

REPORT No. 82/13
CASE 12.679
MERITS
JOSÉ AGAPITO RUANO TORRES AND RELATIVES
EL SALVADOR
November 4, 2013

I.	SUMMARY	1
II.	PROCESSING BY THE COMMISSION	2
III.	POSITIONS OF THE PARTIES	2
	A. The petitioner	2
	B. The State	7
IV.	ESTABLISHED FACTS.....	10
	A. Identification and arrest of José Agapito Ruano Torres	10
	B. Criminal proceedings against José Agapito Ruano Torres	15
V.	ANALYSIS OF LAW	28
	A. The criminal prosecution and incarceration of Mr. Ruano Torres	28
	1. The principle of presumption of innocence.....	29
	2. The right of defense.....	34
	3. The remedies filed in connection with the criminal trial.....	35
	4. The incarceration of Mr. Ruano Torres as a result of the criminal trial	36
	B. The alleged violations of the right to humane treatment and the investigations related to those facts	37
	1. The violence during his arrest and the torture allegations	37
	2. The investigations conducted regarding these facts	40
	C. Impact on the family of José Agapito Ruano Torres.....	42
VI.	CONCLUSIONS.....	43
VII.	RECOMMENDATIONS.....	43

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I. SUMMARY

1. On December 12, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission” or “the IACHR”) received a petition lodged by Pedro Torres Hércules (hereinafter “the petitioner”), which alleged that the Republic of El Salvador (hereinafter “the State,” “El Salvador” or “the Salvadoran State”) bore international responsibility for the presumed violation of the rights to judicial guarantees and judicial protection, personal integrity and personal liberty of José Agapito Ruano Torres (hereinafter “the alleged victim”).

2. On October 17, 2008, the Commission approved the report on admissibility No. 77/08, where it concluded that it was competent to hear the petition lodged by the petitioner and, based on arguments of fact and law, and without prejudging the merits of the matter, decided to declare the petition admissible for the alleged violation of Articles 5, 7, 8, 25 of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”), in connection with the general obligation enshrined in Article 1(1) of said international instrument.

3. During the processing on the merits, the petitioner argued that José Agapito Ruano Torres had been unfairly tried and convicted of kidnapping due to numerous omissions and irregularities committed during the criminal proceedings. The petitioner also alleged that Mr. Ruano Torres had been tortured at the time of his arrest and that, due to his irregular conviction, his confinement had been arbitrary. For its part, the State contended that the alleged violations never took place whereas Mr. Ruano Torres’ guilt had been proven in duly regulated criminal proceedings.

4. After examining the positions of the parties, the Inter-American Commission concluded that, first, the Salvadoran State was responsible for violating the rights to judicial guarantees and to judicial protection enshrined in Articles 8 and 25 of the American Convention in connection with the obligations established in Article 1(1) of said instrument, to the detriment of José Agapito Ruano Torres. Second, in the Commission’s opinion, the State was responsible for violating the right to personal liberty established in Article 7 of the American Convention in connection with Article 1(1) of said instrument, to the detriment of José Agapito Ruano Torres.

5. Third, the Commission considered that the State had violated the right to personal integrity enshrined in Article 5 of the American Convention in connection with Article 1(1) of said instrument to the detriment of José Agapito Ruano Torres. Fourth, the Commission concluded that the State violated the rights to judicial guarantees and judicial protection enshrined in Articles 8 and 25 of the American Convention in connection with the obligations established in Articles 5 and 1(1) of said instrument to the detriment of José Agapito Ruano Torres. The Commission also concluded that the State was responsible for violating the right to personal integrity established in Article 5 of the American Convention in connection with Article 1(1) of said instrument to the detriment of the relatives of José

Agapito Ruano Torres, to wit: his spouse María Maribel Guevara de Ruano, his son Oscar Manuel Ruano Guevara, his daughter Keili Lisbet Ruano Guevara and his cousin Pedro Torres Hércules.

II. PROCESSING BY THE COMMISSION

6. On December 12, 2003, the Commission received the petition dated November 27, 2003. The processing from the date the petition was lodged until the decision on admissibility was made is explained in full detail in the report on admissibility 77/08, issued on October 17, 2008.¹

7. During the analysis on the merits, the Commission received information from the petitioner on the following dates: August 19, 2008; December 17, 2009; January 12, 2009; March 19, 2009; October 19, 2009; May 27, 2010; September 24, 2010; September 26, 2011; April 13, 2012; November 30, 2012; January 28, 2013; and July 8, 2013. On the other hand, the IACHR received information from the State on the following dates: January 22, 2009; February 3, 2009; May 12, 2009; August 13, 2009; September 9, 2009; January 19, 2010; March 2, 2010; and August 3, 2010. Those communications were duly forwarded to the parties.

III. POSITIONS OF THE PARTIES

A. The petitioner

8. The petitioner contends that José Agapito Ruano Torres was unfairly tried and convicted for the kidnapping of Jaime Rodríguez Marroquín, on August 22, 2000. He argues that Mr. Ruano Torres was convicted and sentenced to 15 years in prison based on a judicial mistake regarding his identity and, therefore, the detention was arbitrary. The petitioner also contends that throughout the criminal trial of José Agapito Ruano Torres various public authorities taking part in the proceedings such as judges, prosecutors and public defenders were guilty of serious mistakes and omissions. The petitioner further points out that Mr. Ruano Torres was tortured at the time of his arrest.

9. In that regard, the petitioner maintains that the facts reported to the authorities began when Francisco Amaya Villalta, who was arrested *in fraganti* for extortion, confessed, in a preliminary statement made at the prosecutor's office, to taking part in the kidnapping of Jaime Rodríguez Marroquín. The petitioner asserts that Mr. Amaya Villalta named every individual involved in the kidnapping with the exception of one whom "he only knew as *Chopo*".

10. The petitioner alleges that, on the basis of that confession, National Civil Police investigators conducted only one inquiry which consisted of asking one person who lived in the area if he knew who "*Chopo*" was. The petitioner claims that, due to negligence, the name of that person was not included in the police identification record nor was it part of the case file. As a result, the petitioner claims, the police officers mistakenly concluded that the nickname belonged to José Agapito Ruano Torres when, in fact, the nickname belonged to one of his brothers, Rodolfo Ruano Torres. The petitioner contends that neither the police investigators nor the prosecutors compared the information regarding the address and physical characteristics of *Chopo*, which was provided by Francisco Amaya Villalta, with the information on José Agapito Ruano Torres' identification card which was considerably different.

¹ IACHR, Report No. 77/08, Petition 1094-3, Admissibility, José Agapito Ruano Torres, October 17, 2008.

11. The petitioner charges that police investigators subsequently persuaded Francisco Amaya Villalta to make a second statement, but of a judicial nature, indicating that José Agapito Ruano Torres was indeed nicknamed *Chopo*. According to the petitioner, this was done in order for Francisco Amaya Villalta to benefit from a plea bargain to avoid prosecution for the kidnapping offense. However, the petitioner charges that such action was illegal and arbitrary given that i) the Justice of the Peace of Guazapa did not provide the legal grounds to validate the offer of a plea bargain in this particular case; ii) Francisco Amaya Villalta was not eligible for this benefit since he was not a “minor participant” but, rather, he was one of the masterminds of the kidnapping, he had been previously convicted of several crimes and had changed his identity; iii) neither Mr. Ruano Torres nor his defense counsel were present when Mr. Francisco Amaya Villalta made this sworn statement, and iv) this statement was not provided without fear of reprisal but had been drafted by the prosecutors themselves as evidenced by the use of “a series of technical legal terms.”

12. The petitioner contends that, on the basis of that statement, on October 17, 2000, José Agapito Ruano Torres was arrested and subjected to acts of torture. He further alleges that police officers entered Mr. Ruano Torres’ home while he was sleeping with his spouse and his two-year-old son. The petitioner says that the officers broke down the door to the home, pushed Mr. Ruano Torres to the ground, beat him and handcuffed him. The petitioner further contends that Mr. Ruano Torres was dragged on the floor until taken out of his home, that a rope was placed around his neck and that he was choked to the point of “losing consciousness,” and that his head was pressed against a mound of manure.

13. The petitioner also points out that the police officers threatened to kill José Agapito Ruano Torres and even threatened to rape him “with an object they would show him,” in order to force him to confess that he was “*Chopo*.” The petitioner states that right in front of the television cameras covering the events, Mr. Ruano Torres said he was innocent and that he was not called *Chopo* by others. However, the petitioner maintains that the police officers would say that “they were taking him because he was a kidnapper.” In that regard, the petitioner contends that the communications media irresponsibly recorded Mr. Agapito Torres and reported information assuming that he was one of the kidnappers. He further indicates that, as noted in the medical report completed after his detention, José Agapito Ruano Torres had several lacerations that resulted from the various forms of mistreatment to which he was subjected by the police officers.

14. The petitioner alleges that these facts were reported to the Disciplinary Inquiry Unit of the National Civil Police. But, the petitioner says, that unit argued that it found no grounds to merit an investigation of the police agents’ conduct and the case was therefore forwarded to the sub-regional Office of the Attorney General in Apopa. The petitioner argues that even though the prosecutor examining the case had the names of the police officers that took part in the abuse, he did not pursue the inquiry given that “the subject of the investigation was a kidnapping offense.”

15. The petitioner points out that neither the search nor arrest warrants nor the record that the accused was informed of his rights bore the signature of any attorney. On the contrary, the petitioner points out that later in the process, for purposes of “meeting a requirement,” the signature of a public defender who had never met José Agapito Ruano Torres was added.

16. The petitioner alleges that Mr. Ruano Torres was assigned two public defenders prior to the preliminary hearing before the Justice of the Peace for and in Tonacatepeque. The petitioner contends that the public defenders did not allow Mr. Ruano Torres to testify although he wanted to maintain his

innocence and reiterate that it was his brother Rodolfo Ruano Torres who was known as *Chopo*. The petitioner adds that Mr. José Agapito Ruano Torres asked the public defenders to file motions to show that he was not *Chopo*, and that they request annulment of the actions carried out to locate and identify him as an alleged perpetrator of the kidnapping. But, the petitioner points out, those requests were turned down by the public defenders who themselves argued that “no one can beat the system” and that “nothing can be done [...] there is no evidence that can overcome the testimony of a person who is the beneficiary of a plea bargain.”

17. The petitioner states that José Agapito Ruano Torres’ brother, Rodolfo, wanted to testify at the trial to make it clear that *Chopo* was his nickname and that he had indeed taken part in the kidnapping of Mr. Rodríguez Marroquín. However, the petitioner alleges that Rodolfo’s offer to testify was rejected by i) the prosecutors who did not want to take the testimony; ii) the various courts in which it was argued that “the evidence could not be corroborated,” and that “it was not the appropriate time in the proceedings do so,” and iii) Mr. Ruano Torres’ own public defenders who argued that “if the witness mentions him it would make him look guilty,” and that “one brother would be the kidnapper and the other the extortionist.”

18. In addition, the petitioner states that during the line-up identification the prosecutor told the victim to point out José Agapito Ruano Torres as one of the persons taking part in the kidnapping. The petitioner also asserts that the names registered in the record of the line-up identification did not match the persons who actually took part in the process. He adds that despite requests made by Mr. Ruano Torres, the public defenders did not file any motions seeking to have the line-up identification declared illegal. Furthermore, the petitioner says, even when he confronted one of the public defenders present at the lineup identification about the illegality of the process, the public defender merely responded that “he had not seen anything because his attention was focused on the young man.”

19. The petitioner points out that, given the failings exhibited by the public defense team, numerous requests were made to change the defenders assigned to the case. However, the petitioner says, those requests were turned down repeatedly until the situation was brought directly to the attention of the National Coordinator of Public Defenders and a third attorney was added to help the other two public defenders. The petitioner states that when the new attorney was asked to file for annulment of the line-up identification the attorney responded that she could not do so because “it would be detrimental to her fellow defender” and, she further stated, “jail doesn’t swallow up anyone.”

20. The petitioner states that several motions were filed in the various courts requesting the annulment of the line-up identification. However, he adds, those motions were rejected on grounds that the appropriate phase to consider them had passed and that “if those motions were going to be considered it would be [at] the appropriate time in the proceedings.” The petitioner also alleges that he lodged a petition with the Office of the Legal Advisor of the Office of the Attorney General charging irregularities in the conduct of the prosecutors during the trial. But, the petitioner says, the only thing he was asked was whether “he knew what it meant to accuse a prosecutor.”

21. The petitioner states that, faced with all the failings of his defense team, on December 7, 2000, Mr. Ruano Torres filed for a writ of *habeas corpus* alleging his illegal and arbitrary detention due to the mistake committed in identifying the person responsible for the kidnapping. The petitioner alleges that the petition was resolved almost a year later, on August 7, 2001, by the Constitutional Chamber of the Supreme Court of Justice. The petitioner adds that the court decided that the petition should be archived and that Mr. Ruano Torres should remain in custody. In that regard, the petitioner

contends that the petition was not effective because the court's decision referred only to the fact that Mr. Ruano Torres had been identified prior to his arrest and that the police officers were fully informed of his identity and his place of residence.

22. The petitioner points out that the alleged victim sought to protect his own rights due to the refusal of his public defense team to file any motions. In that regard, the petitioner alleges that Mr. Ruano Torres filed two briefs with the Second Trial Court on June 18 and on September 5, 2001, respectively. The petitioner indicates that the briefs requested that the actions of the National Civil Police officers be investigated and also requested that investigators be sent to his area of residence in order to verify that, in fact, the nickname *Chopo* belonged to his brother Rodolfo Ruano Torres.

23. The petitioner also contends that allegations were made with regard to the failings of the public defenders assigned to Mr. Ruano Torres, denouncing the fact that he had been ordered not to testify and that his case had suffered in each of the proceedings in which he had taken part. The petitioner also points out that allegations of fraud were lodged regarding the line-up identification and that the precise identity of the person known as Chopo was available since he was Rodolfo, the brother of José Agapito Ruano Torres, who was willing to come forward and testify. However, the petitioner says, the first request was denied on grounds that the investigative phase had concluded and, it was pointed out, that "the request should have been made by your defender at the appropriate time." The second request was also denied without any explanation given.

24. The petitioner points out that given the constant failings of Mr. Ruano Torres' public defenders during the proceedings, they were able to obtain enough money to hire a private attorney which they did on September 13, 2001. But, the petitioner says, due to the fact that the Second Trial Court rejected the motion to suspend the public hearing in order for the attorney to study the case, Mr. Ruano Torres revoked the power of attorney granted to private counsel, and, the petitioner adds, the public defenders had to represent him during the final stage of the proceedings.

25. The petitioner says that during the public hearing held before the Second Trial Court, Rodolfo Ruano Torres, José Agapito's brother, tried to testify to try to clarify that he was known as Chopo and that he was the one who took part in the kidnapping. However, the petitioner points out, his offer to testify was not accepted. The petitioner adds that at that public hearing the victim of the kidnapping stated that the identification of his kidnappers was based on the images disseminated by the media. The petitioner also states that the court refused to allow the introduction of the confession of Toribio Chiquillo Rodríguez, one of the persons charged with the kidnapping, who said that José Agapito Ruano Torres was innocent. "...the person taking part, whom I know, and was present in the perpetration of the fact and is identified by the alias *Chopo* [and] whose name is Rodolfo Ruano Torres". The petitioner further states that Mr. Ruano Torres was not allowed to testify even though he stated "I am willing to testify."

26. The petitioner states that the public defenders of José Agapito Ruano Torres did not file any motions on his behalf during the public hearing and did not appeal the conviction handed down on October 5, 2001, which sentenced Mr. Ruano Torres to fifteen years in jail. The petitioner argues that there were motions that could have been filed only by the defense such as a motion for revocation of judgment with supplementary appeal which the public defenders neglected to file. The petitioner contends that one of the public defenders for Mr. Ruano Torres told him that "it has been proven that no one can overcome the system and, therefore, no motions would be filed."

27. Faced with that situation, the petitioner alleges that on August 11 and on September 22, 2003, Mr. Ruano Torres filed on his own behalf with the Second Trial Court in and for San Salvador, motions to review the conviction and offered as witnesses i) his brother, Rodolfo Ruano Torres, also known as *Chopo* and who is willing to testify to taking part in the kidnapping, and ii) Toribio Chiquillo Rodríguez, who stated that both he and Rodolfo Ruano Torres, also known as *Chopo*, took part in the kidnapping. The petitioner states that the two motions were ruled inadmissible on August 13 and on September 29, 2003, respectively. The petitioner points out that with regard to the first motion, the Second Trial Court determined that the constitutional guarantees of the convicted man had not been violated and that the second motion reiterated the first.

28. The petitioner also reports that the above mentioned situation was brought to the attention of the Office of the Human Rights Ombudsman which issued a report indicating that i) there is no certainty as to the manner in which the investigators identified José Agapito Ruano Torres; ii) his identification in a line-up was tainted; iii) his right to due process was violated and that there was also judicial error involved. The petitioner states that the report recommended that the Office of the Public Defender of the Attorney General's Office seek a review of José Agapito Ruano Torres's conviction "bearing in mind the irregularities in the process jointly endorsed by omission of the various participants in the proceedings (judges, prosecutors, public defenders and private parties)." The petitioner alleges that no action was taken in that regard.

29. The petitioner states that on November 22, 2006, José Agapito Ruano Torres filed a new motion to review with the Second Trial Court in and for San Salvador, using the same arguments and evidence previously submitted. The petitioner points out that the court found the motion groundless the very next day. In the petitioner's opinion, when testimonial evidence is presented, such as that of Rodolfo Ruano Torres and of Toribio Chiquillo Rodríguez, a public hearing should have been scheduled. But, the petitioner says, a hearing was never scheduled. In addition, the petitioner says that on December 1, 2008, in response to a request filed, the Second Trial Court decided not to make the case file available because "only the parties involved in the proceedings could have access to it."

