



REPORT N° 2/06
CASE 12.130
MERITS
MIGUEL ORLANDO MUÑOZ GUZMÁN
MEXICO
February 28, 2006

I. SUMMARY

1. On March 1, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or the "IACHR") received a petition filed by María Guadalupe Muñoz Guzmán and the Mexican Commission for the Defense and Promotion of Human Rights (jointly "the petitioners"), in which it was alleged that the United Mexican States (hereinafter "the State") bore international responsibility for the forced disappearance of Miguel Orlando Muñoz Guzmán, as well as for its subsequent failure to investigate and provide compensation for the said acts. The petitioners allege that the facts alleged in the petition violate several rights enshrined in the American Convention on Human Rights (hereinafter the "American Convention"), namely, the right to life (Article 4); right to humane treatment (Article 5); right to personal liberty (Article 7); right to a fair trial (Article 8); and right to judicial protection (Article 25), in accordance with the general obligation provided in Article 1.1 of the aforementioned international instrument.

2. According to the petition, Mr. Miguel Orlando Muñoz Guzmán, a lieutenant in the Mexican army, disappeared on May 8, 1993, at the age of 25. His fellow soldiers in the 26th Battalion of Ciudad Juárez, state of Chihuahua, Mexico, last saw him on that date as he was preparing to go off duty. Lieutenant Muñoz Guzmán's family say that he was a dedicated career officer, a fact that wrests credibility from the army's official version of events, which was that he had deserted from the army and traveled to the United States. The petitioners say that, to date, no serious investigation has been carried out in Mexico to determine his whereabouts and punish those responsible for his forced disappearance. They argue that the irregularities surrounding this case have been deliberate and intended to cover up for those responsible. They also mention that the family began to receive anonymous threats, which they attribute to military personnel, from the time that they brought the complaints.

3. The State maintains that a serious investigation has been carried out in Mexico and that it produced no evidence whatsoever that Orlando Muñoz Guzmán might have been the victim of criminal acts committed by members of the army or other agents of the State. In the stage on merits, the State reiterates its position on the alleged facts and holds that the investigation has brought to light evidence that the alleged victim in this case was probably

responsible for drug trafficking offences.

4. The IACHR concludes in this report that there is nothing in the record to support the allegation that the Mexican State bears international responsibility for the forced disappearance of Miguel Orlando Muñoz Guzmán. Therefore, it does not find any responsibility of the Mexican State for the violation of the rights to life, physical integrity, or personal liberty to the detriment of Miguel Orlando Muñoz Guzmán; or for the violation of the right to physical integrity of his relatives. The IACHR further determines in this report that the Mexican State is responsible for violation of the rights to a fair trial and judicial protection contained in Articles 8 and 25 of the American Convention, in connection with Article 1.1 of the aforementioned international instrument. In Report 106/05 on the merits, the Commission recommended that the Mexican State adopt the appropriate measures to investigate the facts, punish those responsible, and provide reparation for the consequences of the violations; a one-month deadline starting on October 31, 2005 was established for the State to report on the measures toward compliance, after which a decision would be made on publishing the report. The IACHR analyzed the information sent by the State and found that, despite the good will expressed by Mexican authorities, compliance with the recommendations is still pending. Accordingly, the Commission reiterates the conclusions and recommendations set forth in paragraph 105 below; decides to publish this report and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING SUBSEQUENT TO THE ADMISSIBILITY REPORT

5. The Inter-American Commission declared the instant case admissible on December 4, 2000,^[1] and notified the parties accordingly on December 8 of that year. Based on that communication, the Inter-American Commission placed itself at the disposal of the parties with a view to initiating a friendly settlement proceeding as provided in Article 48(1)(f) of the American Convention. The Mexican State requested an extension on January 16, 2001, in order to present its position in that connection, and it was given 30 days starting on February 2, 2001. On March 5 of that year, the State said that the investigations to ascertain the whereabouts of Lieutenant Muñoz Guzmán were ongoing and, therefore, it did not deem it appropriate to seek a friendly settlement to resolve the matter. The latter communication was brought to the attention of the petitioners in a note of March 13, 2001.

6. On July 23, 2001, the petitioners requested a hearing at the 113th regular session of the IACHR in order to present information on the case. The Inter-American Commission decided to invite the parties to a work meeting during the aforesaid session, and informed them accordingly in a note of August 24, 2001.

7. The petitioners submitted additional information on the case on August 16, 2001, and the Inter-American Commission transmitted it to the State on August 27 of that year. The IACHR received the observations of the State on said information in a communication of September 28, 2001. On October 2, 2001, the parties were informed that the date of the work meeting on Case 12.130 had been changed.

8. The Inter-American Commission transmitted the State's communication of September 28, 2001, to the petitioners on October 23, 2001. On November 14, 2001, at the work meeting on the case, the petitioners submitted additional information, which was forwarded to the Mexican State on November 28, 2001. For its part, on December 20, 2001, the State sent a communication regarding a joint work program with the petitioners to review the record in the case prepared by the Office of the Prosecutor General, the proceeding for which was set to open on January 14, 2002. On January 3, 2002, the State replied to the request for information made by the Inter-American Commission on November 28, 2001; said communication was brought to the attention of the petitioners on January 7, 2002.

9. The petitioners requested a hearing on merits in the case on January 18, 2002. In its reply of February 21 of that year, the IACHR explained that it would not be possible to accede to said request and asked the petitioners to submit additional observations on merits. On March 20, 2002, the petitioners requested an extension of 45 days to submit their additional observations, to which the IACHR agreed on April 2 of that year.

10. On May 22, 2002, the petitioners submitted their additional observations on merits, which were transmitted to the State on June 21, 2002. On August 27 of the same year, the IACHR received a brief from the State containing its additional observations on merits in the case, which were conveyed to the petitioners on August 30, 2002. On September 16 of that year, the Mexican State presented a volume of annexes that had been mentioned in its observations brief. On September 18 of that year, the IACHR invited the parties to a hearing on the merits of the case in the framework of its 116th regular session.

11. The IACHR wrote to the petitioners on September 30, 2002 and requested them to submit their comments on the communication of the Mexican State on merits. On October 18, 2002, the hearing convened on Case 12.130 was held at the headquarters of the Inter-American Commission. On January 8, 2003, the petitioners sent a communication in which they reiterated their arguments and asked the Commission to adopt the report provided for in Article 50 of the American Convention.

12. On March 14, 2003, the Mexican State requested the Inter-American Commission to send it an audio recording of the hearing on the instant case that was held on October 18, 2002. On March 25, 2003, the IACHR sent the Mexican State copies of the documents and photographs received from the petitioners that were referred to in the aforementioned hearing. On April 23, 2003, the State sent a communication in which it requested an extension of the deadline to submit its observations; the IACHR granted it an extension of 15 days counted from April 29, 2003.

13. On May 16, 2003, the State submitted additional observations and sought a hearing to present further information on the case; this communication was brought to the attention of the petitioners on June 20, 2003. The State forwarded annexes to the aforementioned note on May 27, 2003, which were transmitted to the petitioners on June 30 of that year.

14. The Inter-American Commission held another work meeting on the instant case on October 20, 2003, in the framework of its 118th regular session. The decision reached on that occasion, entailing the creation of a working group to review jointly the record in the investigation of the facts connected with this case in Mexico, was communicated to the parties on October 27 of that year.

15. The petitioners wrote to the Inter-American Commission on January 14, 2004, to request another work meeting to submit the findings of the review of the investigation of the facts connected with the instant case in Mexico. On February 2, 2004, the parties were invited to the above-requested work meeting. Said meeting was held at the headquarters of the IACHR on March 3, 2004, in the framework of its 119th regular session.

16. On May 26, 2004, the petitioners reiterated the request made at the work meeting with respect to the adoption of a report on merits in this case. On November 10 of that year, the petitioners submitted another brief in which they expressed the same request.

17. The State sent a communication that contained additional information on the steps taken in the investigation of this case in Mexico, and reiterated its willingness to

continue to provide information on the outcome of said investigation. The Inter-American Commission transferred the pertinent portions of this last communication to the petitioners on December 27, 2004, with one month to submit their observations. On January 27, 2005, the petitioners forwarded a communication in which they reiterated their request for the IACHR to move forward with the procedure provided in Articles 39, 41, 42 and 43 of its Rules of Procedure.

III. POSITIONS OF THE PARTIES

18. In Report on Admissibility 106/00, the IACHR examined the positions of the parties with respect to that stage of the proceeding and concluded that, if proven,^[2] the alleged acts would constitute violations of the rights guaranteed in Articles 4, 5, 7, 8, and 25 of the American Convention. Following is a short summary of either party's position on merits in the case, which are examined further in the section on analysis.

