



Organization of
American States



Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
Teodoro Cabrera García and Rodolfo Montiel Flores
(Case 12.449)
against the United Mexican States

DELEGATES:

Florentín Meléndez, Commissioner
Santiago A. Canton, Executive Secretary

ADVISORS:

Elizabeth Abi-Mershed
Isabel Madariaga
Juan Pablo Albán Alencastro
Marisol Blanchard

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1889 F Street, N.W.
Washington, D.C., 20006

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**APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS
AGAINST THE UNITED MEXICAN STATES**

**CASE 12.449
TEODORO CABRERA GARCÍA AND RODOLFO MONTIEL FLORES**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", "the Commission" or "the IACHR") hereby files this application with the Honorable Inter-American Court of Human Rights (hereinafter the "Inter-American Court" or "the Court") in Case No. No. 12,449, *Teodoro Cabrera García and Rodolfo Montiel Flores*, against the United Mexican States (hereinafter "the State," "the Mexican State" or "Mexico") for its responsibility in the cruel, inhuman and degrading treatment to which Mr. Teodoro Cabrera García and Mr. Rodolfo Montiel Flores (hereinafter "Messrs. Cabrera and Montiel" or "the victims") were subjected when detained by and in the custody of members of the Mexican Army, the failure to bring them without delay before a judge or other officer authorized by law to exercise judicial power in order to verify the lawfulness of the arrest, and the irregularities that occurred in the course of the criminal case prosecuted against them.

2. The application also deals with the lack of due diligence in investigating and sanctioning those responsible for the incidents and, in particular, the failure to properly investigate the allegations of torture; the failure to make proper reparations to the victims, and the use of the military system of justice to investigate and try human rights violations.

3. This case has been processed in accordance with the terms of the American Convention and is submitted to the Court in compliance with Article 34 of its Rules of Procedure. Attached as an appendix hereto is a copy of Report No. 88/08, prepared pursuant to Article 50 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").¹

4. The Commission believes it is justified in referring this case to the Court because of the exigency of securing justice and redress for the victims. In addition, the Commission believes that the case is emblematic of the abuses committed by the military forces posted in the State of Guerrero and of the impunity surrounding such incidents, which is largely due to the fact that it is the military system of justice that investigates and prosecutes them.

II. PURPOSE OF THE APPLICATION

5. The purpose of this application is to respectfully request that the Court adjudge and declare that:

the State of Mexico is responsible for violation of articles 5(1), 5(2), 7(5), 8(1), 8(2)g, 8(3) and 25 of the American Convention; for failure to comply with the general

¹ IACHR, Report No. 88/08 (Merits), Case 12,449, *Teodoro Cabrera García and Rodolfo Montiel Flores*, Mexico, October 30, 2008; Appendix 1.

obligations established in articles 1(1) and 2 of the Convention, and for failure to comply with its obligations under articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the Convention against Torture"), all to the detriment of Messrs. Teodoro Cabrera García and Rodolfo Montiel Flores.

6. In consideration of the above, the Inter-American Commission asks the Court to order that the Mexican State:

- a) conduct a serious, thorough, impartial and effective investigation within the regular criminal justice system, to shed light on the events of which Messrs. Teodoro Cabrera García and Rodolfo Montiel Flores were victim, to identify the intellectual and material authors of those events, and enforce the sanctions that the law prescribes;
- b) adopt the measures necessary to review the validity of the criminal case prosecuted against Messrs. Rodolfo Montiel Flores and Teodoro Cabrera García in consideration of the rights that were violated against them, especially the evidentiary weight attached to the confessions that the victims made while being subjected to cruel, inhuman or degrading treatment;
- c) adopt the measures necessary so that the jurisdiction of military criminal courts is restrictive and exceptional, limited exclusively to judging members of the military for the commission of crimes or offenses that, due to their nature, may affect a military interest. In particular, adopt the legislative, administrative or other measures necessary so that the military justice system is precluded from taking up violations of human rights, particularly cases of cruel, inhuman and degrading treatment and allegations of torture;
- d) adopt legislative, administrative or any other measures to bring Mexico's laws and practices in line with inter-American standards on the subject of torture;
- e) develop training programs for state officials that take into account the international standards established in the Istanbul Protocol so that the officials have the technical and scientific guidelines necessary to assess situations of possible torture or cruel, inhuman or degrading treatment;
- f) introduce, within a reasonable period of time, permanent human rights instruction programs within the Mexican Armed Forces, at all levels of the hierarchy; in the curriculum of those training programs, make specific reference to this case and to the international human rights instruments;
- g) adopt the measures necessary to ensure that detained persons are brought without delay before a judge or other officer authorized by law to exercise judicial power, in order to verify the lawfulness of the arrest;
- h) adopt rehabilitation measures to benefit the victims;
- i) make full reparations to the victims, including pecuniary and non-pecuniary damages for the human rights violations herein established and adopt measures of satisfaction for them, and
- j) pay the legal costs and expenses incurred in processing the present case.

III. REPRESENTATION

7. In accordance with the provisions of Articles 23 and 34 of the Court's Rules of Procedure, the Commission has appointed Commissioner Florentín Meléndez and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed and attorneys Isabel Madariaga, Juan Pablo Albán Alencastro and Marisol Blanchard, specialists with the Executive Secretariat of the Commission, have been appointed to serve as legal advisors.

IV. JURISDICTION OF THE COURT

8. Under Article 62(3) of the American Convention, the Inter-American Court is competent to hear all cases concerning the interpretation and application of the provisions of the Convention that are submitted to it, provided that the states parties to the case recognize or have recognized its jurisdiction.

9. The Court has jurisdiction to hear this case. The State acceded to the American Convention on March 2, 1981, deposited its instrument of accession thereto on March 24, 1981, and accepted the Court's contentious jurisdiction on December 16, 1998.

10. In addition, the Court has jurisdiction to hear the instant case by virtue of the fact that the Mexican State deposited its instrument of ratification of the Inter-American Convention to Prevent and Punish Torture on June 22, 1987.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION ²

11. On October 25, 2001, the Commission received a complaint presented by Ubalda Cortés Salgado, Ventura López, and the Sierra Club, Greenpeace International, the Miguel Agustín Pro Juárez Center for Human Rights-PRODH, and the Center for Justice and International Law-CEJIL (hereafter referred to jointly as "the petitioners").

12. In accordance with its Rules of Procedure, the Commission classified the complaint as No. 735/01 and proceeded to do a preliminary study of it. On November 2, 2001, the Commission forwarded the pertinent parts of the petition to the State, with a request that it supply relevant information within two months.

13. On November 8, 2001, the Mexican State sent a communication in which it informed the Inter-American Commission that Teodoro Cabrera García and Rodolfo Montiel Flores had been released that day.

14. On January 3, 2002, under Article 30(3) of the Commission's Rules of Procedure the Mexican State requested an extension of the deadline for submitting its response to the Commission's request for information. On January 9, 2002, the Commission granted an extension until February 2, 2002. The State submitted its report on February 5, 2002. The Inter-American Commission relayed that communication to the petitioners on February 22, 2002, and received a response on March 25, 2002. On April 2, 2002, the petitioners' observations were sent to the Mexican State.

² The proceedings mentioned in this section can be found in the file on the processing of the case with the IACHR. Appendix 3.

15. On May 6, 2002, the State requested another extension of the time limit for filing its response. The request was granted on May 21, 2002, and the State was given a one-month extension. The second report containing the State's position on this matter was received on June 25, 2002, and was forwarded to the petitioners. On July 5, 2002, the petitioners requested an extension for purposes of filing their response. On August 26, 2002 they were granted a 15-day extension. On September 8, 2002, the petitioners submitted their observations. The Commission forwarded that brief to the State on November 4, 2002, requesting information within one month.

16. The petitioners submitted an "expanded petition" on November 11, 2002, which the Inter-American Commission sent to the Mexican State on December 2, 2002, requesting information within one month.

17. On December 5, 2002, the Commission transmitted to both parties the *amicus curiae* brief that it had received on August 15, 2002, from the Center for Human Rights and Environment and the Center for International Environmental Law. The brief was placed in the file of case P735/01.

18. The petitioners requested an admissibility hearing by note of January 3, 2003. On January 31, 2003, the IACHR advised that it had not accepted that request.

19. On February 18, 2003, the petitioners asked the Commission whether a response to the expanded petition had been received from the Mexican State. Accordingly, on March 26, 2003 the Commission addressed the Mexican State to reiterate the request for information that it had made on December 2, 2002.

20. On June 3, 2003, the petitioners submitted a request for an admissibility report on this matter, and the Commission so advised the Mexican State on June 23, 2003. On January 12, 2004, the petitioners requested a hearing in order to place before the Commission the statements of witnesses and arguments on the merits of the case. On February 2, 2004, the Commission responded that it would not agree to that request.

21. On February 27, 2004, the Commission adopted Report No. 11/04 in which it declared the case *sub judice*³ to be admissible. In that report, the Commission established that the petitioners had exhausted domestic remedies before turning to an international forum to submit their case regarding violations of the right to personal liberty, the right to a fair trial and the right to judicial protection, and their allegations of torture. The Commission determined that one of the exceptions to the rule requiring exhaustion of local remedies did apply in this case because military justice is not the proper forum to investigate, try and punish violations of human rights. In view of the foregoing, the Commission declared the case admissible as regards the violations of the rights to humane treatment, personal liberty, a fair trial and judicial protection, recognized in articles 5, 7, 8 and 25 of the American Convention, all within the general obligation to respect rights (Article 1(1) of the Convention) and the obligations contained in articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture.

22. On March 12, 2004, the IACHR notified the parties that the admissibility report had been adopted and gave the petitioners two months in which to present their observations on the merits. It also placed itself at the disposal of the parties with a view to exploring the

³ IACHR, Report No. 11/04 (Admissibility) P-735/01, Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico, February 27, 2004, Appendix 2.

possibility of a friendly settlement. On April 21, 2004, the IACHR received a communication from the petitioners in which they expressed their willingness to begin a friendly settlement process in connection with the present case. On April 23, 2004, the Commission forwarded the petitioners' communication to the State. On May 24, 2004, it received a reply in which the State requested an extension to provide its answer.

23. On September 1, 2004, the petitioners requested that the Commission hold a hearing during its 121st regular session to discuss the possibility of a friendly settlement. On September 24, 2004, the Commission informed the petitioners that the requested hearing could not be held.

24. On December 17, 2004, the petitioners requested that the Commission again ask the State for its position on the proposal of a friendly settlement process. On January 10, 2005, the Commission wrote the State reiterating the communication sent on April 23, 2004, in which it had informed the State that the petitioners had expressed their interest in undertaking a friendly settlement process. Given the State's failure to respond, on November 23, 2005 the Commission resumed its examination of the merits of the case and asked the petitioners to present their observations thereon.

25. On February 6, 2006, the petitioners submitted their observations on the merits, which the Commission forwarded to the State on April 18, 2006. On June 20, 2006, the State sent its observations on the merits. On July 14, 2006, the Commission sent the petitioners the State's response to their observations.

26. On September 6, 2006, the petitioners requested a hearing to discuss the merits of the case during the Commission's 126th regular session. The Commission convened both parties to a hearing on October 23, 2006.

27. The petitioners sent additional information to the Commission, which was duly forwarded to the State on January 19, 2007. On February 1, 2007, the petitioners filed a brief with the Commission containing their additional observations. On April 24, 2007, the Commission forwarded those additional observations to the State.

28. On June 29, 2007, the petitioners conveyed additional information to the Commission, which was sent to the State on July 16, 2007. On August 14, 2007, the petitioners submitted additional observations. The State submitted its additional observations on August 23, 2007. Each set of observations was duly forwarded to the other party on August 27, 2007. Then, on September 10, 2007, the State sent the Commission the annexes to its observations of August 23, 2007.

29. On November 26, 2007, the Commission requested additional information from both parties. On December 7, 2007, the petitioners provided the Commission with the requested information, which the latter forwarded to the State on January 22, 2008. On December 26, 2007, the State sent the Commission the additional information it had requested, which the Commission forwarded to the petitioners on January 4, 2008.

30. On October 30, 2008, during its 133rd regular session, the Commission adopted Report 88/08, Merits, prepared pursuant to Article 50 of the Convention. In that report it concluded that

the State of Mexico is responsible for violation of the following rights recognized in the American Convention: the right to personal liberty (Article 7), the right to humane treatment (Article 5), the right to due process and the right to judicial protection (articles 8 and 25), and articles 1, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture, all this within the general obligation to respect rights (Article 1(1)) of the American Convention). The Commission also concludes that the State violated the obligation to adopt domestic legislative measures (Article 2) of the American Convention, in relation to Article 6 of the Inter-American Convention to Prevent and Punish Torture and the obligations established in Article 1(1) of the American Convention, to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores. Furthermore, the Commission considers that the information submitted in the present case is not sufficient for a finding of violations of the rights contained in articles 13, 15, and 16 of the American Convention.

31. In that report, the Commission also made the following recommendations to the Mexican State:

1. Conduct a complete, impartial, effective and prompt investigation through the regular courts, to investigate the violations of the right to humane treatment committed against Mr. Teodoro Cabrera García and Mr. Rodolfo Montiel Flores, identify all persons who participated at the various levels of decision-making and execution, conduct the criminal trials and apply the proper sanctions.
2. Adopt the measures necessary so that the jurisdiction of military criminal courts is restrictive and exceptional, limited exclusively to judging members of the military for the commission of crimes or offenses that, due to their nature, may affect any military interest. In particular, adopt the legislative, administrative or other measures necessary so that the military justice system is precluded from taking up violations of human rights.
3. Adopt legislative, administrative or any other measures to bring Mexico's laws and practices in line with inter-American standards on the subject of torture.
4. Introduce, within a reasonable period of time, permanent human rights instruction programs within the Mexican Armed Forces, at all levels of the hierarchy; in the curriculum of those training programs, make specific reference to this case and to the international human rights instruments.
5. Adopt the measures necessary to review the validity of the criminal case prosecuted against Messrs. Rodolfo Montiel Flores and Teodoro Cabrera García in consideration of the rights that were violated against them, especially the evidentiary weight attached to the confessions that the victims made while being subjected to cruel, inhuman or degrading treatment.
6. Adopt the measures necessary to ensure that detained persons are brought without delay before a judge or other officer authorized by law to exercise judicial power, in order to verify the lawfulness of the arrest.
7. Make full reparations to Messrs. Rodolfo Montiel Flores and Teodoro Cabrera García, including pecuniary and non-pecuniary damages for the human rights violations herein established.

8. Take measures to prevent a recurrence of events similar to those recounted in the instant case. Make it a special priority to ensure that complaints involving human rights violations are not heard by Mexico's system of military justice.

32. The report was sent to the State on November 24, 2008, which was given a period of two months to report back on the steps taken to implement the recommendations contained in the report, as provided for in Article 43(2) of the Commission's Rules of Procedure.

33. On that same date, pursuant to Article 43(3) of its Rules of Procedure, the Commission informed the petitioners that a report on the merits had been adopted and had been transmitted to the State. It also asked the petitioners to indicate, within one month, their position and that of the victims regarding the possible referral of the case to the Inter-American Court.

34. On December 24, 2008, the petitioners stated their interest in having the case submitted to the Inter-American Court of Human Rights.

35. On January 23, 2009, the State requested a 6-month extension to report full, specific, and duly substantiated information and explanations on the steps taken to comply with the recommendations contained in report 88/08. In its communication, the State asserted that if the requested extension was granted, it would "waive the 3-month time period specified in articles 51 of the American Convention and 45 of the Rules of Procedure of the Inter-American Commission on Human Rights." On February 23, 2009, the Commission granted the State a 3-month extension.

36. On May 7, 2009, the State requested another extension to submit its report, this time for one month. It argued that the mandatory shut down ordered because of the H1N1 virus had made it impossible for the proper authorities to assemble in order to fully answer the report on the merits. On May 12, 2009, the State asserted that "Following up on our formal note OEA-01215 dated May 7, 2009, in which the Mexican State requested a one-month extension to submit its response to Report 88/08 on the Merits of Case 12,449, *Teodoro Cabrera García and Rodolfo Montiel Flores*, the Mexican State hereby announces that if the extension is granted, it waives the three-month time period mentioned in articles 51 of the American Convention and 45 of the Rules of Procedure of the Inter-American Commission on Human Rights, and the extension granted by the Commission's note of February 23, 2009." The Commission granted the requested extension on May 22, 2009.

37. On June 17, 2009, the State requested a third extension, this time for one month. It stated that "given the complexity of the circumstances and to give an accurate response concerning the steps taken to comply with the recommendations made in report 88/08, the State wishes to request a final one-month extension to answer the aforementioned report on the merits." In its note, the State said that if the requested extension was granted, the State would "waive the time period mentioned in articles 51 of the American Convention on Human Rights and 45 of the Rules of Procedure of the Inter-American Commission on Human Rights."

38. After considering the information supplied by the parties concerning implementation of the recommendations contained in the report on the merits, and in view of the lack of substantive progress in actual steps taken to carry out those recommendations, on June 23, 2009 the Commission decided not to grant the new extension requested by the Mexican State, and instead to refer the present case to the Inter-American Court.

VI. PRECAUTIONARY MEASURES

39. In its communication of November 8, 2001, in which the Mexican State reported that Messrs. Cabrera and Montiel had been released, it asked the Commission to grant precautionary measures on its own initiative and on behalf of both individuals. That same day, November 8, 2001, the Inter-American Commission addressed the Mexican State and asked it to urgently adopt "all concrete measures necessary to protect the physical safety and life of Messrs. Cabrera García and Montiel Flores."

40. Then, on November 10, 2001, a communication was received from the two victims and the PRODH in which they reported that the Preventive Federal Police had been guarding them since their release and that eventually Messrs. Cabrera and Montiel had asked them to withdraw. They added that thereafter, they "remained with [their] families, resting in a safe place;" they also reported that effective November 12, 2001, they would be escorted by the International Peace Brigades and would report any other measures they might need for their protection. The communication was brought to the attention of the State on November 13, 2001. That same day, the Mexican State provided information about the protective services that had been provided to Messrs. Cabrera and Montiel and stated that it would offer the International Peace Brigades "the facilities necessary" to discharge the protective services that the petitioners had requested of them. On November 29, 2001, the Commission forwarded a copy of the State's communication to the petitioners.

41. In a brief dated December 19, 2001, Messrs. Cabrera and Montiel reported that they had decided to accept escort services from "Global Exchange" starting November 21, 2001, and reserved the right to revisit that decision with the Inter-American Commission. On January 7, 2002, the Inter-American Commission forwarded that communication to the Mexican State. No further steps were taken in connection with the precautionary measures, which expired on April 8, 2002, as had been agreed.

VII. THE FACTS

A. The victims

42. In 1998 Teodoro Cabrera García and Rodolfo Montiel Flores⁴ joined with other *campesinos* to form the civil association know as the *Campesino* Environmentalist Organization of the Sierra of Petatlán and Coyuca de Catalán [*Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán*] (OCESP) in order to put a stop to the logging operations in the mountain forests of the state of Guerrero, which in their view threatened the environment and the livelihood of the local *campesino* communities.

43. In February 2001, the victims were awarded the Chico Mendes Prize for their activities to protect the environment.⁵ While in prison, Mr. Rodolfo Montiel Flores received the

⁴ Mr. Montiel is the leader of the Campesino Environmentalist Organization of the Sierra of Petatlán and Coyuca de Catalán [*Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán*] (OCESP).

⁵ The Chico Mendes Prize is awarded by Sierra Club International and recognizes a person or nongovernmental organization outside the United States that has demonstrated extraordinary courage and leadership in defending the environment, who has risked their lives, their liberty, their families and their jobs. <http://www.sierraclub.org/human-rights/Mexico/mendes.asp>

Goldman Environmental Prize⁶ on April 6, 2000. In May 2001, the Don Sergio Méndez Arceo Foundation awarded the victims the human rights award of that same name.⁷ On May 16, 2001, the victims' wives accepted the "Roque Dalton" medal on their behalf.⁸

B. The Detention of Messrs. Cabrera and Montiel

44. On May 2, 1999, at approximately 10:30 a.m., around 40 soldiers with the Mexican Army's 40th Infantry Battalion⁹ appeared in the community of Pizotla, municipality of Ajuchitlán del Progreso, Guerrero. At the time, Rodolfo Montiel Flores and Teodoro Cabrera García were meeting with other individuals at the home of Mr. Cabrera García in the community of Pizotla.

45. According to the testimonies in the record for criminal case 61/99, soldiers fired a series of shots at Mr. Cabrera García's house,¹⁰ whereupon the individuals attending the meeting, including the victims, were said to have fled and hidden in a ravine for several hours. Eventually, the soldiers discovered their hiding place and set fire to it, flushing out Mr. Cabrera and Mr. Montiel Flores who were forced to leave their hiding place.¹¹

46. As for the circumstances surrounding the victims' detention, during the proceedings before the Commission there was a serious contradiction between the parties' positions. During the proceedings before the IACHR, the petitioners contended that Mr. Cabrera García and Mr. Montiel Flores were unarmed, were detained without an order for their arrest and were not caught *in flagrante*. For its part, citing the proceedings conducted by the competent judicial authorities, the State contended that the victims were captured in an anti-drug trafficking operation and that at the time of their apprehension they were in possession of firearms intended for the exclusive use of the military forces. In the August 28, 2000 ruling in criminal case 61/99, the Fifth District Judge wrote that upon entering the community of Pizotla, the Mexican Army soldiers attached to the 40th Infantry Battalion noticed that "approximately five people had

⁶ The Goldman Environmental Prize was created by the Richard & Rhoda Goldman Foundation to honor persons who have distinguished themselves for their outstanding work in defense of the environment. According to the Foundation's web site, Rodolfo Montiel Flores received the award in 2000. <http://www.goldmanprize.org/recipients/year>.

⁷ This prize is awarded by a Mexican nongovernmental organization, the Don Sergio Méndez Arceo Foundation, and recognizes, encourages and supports organizations, groups and individuals who have demonstrated extraordinary courage in defending and promoting a culture of respect for human rights in Mexico. http://www.cetlalic.org.mx/donsergio_human_rights_award.htm. See also www.cimacnoticias.com/especiales/cdd/bppremiomendezarceo.doc -

⁸ This medal is an award created by the Culture and Science Cooperation Council in El Salvador, a civil association, CONCIES, A.C. It is intended to reward and encourage various contributions in matters related to peace, independence, sovereignty, self determination, solidarity, conservation and promotion of Latin American culture, Salvadoran culture in particular. http://www.centroprodh.org.mx/casos/ecologistas/index_ecologistas.htm.

⁹ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 7. See also, statements made by Silvio Jaimes Maldonado, Crescencia Jaimes Maldonado, and Esperanza Rebollar Jaimes, given before the Fifth District Judge, October 26, 1999. Annex 7.

¹⁰ Criminal Case 61/99. Testimony as to the facts, given by Crescencia Jaimes Maldonado before the Fifth District Judge, October 26, 1999. At 471, Annex 7; Criminal Case 61/99. Testimony as to the facts given by Silvino Jaimes Maldonado before the Fifth District Judge, October 26, 1999. At 464, Annex 7; CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p.16, Annex 3.

¹¹ Testimony of Ubalda Cortés Salgado, given before the Fifth District Judge, July 30, 1999, Annex 7.

gathered at one of the houses, and were [...] armed; [upon seeing the soldiers], they fled in different directions [while] firing their weapons.”¹²

47. In its Merits Report 88/08, the Commission took note of recommendation 8/2000, issued by the National Human Rights Commission (hereinafter the CNDH), an autonomous Mexican entity with constitutional authority to take cognizance of and investigate alleged human rights violations caused by the authorities’ actions or omissions.¹³ A copy of that recommendation is attached to the present application.¹⁴ Concerning the lawfulness of the victims’ capture, the CNDH established that Teodoro Cabrera and Rodolfo Montiel were detained *in flagrante*, during an armed confrontation between the victims and members of the Mexican Army.¹⁵ During the clash Mr. Salomé Sánchez Ortiz was killed by a bullet that hit him in the right temple; Mr. Cabrera García sustained an injury to his right ear.¹⁶

48. The ruling delivered by the domestic court on August 28, 2000 concluded that at the time of his detention, Mr. Montiel Flores was carrying a 0.4 caliber Colt Government pistol and a 22-caliber Remington rifle, while Mr. Cabrera García was carrying a 7.62 mm M1A Springfield Armory rifle. However, in recommendation 8/2000 and based on the evidence compiled, the CNDH concluded that Mr. Rodolfo Montiel Flores was only carrying a 45-caliber pistol at the time of his detention,¹⁷ while Mr. Teodoro Cabrera García was carrying the 7.62-caliber rifle¹⁸ that the State claimed. The IACHR also observes that based on the results of the sodium rhodizonate tests in the record of the court case, Mr. Montiel Flores and Mr. Cabrera García were said to have fired the weapons in question; the test results showed that both men had lead residue on their hands of the kind left from discharging a firearm.¹⁹

49. The CNDH also established that during the anti-drug operation undertaken by members of the 40th Infantry Battalion, the freedom of movement of the inhabitants of the community was restricted.²⁰ Inhabitants of the community were assaulted by the Mexican Army soldiers. According to the account given by Mr. Leonardo Perea Santoyo, Municipal Police Chief for Coacoyul and Pizotla, cited by the CNDH in its recommendation 8/2000, “the soldiers with

¹² Criminal Case 61/99. Ruling of August 28, 2000, at 21. Annex 7.