30. The petitioner points out that with regard to Mr. Ruano Torres's confinement in a penitentiary for over twelve years, he was offered transfer to another jail where conditions were not favorable. The petitioner also contends that the social readaptation and reform programs implemented have been a constant grief for Mr. Ruano Torres. Furthermore, the petitioner states that Mr. Ruano Torres's life had been put in danger due to mutinies and gang fights in the penitentiary, especially one that occurred on January 5, 2007, where police officers killed more than 20 inmates.

31. The petitioner contends that although penitentiary authorities authorized Mr. Ruano Torres to work in janitorial and construction projects, they refused to pay him what they had agreed to. The petitioner says that in order to report this situation, Mr. Ruano Torres "went to the Ministry of Labor in person and [w]as told that, given his status as an inmate, [José Agapito Ruano Torres] had lost his rights as a citizen the moment he was convicted."

32. He reports that after requests for parole on behalf of Mr. Ruano were denied on September 24, 2009, and February 23, 2012, parole was finally granted on May 9, 2013. José Agapito Ruano Torres himself stated that during the judicial hearing that ordered his release, the Prosecution Service "insist[ed] that he [should] remain incarcerated."

33. The petitioner notes that the context in which the above mentioned actions took place was that of a time in which harsh reforms were adopted with regard to kidnapping. The petitioner says that the Salvadoran President at the time, Francisco Flores, pressured the judicial branch to “publicly repudiate and condemn kidnappings but also to effectively convict any person prosecuted for that crime.” The petitioner also notes that it was the practice of the courts to rule any motion filed by any individual accused or convicted of kidnapping groundless. In that regard, the petitioner asserts that, during that time, the National Association of Private Enterprises (ANEP) applied pressure and interfered in judicial decisions. The petitioner even contends that the lead counsel for ANEP at the time publicly stated that “what was important was for someone to be punished so others would fear the consequences regardless of whether the person punished was responsible for the crime or not.” The petitioner states that one of the public defenders confessed that “they want to hang us” since the judges themselves had told them not to provide legal counsel to those being prosecuted for kidnapping.

34. Based on the preceding, the petitioner concludes that the process to investigate and identify José Agapito Ruano Torres as possible perpetrator of a kidnapping as well as the penal proceedings followed to prosecute him were plagued by omissions and irregularities. The petitioner points out that during the criminal proceedings undertaken against José Agapito Ruano Torres, his public defenders did not allow him to testify at various stages of the trial and, despite his requests, they never took any action to confront the various illegalities perpetrated and try to prove his innocence. The petitioner says that this situation was made all the more aggravating by the fact that José Agapito’s own brother, Rodolfo Ruano Torres, wanted to testify that he was known as *Chopo* and that he was the one who had taken part in the kidnapping.

35. The petitioner also points out that the various courts did not take this situation into account although it had been alleged at the various stages of the proceedings. To the contrary, the petitioner states that the conviction was solely based on the illegal, tainted and fraudulent testimony of Francisco Amaya Villalta, the person kidnapped, without the existence of any other evidence or reasonable lead “to have established the link that must exist between the perpetrator of the criminal offense and the crime.” The petitioner further notes that José Agapito Ruano Torres reported the conduct of the police officers who tortured him to his public defenders, prosecutors and judges without any positive results.

36. Based on the foregoing, the petitioner claims that José Agapito Ruano Torres’s right to judicial guarantees and his right to judicial protection were violated. Furthermore, the petitioner alleges that Mr. Ruano Torres’s right to personal liberty was violated since he has been arbitrarily held for more than ten years. The petitioner argues that José Agapito Ruano Torres’s right to personal integrity was violated since he was tortured at the time of his arrest. On that basis, the petitioner requests restitution for the “physical, moral, psychological and spiritual harm” caused to José Agapito Ruano Torres, his spouse and his children. In that regard, the petitioner emphasizes that it is necessary that Mr. Ruano Torres be declared innocent in order to “give him back his image, his honor, his reputation and his dignity,” and to direct the State to provide him the appropriate financial compensation.

B. The State

37. The State holds that proceedings against Mr. Ruano Torres began based on the testimony received from one of the accomplices in the kidnapping, Francisco Amaya Villalta, who was offered a plea bargain in accordance with the provisions of domestic penal legislation. The State contends that the Office of the Attorney General has the authority to offer this procedural opportunity

to persons who, although involved in the criminal facts, are willing to cooperate with the investigation. The State further contends that thanks to Amaya Villata's cooperation, the offense "did not remain unpunished as it would have been the case had Mr. Amaya Villata not cooperated."

38. The State points out that due to the fact that this person identified one of the perpetrators of the kidnapping as *Chopo*, every effort was made to identify that person. The State maintains that the police investigators "were informed that this [nickname] belongs to Agapito Ruano". The State asserts that subsequently, in his sworn testimony, Francisco Amaya Villalta himself that *Chopo* was José Agapito Ruano Torres, "the same individual who had been identified as such in the police investigations."

39. With regard to the arrest of Mr. Ruano Torres and the search of his residence, the State contends that he was identified "by referring to a certified photocopy of his identification card" prior to his arrest which was carried out in accordance with a duly issued warrant. The State argues that agents from the Police Strike Force went to Mr. Ruano Torres's residence to make the arrest and that, once they entered the home, Mr. Ruano Torres resisted. The State contends that because of the resistance, agents had to "use force commensurate with the level of resistance put up by the arrestee." The State says that, afterwards, Mr. Ruano Torres was told why he was being arrested. The State also points out that the medical examination of Mr. Ruano Torres did not reveal the presumed physical mistreatment the petitioner alleges.

40. With regard to media coverage of the arrest of José Agapito Ruano Torres, the State points out that those were not state controlled publications but private media outlets. Therefore, the State argues, "there is recognition of the right to freedom of expression which allows the dissemination of ideas and information within certain limits."

41. With regard to the allegations of the petitioner referring to presumed failings in the actions of Mr. Ruano Torres's public defenders, the State contends that at no time during the process was Mr. Ruano Torres without defense counsel. On the contrary, the State argues that from the moment of his arrest onward, Mr. Ruano Torres was assisted by a team of public defenders who remained on the case until its completion. The State argues that although it is true that the public defenders did not file a series of motions, this was not due to negligence but rather that "it was the opinion of legal counsel, based on a responsible and detailed analysis, that the filing of motions was not in order."

42. The State contends that what the petitioner argues with regard to the alleged pointing out of José Agapito Ruano Torres by the prosecutor to the victim of the kidnapping during the line-up identification is false. In that regard, the State notes that the record of that process indicates that José Agapito Ruano Torres was identified by the victim and states that, in such procedures "the accused is behind a glass through which he cannot see and, therefore, Mr. Ruano could not have seen the prosecutor allegedly tell the victim to point him out." The State also points out that one of Mr. Ruano Torres's public defenders was also present during the proceeding and that, if the theory sustained by the petitioner were true, "the public defender would have undoubtedly requested the annulment of the proceeding."

43. With regard to the conviction of José Agapito Ruano Torres, the State points out that two elements of "great legal weight" were taken into account in order to determine his participation in the kidnapping: i) the taking of evidence in advance of trial of Francisco Amaya Villalta, in addition to

police investigations carried out to prove that the person pointed out by said witness in its testimony was in fact Mr. Ruano Torres; and ii) the line-up identification where the victim of the kidnapping identified José Agapito Ruano Torres. In that regard, the State contends that neither of those two pieces of evidence “could be discredited during the proceedings.”

44. The State contends that each one of the judicial decisions of the various courts, which together led to the conviction of José Agapito Ruano Torres and his sentencing to 15 years in prison, was “based on the law since criminal procedure and the various legal instances established were followed.” The State alleges that there is no evidence in the record of the judicial proceeding of either the petitioner or José Agapito Ruano Torres having requested an investigation into Mr. Ruano Torres being mistakenly attributed the nickname *Chopo*. Furthermore, the State contends that the motions lodged on behalf of Mr. Ruano Torres were resolved within established deadlines and that the allegation made by the petitioner that some of the decisions lacked sufficient grounds was presented only because the decisions “went against his interests.”

45. Also, within the framework of the criminal proceedings, the State argues that José Agapito Ruano Torres could have filed a motion to review, which is the legal recourse to seek relief for the alleged violations. But, the State argues, Mr. Ruano Torres never invoked the remedy. To the contrary, the State contends that all Mr. Ruano Torres did “was to complain and denounce the judges and magistrates without making use of the mechanisms available within the proceedings.” By the same token, the State notes that Mr. Ruano Torres had the additional opportunity to file an ordinary appeal and a cassation appeal to challenge his detention, the line-up identification or any other actions. However, the State contends that Mr. Ruano Torres “opted to abandon standard procedure which was available to him as the suitable jurisdiction.” The State also pointed out that the alleged victim could have sought relief by lodging a motion for *amparo* with the Constitutional Chamber of the Supreme Court of Justice but he did not do so.

46. On the other hand, the State makes reference to the denial of the motion to review lodged by the petitioner after the conviction was handed down indicating that the motion had been declared inadmissible because the evidence in support of his guilt was considered compelling. By the same token, the State alludes to the petition for *habeas corpus* lodged by the alleged victim, and says that the unfavorable ruling of the Constitutional Chamber on August 7, 2001, was based on the fact that in the course of the investigation evidence had been found of his participation in the commission of the crime. The State also points out that the ruling responded to each of the alleged violations denounced by the petitioner. In the resolution of that petition, the State points out, it was also determined that i) contrary to the allegations, the judicial decisions by which the accused was ordered held in pre-trial detention were not unwarranted; ii) the arrest of José Agapito Ruano Torres was carried out after he had been identified; y iii) his physical integrity had not been violated given that the use of force by the agents was necessary and commensurate to the resistance offered by the detainee.

47. The State points out that based on the complaint filed by the petitioner, an internal investigation was conducted within the National Civil Police into the conduct of the police officers who had participated in the arrest of Mr. Ruano Torres. The State indicates that none of the officers was sanctioned and that some of them “had died or were no longer members of the police force.” The State also points out that the investigations requested by the alleged victim into the conduct of the judges taking part in the proceedings resulted in a finding by the Department of Investigation of Professional Conduct of the Supreme Court of Justice that the allegations made against the officials in question “provided no evidence of probable cause to open a disciplinary inquiry.”

48. The State notes that the allegations referring to mutinies or attacks in the penitentiary where Mr. Ruano Torres was held do not relate to the specific case. In fact, the State points out, Mr. Ruano Torres receives the recommended penitentiary treatment according to “his own criminological diagnosis,” and that’s why he is in the program to control aggressive behavior.

49. Furthermore, with regard to the revocation of José Agapito Ruano Torres’s parole in 2009, the State argues that the decision was based on the fact that, according to the legislation in force, persons convicted of kidnapping such as Mr. Ruano Torres, are not eligible to receive this benefit. The State adds that since March 13, 2009, Mr. José Agapito Ruano Torres was granted admission into the “trust phase” in the penitentiary system which allowed him to obtain temporary passes to leave the penitentiary every fifteen days, to get a job, to increase the number of visits allowed for family members and friends, and to have better access within the penitentiary. Moreover, the State notes, beginning on December 14, 2009, Mr. Ruano Torres was placed on the “day-release phase” which allows him to hold jobs outside the penitentiary, have passes to leave the penitentiary for longer periods of time [...], to be able to receive more visits; assistance to find employment, prepare documents and, if necessary, to find housing.” The State points out that on February 12, 2010, José Agapito Ruano Torres was transferred to the “La Esperanza” Penitentiary, which is located in the city of San Salvador, in order to get him closer to his family.

50. In conclusion, the State contends that, within the framework of the judicial proceedings, evidence was obtained and introduced following due process. The State reiterates that there was sufficient evidence to implicate José Agapito Ruano Torres. This is based on two pieces of evidence presented during the trial: the identification of Mr. Ruano Torres by Francisco Amaya Villalta, the witness benefitting from a plea bargain, and the pointing out of Mr. Ruano Torres during line-up identification by the victim of the kidnapping, Jaime Rodríguez Marroquín. For that reason, the State considers that it did not violate Mr. Ruano Torres’s rights to judicial guarantees and to judicial protection. Based on this due process which resulted in the conviction of Mr. Ruano Torres, the State argues that his confinement in prison is not arbitrary. The State also contends that there was no evidence to support the claim that José Agapito Ruano Torres had been tortured at the time of his arrest.

IV. ESTABLISHED FACTS

51. In accordance with the provisions of Article 43(1) of its Rules and Procedures, the IACHR will examine the arguments and evidence presented by the parties and information that is the matter of public knowledge.²

A. Identification and arrest of José Agapito Ruano Torres

52. On the evening of August 22, 2000, Mr. Jaime Rodríguez Marroquín was driving a transport bus to the city of Tonacatepeque³. Along the route, he was approached by three armed who

² Article 43(1) of the Rules of Procedure of the IACHR establishes: The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

³ Annex 1. Record of interview of bus fare collector Mauricio Torres Mejía dated August 25, 2000, page 21, criminal case file 77-2001-2.

were riding the bus and who ordered him to stop the vehicle.⁴ He was then forced to get off the bus and was taken in a station wagon to a deserted area.⁵

53. On August 23, 2000, Mr. Rodríguez Marroquín's brother contacted the fare collector on that bus who told him what had happened. Based on that account, the brother reported the kidnapping of Mr. Rodríguez Marroquín to the Criminal Investigation Division of the National Civil Police.⁶ The kidnappers called Mr. Rodríguez Marroquín's family and demanded money in exchange for his freedom.⁷ On August 26, 2000, Mr. Rodríguez Marroquín was set free by the kidnappers⁸ and later, after receiving a number of threats, paid the kidnappers the sum of fifty thousand colones.⁹

54. On October 9, 2000, the Criminal Investigation Division of the National Civil Police interviewed Francisco Amaya Villalta, who was being held for extortion of a member of a cooperative. Mr. Amaya Villalta stated that he had information regarding the kidnapping of Jaime Rodríguez Marroquín since he had also taken part in the kidnapping.¹⁰ In an extra-judicial statement made at the prosecutor's office, he identified the persons who had taken part in the kidnapping, naming: José León Pérez Alvarado, José Orellana, José Dolores Ruano, Francisco Mejía, Samuel Hernández Ramírez, Ricardo Antonio Figueroa, Toribio Chiquillo Rodríguez, Joaquín Rodríguez, Miguel Ángel Guzmán and Edenilson Montenegro.¹¹ In his statement, Mr. Amaya Villalta also included "a man known only as *Chopo*."¹² Mr. Amaya Villalta described *Chopo* as a man of approximately 1.55 meters in height and who resided in "Cantón Colón, de Guazapa".¹³ The record shows that the statement made no mention of José Agapito Ruano Torres, who at the time worked as a construction laborer¹⁴ and was 24 years old.¹⁵

55. On October 10, 2000, agents of the Criminal Investigation Division of the National Civil Police went to the Department of Police Records and Archives and to the municipal government offices of the cities of Guazapa, Tonacatepeque and San José Guayabal, in order to collect the identity cards of

⁴ Annex 1. Record of interview of Jaime Rodríguez Marroquín dated September 2, 2000, page 26, criminal case file 77-2001-2.

⁵ Annex 1. Record of interview of Jaime Rodríguez Marroquín dated September 2, 2000, page 26, criminal case file 77-2001-2.

⁶ Annex 1. Police complaint report No. 01PLB23082000, filed with Criminal Investigation Division of the National Civil Police, dated August 23, 2000, page 6, criminal case file 77-2001-2.

⁷ Annex 1. Brief of the investigator in charge of the case, José Hernández Meléndez, of the Anti-kidnapping Unit of the National Civil Police, dated August 23, 2000, page 14, criminal case file 77-2001-2.

⁸ Annex 1. Brief of the Office of the Attorney General of the Republic dated October 18, 2000, page 2, criminal case file 77-2001-2.

⁹ Annex 1. Record of interview of Jaime Rodríguez Marroquín dated October 13, 2000, page 152, criminal case file I 77-2001-2; and statement of Sergeant José Oliverio Hernández Meléndez, National Civil Police investigator and person in charge of the kidnapping case of Mr. Marroquín. Audio of pre-trial hearing, compact disc No. 3.

¹⁰ According to the statement of Sergeant José Oliverio Hernández, National Civil Police investigator and person in charge of the case of the kidnapping of Mr. Marroquín, it was concluded that the telephone numbers used by the kidnappers coincided with the numbers used in the extortion of a member of a cooperative, a situation that had been reported as well. Annex 2. Audio of the pre-trial hearing on compact disc No. 2.

¹¹ Annex 1. Record of extra-judicial statement of Francisco Amaya Villalta dated October 9, 2000, pages 54-55, criminal case file 77-2001-2.

¹² Annex 1. Record of extra-judicial statement of Francisco Amaya Villalta dated October 9, 2000, page 55, criminal case file 77-2001-2.

¹³ Annex 1. Record of extra-judicial statement of Francisco Amaya Villalta dated October 9, 2000, page 55, criminal case file 77-2001-2.

¹⁴ Annex 1. Certificate of the Construction Industry Labor-Management Institute, page 563, criminal case file 77-2001-2.

¹⁵ Annex 1. Personal Identification Card of José Agapito Ruano Torres, page 151, criminal case file 77-2001-2.

the suspects in the kidnapping of Mr. Rodríguez Marroquín.¹⁶ The identity document of José Agapito Ruano Torres was not requested at any of these government offices.

56. On October 12, 2000, the Office of the Attorney General of the Republic indicated to the Justice of the Peace of Tonacatepeque that “they already have [...] photographs and sketches of the places of residence of the possible perpetrators of the crime,”¹⁷ to wit: José León Pérez Alvarado, José Orellana, José Dolores Ruano, Francisco Mejía, Samuel Hernández Ramírez, Ricardo Antonio Figueroa, Toribio Chiquillo Rodríguez, Joaquín Rodríguez, Miguel Ángel Guzmán and Edenilson Montenegro. That communication makes no mention of José Agapito Ruano Torres. At the same time, the Office of the Attorney General requested that Francisco Amaya Villalta be offered a plea bargain to avoid criminal action against him given his intention to cooperate in the investigation of the kidnapping of Mr. Rodríguez Marroquín,¹⁸ and establishing as a condition of the deal that Francisco Amaya Villalta provide a verbal description of *Chopo* in order to identify him.¹⁹ There is no record in the case file that the verbal description was ever provided.