A. The petitioners

19. The petitioners consider that the facts in this case constitute violations of the right to personal liberty, in connection with lack of judicial protection in the framework of the writ of *amparo* sought to determine the whereabouts of Miguel Orlando Muñoz Guzmán. They further argue that the Mexican State is responsible for violation of the right to life and humane treatment of Lieutenant Muñoz Guzmán; and, to the detriment of his family, for violation of the rights to humane treatment, a fair trial, judicial protection, and the truth. The petitioners say that in this case the State violated several provisions contained in the Inter-American Convention on Forced Disappearance of Persons, as well as the general obligation, enshrined in Article 1.1 of the American Convention, to respect and ensure all rights. They request the Inter-American Commission to declare that the Mexican State is responsible for the above-mentioned violations; and to recommend that the State ascertain the whereabouts of Miguel Orlando Muñoz Guzmán, investigate and punish the persons responsible, and provide fair compensation to the family of the disappeared man.

B. The State

20. The State holds that the evidence put forward by the petitioners is insufficient to determine that Muñoz Guzmán was a victim of forced disappearance since there is no circumstantial evidence, indicia or reason to presume that the Lieutenant was deprived of his liberty by military personnel or any other agents of the state. The State argues that the investigations show that he left the military facility because he was off duty and dressed in civilian clothing, for which reason he was charged with desertion, an offense punished by the Code of Military Justice. In the conclusion of the section on the facts, the State reiterates that the investigation of the Office of the Public Prosecutor for Military Justice (hereinafter, "PGJM") has been carried out in accordance with the law and that "it was also determined that **MIGUEL ORLANDO MUÑOZ GUZMÁN** probably bears responsibility for the crime of BRIBERY AND CRIMES AGAINST HEALTH as attested by the records attached" (emphasis and capitals in the original).^[3] To summarize, they argue that it is not possible to attribute international responsibility to the State for the forced disappearance of Miguel Orlando Muñoz Guzmán, and that there is no violation of the rights to a fair trial or judicial protection because the PGJM and other justice seeking organs have acted with the independence and impartiality provided for in the American Convention.

IV. ANALYSIS

21. The Inter-American Commission shall proceed to examine the arguments of the parties specifically concerned with the facts and the rights allegedly violated in this case,

which was declared admissible in Report 106/00.

A. Burden of proof and assessment of the evidence

22. In the opinion of the petitioners, the jurisprudence of the IACHR and the Inter-American Court on inversion of the burden of proof is applicable in this case. In that connection they say that:

In the instant case there are testimonies from different witnesses, all of which are consistent and coincide, that Miguel Orlando Muñoz was seen for the last time on May 8, 1993, on the facilities of the 26th Infantry Battalion in Ciudad Juárez, state of Chihuahua. The record also contains a number of statements that say that Miguel Orlando Muñoz had encountered various difficulties with his superiors, apparently in connection with information he had concerning drug trafficking operations in the area. Furthermore, as we have mentioned previously, Miguel Orlando Muñoz had been threatened and began to feel afraid and experience distrust in the Battalion. Finally, his disappearance was followed by a series of forgeries, misunderstandings, and theft of key evidence with which to ascertain his whereabouts. In all of these goings-on the persons allegedly responsible have been military personnel of the 26th Infantry Battalion.^[4]

23. Furthermore, the petitioners argue that another of the requisites that allow shifting the burden of proof is met by the fact that the victim was last seen in the custody of state agents. They add that in cases of this type the Inter-American Court attributes high probative value to testimonial evidence, and the duty of the state is made more pressing still when the person disappears while in its custody. They conclude, based on the foregoing, that the Mexican State has the burden of proving in this case that Lieutenant Muñoz Guzmán was not a victim of forced disappearance.

24. For its part, the State holds that inversion of the burden of proof is not appropriate in the instant case, and that the petitioners have failed to demonstrate any of the facts they allege.

25. In such matters, the jurisprudence of the Inter-American Court of Human Rights holds to the basic principles according to which the burden of proving a particular fact rests with the party who makes that allegation.^[5] However, in certain instances, the burden of proof may be inverted and pass to the party who denies the allegation if the latter is in a better position to prove it. Under the inter-American system, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.^[6] For example, the family of a victim of forced disappearance cannot present evidence on such a fact if the persons responsible are agents of the state who elude justice by eliminating any evidence of the whereabouts of said victim.^[7]

26. Furthermore, international jurisprudence has held the courts have the power freely to evaluate evidence, but "it has always avoided a rigid rule regarding the amount of proof necessary to support the judgment."^[8] On the contrary, the power to weigh the evidence freely has been recognized. The Inter-American Court has explained that "[t]he standards of proof are less formal in an international legal proceeding than in a domestic one" and that said systems "recognize different burdens of proof, depending upon the nature, character and seriousness of the case."^[9]

27. The practice of international and domestic courts shows that direct evidence is not the only type of evidence that may be considered in reaching a decision. The Inter-

American Court has determined that “[c]ircumstantial evidence, indicia, and presumptions may be considered, so long as they lead to conclusions consistent with the facts,” and that “[c]ircumstantial or presumptive evidence is especially important in allegations of disappearances, because this type of repression is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim.”^[10]

28. The IACHR considers that in the case of Miguel Orlando Muñoz Guzmán the Mexican State has the clear obligation to provide evidence to determine the facts, since that person was a member of the armed forces and was last seen at a military barracks. This duty concerns not only the procedural aspect of evidence, but also constitutes a substantive obligation whose breach may give rise to international responsibility under the terms of Article 1.1 of the American Convention as analyzed herein below.

B. Facts

29. Based on the foregoing criteria, the Inter-American Commission will examine the arguments of the parties on the facts and make the appropriate determinations. To that end it will take the facts that the State does not dispute or expressly accept and, if appropriate in the circumstances, apply the rule on presumptive evidence to matters on which there is conflict among the parties.

1. Background

30. Lieutenant Miguel Orlando Muñoz Guzmán was serving in the military with the 26th Infantry Battalion in Chihuahua. On May 8, 1993, when he was seen for the last time, he had been with that unit for six months and it was a month and a half since he had returned from leave. The evidence supplied and not disputed by the State in the instant case also mentions that Lieutenant Muñoz Guzmán was well regarded by his superiors and that he had submitted a series of documents for his application to the *Escuela Superior de Guerra de Mexico* [War College of Mexico]. The statements made by his fellow soldiers reveal that Miguel Orlando Muñoz Guzmán was particularly excited about those approaching studies and what they would mean for his career. The Lieutenant’s family was in regular communication with him, and he had also told them about his eagerness to study at the *Escuela Superior de Guerra*. Lieutenant Muñoz Guzmán had a telephone conversation with his family on May 8, 1993, prior to his disappearance. Indeed it was the interruption of the regular family communication after that date that led them to the realization that he was missing and to report his disappearance to the authorities.

31. At the 26th Infantry Battalion, Lieutenant Muñoz Guzmán was assigned command of a Military Tactical detail. A few months before his disappearance, Lieutenant Muñoz Guzmán took part in an operation that led to the capture of a vehicle that belonged to drug traffickers in the area of Nuevo Casas Grandes, state of Chihuahua. The record before the IACHR contains a document signed by Miguel Orlando Muñoz Guzmán dated October 17, 1992, which records the delivery of said vehicle to the Commander of the 5th Military Zone, together with an itemized list of its contents (one gram of cocaine, 150 grams of marijuana, an AK-47 firearm, and a .38 caliber pistol). The Inter-American Commission takes said document to be truthful, inasmuch as its validity was not disputed by the State.

32. Furthermore, the record in the case reveals that members of the same battalion were involved in unlawful activities in connection with drug traffickers in the area. The petitioners mention in particular, Captain José de Jesús Morales García as one of the military officials with alleged links to drug traffickers in the area of Nuevo Casas Grandes, and that he purportedly had had “serious discrepancies” with Muñoz Guzmán for that reason.^[11] The Mexican State expressly recognizes that Captain José de Jesús Morales García had dealings

with Mr. Pedro Damiani, a suspected drug trafficker in the 26th Battalion's zone, for which reason he was tried in a military court for "crimes against health" (drug trafficking) in criminal proceeding 842/99. However, the State says that it was not proven that Captain Morales García was involved in the disappearance of Muñoz Guzmán.

33. The petitioners say that in his latter communications with his family, Miguel Orlando Muñoz Guzmán supposedly told them of the fear he felt in the armed forces, and they cite a phrase that he apparently used several times: "*el enemigo del verde es el mismo verde*" [lit: "the enemy of the green man is the green man"]. They also mention that he would remove his vehicle license plates when he drove around Nuevo Casas Grandes, for fear that they could use the number to locate his family; however, he allegedly did not say from whom he was protecting himself.

34. The State argues that the threat that General Luis Montiel López allegedly proffered against Lieutenant Muñoz Guzmán ("that if he started meddling around he would f**k him up") was "simply a vague comment". The State further mentions that the participation of that general in the "*Brigada Blanca*" ["White Brigade"] is a "baseless and worthless" affirmation since the petitioners furnish no evidence whatever to show that criminal organization actually existed. With respect to the fact that Muñoz Guzmán allegedly said that "the enemy of the green man is the green man" and to the fear he felt in the Army, the State says that it "neither confirms nor denies it, since these are not facts that the Mexican authorities can know to be true". This last expression was also used by the State with regard to the threats allegedly received by the Muñoz Guzmán family after they filed a complaint. The State adds that in addition to giving evidence that threatening telephone calls were made, Mr. Muñoz García "has the temerity to suggest that military personnel made the calls".

