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Decided by:	Chairman: Professor Robert K. Goldman; First Vice-Chairman: Dr. Helio Bicudo; Second-Vice Chairman: Dean Claudio Grossman; Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated:	19 November 1999
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Represented by:	APPLICANT: the Inter-American Press Association
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I. SUMMARY

1. On March 11, 1997, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”), received a complaint presented by the Inter-American Press Association (hereinafter “the petitioners” or “IAPA”), alleging the international responsibility of the United States of Mexico (hereinafter “the State, “the Mexican State”, or “Mexico”), for the assassination of Mexican journalist Víctor Manuel Oropeza, for its failure to investigate the facts and for the resulting impunity of the perpetrators. The petitioners denounced the violation of several rights enshrined in the American Convention on Human Rights (hereinafter the “American Convention”): the right to life (Article 4); to humane treatment (Article 5); to a fair trial (Article 8); to equal protection of the law (Article 24); and to judicial protection (Article 25).

2. Víctor Manuel Oropeza was murdered on July 3, 1991, in Ciudad Juárez, Chihuahua, Mexico. On that day, the journalist was in the office where he practiced medicine when, according to information from witnesses, two persons entered and, following a struggle, they stabbed him 14 times in the torso. Víctor Manuel Oropeza was a doctor by profession and, since 1984, had been writing a column entitled “My View” in the *Diario de Juárez* newspaper of Ciudad Juárez. In this column, Oropeza expressed strong criticism of the authorities and denounced the “close ties between police forces and drug traffickers” in the area. The investigation took various turns--the authorities even regarded the children of the journalist’s first marriage, and later his second wife and her brother, as possible suspects. The only currently presumed culprit is now in prison in the United States for an act unrelated to this case. The petitioners consider that Mr. Oropeza’s assassination was committed for the purpose of silencing

his criticisms, and that the investigation had been intentionally blocked by the implicated authorities for that reason.

3. Based on its analysis on this report, the Commission concludes that the case meets the requisites for admissibility set forth in the American Convention. The IACHR also concludes that the State violated, to the detriment of Víctor Manuel Oropeza and of all citizens, the right to freedom of expression guaranteed by Article 13 of the American Convention; and, to the detriment of his family members, the rights to a fair trial and judicial protection, guaranteed by Articles 8 and 25 of the aforementioned international instrument in relation to the general obligation to respect and guarantee the rights provided for in Article 1(1) thereof. On the other hand, the IACHR concludes that there are no grounds in this case to establish the responsibility of the Mexican State for violation of the rights to life, humane treatment, or equal protection of the law. In light of the violations established, the IACHR recommends that the State conduct a serious, impartial, and exhaustive investigation to determine the criminal responsibility of all of the perpetrators of the assassination of Víctor Manuel Oropeza; determine if there were other crimes that prevented a full investigation of the facts in question; and, as the case may be, apply the appropriate legal sanctions. Finally, the Commission recommends that the Mexican State provide appropriate remedy and compensation for the family members of Víctor Manuel Oropeza for the violations established herein. As a consequence of the violations it found, the Commission recommended to the Mexican State in Report 93/99 that it undertake a serious, impartial and exhaustive investigation in order to determine the criminal responsibility of all of the perpetrators of Víctor Manuel Oropeza's assassination; and to determine whether obstruction of justice was committed to prevent the full investigation of the facts; and, where appropriate, to apply the respective legal sanctions. The IACHR analyzed the information submitted by the Mexican State on the recommendations of Report 93/99 and concluded that they had not been complied with; accordingly, the Commission decided to publish this report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On April 23, 1997, the Commission requested information from the State on the complaint and assigned the case number 11.740. The response, received on September 25, 1997, was forwarded to the petitioners, whose observations were received on January 15, 1998. The State sent its observations on March 15 and forwarded relevant documents on March 24, 1998.

5. The Commission placed itself at the disposal of the parties on July 13, 1998, to initiate a friendly settlement procedure. The State indicated that the authorities were "in the process of evaluating the offer", for which purpose "they wish[ed] to know the intentions of the petitioners". In their communication of July 29, 1998, the petitioners rejected the IACHR's proposal based on "the need for this case to be elucidated".

6. On February 25, 1999, the Commission approved report 18/99 regarding this case, in accordance with Article 50 of the American Convention. The State forwarded its observations on April 28, 1999. On September 29, 1999, the IACHR approved Report N° 93/99 pursuant to Article 51 of the American Convention and sent it to the State with its recommendations on October 4, 1999. The State responded on November 4, 1999.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners allege that the Mexican State is responsible for the violation of Mr. Oropeza's right to life and for the impunity of his assailants. They argue that this situation resulted from the authorities' indifference and lack of political will to investigate and solve the crime. The petitioners linked the assassination of the journalist directly with the strong criticism Oropeza had expressed in his column in the *Diario de Juárez*, in which he identified, by first and last names, police officers responsible for abuses and human rights violations. The petitioners point out that the lead police investigators of the case had been criticized by the victim in his newspaper columns for alleged connections with drug trafficking.

8. According to the petitioners, "there were strong indications that the authorities ignored evidence, destroyed leads, fabricated information and arrested innocent parties". They consider this to be confirmed by the information provided by the State during the initial procedures of the case, which did not respond clearly or fully to the petition or clarify the current status of the investigations. The petitioners allege the following:

In referring to the criminal and disciplinary investigations of the functionaries or officials involved in mismanaging the criminal investigation into the homicide of Oropeza, [the Mexican authorities] are avoiding the central point of this petition, which is to determine by whom, how, and why Dr. Oropeza was killed in 1991, and what action the Government of Mexico has taken to bring those responsible for Oropeza's death to justice (emphasis in the original).

9. Specifically, the petitioners analyzed the steps taken by various bodies as described by the Mexican State as fulfillment of its obligations under the American Convention. The petitioners maintain that in its Recommendation 13/92 of February 7, 1992, addressed to the Governor of Chihuahua and to the Prosecutor General of the Republic, the National Commission on Human Rights (hereinafter "the CNDH") "ordered a series of measures that did not contribute to shedding any light whatsoever on the identity of those who materially or intellectually carried out the homicide...quite the contrary, the recommendations produced no results at all." They went on to say that the recommendation concerning the release of the only persons arrested in the criminal investigation made no reference to their possible involvement, and thus did not contribute in any way to the investigation of Víctor Manuel Oropeza's homicide. They allege that the CNDH's recommendations with regard to the criminal investigations targeting officials of the police and the Office of the Public Prosecutor (hereinafter "PGJ" for Procuraduría General de Justicia) of the state of Chihuahua, for presumed irregularities in managing the investigation of the Oropeza homicide, did not contribute to the investigation either, but rather, lead to the conclusion that there was "negligence, obstruction, and possibly a cover-up on the part of the officials responsible for the investigation". Finally, they questioned the concept of "partial compliance" that the CNDH itself established in respect of the initiatives adopted by the authorities of Chihuahua with respect to the aforementioned recommendation.