¹³ Article 102, paragraph B of the Constitution of Mexico provides that the National Human Rights Commission is autonomous for purposes of its management and budget, juridical personality and assets. The essential purpose of this body is to protect, monitor, promote, study and disseminate the human rights protected under Mexico’s laws.

¹⁴ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*, Annex 2.

¹⁵ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, pp. 15 and 25, Annex 3.

¹⁶ In the Preliminary Statement by Teodoro Cabrera García, given on May 7, 1999 before the Mina District Judge, he said the following: “[...] as soon as I saw the soldiers, I ran; they fired and a bullet grazed my left ear, and it immediately began to bleed [...]”.

Criminal Case 61/99. Preliminary Statement by Rodolfo Montiel Flores and Teodoro Cabrera García, May 7, 1999. Annex 7.

¹⁷ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 21. Annex 3.

¹⁸ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 22. Annex 3.

¹⁹ Preliminary Inquiry CUAU/01/0119/999. Test Results. Sodium Rhodizonate, May 4, 1999. Annex 4.

²⁰ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 17. Annex 3.

the 40th Infantry Battalion fired their weapons, terrorizing the civilian population of the community of Pizotla (sic) and treated women and children brutally. They kept the entire community *incomunicado* for two days.”²¹ Furthermore, the testimony from members of the Pizotla community, which is on record in the case in the domestic judicial system, mentioned that the soldiers entered and searched the homes of inhabitants of the community without the court order needed to conduct such searches.²²

50. Here, the CNDH found that “the conduct of the [...] public servants, having been ordered to direct, supervise and authorize the operation in question, violated the human rights of the inhabitants of the community in question by preventing them from exercising their right to freedom of movement [...].”²³ For the days that the Pizotla community was *incomunicado*, the soldiers “engaged in harassment and conducted searches, which included searches of the houses of Mr. Teodoro Cabrera García and Mr. Jesús Santana, located in the Pizotla community [...]. They took away the seal and papers belonging to the environmental organization [to which they belonged] and two [...] 22-caliber rifles [...]; these soldiers did this without observing the

²¹ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 17. Annex 3.

²² Mr. Silvino Jaimes Maldonado said the following in his statement before the Fifth District Judge:

QUESTION TWENTY: Does the witness know whether the military went to his house at some point? ANSWER: Yes, my sister [Cresencia Jaimes] told me so. QUESTION TWENTY-ONE: Can the witness tell us why the soldiers went to his house. ANSWER: They went there to sack the house; or so my sister said. When I returned from the Mesa del Guayabo community, nothing was missing in my house. QUESTION TWENTY-TWO: Does the witness know whether his was the only house the soldiers entered? ANSWER: My sister Cresencia told me that the soldiers went into every house. QUESTION TWENTY-THREE: Does the witness know whether the soldiers had a search warrant for his house. ANSWER: No, they did not.

In her statement, Cresencia Jaimes said the following:

QUESTION TWENTY-SIX: Did you communicate with the soldiers at any time? ANSWER: The day the soldiers arrived, the commanding officer told five of us women that he was going to kill Teodoro and Rodolfo, throwing bombs. He didn’t say why. QUESTION TWENTY-SEVEN: Did the witness speak with the soldiers on any other occasion? ANSWER: On Tuesday, they came to my house to tell me to give them permission to search the house. I asked them to show me an order. They told me they didn’t have the order with them and that I should authorize them to go ahead and search the house, because they were coming in anyway. I said no, but they came in anyway. They ransacked everything in searching the house, but took nothing. However, they did take machetes and clothing from the other houses. QUESTION THIRTY: Does the witness know whether the soldiers had search warrants to inspect the house. ANSWER: They did not have search warrants, because all the women asked to see the search warrant and no one produced it. QUESTION THIRTY-THREE: Apart from the clothing and machetes that the witness mentioned earlier [...], does the witness know whether the soldiers took anything else? ANSWER: I know they took clothing, machetes, identification papers and shoes. I know because a neighbor by the name of Irene Santoyo Santoyo told me that the soldiers took identification cards and two pairs of shoes. The identification cards belonged to her husband Rodolfo Serrano; the shoes were her son’s, Pedro Serrano.

In her statement, Esperanza Rebollar Jaimes said the following, Annex 7:

QUESTION TEN: What did the soldiers do when they entered Pizotla community? ANSWER: They went into the homes and searched them. They took away machetes that the farmers use to work. That’s it. QUESTION ELEVEN: Did the soldiers return the machetes that you mentioned in your previous answer? ANSWER: I don’t know whether they returned them. QUESTION TWELVE: Did the soldiers come to the witness’ house? ANSWER: Yes, they searched it. They didn’t take anything. I was there. They did not show any search warrant and I did not give them permission to conduct the search. But they came in anyway.

Criminal Case 61/99. Testimony given by Cresencia Jaimes Maldonado in the presence of the Fifth District Judge, October 26, 1999. At 471, Annex 7; Criminal Case 61/99. Testimony given by Silvino Jaimes Maldonado in the presence of the Fifth District Judge, October 26, 1999. At 464, Annex 7.

²³ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 18, Annex 3.

formalities required under paragraph eight of Article 16²⁴ of the Constitution of the United Mexican States.”²⁵

51. The Commission should note for the record that the two victims were captured at 4:30 p.m.²⁶

52. In the amplification of the statement that Mr. Montiel Flores made in the presence of the Fifth District Judge of the Twenty-first Circuit, he said that after being detained, both men were dragged by the hair for a distance of some 5 meters to the banks of the Pizotla River, taken to a military outpost. There, they were denied any contact with family members.²⁷ According to his testimony, soldiers of the Mexican Army subjected them to various forms of abuse and mistreatment, which included the following: “he was kicked in the abdomen and the upper left lumbar region; he was subjected to mock executions; his testicles were pulled repeatedly, causing him to lose consciousness; electric shocks were administered to his right thigh, after it was soaked down; his head was forced back by someone pulling on his jaw; his shoulders were forced to the floor by someone standing on them. This went on for approximately two hours.”²⁸ All this was confirmed by Mr. Montiel Flores at the hearing the Commission held on October 23, 2006, during its 126th regular session.²⁹

²⁴ Art. 16 paragraph eight:

All search warrants, which only the judicial authority has the power to issue and which shall be in writing, shall specify the place to be inspected, the name of the person or persons to be apprehended, and the objects sought. The search shall confine itself to the information specified in the warrant. Upon conclusion of the search, a detailed document shall be prepared in the presence of two witnesses proposed by the occupant of the place being searched; in the event of the occupant’s absence or refusal, that document shall be signed by the authority conducting the search.

²⁵ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 22, Annex 3.

²⁶ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 7, Annex 3.

²⁷ Case 61/99-1. Amplification of the Statement made by Rodolfo Montiel Flores and Teodoro Cabrera García in the presence of the Fifth District Judge of Iguala, December 23, 1999, p. 5. Annex 3.

²⁸ Case 61/99-1. Amplification of the Statement made by Rodolfo Montiel Flores and Teodoro Cabrera García in the presence of the Fifth District Judge of Iguala, December 23, 1999, pp. 5-9. Annex 3.

²⁹ At the hearing Mr. Montiel Flores said the following: “They went after Teodoro [Cabrera García] and me [...] They detained us on May 2. I was in the community of Pizotla at the time, where I was selling clothing and handing out flyers to invite the public to fight for the forests. The soldiers came [there] firing their weapons. They killed Salomé Sánchez Ortiz and wounded Teodoro. They detained us: they never identified themselves and had no arrest warrant. We were tortured brutally. They cut off one of my friend Teodoro’s [Cabrera García] testicles. One of my testicles is damaged. We were held *incommunicado*, we were being tortured. A drunken soldier also tortured us. I say this because he smelled of liquor.” When Commissioner Florentín Meléndez asked him to describe the acts of torture in detail, Mr. Montiel Flores answered: “The torture consisted of the following: they took us to the mountain, they laid us on the ground and pulled us by the neck; one soldier climbed on my stomach, put his hands on my shoulders and jumped up and down. Another pulled my pants down and pulled my testicles. After that they poured water on my right thigh and applied electric current. They also pointed a blue light in my face; then they told me to talk, ‘tell us where your friends are; you’re a member of the EZLN [Zapatista National Liberation Army] and the EPR [Revolutionary People’s Army]. Tell us the truth.’ I told them, ‘I’m not a member of any armed group; I’m a member of a *campesino* environmentalist organization.’ They knew that, because they took from me the organization’s seal and the letterhead flyers that said I was selling clothes and was inviting people to a meeting. While I was in their hands, the physical torture I endured was compounded by psychological torture, because they claimed to have my family and that everything I said was going to be used against me and not to forget it.”

IACHR. Minutes of hearing 26, Case 12, 449 Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico. Hearing on the Merits. 126th regular session, October 23, 2006, pp. 3 and 9. Annex 16.

53. For his part, Mr. Teodoro Cabrera testified that he was led away by soldiers, with his feet partially tied. He was taken to a place where he was interrogated with the use of force, consisting of the following: "he was kicked in the upper abdomen; he was subjected to mock executions; his head was forced back by someone pulling on his jaw; his shoulders were forced to the floor by someone standing on them while he writhed from the pain of the blows; he was hit in the left lumbar area, presumably with the butt of a rifle; his testicles were pulled, causing him to lose consciousness repeatedly."³⁰ The record of the investigation instituted by the CNDH contains a detailed statement made by Mrs. Cortés whose says that she witnessed some of the abuse to which the victims were subjected. She described them in the following terms: "I followed them [the soldiers] to [...] and saw them grab Mr. Teodoro [Cabrera García] and they threw him behind a rock; I didn't see what they did to him there but [I heard] them tell him to unbutton his pants. Then they pulled down the pants my husband [Rodolfo Montiel Flores] was wearing and they did the same to him. I think they did it to torture him. Later my husband told me that they stripped them in order to apply the electric shock to force them to talk."³¹

54. The statement by Mr. Montiel Flores and the statement by Mr. Cabrera García both establish that they were then tied, hand and foot, forced to lie face down and were kept in that position until the night of May 3, 1999. That night, members of the Mexican Army began to interrogate the victims about their environmental activism.

55. On May 4, 1999, the victims were transferred to the headquarters of the 40th Infantry Battalion in Altamirano, Guerrero, where they were held for a second time.³² As for how long the victims were detained, in its recommendation 8/2000 the CNDH determined that the detention had violated "the principle of legality and the right to personal liberty [...]."³³ Mr. Montiel Flores and Mr. Cabrera García were held for two days, before being handed over to the District Attorney's Office³⁴ on May 4, 1999, at 6:00 p.m.

56. Mr. Montiel Flores and Mr. Cabrera García stated that they were separated while at the headquarters of the 40th Infantry Battalion, where the threats³⁵ and acts of violence continued. Both Mr. Montiel Flores and Mr. Cabrera García complained that while held in custody at the military base, they were tortured to force them to sign incriminating statements in which both admitted to the crimes of growing marijuana and illegal possession of firearms.

57. With specific reference to the acts of violence, the court record of the present case contains the private defense counsel's interrogations of Mrs. Jacqueline Pineda Mendoza, who was the federal court-appointed defense counsel for Mr. Montiel Flores and Mr. Cabrera García. According to her statement, she was present at the Coyuca Federal Public Prosecutor's

³⁰ Case 61-99-1. Preliminary Statement made by Teodoro Cabrera García in the presence of the Judge of First Instance of Mina, May 7, 1999, pp. 2-6. Annex 7.

³¹ CNDH. Case file 99/1900 Detailed statement, June 7, 1999. Annex 2.

³² CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García.* Recommendation No. 8/2000, p.15, Annex 3.

³³ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García.* Recommendation No. 8/2000, pp. 12-13, Annex 3.

³⁴ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García.* Recommendation No. 8/2000, pp. 25 -26, Annex 3.

³⁵ In Rodolfo Montiel's Preliminary Statement, given in the presence of the Mina District Judge of First Instance, Coyuca de Catalán on May 7, 1999, the alleged victim said the following: "When I was at the 40th Battalion, a drunken friend of the soldiers came along and began to beat me up, causing me to fall over. They had my hands tied behind my back; my feet were also bound."

Office on May 6, 1999, when the victims were handed over to the Office of the Federal Public Prosecutor. Mrs. Pineda Mendoza maintained that on that day she had asked Mr. Teodoro Cabrera whether the Mexican Army soldiers had hit him when he was in their custody; his answer was that he had been hit on the head while at the 40th Infantry Battalion.³⁶

58. According to the amplification of the victims' statement, while in the custody of the 40th Infantry Battalion, the only persons the victims spoke to were members of the Mexican Army.³⁷ The State, however, alleged before the Commission that for the duration of the time they were in custody in the community of Pizotla, the two victims were kept within view of their relatives. Based on the testimony of members of the Pizotla community, which appears in the court record of the case, and on the victims' own testimony, the Commission concluded in its Merits' Report that Mr. Montiel Flores and Mr. Cabrera García remained *incomunicado*³⁸ for the

³⁶ The statement is, *verbatim*, as follows:

"QUESTION TWENTY-EIGHT: When the witness saw Mr. Teodoro Cabrera, did she notice any visible injury?

ANSWER: Well, no. But I asked him if the soldiers had beaten him while he was in their custody and he told me that they had hit him on the head at the Fortieth Infantry Battalion's base in Altamirano, Guerrero. And he said that if they showed him a photograph of the soldiers, he could identify the person who had beaten him [...]"

Criminal Case 61/99. The private defense counsel's interrogations of Jacqueline Pineda Mendoza, Alejandra Flores López and Marleni Cuica Acosta. January 27, 2000.

³⁷ Criminal case 61/99-I. Amplification of the statement made by Teodoro Cabrera García in the presence of the Fifth District Judge, October 23, 1999, p. 4. Annex 7.

³⁸ In her statement, Mrs. Ubalda Cortés Santana said the following: "In order to force them [Teodoro Cabrera García and Rodolfo Montiel Flores] to come out, they [the soldiers] threw stones at them. They came to me and asked me where they were [...] I went back to my house and about an hour later came back and the lady there told me that they had my husband in custody; I saw that they had him lying face down, with his hands tied behind his back [...] They then boarded Rodolfo Montiel and Teodoro [Cabrera] onto a helicopter. I asked if I could have a few words with him, to find out where they were taking him. The soldiers told me that I didn't need to chat with him and to look for him later."

Criminal Case 61/99-1. Testimony of Ubalda Cortés Santana. July 30, 1999, at 341 and 342. Annex 7.

Silvino Jaimes Maldonado also said that "the Army surrounded them [the victims]. Rodolfo and Teodoro then hid themselves in a tree. In order to flush them out, the Army set the tree on fire. It was at that point that they, the two now on trial, came out because if they hadn't they would have been burned. My sister Cresencia Jaimes told me that the Commander who was there had threatened them [the victims' next of kin], telling them that either they persuaded them to come out or they [the military] would start throwing bombs. The women refused, because they were afraid. The military set fire to the mountain and flushed them [the victims] out. I learned from my sister, Cresencia Jaimes, that the soldiers took them to the bank of the Pizotla River and had them [the victims] lying there face down in the water. After that, I don't know what else the Army did to Rodolfo and Teodoro, because they [the military] didn't allow anyone to have contact with them."

Testimony given by Silvino Jaimes Maldonado in the presence of the Fifth District Judge, October 26, 1999, at 450. Annex 7.

Cresencia Jaimes Maldonado testified as follows:

QUESTION TWENTY-ONE: How far was the witness from the place where Rodolfo and Teodoro were detained at around three in the afternoon? ANSWER: They had them about sixty meters away from my house, and from there I could see that they [the victims] were in custody.

Testimony given by Cresencia Jaimes Maldonado in the presence of the Fifth District Judge, October 26, 1999, at 454 and 455. Annex 7.

Esperanza Rebollar Jaimes testified as follows:

QUESTION TWENTY-FOUR: Did the witness see the soldiers with Rodolfo Montiel in custody? ANSWER: Yes, they had Rodolfo and Teodoro on the bank of the river, lying face down in the mud, with their hands behind their back. From where I was standing, I couldn't see whether their hands were tied [...] From what I saw, the soldiers had them [the victims] there all Sunday evening and all day Monday. I don't know when they took them away. QUESTION TWENTY-FIVE: How far away was the witness when she says she saw Rodolfo and

duration of their detention; in other words, from 4:30 p.m. on May 2, 1999, until they were handed over to the District Attorney's Office³⁹ on May 4, 1999, at 6:00 p.m.⁴⁰

59. The State, for its part, asserted before the Commission that Mr. Montiel Flores and Mr. Cabrera García were not tortured while in the custody of soldiers from the 40th Infantry Battalion. The State contends that both the military medical personnel and the forensic physicians from the Office of the Attorney General for the State of Guerrero⁴¹ issued medical reports certifying that the victims showed no evidence or traces of any physical violence.

60. During the investigation launched within its area of competence, the CNDH focused its inquiry on corroborating the acts of violence against the victims.⁴² However, when the military authorities did not cooperate, the CNDH concluded that "given the repeated silence [on the part of the Office of the Prosecutor General for Military Justice], which did not provide

Teodoro in custody on the river bank? ANSWER: About fifty meters away. QUESTION TWENTY-SIX: Where was the witness when she saw the men in custody? ANSWER: In my house.

Testimony given by Esperanza Jaimes Maldonado in the presence of the Fifth District Judge, October 26, 1999, at 454 and 455, Annex 7.

³⁹ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, pp. 25 -26. Annex 3

⁴⁰ The August 28, 2000 conviction held the following with respect to the excessive period of detention: "Therefore, the accused were handed over to the District Attorney's Office at 6:00 p.m. on May 4, 1999 [...] It is obvious, therefore, that the accused spent forty-eight hours in the custody of their military captors, which is in violation of paragraph four of Article 16 of the Constitution [...] Therefore, in order to be in compliance with Article 16 of the Constitution, the military captors should have handed over the accused to the District Attorney's Office by that point in time [4:00 p.m. on May 4, 1999]. However, if they did not and the judge went ahead and confirmed the arrest, without that decision being challenged, then they ought not to be released on that account. Whatever blame there may be in this regard, this judgment is not the place to examine it, because that issue is not the matter before this court."

Criminal Case 61/99. Judgment of First Instance, delivered by the Fifth District Judge of the state, August 28, 2000, pp. 81-82. Annex 7.

⁴¹ According to the medical certificate issued by the Office of the Public Prosecutor for the state of Guerrero on May 4, 1999, Rodolfo Montiel Flores "appears to be in GOOD PHYSICAL CONDITION, and shows no evidence of any violence." Teodoro Cabrera García, "is in GOOD PHYSICAL CONDITION, with no signs of any violence. However, he does have one wound behind the ear that is not recent." On May 6, 1999, the forensic physicians from the Office of the Public Prosecutor in Coyuca, Guerrero, found that Mr. Montiel Flores and Mr. Cabrera García were "physically and mentally fit."

Criminal Case 61/99. Medical certification of physical condition, issued by Cirenio Guzmán, May 6, 1999. Criminal Case 61/99. Forensic certificate issued by Mario Lara Romero on May 4, 1999. Annex 7.

⁴² CNDH. Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part one. Memorandum No. V2/0016528. Subject matter: Cooperation in the form of information requested. June 3, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part one. Memorandum No. V2/00016575. June 4, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part one. Memorandum No. V2/00016576. Subject matter: Cooperation in the form of information requested. June 4, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part one. Letter addressed to all civilian and military authorities in the State of Guerrero. June 4, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part one. Memorandum No. VA/00017197. Subject matter: Elaboration of information. June 10, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II part one. Memorandum No. VA/00017200. Subject matter: cooperation in the form of elaboration of information requested. June 10, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, parts one and two. Memorandum CNDH/2VG/DG/047/99. September 23, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part two. Memorandum No. VA/00031712. October 6, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part two. Memorandum No. VA/00031711. October 6, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part two. Memorandum No. VA/00031799. Subject matter: elaboration of information. October 7, 1999, Annex 2; Files 2000/232 and joined cases 99/1900 and 99/2336. Volume II, part two. Memorandum No. V2/014063. Subject Matter: cooperation requested. May 19, 2000, Annex 2.

the CNDH with the information [requested]⁴³ in the proceeding instituted by the victims, the CNDH presumed that the allegations of torture were true, in keeping with articles 38⁴⁴ and 70⁴⁵ of the CNDH Law.⁴⁶ The court record for this case includes the medical report prepared by *Physicians for Human Rights- Denmark*, which was offered as evidence during the proceedings on the case and which concluded that the victims displayed the physical after-effects consistent with the torture suffered.⁴⁷

C. Judicial proceeding against Teodoro Cabrera García and Rodolfo Montiel Flores

61. On May 4, 1999, Artemio Nazario Carballo (Second Infantry Captain), Calixto Rodríguez Salmerón (Infantry Sergeant Second Class) and José C. Calderón Flaviano (Infantry Corporal) brought a criminal complaint against the victims, which they filed with the Criminal Judge of First Instance of the Mina Judicial District. Rodolfo Montiel Flores was accused of the following crimes: possession of firearms intended for the exclusive use of the Army, Navy and Air Force, and possession of a firearm without a permit.⁴⁸ The firearms he was alleged to have

⁴³ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 25. Annex 3.

⁴⁴ Article 38.- The report to be presented by the authorities in question, as the responsible parties against whom a complaint or claim may be brought, is to include background information on the matter, the grounds and motives for the actions or omissions being challenged, if such grounds or motives exist, and the information deemed necessary to properly document the matter.

If the report or the supporting documentation is either not presented or is delayed without cause, the parties to blame shall be held accountable and the facts of the complaint shall be deemed to be true, unless proven otherwise.

⁴⁵ Article 70. – The public authorities and public servants shall be criminally and administratively liable for the acts or omissions they incur during and in connection with the processing of complaints with the National Human Rights Commission, in accordance with the applicable provisions of the Constitution and the law.

⁴⁶ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 25. Annex 3.

⁴⁷ Physicians for Human Rights-Denmark. The case of Rodolfo Montiel Flores and Teodoro Cabrera García, Mexican *campesinos* and environmental activists, July 29, 2000. Annex 13.

⁴⁸ The August 28, 2000 ruling in case 61/99, delivered by the Fifth District Judge, states that unlicensed possession of firearms and possession of firearms intended for the exclusive use of the Army, Navy and Air Force are criminalized in articles 81 and 83, paragraph II, respectively, of the Federal Firearms and Explosives Act:

Article 81

Anyone found in possession of one of the weapons covered under articles 9 and 10 of this law, without the proper license, shall be sentenced to prison for a period of two to seven years and shall be ordered to pay a fine of two hundred days' wages.

If the person is found to be in possession of two or more firearms, the penalty shall be increased by as much as another two thirds.

Article 9

Possessing or carrying weapons with the following features is allowed, provided the provisions and limitations established by this law are observed:

- I. Semi-automatic pistols whose caliber shall not exceed .380 (9 mm.); the exceptions are the .38 Super and .38 Commando pistols and the 9 mm. Mauser, Luger "Parabellum" and Commando, and any similar models of the same caliber as the exceptions, sold under other brand names.
- II. Revolvers of calibers no higher than the .38 Special; the exception is the .357 caliber Magnum.

Landholders, *comuneros* and day workers from the countryside, beyond urban areas, may own and carry one of the weapons mentioned above or a .22-caliber rifle or a shotgun of

had in his possession were: a 45-caliber pistol serial number 85900G70, three magazines and three live cartridges, and a 22-caliber Remington rifle, model 550-1.⁴⁹ He was also accused of cultivating marijuana.⁵⁰ Mr. Teodoro Cabrera García was accused of possession of a firearm intended for the exclusive use of the Army, Navy and Air Force,⁵¹ possession of a 7.62 mm M-

any caliber, except for any shotgun or rifle with a barrel of less than 635 mm (25) and those of a caliber higher than 12 (.729 or 18.5 mm) .

- III. Those mentioned in Article 10 of this law.
- IV. Those that are part of weapons collections, as described in articles 21 and 2.

Article 83

The penalty for any person who carries a firearm intended for the exclusive use of the Army, Navy or Air Force without the proper permit, shall be as follows:

(...)

- II. Imprisonment for three to ten years and a fine of two hundred days, in the case of firearms covered under subparagraphs a) and b) of Article 11 of this law.

Article 11

The weapons, ammunition and materials intended for the exclusive use of the Army, Navy and Air Force are as follows:

- a).- .357 Magnum revolvers or revolvers of a caliber higher than a .38 Special.
- b).- 9 mm. Luger "Parabellum" and similar pistols, the .38 Super and Commando, and higher-caliber pistols

⁴⁹ Preliminary inquiry CAU/01/199/999, at 12, Annex 4.

⁵⁰ The judgment in case 61/99 of August 28, 2000, delivered by the Fifth District Judge, states that the offense against health in the form of marijuana cultivation is criminalized in Article 198, penultimate paragraph, of the Federal Criminal Code:

Article 198. Anyone whose principal farming activity is the planting, cultivation or harvesting of marijuana, poppies, hallucinogenic mushrooms, peyote or any other plant that produces similar effects and who does so on his own or -because he is someone with little education and of very modest means- does so with funding from third parties, shall face a sentence of imprisonment for a period of one to six years.

Anyone of similar circumstance, who allows land he owns, is a tenant on, or holds to be used to plant, cultivate or harvest those plants shall face the same penalty.

If the conduct described in the preceding two paragraphs is not attended by the circumstances specified therein, the penalty shall be up to two thirds of the penalty stipulated in Article 194, provided the planting, cultivation or harvesting is for the purpose of engaging in any of the conduct provided for in subparagraphs I and II of that article. Absent that purpose, the penalty shall be two to eight years in prison.