35. The Mexican State considers that the fact that Mr. Miguel Orlando Muñoz Guzmán was privy to compromising information, and that he was supposedly a witness to crimes and acts of corruption that implicated members of the military amount to "mere assumptions or conjecture on the part of the petitioners". It mentions in this connection that the statements of Infantry Sergeant, 2nd class Zózimo Gutiérrez Borneos were merely comments for which there is no evidence whatever; and that the sergeant himself clarified that Lieutenant Muñoz Guzmán had no enemies in the barracks. Specifically with respect to the enmity between the alleged victim and Captain Morales García, the State says that there is no evidence to attest to that circumstance or to the facts on which it was supposedly based, such as the alleged "reprimands and constant punishments".

36. Based on the aforementioned rules for weighing evidence, the IACHR finds it reasonable to assume that, by virtue of his duties, Lieutenant Muñoz Guzmán could have been privy to information that was compromising for certain members of the Mexican Army. The Inter-American Commission also considers, based on the foregoing, that Miguel Orlando Muñoz Guzmán could have been threatened or in danger prior to his disappearance.

2. The disappearance of Miguel Orlando Muñoz Guzmán

37. The petitioners say that no evidence was put forward to the effect that Lieutenant Muñoz Guzmán actually left the 26th Battalion on May 8, 1993, after he was last seen, between 7:30 p.m. and 8:30 p.m. Furthermore, they consider that based on the evidence that they have provided "it is reasonable to suppose that Miguel Orlando Muñoz was arbitrarily detained without an order from an authority to do so".^[12]

38. The petitioners also say that "there are strong indications that Miguel Orlando Muñoz was arbitrarily detained by personnel of the 26th Infantry Battalion of the Mexican Army and later held in an unknown location," and that "this fact led to other violations to the

detriment of Miguel Orlando Muñoz, such as his rights to humane treatment and life.”^[13]

39. The State reiterates several time in its brief that Miguel Orlando Muñoz Guzmán was seen leaving the Battalion. However, the IACHR notes that that fact is not consistent with statements made by military personnel in the preliminary enquiry, or other documents. Indeed, the State submits as an annex to its observations on merits the statement of Captain Andrés Notario Velásquez, who says that he did not know if Lieutenant Muñoz Guzmán left the barracks.^[14] Furthermore, Lieutenant Filiberto Ortiz Ibáñez declared that he saw Lieutenant Muñoz Guzmán for the last time on May 8, 1993, in the room that he shared with him at 26th Battalion.^[15] The facts described by the State are transcribed as follows:

Lieutenant (Infantry) **MIGUEL ORLANDO MUÑOZ GUZMÁN** was serving with the 26th Infantry Battalion based in Ciudad Juárez, state of Chihuahua and was seen leaving the facility of said unit on May 8, 1993. He was seen for the last time by fellow soldiers, such as 2nd Captain (Infantry) **ANDRÉS NOTARIO VELÁSQUEZ**, who says in his declaration that the last time he saw him was on May 8; as did 2nd Captain (Administration) **LUIS ALBERTO VILLAR JIMÉNEZ**, who saw him speaking by telephone. He was also seen leaving the facility by the now First Captain (Infantry) **EDWIN TONATIUH RUIZ DELGADO** and First Sergeant (Infantry) **JOSÉ ALFREDO FUENTES BARRERA**; in the evidence annexed to the enquiry, Lieutenant (Infantry) **FILIBERTO ORTIZ IBÁÑEZ** (room mate of Lieutenant **ORLANDO**), declared that at approximately 17:30 he left the room, saying to him that that he had to go out to have dinner and use the telephone, 'but that he would go and ask Lieutenant Edwin Tonatiah for his car, as he was the watch officer. Shortly afterwards he returned and told him that he had been unable to get the vehicle, so he bathed, changed into civilian clothing, donned his pistol, told him he would see if he could catch the *rutera* (meaning the truck that goes to Battalion), and left. He did not return that night. The next day was the first day he was AWOL, and he remained AWOL until he deserted on May 11, 1993; The foregoing was corroborated by the now First Captain (Infantry) **EDWIN TONATIUH RUIZ DELGADO**, who said in his statement that on May 8, 1993, he was officer of the watch and at 17:00 Lieutenant **ORLANDO** went to the guardhouse in sports clothing, and told them that he intended to go to El Paso, Texas with a girl he had recently met, without providing further details about that person. Then he asked to borrow his car, but the former told him that it was broken, so said officer left and went into the barracks. Shortly afterwards he came out walking alone and dressed in civilian clothing; he did not notice if he was armed, but he was headed for the battalion gate.

It emerges from the investigation that Lieutenant **ORLANDO** left, headed for the unit's gate, with the intention of visiting a lady in El Paso, Texas, as he had mentioned to Lieutenant **EDWIN**, and was absent on the following days until he was reported for desertion, a crime recognized and punished by Articles 255 (II) and 256 of the Code of Military Justice. For that reason the military tribunal issued a warrant for his arrest.

In his statement to the office of the attorney general, the father of **ORLANDO** said, *inter alia*, that he knew that his son **ORLANDO**, tried go to the United States when he was off duty, taking advantage of its proximity to buy things. Based on the foregoing, it is shown that Lieutenant **MIGUEL ORLANDO** was seen leaving the barracks, as attested by the appropriate documents attached hereto. ^[16] (emphasis and capitals in the original)

Based on the aforementioned testimonial evidence in Preliminary Enquiry SC/002/2001/IX-E, the inference of the petitioners is disproved because it clearly emerges from that evidence that **MIGUEL ORLANDO MUÑOZ**, WAS INDEED seen leaving the base dressed as a civilian, wearing jeans on the evening of May 8, 1993, and was not seen to return, for which reason he was presumed to have deserted; a documented fact that disproves the inference of the petitioners.

Accordingly, since it is not proven that agents of the Mexican State deprived **MIGUEL ORLANDO MUÑOZ** of his liberty, with either the support or toleration of the state, as the petitioners allege, it is to be deduced that the Government of Mexico did not violate the right to personal liberty of MIGUEL ORLANDO MUÑOZ.^[17] (sic) (emphasis and capitals in the original)

40. The petitioners have requested the Inter-American Commission to shift the burden of proof back on to the Mexican State; that is, to require it to demonstrate that Lieutenant Miguel Orlando Muñoz Guzmán was not a victim of forced disappearance. The jurisprudence of the inter-American system on distribution of the burden of proof has two parts: the first requires the petitioner who alleges the disappearance of a person to demonstrate that the State concerned has engaged in such practices, or tolerated them.^[18] The second part requires the petitioner to demonstrate a link between the alleged disappearance in a particular case and the aforementioned state practice.^[19] The Inter-American Court found in this connection that “if it has been proved that the State promotes or tolerates the practice of forced disappearance of persons, and the case of a specific person can be linked to this practice, either by circumstantial or indirect evidence, or both, or by pertinent logical inference, then this specific disappearance may be considered to have been proven”.^[20]

41. In the instant case, the petitioners have not managed to meet the first of these requirements because they have not shown that the Mexican State engaged in or tolerated the practice of forced disappearance of persons at the time and place that the facts alleged in the petition are said to have occurred. Accordingly, it would not be possible for them either to meet the second requirement imposed by the above-cited jurisprudence. Therefore, the conditions are lacking that would permit the burden of proof to be inverted in this case and, therefore, presume forced disappearance until the State has demonstrated the whereabouts of Miguel Orlando Muñoz Guzmán.

42. The Inter-American Commission notes that there is nothing in the record to suggest that Lieutenant Miguel Orlando Muñoz Guzmán was deprived of his liberty by military personnel inside the 26th Infantry Battalion. The record also contains no information from which to conclude that he left said facility and was later apprehended by other persons, whether military or civilian. Indeed, the evidence shows that he was seen for the last time inside the Battalion, dressed as a civilian, preparing to go off duty.

43. Based on the foregoing, the IACHR considers that it is not possible to determine that Lieutenant Muñoz Guzmán was a victim of forced disappearance in the accepted meaning of the term in international law on human rights.^[21] The circumstances of the case also fail to conform to the jurisprudence of the inter-American system in that area.

44. Notwithstanding the foregoing, the IACHR notes that it remains the duty of the State to investigate the whereabouts of Lieutenant Muñoz Guzmán. Although analysis in the light of the legal concept of forced disappearance is not possible for the above-mentioned reasons, it is a demonstrated fact that Miguel Orlando Muñoz Guzmán was seen for the last time on the premises of the 26th Infantry Battalion in Ciudad Juárez and, to date, it is not known what became of him.