10. The petitioners also maintain that the Mexican State did not perform its duty of protecting Mr. Oropeza, who had been the subject of several threats and who feared for his life. In

subsequent affirmations on the matter, the petitioners indicated that the reason why the complaint had not been brought before Mexican authorities was that “it would have been necessary to file the complaint with the same police and justice administration officials who had been criticized by the journalist for their ineffectiveness and corruption”. According to the petitioners, the threats to Oropeza were brought to the attention of readers of his *Diario de Juárez* column.

11. The complaint draws particular attention to flaws in the investigation and the unreasonable procedural delays in the domestic judicial proceedings, which had produced no results whatsoever to date. Based on the information provided by the State, they conclude that the State, having affirmed that it had already fulfilled its obligation of rendering justice, would not be proceeding with an investigation of any kind.

B. The State

12. In its first response, the State requested that the case be declared inadmissible, considering that no violations of the American Convention had been demonstrated and that the remedies under domestic law in Mexico had not been exhausted. The State held that the petition did not meet the requisite of Article 46(1)(a) of the American Convention on the exhaustion of remedies under domestic law. In this regard, it indicated the following:

The Office of the Prosecutor General of the state of Chihuahua has not yet completed all of the steps necessary to exhaust the lines of investigation in the case concerned. Accordingly, the competent authority considers that after these steps have been taken it may be in a position to criminally prosecute those responsible for the homicide of Dr. Oropeza.

13. With regard to the substance of the complaint, after clarifying that the information was “preliminary”, the State described the actions of CNDH, the Chihuahua state Human Rights Commission (hereinafter “the State Commission”), and the PGJ. In response to CNDH Recommendation 13/92, the State indicated that criminal case 182/91 had been dismissed and the suspects “unconditionally released”;^[FN1] that an investigation preliminary to possible criminal action against the judicial police involved had been instigated together with an administrative investigation to solve Dr. Oropeza’s homicide; and that criminal action had been brought against six officials of the Chihuahua PGJ for “abuse of authority, illegal entry, assault and battery, threats, and false statements”.

[FN1] Marco Arturo Salas Sánchez and Sergio Aguirre Torres, who stated that their confession to material responsibility in Oropeza’s homicide had been given under torture.

14. In support of its position concerning willingness to investigate the facts of this case, the State provided information on actions taken against two public officials for “irregular conduct of the preliminary investigation”^[FN2], although it clarified that the investigation of the Oropeza homicide was still pending. The Human Rights Commission of the state of Chihuahua indicated that the Chief of the Preliminary Investigations Office of Ciudad Juárez had received a

reprimand and that criminal action had been brought against the children of Víctor Manuel Oropeza for defamation and calumny.

[FN2] The sanctions imposed consisted of the dismissal of Mr. Ricardo Valladolid Márquez and the “public reprimand” of Mr. Félix Calderón Quijas, agents of the Public Prosecutor’s Office for their irregular conduct of preliminary investigation 639/91 against state officials Rafael Aguilar García, Juan Granados Martínez, Noé Basilio Nino Chávez and Leticia Vega Medina. These four persons were accused of abuse of authority, crimes against the administration of justice, and torture; when criminal action was brought against them, the judge in the case refused to issue arrest orders based on the aforementioned irregularities; this decision was upheld on appeal, with the result that the crimes were not punished. The recommendation from CNDH was considered “fully carried out” by decision of the President of that body on April 24, 1994.

15. The State indicated that “the last procedural step to be taken” (during the second week of November 1997) was to take the statement of Samuel Reyes, the presumed material culprit in Oropeza’s homicide. According to the information provided, Reyes is serving a sentence in a high-security prison in Livingston, Texas, for an act unrelated to the instant case.

16. With regard to the threats allegedly made to the journalist, the State responded that Oropeza “did not file a complaint about these threats with any authority or any journalists union or association, let alone his readers, and therefore these allegations of anonymous threats were not supported by legally credible evidence”. The State added that “the petitioners’ argument concerning a connection between Oropeza’s articles and the authorities criticized in those articles had been inconsistent and untruthful”, and dismissed the information provided by the IAPA, arguing that it lacked the technical qualifications and impartiality necessary to investigate the homicides.

17. Based on its arguments, the Mexican State concluded that the complaint did not meet the requisites for establishing its international responsibility for any action or omission. It affirmed, in this regard, that the Chihuahua PGJ, the CNDH, and the Chihuahua State Human Rights Commission “have seriously investigated” the matter and that “the probable culprit had been located and that most of the various recommendations by these Commissions had been carried out”. The State indicates that “the fact that it has not been possible to arrest all of the probable culprits in the homicide does not mean that the government has ‘tolerated’ an evasion of justice” (emphasis in the original). It requested that the IACHR declare the complaint inadmissible for failure to exhaust domestic remedies and demonstrate a violation of human rights protected by the American Convention.

IV. ANALYSIS

A. Admissibility

18. The recent practice of the Commission has been to make a prior and separate determination concerning the admissibility of petitions[FN3]. However, the IACHR has also

made exceptions to this practice in cases--such as the instant case--where a complaint concerning violation of the right to a fair trial and to judicial protection calls for an analysis of the extent to which domestic remedies have been exhausted within a reasonable period of time, and the extent to which such remedies have been effective.[FN4] Accordingly, the Commission will analyze conformity with the requisites set forth in Articles 46 and 47 of the American Convention.

[FN3] See IACHR, Annual Report 1996, Reports N° 5/97 (Case 11.227 – José Bernardo Díaz et al), Colombia; N° 12/97 (Case 11.427 – Víctor Rosario Congo), Ecuador; N° 13/97 (Case 11.515 – Bolívar Camacho Arboleda), Ecuador; N° 7/97 (Case 11.321 – Delford Gardener), Jamaica; N° 25/96 (Case 11.411 – Severiano Santiz Gómez et al), Mexico; N° 44/96 (Case 11.479 - Evaristo and Blas Dorado Almanza), Mexico; N° 9/97 (Case 11.509 – Manuel Manríquez San Agustín), Mexico; and N° 14/97 (Case 11.381 – Milton García Fajardo), Nicaragua, OEA/Ser.L/V/II.95, 14 March , 1997; and Annual Report 1997, Reports N° 7/98 (Case 11.597 – Emiliano Castro Tortrino), Argentina; N° 33/97 (Case 11.405 – Newton Coutinho Mendes), Brasil; N° 17/98 (Case 11.286 et al – Aluísio Cavalcanti Junior et al); N° 18/98 (Cases 11.285 – Edson Damiao Calixto and 11.290 – Roselindo Borges Senado), Brasil; N° 19/98 (Case 11.516 – Ovelario Tames), Brasil; 14/98 (Case 11.778 - Ruth Garcés Valladares), Ecuador; N° 53/97 (Case 11.312 – Emilio Tec Pop), Colombia; N° 22/98 (Francisco Guarcas Cipriano) Guatemala; N° 21/98 (Case 11.435 - José Sucunú Panjoj), Guatemala; N° 28/98 (Case 11.625 - María Eugenia de Sierra), Guatemala; N° 46/97 (Case 11.166 - Walter Humberto Vásquez), Perú; N° 20/98 (Case 11.762 – Baruch Ivcher Bronstein), Perú; and N° 16/98 (Case 11.324 – Narciso González), Dominican Republic, OEA /Ser.L/V/II.98 Doc. 6 rev., April 13, 1998.