If the crime is committed by a public servant who is a member of a police force, that person shall also be dismissed from his government employment, post or commission and shall be disqualified from any other public employment or office for a period of one to five years; if the crime is committed by a member of the Mexican Armed Forces who is retired, on reserve or in active service, he or she shall receive the penalty described above and shall be permanently discharged from the branch of the Armed Forces to which he or she belongs and will be disqualified from any public employment or office for a period of one to five years.

⁵¹ The August 28, 2000 Judgment in case 61/99, delivered by the Fifth District Judge, held that the crimes of unlicensed possession of firearms and the possession of a firearm intended for the exclusive use of the Army, Navy and Air Force are covered in Article 83, subparagraph II:

Article 83

The penalty for any person who carries a firearm intended for the exclusive use of the Army, Navy or Air Force without the proper permit, shall be as follows:

(...)

- II. Imprisonment for three to ten years and a fine of two hundred days, in the case of firearms covered under subparagraphs a) and b) of Article 11 of this law.

Article 11

1A rifle, serial number 035757, with one magazine and twenty-eight live cartridges.⁵² The complaint also stated that a marijuana field had been destroyed and by signed by the soldiers in question. A sworn statement was included to the effect that firearms, live cartridges, marijuana, and poppy and marijuana seeds had been observed.⁵³ Also included were two medical certificates signed by physicians with the Mexican Army: one concerned Mr. Montiel Flores, and the other was for Mr. Cabrera García. The certificates stated that there was evidence of "scarring from firearms, abrasions, dermatomycosis, and wounds from sharp instruments."⁵⁴ According to the Army physicians, however, those lesions "are not life threatening and would take less than 15 days to heal; there was no evidence of [...] torture anywhere on the body."⁵⁵

62. In ratifying or confirming his complaint, Captain Carballo asserted that the investigations conducted by the military had found that Mr. Montiel Flores and Mr. Cabrera García were members of an armed group known as the *Ejército Zapatista de Liberación Nacional* [Zapatista National Liberation Army] (EZLN) and were also members of the Campesino Environmentalist Organization of the Sierra of Petatlán and Coyuca de Catalán [*Organización de Campesinos Ecologistas de la Sierra de Petatlán y Coyuca de Catalán*] (OCESP), which the military alleged was formed in order to put together an armed resistance group.⁵⁶

63. On May 5, 1999, the Office of the Federal Public Prosecutor established that there was sufficient evidence⁵⁷ to show probable cause in the case of Mr. Montiel Flores and Mr.

The weapons, ammunition and materials intended for the exclusive use of the Army, Navy and Air Force are as follows:

- a). .357 Magnum revolvers or revolvers of a caliber higher than a .38 Special.
- b). 9 mm Luger "Parabellum" and similar pistols, the .38 Super and Commando, and higher-caliber pistols.

⁵² Preliminary inquiry CAU/01/199/999, at 12, Annex 4.

⁵³ Affidavit issued by the Office of the Deputy Public Prosecutor of Ajuchitán del Progreso, May 4, 1999, Annex 4.

⁵⁴ Preliminary Inquiry 33/CC/999. Forensic certificate for Mr. Rodolfo Montiel Flores and forensic certificate for Mr. Teodoro Cabrera García. Both issued by Dr. Bulmario Adame Benítez (Medical/surgical officer, Second Lieutenant in the Mexican Army attached to the Regional Military Hospital at Chilpancingo, Guerrero, providing medical support to the Health Unit of the 40th Infantry Battalion in the 35th Military Zone), dated May 4, 1999, Annex 5.

⁵⁵ Preliminary Inquiry 33/CC/999. Forensic certificate for Mr. Rodolfo Montiel Flores and forensic certificate for Mr. Teodoro Cabrera García. Both issued by Dr. Bulmario Adame Benítez (Medical/surgical officer, Second Lieutenant in the Mexican Army, attached to the Regional Military Hospital at Chilpancingo, Guerrero, providing medical support to the Health Unit of the 40th Infantry Battalion in the 35th Military Zone), dated May 4, 1999, Annex 5.

⁵⁶ Preliminary Inquiry No. 33/CC/999. Amplification of the confirmation of the complaint filed by a Second Infantry Captain with the 40th Infantry Battalion in the presence of the agent from the Office of the Federal Public Prosecutor in Coyuca de Catalán, Annex 5.

⁵⁷ The evidence that carried the heaviest weight was the victims' confession.

The brief binding over to the jurisdiction of the courts included the following jurisprudential arguments:

WEIGHT ATTACHED TO THE CONFESSION. According to the principles governing the weighing of evidence in a criminal proceeding, the weight attached to the accused' confession as an admission of his or her own guilt follows from the facts themselves and has value as a relevant factor and rises to the level of evidence of a crime when not refuted or shown to be untrue and if corroborated by [other] means of evidence.

CONFESSION – THE ACCUSED' FIRST STATEMENTS. Under the principle of procedural immediacy, the confession has full evidentiary value because it came from the accused without coaxing or exculpatory considerations. It should therefore carry more weight than subsequent statements, especially when those subsequent statements were made the day after the criminal acts were committed.

Cabrera García.⁵⁸ It therefore filed criminal charges against the victims and handed them over to the Judge of First Instance of the State Court⁵⁹ on May 6, 1999, at 6:40 p.m.⁶⁰ accused of planting marijuana and possession of firearms. With that, the two accused were handed over to the Criminal Court of First Instance of the Mina Judicial District, which opened criminal case 13/99.

64. On May 12, 1999, the Judge of First Instance of the Mina Judicial District issued a formal order of detention against the victims. However, he recused himself⁶¹ from the case and forwarded the case file to the Fifth District Judge of the Twenty-first Circuit.⁶² On May 13, 1999, Mr. Montiel Flores and Mr. Cabrera García received notice of the formal order of detention and immediately appealed that decision. On May 28, 1999, the Fifth District Court accepted contentious jurisdiction⁶³ in order to continue to hear the criminal case. It also agreed to hear the criminal appeal that the victims filed on May 13, 1999.⁶⁴ On July 4, 1999, Mr. Montiel Flores and Mr. Cabrera García petitioned the Fifth District Judge of the Twenty-first Circuit to revoke the appointment of the court-appointed defense counsel and to recognize Mr. Carlos Ledesma Narváez as defense counsel. On July 13, 1999, Mr. Carlos Ledesma Narváez accepted the post but filed a protest with the Fifth District Judge of the Twenty-first Circuit. Later, the presiding judge ordered that Mr. Teodoro Cabrera García be taken⁶⁵ to the hospital for health complications.⁶⁶

Brief binding the accused over to the justice system, drawn up by the Office of the Federal Public Prosecutor of Coyuca de Catalán, May 6, 1999, Annex 5.

⁵⁸ Preliminary Inquiry No. 33/CC/99. Brief handing the accused over to the justice system, issued by the Office of the Federal Public Prosecutor of Coyuca de Catalán, May 6, 1999, Annex 5.

⁵⁹ Preliminary Inquiry No. 33/CC/99. Brief handing the accused over to the justice system, issued by the Office of the Federal Public Prosecutor of Coyuca de Catalán, May 6, 1999, Annex 5.

⁶⁰ The document acknowledging receipt shows that the brief was filed with the Judge at 6:40 p.m. Preliminary Inquiry No. 33/CC/99. Brief handing the accused over to the justice system, issued by the Office of the Federal Public Prosecutor of Coyuca de Catalán, May 6, 1999, Annex 5.

⁶¹“SIX: This court of first instance hereby declares that it does not have jurisdiction to continue hearing the matter and therefore refers the files to the Fifth District State Judge, in the city of Iguala, Guerrero, so that he can continue to hear the present case. The defendants RODOLFO MONTIEL FLORES and TEODORO CABRERA GARCÍA, inmates at the Social Re-adaptation Center in this city, are thus transferred to the jurisdiction of that court [...].”

Criminal Case 61/99. Order of Committal for Trial, p. 30, at 191, May 12, 1999, Annex 7.

⁶² Criminal Case 61/99. Order of Committee for Trial, May 12, 1999, Annex 7..

⁶³ “[...] Because the Judge of First Instance of the Mina Judicial District, in Coyuca Catalán, Guerrero, declared that he did not have jurisdiction to continue to hear the present case because the crime attributed to the accused RODOLFO MONTIEL FLORES and TEODORO CABRERA GARCÍA, is a federal offense and therefore under the jurisdiction of this Fifth District Court. Therefore, based on Article 144 of the Federal Procedural Code, this Fifth District Court accepts jurisdiction from the Court of First Instance of the Mina Judicial District, on the understanding that this case will be prosecuted through the regular courts.”

Criminal Case 61/99. Acceptance of jurisdiction. May 28, 1999, Annex 7.

⁶⁴ Criminal Case 61/99, memorandum 1936, dated May 28, 1999, Annex 7.

⁶⁵ Criminal Case 61/99. Decisions of February 3, 2000, February 10, 2000, February 23, 2000, March 6, 2000 and March 22, 2000, Annex 7.

⁶⁶ “Based on Article 21 of the Federal Code of Criminal Procedure, the release of defendant TEODORO CABRERA GARCÍA is being requested so that he can be examined by a specialist in surgery at the General Jorge Soberón Acevedo Hospital [...] In response to the request, a memorandum is to be sent to the Director of the Regional Center for Social Re-adaptation and the Director of Municipal Public Security, both of this city, so that the former might allow the defendant’s release and so that the latter might transfer defendant TEODORO CABRERA GARCIA [...] to the General Soberón de Acevedo Hospital in this city [...] with the necessary security and under his strict responsibility.”

Criminal Case 61/99. Memorandum Number 457. February 3, 2000, Annex 7.

65. On August 28, 2000, the Fifth District Judge of the Twenty-first Circuit handed down a judgment of conviction against Rodolfo Montiel Flores and Teodoro Cabrera García, sentencing them to prison terms of six years eight months and ten years, respectively. Rodolfo Montiel Flores was convicted of the crimes of: possession of firearms intended for the exclusive use of the Army, Navy and Air Force, for his "possession of a .22-caliber Remington rifle, model 550-1, no serial number, and [...] a 45-caliber Colt Government automatic, serial number 85900GZO,"⁶⁷ and marijuana cultivation. Mr. Cabrera García, for his part, was convicted of possession of a firearm intended for the exclusive use of the Army, Navy and Air Force,⁶⁸ for his "possession a 7.62 mm MIA Springfield Armoy rifle, serial number 035757."⁶⁹ The judge in the case had various means of evidence available to him. Nevertheless, the victims' self-incriminating confessions carried special weight within the judgment. The ruling in question states that Mr. Montiel Flores and Mr. Cabrera García had testified on various occasions during the course of the criminal case against them, most particularly in the presence of the Office of the State Public Prosecutor, the Office of the Federal Public Prosecutor, the Judge of First Instance of the Mina Judicial District and the Fifth District Judge. However, the judge in the case concluded that "irrespective of whether there were irregularities in the way in which the confession given in the presence of the Office of the Federal Public Prosecutor was obtained, when RODOLFO MONTIEL FLORES made his statement in the presence of the state judge, attended by all the formalities that the law provides, he still confirmed the statement he made in the presence of the Federal Prosecutor [...] the confession is valid because he ratified his original declaration in the presence of the court authority; in so doing, any possible procedural irregularities previously committed were purged. That confirmation of his statement was given freely and spontaneously, without coercion or violence and in the presence of the defense counsel named."⁷⁰ In response to the claim that the victims made to the presiding judges alleging acts of torture, the judgment states that "in our system of justice, no one can simply claim to have been the victim of physical and moral duress and expect to be released as a result; in principle that claim of violence must be proved and it must be shown that the violence served as a means to force a confession from someone, which in the best of cases would render the confession invalid."⁷¹

66. The court also held that the criminal acts "were mainly corroborated by the statements made by the accused [...]."⁷² It also held that "those statements [...] meet the requirements stipulated in Article 279 of the Federal Code of Criminal Procedure"⁷³ because they were made in the presence of the Public Prosecutor and the Judge of First Instance, who initially took cognizance of the facts in the case; the statements were made by fully cognizant adults,

⁶⁷ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, pp. 78.-79, Annex 7.

⁶⁸ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, Annex 7.

⁶⁹ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, pp. 79-80, Annex 7. .

⁷⁰ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, p. 40, Annex 7.

⁷¹ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, p. 40, Annex 7.

⁷² Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, p. 61, Annex 7.

⁷³ Article 279.- The court authority shall weigh the value of the confession, taking into account the requirements set forth in Article 287 and giving the reasons for his or her assessment, as required under Article 290.

subject to neither coercion nor violence. The statements themselves thus have importance as relevant information; but when their statements contain mutually incriminating charges, those statements rise to the level of full proof when also corroborated by the testimony of their captors [...].”⁷⁴

67. The court also argued that the victims’ protracted detention could detract from the validity of their first confessions.⁷⁵ However, it concluded that the confessions that were relied on when the ruling was delivered were those drawn up in the Office of Federal Prosecutions -not those drawn up in the State Public Prosecutions Office. In those confessions, the two men admitted to the crimes charged and both later made confessions in the presence of the judges hearing the case.⁷⁶

68. Another factor that the court considered was that while in their preliminary statements Mr. Montiel Flores and Mr. Cabrera García asserted that at the time of their detention, “They were tortured, from which one can infer that their military captors forced them to confess to the charges against them in the presence of both the state public prosecutions office and the federal public prosecutions office, it is also true, as has been said, that the violence claimed was not demonstrated in this criminal proceeding; it is important to bear in mind that no violence was ever suggested in connection with the Judge of First instance of the Mina Judicial District. When Mr. RODOLFO MONTIEL FLORES made his preliminary statement before that judge, he freely and spontaneously confirmed the statement he had made before the agent from the Federal Public Prosecutions Office. When he confirmed that statement, it became final, as did his admission of the fact that he had planted marijuana and had in his possession a 45-caliber pistol; he also confirmed the charge against TEODORO CABRERA to the effect that he had in his possession an M-1 rifle. In his statement before that same judge, TEODORO CABRERA GARCÍA also admitted to having the weapon he was accused of having in his possession, and he even implicated RODOLFO MONTIEL FLORES by admitting that he was carrying a 45-caliber pistol. The preliminary statements made before the judge must take precedence; if by some chance the accused were abused in the presence of the public prosecutor, then when brought before the judge to make their preliminary statement they should have retracted their confessions and denounced the torture. But they didn’t do that.”⁷⁷ “Having weighed the prosecution’s evidence and the defense’s evidence, therefore, the prosecution’s evidence prevails [...].”⁷⁸

69. In September 2000, the victims filed a motion to have the judgment delivered by the Fifth District Judge of the Twenty-first Circuit revoked (*recurso de revocatoria*). The motion was filed with the Single-Magistrate Court of the Twenty-first Circuit, which opened Criminal Court Docket Number 406/2000. Their argument was that the confessions that the judge relied on as evidence were obtained under torture.⁷⁹ On October 26, 2000, the Single-Magistrate

⁷⁴ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, p. 77, Annex 7.

⁷⁵ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, p. 84, Annex 7.

⁷⁶ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, p. 84, Annex 7.

⁷⁷ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, pp. 92 and 93, Annex 7.

⁷⁸ Criminal Case 61/99. Ruling of the Court of First Instance, issued by the Fifth District State Judge, dated August 28, 2000, pp. 137 and 138, Annex 7.

⁷⁹ Appeal of the August 28, 2000 ruling, filed by Lic. María del Pilar Noriega on October 2, 2000; Appeal of the August 28, 2000 ruling, filed by Lic. Miguel Ángel Nava Castro, Federal Public Defender, October 2, 2000, Annex 8.

Court ruled that “[...] the rules for weighing and assessing evidence were not violated, nor were the facts in any way altered; the basis and reasoning of the judgment were sound. Therefore, this court hereby confirms the August 28, 2000 conviction of Rodolfo Montiel Flores as fully responsible for the commission of crimes against health in the form of marijuana cultivation [...] and possession of firearms intended for the exclusive use of the Army, Navy and Air Force [...] and of Teodoro Cabrera García for unlawful possession of a firearm intended for the exclusive use of the Army, Navy and Air Force [...].”⁸⁰

70. Given the decision of the First Single Magistrate Court of the Twenty-first Circuit, on March 9, 2001 the victims filed an application seeking *amparo* relief before the Second Collegiate Tribunal of the Twenty-first Circuit, for the purpose of challenging the decision delivered by the First Single Magistrate Court of the Twenty-first Circuit. As evidence, they offered the expert medical report issued by *Physicians for Human Rights- Denmark*, in which it determined that “[...] the results are conclusive based on the fact that the allegations of torture are consistent with the signs and symptoms found.”⁸¹

71. On May 9, 2000, the Second Collegiate Tribunal of the Twenty-first Circuit issued its *amparo* ruling [criminal case 117/2001] in which it ordered the First Single Magistrate Court of the Twenty-first Circuit to admit into evidence the expert report prepared by *Physicians for Human Rights- Denmark*. In its ruling, the Second Collegiate Tribunal of the Twenty-first Circuit ordered that the expert report be admitted into evidence in the following terms: “[...] since the claim made by complainants RODOLFO MONTIEL FLORES and TEODORO CABRERA GARCÍA alleging a procedural violation is well founded, this court is granting *amparo* relief and the protection of the Federal Courts that they seek. This Tribunal therefore orders the Single Magistrate Court that delivered the judgment in question to vacate that decision and resume proceedings in the case by issuing a new writ ordering that the documentary evidence proposed by the complainants be admitted into evidence; once legal proceedings on the appeal have been completed, it is to decide the case in accordance with the law.”⁸²

72. Pursuant to the order issued by the Second Collegiate Tribunal of the Twenty-first Circuit, on July 16, 2001 the First Single-Magistrate Court of the Twenty-first Circuit resumed proceedings in criminal case 406/00 and confirmed the decision handed down by the Fifth District Judge of the Twenty-first Circuit on August 28, 2000. It dismissed the expert report on the grounds that it had no evidentiary value since it did not include “[...] all the procedures and tests required in this particular case to shed light on the abusive treatment about which they [Mr. Montiel Flores and Mr. Cabrera García] are complaining.”⁸³ The IACHR would like to point out that there is no evidence that the domestic courts ordered other evidentiary measures with respect to the allegations of torture.

⁸⁰ Single Magistrate Court of the Twenty-first Circuit. Criminal Court Docket Number 406/00. Ruling of October 26, 2000, at 881 and 882, Annex 8.

⁸¹ The report of *Physicians for Human Rights-Denmark* concluded that “the physical effects are consistent with the allegations of the time and methods of torture used. Furthermore, the medical history of the two men examined, the symptoms and the positive results lead to the conclusion that the events must have taken place at the time and in the manner described by the persons examined [...] While the results are conclusive based on the fact that the allegations of torture are consistent with the signs and symptoms found, additional examinations are recommended to examine all the physical and psychological harm caused by the torture and to propose the necessary treatment.” Annex 13.

Physicians for Human Rights-Denmark. The case of Rodolfo Montiel Flores and Teodoro Cabrera García, Mexican campesinos and environmental activists. Annex 13.

⁸² Second Collegiate Tribunal of the Twenty-first Circuit. Direct Criminal Appeal No. 117/2001, decision of May 9, 2001, at 466, Annex 9.

⁸³ First Single-Magistrate Court of the Twenty-first Circuit. Criminal Court Docket Number 406/00. Decision of July 16, 2001, Annex 8.

73. The victims filed another application with the Second Collegiate Tribunal of the Twenty-first Circuit, seeking *amparo* relief against the judgment delivered on July 16, 2001 by the First Single-Magistrate Court. They argued that the decision did not take into account the fact that the confessions made by Rodolfo Montiel Flores and Teodoro Cabrera García were torture induced.

74. On November 7, 2001, the Federal Executive, by way of the Secretariat of Public Safety and Security and its Prevention Directorate,⁸⁴ ordered the release of Rodolfo Montiel Flores⁸⁵ and Teodoro Cabrera García⁸⁶ on the grounds that the penalty imposed was “incompatible with their state of health and physical constitution. The order was based on articles 75 and 77⁸⁷ of the Federal Penal Code.”⁸⁸

75. On August 14, 2002, the Second Collegiate Tribunal of the Twenty-first Circuit decided the new application for *amparo* relief brought by the victims under criminal court docket number 499/2001. In its *amparo* ruling, the Collegiate Tribunal held that it was denying “[...] *amparo* relief and federal protection [in the case of Teodoro Cabrera García], since the evidence offered in the original criminal case proved [...] the presence of the essential elements of the crime of POSSESSION OF A FIREARM INTENDED FOR THE EXCLUSIVE USE OF THE ARMY, NAVY AND AIR FORCE [...]. Inasmuch as TEODORO CABRERA GARCÍA was not improperly

⁸⁴ General Bureau of Prevention and Social Re-adaptation. File 8/421.7/178167. Memorandum No. 210/3430/2001, dated November 7, 2001, Annex 12.

⁸⁵ The diagnosis cited by the State for Rodolfo Montiel Flores was: Left middle ear hypoacusia secondary to chronic bilateral otitis, deformation in the left sub-clavicular and supra-clavicular region, grade II to III, after-effects of contractile fibrosis secondary to scarring from a bullet wound in the abdomen, and circumscribed hypertrophy of the skin (dermatome) with insensitivity, over an area 5 cm. in diameter, located on the outer side of the upper right thigh, chronic inflamed orchiepididymitis, as well as impairment of visual acuity. Taken together, these pathologies significantly limit his ability to serve out his sentence.

General Bureau of Prevention and Social Re-adaptation. File 8/421.7/178167. Memorandum number 210/3431/2001, November 7, 2001, Annex 12.

⁸⁶ The diagnosis of Mr. Teodoro Cabrera García cited by the State was as follows: Complete loss of vision in the left eye secondary to a cataract and corneal opacity caused by direct trauma sustained at the age of 10. Partial loss of vision in the right eye secondary to pterygium (a triangular fleshy mass of thickened conjunctiva) at the inner side of the eyeball. Poor circulation in the lower extremities Grade II. Osteoarthritis (which becomes worse with temperature changes). Pain in the right testicle, which has retracted and is smaller than the left testicle. Nail mycosis on both feet (fungal infection on toenails). In addition to a visible attack on general health, including morale, the vision loss prevents him from participating in various activities at the institution. The set of pathologies are progressive and require immediate medical hospital care at level 2 or 3, to provide comprehensive medical and surgical treatment in various areas of specialization. (...) His prognosis for life is guarded; his prognosis for function is poor, since even if surgery on the right eye is done, he will never recover full vision; the damage to the left eye is irreversible

General Bureau of Prevention and Social Re-adaptation. Case File 8/421.7/178167. Memorandum Number 210/3430/2001, November 7, 2001, Annex 12.

⁸⁷ Article 75 of the Federal Penal Code provides that:

When the prisoner fully certifies that he or she cannot perform any part of the penalty imposed because it is incompatible with his or her age, gender, health or physical constitution, the Office of the Director General of Coordinated Prevention and Social Re-adaptation Services may modify the sentence, provided the change does not fundamentally alter the sentence.

Article 77 of the Federal Penal Code reads as follows:

Execution of sentences shall be the authority of the Federal Executive, who shall consult with the technical body that the law prescribes.

⁸⁸ General Bureau of Prevention and Social Re-adaptation. Case File 8/421.7/178167. Memorandum Number 210/3430/2001, November 7, 2001, Annex 12.

charged, the decision need not be vacated. [...] On the other hand, RODOLFO MONTIEL FLORES is alleging that the ruling is in violation of the guarantees of legality and juridical security, provided in articles 14⁸⁹ and 16 of the Constitution. Therefore, the proper course of action in the case of that petitioner is to grant federal protection in order that the responsible court may vacate the decision being challenged and deliver another in its place. Following the guidelines contained in this writ of relief, the new decision delivered should find that the evidence offered in the natural forum is neither effective nor sufficient to prove the presence of the essential elements of the crime AGAINST HEALTH IN THE FORM OF MARIJUANA CULTIVATION and of the crime of POSSESSION OF A FIREARM WITHOUT A PERMIT [...]. In the new judgment, the prison term and the fine should not be the same for the two defendants, and should be the one prescribed by law for each case [...].⁹⁰ Mr. Rodolfo Montiel Flores was convicted of POSSESSION of a 45-caliber Colt Government automatic pistol, serial number 85900GZO, but not a 22-caliber Remington rifle.

76. The authority executing this sentence was the federal judge who presided over the case, i.e., the Fifth District Judge of the Twenty-first Circuit. On August 22, 2002, he notified the victims of his decision as follows: "SECOND:- The August 28, 2000 judgment delivered by the Fifth District Judge in criminal case 61/99 is hereby amended to read as follows: THIRD.- The conviction for the crime of POSSESSION OF A FIREARM INTENDED FOR THE EXCLUSIVE USE OF THE ARMY, NAVY AND AIR FORCE IS CONFIRMED, as is the full responsibility that RODOLFO MONTIEL FLORES bears for the commission of that crime.- FOUR.- The afore-named MONTIEL FLORES' conviction of the CRIME AGAINST HEALTH in the form of MARIJUANA CULTIVATION [...] and the crime of POSSESSION OF A FIREARM WITHOUT A PERMIT is vacated [...] and replaced by a verdict of acquittal, only and exclusively with respect to this charge.- FIVE.- Following the logic and legal reasoning suggested, RODOLFO MONTIEL FLORES' SENTENCE for the commission of the crime of POSSESSION OF A FIREARM INTENDED FOR THE EXCLUSIVE USE OF THE ARMY, NAVY AND AIR FORCE [...] shall be FIVE YEARS IN PRISON AND FORTY DAYS' FINE, the equivalent of one thousand four hundred eighty-five pesos. [...]."⁹¹

77. In the August 14, 2002 judgment, the Second Collegiate Tribunal of the Twenty-first Circuit concluded that Teodoro Cabrera should be denied *amparo* relief; the court therefore sentenced him to 10 years in prison and a fine of 100 days. Rodolfo Montiel, on the other hand, was granted *amparo* relief and the Fifth District Judge of the Twenty-first Circuit was ordered to set separate prison terms and fines for the two defendants. On August 22, 2002, that judge ordered notification and sentenced Rodolfo Montiel Flores to five years in prison and a fine of fifty-two days, the equivalent of one thousand four hundred eighty-five Mexican pesos. Despite their convictions, Mr. Montiel Flores and Mr. Cabrera are now free by virtue of a November 7, 2001 decision in which the Federal Executive Authority, based on articles 75 and 77 of the

⁸⁹ Article 14. No law shall be applied retroactively to the detriment of any person.