3. The loss of the briefcase belonging to Lieutenant Muñoz Guzmán

45. The Mexican authorities found that officers of the 26th Battalion were involved in falsification of documents to make it appear that no briefcase belonging to Lieutenant Muñoz Guzmán had ever been seen on said military facility. Criminal proceedings were instituted

against Captain Víctor Gallegos Bernardino, Lieutenant Filiberto Ortiz Ibáñez, and Captain José de Jesús Morales García, and the Fourth Military Court issued a warrant for their arrest because it was shown that the accused military personnel were probably responsible for the falsification of documents in general.

46. The petitioners say that the briefcase in question was maroon-colored, and that its owner kept items of value in it, along with his private journal in which he noted important events in the Armed Forces. In May 1993, they presented a request to the Garrison Commander asking for the briefcase to be handed over to them, but it was denied. In this connection, the petitioners mention that the Mexican State recognized during the processing of the case that Lieutenant Muñoz Guzmán did in fact have a briefcase, but that it was lost. Furthermore, the petitioners say that it was determined that First Captain Víctor Gallegos Bernardino and Lieutenant Filiberto Ortiz Ibáñez drew up a "certificate of non-existence" for the briefcase despite the knowledge that they were setting down falsehoods, and that the arrest warrant was issued for having engaged in such conduct. However, the petitioners say that "to date, they have not been punished in accordance with the law, nor have the appropriate complaints been extended so that the aforesaid persons might provide information on the persons responsible for the forced disappearance of Miguel Orlando Muñoz and on the reasons for that disappearance".^[22]

47. The petitioners consider these facts to be very serious because they show that there are personnel in the Armed Forces directly involved in the forced disappearance of Lieutenant Muñoz Guzmán. They say in their observations on merits that they are unaware if there has been any progress in the proceedings initiated as a result of the loss of the alleged victim's briefcase and consider that this was not an accident, but the result of deliberate intent to eliminate all traces of him. Lastly, they draw attention to the fact that the persons involved in the disappearance of the briefcase are members of the military, all of which, in the opinion of the petitioners leads to the conclusion that Miguel Orlando Muñoz Guzmán was a victim of forced disappearance at the hands of military personnel.

48. The petitioners say:

We never cease to wonder at the nature of the information that Miguel Orlando Muñoz might have had in his possession, that it should have led him to become a victim of forced disappearance. Certainly, the documents contained in the briefcase that was so conveniently "eliminated" could provide us reasons or clues as to the fate of Miguel Orlando Muñoz.

However, the petitioners consider that, based on the information contained in this section, there are strong and serious indicia that connect members of the Mexican army to the disappearance of Miguel Orlando Muñoz. It would appear that his assailants thought it easier to cause the disappearance of someone who was becoming a threat to the interests of senior military commanders, than to risk public disclosure of the information to which Miguel Orlando Muñoz was privy. The same had to happen to any incriminating evidence.

Based on the foregoing it is fair to assume that Miguel Orlando was the victim of forced disappearance.^[23]

49. As to the briefcase belonging to Miguel Orlando Muñoz Guzmán, in addition to the aforementioned recognized facts, the State says that it has not been proven to contain compromising documentation for members of the military; nor, in the opinion of the State, was it shown that it contained a journal or any of the entries in it. As for the lack of information on the proceedings against the members of the military accused of committing irregularities in connection with this case, the State says that "the petitioners unquestionably act heedlessly because it is a recognized fact of law that every petition demands an answer;

however, they have made no petition with respect to the procedural status of the above-mentioned matters.”^[24]

50. The State also says:

There is no conclusive evidence that attests to the involvement of military personnel in the disappearance of said Lieutenant, despite having been the subject of a preliminary enquiry (No. SC/002/2001/IX-E). It should be mentioned that while it is true that the alleged disappeared person had military status at the time of the events, it is equally true that there is no evidence that links the Ministry of National Defense with such events, and it is wrong to seek to establish a link between the armed forces and the events when none exists.^[25]

51. The Mexican State holds that the petitioners have falsely alleged that military personnel of the 26th Battalion were involved in the “macabre task of concealment of evidence” of the disappearance of Miguel Orlando Muñoz Guzmán. To support the foregoing, the State says that the Office of the Public Prosecutor for Military Justice (PGJM), demonstrated in Preliminary Enquiry SC/002/2001/IX-E that Miguel Orlando Muñoz Guzmán left the facilities of the aforementioned military unit, but that even so “it has continued to investigate the disappearance with absolute transparency and has assisted the investigations of the authorities of the federal and general jurisdiction by sending them certified copies of the proceedings.”^[26]

52. The context described by the petitioners and not refuted by the State is consistent with other evidence analyzed. The Inter-American Commission evaluates such evidence in the light of the jurisprudence of the inter-American system and concludes that the removal and concealment of the briefcase belonging to Lieutenant Muñoz Guzmán are connected with his disappearance and, therefore, the Mexican State has the obligation to conduct an effective investigation of this fact and punish all those responsible.

4. The possible forgery of the petition to return documents

53. The PGJM instituted criminal proceedings against Colonel Jorge Carrasco Reyes for certification of a plain copy –without having sight of the original-- of an alleged petition from Lieutenant Miguel Orlando Muñoz Guzmán, in which he supposedly requested the return of documents presented to the Office of the Commander of the 26th Battalion with his application to the *Escuela Superior de Guerra*. The original, which was purportedly delivered to the military authorities of said Battalion could not be found, for which reason the experts of the PGJM were unable to determine if the signature of Muñoz Guzmán was false.

54. The petitioners say in this connection:

In several communications to the illustrious Commission, the petitioners have mentioned that the document in which Miguel Orlando Muñoz is alleged to have requested the return to him of documents submitted to the *Escuela Superior de Guerra* for the appropriate processing, was also false. In this regard, the petitioners do not know if the aforementioned legal actions have to do with the forgery of the document that contained an alleged request from Miguel Orlando, even though the Public Prosecutor for Military Justice, General Gilberto López Portillo Robles Gil, informed us on June 18, 2001, that the persons mentioned in the foregoing section were responsible for the aforementioned offense; however, it was not possible to proceed in that respect because the time limit for criminal action had expired.^[27]

55. In their observations on merits, the petitioners cite the replies of the Mexican State in which the signature on the aforementioned document is determined to be false based on the opinion of a graphology expert, and which clarify that the original official letter was not in the file at the Bureau of Archives and History. The petitioners argue that the foregoing reveals serious flaws in the investigation and punishment of the persons responsible inside the Army, as well as a lack of independence and impartiality, in contravention of the rules of due process set down in Article 8 of the American Convention, and that it is "a clear indication that the fabrication of evidence that occurred in the Army was intended to dissociate it from the forced disappearance of Miguel Orlando Muñoz, and give the appearance of desertion."^[28]

56. The State recognizes that criminal proceedings were instituted against Colonel Jorge Carrasco Reyes for having certified a plain copy –without having sight of the original-- of an alleged petition from Lieutenant Miguel Orlando Muñoz Guzmán, in which he supposedly requested the return of documents presented to the Office of the Commander of the 26th Battalion to apply to the *Escuela Superior de Guerra*. It also confirms that the original could not be found and explains that for that reason the experts of the PGJM were unable to determine if the signature of Muñoz Guzmán was false. The State holds that the prosecution of Colonel Carrasco does not demonstrate his responsibility in the forging of the petition itself.

57. Once again the IACHR notes the denial of the State but no effective investigation of the facts and, consequently, the absence of evidence to support its position. The IACHR concludes that the irregular certification and misplacement of the alleged original document are not isolated events, but part of a pattern of irregularities observed in this case directly attributable to military personnel of the 26th Infantry Battalion.

58. In sum, the Inter-American Commission concludes that Lieutenant Miguel Orlando Muñoz Guzmán has been missing since the night of May 8, 1993, when he was seen by military personnel inside the 26th Infantry Battalion in Ciudad Juárez, state of Chihuahua. The investigations to date have proved manifestly ineffective, and even in the context of military justice it has been determined that offenses have been committed by members of the armed forces in connection with these events. While it is not possible to classify the disappearance of Miguel Orlando Muñoz Guzmán as forced disappearance in keeping with the definition of this concept adopted under international law on human rights, the Mexican State still has the duty to initiate and complete an effective investigation consistent with due process guarantees, in order to demonstrate what happened and punish all those responsible for those acts.

B. Law

59. Following, the Inter-American Commission analyzes the rights allegedly violated in the case of Lieutenant Muñoz Guzmán based on the facts established by the Commission and accepted or not refuted by the Mexican State.