57. On that same day, agents of the Criminal Investigation division of the National Civil Police went to the city of Guaza in order to identify the person known as *Chopo*. In that regard, the investigation report indicates only that “information was obtained that the nickname matches up with the name Agapito Ruano.”²⁰ In a later statement, the police agent in charge of the case of the kidnapping of Mr. Rodríguez Marroquín stated that he didn’t remember the efforts undertaken to identify the suspects of the kidnapping.²¹

58. On October 13, 2000, agents of the Criminal Investigation Division of the National Civil Police approached the Tonacatepeque municipal authorities and requested the identification document of José Agapito Ruano Torres. Then, after inquiries with people who resided in the area, they managed to locate his residence.²² According to the information in the case file, José Agapito Ruano Torres is 1.72 meters in height²³ and, at the time, resided in the development “Ilotificación Monte Cristo de Guazapa²⁴”.

¹⁶ Annex 1. Brief of the investigator in charge of the case, José Hernández Meléndez, of the Anti-kidnapping Unit of the National Civil Police dated October 10, 2000, page 59, criminal case file 77-2001-2.

¹⁷ Annex 1. Brief of the Office of the Attorney General of the Republic dated October 12, 2000, page 157, criminal case file 77-2001-2.

¹⁸ Annex 1. Brief of the Office of the Attorney General of the Republic dated October 12, 2000, page 156, criminal case file 77-2001-2.

¹⁹ Annex 1. Brief of the Office of the Attorney General of the Republic dated October 12, 2000, page 155, criminal case file 77-2001-2.

²⁰ Annex 1. Brief of the investigator in charge of the case, José Hernández Meléndez, of the Anti-kidnapping Unit of the National Civil Police dated October 12, 2000, page 182, criminal case file 77-2001-2.

²¹ Annex 2. Statement of Sergeant José Oliverio Hernández Meléndez, National Civil Police investigator and in charge of the case of the kidnapping of Mr. Marroquín. Audio of pre-trial hearing on compact disc No. 2.

²² Annex 1. Written communication No. 169UAS. DIC.00 of the National Civil Police dated October 13, 2000, page 150, criminal case file 77-2001-2.

²³ Annex 1. Personal Identification Card of José Agapito Ruano Torres, page 151, criminal case file 77-2001-2.

²⁴ Annex 1. Written communication No. 169UAS. DIC.00 of the National Civil Police dated October 13, 2000, page 150, criminal case file 77-2001-2.

59. On October 16, 2000, the Magistrate's Court of Tonacatepeque granted Francisco Amaya Villalta a plea bargain for a period of two months in order for him to provide all the information he had with regard to the kidnapping of Mr. Rodríguez Marroquín.²⁵ The case file contains his sworn statement in which the names of the individuals implicated in the kidnapping of Mr. Rodríguez Marroquín are mentioned again (see *supra* para. 54) and adding that one of them was known by his nickname *Chopo*, "whose real name is José Agapito Ruano Torres."²⁶ Francisco Amaya Villalta, as he did in his extra-judicial confession, pointed out that *Chopo* was 1.55 meters tall.²⁷ However, unlike what he had said in his extra-judicial confession, he gave the same home address for José Agapito Ruano Torres.²⁸ With regard to the sworn statement made by Francisco Amaya Villalta, the police agent in charge of the investigation of the kidnapping of Mr. Rodríguez Marroquín stated that Francisco Amaya Villalta "had entered into negotiations with the prosecutor" since he was the one who "made the connections."²⁹

60. On the same day, the Office of the Attorney General of the Republic ordered the administrative arrest of the alleged suspects in the kidnapping of Mr. Rodríguez Marroquín, to wit: José Agapito Ruano Torres, José León Pérez Alvarado, José Orellana, José Dolores Ruano, Francisco Mejía, Samuel Hernández Ramírez, Ricardo Antonio Figueroa, Toribio Chiquillo Rodríguez, Joaquín Rodríguez, Miguel Ángel Guzmán and Edenilson Montenegro.³⁰ In addition, the Magistrate's Court in Guapaza authorized the execution of a search and seizure warrant at the home of José Agapito Ruano Torres for the purpose of verifying whether there were any "cellular phones, money, weapons, or other personal objects connected to the kidnapping of Mr. Rodríguez Marroquín."³¹ With regard to the manner in which information was obtained in order to effect the arrest of the suspects, information in the case file indicates that the police agent in charge of the investigation of the kidnapping of Mr. Rodríguez Marroquín stated that "I only gathered the evidence and brought it to the prosecutor and he determined what evidence he was going to use in order to proceed with the arrests."³²

61. In the early hours of October 17, 2000, a police operation designated "Operativo Guaza" was carried out in which various police agents teamed up in groups and proceeded with the simultaneous arrest of the suspects in the kidnapping of Mr. Rodríguez Marroquín.³³ According to the written communication of the Criminal Investigation Division of the National Civil Police, approximately 9 agents went to the residence of Mr. Ruano Torres and forced the door open "because the persons in

²⁵ Annex 1. Brief of the Magistrate's Court in and for Tonacatepeque dated October 16, 2000, page 160, criminal case file 77-2001-2.

²⁶ Annex 1. Brief of the Magistrate's Court in and for Tonacatepeque dated October 16, 2000, page 165, criminal case file 77-2001-2.

²⁷ Annex 1. Brief of the Magistrate's Court in and for Tonacatepeque dated October 16, 2000, page 165, criminal case file 77-2001-2.

²⁸ Annex 1. Brief of the Magistrate's Court in and for Tonacatepeque dated October 16, 2000, page 165, criminal case file 77-2001-2.

²⁹ Annex 2 Statement of Sergeant José Oliverio Hernández Meléndez, National Civil Police investigator and person in charge of the case of the kidnapping of Mr. Marroquín. Audio of pre-trial hearing on compact disc No. 2.

³⁰ Annex 1. Brief of the Office of the Attorney General of the Republic – Special Crimes Unit dated October 16, 2000, page 171, criminal case file 77-2001-2.

³¹ Annex 1. Written communication No. 446 of the Justice of the Peace of Guazapa dated October 16, 2000, page 180, criminal case file 77-2001-2.

³² Annex 2 Statement of Sergeant José Oliverio Hernández Meléndez, National Civil Police investigator and person in charge of the case of the kidnapping of Mr. Marroquín. Audio of pre-trial hearing on compact disc No. 3.

³³ Annex 2. Statements of police agents Baltasar Echevarria González, Saúl Alemán Cervantes and José Francisco Guzmán Zavala. Audio of pre-trial hearing on compact discs No. 5 and No. 6.

charge of the case believed the suspect to be dangerous.”³⁴ Present at that location were: José Agapito Ruano Torres, his spouse María Isabel Guevara and his two-year-old son Oscar Manuel Ruano Guevara.

62. According to the brief of the Criminal Investigation Division of the National Civil Police, José Agapito Ruano Torres resisted the arrest and the police agents had to use “necessary force.”³⁵ After they arrested him, the aforementioned brief indicates that the agents verified that the man was indeed José Agapito Ruano Torres by checking his identification card. The brief then notes that Mr. Ruano Torres was shown the administrative arrest warrant issued in his name and that he was made aware of his rights.³⁶ During the search of José Agapito Ruano Torres’s home, the police agents indicated that “they did not find any of the items they were looking for.”³⁷ In addition, in that same brief of the Criminal Investigation Division of the National Civil Police it is noted that José Agapito Ruano Torres said that due to the fact that he did not have the financial means to hire a private lawyer, he requested that a public defender be assigned to him.³⁸

63. With regard to these facts, José Agapito Ruano Torres stated that he was sleeping when approximately twenty police agents broke down the door to his residence and “proceeded to hit him with closed fists; then they threw him on the floor [dragging him] around the house, accusing him of being *Chopo* and that they continued to kick him with the toes of their boots and caused his right little toe to bleed.”³⁹ Furthermore, he alleged that he was threatened with death so that when he faced the television cameras he would say that “he was being arrested for being a kidnapper and to confess that he was the man nicknamed *Chopo*.”⁴⁰

64. His spouse also made statements along the same lines and added that; i) the police agents would ask her if Mr. Ruano Torres was *Chopo*, and that she would respond that he was not; ii) Mr. Ruano Torres told the agents that his brother was nicknamed *Chopo* and that he could take them to him; iii) when she gave the agents Mr. Ruano Torres’s identification card, they pulled out his photo and glued it to a blank sheet of paper; iv) they destroyed the furniture and other objects in the residence; and that v) she never saw a legal warrant nor “was she read anything.”⁴¹ She also indicated that Rodolfo Ruano Torres had moved out of that house a year before the facts occurred.⁴² Years later, Mr. Ruano

³⁴ Annex 1. Brief of the investigators of the Criminal Investigation Division of the National Civil Police dated October 17, 2000, page 222, criminal case file 77-2001-2.

³⁵ Annex 1. Brief of the investigators of the Criminal Investigation Division of the National Civil Police dated October 17, 2000, page 222, criminal case file 77-2001-2.

³⁶ Annex 1. Brief of the investigators of the Criminal Investigation Division of the National Civil Police dated October 17, 2000, page 222, criminal case file 77-2001-2.

³⁷ Annex 1. Brief of the investigators of the Criminal Investigation Division of the National Civil Police dated October 17, 2000, page 223, criminal case file 77-2001-2.

³⁸ Annex 1. Brief of the Criminal Investigation Division of the National Civil Police dated October 17, 2000, page 225, criminal case file 77-2001-2.

³⁹ Annex 3. Written communication of José Agapito Ruano Torres to the Office of the Human Rights Ombudsman dated February 19, 2001.. Annex to the petitioner’s brief dated December 12, 2003.

⁴⁰ Annex 3. Written communication of José Agapito Ruano Torres to the Office of the Human Rights Ombudsman dated February 19, 2001. Annex to the petitioner’s brief dated December 12, 2003.

⁴¹ Annex 4. Statement of María Maribel Guevara de Ruano to the Human Rights Commission of El Salvador. Annex to the petitioner’s observations dated March 19, 2009.

⁴² Annex 4. Statement of María Maribel Guevara de Ruano to the Human Rights Commission of El Salvador. Annex to the observations of the petitioner dated March 19, 2009.

Torres's son said that on the day his father was arrested, "he only saw that they were hitting [his] father and that a man would tell him not to look."⁴³

65. Following his arrest, Mr. Ruano Torres was transferred to the Criminal Investigation Division of the National Civil Police in the city of Guazapa.⁴⁴ On that same day, he was given a medical examination which found that José Agapito Ruano Torres exhibited lacerations around his neck, thorax and shoulders and scars on his nose and on his thighs.⁴⁵ José Agapito Ruano Torres was transferred to the main penitentiary "La Esperanza" in the Cantón San Luis Mariona de Ayutuxtepeque.⁴⁶

66. Furthermore, according to the arrest record of Mr. Ruano Torres, he was assigned Mr. Alonso Bonilla Evenor as Public Defender.⁴⁷ There is no evidence in the case file of this attorney being involved in any legal actions following the arrest of José Agapito Ruano Torres.

67. On October 18, 2000, assistant prosecutors in the Office of the Attorney General of the Republic requested that the various suspects in the kidnapping of Mr. Jaime Rodríguez Marroquín, including José Agapito Ruano Torres, be provisionally detained.⁴⁸ The request was based on the presumed flight risk presented by the suspects and the impediment to specific actions in the investigation.⁴⁹ On that same day, the Magistrate's Court of Tonacatepeque ordered that the suspects be held in jail and scheduled a preliminary hearing.⁵⁰ According to José Agapito Ruano Torres's statement, when one of the individuals charged with Mr. Marroquín's kidnapping was taken to the detention center, he told the police, "you're mistaken [...] that isn't *Chopo*."⁵¹

B. Criminal proceedings against José Agapito Ruano Torres

68. The preliminary hearing was held on October 20, 2000, before the Magistrate's Court of Tonacatepeque. Public Defenders Mario Chávez Corvera and Soraya Melanie Contreras were assigned to assist and represent four of the accused, to wit: José Agapito Ruano Torres, José Ruano López, José Orellana Pérez and José León Pérez.⁵² According to the record of that hearing, the accused were asked if they wanted to make statements regarding the facts, to which the accused, including José Agapito Ruano Torres, responded that they would refrain from making any statements.⁵³ Afterwards, Mr. Ruano Torres stated that he wanted to point out that it was his brother Rodolfo who was known as *Chopo* and

⁴³ Annex 5. Statement of Oscar Manuel Ruano Guevara to the Human Rights Commission of El Salvador. Annex to the petitioner's observations dated March 19, 2009.

⁴⁴ Annex 1. Written communication No. 182 of the Criminal Investigation Division of the National Civil Police dated October 17, 2000, page 250, criminal case file 77-2001-2.

⁴⁵ Annex 1. Medical Examination Report of the National Civil Police dated October 17, 2000, page 226, criminal case file 77-2001-2.

⁴⁶ Annex 1. Brief of the Court of First Instance in and for Tonacatepeque, dated October 27, 2000, page 330, criminal case file 77-2001-2.

⁴⁷ Annex 1. Record of identification and rights of the accused dated October 17, 2000, page 276, criminal case file 77-2001-2.

⁴⁸ Annex 1. Brief of the Office of the Attorney General of the Republic dated October 18, 2000, page 5, criminal case file 77-2001-2.

⁴⁹ Annex 1. Brief of the Office of the Attorney General of the Republic dated October 18, 2000, page 4, criminal case file 77-2001-2.

⁵⁰ Annex 1. Brief of the Magistrate's Court in and for Tonacatepeque dated October 18, 2000, page 281, criminal case file 77-2001-2.

⁵¹ Annex 6. Written communication of José Agapito Ruano Torres, received by the IACHR on July 8, 2013.

⁵² Annex 1. Magistrate's Court in and for Tonacatepeque, Preliminary Hearing, October 20, 2000, page 299, criminal case file 77-2001-2.

⁵³ Annex 1. Magistrate's Court in and for Tonacatepeque, Preliminary Hearing, October 20, 2000, page 299, criminal case file 77-2001-2.

not him, but the defense attorney did not allow him to do so and told him that “whatever a suspect says is not credible and actually works against him.”⁵⁴

69. On the same day, the Justice of the Peace in Tonacatepeque ordered the pre-trial investigation of the case to proceed and also ordered that the suspects be remanded in custody based on the sworn statement of Francisco Amaya Villalta.⁵⁵ In addition, on October 27, 2000, the Court of First Instance in and for Tonacatepeque indicted the accused also based on the sworn statement of Francisco Amaya Villalta.⁵⁶

70. Pedro Torres Hércules, petitioner and cousin of the alleged victim, was living in Guatemala at the time of the facts. After learning of the arrest of José Agapito Ruano Torres, he decided to travel to El Salvador in order to ask him what had happened.⁵⁷ According to a subsequent statement made by Mr. Torres Hércules, José Agapito Ruano Torres told him that while he was asleep after working all day on the remodeling of a school, several police agents entered his home, and proceeded to hit him and drag him on the floor.⁵⁸ Faced with this situation, Mr. Torres Hércules said that he would take the necessary steps in order to prove Mr. Ruano Torres’s innocence.⁵⁹

71. Thus, on October 30, 2000, Pedro Torres Hércules reported to the Disciplinary Inquiry Unit of the National Civil Police that José Agapito Ruano Torres was victimized through “abuse of authority and physical, moral and psychological mistreatment” at the time of this arrest.⁶⁰

72. Then, on November 27, 2000, the petitioner submitted a brief to the Court of First Instance in and for Tonacatepeque with the same information and included documents and statements of witnesses who stated that José Agapito Ruano Torres had been working in the remodeling of a school when the kidnapping of Mr. Marroquín took place.⁶¹ However, that brief indicates that the Court of First Instance in and for Tonacatepeque refused to receive the information alleging that it would be “a trial court that would make a determination regarding the evidence.”⁶² Likewise, on November 29, 2000, the

⁵⁴ Annex 1. Written communication of José Agapito Ruano Torres to the Second Trial Court Judge dated September 6, 2000, page 546, criminal case file 77-2001-2.

⁵⁵ Annex 1. Magistrate’s Court in and for Tonacatepeque, Preliminary hearing, October 20, 2000, page 303, criminal case file 77-2001-2.

⁵⁶ Annex 1. Brief of the Court of First Instance in and for Tonacatepeque dated October 27, 2000, page 334, criminal case file 77-2001-2.

⁵⁷ Annex 7. Statement of Pedro Torres Hércules to the Human Rights Commission of El Salvador. Annex to the petitioner’s observations dated March 19, 2009.

⁵⁸ Annex 7. Statement of Pedro Torres Hércules to the Human Rights Commission of El Salvador. Annex to the petitioner’s observations dated March 19, 2009.

⁵⁹ Annex 7. Statement of Pedro Torres Hércules to the Human Rights Commission of El Salvador. Annex to the petitioner’s observations dated March 19, 2009.

⁶⁰ Annex 1. Brief of the Subregional Office of the Attorney General in Apopa dated April 18, 2011, page 420, criminal case file 77-2001-2.

⁶¹ Annex 8. Brief of Pedro Torres Hércules to the Court of First Instance in and for Tonacatepeque dated November 27, 2000. Annex to the petitioner’s communication received on December 12, 2003.

