

CHAPTER IV

HUMAN RIGHTS DEVELOPMENTS IN THE REGION

INTRODUCTION

1. The Inter-American Commission on Human Rights continues its practice of including in its Annual Report to the General Assembly of the Organization of American States a chapter on the situation of human rights in member countries of the Organization, based on the competence assigned to it by the OAS Charter, the American Convention on Human Rights, and the Commission's Statute and Rules of Procedure. This practice has served the purpose of providing the OAS updated information on the human rights situation in those countries that had been the subject of the Commission's special attention; and in some cases, to report on a particular event that had taken place or was emerging or developing at the close of its reporting cycle.

2. The Annual Report of the IACHR for 1997 set forth five criteria pre-established by the Commission to identify the member states of the OAS whose human rights practices merited special attention and which consequently should be included in its Chapter IV.

1. The first criterion encompasses those states ruled by governments that have not come to power through popular elections, by secret, genuine, periodic, and free suffrage, according to internationally accepted standards and principles. The Commission has repeatedly pointed out that representative democracy and its mechanisms are essential for achieving the rule of law and respect for human rights. As for those states that do not observe the political rights enshrined in the American Declaration and the American Convention, the Commission fulfills its duty to inform the other OAS members states as to the human rights situation of the population.

2. The second criterion concerns states where the free exercise of the rights set forth in the American Convention or American Declaration have been, in effect, suspended totally or in part, by virtue of the imposition of exceptional measures, such as state of emergency, state of siege, suspension of guarantees, or exceptional security measures, and the like.

3. The third criterion to justify the inclusion in this chapter of a particular state is when there is clear and convincing evidence that a state commits massive and grave violations of the human rights guaranteed in the American Convention, the American Declaration, and all other applicable human rights instruments. In so doing, the Commission highlights the fundamental rights that cannot be suspended; thus it is especially concerned about violations such as extrajudicial executions, torture, and forced disappearances. Thus, when the Commission receives credible communications denouncing such violations by a particular state which are attested to or corroborated by the reports or findings of other governmental or intergovernmental bodies and/or of respected national and international human rights organizations, the Commission believes that it has a duty to bring such situations to the attention of the Organization and its member states.

4. The fourth criterion concerns those states that are in a process of transition from any of the above three situations.

5. The fifth criterion regards temporary or structural situations that may appear in member states confronted, for various reasons, with situations that seriously

affect the enjoyment of fundamental rights enshrined in the American Convention or the American Declaration. This criterion includes, for example: grave situations of violations that prevent the proper application of the rule of law; serious institutional crises; processes of institutional change which have negative consequences for human rights; or grave omissions in the adoption of the provisions necessary for the effective exercise of fundamental rights.

3. On the basis of the criteria set forth above, the Commission has decided to include four member states: Colombia, Cuba, Haiti and Venezuela.

COLOMBIA

4. As in previous years, developments observed in the Republic of Colombia during 2006 were framed by the situation described in the introduction to Chapter IV of the Annual Report of the Inter-American Commission on Human Rights (IACHR). This framework is relevant as a whole and in particular as regards the continued existence of circumstantial or structural situations in member states that, for various reasons, seriously and gravely affect the enjoyment and exercise of the basic rights enshrined in the American Convention on Human Rights. Consequently, the Commission has adopted the following considerations on the matter, in accordance with the procedure set out in Article 57.1.h of its Rules of Procedure,¹ for their inclusion in its Annual Report. On January 26, 2007, the preliminary draft of the present report was transmitted to the State for its observations. These observations were received by the CIDH on February 27, 2007, and have been incorporated, where pertinent, to the final version of this report.²

5. The IACHR is keenly aware of the complex situation in Colombia, of the consequences on the civilian population of the violence perpetrated by the participants in the conflict, and of the State's pacification efforts. In that context, the efforts of the Colombian Government in promoting measures intended to uphold human rights should be applauded. In particular, the IACHR would like to note the "Protection Program for Human Rights Defenders, Trade-Unionists, Journalists, and Social Leaders,"³ which, as the IACHR has said on previous

¹ Article 57 of the IACHR's Rules of Procedure stipulates that: "1. The Annual Report presented by the Commission to the OAS General Assembly shall include the following: [...] h. any general or special report the Commission considers necessary with regard to the situation of human rights in the Member States, and, as the case may be, follow-up reports noting the progress achieved and the difficulties that have existed with respect to the effective observance of human rights; [...] 2. For the preparation and adoption of the reports provided for in paragraph 1(h) of this article, the Commission shall gather information from all the sources it deems necessary for the protection of human rights. Prior to its publication in the Annual Report, the Commission shall provide a copy of said report to the interested State. That State may send the Commission the views it deems pertinent within a maximum time period of one month from the date of transmission. The contents of the report and the decision to publish it shall be within the exclusive discretion of the Commission." *Rules of Procedure of the Inter-American Commission on Human Rights* (approved by the Commission at its 109th special session, held from December 4 to 8, 2000; amended at its 116th regular session, held from October 7 to 25, 2002, and at its 118th regular session, held from October 6 to 24, 2003).

² Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007.

³ This Protection Program was created in 1997, through the joint efforts of government and civil society, to protect certain sectors of the population at particular risk from the actions of the armed illegal groups as regards their right to life, integrity, freedom, and personal security. The objectives of the Program are: (1) to strengthen government agencies at the national, regional, and local levels so as to enable them to undertake joint, coordinated, integrated and permanent measures to prevent human rights violations and to protect the rights of inhabitants of targeted at-risk communities; (2) to strengthen the traditional organizational structures, traditional authorities, and social organizations of the targeted at-risk communities so that they can develop initiatives, make proposals, coordinate with public authorities, and become involved in the implementation, follow-up, and oversight of measures aimed at preventing violations and protecting human rights and international humanitarian law; and (3) to re-establish or improve the relationship between the State and the community for the purpose of coordinating, developing, monitoring, and evaluating the preventive and protective measures proposed in the action plans.

occasions, protects numerous beneficiaries of precautionary and provisional measures extended, respectively, by the IACHR and by the Inter-American Court of Human Rights. In addition, the IACHR again states the need to continue strengthening the protection mechanisms created by those programs.⁴

6. The Commission is also aware of the recent increase in government measures aimed at promoting human rights, such as the establishment of a committee to draw up a National Action Plan for Human Rights and International Humanitarian Law. The goal of this plan would be to emphasize “the role of human rights in national development [...] in order to strengthen the rule of law so it can maintain a state character that transcends successive administrations.”⁵

7. The Commission notes, however, that alongside initiatives to promote human rights, such as the one cited above, and the decrease in the numbers of certain human rights violations, the effects of the armed conflict are still being felt and continue to affect the most vulnerable sectors of the civilian population. Manifestations of violence persist alongside the efforts being made to demobilize the outlawed armed groups and to administer justice, which have yet to yield results in terms of effectiveness, comprehensive redress, and elimination of factors of violence.

8. Consequently, based on the on-site observations carried out in various regions of Colombia during 2006 and on information received from both the State and civil society at hearings and in written form, the IACHR has drawn up a list of comments on the human rights situation in the Republic of Colombia during 2006. Particular reference is made to progress made and obstacles encountered in the process of demobilizing armed participants and the development and enforcement of the applicable legal framework, the persistence of systematic violations of the right to life and humane treatment, the situation of vulnerable groups, and the situation of human rights defenders and social leaders.

I. THE DEMOBILIZATION PROCESS AND THE DEVELOPMENT AND ENFORCEMENT OF ITS LEGAL FRAMEWORK

9. Over the past fifteen years, the parties involved in the armed internal conflict – in particular, the United Self-Defense Forces of Colombia (AUC) and the FARC-EP – have used massacres, targeted killings, and forced disappearances as strategies against the civilian population. The strategies of the armed dissident groups – chiefly the FARC-EP – have also included the use of indiscriminate attacks with explosives and kidnappings, in violation of the most fundamental principles of international humanitarian law. The IACHR has repeatedly noted its concern about the failure to clarify the overwhelming majority of these incidents through the courts.⁶

⁴ The State’s observations indicate that in 2006, the Program of Protection received a total of \$72.223.425 (U.S. 30.551.364), of which \$71.289.065.000 (U.S. 30.156.119) from the national Budget and \$934.360.000 (U.S. 395.246) from international cooperation - USAID. The State points out that during 2006, 6.424 people benefited from the measures of protection, of which 741 were social leaders and 583 members of NGO’s, which indicates an increase in the amount of people which benefited in 2005, specifically 34% and 5% respectively. Note DDH/OEA 8821/0420 of the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February of 2007, pages 44 and 46.

⁵ This committee was set up on September 26, 2006, by Vice-President Francisco Santos. See: <http://www.derechoshumanos.gov.co/modules.php?name=informacion&file=article&sid=649>.

⁶ The IACHR has shared its perspective on the general human rights situation in Colombia on a regular basis in the fourth chapters of its annual reports for the years 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, and 2005; in the *Third Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999; and in its *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004.