1. Right to a fair trial and judicial protection, and the obligation to respect and ensure human rights (Articles 8, 25 and 1.1 of the American Convention)

60. The American Convention recognizes the obligation to investigate and punish persons responsible for violations of human rights, as well as the duty to provide compensation to victims of such violations or their families. The relevant provisions of the aforesaid international instrument are transcribed below:

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and

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

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

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Article 25. Right to Judicial Protection

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

2. The States Parties undertake:

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

61. The Inter-American Court of Human Rights has found that the obligation provided in the above-cited Article 1.1 imposes on states parties to the American Convention the duty to "prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."^[29] The aforesaid Court has also said that, "[I]t is clear from Article 1.1 that the State is obliged to investigate and punish any violation of the rights embodied in the Convention in order to guarantee such rights."^[30]

62. The Inter-American Court has developed an ample body of jurisprudence concerning the obligation of the state to investigate and punish violations of human rights. The Court has found that said obligation is not met merely with the formal institution of proceedings in which it is up to the petitioners to supply information to sustain momentum in the proceedings, but should be discharged by the State in a serious manner as a matter of duty.^[31]

63. In its decision on admissibility in the instant case, the Inter-American Commission determined the following:

The Commission considers that the family of Mr. Muñoz Guzmán had access to the legal remedies that were available under the domestic jurisdiction in Mexico and that they used them in a timely and proper manner. Thus far, however, those remedies had not operated with the effectiveness required to investigate a complaint of forced disappearance, which constitutes a serious violation of human rights. Indeed, more than seven years have passed since the first complaint was made to the authorities in Mexico without, up to the

date of the adoption of this report, any definitive determination of how the events occurred. These questions will be examined during the appropriate stage of the proceeding, together with the other submissions concerning rights to a fair trial and to judicial protection.

The Inter-American Commission concludes that for a number of reasons it has not been possible to exhaust the domestic legal remedies available in Mexico, despite the fact that more than seven years have elapsed since the acts took place and were denounced to the authorities responsible for investigating them. Consequently, the IACHR applies to the present case the exception provided for in the second part of Article 46.2.b of the American Convention. The causes and effects that prevented the exhaustion of the domestic remedies will be examined in the report to be adopted by the IACHR on the substance of the complaint, in order to determine whether violations of the American Convention have taken place.^[32]

64. Based on the foregoing, the IACHR will analyze the proceedings and investigations carried out in the domestic jurisdiction of Mexico in order to determine their compatibility with the above-described obligations, and with the jurisprudential interpretation of the organs of the inter-American system of human rights. While it is a single and indivisible obligation, the Commission considers it appropriate to analyze the proceedings initiated in the general jurisdiction separate from those of the military courts based on the unique characteristics of each.

a. Investigations and proceedings in the general jurisdiction

65. The first intervention in the general jurisdiction in this case was the petition lodged by the family of Miguel Orlando Muñoz Guzmán, which filed for writ of *amparo* to determine his whereabouts. On May 25, 1993, the brother of Lieutenant Muñoz Guzmán reported his disappearance to the Office of the Prosecutor General of the State of Chihuahua (hereinafter "PGJ"). The PGJ considered that there was evidence to suggest that the facts alleged could involve a criminal organization engaged in drug trafficking, for which reason it referred that investigation to the Special Unit on Organized Crime (UEDO) of the Office of the Prosecutor General of the Republic (hereinafter "PGR"), which has been in charge of the investigation since June 22, 2001.

The Writ of Amparo

66. As to the writ of *amparo*, the petitioners argue that the Mexican State is responsible for violation of Articles 7.6 and 25 for failure to ensure the effectiveness of that remedy. In the section on the facts, the IACHR has determined that there is no evidence to find that Lieutenant Muñoz Guzmán had his liberty deprived by agents of the Mexican State. It is necessary, however, to examine the arguments of the parties with respect to the suitability of *amparo* in the light of the right to judicial protection enshrined in the American Convention. In this regard, the petitioners say:

The petitioners recognize that under Mexican law the *amparo* remedy is the formal proceeding to protect the human rights of persons who are victims of violation of such rights, in particular those recognized in Article 22 of the Mexican Constitution. However, where forced disappearances in Mexico are concerned, *amparo* clearly cannot be considered a suitable remedy to protect victims of such deeds because, though formally recognized as a mechanism to protect the right to life or humane treatment, it does not meet the standards developed by the inter-American system

(...)

The fact that the law on *amparo* in Mexico provides that an essential requirement for an

amparo ruling favor of the victim is to state where the victim is being detained, renders it groundless and contrary to the parameters set down both by the illustrious Commission and by the Court.

In the instant case, the Muñoz family filed a petition for a writ of amparo on June 7, 1993; the application was taken up by the First District Court for Criminal Matters in and for the State of Jalisco, as case 450-93.

In this connection, the authorities named responsible, in particular the military authorities, denied the acts alleged in the petition and, on that basis and owing to the failure to state the place of detention and the authority ordering the detention, the First Court dismissed the case, which ruling struck the petitioners as illogical where forced disappearance of persons is concerned.

The requirement mentioned in the foregoing paragraph leads us to the conclusion that the mandatory procedure of seeking a writ of amparo to establish the whereabouts of a missing person is not suitable for finding a person who has been illegally detained by agents of the State and concealed in clandestine holding places or official buildings. To make the admissibility of a writ of amparo and the continuation of proceedings contingent on the identification by the victim or their relatives of the whereabouts of the detained person, defeats the very object of the remedy and cancels its effectiveness.

(...)

The concept of disappearance entails the inability to say where the missing person is located, since they are the victim of covert detention. Furthermore, the injured party must ratify the petition for amparo within three days otherwise it is taken as not lodged.

The petitioners consider that the Court should have investigated to make sure that he really was not at the aforementioned places, since the failure to carry out a prompt, serious investigation in such cases, which includes the presence of court officials to verify the veracity or otherwise of the detention, invalidates the remedy. In the instant case, the Mexican Army was allegedly responsible for the disappearance; however, that was not corroborated by the court.

Certainly, the remedy of amparo is the formal mechanism to ensure that the detained person is brought before a judge; however, in the instant case it was clearly impossible to place Miguel Orlando Muñoz, a victim of forced disappearance, at the immediate disposal of the appropriate judicial authority.

In conclusion, inasmuch as the Amparo Law contains requirements that are impossible to fulfill, amparo is an ineffective remedy and failed to accomplish its principal objective, which was to protect him from the forced disappearance of which he was a victim. Accordingly, the Mexican State has violated the provision contained in Articles 7.6 and 25 of the American Convention to the detriment of the victim.^[33]

67. With respect to the effectiveness of the remedy sought in this case to determine the whereabouts of Miguel Orlando Muñoz Guzmán, the State holds that the *amparo* proceeding "is the mechanism to ensure constitutionality, and is admissible, *inter alia*, against acts of authorities that are deemed to violate personal guarantees provided in the Constitution". It holds that the nature and suitability of the *amparo* proceeding "do satisfy the standards that the petitioners say were violated."^[34]

68. The State further explains that the *amparo* proceeding brought by the petitioners was dismissed by the court based on Article 74 (IV) of the *Amparo* Law because "it emerged from the record that the alleged violation did not exist." The State argues that the problem is not that the *amparo* proceeding is ineffective for protection of constitutional guarantees, but

that in the instant case no unlawful deprivation of liberty existed; and that the petitioners had one course of action available to challenge said judicial decision.

69. The jurisprudence of the inter-American system has found that *habeas corpus* is the suitable remedy in cases of forced disappearance,^[35] the equivalent of which under Mexican law is *amparo*. This remedy is configured in Mexico as the legal mechanism for ensuring the cessation of any acts by authorities or laws that might violate human rights. However, Mexico's *Amparo* Law makes it an essential requirement for the victim to say where he is being held. The Inter-American Commission considers that this aspect makes *amparo* unsuitable in Mexico to determine the whereabouts of an alleged victim of forced disappearance, since it runs contrary to the parameters established by the jurisprudence of both organs of the inter-American system.^[36] In this connection, the Inter-American Court has found:

[...] *habeas corpus* would be the normal means of finding a person presumably detained by the authorities, of ascertaining whether he is legally detained and, given the case, of obtaining his liberty. [...] If, however, [...] the writ of *habeas corpus* requires the identification of the place of detention and the authority ordering the detention, it would not be adequate for finding a person clandestinely held by State officials, since in such cases there is only hearsay evidence of the detention, and the whereabouts of the victim is unknown.^[37]

70. For its part, the IACHR has determined that forced disappearance, by definition, entails the refusal to reveal the whereabouts of detained persons, so obviously it would be materially impossible to identify the place of detention of disappeared persons, in order to file for a writ of *habeas corpus* or,^[38] in this case, of *amparo*. In sum, the Inter-American Commission considers that the requirements contained in Article 117 of the Mexican *Amparo* Law conflict with the criteria of the Inter-American Court in the area of forced disappearance and render the *amparo* remedy ineffective in such cases.