No one may be deprived of his liberty or property, possessions or rights, except by virtue of a trial prosecuted before courts previously established by law, in which the essential procedural formalities and the laws enacted prior to the date of the events in question are observed.

By simple analogy and logic, the only penalties that may be applied in criminal cases are those prescribed by law for the crime in question.

In civil judgments, the final ruling shall conform to the letter or legal interpretation of the law; failing that, it shall be based on general principles of law.

⁹⁰ Second Collegiate Tribunal of the Twenty-first Circuit. Criminal Case 499/2001. Judgment of August 14, 2002, at 560 and 561, Annex 10.

⁹¹ Official Notice of a Judicial Notification of August 22, 2002, at 2 and 3, Annex 10.

Federal Penal Code, determined that the penalty imposed was not compatible with the two men's state of health and physical condition.

D. Investigation of the allegations of torture made by Messrs. Cabrera and Montiel

78. As for the investigation of the allegations of torture, the Commission points out that in a number of their statements, the victims said that they had been subjected to acts of violence committed by soldiers with the 40th Infantry Battalion. In their statement in the presence of the Federal Public Prosecutions Office on May 6, 1999, they complained that they had been beaten while at the Army facilities. In the statement they made in the presence of the Criminal Court Judge of First Instance of the Mina Judicial District, Mr. Montiel and Mr. Cabrera described various forms of abuse that they suffered while in the custody of members of the Mexican Army. In their preliminary statement before the Fifth District Judge of the Twenty-first Circuit, on July 13, 1999 the victims amplified the statement they made before the Judge of First Instance of the Mina Judicial District concerning torture.

79. Then, on August 26, 1999, the victims asked the Fifth District Judge of the Twenty-first Circuit to order the Public Prosecutor's Office to investigate the allegations of torture and *incommunicado* and unlawful detention that they had previously reported to the Public Prosecutor's Office. The Fifth District Judge ordered the Public Prosecutor's Office to institute a preliminary inquiry to investigate the acts of torture being alleged.⁹² On September 30, the Office of the Federal Public Prosecutor for Coahuila de Zaragoza, in the state of Guerrero, launched the Preliminary Inquiry it was ordered to conduct.⁹³

80. In November 1999, the Office of the Attorney General of the Republic (hereinafter "PGR") declared that it did not have jurisdiction to investigate the crime of torture and ceded jurisdiction to the Office of the Prosecutor General for Military Justice (hereinafter "PGJM"). "On December 14, 1999, [the Office of the Public Prosecutor of Coahuila de Zaragoza, Guerrero] declared that it did not have jurisdiction; it, too, ceded jurisdiction to its military counterpart in the [35th] Military Zone,"⁹⁴ arguing that the suspects were military in active service.⁹⁵ According to the information supplied by the State during the proceedings before the Commission, during that preliminary inquiry the following procedures were carried out: "Legal custody agreement, document attesting to the good physical condition of Mr. Teodoro Cabrera García, medical certifications, medical opinions, record of the handover of a cadaver, a record documenting the firearms, poppy and marijuana seeds, marijuana plants and objects that the victims were carrying at the time of their detention, results of chemical tests, results of ballistics tests, expert report on the identification of firearms, agreement to cede jurisdiction to the Office of the Prosecutor General for Military Justice, the record documenting the receipt of case number 03/999-I prosecuted against the petitioners for crimes against health in the form of marijuana cultivation, possession of a firearm without a permit, and possession of a firearm intended for the exclusive use of the Army, Navy and Air Force and of the appellate judgment, various documents, letters rogatory and copies of the file assembled by the Inspection Unit and Office of the Comptroller

⁹² August 31, 1999 judgment delivered by the Fifth District Judge, Annex 7.

⁹³ Preliminary Inquiry No. 33/CC/99. Decision to institute a preliminary investigation, issued by Lic. Gilberto García Polanco, agent of the Federal Public Prosecutor's Office, Annex 5.

⁹⁴ CNDH.. Recommendation No. 8/2000, p. 24, point 1 *in fine*, Annex 3.

⁹⁵ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 24, point 1 *in fine*, Annex 3.

General of the Army and Air Force.”⁹⁶ On June 13, 2000, the PGJM ordered the preliminary inquiry into torture closed without prejudice, pending further evidence to support the complaint; in the opinion of the military investigator, no evidence had been produced to prove torture.⁹⁷

81. The victims filed a complaint with the National Human Rights Commission (CNDH), which on July 14, 2000 established that “the military personnel in question⁹⁸ violated, in the case of Mr. Rodolfo Montiel and Mr. Teodoro Cabrera García, the principle of legality and their right to liberty. [...] Given the repeated silence [on the part of the Office of the Prosecutor General for Military Justice], which did not provide the CNDH with the information [requested]”⁹⁹ in the proceeding instituted by the petitioners, the CNDH presumed that the allegations of torture were true, in keeping with articles 38¹⁰⁰ and 70¹⁰¹ of the CNDH Law.¹⁰² Accordingly, it recommended that the Inspection Unit and Office of the Comptroller General of the Army and Air Force institute an administrative investigation against the members of the Mexican Army who authorized, supervised, implemented and carried out the operation in the Pizotla Community, Municipality of Ajuchitlán, Guerrero, in the period from May 1 through 4, 1999. It also recommended that Mexico’s Attorney General’s Office order the appropriate measures to put together and issue, as soon as possible, the decision in preliminary inquiry 35ZM/06/99, concerning the investigation into the acts of torture being alleged.¹⁰³

82. In response to the CNDH’s recommendations, the PGJM launched another Preliminary Inquiry on September 29, 2000, classified as number SC/304/2000/VIII-I, to investigate the allegations of torture, prolonged detention and other crimes. On February 10, 2001, the Office of the Prosecutor General for Military Justice went to the facilities of the Iguala de la Independencia Prison, where the victims were being held. He was there to confirm their complaints. That day, Mr. Montiel and Mr. Cabrera filed a brief addressed to the PGJM, wherein they demanded that it decline jurisdiction and return the Preliminary Inquiry to the Attorney

⁹⁶ Observations that the State of Mexico submitted to the IACHR on August 23, 2007, pp. 1 and 2, Appendix 3.

⁹⁷ Brief of observations on the merits, presented by the State of Mexico on June 20, 2006, Appendix 3.

⁹⁸ The reference here is to the Military Commander in Chilpancingo Guerrero, Brigadier General D.E.M. J. Pérez Toledo, Infantry Lieutenant Colonel José Pedro Arciéngo Gómez, Second Infantry Captain Artemio Nazario Castillo, Infantry Sergeant Second Class Calixto Rodríguez Salmerón and Infantry Corporal José C. Calderón Fabiano, all members of what was then the 35th Military Zone corresponding to the 40th Infantry Battalion.

CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García.* Recommendation No. 8/2000, Annex 3.

⁹⁹ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García.* Recommendation No. 8/2000, p. 25, Annex 3.

¹⁰⁰ Article 38.- The report to be presented by the authorities in question, as the responsible parties against which a complaint or claim may be brought, is to include background information on the matter, the grounds and motives for the actions or omissions being challenged, if such grounds or motives exist, and the information deemed necessary to properly document the matter.

If the report or the supporting documentation is either not presented or is delayed without cause, the parties to blame shall be held accountable and the facts of the complaint shall be deemed to be true, unless proven otherwise.

¹⁰¹ Article 70. – The public authorities and public servants shall be criminally and administratively liable for the acts or omissions they incur during and in connection with the processing of complaints with the National Human Rights Commission, in accordance with the applicable provisions of the Constitution and the law.

¹⁰² CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García.* Recommendation No. 8/2000, pp. 16 and 25, Annex 3.

¹⁰³ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García.* Recommendation No. 8/2000, pp. 26-27, Annex 3.

General's jurisdiction.¹⁰⁴ On November 3, 2001, preliminary inquiry SC/304/2000/VIII-I was closed without prejudice, pending further evidence. Its findings on the allegations of torture were as follows:

Finally, on the matter of the acts of torture that the National Human Rights Commission presumed to be true merely because it was not provided with certified copies of the preliminary inquiry conducted by the agent from the Office of the Prosecutor General for Military Justice assigned to the 35th Military Zone, the point has to be made that while Article 38, paragraph two, of the law establishing that commission for the protection of human rights states that if documentation to support a report from the authorities in question, who are the responsible parties, is not presented, then the facts alleged in a complaint shall be presumed to be true, unless there is evidence to the contrary. The Office of the Prosecutor General for Military Justice cannot operate by that principle in order to bring criminal action against anyone, for the commission of a crime; instead, it must have the evidence necessary to demonstrate the *corpus delicti* and show probable cause. This is the requirement under Article 16 of the Constitution. However, in the instant case, the body of evidence in this inquiry is not sufficient to demonstrate that civilians RODOLFO MONTIEL FLORES and TEODORO CABRERA GARCÍA were tortured while in the custody of military personnel. The medical certificates drawn up on May 4, 1999, by medical surgical officer Second Lieutenant BULMARO ADAME BENÍTEZ state that TEODORO CABRERA GARCÍA had a cut in the left retro auricular region, which was classified as non-life threatening and which would take fifteen days to heal; there was no evidence of torture. In the case of RODOLFO MONTIEL FLORES, the medical screening found four scars from bullet wounds in the region of the left rib cage, two abrasions on the forehead measuring approximately one cm in length, dermatomycosis in the right scapular region, with no evidence of recent injuries or wounds caused by beating or torture. The state's forensic expert, MARIO LARA ROMERO, did medical examinations of both men and certified that TEODORO CABRERA GARCÍA bore no visible evidence of violence or beating, and had a cut in the retro auricular region, but not of recent making. On RODOLFO MONTIEL FLORES he found the same four scars mentioned above, as well as the two abrasions on the forehead, which the military doctor had already detected. The expert medical report prepared by doctor IRENIO GUZMÁN OLIVAR,¹⁰⁵ from the Office of the Attorney General, matched the reports prepared by the other two physicians. The conclusion from all this is that there is absolutely no evidence to support the claim that military personnel had used coercion or violence against the two detainees to force them to confess to the commission of a crime or to provide information. Therefore, there is no evidence to show the torture that the two individuals claimed to have suffered while in the custody of military personnel.

The foregoing notwithstanding, the medical report by Danish doctors CHRISTIAN TRAMSEN and MORRIS TIDBAL-BINZ on behalf of Physicians for Human Rights-Denmark, which is the basis for the request made by the Agustín Pro Juárez Center for Human Rights, was done [the medical examination] on TEODORO CABRERA GARCÍA and RODOLFO MONTIEL FLORES between 11:00 a.m. and 1:00 p.m. on July 29, 2000, in the Center for Social Rehabilitation in Iguala, Guerrero. It concludes that those individuals were tortured and were still suffering the after-effects of their torture. However, the medical report prepared by Military Medical Surgical Officer Lieutenant JUAN ZAROGOAZA ARAUJO¹⁰⁶ has the

¹⁰⁴ Brief that Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García presented to the agent of the Office of the Prosecutor General for Military Justice in connection with preliminary inquiry No. SC/304/2000/VII, February 10, 2001, Annex 11.

¹⁰⁵ According to Preliminary Inquiry SC/304/2000/VIII-1, that medical examination was done on May 6, 1999. Preliminary Inquiry SC/304/2000/VIII-I, November 3, 2001, at 112, Annex 11.

¹⁰⁶ Head of the Forensic Medicine Section at the Scientific Investigations Laboratory of the Office of the Prosecutor General for Military Justice; according to Preliminary Inquiry SC/304/2000/VIII-1, the section head had allegedly examined the reports of the various medical examinations done on the victims. Preliminary Inquiry SC/304/2000/VIII-I of November 3, 2001, at 111, Annex 11.

following observations with respect to the medical report prepared by the Danish doctors: "... the symptoms described by the patient or person being examined –which in this case are pain, a heightened sensitivity to pain [hyperalgesia] and lack of sensitivity- are subjective elements which no physician can prove, assess, quantify, or affirm or deny their presence; lacking objective elements such as pathologies (sickness or disease), injuries or scars of injuries to support the symptoms described, it is too much of a risk to assert that the patient indeed has the condition. In real life, a doctor will find people who are trying to fool him. From the manner in which they are described, the injuries that RODOLFO MONTIEL FLORES and TEODORO CABRERA GARCÍA are claiming should have left visible marks on the body. However, just two days after they were detained, the two men were examined by a military doctor; a few hours later they were examined by a physician from another Guerrero state agency, at the request of the Federal Public Prosecutor's Office. The three doctors from the three institutions concluded that there were no recent injuries or wounds; that the two men were in good condition and showed no evidence of violence. One of the men was found to have a cut; the other was found to have two abrasions. The physicians did not regard these as evidence of torture. Furthermore, the records of the case [show that] in the statement made by doctors Christian Tramsen and Morris Tidball-Binz the following is noted: "during their time in prison, Rodolfo Montiel Flores and Teodoro Cabrera García were examined by physicians, among them a doctor from the National Human Rights Commission, who certified that none of the injuries on the two men was a consequence of the torture that they allege to have suffered." However, there is no indication of when the two men were examined by the doctor [from the National Human Rights Commission]. In the two medical certificates drawn up on May 4, 1999 –one by the military doctor and the other by the state medical examiner- Teodoro Cabrera García is said to have a cut in the left retro auricular region, which may be the scar that the Danish physicians are speaking of in their report of July 29, 2000. Lacking specific information, this wound appears to have been caused by an object with a point and a sharp edge; the exact object that inflicted the wound cannot be identified and could be made of stone, wood, glass, metal, etc. In the background information on the case, [...] reference is made to the fact that Rodolfo Montiel Flores was hit on forehead with the barrel of a pistol; "it should be noted that the medical certificates prepared on May 4, 1999, mention only the two abrasions, measuring one cm each; depending on its force, the blow would cause swelling (edema or hematoma) in the affected region, bruising of variable coloring, a mark and/or impression that could mimic the barrel of the weapon. The two abrasions, described only by their size, could have been caused by anything with a rough surface: the object may have hit the face or the face may have hit the object. –The two men allege that they were subjected to electric shock applied to their water-soaked thighs, that they sustained blows to several parts of their bodies –either knee kicks or foot kicks-; one claims to have been hit in the back with a club. They also allege that their testicles were pulled. The severity of the torture they are claiming is such that visible physical evidence should be evident on their bodies for several weeks. However, the reports on the three medical examinations of the affected parts of their bodies, done within days of their detention, make no reference to swelling or bruising caused by boots or a club. Injuries like bruising and swelling, however insignificant they may seem, may take several days to develop and no less than fifteen days to heal by the standard of the Criminal Code, since the injury is measured by how long it takes to heal and not by its severity from the medical standpoint. Bruising can take up to twenty days to heal. The detainees' claims that they sustained severe blows to several parts of their bodies do not square with the absence of any objective elements such as external injuries. The absence of external injuries was certified by three physicians from two different institutions and from different communities within the same state, all of which noted that there were no marks indicative of violence, that the two detainees were in good condition and there was no evidence of torture. - [...] It is odd that in the statements that Rodolfo Montiel Flores and Teodoro Cabrera García gave to the human rights doctors from abroad, their descriptions of the way in which they were tortured, the alleged injuries and the after-effects they are still suffering are very similar, down to the fact that for several weeks they were experiencing pain when urinating, changes in the color of their urine, and blood in the urine. If these symptoms were documented, they should be on file at the infirmary of the Regional Social Rehabilitation

Center of Iguala, Guerrero, or some agency hospital. Finally, the study and analysis of any case in which a physician is involved must be objective, scientific and verifiable. If necessary, a complete case study should be done and should include the affected parts of the body. It should provide a broader picture of the problem that the professional is examining, and not focus on just one party, as happened in the present case, where the symptoms and physical examination are based on the statement of just one party and the only objective element found is a round, hyper-pigmented scar in the left retro auricular region, approximately 10 centimeters in size and which is not associated with any of the complaints or ailments that Teodoro Cabrera is presenting. It can therefore be concluded that this cut healed with no after-effects. The origin or cause of the other findings mentioned cannot be established; there is no way to credibly demonstrate the symptoms described, much less to measure their severity..." Hence, while the Danish doctors concluded that the two above-named persons were, as claimed, tortured while in the custody of military personnel, the reasons why they arrived at that conclusion cannot be explained. Therefore since the commission of a violation of military discipline has not been proven, the appropriate course of action [...] is to refer the present inquiry to the head of this Prosecutor's Office, with a recommendation that the inquiry be definitively closed. Once its assigned agents have been consulted for their opinion, it may decide whether or not to confirm this proposal.

DECIDES:

FIRST: To refer the present inquiry to the Prosecutor General for Military Justice, with a reasoned report proposing that no criminal action be brought and that the inquiry be definitively closed, with the exceptions that the law provides, so that after consulting his assigned agents, he may decide whether or not to confirm the proposal [...]"¹⁰⁷.

83. After their release, neither of the victims returned to the state of Guerrero. As of 2002, both had moved to Mexico's Yucatan Peninsula in the state of Yucatán, and settled with their families in the community of Mani. Later, Rodolfo Montiel Flores would request asylum in a foreign country.¹⁰⁸

VIII. THE LAW

A. Violation of the right to personal liberty (Article 7 of the Convention), in conjunction with Article 1(1) thereof

84. Article 7(5) of the American Convention reads as follows:

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

85. As for the lawfulness of the detention, Article 16 of the Constitution of the United Mexican States provides that:

[...] The authority that executes an arrest warrant shall bring the suspect before the judge without delay and under his or her strict recognizance. Failure to do so shall be a punishable offense under criminal law.

¹⁰⁷ Preliminary Inquiry SC/304/2000/VIII-I of November 3, 2001. *Consideranda* XXII, XXIII, at 175, 176, 177 and 178, Annex 11.

¹⁰⁸ Letter/Brief in support of the Application for Asylum (Form I-589) for Rodolfo Montiel, Annex 14.

In cases where the person has been caught *in flagrante*, any person may detain the suspect and shall, without delay, hand over the suspect to the immediate authority, which shall just as swiftly hand the suspect over to the Office of the Public Prosecutor.

[...]

In urgent cases or when the suspect is caught *in flagrante*, the judge who receives the detained person must either immediately confirm the detention or order the person's release, except in those cases provided by law. [...]

86. Mr. Cabrera García and Mr. Montiel Flores were apprehended by members of the 40th Infantry Battalion on May 2, 1999, at 4:30 p.m.¹⁰⁹ They were then turned over to the State Public Prosecutor's Office at 6:00 p.m. on May 4, 1999,¹¹⁰ in other words, two days after they were detained. Then, the State Public Prosecutor's Office brought them before a judge on May 6, at 6:40 p.m.

87. The CNDH established that in the instant case, the detention by members of the Mexican Army was prolonged without any legal justification:

Having analyzed the evidence that the CNDH was able to obtain, particularly memorandum DH/4340 of May 2, 2000, the Commission is unable to understand the argument made by the Army to the effect that it did not have the equipment and transportation it needed to promptly transfer custody of the detainees to the immediate authority [...] The Army personnel were allegedly prevented, either physically or materially [for reasons of communication or means of transport] from being able to bring the detainees, without delay, before the authority most proximate to the scene of the events. However, they could have solved the problem when the agent from the state public prosecutor's office arrived in that community, assisted by members of the Judicial Police Force under his command; failing that, they could have immediately surrendered the detainees to a proper authority when they arrived at the military base in Ciudad Altamirano, Guerrero; however, for a second time, they opted, without justification, to continue to hold the two men for another eight hours in the 40th Infantry Battalion, before handing them over to the representative of the public prosecutor's office. In so doing, they violated the principle of legality and the right to personal liberty [...].¹¹¹

88. Furthermore, according to the records of the military authorities who conducted Preliminary Inquiry SC/304/200/VIII-I, the State asserted that the victims had been handed over to the custody of the state public prosecutor's office on May 4, 1999, at 6:00 p.m., for two reasons:

a) The Counter-Narcotics Field Manual for Mexican Army and Air Force Personnel stipulates that when civilians are arrested *in flagrante*, they are to be handed over to the competent authority after undergoing a medical examination. That examination is to be conducted by a physician attached to the unit in question, who shall issue the corresponding medical certificate. That certificate is to be attached to the document transferring custody of the detainees to the proper authority. According to the State's Preliminary Inquiry SC/304/200/VIII-I, Captain Artemio Nazario Carballo was obliged to comply with the rule contained in the Counter-Narcotics Field Manual for

¹⁰⁹ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 7, Annex 3.

¹¹⁰ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, pp. 25-26, Annex 3. See also Criminal Case 61/99. Judgment of First Instance issued by the Fifth District Judge of the state, August 28, 2000, pp. 81-82, Annex 7.

¹¹¹ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, pp. 12-13, Annex 3.

Mexican Army and Air Force Personnel, since to do otherwise would constitute a failure to obey an Army regulation. This explains why Medical/Surgical Officer Second Lieutenant Bulamaro Adame Benítez did a medical examination of the victims and issued the corresponding medical certificates before the detainees were handed over to the agent of the State public prosecutor's office for the Cuauhtémoc Judicial District. Only after the medical examinations were done and the certificates drawn up did Captain Nazario Carballo proceed to transfer the detainees to Arcelia, Guerrero, so that they might finally be brought before the prosecutorial authority;¹¹² and

b) The representative from the state public prosecutor's office had gone to the area where the events occurred, but arrived at around 11:00 p.m. on May 3, 1999. "Tired from the difficult journey, he planned to begin his inquiries early the next day; this was [another] reason why they [the victims] were not brought before that authority on the night of May 3."¹¹³

89. The Commission considers that the requirements set forth in Article 16 of the Mexican Constitution were not observed, since Mr. Montiel Flores and Mr. Cabrera García remained in custody for two days, without ever being brought before a competent authority to verify the lawfulness of their detention. Principle 4 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that:

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.¹¹⁴

90. As to the importance of juridical oversight to prevent arbitrary and abusive acts, the jurisprudence of the inter-American system is that the essential purpose of Article 7 of the Convention is to protect the individual's freedom against State interference; therefore, anyone who has been deprived of his liberty without any form of judicial oversight or control must be either released or brought immediately before a judge.¹¹⁵

91. In the case *sub examine*, under Mexican law the victims should have been handed over to the Public Prosecutor "without delay" so that he, in turn, might bring them before a judge within 48 hours in order to verify the lawfulness of the detention. Nevertheless, the victims remained in custody at an improvised military outpost near the Pizotla River; from there they were taken by helicopter to the 40th Infantry Battalion where they remained under detention for another eight hours before being turned over to the custody of the Public Prosecutor's Office;¹¹⁶ in other words, Mr. Montiel Flores and Mr. Cabrera García were brought before the State Public Prosecutor's Office on May 4, at 6:00 p.m. The CNDH's findings and the reports of the State contend that there are no reasons to justify the delay. Later, on May 6, 1999, at 6:40 p.m., both were brought before the Judge of the Criminal Court of First Instance in the Mina Judicial District.

¹¹² Preliminary Inquiry SC/304/2000/VIII-I of November 3, 2001. *Consideranda XV*, at 170 and 171, Annex 11.

¹¹³ Preliminary Inquiry SC/304/2000/VIII-I of November 3, 2001. *Consideranda XV*, at 170, Annex 11.

¹¹⁴ UN, Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, adopted by the General Assembly in resolution 43/173, December 9, 1988, Principle 4.

¹¹⁵ I/A Court H.R. *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 115. *Case of the Gómez Paquiyañ Brothers*, Judgment of July 8, 2004, Series C No. 110, para. 95; *Case of Maritza Urrutia*, Judgment of November 27, 2003. Series C No. 103, para. 73; and *Case of Bulacio*, Judgment of September 18, 2003. Series C No. 100, paragraph 129; see, also Eur. Court H.R., *Brogan and Others*, judgment of 29 November 1988, Series A no. 145-B, para. 58-59, 61-62; and *Kurt v. Turkey*, No. 24276/94, para. 122, 123 and 124, ECHR 1998-III. I/A Court H.R., *Bámaca Velásquez Case*, Merits, Judgment of November 25, 2000, para. 140.

¹¹⁶ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 15, Annex 3.

92. Under Mexican law, in cases where a person has been caught *in flagrante*, that person is to be brought before the immediate authority “without delay,” who shall just as swiftly hand the suspect over to the Office of the Public Prosecutor. In the instant case, the victims were apprehended by members of the Mexican Army who, under Article 16 of the Constitution, should have handed them over to the Public Prosecutor’s Office “without delay.”