[FN4] See IACHR, Annual Report 1996, Report N° 43/96 (Case 11.430 – General Gallardo), Mexico, OEA/Ser.L/V/II.95, March 14, 1997, paragraphs 40 to 44, pages 595 and 596; and Annual Report 1997, Report N°49/97 (Case 11.520 – Tomás Porfirio Rondín et al “Aguas Blancas”), paragraphs 42 to 49, pages 687 to 689.

a. Jurisdiction

19. The State has argued that acts in violation of human rights have not been demonstrated. As indicated above, the arguments in this case describe acts that would be in violation of various rights recognized and enshrined in the American Convention and which took place at a time when the obligation to respect and guarantee the rights established in that instrument was binding upon Mexico.[FN5] Accordingly, the IACHR has jurisdiction *ratione personae*, *ratione materiae*, and *ratione temporis* to review the substance of the complaint.

[FN5] The Mexican State deposited the instrument of ratification of the American Convention on April 3, 1982.

b. Exhaustion of domestic remedies

20. Article 46(2)(c) of the American Convention refers to exceptions to the rule requiring exhaustion of domestic remedies, which include unwarranted delay in rendering a final judgment under those remedies. The assassination of Mr. Víctor Manuel Oropeza occurred in July, 1991, and after nearly eight years, the competent authorities have still not tried or convicted a single material or intellectual culprit.

21. The fact that the investigation has remained open for a lengthy period of time --from July 1991, when the events took place up to the time of approval of this report-- does not in itself demonstrate a will to fully solve the case and find the perpetrators. Quite the contrary, the IACHR considers that if the Mexican authorities have sufficient elements to continue the investigation, which does not in the least appear to be complex in nature, its duration for more than eight years since the assassination took place is clearly unreasonable. The Commission therefore determines that there has been an unwarranted delay in rendering a final judgment in this case, and thus the exception under Article 46(2)(c) of the American Convention applies. The delay in rendering a judgment will be the subject of a more complete analysis in the section of this report concerning the right to a fair trial.

c. Time frame for lodging the petition

22. The State did not invoke the exception allowed under Article 46(1)(b) of the American Convention. Analysis of this point is not called for in this report, since the parties concur that the domestic jurisdictional procedures in Mexico have still not been completed.

d. Duplication of procedures

23. The exception allowed under Article 46(1)(d) of the American Convention was not invoked by the Mexican State, and does not apply based on the information contained in the file for the instant case.

B. Merits

24. Having established the admissibility of the petition, the Commission will now analyze the merits.

a. Right to life (Article 4)

25. Article 4(1) of the American Convention guarantees the right of every person to have his life respected, and provides that no one shall be arbitrarily deprived of his life. In the instant case, the petitioners have not alleged the direct responsibility of State agents in the assassination of Víctor Manuel Oropeza, but consider his death the result of the authorities' failure to protect the journalist.

26. The Commission observes the absence of any dispute over the point that the threats to Mr. Oropeza had not been reported to the competent authorities so that the State might have taken the measures necessary to protect the journalist's safety and life.[FN6] The IACHR

therefore concludes that the State cannot be held responsible--by action or omission--for violating Mr. Oropeza's right to life.

[FN6] The Inter-American Court of Human Rights has stated the following:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duties to respect and guarantee the rights recognized in the Convention so that any impairment of those rights, which can be attributed under the rules of international law to the action or omission of any public authority, constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention itself.

Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1998, para. 164.

b. Right to humane treatment (Article 5) and right to equal protection of the law (Article 24)

27. In their comments on the first response from the State, the petitioners refer to the rights of Víctor Manuel Oropeza to humane treatment and equal protection of the law. This reference is limited to the following:

Article 5 (1) Every person has the right to have his physical, mental, and moral integrity respected.

Article 24. All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.

28. The petitioners have not provided any basis for this assertion, nor is one evident in the other contents of the case file. In the absence of grounds for a determination on this point, the Commission dismisses, without further consideration, the complaint concerning violation of the rights to humane treatment and equal protection of the law in the instant case.

c. Right to a fair trial (Article 8) and to judicial protection (Article 25) in relation to the obligation to respect and protect rights (Article 1(1)).

29. The Commission has indicated before that "the question of a State's compliance with its obligations under Articles 8 and 25 is closely linked to the question of the applicability of exceptions to the requirement of exhaustion of domestic remedies." [FN7] The IACHR has already made a preliminary determination, above, as to the failure to fulfill these obligations, concluding that the exception under Article 46(2)(c) of the American Convention is applicable to the instant case. The Commission will proceed to analyze the information available in the file on the investigation into the violation of Víctor Manuel Oropeza's right to life, in order to determine if it meets the requirements established in the American Convention, specifically in the following provisions:

Article 1(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(1)

Every person has the right to a hearing, with due guarantees and within to 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.

Article 25(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.

[FN7] IACHR Annual Report 1997, Report N° 3/98 (case 11.221 -- Tarcisio Medina Charry), Colombia, OEA/Ser.L/V/II.98 Doc. 6 rev., April 13, 1998, para. 80, p. 506.

i. Reasonable period of time

30. More than eight years have passed since the assassination of the journalist Víctor Manuel Oropeza--a period of time the IACHR has determined to be unreasonable in this report. The investigation remains open, but not a single person has been established as materially or intellectually responsible for the assassination, nor has redress been provided in respect thereof. The Inter-American Court of Human Rights has said that the reasonable time referred to in Article 8(1) “is not an easily defined concept”, and has referred to judgments of the European Court of Human Rights in reaching determinations on the point. These judgments have established the following criteria for determining the reasonableness of the time taken in the process: the complexity of the matter; the procedural steps taken by the interested parties; and the conduct of the judicial authorities.[FN8]

[FN8] Inter-American Court of Human Rights -- Genie Lacayo case, Judgment of January 29, 1997, para. 77.

31. The information available in the file shows that it is not an extremely complex case. Two persons--Marco Arturo Salas Sánchez and Sergio Aguirre Torres-- were initially prosecuted but

were released when the CNDH determined that they had confessed to the crime under torture. The other arguments maintained by the State concerning alleged obstacles to the investigation, such as accusations among family members of the assassinated journalist, do not constitute obstacles in the judgment of the Commission. Indeed, there do not appear to be sufficient grounds for determining the significance of such accusations, since the information provided by the State itself shows that they were disregarded in the investigation of Oropeza's assassination.

32. In the light of this information, the Commission confirms its preliminary assessment with respect to the unreasonable duration of the investigation, which remains open without any result whatsoever almost eight years after the events took place. This conclusion will also enter into the analysis of the other required element of an investigation: effectiveness.

ii. Effectiveness

33. The jurisprudence of the inter-American system has defined the obligation to investigate as an "obligation of means or behavior," which cannot be considered not to have been met simply because the investigation failed to yield a satisfactory result, but "must be undertaken in a serious manner, and not as a mere formality, preordained to be ineffective." The investigation "must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests which 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." [FN9]

[FN9] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 177.