The preliminary enquiry initiated by the PGJ and referred to the UEDO-PGR

71. Based on information provided by the petitioners and not disputed by the Mexican State, on May 25, 1993, Martín Eloy Muñoz Guzmán filed a complaint of forced disappearance of a person with the Preliminary Enquiries Office in Ciudad Juárez, state of Chihuahua. The Office of the Attorney General opened preliminary enquiry No. 10911/93-0401, in respect of which the petitioners say they have no knowledge if any steps might have been taken. They also mention in this connection that the family was notified in 1997 "that the case file had been lost owing to a domicile change made by the Office of the Prosecutor General (PGJ) of the state of Chihuahua.

72. The Mexican State holds that "the investigations in the case in the civil proceedings have not yielded indications to that effect, but that it had revealed signs that suggested the probable involvement of Mr. Muñoz in several crimes."^[39] In their observations on merits in this case, the petitioners say that the Mexican State has not advised it of the substance of those crimes, but that in any case, the proceeding before the Inter-American Commission is not concerned with the guilt or innocence of Miguel Orlando. The petitioners say:

In conclusion, the criminal investigation into the disappearance of Miguel Orlando Muñoz was opened two years after it was perpetrated. In the course of the proceeding, the authorities failed to notify the family of various decisions; and the case file was mislaid. More importantly, more than six years have passed since the investigation opened and the Muñoz family have yet to have the consolation of knowing the truth of what happened to

Miguel Orlando Muñoz. All of the foregoing reveals the lack of diligence with which the state authorities responsible for the investigating the disappearance de Miguel Orlando Muñoz Guzmán acted, in violation both of the provisions of Article 8.1 and of the right to effective judicial protection contained in Article 25 of the American Convention.^[40]

73. According to information supplied by the Mexican State, the PGJ of Chihuahua “determined that there were signs that made it seem likely that the disappearance of Lieutenant Muñoz Guzmán was the result of his probable participation in a criminal organization”^[41] and for that reason it referred the proceeding to the Special Unit on Organized Crime (UEDO) of the Office of the Prosecutor General of the Republic (PGR). The UEDO has been in charge of the investigation of the facts, classified as preliminary enquiry PGR/UEDO/100/2001, since June 22, 2001.

74. The petitioners note in this regard that initially they were unaware of the decision to transfer the case file to the PGR and they were worried because the then-Attorney General of the Republic had previously been the Public Prosecutor for Military Justice and had pronounced his opinion on the case of Miguel Orlando Muñoz Guzmán.^[42] They further explain that based on the agreements reached at the hearings before the IACHR on October 10, 2000 and November 14, 2001, the authorities of the PGR allegedly offered –due to the fact that it was a case of disappearance– to organize for them a program of periodic visits in order to access the record of the investigation. Despite the foregoing, the petitioners say that the offers of access to the files were always conditioned to their agreement to assist in the ongoing investigation by the PGJM and the one opened by the UEDO. In this regard, they argue that they consider that this unit of the PGR is not competent to investigate the forced disappearance of Miguel Orlando Muñoz Guzmán but, if anything, the possible liability to criminal prosecution of that member of the military.

75. A review of the case file enabled the petitioners to see “the poor way in which [the preliminary enquiry] had been assembled, since the enquiries of the PGJM and the PGJ were mixed together, the pages did not match, and the volume numbering of the PGJM was not consistent with that of the UEDO”.^[43] They consider that these aspects strengthen their arguments that the Muñoz Guzmán family was denied the right to effective judicial protection, insofar as the facts are under investigation by a body that is not competent to make a decision in this regard, and in light of the “multiple flaws and inconsistencies in the investigation and, furthermore, we have not received any information regarding what and whom are under investigation, or the connection with the disappearance of Miguel Orlando Muñoz”.^[44]

76. For its part, in its observations on merits, the State centered on the military investigations and does not respond specifically to the arguments of the petitioners on the investigation of the PGJ that was transferred to the UEDO-PGR. In broad terms, the State holds in those observations that “Article 8 [on] the right to a fair trial has been misinterpreted as it applies in the framework of the administration of justice, and the complainants have yet to be charged with any offense, or, were it appropriate, has it been necessary to adopt a decision on any of their rights and obligations.”^[45] (sic)

77. The IACHR should mention the course of processing in this case the Mexican State has made the petitioners reiterated offers of access to the documents of the investigation at the domestic level, and that both parties have gone to considerable lengths to review the files jointly. Furthermore, it should be mentioned that on December 17, 2004 –a long time after the conclusion of the meetings of the working group created for that purpose-- the State sent updated information on the most recent proceedings. The information was brought to the attention of the petitioners, who did not alter their position on merits in the matter and, therefore, reiterated their request for the IACHR to adopt a decision.

78. Without prejudice to the foregoing, the information in the record reveals numerous irregularities, including the loss of the PGJ enquiry, the referral of the investigation to a unit of the Federal Attorney General's Office, which was allegedly investigating matters related to criminal organizations involved in drug trafficking, as well as overall uncertainty with regard to the facts. As shown *supra*, the State is duty bound to clarify what happened to Miguel Orlando Muñoz Guzmán; however, it has yet to fulfill that obligation and there is nothing in the most recent information to suggest that it is taking the appropriate steps to do so.

79. Therefore, the IACHR concludes that the Mexican State is responsible for violation of the right to judicial protection of the Muñoz Guzmán family in the *amparo* petition lodged to put an end to his disappearance and in the investigations opened in the general jurisdiction at the domestic level.

b. Investigations in the system of military justice

80. An essential feature of a serious investigation is that it be carried out by an independent and autonomous organ. The basis for the foregoing in the American Convention arises from the joint reading of Articles 1.1, 25, and 8 of that instrument. The last of the aforesaid provisions concerns the competence, independence and impartiality of tribunals as a fundamental element of due process.

81. The Inter-American Commission has held that, "where the state allows investigations to be conducted by the organs potentially implicated, independence and impartiality are clearly compromised," in such a way that procedures "are incapable of affording the investigation, information and remedy purportedly available" and a type of *de facto* impunity occurs that is "corrosive of the rule of law and violative of the principles of the American Convention". In particular, the IACHR has determined that, by reason of its nature and structure, the military criminal justice system does not meet the standards of independence and impartiality required under Article 8.1 of the American Convention. In this same connection the Inter-American Court has found:

In a democratic Government of Laws the penal military jurisdiction shall have a restrictive and exceptional scope and shall lead to the protection of special juridical interests, related to the functions assigned by law to the military forces. Consequently, civilians must be excluded from the military jurisdiction scope and only the military shall be judged by commission of crime or offenses that by its own nature attempt against legally protected interests of military order.

82. The IACHR has mentioned that "the problem of impunity is aggravated by the fact that most of the cases that involve human rights violations by the members of the State security forces are tried by the military criminal courts. The Commission has "repeatedly and consistently stated that the military jurisdiction does not offer the guarantees of independence and impartiality needed for the trial of cases that involve punishing members of the Armed Forces, thereby guaranteeing impunity".

83. The Commission has also explained that the problem of impunity in the military justice system is not tied only to the acquittal of defendants, but that "criminal investigations carried out in the military justice system impede access to an effective and impartial judicial remedy." The Commission has further found that:

The investigation of the case by the military courts precludes the possibility of an objective and independent investigation carried out by judicial authorities not linked to the command structure of the security forces. The fact that the investigation of the case was

initiated in the military justice system may make a conviction impossible, even if the case is passed on to the regular courts, as it is likely that the necessary evidence has not been collected in a timely and effective manner. In addition, the investigation of the cases that remain in the military jurisdiction may be conducted so as to impede them from reaching the final decision-making stage.

The 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.

84. The Commission has found on other occasions that only certain offenses that are either service-related or have to do with military discipline may be judged by military courts with full respect for judicial guarantees:

[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.

85. The IACHR considers 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.

86. In the instant case, the military criminal justice system has been involved from the outset: in the investigation both of the alleged desertion of Miguel Orlando Muñoz Guzmán and of the other facts considered to be connected with his disappearance. The complaints brought by the petitioners in Mexico allege the possible responsibility of members of the armed forces for serious human rights violations, for which reason, the fact that they are keeping open the investigation of the PGJM and according legal validity to its actions in this case relieves the Inter-American Commission of further consideration.

87. 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.

88. In sum, the proceedings before the civilian and military courts in this case give rise to the responsibility of the Mexican State for violation of the rights protected in Articles 8 and 25 of the American Convention, in conjunction with Article 1.1 of said international instrument to the detriment of the Muñoz Guzmán family.

B. Rights to life, humane treatment and personal liberty (Articles 4, 5, and 7 of the American Convention)

89. The American Convention guarantees the rights mentioned in the provisions

transcribed –where pertinent- below:

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Article 4. Right to life

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

Article 5. Right to Humane Treatment

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.

Article 7. Right to personal liberty

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

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.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

90. The Inter-American Commission has found in this case, in the section on the facts *supra*, that there is insufficient evidence to conclude that agents of the Mexican State deprived Lieutenant Muñoz Guzmán of his liberty. In the context of the instant case, the IACHR lacks elements of fact to establish that the Mexican State is responsible for the violation of the rights of Miguel Orlando Muñoz Guzmán recognized in Articles 4, 5, and 7 of the American Convention. With respect to the victim's family, the Commission likewise considers that there are no factual elements to determine in this case that the State is responsible for violation of the right protected in Article 5 of the American Convention.