93. In cases involving a failure to bring detainees before a competent judicial authority, the European Court of Human Rights has held that the term “immediately” must be interpreted according to the special characteristics of each case, and no situation, no matter how serious, empowers the authorities to unduly extend the detention period, because this would be a breach of Article 5(3)¹¹⁷ of the European Convention.¹¹⁸ Similarly, in *Jong, Baljet and Van Den Brink v. the Netherlands*, the European Court held that bringing detained conscripts before an *auditeur-militair* rather than a competent judicial authority was a violation of Article 5(3) of the European Convention.¹¹⁹

94. The IACHR notes that the acts of torture committed against the victims in this case occurred during this period, which proves the point made by the Inter-American Court to the effect that by protecting personal liberty, a safeguard is also provided for “both the physical liberty of the individual and his personal safety, in a context where the absence of guarantees may result in the subversion of the rule of law and deprive those arrested of the minimum legal protection.”¹²⁰ The United Nations Committee against Torture (hereinafter “CAT”) said the following about Mexico: “the highest incidence of torture occurred during the period between detention and committal for trial, precisely when judicial checks on the legality of detention and the treatment of detainees are most needed.”¹²¹

95. For all the foregoing reasons, the IACHR requests the Court to declare that the Mexican State violated the right to personal liberty of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García, protected under Article 7(5) of the American Convention, in conjunction with the general obligation to respect the Convention-protected rights undertaken in Article 1(1) of that international instrument.

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

¹¹⁷ Article 5. Right to liberty and security.

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial..

¹¹⁸ *Eur. Court H.R., Brogan and Others*, judgment of 29 November 1988, *Series A no. 145-B*, para. 58-59, 61-62. See also I/A Court H.R., *Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 7, 2004. *Series C No. 114*, para.115.

¹¹⁹ *Eur. Court H.R., Jong, Baljet and Van Den Brink v. The Netherlands*. Application N° 8805/79; 8806/79; 9242/81, Judgment of 22 May 1984, para. 46-50.

¹²⁰ I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. *Series C No. 99*, para. 77; *Case of Cantoral Benavides*. Judgment of August 18, 2000. *Series C No. 69*, para. 72, and *Bámaca Velásquez Case*, Judgment of November 25, 2000. *Series C No. 70*, para. 141.

¹²¹ United Nations Committee against Torture (CAT). Report on Mexico produced by the Committee under Article 20 of the Convention, and Reply from the Government of Mexico. CAT/C/75 May 25, 2003, para. 186.

96. The pertinent part of Article 5 of the American Convention provides the following:

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

97. Some reference to the documentation the Commission received during its processing of this case in connection with the victims' allegations of torture is relevant in this section. As for medical reports, the Commission notes that there are three different medical certificates. One of those medical certificates is in the records of case file 61/99 and established the following: Rodolfo Montiel had "four scars from bullet wounds in the region of the left rib cage, two abrasions on the forehead measuring approximately one cm in length, dermatomycosis in the right scapular region, with no evidence of recent injuries or wounds caused by beating or torture;"¹²² the forensic certificate issued by the Office of the Prosecutor General for Military Justice in Arcelia, state of Guerrero, found that "Rodolfo Montiel Flores presents in SOUND PHYSICAL CONDITION, and shows no evidence of violence."¹²³ On May 6, 1999, the forensic physician with the Office of the State Attorney General in Coyuca, state of Guerrero, wrote that he was "physically and mentally sound."¹²⁴

98. In the case of Teodoro Cabrera García, the military medical certificate established that he had "a cut in the left retro auricular region, which was classified as non-life threatening and which would take fifteen days to heal; there was no evidence of being beaten or tortured anywhere on the body."¹²⁵ The forensic certificate issued by the Office of the Prosecutor General for Military Justice on May 4, 1999, states that "Teodoro Cabrera García is in GOOD PHYSICAL CONDITION, with no signs of violence. He has a cut in the retro auricular region, but it is not of recent making."¹²⁶ The certificate issued by the Office of the Attorney General of the State on May 6, 1999 established that he was found to be "in sound physical and mental condition."¹²⁷

99. On the other hand, the medical examination report prepared by Physicians for Human Rights-Denmark,¹²⁸ dated July 29, 2000, stated that Mr. Rodolfo Cabrera García had scars in the left pre- and retro-auricular regions; sharp pains in various parts of the body, especially the upper chest and left gluteus region; a lack of sensitivity between the gluteus region and his feet; thoracic pain exacerbated by movement; inflammation and sharp pain in the testicles; a shrunken right testicle; and inflammation in the left lumbar region. In the case of Mr.

¹²² Criminal Case 61/99. Military medical certificate for Mr. Rodolfo Montiel Flores, issued by Dr. Bulmario Adame Benítez. May 4, 1999.

¹²³ Criminal Case 61/99. Forensic medical certificate issued by Mario Lara Romero on May 4, 1999.

¹²⁴ Criminal Case 61/99. Medical certificate of physical condition, issued by Cirenio Guzmán, May 6, 1999.

¹²⁵ Criminal Case 61/99. Military medical certificate for Mr. Teodoro Cabrera García, issued by Dr. Bulmario Adame Benítez. May 4, 1999.

¹²⁶ Criminal Case 61/99. Forensic medical certificate issued by Mario Lara Romero on May 4, 1999.

¹²⁷ Criminal Case 61/99. Medical certificate of physical condition, issued by Cirenio Guzmán, May 6, 1999.

¹²⁸ That expert medical examination was done in order to be presented to the First Court of the Twenty-first Circuit, in criminal case docket number 406/00.

First Single-Magistrate Court of the Twenty-first Circuit. Criminal case docket number 406/00. Judgment of July 16, 2001.

Rodolfo Montiel Flores, the report states that he was suffering from: pain in the left shoulder, epigastrium and left hypochondrium, the left lumbar region and right paravertebral region; pain in the left groin region; bruising on the testicles, abdomen, wrists and ankles; lack of sensitivity in the right thigh.¹²⁹ This medical report concluded as follows: "The physical effects are consistent with the allegations of the time and methods of torture used. Furthermore, the medical history of the two men examined, the symptoms and the positive results lead to the conclusion that the events must have taken place at the time and in the manner described by the persons examined [...] While the results are conclusive based on the fact that the allegations of torture are consistent with the signs and symptoms found, additional examinations are recommended to examine all the physical and psychological harm caused by the torture and propose the necessary treatment."¹³⁰ However, this expert medical report was prepared on July 29, 2000, which was more than one year after the alleged events occurred, and does not offer more specific assessments as to the temporal or causal relationship between the facts alleged and the descriptions and symptoms reported. There is nothing in the court records to suggest that other examinations were conducted subsequent to the date of this expert report.

100. In other words, in the instant case, the evidence concerning the alleged commission of acts of torture against the victims is inconclusive. Nevertheless, the Commission observes that there are a number of factors that should be considered, namely:

a) the statements of the victims: the first statements, made on May 4, 1999,¹³¹ were given at a time when the victims were under the control of the Mexican Army; in those statements, the victims admitted to the crimes of which they were accused. These initial statements as pertains to the alleged acts of torture, were elaborated upon in the statements given on May 6, 1999, in the presence of the Federal Public Prosecutor's Office,¹³² in which the victims stated that the facts and crimes that members of the Mexican Army were accusing them of were not entirely true. The victims further elaborated upon their statements in their testimony before the judges presiding over the case, and provided details as to the way in which they had allegedly been mistreated.¹³³ Mr. Montiel Flores confirmed these statements in the hearing that the Inter-American Commission conducted;¹³⁴

¹²⁹ *Physicians for Human Rights-Denmark*. The Case of Rodolfo Montiel Flores and Teodoro Cabrera García, Mexican *campesinos* and environmental activists.

¹³⁰ *Physicians for Human Rights-Denmark*. The Case of Rodolfo Montiel Flores and Teodoro Cabrera García, Mexican *campesinos* and environmental activists, Annex 13.

¹³¹ In that statement the victims admit that at the time they were apprehended, they had weapons in their possession. They made no reference to the acts of torture being alleged.

Preliminary Inquiry CUAU/01/119/999, at 17, Annex 4.

¹³² In this statement, the victims begin to recount the purported acts of torture: i) RODOLFO MONTIEL FLORES answered the questions as follows: QUESTION ONE: When you surrendered your weapons, where were you taken? ANSWER: To the bank of the Pizotla River [...]. QUESTION THREE: While you were in the custody of the military authorities, did they beat or mistreat you? ANSWER: Not when I was there at the river; but when I was at the military base, I was hit in the stomach and slapped on the left cheek"; ii) TEODORO CABRERA GARCÍA answered the questions as follows: QUESTION FOUR: Were you beaten at any time between the time you were first detained and the time you were brought before the Federal Public Prosecutions Office? ANSWER: When I was at the military post I was hit in the abdomen. While I don't know the name of the person who hit me, if you show me a photograph I would recognize him."

Preliminary Inquiry 33/CC/99. Statements made by Rodolfo Montiel Flores and Teodoro Cabrera García in the Public Prosecutor's Office, May 6, 1999, Annex 7.

¹³³ On May 7, 1999, the victims stated the following in the presence of the Criminal Court Judge of First Instance of the Mina Judicial District: i) Rodolfo Montiel Flores answered the questions as follows: QUESTION ONE: Will the accused please tell the court whether he was tortured at the time he was detained or thereafter; ANSWER: "They did not beat me when I was detained; however, that night, when I was in the soldiers' custody, they stepped on my face and put the mouth of a rifle to my forehead. The soldier said, 'If something happens to me, dude, I'm gonna unload this rifle in you' [...]" The accused then asked the court if he could speak. When the court recognized him, he

said the following: “[...] I want to clarify something. On Monday night, the soldiers told us to lie face down with our heads pointing east; later, they woke us up and told us to lie face down with our heads pointing west; shortly thereafter, they got us up again and had us lying as on a cross; still later they came for us and took us to the mountain. Armed men were there, with their faces covered. This was around two in the morning. The soldiers said they were coming for me first because I knew a lot about the EPR. I told them I didn’t know anything, that I was a member of an environmental group that didn’t allow us to carry weapons. And they said, ‘Don’t try to fool us; we know who you are’. And then they directed a powerful light at my face and told me to look into the light; it was a harsh, blue light. When I became dazed, they blindfolded me. They tied my hands behind my back and bound my feet. Then someone grabbed me by the neck; another grabbed and pulled my testicles, saying that he would cut them off if I didn’t tell him what I knew. And I said that I was going to say whatever they told me if they would just stop beating me. That’s all I have to say. ii) Teodoro Cabrera García said the following: “[...] as soon as I saw the soldiers, I ran; they fired and a bullet grazed my left ear, and it immediately began to bleed. Just as I was getting away, they caught me. As for the M1 weapon they claim I had [...] the only wrong thing I did was to run; [...] I had the weapon in my hand, but didn’t fire it. I wanted to get rid of it, so that the soldiers wouldn’t take me into custody. I am not confirming the statements I made in the state public prosecutions office and the federal prosecutions office. This is how things happened. [...] QUESTION SIX: Did the soldiers torture the accused when he was detained or thereafter? ANSWER: When I was at the 40th Battalion, a drunken friend of the soldiers came along and he began to beat me up, causing me to fall over. They had my hands tied behind my back; my feet were also bound. In Pizotla they blindfolded me and I heard that they wanted to cut off my testicles; they opened my mouth and put a pistol inside. [...].

On July 13 and December 23, 1999, both the victims made their preliminary statements before the Fifth District Judge: a) on July 13, 1999: i) Rodolfo Montiel Flores stated the following: “the soldiers put a rifle to my head [...] the soldier also stepped on my head and told me that if anything went wrong, he’d blow my head off [...] one of the soldiers got angry and told us that he was going to smash our head in; he then took us to jail [...] I saw a signature there that I didn’t recognize as mine; I also want to say that there were times when out of fear of being tortured, they got me to admit that the pistol and marijuana were mine. I had to admit these things. But there were also times when... I know these things are not mine, but I admitted to having them because of the beatings. But today, I won’t admit it. They tortured me and told that if I didn’t admit to these things they knew where my family was. I was fearful that they would hurt my family and I had to stop them [...].” The private defense counsel asked to question the witness. [She asks the following] [...] QUESTION TWO: Will the defendant please tell the court who forced him to admit to the pistol and the marijuana [...] He answered: “I didn’t recognize him, because he had his face covered.” ii) Teodoro Cabrera García stated the following: “From there they took us to the Public Prosecutor’s Office, where they held a pistol to my head, saying that if I didn’t sign they would blow my head off. That’s why I signed it, and from there they took me to jail [...]” The Federal Prosecutor then asked to question the witness. QUESTION ONE: Will you please tell the court what you mean when you say that on one occasion when you were at the Public Prosecutions Office, they held a gun to your head, which is what you said in your statement. ANSWER: If I saw the man who put the pistol to my head I would recognize him [...].

Case 61/99-I Amplification of the Preliminary Statements of Rodolfo Montiel Flores and Teodoro Cabrera García on July 13, 1999, Annex 7.

b) on December 23, 1999: i) Teodoro Cabrera García stated that: “as they were yanking us, I felt sick. My testicles were getting dry and I had blood in my urine from their beatings. They took us to the bank of the Pizotla River and kept us tied up there, with our hands and feet bound; they gave us nothing to eat. [...] At the river, the military put us face-down, head to head. Then they took us into the hinterland, where three soldiers were waiting, their faces covered. They told us that they covered their faces so that we wouldn’t recognize them [...] from there they put us in a helicopter and took us to Altamirano. Once at the battalion’s base they continued to beat us. Then they separated us. I don’t know where they took Rodolfo. They brought him back in about two hours. Then on Thursday, a drunken soldier arrived and he continued to beat and torture the two of us. He hit us in the face and then took us to the Social Rehabilitation Center at Coyuca Catalán [...]” Then the defense attorney asked to question the defendant; the line of questioning went as follows: QUESTION ONE: Will the defendant please explain what he meant when he said that they grazed his ear, which is what he said in the preliminary statement he gave in the presence of the Judge of First Instance in Coyuca Catalán [statement made on May 7, 1999]. ANSWER: The military fired their weapons and one of the bullets hit a rock; a fragment broke off and cut me behind my left ear. [...] QUESTION SEVEN – Will the defendant tell the court where on his body they beat him? ANSWER: The military tortured me. They hit me on my body, my head and my genitals. QUESTION EIGHT: Will the defendant please tell the court what he means when he says that the soldiers were yanking them, and why that should dry his testicles? ANSWER: The soldiers were yanking or tugging at our genitals. QUESTION NINE: How many soldiers were tugging at your genitals? ANSWER: Four soldiers. ii) Rodolfo Montiel Flores said the following: “I want to amplify my statement on the torture that the soldiers inflicted on me; I already told the judge about this in the rehabilitation center [...] When they apprehended me, they tied me up with a piece of rope and dragged me by the hands until the rope broke, and they hit me on the head [...] they dragged me four or five meters. A soldier put his foot on my back and pointed the barrel of a rifle at my head. They then took us to the Pizotla River. They crossed the river and tied my feet and my hands behind me. I spent all of Sunday in that condition. On Monday, at around 11:00 p.m., they had us lying down as if on a cross [...] Because we were on the ground they kept rotating our positions according to the four cardinal points on a compass. Later that night they took us to the mountain, where the

b) The statement made by Mrs. Ubalda Cortés Salgado and by the court-appointed defense counsel for the proceedings in federal court, Jacqueline Pineda Mendoza. Mrs. Cortés Salgado's statement before the CNDH, and the statement of Mrs. Pineda Mendoza are consistent with what the victims described, as they confirm what the victims said in their statements with regard to the acts of violence to which they were subjected. Mrs. Cortés Salgado reported having heard how the soldiers of the 40th Infantry Battalion ordered Mr. Teodoro Cabrera García to drop his pants, apparently for the purpose of hitting him in the genitals; Mrs. Pineda Mendoza said that Mr. Teodoro Cabrera García had told her that he was beaten while in the custody of the Mexican Army; and

c) The manner, time and place of the victims' detention. Mr. Montiel Flores and Mr. Cabrera García were detained during the course of a large military deployment in the community of Pizotla, during which the Army soldiers entered and searched various houses in the community. The soldiers from the 40th Infantry Battalion set fire to the victims' hiding place in order to flush them out and apprehend them. The Commission notes that acts of violence appear to have been committed on several occasions, starting with the moment in which soldiers of the 40th Infantry Battalion captured Mr. Montiel Flores and Mr. Cabrera García on May 2, 1999, continuing until Mr. Montiel Flores and Mr. Cabrera García were handed over to the Office of the State Public Prosecutor on May 4, 1999, at 6:00 p.m. Specifically, the Commission observes that the violence occurred on two occasions: the first was when they were detained in the community of Pizotla, and the second was when they were transferred to and held in custody at the base of the 40th Infantry Battalion.

101. Therefore, in its Merits' Report on this case, the Commission found that while there is no direct evidence of the commission of the torture being alleged by the representatives or of its severity, there is sufficient circumstantial evidence to allow the Commission to logically infer that the victims were subjected to cruel, inhuman and degrading treatment by agents of the

soldiers who tortured us were waiting [...] one told me to look at his hands. They were thin, he said, but those hands were going to force me to do whatever he said. Then he blindfolded me and tied my feet; my hands were already tied. [...] They pulled my pants down and grabbed my testicles [...] another soldier stood on my soldiers and it felt as if he dropped down on his knees on my stomach; three soldiers were doing this at the same time and they ordered me to tell them where the other comrades were, that I was a member of the ERP and if I didn't tell them, well, they knew precisely where my family was [...] Then they used electric shock [...] they separated us and took me to a room. There they wanted to force me to say that I was carrying firearms and was a member of a guerrilla group [...] The next morning, a soldier began to torture us, hitting us in the body, on the head, and in the stomach. That night, they took us and put us in a military vehicle [...] They again put the mouth of the rifle to my head, near the neck. They told us they were taking us to jail [...] They took us to cells at the federal public prosecutor's office [...] where they questioned us. At three in the morning they put us in a cell. The doctor they had there, instead of treating us, slapped Teodoro, because he told the doctor to wash the area where he had a cut, pointing behind his ear [...] When they had us at the river, we used our elbows to dig holes that would fill up with river water that we could then drink [...] Then they put us in that room [in the 40th Battalion]. They took us to another, right there on the base, where they wanted us to sign some documents, without knowing what the documents said, because they didn't give us the chance to read them [...]” The private defense counsel asked to question the defendant, and said [...] QUESTION ONE: “In his previous amplification, the defendant said that when they were on the mountain the soldiers were pulling his genitals. For how long did this go on? ANSWER: They were pulling on them for a while, until I passed out. I don't know how long. When I regained consciousness I told them I would admit to being a member of the ERP and not to start pulling at my genitals again. SECOND QUESTION: How long were you forced to undergo the electric shock that you mention in your previous statement? ANSWER: They applied the shock three different times for brief periods. I couldn't be more specific about the time. [...] QUESTION FIVE: Will the defendant please tell the court what he means when he says he saw a signature that he didn't recognize as being his? ANSWER: It was one of the documents drawn up at the 40th Battalion [...].

Criminal case 61/99-1 Amplification of the statements made by Teodoro Cabrera García and Rodolfo Montiel Flores, December 23, 1999, Annex 7.

¹³⁴ IACHR. Minutes of Hearing 26, “Case 12,449 Teodoro Cabrera García and Rodolfo Montiel Flores v. Mexico. Merits. 126th Regular Session, October 23, 2006, pp. 3 and 9, Annex 16.

State. Consequently, the Commission asks the Court to adjudge and declare that the Mexican State violated, in the case of the victims, Article 5(1) and 5(2) of the American Convention, read in conjunction with Article 1(1) thereof.

102. On the other hand, as for the circumstances surrounding the victims' detention, the Commission notes that the victims were initially held near the Pizotla River, in an improved military outpost. There, *inter alia*, they were kept uncomfortable positions for a prolonged period of time and not allowed contact with their families. They were then transferred to the base of the Mexican Army's 40th Infantry Battalion, where they were again denied any communication with their families and were beaten on a number of occasions. In this regard, the Inter-American Court has held that:

[T]he State must ensure that a person is detained in conditions which are compatible regarding for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention [...].¹³⁵

Therefore, the Commission is also asking the Court to adjudge and declare that the conditions to which the victims were subjected while in the custody of the Mexican Army are contrary to the obligations established in articles 5(1) and 5(2) of the American Convention.

103. In the past, the Inter-American Court has written that

[I]n the light of the general obligation of the State Parties to respect and guarantee the rights of all persons subject to its jurisdiction, contained in Article 1(1) of the American Convention, the State has the obligation to commence immediately an effective investigation that may allow the identification, the trial and the punishment of those liable, whenever there is an accusation or well-grounded reason to believe that an act of torture has been committed in violation of Article 5 of the American Convention. Furthermore, this action is specifically regulated in Articles 1, 6 and 8 of the Inter-American Convention against Torture, which Articles bind the State Parties to take all steps that may be effective to prevent and punish all acts of torture within the scope of their jurisdiction, as well as to guarantee that all torture cases be examined impartially.¹³⁶

104. Thus, in cases involving allegations of torture or cruel, inhuman or degrading treatment, said to have occurred while the victim or victims were in the State's custody, it is up to the State to launch a serious, exhaustive and impartial investigation into those allegations.¹³⁷ In this regard, the Inter-American Court has written that "the State, [...] as guarantor of the rights enshrined in the Convention, is responsible for the observance of the right to humane treatment of all individuals in its custody."¹³⁸ In the next section of this application, the Commission will examine the due diligence practiced in the investigation into the allegations of torture in the present case.

¹³⁵ I/A Court H.R. *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 155. See also Eur. Court H.R., *Kudla v. Poland*, No. 30210/96, para. 93-94, ECHR 2000-XI.

¹³⁶ I/A Court H.R., *Case of Gutiérrez Soler*. Judgment of September 12, 2005. Series C No. 132, para. 54.

¹³⁷ When an individual raises an "arguable claim" of torture at the hands of State agents, the State's obligation to refrain from torture and to respect and ensure the rights of all subject to its jurisdiction needs to be investigated. It must be an investigation capable of leading to the identification and punishment of those responsible. Eur. Ct. H.R., *Azenov and others v. Bulgaria* (90/1997/874/1086), para. 102.

¹³⁸ I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para. 120; *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 104 to 106.

C. Violation of the right to a fair trial and right to judicial protection (articles 8 and 25 of the American Convention, read in conjunction with Article 1(1) thereof, and violation of articles 1, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture).

105. The pertinent part of Article 8 of the American Convention reads as follows:

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: [...]
 - g. the right not to be compelled to be a witness against himself or to plead guilty; [...]
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind. [...]

106. Article 25 of the American Convention provides that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

107. Articles 1, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture read as follows:

Article 1. The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

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.

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.

108. In the case *sub lite*, the Commission will demonstrate that the violations of the rights to due process and to judicial protection were twofold: a) the failure to investigate and substantiate the complaint filed alleging torture; and b) the irregularities in the criminal case prosecuted against the victims.

1. Failure to investigate and substantiate the complaint filed alleging torture

109. The records of the instant case contain various complaints filed by the victims and their representatives reporting the allegations of torture. The Commission points out that the first time that Mr. Montiel Flores and Mr. Cabrera García complained of having been beaten was in their May 6, 1999 statement, made at the Federal Public Prosecutor's Office.¹³⁹ They complained again in the statements they made before the Criminal Court Judge of First Instance on May 7, 1999, where they provided details of the Mexican Army soldiers' abusive treatment of them.¹⁴⁰ Within the Inter-American System, and in keeping with the principle of due diligence, a judge hearing a case has a responsibility to guarantee the rights of an individual in the custody of the court and to supply the information and evidence pertaining to what happened to the detainee.¹⁴¹ From the court records of this case, there is nothing to suggest that any of the judges in the case ordered additional medical examinations to investigate the allegations of torture made by Mr. Montiel Flores and Mr. Cabrera García in the statements they made at the offices of the public prosecutors and before the court.

110. As the Court has held:

¹³⁹ In this statement, the victims begin to recount the purported acts of torture as follows: i) RODOLFO MONTIEL FLORES answered the questions as follows: QUESTION ONE: When you surrendered your weapons, where were you taken? ANSWER: To the bank of the Pizotla River [...]. QUESTION THREE: While you were in the custody of the military authorities, did they beat or mistreat you? ANSWER: Not when I was there at the river; but when I was at the military base, I was hit in the stomach and slapped on the left cheek"; ii) TEODORO CABRERA GARCÍA answered the questions as follows: QUESTION FOUR: Were you ever beaten between the time you were first detained and the time you were brought before the Federal Public Prosecution Office? ANSWER: When I was at the military post I was hit in the abdomen. While I don't know the name of the person who hit me, if you show me a photograph I would recognize him."

Preliminary Inquiry 33/CC/99. Statements that Rodolfo Montiel Flores and Teodoro Cabrera García made in the Public Prosecutor's Office on May 6, 1999, Annex 7.