34. The IACHR has also expressed its view of the non-transferable nature of the State's obligation to investigate, try and punish the persons responsible for human rights violations.

One consequence is that public employees, unlike private individuals, have a legal obligation to denounce all crimes of public action that they come to learn of in the performance of their duties. The preceding statement is confirmed in those procedural regimes which deny the victim or the victim's relatives any standing, as the State monopolizes the ability to press criminal charges. And where such standing is provided for, its exercise is not compulsory, but an optional choice for the person who has suffered harm, and it does not take the place of State action. [FN10]

[FN10] IACHR, 1997 Annual Report, Report N° 52/97, (Case 11.218 - Arges Sequeira Mangas), Nicaragua, OEA/Ser.L/V/II.98 Doc.6 rev., April 13, 1998, paras. 96 and 97, pp. 714-715. The IACHR has also maintained that:

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 fulfil 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 N° 55/97, Case N° 11.137 (Juan Carlos Abella et al.) Argentina, paragraph 412, page 370.

35. Mexico's juridical system is characterized precisely by the fact that the exercise of penal action is the exclusive purview of the State--an issue to which the IACHR has referred on various occasions. In a paradigmatic case of serious violations of human rights in Mexico, the following statement was made:

The Commission believes that because of the exclusive and sole monopoly which the Office of the Public Prosecutor holds in Mexico's juridical system on the exercise of criminal proceedings, the rights of persons should be assured adequately and effectively, so that this competence is not exercised arbitrarily but in a serious and professional manner in order to guarantee the right to judicial protection established in Article 25 of the American Convention. In this connection, the Commission has already pointed out that "the monopoly on the exercise of criminal proceedings that is conferred on the Office of the Public Prosecutor in Mexico requires the establishment of an independent and autonomous, professional, efficient and impartial institution." [FN11]

[FN11] IACHR, 1997 Annual Report, Report N° 49/97 (Case N° 11.520 - Tomas Porfirio Rondin and others, "Aguas Blancas"), Mexico, par. 67, page 675. In the same vein, see the IACHR 1997 Annual Report, Report N° 48/97 (Case 11.411 - Severiano Santiz Gomez and others, "Ejido Morelia"), Mexico, par. 50, page 647.

36. The Inter-American Court of Human Rights has established that "the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted" for resulting damages.[FN12] For its part, the IACHR has held before the Inter-American Court that the State has the commitment to investigate and punish "all persons responsible for the violations concerned in the case".[FN13] The Commission has also stated:

It is the obligation of the Government to carry out a full, independent and impartial investigation into an alleged violation of the right to life. This obligation is incident to the Government's duty to protect and ensure the human rights recognized in the American Convention.[FN14]

[FN12] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 166.

[FN13] Inter-American Court of Human Rights, Benavides Cevallos case, Judgment of June 19, 1998, para. 51.

[FN14] IACHR, Report N° 10/95 (case 10.580), Ecuador, Annual Report 1995, OEA/Ser.L/V/II.91 Doc. 7, rev., February 28, 1995, paras. 46 and 48. In this report, the Commission observed that the investigation by Ecuadorian authorities lasted more than three

years, but even so, all possible measures to determine the truth had not yet been exhausted. The Commission also concluded that the investigation had been insufficient, which combined with the excessive delay constituted a violation of the right to justice and to knowledge of the truth concerning the whereabouts of the victim. See also IACHR, Reports 28/92, Argentina and 29/92, Uruguay, Annual Report 1992-1993, OEA/Ser.L/V/II.83.

37. Similarly, the United Nations Commission on Human Rights has affirmed that victims of human rights violations must be permitted to “know the truth about the acts committed, those responsible, and to obtain appropriate compensation”.^[FN15] In the United Nations system, the impunity of perpetrators of human rights violations has been defined as follows:

[impunity is] a breach of the State’s obligations to investigate violations, take appropriate measures in respect of their perpetrators, especially within the justice system, to ensure that they are prosecuted, judged, and sentenced to appropriate punishment, to assure the victims of effective recourse and remedy for the injury they have suffered, and to take all measures necessary to avoid the repetition of such violations.^[FN16]

[FN15] United Nations Human Rights Commission, Observations and Recommendations to the State of Guatemala, doc. CCPR/C/79/Add.63, para. 25.

[FN16] Expert on the question of impunity of perpetrators of civil and political rights violations with the United Nations, doc. E/CN.4/Sub.2/1997/20, para. 17. The non-governmental organization Amnesty International has also referred to the scope of investigations into human rights violations, asserting that “de facto impunity can occur when the authorities do not investigate human rights violations or even when they do investigate them, do not do so promptly and diligently in accordance with international standards in this area” (emphasis added). Amnesty International, amicus curiae memorial presented to the Inter-American Court of Human Rights in the Consuelo Benavides Cevallos case - Ecuador, December 18, 1997, para. 68, p. 23.

38. The Commission will analyze the available information to determine whether the investigation of the assassination of the journalist Víctor Manuel Oropeza, meets all of the requirements referred to above. In that regard, the State itself provided numerous details concerning steps not directly related to the investigation of the facts in the case, but rather to the punishment of several public officials for very serious irregularities in that investigation, including the torture of two persons with the aim of self-incrimination. Although it should be clear that such acts do not constitute the central issue in the instant case--which is why they will not be analyzed in this report in as much detail as the State provided in its communications--the IACHR considers these facts important insofar as they provide evidence concerning the ineffectiveness of the investigation. It is observed that six public officials were accused of abuse of authority, crimes against the administration of justice, and torture; that they themselves were not prosecuted or punished for these actions due to irregularities committed by the PGJ’s agents responsible for prosecuting those serious crimes; that one of these agents was “punished” with dismissal and the other with a reprimand; and that in view of this pattern of impunity, the CNDH

considered “totally unfulfilled” the recommendation issued by the state authorities that these actions be investigated and punished.

39. The central question in this investigation is obviously to determine the circumstances under which Víctor Manuel Oropeza was assassinated. In evaluating the implementation of CNDH’s recommendations, the State itself affirmed:

The results of the investigations are still being awaited in order to elucidate the hypotheses concerning the material and intellectual perpetrators of the homicide of the doctor and journalist Víctor Manuel Oropeza Contreras, acts referred to in the pre-trial investigation No. 4113/992.

40. Although the State has affirmed that it had been diligent in the homicide investigation, more than eight years have passed since the acts took place, and the State itself admits that it has still not determined who committed them and why. The only suspect is a person named Samuel de la Rosa Reyes, who is imprisoned in Texas, U.S.A., for a matter unrelated to Oropeza’s homicide. According to information submitted by the State, on November 14, 1997, Mexican consular officers and authorities from the Office of the PGJ of Chihuahua went to the high security prison in the city of Livingston, Texas, to interrogate Samuel Reyes. In the same submission, the State indicates that the detainee refused to declare, in spite of the insistence of the Mexican officers; and that they proceeded to take an official record of the event and considered the act finished.

41. At no time was the Commission informed of the grounds for considering this person as the “probable culprit” in the assassination, or the reasons why there is no evidence pointing to any other material perpetrators, since it is clear that a number of persons were involved as several eyewitnesses have stated. Nor is there any reason to expect a change in the total ineffectiveness of the investigation in the near future.