⁶² Annex 8. Brief of Pedro Torres Hércules to the Court of First Instance in and for Tonacatepeque, dated November 27, 2000. Annex to the petitioner’s communication received on December 12, 2003.

petitioner attempted to present the aforementioned evidence to the Office of the Attorney General but was rejected.⁶³

73. On December 7, 2000, José Agapito Ruano Torres filed for a writ of *habeas corpus* with the Constitutional Chamber of the Supreme Court of Justice⁶⁴ claiming that his detention was arbitrary and that he had been subjected to physical, moral and psychological mistreatment. Mr. Ruano Torres alleged that at the time of his arrest he had not been identified given that they were addressing him by the nickname *Chopo*. He added that it was not until a police agent found his identification card that they began to call him by his name.⁶⁵

74. In addition, on January 3, 2001, Mr. Ruano Torres lodged an extended habeas corpus petition requesting the investigation and sanction of the prosecutor and the police agents who, without doing due diligence, identified him as *Chopo* and, as a result, as the alleged mastermind of the kidnapping of Mr. Rodríguez Marroquín.⁶⁶ He also reiterated the physical psychological harm inflicted on him during his detention.

75. In that petition, Mr. Ruano Torres denounced the “negligent and indifferent attitude” of his public defenders who, he claimed, did not allow him to file several motions and seek other actions in order to prove that he was not involved in the kidnapping of Mr. Rodríguez Marroquín since he was not *Chopo*.⁶⁷ This includes, i) not being able to testify during the preliminary hearing because he was told that “what a suspect says is not credible and actually works against him;” ii) not being able to call Mr. Rodríguez Marroquín and Mr. Francisco Amaya Villalta to provide testimony that he had not taken part in the kidnapping; iii) failing to ask that the report of the medical examination issued following his detention document the evidence of torture and mistreatment to which he was subjected; iv) the refusal to request a special hearing in order to be able to present evidence to prove that *Chopo* was his brother Rodolfo Ruano Torres and not him; and v) the refusal to lodge a petition of habeas corpus arguing that “they take so long that they could resolve it even after the preliminary hearing.” Mr. Ruano Torres also indicated that he requested that his public defender be changed but that the prosecutor in Apopa told him that “it was not necessary because there were six months left and since there were only a few public defenders they would handle the case as a group.”⁶⁸

76. On January 11, 2001, based on a decision of the Court of First Instance in and for Tonacatepeque, Mr. Rodríguez Marroquín was brought in for a line-up identification.⁶⁹ During that

⁶³ Annex 9. Written communication of Pedro Torres Hércules to the assistant prosecutors in the Office of the Attorney General of the Republic, dated November 29, 2000. Annex to the petitioner’s communication received on December 12, 2003.

⁶⁴ Annex 10. Habeas corpus No. 403-2000 of José Agapito Ruano Torres lodged with the Constitutional Chamber of the Supreme Court of Justice, dated December 7, 2000. Annex to the petitioner’s communication received on December 12, 2003.

⁶⁵ Annex 10. Habeas corpus No. 403-2000 of José Agapito Ruano Torres lodged with the Constitutional Chamber of the Supreme Court of Justice, dated December 7, 2000. Annex to the petitioner’s communication received on December 12, 2003.

⁶⁶ Annex 11. Brief of José Agapito Ruano Torres submitted to the Constitutional Chamber of the Supreme Court of Justice dated January 3, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁶⁷ Annex 11. Brief of José Agapito Ruano Torres submitted to the Constitutional Chamber of the Supreme Court of Justice dated January 3, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁶⁸ Annex 11. Brief of José Agapito Ruano Torres submitted to the Constitutional Chamber of the Supreme Court of Justice dated January 3, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁶⁹ Annex 1. Brief of the Court of First Instance in and for Tonacatepeque, dated December 1, 2000, page 379, criminal case file 77-2001-2.

process, Mr. Rodríguez Marroquín provided physical descriptions of 8 of the persons who had taken part in his kidnapping without mentioning any names.⁷⁰ In a statement given at the Office of the Human Rights Ombudsman, José Agapito Ruano Torres stated that the penitentiary authorities at the center where he was being held asked him to pick four persons to go with him to the line-up. However, he stated that the names listed in the record of the line-up were not the names of the persons who actually took part in that process.⁷¹ He also argued that, contrary to what usually takes place in line-ups, those who were part of the line-up were not allowed to pick their own numbers. Quite the contrary, Mr. Ruano Torres points out that he was assigned a number and, furthermore, even before all the individuals were lined-up he was called for interrogation.⁷²

77. In that regard, there were statements made by i) Miguel Cerritos Ríos who stated that, although his name was in one of the records of the line-up, he never took part in it,⁷³; and ii) Maximino Díaz Ayala, who stated that his name was not listed in the record of the line-up although he had participated in it, and also said that when “they were lining up, he observed that the prosecutor in the case pointed with his finger” toward José Agapito Ruano Torres.⁷⁴

78. José Agapito Ruano Torres requested the change of public defenders which, after a petition was filed on March 16, 2001,⁷⁵ resulted in the assignment of Emilia Castillo del Castillo as his public defender.⁷⁶ However, Mr. Ruano Torres said that the new public defender refused to challenge the line-up identification because “it would be damaging to her colleague Corvera and [...] in any event, nothing could be done at that point and that the challenge should have been filed right away.”⁷⁷

79. On the other hand, in the writ of habeas corpus lodged with the Constitutional Chamber of the Supreme Court of Justice on February 19, 2001, José Agapito Ruano Torres requested a new extension of the writ indicating that he was in jail due to a judicial error based on his identity.⁷⁸ On that basis, he requested that an investigator be sent to the area where he resided to verify that it is his brother Rodolfo who is referred to as *Chopo* and not him. Furthermore, Mr. Ruano Torres maintained that the case file should be reviewed to confirm that Francisco Amaya Villalta only knew one of the persons implicated in the kidnapping as *Chopo*, a nickname that doesn’t belong to him.⁷⁹ Moreover, Mr. Ruano Torres pointed out that even the Court of First Instance in and for Tonacatepeque, when asked about this situation, stated

⁷⁰ Annex 1. Interrogation prior to the line-up dated January 1, 2001, page 377, criminal case file 77-2001-2.

⁷¹ Annex 1. Office of the Human Rights Ombudsman dated June 9, 2003, page 695, criminal case file 77-2001-2.

⁷² Annex 1. Brief of José Agapito Ruano Torres submitted to the Second Trial Court Judge dated September 6, 2000, page 547, criminal case file 77-2001-2.

⁷³ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, dated June 9, 2003, page 697, criminal case file 77-2001-2; and Statement of Maximino Díaz Ayala, dated July 22, 2001. Annex to the petitioner’s communication of December 12, 2003.

⁷⁴ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, dated June 9, 2003, page 698, criminal case file 77-2001-2; and Written communication of José Agapito Ruano Torres to the Second Trial Court Judge dated September 6, 2000, page 547, criminal case file 77-2001-2.

⁷⁵ Annex 1. Brief of the Court of First Instance in and for Tonacatepeque, dated March 19, 2001, page 409, criminal case file 77-2001-2.

⁷⁶ Annex 1. Brief of March 16, 2001, page 408, criminal case file 77-2001-2.

⁷⁷ Annex 1. Brief of José Agapito Ruano Torres to the Second Trial Court Judge dated September 6, 2000, page 548, criminal case file 77-2001-2.

⁷⁸ Annex 13. Brief of José Agapito Ruano Torres to the Constitutional Chamber of the Supreme Court of Justice dated February 19, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁷⁹ Annex 13. Brief of José Agapito Ruano Torres submitted to the Constitutional Chamber of the Supreme Court of Justice February 19, 2001. Annex to the petitioner’s communication received on December 12, 2003.

that “in any event, there is a nickname based on which he has been deprived of his liberty and is being prosecuted”⁸⁰

80. On March 12, 2001, Pedro Torres Hércules submitted a brief to the Attorney General of the Republic for the purpose of having the public defenders assigned to José Agapito Ruano Torres changed given that they had repeatedly refused to assist him, including during the irregular line-up.⁸¹ Mr. Torres Hercules maintains that one of the attorneys said that “if we didn’t like their work to complain to their superiors and [...] to look for a private defense attorney.”⁸² The petitioner pointed out that although they had made several requests for a change of public defenders previously, the regional prosecutor always denied their requests.⁸³

81. On March 14, 2001, Pedro Torres Hércules filed a brief with the Supreme Court of Justice requesting that, due to the lack of response to the writ of habeas corpus lodged with the Constitutional Chamber of that court on December 7, 2000, a hearing be scheduled with the prosecutor of the case, Mr. Rodríguez Marroquín, Francisco Amaya Villalta and a number of witnesses present.⁸⁴ The purpose of this hearing would be to prove that José Agapito Ruano Torres is not *Chopo* and, therefore, he did not take part in the kidnapping.

82. On April 18, 2001, the prosecutor assigned to the case, following the complaint filed with the Disciplinary Inquiry Unit of the National Civil Police for the purpose of investigating the alleged mistreatment of Mr. Ruano Torres at the time of his arrest, submitted a request to the Court of First Instance in and for Tonacatepeque.⁸⁵ In this brief, the prosecutor requested authorization for the transfer of José Agapito Ruano Torres to the Institute of Forensic Medicine of San Salvador on April 20, 2001, in order for him to undergo a psychological evaluation.⁸⁶ The following day, the Court of First Instance in and for Tonacatepeque ruled the request out of order and put the prosecutor on notice that, “in the future, any request of such nature must be submitted at least six days before the action is to take place in order for this court to do its due diligence.”⁸⁷ The case file does not indicate that any other requests were ever made in that regard.

83. On April 19, 2001, the Office of the Attorney General of the Republic filed formal charges against the various individuals accused in the kidnapping of Mr. Rodríguez Marroquín, among them, José Agapito Ruano Torres.⁸⁸ For its part, on April 24, 2001, public defender Emilia Castillo del Castillo filed a brief with the Examining Magistrate in and for Tonacatepeque to provide a list of witnesses and the

⁸⁰ Annex 13. Brief of José Agapito Ruano Torres submitted to the Constitutional Chamber of the Supreme Court of Justice dated February 19, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁸¹ Annex 14. Brief of Pedro Torres Hércules submitted to the Attorney General of the Republic dated March 12, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁸² Annex 14. Brief of Pedro Torres Hércules submitted to the Attorney General of the Republic dated March 12, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁸³ Annex 14. Brief of Pedro Torres Hércules submitted to the Attorney General of the Republic dated March 12, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁸⁴ Annex 15. Brief of Pedro Torres Hércules submitted to the Supreme Court of Justice dated March 14, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁸⁵ Annex 1. Brief dated April 18, 2001, page 420, criminal case file 77-2001-2.

⁸⁶ Annex 1. Brief dated April 18, 2001, page 420, criminal case file 77-2001-2.

⁸⁷ Annex 1. Brief dated April 18, 2001, page 420, criminal case file 77-2001-2.

⁸⁸ Annex 1. Brief of the Office of the Attorney General of the Republic dated April 19, 2001, page 427, criminal case file 77-2001-2.

evidence to be presented at the preliminary hearing before the Court of First Instance in and for Tonacatepeque. That document stated that the witnesses would help corroborate that José Agapito Ruano Torres is not *Chopo*.⁸⁹ At the same time, the defense attached a series of documents claiming that Agapito Ruano Torres was working at a school on the date and time that the kidnapping of Mr. Rodríguez Marroquín took place.⁹⁰ The case file contains a brief in which a teacher at an educational institution in Guazapa states that José Agapito Ruano Torres worked at that location from August 8 until October 16, 2000, from 7:00am until 7:00pm.⁹¹ During the preliminary hearing on April 26, 2001, the judge ruled that evidence inadmissible “since that is not essential evidence.”⁹² In an interview conducted by the Office of the Human Rights Ombudsman, the judge of that court stated that the evidence presented at the preliminary hearing was not admissible because “it was untimely.”⁹³

84. At that same hearing, José Agapito Ruano Torres stated that he was not *Chopo* and that “the police agents [...] threatened him with death, dragged him around and that’s how they implicated him in the kidnapping.”⁹⁴ The Court of First Instance in and for Tonacatepeque ordered the opening of proceedings against José Agapito Ruano Torres without ruling on his statement.⁹⁵ Likewise, the court also ordered the opening of proceedings against the other individuals accused in the case: José León Pérez Alvarado, José Orellana, José Dolores Ruano, Francisco Mejía, Ricardo Antonio Figueroa, Toribio Chiquillo Rodríguez, Joaquín Rodríguez and Miguel Ángel Guzmán. Likewise, the court ordered that Samuel Hernández Ramírez and Edenilson Montenegro be separated from the proceedings because they were absent.⁹⁶

85. On June 8, 2001, Pedro Torres Hércules lodged a new *extended habeas corpus* petition with the Constitutional Chamber of the Supreme Court of Justice.⁹⁷ He stated that, to date, the court had not ruled on the matter and reiterated the omissions and errors committed by the police agents in identifying José Agapito Ruano Torres as *Chopo*, the acts of torture and mistreatment inflicted upon him during his arrest and the fraud committed during the line-up.

86. On June 18, 2001, José Agapito Ruano Torres submitted a brief to the Second Trial Court requesting a special review hearing.⁹⁸ In that regard, Mr. Ruano Torres indicated that the police agents who identified him as *Chopo* did so based only on the information provided by one person. It was for that reason that he requested that investigators be sent to his area of residence in order to verify that the nickname *Chopo* did not apply to him and that they could even inquire with the Mayor in that regard. Mr. Ruano Torres stated that there were documents available to prove that he was working at a

⁸⁹ Annex 1. Brief of Emilia Castillo del Castillo, dated April 24, 2001, page 455, criminal case file 77-2001-2.

⁹⁰ Annex 1. Brief of Emilia Castillo del Castillo, dated April 24, 2001, page 455, criminal case file 77-2001-2.

⁹¹ Annex 1. Brief dated October 19, 2000, page 316, criminal case file 77-2001-2.

⁹² Annex 1. Record of Preliminary Hearing dated April 26, 2001, page 472, criminal case file 77-2001-2.

⁹³ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, dated June 9, 2003, page 697, criminal case file 77-2001-2.

⁹⁴ Annex 1. Record of Preliminary Hearing dated April 26, 2001, page 471, criminal case file 77-2001-2.

⁹⁵ Annex 1. Record of Preliminary Hearing dated April 26, 2001, page 472, criminal case file 77-2001-2.

⁹⁶ Annex 1. Record of Preliminary Hearing dated April 26, 2001, page 473, criminal case file 77-2001-2.

⁹⁷ Annex 16. Brief of Pedro Torres Hércules submitted to the Constitutional Chamber of the Supreme Court of Justice, dated June 8, 2001. Annex to the petitioner’s communication received on December 12, 2003.

⁹⁸ Annex 1. Brief of José Agapito Ruano Torres dated June 18, 2003, page 522, criminal case file 77-2001-2

school when the kidnapping took place.⁹⁹ Those requests were rejected by the Second Trial Court in and for San Salvador on grounds that the investigative phase had concluded and that “his defense should have entered those requests at the appropriate time.”¹⁰⁰

87. On August 7, 2001, the Constitutional Chamber of the Supreme Court of Justice ruled on the writ of habeas corpus lodged deciding that José Agapito Ruano Torres should remain in custody.¹⁰¹ The court stated that prior to José Agapito Ruano Torres’s detention, “the identities of the accused were determined as a result of a duly conducted investigation [...] based on information obtained from the general public.”¹⁰² With regard to the allegations of torture and mistreatment inflicted upon Mr. Ruano Torres during his detention, it was the opinion of the Constitutional Chamber of the Supreme Court of Justice that although there had been use of force, it had not violated his rights given that—according to the police report on the incident—this use of force “had been necessary in order to neutralize his resistance.”¹⁰³

88. On September 6, 2001, José Agapito Ruano Torres submitted another brief to the Second Trial Court alleging that his public defenders had acted to his detriment at every stage in the proceedings in which they had taken part, to wit: i) preventing him from making a statement; ii) refusing to introduce information regarding the true identity of *Chopo*, who was his brother Rodolfo; iii) not challenging the irregularities that took place during the line-up; and iv) in general, refusing to take any action he requested in order to help prove his innocence by proving that he was not *Chopo*.¹⁰⁴ He also requested that Pedro Torres Hércules, who witnessed the irregularities during the line-up and has in his possession the necessary information to prove that he is not *Chopo*, be added as a declaring party in his favor.¹⁰⁵ On September 17, 2001, the Second Trial Court in and for San Salvador decided that as to “the witness testimony offered [...] this Court considers that a decision on the admissibility of said evidence will be made at the appropriate time in the proceedings.”¹⁰⁶ There is no evidence in the case file of the Second Trial Court making any subsequent reference to those requests.

89. On September 24, 2001, Pedro Torres Hércules submitted a brief to the Second Trial Court in and for San Salvador in which the Mayor of Guazapa emphasized José Agapito Ruano Torres’s honesty and pointed out that the nickname *Chopo* belonged to his brother “Rodolfo Ruano Torres, who was the person that the National Civil Police went looking for and, due to a confusion, the young man José

⁹⁹ Annex 1. Brief of José Agapito Ruano Torres, dated June 18, 2003, page 523, criminal case file 77-2001-2.

¹⁰⁰ Annex 1. Decision of the Second Trial Court in and for San Salvador dated June 22, 2001, page 524, criminal case file criminal 77-2001-2.

¹⁰¹ Annex 1. Constitutional Chamber of the Supreme Court of Justice, San Salvador, dated August 7, 2001, page 539, criminal case file 77-2001-2.

¹⁰² Annex 1. Constitutional Chamber of the Supreme Court of Justice, San Salvador, dated August 7, 2001, page 539, criminal case file 77-2001-2.

¹⁰³ Annex 1. Constitutional Chamber of the Supreme Court of Justice, San Salvador, dated August 7, 2001, page 539, criminal case file 77-2001-2.

¹⁰⁴ Annex 1. Brief of José Agapito Ruano Torres, dated September 6, 2001, page 548, criminal case file 77-2001-2.

¹⁰⁵ Annex 1. Brief of José Agapito Ruano Torres, dated September 6, 2001, page 548, criminal case file 77-2001-2.