¹⁴⁰ On May 7, 1999, the victims stated the following in the presence of the Criminal Court Judge of First Instance of the Mina Judicial District: i) Rodolfo Montiel Flores answered the questions as follows: QUESTION ONE: Will the accused please tell the court whether he was tortured at the time he was detained or thereafter; ANSWER: "They did not beat me when I was detained; however, that night, when I was in the soldiers' custody, they stepped on my face and put the mouth of a rifle to my forehead. The soldier said, 'If something happens to me, dude, I'm gonna unload this rifle in you' [...]" The accused then asked the court if he could speak. When the court recognized him, he said the following: "[...] I want to clarify something. On Monday night, the soldiers told us to lie face down with our heads pointing east; later, they woke us up and told us to lie face down with our heads pointing west; shortly thereafter, they got us up again and had us lying as on a cross; still later they came for us and took us to the mountain. Armed men were there, with their faces covered. This was around two in the morning. The soldiers said they were coming for me first because I knew a lot about the EPR. I told them I didn't know anything, that I was a member of an environmental group that didn't allow us to carry weapons. And they said, 'Don't try to fool us; we know who you are'. And then they directed a powerful light at my face and told me to look into the light; it was a harsh, blue light. When I became dazed, they blindfolded me. They tied my hands behind my back and bound my feet. Then someone grabbed me by the neck; another grabbed and pulled my testicles, saying that he would cut them off if I didn't tell him what I knew. And I said that I would say whatever they wanted me to say if they would just stop beating me. That's all I have to say. ii) Teodoro Cabrera García said the following: "[...] as soon as I saw the soldiers, I ran; they fired and a bullet grazed my left ear, and it immediately began to bleed. Just as I was getting away, they caught me. As for the M1 weapon they claim I had [...] the only wrong thing I did was to run, [...]. I had the weapon in my hand, but didn't fire it. I wanted to get rid of it, so that the soldiers wouldn't take me into custody. I am not confirming the statements I made in the state public prosecutions office and the federal prosecutions office. This is how things happened. [...] QUESTION SIX: Did the soldiers torture the accused when he was detained or thereafter? ANSWER: When I was at the 40th Battalion, a drunken friend of the soldiers came along and he began to beat me up, causing me to fall over. They had my hands tied behind my back; my feet were also bound. In Pizotla they blindfolded me and I heard them say they wanted to cut off my testicles; they opened my mouth and put a pistol inside. [...]. Annex 6.

¹⁴¹ I/A Court H.R. *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, para. 91; *Case of Tibi v. Ecuador*, Judgment of September 7, 2004. Series C No. 114, para. 98; *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 138.

[...] in those cases where alleged torture or mistreatment have been claimed, the time elapsed till the performance of the pertinent medical examinations is essential in order to unquestionably determine the existence of damage, specially when there are no witnesses other than the perpetrators and the victims themselves, and consequently, the evidence may be scarce. Thus, it may be concluded that in order for an investigation regarding facts involving torture to be effective, the same must be promptly conducted.¹⁴².

In the instant case, the only medical examinations done to check the condition of the detainees when they were handed over predate the complaints alleging torture. Furthermore, because the exams were done by persons affiliated with the same institution to which the alleged perpetrators belonged, their impartiality and competence could be called into question.

111. In cases in which torture, or cruel, inhuman or degrading treatment are alleged, it is imperative that the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the principles for investigation of torture") be observed. Under those principles, medical experts charged with determining the presence of torture or cruel, inhuman or degrading treatment or punishment are to prepare accurate written reports that include, as a minimum, the following:

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

112. In the instant case, during the course of the investigation into the allegations of torture no judge ordered any medical examinations other than those already done; in other words, additional examinations over and above those conducted at the time the victims were detained. Neither the military medical examinations nor those conducted by the forensic physicians meet the standards established in the principles for investigation of torture, which are: a) circumstances of the interview: the examinations under discussion here did not provide information such as: the exact time and date of the examination; the address of the institution where the examinations were conducted (e.g., detention centre, clinic or house); and the circumstances of the victims; b) medical history: the medical examinations conducted did not meet the following requirements: detailed record of the subject's story as given during the

¹⁴² I/A Court H.R., *Case of Bueno Alves*. Judgment of May 11, 2007. Series C No. 164, para. 111.

interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms; c) physical and psychological examination: the medical examinations do not describe the findings of the physical and psychological examinations and do not report the diagnostic tests done; no photographs of the injuries are included; d) opinion: the examinations do not establish the relationship between the physical and psychological symptoms and the torture the victims claim to have suffered.

113. The United Nations Committee against Torture has written that in all cases where torture is alleged, the examination must be done by an independent doctor,¹⁴³ in accordance with the Istanbul Protocol.¹⁴⁴

114. The Commission believes that the medical certificates in the court record, specifically those drawn up by military physicians, are not rigorous enough to prove that the victims were or were not subjected to torture. The military medical certificate was drawn up on May 4, 1999, by Second Lieutenant Bulmaro Adame Benítez, who is a member of the Mexican Army. Because of his relationship with the Mexican Army, he does not have the independence and autonomy necessary to conduct the medical examination. The medical examinations done by the forensic physicians with the public prosecutions offices do not meet the requirements established in the principles for investigation of torture and those of the Istanbul Protocol.

115. As for the investigation of the facts, on August 26, 1999, upon conclusion of a line of questioning, the representatives of the victims in the domestic proceedings asked the presiding judge to order the Public Prosecutor's Office to investigate the allegations of torture.¹⁴⁵ In November of that year, the PGR abdicated jurisdiction in favor of the Office of the Prosecutor General for Military Justice (PGJM).¹⁴⁶ On June 13, 2000, the PGJM closed the preliminary inquiry without prejudice, pending further evidence to support the complaint; its contention was that no evidence had been produced to substantiate the claims of torture. On this point, the principles for investigation of torture require that "States shall ensure that complaints and reports

¹⁴³ Committee against Torture (CAT). Consideration of Reports Submitted by States Parties under Article 19 of the Convention. . CAT/C/MEX/CO/4. February 6, 2007, paragraph 16(a). See also Committee against Torture. Report on Mexico produced by the Committee under Article 20 of the Convention, and Reply from the Government of Mexico. CAT/C/75, May 25, 2003, paragraph 220 (k).

¹⁴⁴ According to the Guidelines for the Medical Evaluation of Torture and Ill-treatment of the Istanbul Protocol, the medical evaluation should include:

a) Case information; b) Clinician's qualifications (for judicial testimony); c) statement regarding the veracity of the testimony (for judicial testimony); d) background information; e) allegations of torture and ill-treatment; f) physical symptoms and disabilities; g) physical examination; h) psychological history/examination; i) photographs; j) diagnostic test results; k) consultations; l) interpretation of findings; m) conclusions and recommendations; n) statement of truthfulness; o) statement of restrictions on the medical investigation and documentation evaluation/investigation; p) clinician's signature, date, place; q) relevant annexes.

Office of the United Nations High Commissioner for Human Rights, Istanbul Protocol, "*Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,". Annex IV Guidelines for the medical evaluation of torture and ill-treatment. 2001.

¹⁴⁵ According to the court record, when the defense's questioning of the alleged victims was over, the judge was asked to investigate the acts of torture. The defense's request was as follows:

"I am petitioning the court to instruct the Public Prosecutor's Office to investigate the torture my clients suffered when detained by the military troops [...]"

¹⁴⁶ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 24, Annex 3.

of torture or ill-treatment are promptly and effectively investigated.”¹⁴⁷ The Commission considers that an investigation cannot be effective as long as there are serious doubts as to the impartiality of the organ charged with conducting the investigation.¹⁴⁸

116. Moreover, the victims filed a complaint with the CNDH, which ordered the PGJM to open a new preliminary inquiry against the soldiers of the Mexican Army who participated in the operation conducted in the community of Pizotla from May 1 through 4, 1999.¹⁴⁹ The PGJM responded by instituting Preliminary Inquiry SC/304/2000/VIII-I into the allegations of torture. In February 2001, the victims asked the PGJM to decline jurisdiction and return the preliminary inquiry to the jurisdiction of the PGR. On November 3, 2001, the PGJM settled the Preliminary Inquiry by deciding not to bring criminal action and to close the inquiry.¹⁵⁰ Neither the victims nor their representatives had any input into the decision by which the inquiry was closed and played no direct role in the investigation. Here, the principles for investigation of torture state that “Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.”¹⁵¹ During the proceedings before the Commission, the State had argued that the PGJM’s Preliminary Inquiry was currently ongoing, and that the victims had not yet appeared in the offices of the PGJM to be notified of that preliminary inquiry.

117. As for the authority that conducted the investigation into the alleged acts of torture, the Commission considers that the PGJM was not the competent authority to investigate the facts, inasmuch as military justice should only be used in cases in which military criminal legal interests are endangered, during the performance of specific duties related to the defense and external security of a State.¹⁵² Military justice is not for investigating human rights violations. In several previous cases, the Commission has held that:

[M]ilitary justice should be used only to judge active-duty military officers for the alleged commission of service-related offenses, strictly speaking. Human rights violations must be investigated, tried, and punished in keeping with the law, by the regular criminal courts. Inverting the jurisdiction in cases of human rights violations should not be allowed, as this undercuts judicial guarantees, under an illusory image of the effectiveness of military justice, with grave institutional consequences, which in fact call into question the civilian courts and the rule of law.¹⁵³

¹⁴⁷ United Nations General Assembly. Resolution 55/89 “Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” Principle 2, December 4, 2000.

¹⁴⁸ The Istanbul Protocol provides that a serious investigation rests on five basic principles: competency, impartiality, independence, promptness and detail.

Office of the United Nations High Commissioner for Human Rights, Istanbul Protocol, “*Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*,” Annex IV Guidelines for the medical evaluation of torture and ill-treatment. 2001, para. 73.

¹⁴⁹ CNDH. *Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García*. Recommendation No. 8/2000, p. 28, Annex 3.

¹⁵⁰ Preliminary Inquiry SC/304/2000/VIII-I of November 3, 2001. Decision, at 178, Annex 11.

¹⁵¹ United Nations General Assembly. Resolution 55/89 “Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” Principle 4, December 4, 2000.

¹⁵² I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 132.

¹⁵³ IACHR. Report No. 2/06 (Merits). Case 12,130, Miguel Orlando Muñoz Guzmán v Mexico, February 28, 2006, para. 84.

118. Thus, service-related crimes, which are the crimes over which the military courts have jurisdiction, are “punishable acts in the form of an excess or abuse of authority committed in the context of an activity that is directly related to the exclusive function of the armed forces.”¹⁵⁴ In the instant case, the allegations of the torture that the victims were said to have suffered extend well beyond any defense- and security-related function, especially inasmuch as the prohibition against torture has become part of the international *jus cogens*.¹⁵⁵ Furthermore, “the link between the criminal act and military-service related activity is broken when the crime is extremely grave, as in the case of crimes against humanity. In such circumstances, the case is to be referred to the civilian justice system.”¹⁵⁶ The Commission considers that the torture that Mr. Montiel Flores and Mr. Cabrera García were alleged to have suffered cannot be regarded as a service-related crime or offense. Therefore, the investigation of these allegations should have been conducted in the regular courts.

119. The Inter-American Court has held that:

All organs that exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the Convention.¹⁵⁷

120. On the question of investigating allegations of torture, the Inter-American Court has written that:

[a]ccording to the American Convention, the States Parties are obliged to offer the victims of human rights’ violations effective judicial recourses (Article 25), that must be substantiated pursuant to the rules of the due process of law (Article 8(1)), all this within the general obligation, of the same States, to guarantee the free and full exercise of the rights acknowledged by the Convention to all person under its jurisdiction (Article 1(1)).¹⁵⁸

121. Similarly, the principles for investigation of torture state that “investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial.”¹⁵⁹ The Commission notes that the PGJM cannot be an independent and impartial investigative body because of “a deep-seated sense of *esprit de corps* which is sometimes misinterpreted as requiring them to cover up or remain silent about crimes committed

¹⁵⁴ Constitutional Court of Colombia, Ruling C-358 of August 5, 1997. See also IACHR. *Third report on the situation of human rights in Colombia*, para. 30.

¹⁵⁵ I/A Court H.R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006. Series C No. 160, para. 271.

¹⁵⁶ Constitutional Court of Colombia, Ruling C-358 of August 5, 1997. See also IACHR. *Third report on the situation of human rights in Colombia*, para. 30.

¹⁵⁷ I/A Court H.R. *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 148; *Case of Palamara Iribarne*, Judgment of November 22, 2005. Series C No. 135, para. 164; *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127, para. 149; *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, para. 104.

¹⁵⁸ I/A Court H.R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006. Series C No. 160, para. 381; *Case of Goiburú et al.*, Judgment of September 22, 2006. Series C No. 153, para. 110; *Case of Servellón García et al.*, Judgment of September 21, 2006. Series C No. 152, para. 147; and *Case of Ximenes Lopes*, Judgment of July 4, 2006. Series C No. 149, para. 175.

¹⁵⁹ United Nations General Assembly, resolution 55/89 “Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” Principle 2, December 4, 2000.

by fellow soldiers.”¹⁶⁰ The IACHR further considers that when military authorities conduct cases whose active subject is another member of the military, impartiality is all the more difficult because investigations into the conduct of members of the security forces managed by other members of the security forces could tend to cover up the facts rather than shed light on them.¹⁶¹

122. Prosecution by military courts of serious human rights violations is in itself a violation of, *inter alia*, the rights protected in articles 8 and 25 of the American Convention.¹⁶² The Inter-American Court has written that

[...]in a democratic State, the jurisdiction of military criminal courts must be restrictive and exceptional, and they must only judge military men for the commission of crimes or offences that due to their nature may affect any interest of military nature.¹⁶³ In this regard, the Court has held that “when the military courts assume jurisdiction over a matter that should be heard by the ordinary courts, the right to the appropriate judge is violated, as is, *a fortiori*, due process, which, in turn, is intimately linked to the right of access to justice”¹⁶⁴ For these reasons and because of the nature of the crime and the legally protected interest wronged, the military criminal courts have no competent jurisdiction to investigate or prosecute and punish the authors of these events [...]¹⁶⁵

123. The Commission, for its part, has held that “[t]he military criminal justice system has certain peculiar characteristics that impede access to an effective and impartial remedy in this jurisdiction. One of these is that the military jurisdiction cannot be considered a real judicial system, as it is not part of the judicial branch, but is organized instead under the Executive. Another aspect is that the judges in the military judicial system are generally active-duty members of the Army, which means that they are in the position of sitting in judgment of their comrades-in-arms, rendering illusory the requirement of impartiality, since the members of the Army often feel compelled to protect those who fight alongside them in a difficult and dangerous context.”¹⁶⁶

124. Article 57.II.a of Mexico’s Code of Military Justice provides that crimes against military discipline are those that “were committed by military in active service or in connection with active service.”¹⁶⁷

¹⁶⁰ IACHR. *Third Report on the Situation of Human Rights in Colombia*, paragraphs 26-29.

¹⁶¹ IACHR. *Third Report on the Situation of Human Rights in Colombia*, para. 19.

¹⁶² IACHR. *Annual Report 1993*. OEA/Ser.L/V/III.85. February 11, 1994

¹⁶³ I/A Court H.R. *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, para. 142; *Case of Almonacid-Arellano et al.*, Judgment of September 26, 2006. Series C No. 154, para. 131; *Case of the Pueblo Bello Massacre*, Judgment of January 31, 2006. Series C No. 140, para. 189, and *Case of Palamara-Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 124.

¹⁶⁴ I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, para. 142; *Case of Almonacid-Arellano et al.*, Judgment of September 26, 2006. Series C No. 154, para. 131; *Case of Palamara-Iribarne*. Judgment of November 22, 2005. Series C No. 135, para. 143, and *Case of the “16 Merchants”*, Judgment of July 5, 2004. Series C No. 109, para. 167.

¹⁶⁵ I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006 Series C No. 162, para. 142.

¹⁶⁶ IACHR. Report No. 2/06 (Merits). Case 12,130, Miguel Orlando Muñoz Guzmán v Mexico, February 28, 2006, para. 83.

¹⁶⁷ ARTICLE 57. – Crimes against military discipline are:

I.- Those specified in the Second Volume of this Code;

II.- Common or federal crimes when any of the following circumstances attend their commission:

125. Mexico's Supreme Court has written that:

[the military justice system] cannot be extended to enable military courts to prosecute crimes that, although committed by military and related to the Army service, are not violations of military discipline."¹⁶⁸ "[...] The military justice system does not have jurisdiction over common crimes committed by military when not in active service [...]"¹⁶⁹ "Article 13 of the Constitution reserves military jurisdiction for crimes against military discipline, which should be understood as those that, when committed, disturb, diminish or jeopardize the military service and that are contrary to the duties that the Army's General System of Order imposes or that are carried out during military service."¹⁷⁰

126. The impartiality of any court rests on the fact that none of its members has any direct interest, any predisposition, or any preference for one party over another and is not in any way involved in the dispute. The principles for the investigation of torture state that "[i]n cases in which the established investigative procedures are inadequate because of [...] suspected bias [...], States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure."¹⁷¹ In the instant case, the Commission finds no *de facto* or *de jure* evidence that the State has conducted any judicial inquiry other than the one conducted within military jurisdiction.

127. In the present case the investigation was not undertaken at the State's own initiative, even though the victims had, on several occasions, reported that they had been tortured. Instead, the investigation was launched in response to a request that the victims filed with the Fifth District Judge of the Twenty-first Circuit. The Attorney General's Office ceded jurisdiction to the PGJM in November 1999. On June 13, 2000, the PGJM issued an order to close the preliminary inquiry without prejudice, pending further evidence to support the

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- a).- The crimes were committed by military in active service or in connection with active service;
 - b).- The crimes were committed by military personnel on a warship or in a military facility or military point or militarily occupied area, provided that disruption or disorder ensues among the ranks of the troops located at the site where the crime was committed or the military service is disrupted or somehow harmed;
 - c).- The crimes were committed in a territory under a declared state of siege or under martial law, under the rules of the law of war;
 - d).- The crimes were committed by military in the presence of troops in formation or in the presence of the flag;
 - e).- The crime was committed by military personnel in connection with one of those referred to in subparagraph I.

When military personnel and civilians are complicit in the commission of crime in the cases hypothesized in subparagraph II, the military personnel will be tried by military justice.

Military courts shall not have jurisdiction over those crimes whose investigation and punishment require that a complaint be filed. The exceptions shall be the cases specified in subparagraphs (c) and (e) of section II.

¹⁶⁸ MILITARY JUSTICE SYSTEM. Supreme Court of Justice (SCJN), *en banc*, *Semanario Judicial de la Federación y su Gaceta*, Fifth Epoch, Volume V, p. 900.

¹⁶⁹ MILITARY JUSTICE SYSTEM. Supreme Court of Justice (SCJN), *en banc*, *Semanario Judicial de la Federación y su Gaceta*, Fifth Epoch, Volume XII, p. 714.

¹⁷⁰ MILITARY JUSTICE SYSTEM. Supreme Court of Justice (SCJN), *en banc*, *Semanario Judicial de la Federación* and its Gazette, Fifth Epoch, Volume XIV, p. 1788.

¹⁷¹ United Nations General Assembly, resolution 55/89 "Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." Principle 5.a, December 4, 2000.

complaint; it argued that no evidence had been produced to support the claim of torture. The inquiry into torture was reopened three months later in response to CNDH recommendation 8/2000. The investigation was classified as Preliminary Inquiry SC/304/2000/VIII-I and in the end ruled that there was no evidence to support the claim of torture.

128. The Commission has held that “[w]here the state allows investigations to be conducted by the organs potentially implicated, independence and impartiality are clearly compromised. [...] The consequence of such compromise is insulation of those presumably responsible from the normal operation of the legal system.”¹⁷²

129. On the other hand, the Commission considers that “in light of the general obligation of the States party to respect and ensure the rights of all persons under their jurisdiction, contained in Article 1(1) of the American Convention, the State has the duty to immediately and ex officio begin an effective investigation to identify, try, and punish those responsible, when there is a complaint or there are grounds to believe that an act of torture has been committed in violation of Article 5 of the American Convention.”¹⁷³

130. The Commission therefore asks the Court to adjudge and declare that the absence of a serious, exhaustive and impartial investigation and substantiation of the acts of torture alleged was a violation of the rights protected in Article 8(1) and Article 25 of the American Convention, all within the general obligations undertaken in Article 1(1) thereof, and Article 8 of the Inter-American Convention to Prevent and Punish Torture.

2. Irregularities in the criminal case prosecuted against the victims

131. Mexico’s domestic laws establish the prohibition against torture as follows:

Article 20(A)(II) of the Mexican Constitution:

In every criminal proceeding, the accused, the victim or the aggrieved party shall have following guarantees:

A. The accused:

II. The accused does not have to make a statement. *Incommunicado* detention, intimidation and torture shall be prohibited and are punishable offenses under criminal law. Confessions made before any authority other than the Public Prosecutor or a judge, or made before them but without the assistance of defense counsel shall have no evidentiary value.

Article 9 of Mexico’s Federal Law to Prevent and Punish Torture reads as follows:

No evidentiary value shall be attached to a confession made or information given to a police authority or to the Public Prosecutor’s Office or a court authority in the absence of the accused’ defense counsel or trusted individual and, where necessary, an interpreter.

Article 287(I) of Mexico’s Federal Code of Criminal Procedure provides that:

¹⁷² IACHR, Report No. 10/95, Case 10,580, *Manuel Stalin Bolaños*, Ecuador, Annual Report of the IACHR 1995, OEA/Ser.L/V/II.91, Doc. 7, rev. 3, April 3, 1996, para. 48.

¹⁷³ I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 159.

A confession made to the Public Prosecutor's Office and the Judge must satisfy the following requirements:

I. The statement must be made by someone eighteen or over, fully cognizant of the fact that the statement is self-incriminating; the statement must be made without coercion or any form of physical or moral duress.

132. According to the conviction handed down by the Fifth District Judge of the Twenty-first Circuit on August 28, 2000, the confessions that the victims made to the soldiers who captured them were said to have been expunged from the record when they gave their new statements to the Public Prosecutor's Office and to the Judge of the Mina Judicial District. However, it is important to note that in the statements they made to the Federal Public Prosecutor's Office, the victims asserted that the facts with which they were charged were not entirely true and that they had been tortured while in detention under the supervision of members of the Mexican Army. The victims elaborated upon the earlier statements when they made their statements to the Judge of the Mina Judicial District and provided specific details about the alleged torture.

133. In its 1998 *Report on the situation of human rights in Mexico*, the Commission found that "most cases of torture and of cruel, inhuman and degrading treatment occur in the context of the criminal justice system, mainly during the early stages of the investigation of criminal offenses."¹⁷⁴ "The agents who are usually guilty of committing acts of torture are members of the Federal and state judicial police, the Office of the Public Prosecutor or the Armed Forces. [...]"¹⁷⁵

134. For his part, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment wrote the following about the Mexican State: "generally speaking, not only judges, but also lawyers, the Public Prosecutor's Office and the Judicial Police itself are overloaded with work, which may explain the tendency to rely on confessions as a way of clearing up cases rapidly."¹⁷⁶ As for the fact that agents from Mexico's Public Prosecutor's Offices are present when a confession is taken, the UN Committee against Torture found that "Public Prosecutor's Office officials do not generally bother to ascertain whether a confession has been voluntarily made."¹⁷⁷

135. In the instant case, when the Fifth District Judge delivered his judgment on August 28, 2000, he found that the confessions that carried evidentiary weight were those made to the Federal Public Prosecutor's Office and to the Judge of the Mina Judicial District, not those made in the military jurisdiction. As stated on previous occasions in reference to Mexico, the Commission observes that "in most cases, torture occurs during the first few days the prisoner is detained. Prisoners are particularly vulnerable during the time they are held "*incommunicado*," that is, when the security forces have total control over the fate of these people, since they are denied access to family members, an attorney, or an independent

¹⁷⁴ Amnesty International, *The Presumption of Torture with Impunity*, AMR.41/01/93.

¹⁷⁵ Report on the situation of human rights in Mexico, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 305

¹⁷⁶ United Nations, Economic and Social Council, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38, E/CN.4/1998/38/Add.2, January 14, 1998, para. 79, p. 23.

¹⁷⁷ Committee against Torture (CAT). Report on Mexico produced by the Committee under Article 20 of the Convention, and Reply from the Government of Mexico. CAT/C/75, May 25, 2003, para. 201.

physician.”¹⁷⁸ In the *Case of Tibi v. Ecuador v. Ecuador*, the Inter-American Court concluded that certain acts of violence, inflicted intentionally and in the context of a detention, may cause one to feel panic and fear for one’s life.¹⁷⁹

136. It is this sense of defenselessness and vulnerability that the individual feels when detained and subjected to cruel, inhuman and degrading treatment in order to break down that individual’s psychological resistance and force him to incriminate himself¹⁸⁰ and that engenders “feelings of fear, anguish and inferiority capable of humiliating and debasing an individual and possibly breaking his physical and moral resistance.”

137. One of the distinctive characteristics of torture and cruel, inhuman or degrading treatment is the intimidating effect it has on the person being tortured or mistreated. It is the Commission’s understanding that when the victims made their self-incriminating statements in the presence of the Federal Public Prosecutor’s Office and the Judge of the Mina Judicial District, they were still in the grips of fear, anguish and inferiority, since it had been only a few days since their detention and physical mistreatment.

138. On previous occasions, the Commission has written that “in the case of a statement or testimony in which there is a well-founded suspicion or presumption that it was obtained by some type of coercion, be it physical or psychological, the Mexican courts must determine whether such coercion did actually exist. In the event that a statement or testimony obtained in these circumstances is admitted and used during the trial as an element of evidence or proof, that state may incur international responsibility.”¹⁸¹

139. As was analyzed in the preceding section of this application, the Commission observes that in the instant case, no serious, exhaustive and impartial investigation was conducted that would have established whether the victims’ allegations of torture were true or not. In this regard, in the *García Fuenzalida v. Ecuador Case*, the United Nations Human Rights Committee wrote that “[i]n principle, it is not for the Committee to question the evaluation of the evidence made by national courts, unless that evaluation was manifestly arbitrary or constituted a denial of justice.”¹⁸² In the *Case of Assenov and others v. Bulgaria*, the European Court of Human Rights wrote the following in connection with the investigation into allegations of torture: “the Court was unable to reach any conclusion as to whether the applicant’s injuries had in fact been caused by the police, as he had alleged. The inability to make any conclusive findings of fact in that regard derived at least in part from the failure of the authorities to react effectively to those complaints at the relevant time.”¹⁸³

¹⁷⁸ Report on the Situation of Human Rights in Mexico. Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 307.