IV. PROCESSING SUBSEQUENT TO REPORT No. 33/05

91. On March 8, 2005, the Inter-American Commission adopted Report No. 33/05 on the instant case, pursuant to Article 50 of the American Convention, and, on April 6, 2005, forwarded it to the Mexican State, along with the corresponding recommendations. On the

same date, the pertinent parts of the report were transmitted to the petitioners in accordance with Article 43.3 of the Commission's Rules of Procedure, with the petitioners given a period of one month to express their position on the submission of the instant case to the Inter-American Court of Human Rights.

A. The petitioners

92. The petitioners responded on May 6, 2005, in a note expressing first of all their disagreement with the Commission's conclusions that there was no forced disappearance in this case, and reiterating the arguments to that effect expressed during the stage prior to the decision on the merits. Regarding submission of the case to the Inter-American Court, they contend:

Given the nature and gravity of the acts, the case of Miguel Orlando Muñoz Guzmán should be submitted to the Court so that justice may be served, since, 12 years after his disappearance, a permanent context of impunity and obstruction of justice has developed concerning the determination of his whereabouts and the punishment of those responsible.

93. To that end, they develop each of the following grounds:

- That recourse to military jurisdiction for human rights violations is contrary to the American Convention;
- That impunity in this case must be brought to an end;
- That it is essential that the family obtain justice in this case; and
- That this is an opportunity for the Court to express its views on reform of the Mexican amparo legislation to bring it into line with the standards of the inter-American system.

94. As regards the first of the grounds, the petitioners cite the jurisprudence of the Court and the Commission in cases where penal military jurisdiction was applied and state that this case deals with "innovative matters" since "the alleged victim is not a civilian as in the cases heard by the Court, but rather a member of the armed forces alleged to have disappeared in military territory at the hands of alleged military officers, which might be construed, under Mexican law, as coming under military jurisdiction; however, the crime under consideration is within the purview of civil jurisdiction as it concerns human rights violations."

95. With respect to impunity in the case, the petitioners allege that, following December 16, 1998, the date on which Mexico accepted the contentious jurisdiction of the Inter-American Court, "there continue to appear a series of irregularities in the investigation, which have adversely affected the right to justice, recognized in the Convention." The petitioners therefore consider that this "constitutes an unequivocal argument that the State is responsible and thus that the Court is competent to examine the grave violations of Articles 8 and 25 of the Convention." To back this up, they reiterate the allegations they made during the proceedings before the Commission regarding "the inconsistencies and irregularities surrounding the investigation" and in particular those that took place in the military and general jurisdictions after December 16, 1998. In the final analysis they conclude that the whereabouts of Miguel Orlando Muñoz Guzmán are not known 12 years after he was seen for the last time, and that as a result of the ongoing impunity "the jurisdiction of the Inter-American Court to decide on the violations perpetrated in this case remains current."

96. Further, the petitioners allege that "the family is distrustful of the justice system

(especially the military jurisdiction) and therefore considers that a possible Inter-American Court judgment could not only recognize its suffering and the search for justice internally but also, *per se*, give them some satisfaction and confidence that the case would not remain unpunished.”

97. With regard to *amparo*, they reaffirm their allegations concerning its ineffectiveness and consider that the case affords the Mexican State an opportunity to adjust its domestic regulatory framework for judicial protection of the right to personal liberty and to establish an adequate and effective remedy, such as *habeas corpus*. In response to the request from the IACHR, the petitioners refer likewise to the evidence available in the case, offer their witnesses, and define their claims for reparations.

98. Lastly, the petitioners present a note signed by María Guadalupe Guzmán Romo and María Guadalupe Muñoz Guzmán, mother and sister, respectively, of the victim in this case. Said note contains the reasons for which the family considers that the case should be submitted to the Inter-American Court, including their suffering since the date of the events, and the threats and harassment they were allegedly subject to as a result of their reports and their quest for justice. The victim’s mother and sister deem it “imperative” that the IACHR submit the case to the Inter-American Court and express their “hopes that said Court will order the Mexican State to bring about what we have sought during this entire period: justice and locating Miguel Orlando.”

B. The State

99. For its part, in a note dated June 6, 2005, the State maintains the following concerning the Commission’s recommendation on the investigation of the facts:

The Mexican Government has decided that the general civil courts will continue the investigations, as indicated in the recommendations contained in the confidential report; to that end, a note has been appended hereto whereby the Military Prosecutor has turned the entire investigation over to the Attorney General of the Republic.

The IACHR will be kept informed of any progress made in the investigations.

100. As concerns reparation for the violations established by the Inter-American Commission in this report, the State affirms that “it will prepare a compensation plan, which it will duly distribute, in the near future, to the IACHR and the petitioners.”

V. CONCLUSIONS

101. The whereabouts of Miguel Orlando Muñoz Guzmán rare unknown since May 8, 1993. The Mexican State has the burden of proving what happened to him, given that the matter concerns a member of the military who was seen for the last time in an army barracks. However, almost 12 years since the facts took place, and in spite of several formal investigations to ascertain his whereabouts, to date what happened to him is not known.

102. The Mexican State has incurred in international responsibility for the violation of the rights to a fair trial and judicial protection, in conjunction with the obligation to respect and ensure rights, pursuant to Articles 8, 25, and 1.1 of the American Convention. On the other hand, the responsibility of the Mexican State has not been proven as to the alleged violation of the rights to life, humane treatment, and personal liberty of Miguel Orlando Muñoz Guzmán, in accordance with Articles 4, 5, and 7 of the American Convention. Also, it is established in this report that the Mexican State is not responsible for violation of the right to humane treatment of the Muñoz Guzmán family.

103. The Inter-American Commission examined the Mexican State's response to the request for information on the measures taken to carry out the recommendations in Report No. 33/05 concerning the instant case. The measures mentioned in that response demonstrate the good will of the State but, in the IACHR's view, do not show that any action has been taken to begin to carry out the recommendations set out in the decision on the merits.

104. To adopt its decision on the next procedural step, the IACHR took into account that the Mexican State accepted the contentious jurisdiction of the Inter-American Court on December 16, 1998, and that the events that led up to the instant case began prior to that date. Also predating acceptance of the Court's jurisdiction were the start and conclusion of the principal investigations into the matter, and the court proceedings that were based on the facts of the case and could have clarified said facts. The Inter-American Commission also took into account its own conclusion in this case that evidence had not been gathered to establish State responsibility for an ongoing offense—such as the forced disappearance of persons—to the detriment of Miguel Orlando Muñoz Guzmán. Under these circumstances and in keeping with Article 44.1 *in fine* of its Rules of Procedure, the IACHR decided by an absolute majority of its members not to submit this case to the Inter-American Court and to adopt this final report, in accordance with Article 51 of the American Convention.

VI. RECOMMENDATIONS

105. Based on the foregoing factual and legal considerations,

THE INTER-AMERICAN COMMISSION RECOMMENDS THAT THE MEXICAN STATE:

1. Conduct a complete, impartial, and effective investigation in the Mexican general jurisdiction to determine the whereabouts of Miguel Orlando Muñoz Guzmán; and, if it were determined that he was a victim of forced disappearance, to sanction all those responsible for such crime.

2. Provide adequate compensation to the relatives of the family of Miguel Orlando Muñoz Guzmán for the human rights violations established herein.

VII. PUBLICATION

106. On October 31, 2005, the Inter-American Commission transmitted Report No. 106/02—the text of which is transcribed above—to the Mexican State and the petitioners, in accordance with Article 51.2 of the American Convention, and granted it one month to present information on compliance with the foregoing recommendations. On November 30, 2005, the Mexican State transmitted a communication in which "it ratifies its firm commitment to implement the recommendations contained in said report."

107. As to the first of the recommendations, the State affirms that the investigation is being handled by the Office of the Assistant Attorney General for Specialized Investigation of Organized Crime of the PGR in file PGR/UEDO/100/2001. In that connection, the State notes that a number of meetings have been held with officials from the Secretariat of Foreign Affairs and the aforementioned Office of the Assistant Attorney General as well as the Office of the Assistant Attorney General for Human Rights, Victim Care, and Community Services of the PGR, in order to identify the approaches to take in this investigation. With the concurrence of the State, those officials drew up an "initial plan of work" consisting of several steps to be taken to locate Miguel Orlando Muñoz Guzmán. However, the State asks the IACHR "to keep this information confidential as it constitutes part of an ongoing investigation and its disclosure could compromise these steps." The Inter-American Commission brought the State's note to the attention of the petitioners.