¹⁰⁶ Annex 1. Decision of the Second Trial Court in and for San Salvador, dated September 17, 2001, page 551, criminal case file 77-2001-2.

Agapito was detained.”¹⁰⁷ The Second Trial Court did not rule in that regard and merely indicated “add the information to his background.”¹⁰⁸

90. On September 27, 2001, Roberto Ruano Torres, brother of José Agapito, and two other persons appearing as witnesses, submitted a brief to the Second Trial Court in and for San Salvador stating that the person known as *Chopo* was Rodolfo Ruano Torres and not José Agapito Ruano Torres.¹⁰⁹ Therefore, they said, “if what the case says is true, the person who should know anything would be the brother who is the person who goes by that ALIAS.”¹¹⁰

91. The pre-trial hearing began on October 1, 2001, in the Second Trial Court in and for San Salvador. At the beginning of the hearing the accused, including José Agapito Ruano Torres, were asked if they wanted to make statements. The audio of the pre-trial hearing shows that Mr. Ruano Torres stated “I am willing to make a statement.” However, the Second Trial Court in and for San Salvador did not allow him to make a statement. On the contrary, following his response another one of the accused was asked if he wanted to make a statement.¹¹¹ In addition, various witnesses testified that on the day that Mr. Rodríguez Marroquín was kidnapped, Mr. Ruano Torres was working with his brother Roberto Ruano Torres remodeling a school until late in the evening.¹¹² They also pointed out that the nickname *Chopo* belonged to Rodolfo, the brother of José Agapito Ruano Torres.¹¹³ During the questioning of Mr. Rodríguez Marroquín, he named and pointed out all of the accused, including José Agapito Ruano Torres, present in the hearing as participants in his kidnapping.¹¹⁴ He further stated that after the suspects in the kidnapping had been arrested, he had seen them “in the newspapers and in one video.”¹¹⁵

92. On October 5, 2001, the Second Trial Court in and for San Salvador convicted José Agapito Ruano Torres, José León Pérez Alvarado, José Orellana, José Dolores Ruano, Francisco Mejía, Ricardo Antonio Figueroa, Toribio Chiquillo Rodríguez, Joaquín Rodríguez and Miguel Ángel Guzmán as co-perpetrators in the kidnapping of Mr. Rodríguez Marroquín and sentenced them to fifteen years in prison.¹¹⁶ The Court based its decision on the corroborating (unánimes y contestes) statements of Jaime

¹⁰⁷ Annex 1. Communication signed by the Mayor of the Municipality of Guazapa, dated September 21, 2001, page 553, criminal case file 77-2001-2.

¹⁰⁸ Annex 1. Brief of the Second Trial Court in and for San Salvador, dated September 26, 2001, page 555, criminal case file 77-2001-2.

¹⁰⁹ Annex 1. Brief signed by Roberto Ruano Torres and two other persons, dated September 2001, page 560, criminal case file 77-2001-2.

¹¹⁰ Annex 1. Brief signed by Roberto Ruano Torres and two other persons, dated September 27, 2001, page 560, criminal case file 77-2001-2.

¹¹¹ Annex 2. Audio of the pre-trial hearing on compact disc No. 2.

¹¹² Annex 2. Statements of Eleazar Antonio Alemán, Roberto Ruano Torres, José Alberto Orellana Barrera and Nublas Parada Zelaya. Audio of the pre-trial hearing on compact discs No. 6 and 7.

¹¹³ Annex 2. Statements of Roberto Ruano Torres and María Maribel Guevara. Annex 2. Audio of the pre-trial hearing on compact discs No. 6 and 7.

¹¹⁴ Annex 2. Statement of Jaime Rodríguez Marroquín. Audio of the pre-trial hearing on compact disc No. 3.

¹¹⁵ Annex 2. Statement of Jaime Rodríguez Marroquín. Audio of the pre-trial hearing on compact disc No. 3.

¹¹⁶ Annex 1. Judgment of the Second Trial Court in and for San Salvador, dated October 5, 2001, page 590, criminal case file 77-2001-2.

Rodríguez Marroquín and Javier Amaya Villalta.¹¹⁷ With regard to the testimonial evidence relating to José Agapito Ruano Torres working at the school while the kidnapping was taking place, the court ruled that “those circumstances have not been corroborated by any other evidentiary sources; [...] it is relatives and friends.”¹¹⁸

93. On October 23, 2001, the Office of the Human Rights Ombudsman submitted a complaint regarding the lack of participation of some witnesses during the public hearing despite having been cited with regard to the case of José Agapito Ruano Torres, Joaquín Rodríguez Marroquín, José Dolores Ruano López, Francisco Mejía Pérez, José León Pérez Alvarado, Ricardo Figueroa and Miguel Ángel Guzmán.¹¹⁹ With regard to the situation of Mr. Ruano Torres, the Second Trial Court in and for San Salvador indicated that the testimony of Eleazar Antonio Alemán, Roberto Ruano Torres, José and Ana Marlene Orellana Barrera, and Nublas and Miguel Antonio Torres had already been admitted during the preliminary hearing.¹²⁰ Furthermore, the Court pointed out that José Agapito Ruano Torres’s own defense “stated that it would not use the testimony of the witness Leonel Alcides Orellana.”¹²¹

94. The documentation in the case file makes evident that the public defense of José Agapito Ruano Torres did not file any motions for appeal, cassation appeal or review of the conviction. In a brief to the National Coordinator of the Office of Public Defenders the public defense argued that that the motion to review was not in order because, among other reasons, “[there] was no direct or manifest violation of constitutional guarantees.”¹²² The defense added that the filing of this motion could be attempted only if Rodolfo Ruano Torres “made a sworn statement that it was he and not his brother [...] who took part in the kidnapping.”¹²³

95. On October 16, 2001, after the Supreme Court of Justice had ruled inadmissible the motions for cassation appeal filed on behalf of other convicted persons,¹²⁴ the Second Trial Court in and for San Salvador requested that the guilty judgment against José Agapito Ruano Torres and the other accused be declared final.¹²⁵

96. On April 4, 2002, José Agapito Ruano Torres’s brother, Rodolfo Ruano Torres, stated before the Human Rights Commission of El Salvador “I’ve been known as *Chopo* since I was a little child

¹¹⁷ Annex 1. Judgment of the Second Trial Court in and for San Salvador, dated October 5, 2001, page 590, criminal case file 77-2001-2.

¹¹⁸ Annex 1. Judgment of the Second Trial Court in and for San Salvador, dated October 5, 2001, page 590, criminal case file 77-2001-2.

¹¹⁹ Annex 1. Notification of the Office of the Human Rights Ombudsman with regard to the complaint submitted by the witness Juana Antonia Henríquez de Guzmán, dated October 23, 2001, page 621, criminal case file 77-2001-2.

¹²⁰ Annex 1. Brief of the Second Trial Court in and for San Salvador, dated October 25, 2001, page 625, criminal case file 77-2001-2.

¹²¹ Annex 1. Brief of the Second Trial Court in and for San Salvador, dated October 25, 2001, page 625, criminal case file 77-2001-2.

¹²² Annex 17. Brief of attorney Mario Chávez Corvera and attorney Soraya Melani Contreras de Escalante, submitted to the National Coordinator of the Office of Public Defenders, dated March 19, 2002. Annex to the petitioner’s communication received on December 12, 2003.

¹²³ Annex 17. Brief of attorney Mario Chávez Corvera and of attorney Soraya Melani Contreras de Escalante, submitted to the National Coordinator of the Office of Public Defenders, dated March 19, 2002. Annex to the petitioner’s communication received on December 12, 2003.

¹²⁴ The case file contains the motions for cassation appeal on behalf of Miguel Guzmán Mazariego, José Orellana Pérez, José León Pérez, Joaquín Rodríguez and Ricardo Antonio Figueroa.

¹²⁵ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, June 9, 2003, page 694, criminal case file 77-2001-2.

because that's what my family always called me."¹²⁶ He stated that, i) he tried to make a statement at the Prosecutor's office, at the Office of the Attorney General and during the trial "but they didn't want to listen to me;" ii) that he was forced by a police agent to take part in the kidnapping of Mr. Marroquín and described all the facts regarding the crime;" and iii) knows that "it is unfair what they have done with his brother, José Agapito Ruano Torres, whom they have convicted [...] for a crime he never committed since he really knows how the events unfolded."¹²⁷

97. On May 13, 2002, José Agapito Ruano Torres submitted to the Chief of the Judicial Investigation Division of the Supreme Court of Justice a complaint against the Court of First Instance in and for Tonacatepeque and Second Trial Court which had participated in the criminal proceedings.¹²⁸ Mr. Ruano Torres alleged that neither of the two aforementioned courts had taken any measures in his favor despite having submitted numerous briefs to them clarifying that it was his brother Rodolfo Ruano Torres who was known as *Chopo* and not him. He also indicated that during the public hearing, the Second Trial Court refused to allow his brother to testify as a witness. On October 22, 2003, the Office of the President of the Supreme Court of Justice declared the complaint inadmissible because "no elements were found that would evidence probable cause to open a disciplinary inquiry."¹²⁹

98. For its part, on June 9, 2003, the Office of the Human Rights Ombudsman issued a resolution based on a complaint submitted by José Agapito Ruano Torres on October 15, 2001.¹³⁰ In that complaint, Mr. Ruano Torres requested that a motion to review be lodged in order to reopen the judicial proceedings. Mr. Ruano Torres pointed out that first, a serious judicial error had been committed in mistaking him for his brother, Rodolfo Ruano Torres, known as *Chopo* and "who admits having taken part in the facts."¹³¹ Second, Mr. Ruano Torres pointed out that he was not allowed to make a statement at the beginning of the pre-trial hearing even though he was willing to do so. Third, he stated that the Court denied his request to have his brother, Rodolfo Ruano Torres, known as *Chopo*, testify at the hearing although he was willing to do so. Fourth, Mr. Ruano Torres said that the Second Trial Court did not give weight to the testimonial and documentary evidence submitted. He further stated that the other persons convicted in the kidnapping admitted that he had not taken part in the crime but, rather, that it had been his brother, Rodolfo Ruano Torres, known as *Chopo* who had participated in the act.¹³²

99. In its resolution, the Office of the Human Rights Ombudsman established the violation of due process to the detriment of José Agapito Ruano Torres.¹³³ The resolution also recommended to

¹²⁶ Annex 18. Brief of the Human Rights Commission of El Salvador, dated April 4, 2002. Annex to the petitioner's brief dated April 11, 2007.

¹²⁷ Annex 18. Brief of the Human Rights Commission of El Salvador, dated April 4, 2002. Annex to the petitioner's brief dated April 11, 2007.

¹²⁸ Annex 19. Brief of José Agapito Ruano Torres submitted to the Constitutional Chamber of the Supreme Court of Justice, dated June 8, 2001. Annex to the petitioner's communication received on December 12, 2003.

¹²⁹ Annex 20. Brief of the Office of the Presidency of the Supreme Court of Justice, dated October 22, 2003. Annex to the petitioner's communication received on December 12, 2003.

¹³⁰ Annex 21. Brief of José Agapito Ruano Torres submitted to the Office of the Human Rights Ombudsman, dated October 15, 2001. Annex to the petitioner's brief dated December 12, 2003.

¹³¹ Annex 21. Brief of José Agapito Ruano Torres submitted to the Office of the Human Rights Ombudsman, dated October 15, 2001. Annex to the petitioner's brief dated December 12, 2003.

¹³² Annex 21. Brief of José Agapito Ruano Torres submitted to the Office of the Human Rights Ombudsman, dated October 15, 2001. Annex to the petitioner's brief dated December 12, 2003.

¹³³ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, June 9, 2003, page 694, criminal case file 77-2001-2.

the Office of the Public Defender of the Office of the Attorney General of the Republic that, given the irregularities in the proceedings, jointly endorsed by omission of the various judges, prosecutors and public defenders, to pursue a review of the judgment against him..¹³⁴ Based on the information provided by both parties, there is no evidence that the Office of the Public Defenders of the Office of the Attorney General of the Republic ever pursued a review of the judgment against Mr. Ruano Torres.

100. With regard to the evidence provided before trial by Francisco Amaya Villalta, the resolution issued by the Office of the Human Rights Ombudsman established that i) his real name was Ricardo Flores Amaya, a fact that was never investigated; and ii) the principle that both parties must be heard was violated given that the accused never had the opportunity to rebut what he said.¹³⁵ Furthermore, the resolution pointed out that there was no evidence that any inquiry was conducted to ascertain that the nickname *Chopo* belonged to José Agapito Ruano Torres which created a situation of legal insecurity. With regard to the line-up in which José Agapito Ruano Torres took part, the resolution pointed out that the principle of due process was violated because of the numerous irregularities in that process.

101. Likewise, in the resolution, the Office of the Human Rights Ombudsman maintained that the fact that Mr. Ruano Torres had been exposed to the communications media before the line-up took place, tainted this means to produce evidence and violated the right to the presumption of innocence. With regard to the various participants in the proceedings to prosecute Mr. Ruano Torres, the resolution pointed out that i) his public defense harmed his position by not promoting the investigation of his case and by not recognizing the various irregularities in the proceeding; ii) the prosecutors' performance violated the principles of promoting investigations on their own initiative, impartiality and objectivity; and iii) the Magistrate's Court in Tonacatepeque ignored all the irregularities that had taken place up until it heard the case.¹³⁶

102. On August 1, 2003, José Agapito Ruano Torres, on his own behalf and without legal counsel, filed an extraordinary motion to review¹³⁷ with the Second Trial Court in and for San

¹³⁴ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, June 9, 2003, page 694, criminal case file 77-2001-2.

¹³⁵ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, June 9, 2003, page 696, criminal case file 77-2001-2.

¹³⁶ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, June 9, 2003, page 696, criminal case file 77-2001-2.

¹³⁷ Article 431 of the Code of Criminal Procedure of El Salvador establishes that: A review of final judgment shall be admissible at all times and only in favor of the accused in the following circumstances:

- 1) When the facts on which the judgment is based are incompatible with those established in the judgment or by another final criminal judgment.
- 2) When the challenged judgment has been challenged on documentary evidence or testimony whose falsehood has been declared in a subsequent final decision.
- 3) When the judgment has been delivered as a result of malfeasance, bribery, violence, or in an otherwise fraudulent manner whose existence has been declared in a subsequent final ruling...
- 4) When the judgment violently and patently violates a constitutional guarantee.
- 5) When new facts or evidence come to light after the judgment that on their own or in conjunction with those already examined in the proceeding, show that the act did not exist, that the accused did not commit it, or that the act committed is not punishable.
- 6) When a more favorable criminal law is applicable.

Salvador.¹³⁸ In that motion, Mr. Ruano Torres pointed out that his attorney had not allowed him to make a statement during the beginning of the public hearing and that he had offered to have his brother Rodolfo Ruano Torres appear at the hearing as evidence since he was known as *Chopo*. On August 13, 2003, the Second Trial Court in and for San Salvador ruled the motion inadmissible stating that there had not been any violation of his constitutional guarantees because José Agapito Ruano Torres chose not to make a statement.¹³⁹

103. On September 22, 2003, José Agapito Ruano Torres again filed with the Second Trial Court in and for San Salvador a motion to review based on the same arguments.¹⁴⁰ On September 29, 2003, the Second Trial Court in and for San Salvador decided not to admit this new motion because it considered it a reiteration of the previous motion.¹⁴¹

104. On October 4, 2004, the Office of the Human Rights Ombudsman ratified its previous resolution of June 9, 2003.¹⁴² It reiterated the i) violations found during the prosecution and trial of Mr. Ruano Torres; ii) the responsibility of the three public defenders, the Office of the Attorney General and the various judges who participated in the proceedings; and iii) requested that the public defenders pursue the review of the judgment against Agapito.¹⁴³

105. On September 12, 2006, Toribio Chiquillo Rodríguez, one of the persons convicted in the kidnapping of Mr. Marroquín, submitted a brief to the Second Trial Court indicating that the individual who took part in the kidnapping was Rodolfo Ruano Torres, who goes by the nickname *Chopo*, and not José Agapito Ruano Torres.¹⁴⁴ He stated that from the very beginning of the proceedings, the prosecutors did not allow him to testify that José Agapito Ruano Torres did not participate at any time in the kidnapping of Mr. Marroquín and that he had just met him during the criminal proceedings.¹⁴⁵

106. On November 22, 2006, José Agapito Ruano Torres filed a new motion to review with the Second Trial Court.¹⁴⁶ He argued that he was not allowed to make a statement even though he stated “I am willing to testify.”¹⁴⁷ He also argued that Mr. Marroquín admitted that his pointing to and recognition of Mr. Ruano Torres was based on the communications media and even repeated “I saw

¹³⁸ Annex 1. Brief of José Agapito Ruano Torres, dated August 1, 2003, page 712, criminal case file 77-2001-2.

¹³⁹ Annex 1. Brief of the Second Trial Court in and for San Salvador, dated August 13, 2003, page 713, criminal case file 77-2001-2.

¹⁴⁰ Annex 1. Brief of José Agapito Ruano Torres, dated September 22, 2003, page 715, criminal case file 77-2001-2.

¹⁴¹ Annex 1. Brief of the Second Trial Court in and for San Salvador, dated September 29, 2003, page 716, criminal case file 77-2001-2.

¹⁴² Annex 22. Resolution of the Office of the Human Rights Ombudsman, dated October 4, 2004. Annex to the petitioner’s brief of February 14, 2005.

¹⁴³ Annex 22. Resolution of the Office of the Human Rights Ombudsman, dated October 4, 2004. Annex to the petitioner’s brief of February 14, 2005.

¹⁴⁴ Annex 23. Brief of Toribio Chiquillo Rodríguez submitted to the Second Trial Court, dated September 12, 2006. Annex to the petitioner’s brief dated April 11, 2007.

¹⁴⁵ Annex 1. Office of the Human Rights Ombudsman, case file 01-1554 Ac. 01-0214-01, June 9, 2003, page 697, criminal case file 77-2001-2.