42. The State argued further, on several occasions, that the investigation had not produced the results expected because of the lack of cooperation by the victim’s family, and even that the journalist himself did not cooperate with authorities before he was killed. To justify the failure to investigate the connection between the assassination of Víctor Manuel Oropeza and the information he had published on the authorities, the State affirmed:

If Dr. Oropeza knew of a connection between certain police officers and the traffic in narcotics, why did he never bring formal charges against the persons allegedly engaging in such practices...if the motive of the crime was to silence Dr. Oropeza because of supposedly incriminating information in his possession, why then did the criminals not search for files in which Dr. Oropeza may have kept the information incriminating those persons. (sic)

43. The Commission considers that the intent to shift the responsibility for furnishing evidence identifying the perpetrators of the assassination to individuals, and the inactivity of the authorities in this regard, clearly demonstrate the State’s neglect of its investigative duty under the American Convention. With respect to this duty, the Inter-American Court has stated:

The State is obligated to investigate every situation involving a violation of the human rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, it has failed to comply with its duty to guarantee the free and full exercise of those rights to the persons within its jurisdiction. The same is true when it allows private persons or groups to act freely and with impunity to the detriment of the human rights recognized by the Convention.[FN17] (emphasis added).

[FN17] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 176.

44. The Commission has determined in this report that the Mexican State was responsible for an unwarranted delay in investigating the assassination of Víctor Manuel Oropeza. Despite its monopoly over the enforcement of criminal law, the State failed to perform a complete and serious investigation of the crime against the journalist as an inherent juridical duty, and therefore the judicial recourse available in Mexico has not been simple, swift, or effective. Accordingly, the Mexican State has violated, to the detriment of Víctor Manuel Oropeza's family, the rights to a fair trial and judicial protection enshrined in Articles 8 and 25 of the American Convention as they relate to the obligation to respect and protect such rights established in Article 1(1) of the aforementioned international instrument.

D. The right to freedom of thought and expression (Article 13)

45. The American Convention establishes the following right in its Article 13(1):

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

46. In its "General Report on the Situation of Human Rights in Mexico", the IACHR included a chapter in which it analyzes the right to freedom of expression. More specifically, the problems of violence and harassment of journalists in that country are addressed in the following terms:

Attacks on journalists are specifically intended to silence them, and so they also constitute violations of the right of a society to have free access to information. An independent and critical press is fundamental to ensuring respect for other liberties that are part of a democratic system of government and a state in which the rule of law prevails. [FN18]

[FN18] IACHR, Report on the Situation of Human Rights in Mexico, OEA/Ser.L/V/II.100, Doc. 7 rev.1, September 24 1998, par. 649, p. 142. That report makes reference to the case of Víctor Manuel Oropeza at paragraph 656. Also in that report, the IACHR expresses preoccupation for the allegations of serious acts of violence against journalists, which tend to increase, making

Mexico one of the countries in Latin America with the largest amount of reported aggressions against members of the media:

The Commission has been informed that during the current president's term of office, 428 incidents described as alleged violation of freedom of expression and information have been reported in Mexico, including 11 murders, 89 physical attacks, 67 threats, 57 acts of intimidation, and 14 kidnappings. These incidents, according to reports, have been classified by the Mexican authorities as common crimes, and not as violations of the freedom of expression and information. IACHR Report, par. 651.

47. The Commission has previously issued a report in another case regarding the murder of a journalist where--as in the case of Mr. Oropeza--,it was not possible to establish that State agents were responsible for the violation of the right to life.[FN19] In that case, the Commission established that the lack of an exhaustive investigation, that would lead to the punishment of all those responsible for the murder of the journalist, also constitutes a violation of the right to freedom of expression, due to the "chilling effect" of such impunity on every citizen. The analysis that follows shall be conducted along the lines of the precedent cited.

[FN19] IACHR Report N° 5/99 (Case 11.739 – Héctor Félix Miranda), February 23, 1999, pars. 41 to 52.

48. The right to freedom of expression is fundamental for the development of democracy and for the full-fledged exercise of human rights. [FN20] The Inter-American Court of Human Rights has referred to freedom of expression as "a cornerstone in the very existence of a democratic society...indispensable for the formation of public opinion." The Court added the following:

It is also a *conditio sine qua non* for the political parties, the labor unions, the scientific and cultural associations and, in general, any persons seeking to influence the people as a whole to be able to achieve full development. It is, finally, a condition to ensure that the community is sufficiently well informed when the time comes to exercise its options. Finally, it may be said that a society which is not well informed is not completely free.[FN21]

[FN20] In a recent study on freedom of expression and information in the Mexican legal system, published by the "Universidad Nacional Autónoma de México", the author concluded that:

The press is a means for the development of public opinion and, therefore, to make a democratic society possible. Accordingly, by its very nature it has the purpose of shedding light on the darkness that surrounds public affairs, rather than to just serve as a light to reflect social good, and so it must be afforded special juridical protection.

Ernesto Villanueva, Régimen jurídico de las libertades de expresión e información en México, Instituto de Investigaciones Jurídicas, Universidad Nacional Autónoma de México, 1998, p. 212. (unofficial translation)

[FN21] Inter-American Court of Human Rights, "Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 of the American Convention on Human Rights)", Advisory Opinion OC-5/85 of November 13, 1985, Series A N° 5 (1985), paragraph 70. The democratic system is closely related to the right to freedom of thought and expression, as understood also by the Inter-American Court:

The concept of rights and freedoms, as well as the guarantees thereof, cannot be separated from the system of values and principles which inspire them. In a democratic society, the rights and freedoms inherent to the human person, the guarantees applicable to them, and the rule of law constitute a triad. Each of its components defines itself, complements itself and depends on the other two in order to have meaning.

Inter-American Court of Human Rights, "Habeas Corpus in Emergency Situations" (Articles 27.2, 25.1 and 7.6 of the American Convention on Human Rights), Advisory Opinion OC-8/87, January 30, 1987, Series A N° 8, paragraph 26. Along the same lines, the Secretary General of the United Nations (UN) has considered that freedom of expression and of opinion together constitute the cornerstone of all the freedoms to which the United Nations is dedicated." Notes to the text of the draft International Pact on Human Rights (prepared by the Secretary General, 10 U.N. GAOR, Annexes (Item N° 28 on the agenda) 50, UN Doc. A/2929, 1955).

49. The United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has used similar terms in his recently issued report, which includes the following conclusion:

In several countries, democratic transformations and consolidations have brought about new liberties and freedoms. Freedom of expression has proved to be one of the most important elements in initiating change, contributing to peaceful transformations, as well as consolidating democratic regimes by providing the citizen with the means to participate in public affairs.