¹⁷⁹ I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 148.

¹⁸⁰ I/A Court H.R., *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 146.

¹⁸¹ IACHR, *Report on the situation of human rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 320.

¹⁸² UN, Human Rights Committee. José Luis García Fuenzalida v Ecuador. Communication No. 480/1991. UN.Doc CCPR/C/57/D/480/1991. para. 9.3

¹⁸³ However, in that case the Court was unable to reach any conclusion as to whether the applicant's injuries had in fact been caused by the police, as he had alleged. The inability to make any conclusive findings of fact in that regard derived at least in part from the failure of the authorities to react effectively to those complaints at the relevant time.

Eur. Court H.R., *Case of Caloc v France*. Application No. 33951/96. 20 July 2000 § 91; *Case of Assenov and others v. Bulgaria* (judgment of 28 October 1998, Reports 1998-VIII, p. 3290, §§ 102-03).

140. Summing up, the Commission finds that because the State did not conduct a serious, exhaustive and impartial investigation into the allegations of torture, any possible problems in the confessions given by the victims could not be corrected; the State, therefore, could not use those statements as evidence.

141. Therefore, the Commission asks the Court to adjudge and declare that by assigning evidentiary weight to a confession given under cruel, inhuman or degrading, the Mexican State failed to comply with the obligations set forth in articles 8(2)(g) and 8(3) of the American Convention, read in conjunction with Article 1(1) thereof, and Article 10 of the Inter-American Convention to Prevent and Punish Torture.

D. Failure to comply with the obligation to adopt domestic legislative measures (Article 2 of the American Convention and Article 6 of the Convention against Torture)

142. Article 2 of the American Convention provides that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

143. Article 6 of the Inter-American Convention to Prevent and Punish Torture reads as follows:

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.

144. The Inter-American Court has written that:

[U]nder the *jus gentium*, a customary law prescribes that a State that has signed an international agreement must introduce into its domestic laws whatever changes are needed to ensure execution of the obligations it has undertaken. This principle is universally valid and has been characterized in case law as an evident principle ("*principe allant de soi*"; *Exchange of Greek and Turkish populations*, avis consultatif, 1925, C.P.J.I., Series B, No. 10, p. 20).¹⁸⁴

145. The Inter-American Court has likewise held that Article 2 of the American Convention not only implies that national laws must be in keeping with inter-American standards,

¹⁸⁴ I/A Court H.R. *Case of Zambrano Vélez et al.* Merits, Reparations and Costs, Judgment of July 4, 2007. Series C No. 165, para. 55, *Case of Garrido and Baigorria. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C No. 39, para. 68. See also *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, para. 170, and *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, para. 117.

but also that national practices are to conform to the provisions of the American Convention.¹⁸⁵ It has written that:

The general duty set forth in Article 2 of the American Convention requires adoption of two types of measures: on the one hand, elimination of all kinds of provisions and practices that breach guarantees set forth in the Convention; on the other hand, adoption of provisions and development of practices that lead to effective observance of said guarantees.¹⁸⁶

146. The Inter-American Court has also held that:

[...] adapting its domestic legislative framework means the adoption of measures of two kinds, namely: i) suppression of any rule or practice that violates guarantees recognized in the Convention or that disregards the rights recognized therein or obstructs their exercise; and ii) enactment of standards and development of practices conducive to the effective observance of those guarantees.¹⁸⁷ The Court has interpreted that the State's obligation to suppress any rule or practice that violates guarantees recognized in the Convention is violated if those rules or practices continue to be part of the state's legal system;¹⁸⁸ that obligation is fulfilled when those contrary rules or practices are modified,¹⁸⁹ derogated or in any way annulled¹⁹⁰ or amended,¹⁹¹ as the case may be.¹⁹²

¹⁸⁵ In the *Bulacio Case*, the Inter-American Court held that the Argentine State had violated Article 2 of the American Convention by having permitted practices like the so-called "razzias."

"Razzias are incompatible with respect for fundamental rights, including presumption of innocence, existence of a court order for detention –except in situations of flagrancy– and the obligation to notify those in charge of the minors [...]"

"Pursuant to the terms of the acknowledgment of international responsibility made by the State, it violated the rights enshrined in Articles 4, 5, 7 and 19 of the American Convention on Human Rights to the detriment of Walter David Bulacio and his next of kin, all the above in connection with Articles 1(1) and 2 of the American Convention on Human Rights, under the terms of paragraph 38 of the instant Judgment."

I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100. Para. 137 and operative para. 3.

¹⁸⁶ I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para 143; *Case of the "Five Pensioners,"* Judgment of February 28, 2003. Series C No. 98. para. 165; *Cantos Case*, Judgment of November 28, 2002. Series C No. 97, para. 61; and *Case of Hillaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, para. 113.

¹⁸⁷ I/A Court H.R. *Case of Zambrano Vélez et al.* Merits, Reparations and Costs, Judgment of July 4, 2007. Series C No. 165, para. 57; *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C No. 52, para. 207. See also *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, para. 172, and *Case of Almonacid Arrellano et al.* Judgment of September 26, 2006. Series C No. 154 note 14, para. 118.

¹⁸⁸ I/A Court H.R. *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 57; *Case of The Last Temptation of Christ (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, para. 88. See also *Case of La Cantuta*. Judgment of November 29, 2006. Series C No. 162, para. 172.

¹⁸⁹ I/A Court H.R. *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 57; *Case of Hillaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, para. 113 and 212. See also *Case of Fermín Ramírez*. Judgment of June 20, 2005. Series C No. 126, para. 97 and 130.

¹⁹⁰ I/A Court H.R. *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 57; *Case of Caesar*. Judgment of March 11, 2005. Series C No. 123, para. 94 and 132. See also *Case of Yatama*. Judgment of June 23, 2005, Series C No. 127, para. 254.

¹⁹¹ I/A Court H.R., *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 57; *Case of Raxcacó Reyes*. Judgment of September 15, 2005. Series C No. 133, para. 87 and 125.

1. The jurisdiction given to the military courts to investigate the complaints of torture is a violation of Article 2 of the American Convention.

147. Article 13 of the Constitution of Mexico provides that:

In no case and under no circumstance shall the military justice system be extended to apply to persons who do not belong to the Army. When a civilian is involved in a crime or misdemeanor under the military system, the case shall be heard by the appropriate civilian authority.¹⁹³

148. For its part, the Mexican Code of Military Justice defines military crimes or offenses as those that "are committed by military in active service or in connection with active service."¹⁹⁴

149. On the matter of military jurisdiction, the Supreme Court of Mexico has written that:

The military justice system cannot be extended to enable military courts to prosecute crimes that, although committed by military and related to the Army service, are not violations of military discipline."¹⁹⁵ "[...] "The military justice system, does not have jurisdiction over common crimes committed by military when not in active service [...];"¹⁹⁶

¹⁹² I/A Court H.R. *Case of Zambrano Vélez et al.* Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, para. 57; *Cf. Case of La Cantuta*, Judgment of November 29, 2006. Series C No. 162, para. 172.

¹⁹³ Article 13.- No one can be tried according to private laws or by special courts. No one or corporate body can have privileges..... The military justice system shall be recognized for the trial of crimes against and violation of military discipline, but the military tribunals shall in no case extend jurisdiction over persons who do not belong to the army. Whenever a civilian is involved in a military crime or violation, the respective civil authority shall deal with the case."

¹⁹⁴ ARTICLE 57. – Crimes against military discipline are:

I.- Those specified in the Second Volume of this Code;

II.- Common or federal crimes when any of the following circumstances attend their commission:

- a).- The crimes were committed by military in active service or in connection with active service;
- b).- The crimes were committed by military personnel on a warship or in a military facility or military point or militarily occupied area, provided that disruption or disorder ensues among the ranks of the troops located at the site where the crime was committed or the military service disrupted or somehow harmed;
- c).- The crimes were committed in a territory under a declared state of siege or under martial law, under the rules of the law of war;
- d).- The crimes were committed by military in the presence of troops in formation or in the presence of the flag;
- e).- The crime was committed by military personnel in connection with one of those referred to in subparagraph I.

When military personnel and civilians are complicit in the commission of crime in the cases hypothesized in subparagraph II, the military personnel will be tried by military justice.

Military courts shall not have jurisdiction over those crimes whose investigation and punishment require that a complaint be filed. The exceptions shall be the cases specified in subparagraphs (c) and (e) of section II.

¹⁹⁵ MILITARY JUSTICE SYSTEM. The Supreme Court of Justice, *en banc*, *Semanario Judicial de la Federación y su Gaceta*, Fifth Epoch, Volume V, p. 900.

¹⁹⁶ MILITARY JUSTICE SYSTEM. The Supreme Court of Justice, *en banc*, *Semanario Judicial de la Federación y su Gaceta*, Fifth Epoch, Volume XII, p. 714.

“Article 13 of the Constitution reserves military jurisdiction for crimes against military discipline, which should be understood as those that, when committed, disturb, diminish or jeopardize the military service and that are contrary to the duties that the Army’s General System of Order imposes, or that are carried out during military service.”¹⁹⁷

150. In the instant case, however, although the victims are civilians the investigation into the acts of torture was done by the PGJM, in violation of domestic law, the jurisprudence of the Supreme Court of Mexico, and Article 2 of the American Convention.

151. Elsewhere, the IACHR has previously written that:

[...] the PGJM lacks, by definition, the necessary independence and autonomy to carry out an impartial investigation of human rights violations allegedly committed by members of the armed forces. The investigation by the PGJM of human rights violations allegedly perpetrated by Mexican military personnel is itself a violation of the American Convention.[...]¹⁹⁸

Based on the jurisprudence of the inter-American system of human rights, the Inter-American Commission concludes that the investigations of the PGJM lack the suitability, independence, and impartiality required by the American Convention to determine the whereabouts of Miguel Orlando Muñoz Guzmán, punish the persons responsible for the violations, and provide reparation to his family.¹⁹⁹

152. Similarly, the United Nations Special Rapporteur for torture and other cruel, inhuman or degrading treatment or punishment recommended to the Mexican State that:

The serious crimes committed by military personnel against civilians, especially torture or cruel, inhuman or degrading treatment, must be heard by the civilian courts, irrespective of whether the acts were committed while in active service.²⁰⁰

153. In a report on Mexico, the Committee against Torture wrote that “application of military law should be restricted only to offences of official misconduct and necessary legal arrangements should be made to empower civil courts to try offences against human rights, in particular torture and cruel, inhuman or degrading treatment, committed by military personnel, even when it is claimed that they were service-related.”²⁰¹

2. The domestic legislation on the subject of torture is not commensurate with inter-American standards.

¹⁹⁷ MILITARY JUSTICE SYSTEM. The Supreme Court of Justice, *en banc*, *Semanario Judicial de la Federación y su Gaceta*, Fifth Epoch, Volume XIV, p. 1788.

¹⁹⁸ IACHR. Report No. 2/06 (Merits). Case 12,130, Miguel Orlando Muñoz Guzmán v Mexico, February 28, 2006, para. 85.

¹⁹⁹ IACHR. Report No. 2/06 (Merits). Case 12,130, Miguel Orlando Muñoz Guzmán v Mexico, February 28, 2006, para. 87.

²⁰⁰ Economic and Social Council, Torture and other cruel, inhuman or degrading treatment or punishment, Report of the Special Rapporteur Manfred Nowak, Follow-up to the recommendations made by the Special Rapporteur, Visits to Azerbaijan, Brazil, Cameroon, Chile, Mexico, Romania, the Russian Federation, Spain, Turkey Uzbekistan and Venezuela. E/CN.4/2006/6/Add.2. March 21, 2006, p. 37.

²⁰¹ CAT. Report on Mexico produced by the Committee under Article 20 of the Convention and Reply from the Government of Mexico. CAT/C/75, May 25, 2003, para. 220(g).

154. While laws are on the books in Mexico prohibiting the use of a confession obtained under torture,²⁰² torture-induced confessions are still being used as evidence in Mexican criminal cases.²⁰³

155. Article 20(A)(II) of the Mexican Constitution provides that:

Article 20

In any criminal proceeding, the accused, the victim or the aggrieved party shall have the following guarantees:

A. The accused:

II. The accused cannot be forced to make a statement. *Incommunicado* detention, intimidation and torture shall be prohibited and are punishable offenses under criminal law. Confessions made before any authority other than the Public Prosecutor or a judge, or made before them but without the assistance of defense counsel shall have no evidentiary value.

156. Article 9 of Mexico's Federal Law to Prevent and Punish Torture reads as follows:

No evidentiary value shall be attached to a confession made or information given to a police authority or to the Public Prosecutor's Office or a court authority in the absence of the accused' defense counsel or trusted individual and, where necessary, an interpreter.

157. Article 287(I) of Mexico's Federal Code of Criminal Procedure reads as follows:

A confession made to the Public Prosecutor's Office and the Judge must satisfy the following requirements:

I. The statement must be made by someone eighteen or over, fully cognizant of the fact that the statement is self-incriminating; the statement must be made without coercion or any form of physical or moral duress.

²⁰² Article 20(A)(II) of Mexico's Constitution provides that:

In any criminal proceeding, the accused, the victim and the aggrieved party shall have the following guarantees:

A. The accused:

II. The accused cannot be forced to make a statement. *Incommunicado* detention, intimidation or torture shall be prohibited and shall be a punishable offense under criminal law. Confessions made before any authority other than the Public Prosecutor or a judge, or made before them but without the assistance of defense counsel shall have no evidentiary value.

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²⁰³ CAT. Report on Mexico produced by the Committee under Article 20 of the Convention and Reply from the Government of Mexico. CAT/C/75, May 25, 2003, para. 137.

158. According to the background information that the Commission compiled on the present case and what it found in its *in loco* visits, hearings, meetings and in various cases that the Commission has received and that are being processed, one can conclude that:

most cases of torture and of cruel, inhuman and degrading treatment occur in the context of the criminal justice system, mainly during the early stages of the investigation of criminal offenses.²⁰⁴ The agents who are usually guilty of committing acts of torture are members of the Federal and state judicial police, the Office of the Public Prosecutor or the Armed Forces. [...] ²⁰⁵

159. The Commission's position is that "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."²⁰⁶ The Commission has written that:

Historical experience has shown conclusively that to accord probative value to extrajudicial statements or statements made during the investigative stage of criminal proceedings merely encourages the practice of torture, insofar as the police prefer to expend less effort in the investigation and to seek instead the confession of the accused person.²⁰⁷

160. The use of physical force as a means to extract a confession is a function of the underlying logic of the Mexican system of justice. When addressing the situation in Mexico, the Committee against Torture expressed concern over the fact that in many cases, greater evidentiary value is still attached to the first statement made to a Public Prosecutor than to all subsequent statements made to a judge."²⁰⁸ For its part, the Inter-American Commission has observed that:

[t]he 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.²⁰⁹

Historical experience has shown conclusively that to accord probative value to extrajudicial statements or statements made during the investigative stage of criminal proceedings merely encourages the practice of torture, insofar as the police prefer to

²⁰⁴ Amnesty International, *The presumption of torture with impunity*, AMR.41/01/93.

²⁰⁵ IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 305

²⁰⁶ IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 309. See also IACHR Report No. 2/99 (Merits) Case 11,509, Manuel Manríquez, February 23, 1999, para. 76.

²⁰⁷ IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 311.

²⁰⁸ Committee against Torture (CAT). Consideration of Reports Submitted by States Parties under Article 19 of the Convention. . CAT/C/MEX/CO/4. February 6, 2007, para. 12.

²⁰⁹ IACHR. Report No. 2/99 (Merits), Case 11,509 Manuel Manríquez v Mexico. February 23, 1999, para. 76; *Report on the Situation of Human Rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 309.

expend less effort in the investigation and to seek instead the confession of the accused person.²¹⁰

161. Mexican courts attach primary evidentiary value to an initial confession, more value than they attach to the accused' later statements:

Confession. First statements by a detained person. In conformity with the principle of procedural immediacy [*inmediación procesal*] and unless the retraction of the confession is legal, the first statements by the accused which are made without sufficient time for preparation or for exculpatory reflection should prevail over later statements.²¹¹

162. According to Mexico's Supreme Court "the first statements are more valid, as they are made without any kind of external influence and without having time to reflect upon what happened."²¹² Thus, within Mexico's justice system, the first statements shall carry greater weight than later ones, irrespective of whether those statements were made in the presence of a judicial authority. The argument is that those statements are made without any coaxing. On the other hand, in most countries of the American region, the purpose of the principle of procedural immediacy is "to avoid a distancing of the judge from the elements of the process, especially the accused."²¹³ Hence, "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."²¹⁴

163. On this issue, the Commission has also written that:

Comparative analysis of the various elements of fair trial in the hemisphere clearly shows that the process should be conducted directly and promptly by the judge, with special emphasis being placed on the direct relationship between the judge and the person accused. Both the International Covenant on Civil and Political Rights and the American Convention provide that the accused must be brought "... promptly before a judge...."

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 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 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,

²¹⁰ IACHR. Report No. 2/99 (Merits), Case 11,509 Manuel Manríquez v Mexico. February 23, 1999, para. 78; Report on the Situation of Human Rights in Mexico, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 311.

²¹¹ Thesis number 82. *Semanario Judicial de la Federación, Apéndice de la Jurisprudencia Definida 1917-1971*, Part Two, First Chamber, p. 175. See also, Report on the Situation of Human Rights in Mexico, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 309.

²¹² Supreme Court of the Nation, First Chamber, Thesis 106, Sixth Epoch, 1995 Appendix, Volume II, Part SCJN, p. 60. See also Second Collegiate Tribunal of the Sixth Circuit, Thesis: VI.2.J/61, Ninth Epoch, *Semanario Judicial de la Federación y su Gaceta*, Volume IV, August 1996, p. 576.

²¹³ IACHR. Report No. 2/99 (Merits), Case 11,509 Manuel Manríquez v Mexico. February 23, 1999, para. 80

²¹⁴ IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 314.

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 which, 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.²¹⁵

164. The Inter-American Court, for its part, has held that:

[...]The validity of each juridical proceeding influences the validity of the whole, since each one is built upon the one that preceded it, and will in turn be the foundation of the one that follows it. That sequence of juridical proceedings culminates in the judgment that settles the controversy and establishes the legal truth with the authority of *res judicata*.

If the proceedings upon which the judgment rests have serious defects that strip them of the efficacy they must have under normal circumstances, then the judgment will not stand. It will not have the necessary underpinning, which is litigation conducted by law. The concept of nullification of a proceeding is a familiar one. With it, certain acts are invalidated and any proceedings that followed the proceeding in which the violation that caused the invalidation occurred, are repeated. This, in turn, means that a new judgment is handed down. The legitimacy of the judgment rests upon the legitimacy of the process [...].²¹⁶

165. On this subject Mexico's Supreme Court has written that when a defendant makes two conflicting statements, the first statement shall take precedence.²¹⁷

Confession. First statements by a detained person. In conformity with the principle of procedural immediacy [*inmediación procesal*] and unless the retraction of the confession is legal, the first statements by the accused which are made without sufficient time for preparation or for exculpatory reflection should prevail over later statements.²¹⁸

PRINCIPLE OF IMMEDIACY IN THE ASSESSMENT OF EVIDENCE.- In weighing evidence, the weight attached to evidence obtained on the basis of spontaneous events shall be greater than that attached to events that occur thereafter.²¹⁹

²¹⁵ IACHR. Application in the case of Alfonso Martín del Campo Dodd (Case 12,228) against the United Mexican States, para. 51. See also IACHR, Report on the Situation of Human Rights in Mexico, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 309 to 315.

²¹⁶ I/A Court H.R., *Case of Castillo Petruzzi*. Judgment of November 19, 1999, para. 218 to 220

²¹⁷ IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 309. See also IACHR Report No. 2/99 (Merits) Case 11,509, Manuel Manríquez, February 23, 1999, para. 76.

²¹⁸ CRIMINAL LAW. Supreme Court of the Nation. *Semanario Judicial de la Federación 1917-2000*. Volume II. Case Law 103. See also, Second Collegiate Tribunal of the Twenty-first Circuit. Direct Criminal *Amparo*, criminal case docket number 499/2001. Judgment of August 14, 2002, at 486.

²¹⁹ CRIMINAL LAW. Supreme Court of the Nation. *Semanario Judicial de la Federación 1917-2000*. Volume II. Case Law 283, p. 206. See also, Second Collegiate Tribunal of the Twenty-first Circuit. Direct Criminal *Amparo*, criminal case docket number 499/2001. Judgment of August 14, 2002, at 492.

166. To accord “probative value to extrajudicial statements or statements made during the investigative stage of criminal proceedings merely encourages the practice of torture, insofar as the police prefer to expend less effort in the investigation and to seek instead the confession of the accused person.”²²⁰

167. When interpreting the principle of procedural immediacy (*inmediatez*) in a previous case, the Commission concluded that Mexico’s interpretation was erroneous since *inmediatez* only occurs, legally speaking, when the judge is personally present when the statement is taken.²²¹ Thus, the Mexican State is construing the guarantee of procedural immediacy in such a way that, instead of serving as a procedural guarantee for those accused of a crime, it is becoming its very antithesis, the source of abuse of the rights of accused persons.²²²

168. Moreover, the Commission has maintained that the statements that must carry full evidentiary value are those made before the court, those made before a competent judge and not those made during the pre-trial proceedings.²²³

169. Based on these considerations, the Commission is asking the Court to adjudge and declare that the Mexican State failed to comply with the general obligation to adopt domestic legislative measures, recognized in Article 2 of the American Convention, and the obligation contained in Article 6 of the Inter-American Convention to Prevent and Punish Torture.

IX. REPARATIONS AND COSTS

170. Given the facts alleged in this application and the *jurisprudence constante* of the Inter-American Court, which establishes that “it is a principle of international law [...] that every violation of an international obligation which results in harm creates a duty to make adequate reparation,”²²⁴ the Commission is submitting to the Court its views as to the reparations and costs that the Mexican State must pay as a consequence of its responsibility for the human rights violations committed against the victims.

171. In line with the Court’s Rules of Procedure, which grant individuals autonomous representation, the Commission will at this time simply outline the general guidelines related to reparations and costs it believes the Court should apply in the instant case. The Commission understands that it falls to the victim and their representatives to substantiate their claims, in compliance with Article 63 of the American Convention and the Articles 24 *et al.* of the Rules of Procedure of the Court.

²²⁰ IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, paragraphs 309 to 315. See also IACHR Report No. 2/99 (Merits) Case 11,509, Manuel Manríquez, February 23, 1999, para. 78.

²²¹ IACHR, Report No. 2/99 (Merits) Case 11,509, Manuel Manríquez, February 23, 1999, para. 77.

²²² IACHR, *Report on the Situation of Human Rights in Mexico*, Chapter IV: The right to humane treatment, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 315; see also IACHR, Report No. 2/99 (Merits) Case 11,509, Manuel Manríquez, February 23, 1999, para. 82.

²²³ IACHR Report No. 2/99 (Merits) Case 11,509, Manuel Manríquez, February 23, 1999, para. 84.

²²⁴ I/A Court H. R., *Case of Velásquez-Rodríguez v. Honduras*, Reparations and Costs, Judgment of July 21, 1989, para. 25; *Case of Perozo et al.*, Judgment of January 28, 2009, Series C No. 195, para. 404; I/A Court H. R., *Case of Tristán Donoso*, Judgment of January 27, 2009, Series C No. 193, para. 170; and I/A Court H. R., *Case of Valle Jaramillo et al.*, Judgment of November 27, 2008, Series C No. 192, para. 198.

A. Obligation to make reparations

172. One essential function of justice is to remedy the harm inflicted on the victim. This function must be expressed through rectification or restitution, and not only through compensation, which does not reset the moral balance nor return what was taken.

173. Article 63(1) of the American Convention provides that:

If the Court finds that there has been a violation of a right or freedom protected by [the] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

174. As the Court has consistently maintained in its jurisprudence, “Article 63(1) of the American Convention contains a rule of customary law that constitutes one of the fundamental principles of contemporary international law on State responsibility. The occurrence of a wrongful act that is attributable to a State gives rise to the State’s international liability, and its resulting duty to make reparation for and remove the consequences of the violation.”²²⁵

175. Reparations are crucial in ensuring that justice is done in a given case, and they are the mechanism whereby the Court’s decisions move beyond the realm of mere moral condemnation. Reparations consist of measures that tend to make the effects of violations disappear. Reparation of harm caused by a violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation that existed before the violation occurred.

176. If full restitution is not possible, as in the instant case, it is for the international court to determine a set of measures, in addition to ensuring the rights abridged, to address the consequences of the infractions, as well as ordering payment of a compensation for the damage caused.²²⁶

177. A respondent state may not invoke domestic legal provisions to modify or avoid complying with its obligations to redress, which are regulated in all their aspects (scope, nature, modes, and establishment of the beneficiaries) by international law.²²⁷

178. In the present case the Inter-American Commission has shown that the Mexican State incurred international responsibility for the violation of Articles 5, 7, 8 and 25 of the

²²⁵ I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, para. 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 414; I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006, Series C No. 150, para. 116.

²²⁶ I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 201; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 415; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, para. 143.