¹⁴⁶ Annex 24. Brief of José Agapito Ruano Torres submitted to the Second Trial Court, dated November 22, 2006. Annex to the petitioner’s brief dated April 11, 2007.

¹⁴⁷ Annex 24. Brief of José Agapito Ruano Torres submitted to the Second Trial Court, dated November 22, 2006. Annex to the petitioner’s brief dated April 11, 2007.

them in the newspapers and in one video.”¹⁴⁸ He also requested that the evidence presented be discussed and analyzed –documentary statement regarding his work on the day of the kidnapping and testimony from Rodolfo Ruano Torres and Toribio Chiquillo Rodríguez- in order to be granted alternative measures to deprivation of liberty,

107. On November 27, 2006, the Second Trial Court resolved the motion ruling it out of order.¹⁴⁹ With regard to the refusal to allow Mr. Ruano Torres to make a statement, the Court admitted “at the moment he wanted to make a statement, he was not paid attention when it was asked.”¹⁵⁰ Furthermore, the court maintained that at the end of the pre-trial hearing “he only said he was innocent when that was the moment in the proceeding where he should have stated that he wanted to make a statement.”¹⁵¹ The court also said that the times that Mr. Marroquín pointed him out were spontaneous and direct.¹⁵² The court also pointed out that Mr. Ruano Torres could “allege what is relevant in the trial, which is within his right to a material defense.”¹⁵³

108. With regard to the petitioner’s allegations relating to the events that transpired on January 5, 2007, at the Correctional Center in Apanteos in Santa Ana, where José Agapito Ruano Torres was being held, the IACHR issued a press release four days after the events took place. The Commission expressed its profound concern with the violent acts that had taken place in that institution as a result of a mutiny, and which led to the death of 21 inmates.¹⁵⁴ Mr. Pedro Torres Hércules reported that after learning about those events, the correctional authorities at the institution told him that Mr. Ruano Torres was not on the list of persons transferred or of deceased persons who had been identified.¹⁵⁵ However, he indicated that they recommended that he go to the Forensic Medicine Center since there were “deceased persons who had not been identified.”¹⁵⁶ Mr. Torres Hércules states that he was not able to enter that center “because a large crowd of people had gathered there waiting for the opportunity to identify their loved ones.”¹⁵⁷ He said that until the moment they were told that Mr. Ruano Torres was still at the Correctional Center in Apanteos, his spouse Naría Maribel Guevara de Ruano and his son Oscar Manuel Ruano Guevara went through “very difficult moments.”¹⁵⁸

109. On September 24, 2009, the First Parole and Execution of Sentence Court granted Mr. Ruano Torres parole.¹⁵⁹ However, the Office of the Attorney General of the Republic appealed the

¹⁴⁸ Annex 24. Brief of José Agapito Ruano Torres submitted to the Second Trial Court dated November 22, 2006. Annex to the petitioner’s brief dated April 11, 2007.

¹⁴⁹ Annex 25. Resolution of the Second Trial Court, dated November 27, 2006. Annex to the petitioner’s brief dated April 11, 2007.

¹⁵⁰ Annex 25. Resolution of the Second Trial Court dated November 27, 2006. Annex to the petitioner’s brief dated April 11, 2007.

¹⁵¹ Annex 25. Resolution of the Second Trial Court dated November 27, 2006. Annex to the petitioner’s brief dated April 11, 2007.

¹⁵² Annex 25. Resolution of the Second Trial Court dated November 27, 2006. Annex to the petitioner’s brief dated April 11, 2007.

¹⁵³ Annex 25. Resolution of the Second Trial Court dated November 27, 2006. Annex to the petitioner’s brief dated April 11, 2007.

¹⁵⁴ Annex 26. IACHR, Press Release No. 02-07, January 9, 2007.

¹⁵⁵ Annex 27. Petitioner’s brief dated January 11, 2007.

¹⁵⁶ Annex 27. Petitioner’s brief dated January 11, 2007.

¹⁵⁷ Annex 27. Petitioner’s brief dated January 11, 2007.

¹⁵⁸ Annex 27. Petitioner’s brief dated January 11, 2007.

¹⁵⁹ Annex 28. Resolution of the First Penal Chamber of the First Section of the Judicial Center, dated October 15, 2009. Annex to the report of the State dated March 2, 2010e 2010.

decision and on October 15, 2009, the First Penal Chamber of the First Section of the Judicial Center revoked the decision.¹⁶⁰

110. On May 9, 2013, the First Parole and Execution of Sentence Court granted Mr. Ruano Torres parole, subject to a probationary period up to June 26, 2015. The court found that José Agapito Ruano met the requirements set by the Criminal Code in that: (i) he had served two-thirds of his sentence; (ii) he was a first-time offender; (iii) he had paid the fine as ordered; (iv) his record was free of offenses and disciplinary sanctions; and (v) according to the criminology examination carried out, he had “displayed good conduct” and “good behavior” and “showed low levels of aggression and dangerousness,” on account of which “the prognosis for social reincorporation was favorable.”¹⁶¹

111. According to the court’s decision, Mr. Ruano Torres is obliged to: (i) not leave the country without prior judicial authorization; (ii) remain a resident of the address given; (iii) keep away from the workplace and residence of the victim and his next-of-kin; and (iv) report each four months to the Department of Evidence and Conditional Liberty. The court added that failure to comply with any of those requirements would cause the cancellation of the benefit awarded.¹⁶²

V. ANALYSIS OF LAW

112. The Commission notes that a series of facts of different kinds have been established. Accordingly, the Commission will conduct its analysis of law around three points. The first will address the trial and incarceration of Mr. Ruano Torres; the second will examine the alleged violations of the right to humane treatment and the investigations into those facts; and the third will focus on the impact on Mr. Ruano Torres’s family.

A. The criminal prosecution and incarceration of Mr. Ruano Torres

113. The Commission notes that one basic principle in the law of international state responsibility, enshrined in international human rights law, is that a state is internationally responsible for acts and omissions by any of its agencies or agents in violation of internationally established rights, pursuant to Article 1.1 of the American Convention.¹⁶³ Articles 8 and 25 of the Convention define the scope of that principle, with reference to the actions and omissions of the domestic judicial organs¹⁶⁴ and of the nonjudicial agencies responsible for the investigation prior to judicial proceedings.¹⁶⁵

¹⁶⁰ Annex 28. Resolution of the First Penal Chamber of the First Section of the Judicial Center dated October 15, 2009. Annex to the report of the State dated March 2, 2010.

¹⁶¹ Annex 29. Resolution of the First Parole and Execution of Sentence Court, dated May 9, 2013. Enclosed with José Agapito Ruano Torres’s submission received by the IACHR on July 8, 2013.

¹⁶² Annex 29. Resolution of the First Parole and Execution of Sentence Court, dated May 9, 2013. Enclosed with José Agapito Ruano Torres’s submission received by the IACHR on July 8, 2013.

¹⁶³ I/A Court H. R., *Case of Ximenes Lopes v. Brazil*, Judgment of July 4, 2006, Series C No. 149, para. 172; I/A Court H. R., *Case of Baldeón García v. Peru*, Judgment of April 6, 2006, Series C No. 147, para. 140; I/A Court H. R., *Case of the Massacre of Pueblo Bello v. Colombia*, Judgment of January 31, 2006, Series C No. 140, paras. 111-112; and I/A Court H. R., *Case of the “Mapiripán Massacre” v. Colombia*, Judgment of September 15, 2005, Series C No. 134, para. 108.

¹⁶⁴ I/A Court H. R., *Case of López Álvarez v. Honduras*, Judgment of February 1, 2006, Series C No. 141, para. 28; and I/A Court H. R., *Case of Herrera Ulloa v. Costa Rica*, Judgment of July 2, 2004, Series C No. 107, para. 109.

¹⁶⁵ I/A Court H. R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*, Judgment of July 10, 2007, Series C No. 167, para. 133.

114. In connection with this, the Commission believes it would be useful to again state that:

In order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, [the Commission and the Court] may have to examine the respective domestic proceedings. In light of the above, the domestic proceedings must be considered as a whole and the role of the international court is to establish whether the proceedings as a whole were in accordance with international provisions.¹⁶⁶

115. Since the alleged violations of personal liberty are intimately linked to the criminal proceedings, the Commission will first rule on the following points related to the trial: (i) the principle of presumption of innocence, (ii) the right of defense, and (iii) the remedies filed in connection with the criminal trial. Fourth, the Commission will address Mr. Ruano Torres's incarceration as a consequence of the proceedings.

1. The principle of presumption of innocence

116. Article 8.2 of the American Convention establishes:

Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.

117. The right to a fair trial, established in Article 8 of the American Convention, covers all the procedural requirements that must be observed so that persons may defend their rights adequately against any act by the State.¹⁶⁷ One fundamental element of those guarantees is the principle of presumption of innocence.¹⁶⁸

118. The Inter-American Court has said that this principle means that the defendant does not have to prove that he did not commit the offense with which he is charged, because the *onus probandi* is on those making the accusation.¹⁶⁹ Thus, the convincing demonstration of guilt is an essential requirement for a criminal sanction, so that the burden of proof falls on the prosecutor and not on the accused.¹⁷⁰ On this point, the Human Rights Committee has ruled that:

The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must

¹⁶⁶ I/A Court H. R., *Case of Zambrano Vélez et al. v. Ecuador*, Judgment of July 4, 2007, Series C No. 166, para. 142; I/A Court H. R., *Case of Lori Berenson Mejía v. Peru*, Judgment of November 25, 2004, Series C No. 119, para. 133; I/A Court H. R., *Case of Myrna Mack Chang v. Guatemala*, Judgment of November 25, 2003, Series C No. 101, para. 200; and I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras*, Judgment of June 7, 2003, Series C No. 99, para. 120.

¹⁶⁷ I/A Court H. R., *Case of Genie Lacayo v. Nicaragua*, Judgment of January 29, 1997, Series C No. 30, para. 74; I/A Court H. R., *Case of Claude Reyes et al. v. Chile*, Judgment of September 19, 2006, Series C No. 151, para. 116; and I/A Court H. R., *Judicial Guarantees in States of Emergency (Arts. 27.2, 25, and 8 of the American Convention on Human Rights)*, Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, para. 27.

¹⁶⁸ I/A Court H. R., *Case of Suárez Rosero v. Ecuador*, Judgment of November 12, 1997, Series C No. 35, para. 77; I/A Court H. R., *Case of García Asto Ramírez Rojas v. Peru*, Judgment of November 25, 2005, Series C No. 137, para. 160; and I/A Court H. R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Judgment of November 21, 2007, Series C No. 170, para. 145.

¹⁶⁹ I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 154.

¹⁷⁰ I/A Court H. R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, Series C No. 220, para. 182.

be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused.¹⁷¹

119. Thus, international human rights law establishes that no person may be convicted of a crime unless there is full proof of his or her criminal responsibility. As the Court has said, “if the evidence presented is incomplete or insufficient, he must be acquitted, not convicted.”¹⁷² Consequently, the Court has ruled that the absence of full evidence of criminal responsibility in a conviction constitutes a violation of the principle of presumption of innocence.¹⁷³

120. The case under analysis raises two questions that are directly related to the principle of presumption of innocence. The first involves the claim of a lack of due diligence in the identification of Mr. José Agapito Ruano Torres as one of suspects in the crime for which he was convicted. The second involves the evidence on which that conviction was based.

1.1 The identification of Mr. Ruano Torres

121. The Commission believes that the principle of presumption of innocence, taken in conjunction with the principle of individual responsibility, imposes a minimum obligation on states as regards due diligence in the identification of persons who are to be subjected to investigations and criminal prosecutions. Only through their accurate identification can the competent authorities analyze and assess the evidence that exists regarding their possible involvement in an incident and their possible criminal responsibility.

122. According to the established facts, José Agapito Ruano Torres was first identified as one of the suspects in the kidnapping of Mr. Rodríguez Marroquín on October 12, 2000, during the police investigation carried out to locate “*el Chopo*,” the alias used by one of the suspected perpetrators of that abduction, as indicated by one of the participants in the crime, Francisco Amaya Villalta, in an extrajudicial statement given on October 9, 2000.

123. Thus, the police identification deed of October 12, 2000, indicates that “we sought to obtain information on the identity of the individual referred to only as *Chopo*, where we were told that he responded to the name of Agapito Ruano.” The Commission notes that neither this document nor any other part of the case file indicates the formalities pursued by the police officers on that date to identify José Agapito Ruano Torres as *Chopo*. During the pre-trial hearing held before the Second Trial Court, the police officer in charge of the case, who signed the police deed of October 12, 2000, stated that he did not recall the formalities carried out to identify the suspects in the kidnapping.

124. As for the judicial statement of Francisco Amaya Villalta given under the plea bargain admitted by the Justice of the Peace of Tonacatepeque on October 16, 2000, the Commission notes that it is a verbatim copy of the extrajudicial statement made on October 9, 2000. The sole difference is the inclusion of the name of José Agapito Ruano Torres whenever reference is made to the participation of

¹⁷¹ Human Rights Committee, General Comment No. 32, Article 14, Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, August 23, 2007, para. 30.

¹⁷² I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69, para. 120; and I/A Court H. R., *Case of Ricardo Canese v. Paraguay*, Judgment of August 31, 2004, Series C No. 111, para. 153.

¹⁷³ I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69, para. 121.

Chopo in the kidnapping. Taking into account the full contents of the case file up to that date, the Commission understands that the inclusion of Mr. Ruano Torres's name with the alias *Chopo* in the judicial statement of October 16, 2000, was made on the basis of the police operation of October 12, 2000.

125. The Commission notes that in addition to the lack of clarity regarding the steps taken by the authorities in charge of the initial investigation, there are numerous elements, as of that time and throughout the proceedings, that cast doubts on Mr. José Agapito Ruano Torres being *Chopo*.

126. It is not the task of the Commission to assess the effect of those doubts on the judgments made by the domestic authorities in the course of the investigation and criminal trial. The analysis required of the Commission has to do with how the State responded to them in order to ensure that the investigation and criminal trial were not in breach of the presumption of innocence. That is the analysis the Commission will conduct of the different stages in the investigation and criminal trial.

127. Among the elements of doubt regarding the identification of Mr. José Agapito Ruano Torres as *Chopo* in the first stages of the investigation, the Commission notes the following: (i) there is a considerable difference between the height indicated by Francisco Amaya Villalta in his extrajudicial statement and that set down on José Agapito Ruano Torres's ID card; (ii) the addresses do not agree; (iii) Mr. Ruano Torres himself stated that, when he was arrested and asked whether he was *Chopo*, he said that it was an alias used by his brother, Rodolfo Ruano Torres, and that another of the defendants told a police officer that Mr. Ruano Torres was not *Chopo*. Despite this uncertainty, the case file does not indicate that the police officers or the prosecution service took any steps to confirm, at this preliminary stage, that Mr. Ruano Torres was known by the alias in question.

128. In addition to the early stages in the investigation, the Commission has established that during the proceedings a series of briefs were filed reaffirming that Mr. José Agapito Ruano Torres was not *Chopo* and that it was his brother, Rodolfo Ruano Torres, who was known by that alias. The Commission notes that these filings included offers of evidence specifically intended to demonstrate the alleged error committed during the initial identification. Some of this evidence was rejected, while the elements that were examined were not assessed or included in the arguments of the corresponding decisions. The Commission notes that Rodolfo Ruano Torres admitted his involvement in the kidnapping and attempted to appear before several venues. His requests were repeatedly denied.

129. To summarize, Mr. José Agapito Ruano Torres was convicted without the police, the investigators, or the judicial authorities took the minimum steps to address the doubts existing regarding the identity of *Chopo*. Thus, this situation constitutes a violation of the principle of presumption of innocence.

1.2 The evidence used to convict Mr. Ruano Torres

130. Prior to examining this point the Commission again states that it is the domestic authorities – and, in cases such as this, the criminal judges – who are responsible for appraising the evidence contained in a criminal case file and its implications in determining the corresponding responsibilities. However, an analysis of whether the State failed to observe the principle of presumption of innocence may require an examination of the evidence available to the domestic judicial authorities. This is a different exercise to the one carried out by the criminal judges and is intended

exclusively to determine whether, in discharging their duties, they failed to observe the minimum safeguards required by the principle of presumption of innocence.

131. Thus, the conviction of October 5, 2001, and the State's contentions during the proceedings before the Commission indicate that the court's decision was based on two pieces of evidence: (i) the judicial statement given by Francisco Amaya Villalta, and (ii) the positive identification made by Mr. Rodríguez Marroquín in the identity parade and the pre-trial hearing.

132. The established facts indicate that both these pieces of evidence contained significant irregularities.

133. Regarding the judicial statement made by Francisco Amaya Villalta during the negotiation of his plea bargain, the Commission notes that this document is a verbatim copy of his extrajudicial statement of October 9, 2000. The only difference is the inclusion of José Agapito Ruano Torres's name alongside the references to *Chopo*. The Commission believes that the decision to allow a plea bargain, a mechanism provided for in the criminal law of El Salvador,¹⁷⁴ is a matter for the sole competence of the domestic judicial authorities. However, the Commission notes that the legislation establishes a series of requirements that must be met for plea bargains to proceed in a way that is compatible with the state's duty of properly clearing up crimes. This is of particular relevance since the result thereof can be that persons who provide information about crimes in which they participated are not prosecuted.

134. The Commission notes that the decisions of the Justice of the Peace of Tonacatepeque of October 12 and 16, 2000, giving authorization for a statement to be taken from Mr. Amaya Villalta and allowing the plea bargain to proceed, respectively, were not grounded in such a way as to indicate the facts, reasons, and requirements that had been met and that allowed Mr. Amaya Villalta to benefit from such an arrangement.

135. The absence of information on the guarantees that applied to this formality is particularly problematical since, throughout the proceedings, the statement in question was used as one of the two key pieces of evidence for the trial and conviction. Mr. Ruano Torres asked to be able in some way to confront Mr. Amaya Villalta, for him to explain the reason for his inclusion in the extrajudicial statement instead of the alias *Chopo*. However, Mr. Ruano Torres was denied that possibility.