Unfortunately, long-standing patterns of harassment and oppression of persons whose views and opinions differ from those of persons holding power persist in a number of countries. In many instances, restrictions on the freedom of opinion and expression limit to a significant extent the possibility of violations becoming known and investigated. In the view of the Special Rapporteur, such trends perpetuate patterns such a government corruption and impunity.[FN22]

[FN22] United Nations, E/CN.4/1998/40, Report of the Special Rapporteur, Mr. Abid Hussain, submitted pursuant to Commission on Human Rights resolution 1997/26, 28 January 1998, pars. 1 and 2, p. 21. When addressing the problem of the situation of the right to freedom of opinion and expression in Mexico, the report mentions allegations of kidnapping, torture and killing of journalists in that country, linked to news published regarding police participation in acts of corruption (especially drug trafficking) and in violations of human rights. See in that regard par. 1, p. 17 of the report.

50. The IACHR finds that in the present case, the scope of Article 13(1) of the American Convention should be established in light of the norms contained in Article 29 of that international instrument:

No provision of this Convention shall be interpreted as:

a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein.

51. The Inter-American Court has established that "freedom of expression includes the giving and receiving of information and has a double dimension, individual and collective"; and that "the freedom and independence of journalists is a good which must be protected and ensured.[FN23] The Commission, for its part, has upheld the following concept:

Freedom of expression is universal and its concept embraces the juridical faculty which assists all persons, individually or collectively considered, to express, transmit and disseminate their thoughts; parallel and correlative thereto, the freedom to inform oneself is also universal, and it involves the collective right of persons to receive such information as others may impart to them without any interferences that may distort it.[FN24] (emphasis added)

[FN23] Inter-American Court of Human Rights, OC-5/85, paragraphs 75 and 79, respectively.

[FN24] The Inter-American Commission on Human Rights, 1980-81 Annual Report, OEA/Ser.L/V/II, page 122. it should also be mentioned that in 1997, the IACHR established a Rapporteurship on Freedom of Expression as a means of strengthening the activities performed pursuant to the competence granted to it by Articles 13 and 41 of the American Convention, among other sources. During the 98th Regular Meeting, the Commission approved the Rapporteur on Freedom of Expression's first report.

52. The U.N. Special Rapporteur for the matter under analysis has said, in the same regard, that "the right to seek and receive information is not simply a converse of the right to freedom of opinion and expression but a freedom on its own".[FN25]

[FN25] United Nations, *idem*, par. 11, p. 3.

53. In the broad sense given to it by universal case law, the right to freedom of expression includes, in the instant case, the freedom that the State should have guaranteed for Víctor Manuel Oropeza to express and impart his ideas, as well as the complementary freedom of all citizens to receive such information without illegal or unjustified interference.[FN26] It is therefore to be established in this report whether the failure to investigate the assassination of Víctor Manuel Oropeza constitutes a violation of the right of all citizens to freely receive "information and ideas of all kinds".

[FN26] Article 32(2) of the American Convention provides that “The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society”. Any limitation on the right to freedom of expression must be consistent with these parameters.

54. The information furnished by the petitioners concerning the link between the journalist’s assassination and the content of his publications was dismissed by the State, which contended the petitioners were not qualified to investigate and, therefore, the information they provided was not valid. In this regard, the State affirmed:

The information gathered by an informal investigation supposedly conducted by the petitioners into the homicide in question, and included in their communication, comes from a nongovernmental organization that does not have the technical competence or expertise to investigate a case of this complexity. It is therefore necessary to emphasize that the investigative reasonings and approaches followed are based mainly on legally unsupportable perceptions and deductions with the aim of finding the probable perpetrator.

Some nongovernmental organizations, despite their commendable objectives, base such investigations and reports on hypotheses in the absence of the basic technical methodologies of criminal law and the impartiality required to give their versions the legal validity that might permit the competent authority to uncover the historical and legal truths of the case concerned.

55. In this regard, it should be recalled that the Inter-American Court has recognized the capacity of an international human rights organization to evaluate evidence with criteria less formal than those applied in domestic legal systems, since “in trials concerning human rights violations, the State’s defense cannot rest on the impossibility for the plaintiff to provide evidence which, in many cases, cannot be obtained without the cooperation of the State”. [FN27] Similarly, the IACHR has already established that “...probative elements which are different from direct proof, such as circumstantial evidence, clues, presumptions, press articles and, where relevant, reports of non-governmental organizations may be used, provided that the conclusions drawn therefrom are consistent with the facts and corroborate the testimony or events alleged by the complainants.” [FN28]

[FN27] Inter-American Human Rights, above cited judgment in the case of Velásquez Rodríguez, para. 65.

[FN28] IACHR, Report N° 55/97 cited above, para. 407.

56. Based on the foregoing, it is clear that the elements provided by the petitioners can be used in the analysis of the instant case. Although it has not been definitively and conclusively determined who the material and intellectual perpetrator(s) of the crime was or were, the facts show that Víctor Manuel Oropeza was threatened and subsequently assassinated because of the

content of his articles in the press. Indeed, the file contains abundant information--not disputed by the State--directly linking Oropeza's public activities and the content of his column with the grave threats prior to his assassination.

57. The Commission considers that the consistency and veracity of the information provided by the petitioners is sufficient to establish that Mr. Víctor Manuel Oropeza was the target of threats because of his journalistic activity and his public denunciation of authorities he considered corrupt and implicated in human rights violations. ICHD also observes that the State has not demonstrated how the "juridical qualifications" or "technical qualifications and expertise" that it attributes exclusively to itself have contributed to fulfillment of its duty to investigate and punish the perpetrators of the assassination of Víctor Manuel Oropeza. What does appear clear and irrefutable in this case is that a journalist openly and directly denounced authorities in his locality; and that he was brutally assassinated after that. It is also an undisputed fact that to date there it has not been possible to establish in the jurisdictional bodies of Mexico who committed the crime and why; therefore, it has not been possible to bring these criminals to court, try them under the rules of due process, and punish them in accordance with the law.

58. As mentioned above, the resignation by a State of its duty to fully investigate the killing of a journalist is especially serious because of its impact on society. Likewise, this sort of crime has a "chilling effect" on other journalists, but also on every citizen, as it generates a fear of denouncing abuses, harassment and all kinds of illegal actions. The Commission considers that such an effect can only be avoided by swift action by the respective State to punish all those that may be responsible, as is its duty under international law and domestic law. Therefore, the Mexican State must send a strong message to society that there shall be no tolerance for those who engage in human rights violations of this nature. In this context, one of the Principles of the Declaration of Chapultepec states:

Assassination, kidnapping, pressures, intimidation, unjust imprisonment of newspaper reporters, physical destruction of the means of communication, violence of any sort and the impunity of the aggressors seriously hamper freedom of expression and of the press. Such acts must be promptly investigated and severely punished. (Emphasis added).[FN29]

[FN29] Principle N° 5 of the Declaration of Chapultepec, adopted by the Hemispheric Conference on Freedom of Expression, held in Mexico City on March 11, 1994. The President of Mexico at the time, Carlos Salinas de Gortari, signed the Declaration on the day following approval; as of the date of adoption of the instant report, the Declaration had also been signed by representatives of Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Puerto Rico, Uruguay, and the United States. Principle N° 1 of the Declaration states that "There can be free persons or societies without freedom of expression and of the press. The exercise thereof is not a concession of the authorities: it is an inalienable right of the people." In addition, the IAPA organized the Hemispheric Conference on "Unpunished crimes against journalists," which took place in Guatemala City from July 30 through August 1, 1997. The following resolutions were adopted at that Conference:

TO CONDEMN assassination and all physical violence against journalists as one of the greatest crimes against society because it hampers freedom of expression and thus affects all other rights and freedoms.