108. Regarding the recommendation to adequately compensate the relatives of Miguel Orlando Muñoz Guzmán for the human rights violations established in this report, the State indicates that "it is in the process of drawing up a compensation plan that in the near future will be submitted to the IACHR and of course to the petitioners." Lastly, the State affirms that "it is following up on the recommendations established in Report No. 106/05 and undertakes to report periodically on the progress made in both the investigation and the compensation for damages."

109. For their part, the petitioners sent a note dated December 6, 2005, requesting information on compliance with the recommendations contained in Report No. 106/05, adopted pursuant to Article 51 of the American Convention.

110. The Inter-American Commission notes that the Mexican State has taken initiatives aimed at implementation of the recommendation concerning the investigation. However, it is obvious that the measures taken to date do not meet the criteria for a complete, impartial, and effective investigation in the general jurisdiction, as recommended in the report on the merits. As concerns the recommendation on reparations, the IACHR takes note of the willingness expressed by the State and urges it to get in touch with the petitioners as early as possible to come to terms on compensation measures consistent with the violations established in this report.

111. For these reasons, and in keeping with Articles 51.3 of the American Convention and 48 of the Rules of Procedure of the Commission, it is the decision of the Commission to reaffirm the conclusions and recommendations contained, respectively, in Chapters VI and VII *supra*; to publish this report; and to include it in its annual report to the OAS General Assembly. In accordance with the provisions of the instruments governing its mandate, the IACHR will continue to evaluate the measures taken by the Mexican State regarding the aforementioned recommendations until such time as said State has fully complied with them.

Done and signed in the city of Washington, D.C., on the 28th day of the month of February, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez Trejo and Víctor E. Abramovich, Commissioners.

[1] IACHR, Report Nº 106/00 – Miguel Orlando Muñoz Guzmán, Mexico, December 4, 2000.

[2] IACHR, Report Nº 106/00 *supra*, pars. 8-17.

[3] *Idem.*, p. 15.

[4] *Idem*, p. 9

[5] I/A Court H.R., *Cantoral Benavides Case*, Judgment of August 18, 2000, par. 189; *Gangaram Panday Case*, Judgment of January 21, 1994, par. 49; *Velásquez Rodríguez Case*, Judgment of July 29, 1988, par. 135.

[6] I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, par. 131.

[7] I/A Court H.R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, par. 131

[8] I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, par. 127; *Fairén Garbi and Solís Corrales*, Judgment of March 15, 1989, par. 131.

[9] *Idem*, par. 128

[10] *Idem*, pars. 130 and 131.

[11] Communication of the petitioners of May 22, 2002, pars. 12 and 13, p. 3. They also allude to a supposed conversation between General Luis Montiel López, Commander of the 5th Military Zone, and Lieutenant Muñoz Guzmán, in which the former told the latter that "if he started meddling around he would f**k him up" ["si se metía en chingaderas lo iba a fregar"]. The petitioners also say that General Montiel López had been linked to an organization known as the "brigadas blancas", which is alleged to have brought about the forced disappearance of hundreds of people between 1976 and 1983.

[12] *Idem*, p. 10.

[13] *Idem*, p. 11.

[14] Captain Notario Velásquez says:

Between approximately 19:30 hours and 20:30 hours I saw him dressed in shorts and sandals near the buildings occupied by second and third companies. Possibly he was going to his room. I also remember that I commented that it was time he went on leave, and he said to me "Yes. In a while." But I didn't see him again, and since it was Saturday, roll call for him as an officer was not until the following day, which was Sunday, 9; I did not even hear that he went on leave (sic) (emphasis added).

Communication of the State of September 16, 2002, "Evidence produced in Preliminary Enquiry SC/002/2001-E, which refute the final observations of the petitioners", PGJM, Declaration of Second Captain (Infantry) Andrés Notario Velásquez, p.11.

[15] The version of Ortiz Ibáñez on the last time that he saw Muñoz Guzmán is as follows:

He did not seem worried; he was wearing shorts and a beach shirt and at approximately 17:30 he left the room, saying to me that he had to go out to have dinner and use the telephone, but that he would go and ask Lieutenant Edwin Tonatíuh to lend him his car as he was the watch officer. Shortly afterwards he returned and told me that he had been unable to get a vehicle. He bathed, changed into civilian clothing, donned his pistol, told me he would see if he could catch the *rutera*, that is, the truck that goes to Battalion, and left. He did not return that night. The next day was the first day he was AWOL, and he remained AWOL until he deserted on May 11..

Idem, Declaration of Infantry Lieutenant Filiberto Ortiz Ibáñez, p. 18.

[16] Communication of the State of August 27, 2002, pp. 1 and 2.

[17] Communication of the State of August 27, 2002, p. 17.

[18] I/A Court H.R., *Velásquez Rodríguez Case*, Honduras, Judgment of July 29, 1988, par. 126.

[19] *Ibid*.

[20] I/A Court H.R., *Bámaca Velásquez Case*, Judgment on the merits, 25 November 2000, par. 130.

[21] Forced disappearance is defined as follows:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

Inter-American Convention on Forced Disappearance of Persons, Article II.

[22] *Idem*, par. 25, p. 5.

[23] *Idem*, pars. 33-35, p. 7.

[24] *Idem*.

[25] *Idem*, p. 8.

[26] *Idem*., p. 10.

[27] *Idem*, par. 29, p. 6.

[28] *Idem*, par. 32, p. 7.

[29] I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, par. 166

[30] I/A Court H.R., *Villagrán Morales et al. Case* (Case of the "Street Children"), Judgment of November 19, 1999, par. 225.

[31] In this regard, the Inter-American Court has determined:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.

I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, par. 177. In the same connection, the Inter-American Commission has mentioned:

The fact that no one has been convicted in the case or that, despite the efforts made, it was impossible to establish the facts does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.

IACHR, 1997 Annual Report, Report Nº 55/97, Case 11.137 (Juan Carlos Abella *et al.*) Argentina, par. 412.

[32] IACHR, 2000 Annual Report. Report No. 106/00 (Miguel Orlando Muñoz Guzmán), Mexico, December 4, 2000, pars. 23 and 24.

[33] *Idem*, p. 12.

[34] The State cites the admissibility requirements for the remedy under Article 17 of the Amparo Law:

When the acts concerned pose a danger of deprivation of life, attacks on personal liberty outside of the judicial process, deportation or exile, or any of the acts prohibited by Article 22 of the Federal Constitution, and the injured party is prevented from filing for a writ of *amparo*, any other person, even a minor, may do so in their name. In such cases, the judge shall order the measures necessary to ensure the appearance of the injured party and, once they are present, shall order them to ratify the *amparo* petition within three days. If the interested party ratifies the petition it shall be processed; if they do not, then the petition shall be deemed not lodged, and any interlocutory orders shall be rendered null and void.

Communication of the State of August 27, 2002, p. 17.

[35] I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, par. 65.

[36] In that respect, it should also be mentioned that the Office of the UN High Commissioner for Human Rights concluded in its recent study on Mexico that the requirement contained in Article 117 of the Amparo Law

"Places the aggrieved in a situation of defenselessness because he is held incommunicado, and the person who could file the respective petition in his name might be ignorant of the place of detention and the authority ordering the detention, which creates a vicious circle of legal defenselessness.

The above-described situation should be amended so that when the complainant does not know the whereabouts of the aggrieved, they can demand that the authority locate and identify the authority responsible.

One of the recommendations included in the Review is "to eliminate the requirement to identify the place where the person is detained, held incommunicado or in a state of disappearance at the moment of filing the petition of *amparo* when the subject of the complaint is a violation of the right to personal liberty." [Free translation] Office of the UN High Commissioner for Human Rights in Mexico, *Diagnóstico sobre la Situación de los Derechos Humanos en México*, Chapter 2.1.6.2, "*Las personas no localizadas, incomunicadas o en estado de desaparición*", p. 35.

[37] I/A Court H.R., *Velásquez Rodríguez Case*, *supra*, par. 65; *Case Godínez Cruz*. Judgment of January 20, 1989, par. 69; *Fairén Garbí and Solís Corrales Case*, Judgment of March 15, 1989, par. 90.

[38] See, for example, IACHR, Case 11.221, Tarcisio Medina Charry (Colombia). Report Nº 3/98, of April 7, 1998, par. 41.

[39] Communication of the Mexican State of July 12, 1999, p. 3.

[40] Communication of the petitioners of May 22, 2002, p. 19.

[41] Communication of the Mexican State of September 28, 2001, p. 1.

[42] The petitioners mention that General Rafael Macedo de la Concha, Attorney General of the Republic declared to the press when he was Public Prosecutor for Military Justice that "the matter of this young man was duly investigated by the Prosecutor's Office when it was under my charge and we have divulged the entire investigation that was carried out to the family as well as to the CNDH... as far as military justice is concerned he is a deserter from the Army". From the daily *Reforma*, October 6, 1994, p. 4, cited by the petitioners in their communication of May 22, 2002, p. 20.

[43] Communication of the petitioners of May 22, 2002, p. 21.

[44] *Idem*, p. 22.

[45] *Idem*, p. 19.