¹⁷⁴ Article 20 of the Salvadoran Code of Criminal Procedure: In public actions, the prosecutor may petition the judge to omit the criminal prosecution of one or more of the charges, with respect to one or more of the accused, or to constrain himself to one or more of the possible juridical interpretations, in the following cases:

(1) When the act is such that, by reason of its insignificance, the minimal contribution of the participant, or his minimal guilt, the public interest is not affected.

(2) When the accused did everything within his power to prevent the commission of the act or made a decisive contribution to casting light on the participation of other defendants in the same act or another more serious act.

(3) When the accused has suffered, as a direct consequence of the act, serious or irreparable physical or mental harm that inhibits him from pursuing his regular occupation or when, in the case of a culpable crime, he has suffered insurmountable moral harm.

(4) When the punishment applicable to the act or the legal interpretation that is not to be prosecuted is unimportant compared to a sanction that has already been imposed, to the sanction applicable to the remaining actions or interpretations, or to the sanction that would be imposed in proceedings pursued abroad.

If the judge deems the activation of any of these criteria to be applicable, or in cases covered by the first subparagraph of this article and activation has been requested by the complainant, the opinion of the prosecutor shall be sought, which shall be delivered within no more than the following three days. The judge shall not enable a plea bargain without the prosecutor's consent.

136. It should be noted that in the case of *Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, the Court found that the State had violated the right of defense in that the victims' lawyers were unable to attend one essential formality in the proceedings brought against the victims for the crime of drug trafficking.¹⁷⁵ Similarly, in the case of *Luca v. Italy* before the European Court of Human Rights, a person was convicted on the basis of a witness statement given during the investigation without the accused's defense counsel being present. In that instance, the European Court found that the State had violated the right of defense and the right to the presumption of innocence in that the evidence could not be challenged by the defense and constituted a substantial portion of the evidence used to convict the victim.¹⁷⁶

137. Thus, since Mr. Ruano Torres's defense was not present for that statement, which has been used as a key part of the evidence in his conviction, together with the lack of judicial grounding for allowing Mr. Amaya Villalta's plea bargain and the impossibility of questioning that evidence during the entire judicial proceedings, the Commission believes that this situation constituted an additional violation of the presumption of innocence, in addition to a breach of the right of defense.

138. Regarding the second key piece of evidence – that is, the identification made by the victim of the kidnapping during an identity parade – there are statements from three individuals, including José Agapito Ruano Torres, who contend that the formality was marred by irregularities. Those arguments involve the fact that the prosecutor pointed out Mr. Ruano Torres in order for the kidnapping victim to identify him, and that false names were recorded on the record of the procedure. The case file contains no indication that the judicial authorities assessed those factors or made any statement regarding them. According to the report issued by the office of the Salvadoran Human Rights Ombudsman, this formality was marred by the fact that Mr. Rodríguez Marroquín had seen pictures of the trial's "suspects" in the media. The Commission notes that during the pre-trial hearing, Mr. Rodríguez Marroquín stated that prior to the identity parade, he had seen the arrested suspects "in the papers and in a video."

139. The European Court has ruled that the evidence that is to be analyzed by the agencies of the judiciary must have been obtained in a way that is fair.¹⁷⁷ Otherwise, if evidence that is essential for a conviction is obtained irregularly, the right of defense is undermined.¹⁷⁸

140. Thus, in light of the foregoing, the Commission finds that the only two pieces of evidence on which Mr. José Agapito Ruano Torres's conviction were based were marred with irregularities that affected his right of defense and presumption of innocence. Moreover, at no juncture following the time that evidence was obtained during the investigation phase did any of the judicial venues draw attention to those irregularities or rule on them. In addition, although the petitioner and Mr. Ruano Torres reported the judicial agencies' omissions in admitting and appraising both these

¹⁷⁵ I/A Court H. R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Judgment of November 21, 2007, para. 154.

¹⁷⁶ European Court of Human Rights, *Luca v. Italy*, Application No. 33354/96, Judgment of 27 February 2001, para. 40.

¹⁷⁷ European Court of Human Rights, *Van Mechelen and Others v. The Netherlands*, Applications Nos. 21363/93, 21364/93, 21427/93, and 22056/93, Judgment of 18 March 1997, para. 50.

¹⁷⁸ European Court of Human Rights, *Unterpertinger v. Austria*, Application No. 9120/80, Judgment of 24 November 1986, paras. 31-33; *Saïdi v. France*, Application No. 14647/89, Judgment of 20 September 1993, paras. 43-44; and *Van Mechelen and Others v. The Netherlands*, Applications Nos. 21363/93, 21364/93, 21427/93, and 22056/93, Judgment of 23 April 1997, para. 55.

pieces of evidence for the conviction of Mr. Ruano Torres, those actions were neither investigated nor punished.

141. This situation is compounded by the failure to assess the witness statements and documentary evidence that indicated that Mr. Ruano Torres was at work at a school at the time of the facts. The Commission notes that on several occasions this evidence was disallowed on the grounds that it was not relevant or of importance. In this regard, the Commission highlights the importance, in accordance with the principle of presumption of innocence which involves all authorities conducting a process, that any criminal investigation should allow the presentation and analysis of the evidence that may be favorable or unfavorable to the person prosecuted.

142. In light of the above considerations, the Commission concludes that the State of El Salvador did violate, with respect to Mr. José Agapito Ruano Torres, the right to the presumption of innocence established in Article 8.2 of the American Convention, in conjunction with Article 1.1 thereof.

2. The right of defense

143. Article 8.2.d of the American Convention establishes the “right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel.”

144. In this regard, the Inter-American Court has ruled that the right to defense must necessarily be exercised from the moment a person is accused of perpetrating or participating in an unlawful action and only ends when the proceeding concludes.¹⁷⁹ In addition, once the accused has been provided with public defense counsel, it must be effective, for which purpose the State must adopt all the appropriate measures.¹⁸⁰

145. The Inter-American Commission, the Human Rights Committee, and the European Court have established that states cannot be held responsible for all the failings of public defense counsel.¹⁸¹ Nevertheless, the appointment of public defense counsel alone does not ensure the right to effective assistance.¹⁸² As the Court has ruled, the appointment of defense counsel for the sole purpose of complying with a procedural formality would be tantamount to not having technical legal representation; therefore, it is imperative that defense counsel act diligently in order to protect the procedural guarantees of the accused and thereby prevent their rights from being violated.¹⁸³ Thus, the State is responsible if public defenders incur in omissions or failings that evidently allow the conclusion that effective assistance was not rendered.¹⁸⁴

¹⁷⁹ I/A Court H. R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, Series C No. 220, para. 154; I/A Court H. R., *Case of Barreto Leiva v. Venezuela*, Judgment of November 17, 2009, Series C No. 206, paragraph 29; I/A Court H. R., *Case of Suárez Rosero v. Ecuador*, Judgment of November 12, 1997, Series C No. 35, para. 71; I/A Court H. R., *Case of Heliodoro Portugal v. Panama*, Judgment of August 12, 2008, Series C No. 186, para. 148; I/A Court H. R., *Case of Bayarri v. Argentina*, Judgment of October 30, 2008, Series C No. 187, para. 105; and I/A Court H. R., *Case of Barreto Leiva v. Venezuela*, Judgment of November 17, 2009, Series C No. 206, para. 62.

¹⁸⁰ I/A Court H. R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, Series C No. 220, para. 154.

¹⁸¹ IACHR, Report No. 41/04, Case 12.417, Merits, Whitley Myrie, Jamaica, October 12, 2004, para. 62. Human Rights Committee, *Byrong Young v. Jamaica*, Decision of December 17, 1997, para. 5.5; and *Michael Adams v. Jamaica*, Decision of November 20, 1996, para. 8.4. European Court of Human Rights, *Kamasinsky v. Austria*, Application No. 9783/82, Judgment of 19 December 1989, para. 65.

¹⁸² European Court of Human Rights, *Artico v. Italy*, Application No. 6694/74, Judgment of 13 May 1980, para. 33.

¹⁸³ I/A Court H. R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, Series C No. 220, para. 155.

¹⁸⁴ IACHR, Report No. 41/04, Case 12.417, Merits, Whitley Myrie, Jamaica, October 12, 2004, para. 62.

146. In the case at hand, it has been seen that the public defense team filed no actions, either at the initial hearing, the preliminary hearing, or the pre-trial hearing, to assert the central point of Mr. José Agapito Ruano Torres's defense: that is, the argument that the person who participated in the kidnapping of Mr. Rodríguez Marroquín was his brother Rodolfo Ruano Torres, who was known as *Chopo*. This was in spite of the willingness of Rodolfo Ruano Torres to appear before the various judicial venues to explain that he, and not his brother, was *Chopo*. On the contrary, the petitioner contended that the public defense team told him that nothing could be done against the two pieces of evidence used against him, and the State did not dispute that contention. The Commission also notes that throughout the criminal proceedings, the public defense team did not question the irregularities in the evidence used against Mr. Ruano Torres, nor did it lodge any appeals against the first-instance conviction, allowing it to gain the status of a final judgment.

147. Given this situation, the Commission notes that the record contains numerous indications that Mr. Ruano Torres sought the timely exercise of his defense through all available means. He made such attempts by requesting changes to his defense team and by lodging formal complaints about the performance of his public defenders, both during the proceedings and after they had concluded. In spite of this, the State did not provide a prompt response to the change requests, nor did it conduct a disciplinary investigation into the allegations made by Mr. Ruano Torres. The Commission notes that the report of the Salvadoran Ombudsman for Human Rights finds that because of the failures described, Mr. Ruano Torres's public defense was not effective and did, in fact, affect his right of defense. The Commission believes that it has sufficient evidence to conclude that the deficient performance of the public defenders played an essential role in Mr. Ruano Torres's conviction.

148. In consideration of all the foregoing, the Commission finds that the State of El Salvador did violate the right of defense established in Article 8.2.d of the American Convention, in conjunction with Article 1.1 thereof, with respect to Mr. José Agapito Ruano Torres.

3. The remedies filed in connection with the criminal trial

149. The Court has ruled that in order for a state to be in compliance with Article 25.1 of the Convention, it is not enough for remedies to exist formally: they must also be effective.¹⁸⁵ That means that people must be afforded the real possibility of filing a simple and prompt remedy that will allow them, if appropriate, to secure the judicial protection needed.¹⁸⁶ The Court has repeatedly stated that the existence of that guarantee "is one of the basic pillars, not only of the American Convention, but of the very rule of law in a democratic society within the meaning of the Convention."¹⁸⁷

150. In the case at hand, following José Agapito Ruano Torres's arrest on October 17, 2000, both he and the petitioner, during the criminal proceedings, filed a series of briefs with the different judicial agencies, reporting numerous procedural irregularities, requesting formalities, and offering

¹⁸⁵ I/A Court H. R., *Case of Maritza Urrutia v. Guatemala*, Judgment of November 27, 2003, Series C No. 103, para. 117; I/A Court H. R., *Case of Juan Humberto Sánchez v. Honduras*, Judgment of June 7, 2003, Series C No. 99, para. 121.

¹⁸⁶ I/A Court H. R., *The "Panel Blanca" Case (Paniagua Morales et al.) v. Guatemala*, Judgment of March 8, 1998, Series C No. 37, para. 164; I/A Court H. R., *Case of Cesti Hurtado v. Peru*, Judgment of September 29, 1999, Series C No. 56, para. 125; and I/A Court H. R., *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgment of August 31, 2001, Series C No. 79, para. 114.

¹⁸⁷ I/A Court H. R., *Case of Loayza Tamayo v. Peru*, Judgment of November 27, 1998, Series C No. 42, para. 169; I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Judgment of July 26, 1987, Series C No. 1, para. 91; I/A Court H. R., *Case of Fairén Garbí and Solís Corrales v. Honduras*, Judgment of June 26, 1987, Series C No. 2, para. 90.

evidence. All this was intended to establish that the two pieces of evidence used had been obtained irregularly and that Mr. Ruano Torres was not the person identified as the suspect. None of the remedies took into consideration the violations of due process described in this report.

151. Following his conviction, José Agapito Ruano Torres filed for review remedies on three occasions: August 1, 2003; September 22, 2003; and November 22, 2006. In all those filings he offered the testimony of his brother Rodolfo Ruano Torres admitting to his involvement in the kidnapping of Mr. Rodríguez Marroquín. In the final filing he also offered statements by another of the convicted defendants, who admitted that he had participated in the kidnapping with Rodolfo Ruano Torres, known by the alias *Chopo*, and not with José Agapito Ruano Torres. These three remedies were also dismissed.

152. Because of that, in the case at hand the Commission finds that the remedies lodged with the different judicial agencies were not effective in upholding José Agapito Ruano Torres's right of defense and presumption of innocence. Thus, the Commission concludes that the State did violate Article 25 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Mr. Ruano Torres.

4. The incarceration of Mr. Ruano Torres as a result of the criminal trial

153. The Inter-American Court has maintained on several occasions that Article 7 of the American Convention regulates the guarantees necessary to safeguard personal liberty and, in connection with paragraphs 2 and 3, it has ruled that:

Pursuant to the first of these provisions, no person may be deprived of his or her personal freedom except for reasons, cases or circumstances expressly defined by law (material aspect) and, furthermore, subject to strict adherence to the procedures objectively set forth in that law (formal aspect). The second provision addresses the issue that no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.¹⁸⁸

154. The Court has said that the violation of judicial guarantees can have the effect of marring the entirety of a proceeding, as well as the consequences arising therefrom, including the imprisonment of a person.¹⁸⁹ In addition, the Commission has said that in certain circumstances, violations of human rights committed when adopting decisions where a person's liberty is at stake can make the arrest or imprisonment resulting from such decisions arbitrary.¹⁹⁰ For example, one factor considered by the United Nations Working Group on Arbitrary Detentions to determine when an arrest or imprisonment can be classified as arbitrary has been expressed in the following terms:

¹⁸⁸ I/A Court H. R., *Case of Acosta Calderón v. Ecuador*, Judgment of June 24, 2005, Series C No. 129, para. 57; I/A Court H. R., *Case of Tibi v. Ecuador*, Judgment of September 7, 2004, Series C No. 114, para. 98.

¹⁸⁹ I/A Court H. R., *Case of Usón Ramírez v. Venezuela*, Judgment of November 20, 2009, Series C No. 207, para. 148.

¹⁹⁰ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza and others (Prison and life sentences for adolescents), Argentina, November 2, 2000, para. 175.

When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in [...] the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.¹⁹¹

155. Thus, the Commission notes that although José Agapito Ruano Torres's detention was legal, in that a warrant for his arrest had been issued in accordance with Article 13 of the Constitution of El Salvador,¹⁹² it became arbitrary.¹⁹³ The Commission has stated that people can only be deprived of their liberty through a judgment arrived at during a trial in which they were able to defend themselves,¹⁹⁴ which was not the situation in Mr. Ruano Torres's case. Accordingly, the Commission concludes that the State did violate Article 7.3 of the American Convention, in conjunction with Article 1.1 thereof, with respect to Mr. Ruano Torres.

156. In addition, the Commission notes that on December 7, 2000, Mr. Ruano Torres filed a habeas corpus remedy with the Constitutional Chamber of the Supreme Court of Justice, asserting that his arrest had been arbitrary. Later, after receiving no response, on January 3 and February 19, 2001, he filed expansions of the habeas corpus remedy, requesting that an investigator be sent to the his neighborhood to verify that he was not known by the alias *Chopo*. It was not until August 7, 2001, that the Constitutional Chamber of the Supreme Court ruled on the habeas corpus filing by resolving to keep Mr. Ruano Torres in prison.

157. Article 7.6 of the American Convention is one of the basis for the protection of the right to personal liberty by a judicial body.¹⁹⁵ Thus, the habeas corpus remedy is the ideal means for securing the liberty of a detained person.¹⁹⁶

158. The Commission finds that in the case at hand, the habeas corpus remedy was ineffective, because the judicial authorities failed to pursue the minimal formalities needed to determine whether Mr. Ruano Torres's arrest had been arbitrary. Moreover, it took nine months for the habeas corpus remedy to be resolved, which is an unreasonable delay, particularly in light of Mr. Ruano Torres's situation. In conclusion, the Commission finds that the State did violate Article 7.6 of the American Convention, in conjunction with Article 1.1 thereof, with respect to José Agapito Ruano Torres.

B. The alleged violations of the right to humane treatment and the investigations related to those facts

1. The violence during his arrest and the torture allegations

¹⁹¹ Working Group on Arbitrary Detention of the Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 26, available at: http://www2.ohchr.org/spanish/about/publications/docs/fs26_sp.htm.

¹⁹² Article 13 of the Constitution of El Salvador: Administrative detention shall not exceed a duration of seventy-two hours, during which time the detainee must be referred to a competent judge, along with the formalities carried out.

¹⁹³ IACHR, Report No. 172/10, Case 12.561, Merits, César Alberto Mendoza and other (Prison and life sentences for adolescents), Argentina, November 2, 2000, para. 179.

¹⁹⁴ IACHR, Report No. 64/99, Case 11.778, Merits, Ruth del Rosario Garcés Valladares, Ecuador, April 13, 1999, para. 51.

¹⁹⁵ I/A Court H. R., *Case of Acasta Calderón v. Ecuador*, Judgment of June 24, 2005, Series C No. 129, para. 85.

¹⁹⁶ I/A Court H. R., *Case of Bámaca Velásquez v. Guatemala*, Judgment of November 25, 2000, Series C No. 70, para. 192.

159. First of all, the Commission notes that there is a dispute over whether the violence used against Mr. Ruano Torres in accordance with the established facts constituted a form of torture or a legitimate use of force.