TO CONDEMN action as an accessory, or any failure to act, on the part of the persons who are responsible for investigating or punishing such crimes, thus leaving them unpunished and thereby further compounding the seriousness thereof;

TO DEMAND that the authorities carry out their duty to prevent, investigate and punish such crimes and to repair the consequences thereof.

59. In addition, the United Nations Organization for Education, Science and Culture (UNESCO) has expressed its concern over the growing number of journalists assassinated in the past ten years as a result of exercising their profession, and over the impunity of the persons responsible for such crimes. UNESCO made the following recommendations, among others, to its member states:

- a. That the governments adopt the principle of not permitting the statute of limitations to expire on crimes against the person when they are perpetrated to impede the exercise of freedom of information and expression or when intended to obstruct justice;
- b. That the governments improve legislation to provide for the trial and conviction of the masterminds of murders of those who exercise the right to freedom of expression.[FN30]

[FN30] UNESCO Resolution 29/C/HR. 120 of November 12, 1997. The petitioners alluded to the adoption of that Resolution in their letter of February 13, 1998:

Indeed, the attitude of the highest Mexican authority was fundamental in supporting the initiative of the IAPA, later taken up by the Governments of Uruguay, and later by Mexico, Germany, Colombia and Costa Rica...

Also noteworthy are these expressions:

The fundamental freedoms are very vulnerable, and none more so than freedom of expression and freedom of the press, which are constantly being curtailed by censorship, imprisonment and sometimes death...This year the list of violations of every kind, including the murder of some 50 journalists, makes it only too clear, once again, that no region of the world is spared. These violations are the work of governments, but also of organised crime and extremist groups wishing to intimidate a profession that could stand in their way...UNESCO will take action whenever action is necessary, since any setback for freedom of expression and freedom of the press is a setback for democracy.

Message delivered on May 3, 1998 by UNESCO Director-General Federico Mayor, on the celebration of World Press Freedom Day.

60. This preoccupation is shared by the U.N. Special Rapporteur for the promotion and protection of the right to freedom of opinion and expression, who has said that:

Governments should...make special efforts to investigate all acts or threats of acts of violence, intimidation or harassment directed against media personnel or offices and bring those responsible to justice.[FN31]

[FN31]United Nations, report cited above, par. 3, p. 6.

61. In the instant case, the IACHR has analyzed the content of the right to freedom of expression, the importance assigned to this right by the international community, especially bodies concerned with the observance and respect of human rights. In that context, the Commission concludes that the failure to investigate and criminally sanction the material and intellectual perpetrators of the assassination of Víctor Manuel Oropeza in accordance with Mexican domestic laws and procedures, represents a violation of the right to public and free expression and information. The IACHR also concludes that the homicide of the journalist constitutes an aggression against all citizens inclined to denounce arbitrary acts and abuses to society, aggravated by the impunity of one or more intellectual perpetrators. Accordingly, the failure to perform a serious and complete investigation of the facts in the instant case makes the Mexican State internationally responsible for violation of the right to freedom of expression of Víctor Manuel Oropeza and citizens in general to receive information freely and to learn the truth about acts that have occurred.

V. ACTIONS AFTER REPORT N° 18/99

62. On February 25, 1999, in accordance with Article 50 of the American Convention, the Commission adopted Report N° 18/99 on this case and transmitted it to the Mexican State, along with the corresponding recommendations. The State sent its comments on April 28, 1999.

63. The Mexican State maintains the following:

During the processing of the case, no evidence has been found that could corroborate the alleged link between Mr. Víctor Manuel Oropeza's journalistic work and his murder.

The competent authorities have taken all the steps necessary to establish the facts of the case and to bring the culprits to trial. The investigations have been conducted seriously, impartially, and exhaustively from the start, despite the obstacles they had to contend with—obstacles that cannot be blamed on the agencies of the State and that have, on the contrary, involved relatives of the deceased himself.

The reasons adduced by the IACHR to indicate that this is not a complex case are groundless, as shown by the fact that two preliminary investigations were opened into the murder of the aforesaid journalist.

64. In addition, since the IACHR ruled in Report 18/99 that the Mexican State was not responsible for violating Mr. Oropeza's right to life, the State remarks that "it therefore does not understand how it could have violated Mr. Oropeza's right to freedom of expression, a violation

that could occur only as a result of the murder, if the State had no responsibility in that deplorable incident.” In the following lines, the State claims that “it would therefore follow that rights can be violated by actions committed after the death of the person entitled to those rights.”

65. First of all, the IACHR sees a need to reiterate that the violations in this case do not arise directly from the murder of journalist Víctor Manuel Oropeza, but rather from the lack of an investigation conducted in accordance with the rules of due process and the obligation imposed by Article 1(1) of the American Convention.

66. The Commission must point out that in the above paragraphs it has taken up the arguments offered by the State in its comments but in so doing has not forgotten that the current stage in the proceedings is intended to determine whether the recommendations contained in Report 18/99 on the merits of this case have been complied with. The following paragraphs will analyze the information provided by the State regarding its compliance with those recommendations.

67. As regards the first recommendation (“investigate in a serious, impartial, and exhaustive manner in order to determine the criminal responsibility of all of the perpetrators of Víctor Manuel Oropeza’s assassination”), the State repeats that the Office of the PGJ of Chihuahua began two preliminary investigations into the incident, one of which concluded with a criminal case that was dismissed pursuant to a recommendation issued by the CNDH.[FN32] Regarding the other investigation, the State reports that “preliminary investigation No. 2704/92, which is still being prepared, was opened following an accusation naming the journalist’s own children as being responsible for his murder and also involving his wife.” It repeats that the authorities took steps to obtain a statement from Samuel de la Rosa Reyes, who is currently imprisoned in Texas, USA, for a matter unrelated to this case. The State also commented that:

All the expert work was directly overseen by the family of Mr. Oropeza Contreras, chiefly by his eldest son, Víctor Manuel Oropeza. This individual was present at all times during the investigation, and it was he who on several occasions hindered the expert examination of the crime scene and restricted access to it by the local judicial police. He also dismantled and vacated his father’s office and, without authorization, removed objects from the crime scene.

[FN32] See paragraphs 31 and 38 above.

68. First of all, the Commission notes that at this juncture the State provides no information regarding the progress of the investigation; instead, it simply repeats the position it adopted during the processing of this case, basing itself on events that occurred several years ago. Moreover, the incidents described in the above paragraph point to an attempt by the Mexican State to avoid responsibility for the deficiencies of the investigation and to transfer blame to the victim’s relatives. The State does not report whether it has taken any steps to corroborate those allegations of obstruction of justice--which, if true, would constitute very serious crimes--or whether the guilty have been punished.