²²⁷ I/A Court H. R., *Case of Cantoral Huamaní and García Santacruz*, Judgment of July 10, 2007, Series C No. 167, para. 190; I/A Court H. R., *Case of Zambrano Vélez et al.*, Judgment of July 4, 2007, Series C No. 166, para. 148; I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 200; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 415.

American Convention, read in conjunction with the general obligation to respect and ensure human rights established in Article 1(1) and 2 thereof, and for failure to comply with its obligations under articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture. Inasmuch as it has been more than ten years since the events occurred, the victims feel a natural sense of injustice and despair from having tried in vain to get the State to carry through with the investigation, prosecution and punishment of the responsible parties and to be compensated for the human rights violations they suffered.

B. Measures of reparation

179. In circumstances such as those described in the present case, in order to remedy the situation of the victims and their next-of-kin, the State must meet the following obligations: "obligation of investigating and disclosing the facts that can be reliably established (truth); obligation of prosecuting and punishing the guilty (justice); obligation of making comprehensive reparations for the moral and material injuries inflicted (redress); and obligation of removing from the security forces all individuals known to have committed, ordered, or tolerated such abuses (creation of security forces worthy of a democratic state). These obligations are neither mutual alternatives nor optional; the responsible state must comply with each of them to the extent that it can and in good faith."²²⁸

180. The United Nations Special Rapporteur on the right to restitution, compensation, and rehabilitation for victims of gross violations of human rights has classified the components of that right into four general categories: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition.²²⁹ In the opinion of the United Nations Special Rapporteur on the impunity of perpetrators of human rights violations, these measures include: the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, reputation, and legal rights of the victim and/or of persons connected with the victim; an apology, including public acknowledgement of the facts and acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations; and the prevention of further violations.

181. In addition, the United Nations Commission on Human Rights has stated that:

In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²³⁰

²²⁸ Méndez, Juan E., "The Right to Truth in Serious Human Rights Violations," in: *The Application of Human Rights Treaties by National Courts*, CELS, 1997, p. 517.

²²⁹ Principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, prepared by Dr. Theodore Van Boven pursuant to Human Rights Sub-Commission decision 1995/117. E/CN.4/ sub.2/1997/17.

²³⁰ United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees: Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo Van Boven pursuant to Sub-Commission decision 1995/117 of May 24, 1996, para. 7.

182. Similarly, the Court has said that reparations tend to eliminate the effects of the violations committed.²³¹ These measures cover the different ways in which a state can meet the international responsibility in which it incurred and, in accordance with international law, can be measures of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.²³²

183. In light of the above considerations, the Inter-American Commission is asking the Court to order comprehensive measures of reparation; these would, in turn, send a message against the impunity that attends the vast majority of human rights violations in the member States of the Organization of American States. This requires that judicial and administrative mechanisms be established and reinforced to enable victims to obtain redress through *ex officio* proceedings that are swift, fair, affordable and accessible.

184. In consideration of the criteria established by inter-American and universal case law, the Commission presents its findings and claims as regards the forms of redress owed in the case of Teodoro Cabrera García and Rodolfo Montiel Flores.

1. Measures of cessation

185. Cessation of the wrongful conduct is a fundamental element once a state is determined to be responsible for human rights violations.²³³

186. The Court has consistently held that the identification of those responsible is a natural outcome of the obligations established by the Convention and a requirement for eliminating widespread impunity.²³⁴

187. The Court has also held that impunity is a violation of the state's duty, that it is harmful to victims, their next-of-kin, and society as a whole, and that it fosters chronic recidivism of the human rights violations in question.

188. The Commission thus believes that an investigation is not just a measure of satisfaction; it is also a measure of cessation, since so long as the State is in noncompliance with its obligation of duly investigating, prosecuting, and punishing the human rights violations committed in the instant case, it is in continuing violation of the right established in Articles 8(1)

²³¹ I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 202; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 416; I/A Court H. R., *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.)*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 24, 2006, Series C No. 158, para. 144.

²³² See: United Nations, Final Report submitted by Theo Van Boven, Special Rapporteur on the Right to Reparation for Victims of Gross Violations of Human Rights, E/CN.4/Sub2/1990/10, July 26, 1990. See also: I/A Court H. R., *Blake Case*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, para. 31; I/A Court H. R., *Case of Suárez Rosero Case*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, para. 41.

²³³ I/A Court H. R., *Castillo Páez Case*, Reparations (Art. 63(1) American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 43, para. 52.

²³⁴ In this regard, see: I/A Court H. R., *Case of Blanco Romero et al.*, Judgment of November 28, 2005, Series C No. 138, para. 94; I/A Court H. R., *Gómez Palomino Case*, Judgment of November 22, 2005, Series C No. 136, para. 76.

and 25 of the Convention and of its obligation under Article 1(1) thereof, and in continuing violation of its obligations under Articles 1, 6, and 8 of the Convention against Torture.

189. The Court has stated on repeated occasions that all individuals, and society as a whole, have the right to be informed about incidents involving human rights violations.²³⁵ Similarly, the United Nations Commission on Human Rights has recognized that for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators and their accomplices are essential steps towards rehabilitation and reconciliation; consequently, it has urged states to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated, and it has encouraged victims to participate in that process.²³⁶

190. The Court has also ruled that:

The State must also remove all *de facto* and legal mechanisms and obstacles that maintain impunity [...] it must provide sufficient security measures to the judicial authorities, prosecutors, witnesses, legal operators, and victims, and use all means available to it so as to expedite the proceeding.²³⁷

191. In keeping with the Court's jurisprudence and in light of the particular seriousness of the human rights violations committed in the instant case, full reparations require that the Mexican State conduct, with due diligence, a serious, impartial and exhaustive investigation of the human rights violations suffered Mr. Cabrera and Mr. Montiel, in order to clarify the historical truth of what happened and to prosecute and punish all those responsible, both the physical perpetrators and the masterminds behind it. To this end, it must adopt all the judicial and administrative measures necessary to complete the investigation within the regular system of justice, and to locate, prosecute, and punish all those who participated and to report the outcome.

192. On November 29, 1985, the United Nations General Assembly approved, by consensus, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power,²³⁸ according to which victims "are entitled to access to the mechanisms of justice and to

²³⁵ I/A Court H. R., *Case of Bueno Alves*, Merits, Reparations, and Costs, Judgment of May 11, 2007, Series C No. 164, para. 90; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 347.

²³⁶ E/CN.4/RES/2001/70.

²³⁷ I/A Court H. R., *Case of Heliodoro Portugal*, Judgment of August 12, 2008, Series C No. 186, para. 246; I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006, Series C No. 162, para. 226; I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, para. 134. See also: I/A Court H. R., *Case of Almonacid Arellano*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 26, 2006, Series C No. 154, para. 156.

²³⁸ A/RES/40/34, *Access to justice and fair treatment*. "4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered. 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms. 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by: (a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information; (b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system; (c) Providing proper assistance to victims throughout the legal process; (d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their

prompt redress," for which purpose "the views and concerns of victims [must] be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system."

193. Accordingly, the victims must be given full access and authority to appear at all phases and stages of the investigations, in accordance with domestic law and the provisions of the American Convention. The State must also ensure effective compliance with the decisions adopted by the domestic courts under this obligation. The result of this process must be made public, to make Mexican society aware of the truth.²³⁹

194. In addition, and as another means of cessation, the State must guarantee the security of the victims, their next-of-kin, and their representatives.

2. Measures of satisfaction

195. Satisfaction has been defined as all measures that the perpetrator of a violation is required to adopt under international instruments or customary law with the purpose of acknowledging the commission of an illegal act.²⁴⁰ "The objects of satisfaction are three, which are often cumulative: apologies or other acknowledgement of wrongdoing [...]; the punishment of the individuals concerned; and the taking of measures to prevent a recurrence of the harm."²⁴¹

196. The serious nature of the facts in this case demands that, in addition to conducting an investigation, the State take steps intended to restore the victims' dignity. Thus, the Commission asks the Court to order, *inter alia*:

- Public dissemination of the outcome of the domestic investigation and sanctioning process, in order to uphold the right to truth of the victims, their next-of-kin, and Mexican society as a whole;
- Publication, in a newspaper with nationwide circulation, of whatever judgment the Court may hand down; and,
- A public acknowledgment of State responsibility for the harm done and for the serious violations committed.

3. Guarantees of non-repetition

197. In addition, the Commission believes that the State is obliged to prevent the recurrence of human rights violations such as those in the instant case; consequently, it asks the Court to order Mexico to adopt, *inter alia*, the following measures:

families and witnesses on their behalf, from intimidation and retaliation; (e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims."

²³⁹ I/A Court H. R., *Case of Tiu Tojín*, Judgment of November 26, 2008, Series C No. 190, para. 72; I/A Court H. R., *Case of Heliodoro Portugal*, Judgment of August 12, 2008, Series C No. 186, para. 247; I/A Court H. R., *Case of Huilca Tecse*, Judgment of March 3, 2005, Series C No. 121, para. 107; I/A Court H. R., *Case of the Serrano Cruz Sisters*, Judgment of March 1, 2005, Series C No. 120, para. 175.

²⁴⁰ Brownlie, *System of the Law of Nations, State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

²⁴¹ *Ibid.*

- ensure that the jurisdiction of military criminal courts is restrictive and exceptional, limited exclusively to judging members of the military for the commission of crimes or offenses that, due to their nature, may affect any military interest. In particular, adopt the legislative, administrative or other measures necessary so that the military justice system is precluded from taking up violations of human rights, particularly cases of torture or cruel, inhuman, or degrading treatment;
- adopt legislative, administrative or any other measures to bring Mexico's laws and practices in line with inter-American standards on the subject of torture;
- develop training programs for state officials that take into account the international standards established in the Istanbul Protocol so that the officials have the technical and scientific guidelines necessary to assess situations of possible torture or cruel, inhuman or degrading treatment;
- introduce, within a reasonable period of time, permanent human rights instruction programs within the Mexican Armed Forces, at all levels of the hierarchy; in the curriculum of those training programs, make specific reference to this case and to the international human rights instruments, and
- adopt the measures necessary to ensure that detained persons are brought without delay before a judge or other officer authorized by law to exercise judicial power to verify the lawfulness of the arrest.

4. Measures of rehabilitation

198. Mexico must adopt measures for the medical and psychological rehabilitation of the victims.

5. Measures of compensation

199. The Court has established basic criteria that should guide fair compensation intended to make adequate and effective economic amends for harm arising from violations of human rights. The Court has also ruled that indemnification is merely compensatory in nature, and that it is to be granted in the amount and to the extent sufficient to compensate for the pecuniary and non-pecuniary damages caused.²⁴²

200. The Commission's view is that the Court should set the amount of compensation to which the victims in the present case are entitled relying on the considerations of equity that have always informed the Court's decisions on matters of reparations and in keeping with its earlier jurisprudence.

5.1. Pecuniary damages

²⁴² I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 210; I/A Court H. R., *Case of Hilaire, Constantine, Benjamin et al.*, Judgment of June 21, 2002, Series C No. 94, para. 204; I/A Court H. R., *Garrido and Baigorria Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of August 27, 1998, Series C No. 39, para. 41.

201. The *jurisprudence constante* of the Court on the matter of reparations has been that pecuniary damages include both the *damnum emergens* and the *lucrum cessans*, and non-pecuniary or moral damages for the victims and, in certain cases, their immediate families.²⁴³

202. *Damnum emergens* has been defined as the direct and immediate damage caused to assets as a result of what happened.²⁴⁴

203. *Lucrum cessans*, on the other hand, has been defined as the economic earnings or benefits lost or not received by virtue of a given event and that can be quantified by certain measurable and objective indicators.²⁴⁵

204. Notwithstanding any claims that the representatives of the victims may make at the appropriate stage in the proceedings, the Commission is asking the Court, should it so deem and in exercise of its broad authority, to set an amount as compensation for *damnum emergens* and *lucrum cessans* based on the principle of equity.

5.2. Non-pecuniary damages

205. The Court has written the following on the subject of non-pecuniary damages:

Non-pecuniary damages may include the suffering and affliction caused to the direct victims and to their next-of-kin and the impairment of values that are very significant for a person, together with changes, of a non-pecuniary nature, in the living conditions of victims or their next-of-kin. As it is not possible to assign a precise monetary equivalent to non-pecuniary damages, for purposes of integral reparation to the victims all that can be done is for them to receive compensation, and this in two ways. First, by means of the payment of an amount of money or by providing goods or services that can be appraised in monetary terms, to be determined by the Court through reasonable use of judicial discretion and in terms of equity. Secondly, by carrying out acts or public works whose scope or public repercussion have an effect in terms of the remembrance of the victims, recovery of their dignity, consolation to their relatives or issuing a message of official reproof of the violations of human rights involved and of commitment to avoid their repetition.²⁴⁶

²⁴³ I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 213 and 214; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 423; I/A Court H. R., *Case of Tibi*, Judgment of September 7, 2004, Series C No. 114.

²⁴⁴ I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 215; I/A Court H. R., *Loayza Tamayo Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of November 27, 1998, Series C No. 42, para. 147; and I/A Court H. R., *Aloeboetoe et al. Case*, Reparations (Art. 63.1 American Convention on Human Rights), Judgment of September 10, 1993, Series C No. 15, para. 50.

²⁴⁵ See, for example: I/A Court H. R., *Case of Carpio Nicolle et al.*, Judgment of November 22, 2004, Series C No. 117, para. 105 *et seq.*; I/A Court H. R., *Case of De la Cruz Flores*, Judgment of November 18, 2004, Series C No. 115, para. 151 and 152.

²⁴⁶ I/A Court H. R., *Case of La Cantuta*, Merits, Reparations, and Costs, Judgment of November 29, 2006, Series C No. 162, para. 216; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 430; I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, para. 383; I/A Court H. R., *Case of the Massacre of Pueblo Bello*, Judgment of January 31, 2006, Series C No. 140, para. 254.

206. In the *cas d'espèce*, the Commission is requesting the Court, should it deem it appropriate, to set the amount of compensation for non-pecuniary damages based on the principle of equity.

C. Beneficiaries

207. Article 63(1) of the American Convention requires that the consequences of a violation be remedied and that "fair compensation be paid to the injured party." The persons entitled to this compensation are generally those who suffered direct harm as a result of the violation in question.

208. In accordance with the nature of the instant case, the beneficiaries of any reparations that the Court may order the Mexican State to pay are: Teodoro Cabrera García and Rodolfo Montiel Flores.

209. The foregoing, the Commission wishes to inform the Court that in complying with the requirement stipulated in Article 43(3) of the Commission's Rules of Procedure, the representatives included a list of persons that they regard as possible beneficiaries of any reparations the Court should deem to order.²⁴⁷ The persons named on that list are members of the immediate families of Teodoro Cabrera García and Rodolfo Montiel Flores.

D. Costs and expenses

210. The *jurisprudence constante* of the Court is that costs and expenses must be considered part of the concept of reparation set forth in Article 63(1) of the American Convention, since the activity of the victims, their heirs or their representatives to obtain international justice entails disbursements and financial commitments that must be compensated.²⁴⁸

211. In the *cas d'espèce*, the Commission is petitioning the Court, once it has heard from the representatives of the victims, to order the Mexican State to pay the duly proven reasonable and necessary costs and expenses incurred in litigating this case.

X. CONCLUSION

212. The cruel, inhuman and degrading treatment to which Messrs. Teodoro Cabrera García and Rodolfo Montiel Flores were subjected when detained by and while in the custody of members of the Mexican Army; the failure to bring them without delay before a judge or other officer authorized by law to exercise judicial power, in order to verify the lawfulness of the arrest; the irregularities that occurred in the course of the criminal case prosecuted against them; the lack of diligence in investigating and sanctioning those responsible for the events and, in particular, the failure to properly investigate the allegations of torture; the failure to make adequate reparations to the victims; and the use of the system of military justice to investigate and prosecute violations of human rights, constitute violations of the rights protected by articles

²⁴⁷ See Annex 21.

²⁴⁸ I/A Court H. R., *Case of Perozo et al.*, Judgment of January 28, 2009, Series C No. 195, para. 417; I/A Court H. R., *Case of Tristán Donoso*, Judgment of January 27, 2009, Series C No. 193, para. 212; and I/A Court H. R., *Case of Valle Jaramillo et al.*, Judgment of November 27, 2008, Series C No. 192, para. 243.

5, 7, 8 and 25 of the American Convention; a failure to observe the general obligations to respect and ensure rights and to adapt the domestic legal system to give effect to those rights, recognized in articles 1(1) and 2 of the Convention; and a failure to comply with the obligations undertaken in articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture.

XI. PETITUM

213. Based on the considerations of fact and of law set forth above, the Inter-American Commission on Human Rights is asking the Court to adjudge and declare that:

the State of Mexico is responsible for violation of articles 5(1), 5(2), 7(5), 8(1), 8(2)g, 8(3) and 25 of the American Convention; for failure to comply with the general obligations established in articles 1(1) and 2 of the Convention; and failure to comply with its obligations under articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores.

214. Therefore, the Inter-American Commission is asking the Court to order that the Mexican State:

- a) conduct a serious, thorough, impartial and effective investigation within the regular criminal justice system, to shed light on the events of which Messrs. Teodoro Cabrera García and Rodolfo Montiel Flores were victim, to identify the intellectual and material authors of those events, and enforce the sanctions that the law prescribes;
- b) adopt the measures necessary to review the validity of the criminal case prosecuted against Messrs. Rodolfo Montiel Flores and Teodoro Cabrera García in consideration of the rights that were violated against them, especially the evidentiary weight attached to the confessions that the victims made while being subjected to cruel, inhuman or degrading treatment;
- c) adopt the measures necessary so that the jurisdiction of military criminal courts is restrictive and exceptional, limited exclusively to judging members of the military for the commission of crimes or offenses that, due to their nature, may affect a military interest. In particular, adopt the legislative, administrative or other measures necessary so that the military justice system is precluded from taking up violations of human rights, particularly cases of cruel, inhuman and degrading treatment and allegations of torture;
- d) adopt legislative, administrative or any other measures to bring Mexico's laws and practices in line with inter-American standards on the subject of torture;
- e) develop training programs for state officials that take into account the international standards established in the Istanbul Protocol so that the officials have the technical and scientific guidelines necessary to assess situations of possible torture or cruel, inhuman or degrading treatment;
- f) introduce, within a reasonable period of time, permanent human rights instruction programs within the Mexican Armed Forces, at all levels of the hierarchy; in the curriculum of those training programs, make specific reference to this case and to the international human rights instruments;

- g) adopt the measures necessary to ensure that detained persons are brought without delay before a judge or other officer authorized by law to exercise judicial power, to verify the lawfulness of the arrest;
- h) adopt rehabilitation measures to benefit the victims;
- i) make full reparations to the victims, including pecuniary and non-pecuniary damages for the human rights violations herein established and adopt measures of satisfaction for them, and
- j) pay the legal costs and expenses incurred in processing the present case.

XII. EVIDENTIARY SUPPORTS

A. Documentary evidence

215. The documentary evidence available at this time is listed below:

- APPENDIX 1.** Inter-American Commission on Human Rights, Report No. 88/08 (Merits), Case 12,449, *Teodoro Cabrera García and Rodolfo Montiel Flores*, Mexico, October 30, 2008.
- APPENDIX 2.** Inter-American Commission on Human Rights, Report No. 11/04 (Admissibility), Petition 735/01, *Teodoro Cabrera García and Rodolfo Montiel Flores*, Mexico, February 27, 2004.
- APPENDIX 3.** Record of the processing of the case before the Inter-American Commission on Human Rights.
- APPENDIX 4.** Documentation presented by the petitioner organizations subsequent to the adoption of the report on the merits.
- ANNEX 1.** Charter of the *Organización Ecologista de la Sierra de Petatlán y de Coyuca de Catalán AC*.
- ANNEX 2.** Case file 2000/232, the background information of which appears in joined cases 99/1900 and 99/2336 of Mexico's National Human Rights Commission. The IACHR observes that the copies it is supplying of the documents in this annex are the best that it has in its possession and that it has thus been able to obtain. Some of the files are incomplete or illegible.
- ANNEX 3.** Recommendation 008/2000 of Mexico's National Human Rights Commission, issued on July 14, 2000, in connection with the Case of the Inhabitants of the Pizotla Community, municipality of Ajuchitlán del Progreso, Guerrero, and of Mr. Rodolfo Montiel Flores and Mr. Teodoro Cabrera García.
- ANNEX 4.** Record of preliminary inquiry CUAU/01/119/999, started on May 2, 1999. The Commission observes that the copies it is supplying of the documents in this annex are the best that it has in its possession and that it has thus been able to obtain. Some of the files are incomplete or illegible.
- ANNEX 5.** Record of preliminary inquiry 33/CC/999, started on May 5, 1999. The Commission observes that the copies it is supplying of the documents in this

annex are the best that it has in its possession and that it has thus been able to obtain. Some of the files are incomplete or illegible.

- ANNEX 6.** Record of the criminal case docketed on May 6, 1999, as number 03/999, with the First Criminal Court of First Instance of the Mina Judicial District. The Commission observes that the copies it is supplying of the documents that appear in this annex are the best it has in its possession and that it has thus far been able to obtain. Some of the files are incomplete or illegible.
- ANNEX 7.** Record of criminal case 61/99, prosecuted against Rodolfo Montiel Flores and Teodoro Cabrera García before the Fifth District Court of the State of Guerrero. The Commission observes that the copies it is supplying of the documents in this annex are the best that it has in its possession and that it has thus far been able to obtain. Some of the files are incomplete or illegible.
- ANNEX 8.** Pertinent parts of Case 406/2000 brought before the Single Magistrate Court of the Twenty-first Circuit (State of Guerrero) by virtue of the appeal filed by the victims to challenge the ruling delivered on August 28, 2000 in criminal case 61/99. The Commission observes that the copies it is supplying of the documents in this annex are the best that it has in its possession and that it has thus far been able to obtain. Some of the files are incomplete or illegible..
- ANNEX 9.** May 9, 2001 ruling by the Second Collegiate Tribunal of the Twenty-first Circuit (State of Guerrero) in connection with Direct Criminal Appeal 117/2001.
- ANNEX 10.** Ruling issued on August 14, 2002, by the Second Collegiate Tribunal of the Twenty-first Circuit (State of Guerrero) in connection with the Direct Criminal Appeal 499/2001.
- ANNEX 11.** Decision on preliminary inquiry SC/304/2000/VIII-I instituted pursuant to Recommendation 008/2000 of Mexico's National Human Rights Commission. The Commission observes that the copies it is supplying of the documents in this annex are the best that it has in its possession and that it has thus far been able to obtain. Some of the files are incomplete or illegible.
- ANNEX 12.** Pertinent parts of Case File 8/421.7/178167 de la Office of the Director General for Prevention and Social Re-adaptation.
- ANNEX 13.** Physicians for Human Rights-Denmark. The case of Rodolfo Montiel Flores and Teodoro Cabrera García, Mexican *campesinos* and environmental activists.
- ANNEX 14.** Letter Brief in support of an Application for Asylum (Form I-589) for Rodolfo Montiel.
- ANNEX 15.** CD containing a recording of the hearing held with the Inter-American Commission on Human Rights, October 23, 2006, in connection with case 12,449.
- ANNEX 16.** Record of the hearing held with the Inter-American Commission on Human Rights, October 23, 2006, in connection with case 12,449.
- ANNEX 17.** Precautionary measures No. MC 170-01, ordered by the Commission on November 8, 2001.
- ANNEX 18.** CV of Carlos Castresana Fernández, expert offered by the Commission.

- ANNEX 19.** CV of Miguel Carbonell Sánchez, expert offered by the Commission.
- ANNEX 20.** Power of attorney extended by Teodoro Cabrera García and Rodolfo Montiel Flores.
- ANNEX 21.** List of persons that the representatives of the victims consider to be possible beneficiaries of any reparations eventually ordered.

216. The Commission believes that in order to ensure that the Court has all the elements needed to reach a decision, it is essential that certified copies be submitted of all documents relating to the judicial, administrative, and other investigations conducted at the domestic level in connection with these facts, together with authenticated copies of the applicable laws and regulatory provisions. It therefore requests that the Mexican State proceed accordingly.

B. Expert evidence

217. The Commission asks the Court to hear the opinions of the following expert witnesses:

- Dr. Miguel Carbonell Sánchez, who will provide expert testimony on the involvement of the military system of justice in the investigation and prosecution of crimes that are not service-related and/or that could constitute violations of human rights; the position of the Mexican Supreme Court on the scope of the military system of justice in Mexico; and constitutional and legal regulation of the sphere of application of the military system of justice in Mexico.
- Dr. Carlos Castresana Fernández, who will provide expert testimony on the principle of procedural immediacy in criminal law; obtaining confessions through the use of cruel, inhuman and degrading treatment or torture; and the validity of such confessions as evidence in legal cases, and other issues related to the object and purpose of this application.

XIII. PARTICULARS ON THE VICTIMS AND THEIR REPRESENTATIVES

218. In accordance with the provisions of Article 34 of the Rules of Procedure of the Court, the Inter-American Commission considers that in the *cas d'espèce* the victims are Teodoro Cabrera García and Rodolfo Montiel Flores.

219. Messrs. Cabrera and Montiel extended a power of attorney to the *Centro de Derechos Humanos Miguel Agustín Pro Juárez* – PRODH, to the *Centro de Derechos Humanos de la Montaña "Tlachinollan" AC* and the Center for Justice and International Law - CEJIL, so that they might present them in the judicial phase of proceedings before the inter-American system, as indicated in the annexed document.²⁴⁹

220. The representatives of the victims have given the following address as their domicile: [REDACTED]

²⁴⁹ See Annex 20, power of attorney.