160. The IACHR has underscored that the American Convention prohibits the use of torture or cruel, inhuman, or degrading treatments or punishment in any circumstance. The Commission has stated that “an essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory norm of international law creating obligations *erga omnes*.”¹⁹⁷ It has also determined the prohibition of torture to be a norm of *jus cogens*.¹⁹⁸ Furthermore, the Inter-American Court has repeatedly held that “torture and cruel, inhuman or degrading punishment or treatment are strictly prohibited by international human rights law. The absolute prohibition of torture, both physical and mental, is currently part of the international *jus cogens*.”¹⁹⁹ The Court has also noted that the universal and regional instruments enshrine that prohibition and the inalienable right not to be tortured.²⁰⁰

161. According to the jurisprudence of the inter-American system, for an act to be considered torture, the following elements must be present: (i) it must be an intentional act, (ii) which causes severe physical or mental suffering, and (iii) which is committed with a given purpose or aim.²⁰¹ Before analyzing the facts of the case in the light of these elements, the Commission again states that in cases involving allegations of torture, such as the one at hand, people do not have mechanisms to prove the acts of violence committed against them.²⁰²

162. According to José Agapito Ruano Torres’s statement, he was: (i) beaten and pushed to the ground while asleep, (ii) dragged along the floor to the door of his home, (iii) throttled with a rope, (iv) his limbs trodden on and beaten, and (v) threatened with death. That description is consistent with the statements made by his wife María Maribel Guevara. Similarly, the clinical report prepared by the National Civilian Police Medical Services Unit on the day of Mr. Ruano Torres’s arrest indicates that he had lacerations to the neck, chest, and shoulders, and scars on his nose and thighs.

¹⁹⁷ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing: IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 118.

¹⁹⁸ IACHR, *Report on Terrorism and Human Rights*, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing: IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, para. 154.

¹⁹⁹ I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C No. 164, para. 76; I/A Court H. R., *Case of the Miguel Castro Castro Prison*, Judgment of November 25, 2006, Series C No. 160, para. 271; and I/A Court H. R., *Case of Baldeón García*, Judgment of April 6, 2006, Series C No. 147, para. 117.

²⁰⁰ I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C No. 164, para. 77. Citing: International Covenant on Civil and Political Rights, Art. 7; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Art. 2; Convention on the Rights of the Child, Art. 37, and International Convention on the Protection of the Rights of All Migrant Workers and Their Families, Art. 10; Inter-American Convention to Prevent and Punish Torture, Art. 2; African Charter on Human and Peoples’ Rights, Art. 5; African Charter on the Rights and Welfare of the Child, Art. 16; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará), Art. 4, and European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 3; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6; Code of Conduct for Law Enforcement Officials, Art. 5; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 87(a); Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they Live, Art. 6; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), Rule 17.3.

²⁰¹ IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996, Section 3, Analysis; and I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C No. 164, para. 79.

²⁰² I/A Court H. R., *Case of Cabrera García and Montiel Flores v. Mexico*, Judgment of November 26, 2010, Series C No. 220, para. 128.

163. Given the description offered by Mr. Ruano Torres and his family, which concurs with the report of his medical examination, it can be concluded that he was subjected to acts of violence of a level sufficient to satisfy the severe or intense harm aspect of torture. This conclusion is reinforced by the absence of a diligent investigation by the State.

164. Regarding the requirements of intentionality and the existence of a specific purpose or aim, the Commission believes that the circumstances in which the arrest occurred involve elements that it would be useful to examine.

165. The police report indicates that more than nine officers went to Mr. Ruano Torres's home, where they had to use force because he "resisted arrest." The State of El Salvador told the Commission that the use of violence against Mr. Ruano Torres was "necessary." In contrast, the alleged victim states that around twenty police officers came to his home to arrest him, and at no point did he resist; on the contrary, he was asleep after working all day on the remodeling of a school. This was corroborated by his wife's testimony.

166. In addition to the fact that the State did not demonstrate the actual existence of the purpose it invoked for the violence used, the Commission notes that the police report of the arrest states that "Mr. Ruano Torres was known to be dangerous." The Commission notes that this statement by police, in addition to exposing Mr. Ruano Torres to an unwarranted situation of risk and danger to his physical integrity, constitutes an additional indication that the violence used was not intended to neutralize a risk of resistance arising at the specific time but rather that the police had already assumed an element of danger in the design of the operation. In addition, the Commission notes that according to the statements given by Mr. Ruano Torres and his wife, the police officers participating in his arrest accused him of being *Chopo*. Also, the alleged victim stated that the police made death threats to force him to confess to the media that he was a kidnapper and that he used the alias *Chopo*.

167. All previous elements infer that the actions taken by the police agents during the arrest of Mr. Ruano Torres had a purpose other than that indicated by the State. In this regard, the Commission considers that the objective was to reduce the physical and psychological endurance of Mr. Ruano Torres, and even to obtain a confession or self-identification as alias *Chopo*.

168. In light of all the foregoing, the Commission concludes that there are adequate grounds to classify the violence used José Agapito Ruano Torres as acts of torture in violation of Articles 5.1 and 5.2 of the American Convention, in conjunction with Article 1.1 thereof.

169. In addition, the Court has ruled that a person under illegal arrest or arbitrary arrest is "in an exacerbated situation of vulnerability, creating a real risk that his other rights, such as the right to humane treatment and to be treated with dignity, will be violated."²⁰³ Accordingly, the Commission believes that although there is no evidence to indicate unfavorable conditions at the prisons where he was held, merely being arbitrarily deprived of freedom for more than twelve years on account of a trial that lacked due judicial guarantees affected his right to mental integrity. The Commission therefore concludes that the State did violate Article 5.1 of the American Convention, in conjunction with Article 1.1 thereof, with respect to José Agapito Ruano Torres.

²⁰³ I/A Court H. R., *Case of Cantoral Benavides v. Peru*, Judgment of August 18, 2000, Series C No. 69, para. 90.

2. The investigations conducted regarding these facts

170. According to the duty of guarantee in Article 5 of the American Convention, states are subject to the obligation of preventing, investigating, and punishing the facts placed before them.²⁰⁴ In addition, the Inter-American Court has ruled as follows:

Under the American Convention, States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Art. 8.1), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Art. 1.1).²⁰⁵

171. The Commission notes that, according to the established facts, a complaint was lodged with the Disciplinary Investigation Unit of the National Civilian Police for the alleged mistreatment that Mr. Ruano Torres suffered at the hands of the police officers during his arrest. The Commission further notes that no disciplinary investigation was opened with respect to the police officers who participated in his arrest.

172. On this point, the Court has ruled that state authorities, once they have been made aware of a human rights violation, particularly one involving the right to humane treatment,²⁰⁶ have the duty of initiating, without delay and on an ex officio basis, a serious, impartial, and effective investigation,²⁰⁷ which must be completed within a reasonable time.²⁰⁸ In compliance with the duty of conducting serious investigations into violations of the right to human treatment, states are obligated to act, as of the very first procedures, with the utmost diligence.²⁰⁹

173. The Commission holds that after this complaint was filed, the State did not take any steps to investigate whether Mr. Ruano Torres had indeed suffered acts of torture during his arrest. This omission is made more serious by the statement in the police record that force was used on account of Mr. Ruano Torres's alleged refusal to be taken into custody. In addition, no investigation was conducted to ascertain whether the lacerations and scars reported in Mr. Ruano Torres's medical examination on the day of his arrest were due to the alleged violence.

²⁰⁴ I/A Court H. R., *Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Series C No. 4, para. 174.

²⁰⁵ I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 381; I/A Court H. R., *Case of Goiburú et al. v. Paraguay*, Judgment of September 22, 2006, Series C No. 153, para. 110; I/A Court H. R., *Case of Servellón García et al. v. Honduras*, Judgment of September 21, 2006, Series C No. 152, para. 147; and I/A Court H. R., *Case of Ximenes Lopes v. Brazil*, Judgment of July 4, 2006, Series C No. 149, para. 175.

²⁰⁶ I/A Court H. R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*, Judgment of July 10, 2007, Series C No. 167, para. 100.

²⁰⁷ I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Judgment of November 20, 2007, Series C No. 168, para. 101; I/A Court H. R., *Case of the Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004, Series C No. 110, para. 146; I/A Court H. R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*, Judgment of July 10, 2007, Series C No. 167, para. 130.

²⁰⁸ I/A Court H. R., *Case of Bulacio v. Argentina*, Judgment of September 18, 2003, Series C No. 100, para. 114; I/A Court H. R., *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, para. 146; and I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 382.

²⁰⁹ I/A Court H. R., *Case of Zambrano Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C No. 166, para. 121.

174. The IACHR notes that neither the National Civilian Police's Disciplinary Investigation Unit nor the judicial authorities ordered any medical examinations to investigate the torture claims. On the contrary, the record shows that the first-instance court in Tonacatepeque opposed a fresh medical examination of José Agapito Ruano Torres after he had reported the facts.

175. Thus, the only medical examination conducted took place on the day of his arrest, and was performed by the Medical Services Unit of the National Civilian Police. In this regard, the Commission has stated that "when the State permits investigations to be conducted by the entities with possible involvement, independence and impartiality are clearly compromised [...] The consequence of such compromise is insulation of those presumably responsible from the normal operation of the legal system."²¹⁰

176. Thus, as the Court has said:

"In those cases where alleged torture or mistreatment have been claimed, the time elapsed till the performance of the pertinent medical examinations is essential in order to unquestionably determine the existence of damage, specially when there are no witnesses other than the perpetrators and the victims themselves, and consequently, the evidence may be scarce. Thus, it may be concluded that in order for an investigation regarding facts involving torture to be effective, the same must be promptly conducted."²¹¹

177. Similarly, the United Nations Committee against Torture has ruled that whenever claims of torture are made, an examination must be carried out by an independent physician in accordance with the Istanbul Protocol.²¹² According to that instrument, the medical examination must contain: (i) case information, (ii) clinician's qualifications (for judicial testimony), (iii) statement regarding veracity of testimony (for judicial testimony), (iv) background information, (v) allegations of torture and ill-treatment, (vi) physical symptoms and disabilities, (vii) psychological history/examination, (viii) photographs, (ix) diagnostic test results, (x) consultations, (xi) interpretation of findings, (xii) conclusions and recommendations, (xiii) statement of truthfulness, (n) statement of restrictions on the medical evaluation/investigation, (xiv) clinician's signature, date, place, (xv) relevant annexes.²¹³

178. In the case at hand, the Commission notes that no medical examinations were performed other than the one carried out at the time of Mr. Ruano Torres's arrest, even though the situation was reported. Indeed, the only medical examination performed was carried out prior to the complaints filed by Mr. Ruano Torres. That examination was carried out by personnel belonging to the same agency as the police officers accused of committing the acts of torture and, as such, could have been lacking in impartiality and suitability.²¹⁴ The Commission notes that one of the State's submissions claims that many of the police officers who participated in the arrest of Mr. Ruano Torres had died or no

²¹⁰ IACHR, Report No. 10/95, Case 10.580, Admissibility and Merits, Manuel Stalin Bolaños, Ecuador, April 3, 1996, para. 48.

²¹¹ I/A Court H. R., *Case of Bueno Alves*, Judgment of May 11, 2007, Series C No. 164, para. 111.

²¹² Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/c/MEX/CO/4, February 6, 2007, para. 16(a).

²¹³ See: Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), Office of the United Nations High Commissioner for Human Rights, United Nations, New York and Geneva, 2001.

²¹⁴ IACHR, Application to the I/A Court H. R. in the Case of Teodoro Cabrera García and Rodolfo Montiel Flores, Case 12.449, Mexico, June 24, 2009, para. 110.

longer belonged to the National Civilian Police, an argument that in no way justifies the failure to investigate.

179. Consequently, the Commission concludes that through the total failure to follow up on or investigate torture allegations, the State did violate the rights to a fair trial and judicial protection enshrined in Articles 8 and 25 of the American Convention, in conjunction with the right to humane treatment and Article 1.1 thereof.

C. Impact on the family of José Agapito Ruano Torres

180. Precedent set by the Court holds that the relatives of certain victims of human rights violations can, in turn, be considered victims.²¹⁵ Specifically, members of victims' families can suffer harm to their mental and moral integrity as a consequence of the particular situations faced by their loved ones,²¹⁶ and as a result of the subsequent actions or omissions of state authorities regarding these facts.²¹⁷ Thus, the failure to conduct a diligent investigation into the facts constitutes a source of suffering and anguish for victims' families.²¹⁸

181. The Commission notes that both María Maribel Guevara de Ruano (his wife) and Oscar Manuel Ruano Guevara (his son) witnessed the acts of torture that the police officers inflicted on Mr. Ruano Torres during his arrest. In addition, due to the serious irregularities in Mr. Ruano Torres's criminal trial, as described in this report, he was arbitrarily deprived of his liberty for more than twelve years and is currently on provisional release. Those factors have had an impact on his family members and have prevented them from maintaining a close and direct relationship with Mr. Ruano Torres.

182. In her statements, María Maribel Guevara de Ruano said that during Mr. Ruano Torres's arrest, she was "crying while the police officers restrained her."²¹⁹ She also claimed that "she had not forgotten that incident and that ever since that day, she had been sick."²²⁰ She further stated that whenever she went to visit Mr. Ruano, she began to cry. In turn, Oscar Manuel Ruano Guevara stated that he had to assist his grandfather at work and also help clean the house, and so he had no time to play. He said that "when [his] father is released, everything will be easier because he will help."²²¹ In addition, Pedro Torres Hércules stated that the situation affected his family because he dedicated

²¹⁵ I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Judgment of July 10, 2007, Series C No. 167, para. 112; and I/A Court H. R., *Case of Bueno Alves v. Argentina*, Judgment of May 11, 2007, Series C No. 164, para. 102.

²¹⁶ I/A Court H. R., *Case of the Miguel Castro Castro Prison v. Peru*, Judgment of November 25, 2006, Series C No. 160, para. 335; I/A Court H. R., *Case of Vargas Areco v. Paraguay*, Judgment of September 26, 2006, Series C No. 155, para. 96; and I/A Court H. R., *Case of Goiburú et al. v. Paraguay*, Judgment of September 22, 2006, Series C No. 153, para. 96.

²¹⁷ I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Judgment of July 10, 2007, Series C No. 167, para. 112; and I/A Court H. R., *Case of Vargas Areco v. Paraguay*, Judgment of September 26, 2006, Series C No. 155, para. 96.

²¹⁸ I/A Court H. R., *Case of Valle Jaramillo et al. v. Colombia*, Judgment of November 27, 2008, Series C No. 192, para. 102; I/A Court H. R., *Case of the La Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, para. 195; I/A Court H. R., *Case of Heliodoro Portugal v. Panama*, Judgment of August 12, 2008, Series C No. 186, para. 146; and I/A Court H. R., *Case of García Prieto et al. v. El Salvador*, Judgment of November 20, 2007, Series C No. 168, para. 102.

²¹⁹ Annex 4. Statement given by María Maribel Guevara de Ruano to the Salvadoran Commission on Human Rights, annex to the petitioner's comments of March 19, 2009.

²²⁰ Annex 4. Statement given by María Maribel Guevara de Ruano to the Salvadoran Commission on Human Rights, annex to the petitioner's comments of March 19, 2009.

²²¹ Annex 5. Statement given by Oscar Manuel Ruano Guevara to the Salvadoran Commission on Human Rights, annex to the petitioner's comments of March 19, 2009.

himself full-time to proving Mr. Ruano Torres's innocence, which "meant he was unable to perform [his] duties as a father and husband."²²²

183. The Commission finds that there was a significant impact on the family of Mr. Ruano Torres on account of the acts of torture committed against during his arrest, and because of the prison term arbitrarily imposed on him with disregard for the minimum guarantees of presumption of innocence and the right of defense.

184. In light of the above considerations, the Commission concludes that the State did violate the right to mental and moral integrity enshrined in Article 5.1 of the American Convention, in conjunction with the duty of respect established in Article 1.1 thereof, with respect to the members of José Agapito Ruano Torres's family: his wife María Maribel Guevara de Ruano, his son Oscar Manuel Ruano Guevara, his daughter Keili Lisbet Ruano Guevara, and his cousin Pedro Torres Hércules.

VI. CONCLUSIONS

185. Based on the legal and factual considerations set out above, the Commission concludes that the State of El Salvador is responsible for violating the rights to a fair trial, to judicial protection, to personal liberty, and to humane treatment of Mr. José Agapito Ruano Torres. The Commission further concludes that the State of El Salvador is responsible for violating the right to mental and moral integrity of his wife María Maribel Guevara de Ruano, his son Oscar Manuel Ruano Guevara, his daughter Keili Lisbet Ruano Guevara, and his cousin Pedro Torres Hércules.

VII. RECOMMENDATIONS

186. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF EL SALVADOR:

1. Adopt, as promptly as possible, the measures necessary to cancel the effects of Mr. Ruano Torres's conviction, including the alternative measures to incarceration which remain in force.
2. In light of the time that Mr. Ruano Torres has been deprived of his liberty under the sentence imposed, the Commission recommends that, should the victim so desire, the sentence be revised to bring it into line with the standards governing the presumption of innocence and the right of defense in the terms set out in this report.
3. Provide the victims in this case with integral reparation, including both the material and nonmaterial aspects.
4. Conduct a serious, diligent, and effective investigation, within a reasonable time, to cast light on the acts of torture described by Mr. Ruano Torres, identify the guilty, and impose the corresponding penalties.

²²² Annex 7. Statement given by Pedro Torres Hércules to the Salvadoran Commission on Human Rights, annex to the petitioner's comments of March 19, 2009.

5. Take the applicable administrative, disciplinary, and criminal steps in connection with the actions and omissions of the state agents (police officers, prosecutors, public defenders, and judges of the various courts) whose actions contributed to the violations of José Agapito Ruano Torres's rights.

6. Take the necessary steps to prevent similar incidents in the future, in compliance with the duty of preventing and guaranteeing the fundamental rights enshrined in the American Convention. Specifically, develop training programs for state officials that include the international provisions established in the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Istanbul Protocol.