69. It is unacceptable for a person, even a relative of the victim, to interfere in such a way (“on several occasions”) in the investigation of a crime as serious as this murder without the authorities responsible for the investigation intervening in some way or other. Neither does the State offer an explanation of how those actions affected the investigation as a whole, to the point of rendering it absolutely ineffective. In the absence of such information, the Commission believes that the alleged interference of individuals in the judicial investigation must be seen along with all the other elements analyzed above that indicate a lack of seriousness in the investigation of the murder of journalist Víctor Manuel Oropeza.

70. The second recommendation in Report N° 18/99 requires the investigation and ultimate punishment of any individuals who committed cover-up actions or crimes against the administration of justice, impeding the investigation of Mr. Oropeza’s murder. In this regard, the State notes the following:

It is important to state that the investigations carried out indicate no cover-up actions or crimes against the administration of justice. However, the CNDH issued Recommendation 13/92, which requested that local and federal public officials involved in the investigation of this case be punished and that the preliminary investigation aimed at establishing the facts be continued. This recommendation has currently been partially complied with, in view of the status of preliminary investigation 2704/92.

71. The State also reports that the Chihuahua State Human Rights Commission issued Recommendation 43/94 following the complaint filed by the widow of Víctor Manuel Oropeza because the victim’s children were not summoned to appear in the defamation and calumny proceedings she had begun after being named as a “possible perpetrator of her husband’s murder.” It adds that “at present, Recommendation 43/94 has been complied with in full.”

72. The State then reports that:

Additionally, the Chihuahua State Prosecutor General’s Office will forward to Office of the Comptroller for Internal Affairs, in accordance with the terms of Article 21 of [that Office’s] regulations, the findings both of criminal case 182/91, lodged with the Third Criminal Court, and of preliminary investigation No. 2704/92, to enable that agency to conduct an investigation to determine whether there were cover-up actions or crimes against the administration of justice that impeded the complete investigation of the murder of Víctor Manuel Oropeza Contreras.

73. The relevance of the Chihuahua Human Rights Commission’s recommendation N° 43/94 in this context is not clear. In contrast, the IACHR believes that the State’s comments confirm that there is enough evidence to begin a serious investigation into the possible cover-up and obstruction of justice. Particular note should be taken of the Chihuahua Office of the PGJ’s initiative to determine whether a cover-up or crimes against the administration of justice were committed. As of the date of this report, no updated information had been received indicating whether those steps have been taken and what results were obtained. If those investigations are conducted and completed in compliance with the rules of due process, the IACHR will be able to rule that the recommendation at hand has been complied with.

74. Report N° 18/99's final recommendation refers to adequate redress for the violations established in this case, to be given to the relatives of Víctor Manuel Oropeza. In this regard, the State notes that, "compensation for damages should be sought on an ex officio basis by the Office of the PGJ and ordered by the court when judgment is handed down, at which time the amount in question is to be determined." The Mexican State concludes its comments in the following terms:

The processing of this case is inadmissible since, as can be seen in the text of this document, there was no violation of the right to free expression, to a fair trial, or to judicial protection, and neither have the domestic remedies available to the petitioners been exhausted.

From the actions taken by the Mexican State to establish the facts described in this case, it can be seen that Mexico neither tolerates nor assents to these alleged incidents.

75. In this regard the IACHR must reiterate that the admissibility of the case is not an issue at this stage in the proceedings, since it was already decided on at the appropriate time. Taking into consideration all the above, it is clear that the Mexican State has not taken the steps necessary to comply with the recommendations of Report N° 18/99. The Commission recalls the following statement by the Inter-American Court:

In accordance with the principle of good faith, embodied in the aforesaid Article 31(1) of the Vienna Convention, if a State signs and ratifies an international treaty, especially one concerning human rights, such as the American Convention, it has the obligation to make every effort to apply with the recommendations of a protection organ such as the Inter-American Commission, which is, indeed, one of the principal organs of the Organization of American States, whose function is "to promote the observance and defense of human rights" in the hemisphere.[FN33]

[FN33] Inter-American Court of Human Rights, Loayza Tamayo Case, Judgment of September 17, 1997, paragraph 80.

VI. CONCLUSIONS

76. The Commission concludes that the State violated, to the detriment of Víctor Manuel Oropeza and all citizens, the right to freedom of expression guaranteed by Article 13 of the American Convention; and, to the detriment of his family, the right to a fair trial and judicial protection protected by Articles 8 and 25 of the same Convention as they relate to the general obligation to respect and guarantee the rights referred to in Article 1(1) of the Convention. On the other hand, the IACHR does not have grounds to establish that the Mexican State is responsible for violation of the rights to life, humane treatment, and equal protection of the law.

VII. RECOMMENDATIONS

77. Based on the analysis and conclusions in this report,

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

1. Investigate in a complete, impartial, and effective manner in order to determine the criminal responsibility of all of the perpetrators of Víctor Manuel Oropeza's assassination.
2. Investigate in a complete, impartial, and effective manner in order to determine whether cover-up actions were taken and crimes were committed against the Administration of Justice, including the possible participation of judicial personnel, which impeded the complete investigation of the facts addressed in this report; and, as appropriate, apply criminal, administrative, and/or disciplinary sanctions.
3. Provide redress and proper compensation to the family members of Víctor Manuel Oropeza for the violations established herein.

VIII. PUBLICATION

78. On October 4, 1999, the Commission sent Report N° 93/99--the text of which is above--to the Mexican State and to the petitioners, in keeping with Article 51(2) of the American Convention; and it set a deadline of one month for the State to comply with the foregoing recommendations. On November 4, 1999, the State sent a communication containing observations on the facts and the law, which essentially constitute the repetition of its position during the proceedings in this case, and which have already been analyzed at the appropriate stage. In accordance with Article 51(2), the Commission, in this phase of the process, shall confine itself to assessing the measures taken by the Mexican State to comply with the recommendations and to remedy the situation under review.

79. The State's information on the recommendations issued by the IACHR in Report N° 93/99 mentions the two investigations opened by the Office of the PGJ in Chihuahua, and it indicates that "the first one was initiated by the authorities and the second one, which is still in the preliminary stage, was opened on the basis of a report that pointed to the sons of the journalist as the murderers; they, in turn, accused Oropeza's wife for the crime". The State adds that "under its powers, the Office of the PGJ may still appear before the jurisdictional organs to request criminal proceedings if new evidence is found". Therefore, the State considers that domestic remedies have not been exhausted, and that the exceptions do not apply to this case because of the complex nature of the investigation. The State adds that "the investigations carried out so far show no evidence of any obstruction of justice or similar crimes in this case" and that "reparations for the damages must be requested by the Office of the PGJ under its powers; the courts shall establish the amount in the sentence on the case".

80. The Commission will not address the State's arguments on admissibility, since they were already discussed in the appropriate stage of the proceedings. As to the information supplied by the Mexican State regarding the recommendations of Report N° 93/99, the IACHR considers that the State has not adopted any measure to comply with them. The Commission also considers that the position assumed by the State, which consists of presenting arguments on admissibility after

the Commission has issued a decision on the merits of the case, reveals the unwillingness to comply with the recommendations in this case.

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

Done and signed by the Inter-American Commission on Human Rights, in the city of San José, Costa Rica, on November 19, 1999. (Signed): Robert K. Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second-Vice Chairman; Commissioners Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exumé.