10. As is generally known, between November 2003 and May 2006⁷ more than 30,000 members of 35 blocs from the armed structure of the AUC were demobilized under an agreement reached with the Government of President Uribe.⁸ The demobilization of paramilitary groups not covered by the agreement between the Government and the AUC's Negotiating High Command was concluded in August 2006.⁹

11. The member states of the Organization of American States have been closely following this process through the field verification work of the MAPP/OAS mission, under the supervision of the Secretary General. Thus, although the cycle of demobilizations agreed on with the AUC has been completed, the reports issued by the General Secretariat during 2006 indicate the presence of groups with ties to AUC blocs that have not aligned themselves with the demobilization effort, the regrouping of demobilized fighters into criminal gangs, and even the emergence of new armed players and/or the strengthening of other pre-existing ones, in areas abandoned by demobilized groups.¹⁰

12. Similarly, the IACHR has monitored those aspects of the process related to the State's observance of its human rights obligations. As a part of those follow-up efforts, during 2006 the IACHR received with concern information about the continued commission of crimes against the civilian population in certain areas of the country, perpetrated by fighters who had regrouped or continued to operate after the demobilization, in breach of the commitments entered into. Many of these incidents are a matter of common knowledge.¹¹ It has also received reports of acts of intimidation, harassment, and threats made by those individuals against social leaders and human rights defenders. In its observations, the State makes reference to orders issued for the "persecution (sic) of the criminal bands that have been identified in some parts of the country, in which self-defense groups previously operated, that must be persecuted with resoluteness by the Judiciary and the Public Forces. Emphasizing that if within these bands there are people who were members of the united self-defense groups which demobilized to be brought before the Law of Justice and Peace, those will lose all benefits." The States indicates that the National Police has initiated an operative plan to confront these bands and has been ordered to "fulfill the task of monitoring and following-up on those reinstated, in order to ensure their conduct conforms to the law."¹²

13. As regards the compatibility of the process with the State's justice administration obligations, the IACHR notes that for more than a year and a half this process progressed under the aegis of the regime in force for individual and collective demobilizations of all members of outlawed armed groups who wished to re-enter civilian life. At that time the IACHR,¹³ along with other

⁷ During the IACHR's May 2006 on-site visit, the High Commissioner for Peace reported that between January and May of that year, around 16,000 members of 11 blocs from the AUC's armed structure had been demobilized. See: <http://www.altocomisionadoparalopez.gov.co/>.

⁸ On July 15, 2003, through the "Agreement of Santa Fe de Ralito," the AUC agreed to demobilize their armed units and reintegrate them into civilian life.

⁹ Specifically, the Élder Cárdenas bloc demobilized 1,538 troops in April and August 2006.

¹⁰ Seventh quarterly report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), OEA/Ser.G, CP/doc. 4148/06, August 30, 2006, p. 4.

¹¹ See, for example: "In spite of demobilization, paramilitaries continue to besiege La Guajira, and the Wayuus report killings," in the daily *El Tiempo* of June 1, 2006.

¹² Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, page 2.

¹³ See: IACHR, *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004, available on the web at <http://www.cidh.org/countryrep/Colombia04eng/toc.htm>.

international bodies,¹⁴ recommended the adoption of a legal framework that would set clear conditions for the demobilization of illegal armed groups in line with the State's international obligations regarding truth, justice, and redress for the victims of the conflict.

14. On June 22, 2005, the Congress of Colombia adopted Law 975 of 2005, which came into effect with the President's signature on July 22, 2005. This "Justice and Peace Law" provides a series of benefits, including the imposition of noncustodial sentences of between five and eight years in exchange for meeting various eligibility requirements. The IACHR immediately noted its concerns regarding the prospects for the implementation of this legislation.¹⁵ After the Justice and Peace Law came the adoption of Decree No. 4760 on December 30, 2005.¹⁶ In May 2006, the scope of the Justice and Peace Law was covered by an interpretative ruling from the Constitutional Court,¹⁷ in response to a series of unconstitutionality filings lodged by civil society organizations.¹⁸

15. In its decision, the Court ruled that the legislation was in general terms constitutional, but it also ruled several of its provisions unconstitutional and placed conditions on their enforcement. The parameters of interpretation set by the Constitutional Court include those intended to protect the participation of victims in the process¹⁹ and their access to full redress.²⁰ The ruling also clarified the obligation of effectively imposing the reduced prison term provided for and introduced legal consequences, such as the loss of benefits, for demobilized fighters seeking to benefit from the terms of the Law who were found to have kept information from the judicial authorities.²¹ The judgment also clarified the definition of paramilitary activity as a common crime, and it ruled as unconstitutional the provision that allowed the time spent by demobilized fighters in the concentration zones to be offset against the duration of their noncustodial sentences.

16. On August 1, 2006, following the publication of the full text of that ruling, the IACHR issued a statement on the application and scope of the Justice and Peace Law, underscoring the implications of the Constitutional Court's judgment and calling on the State to abide by the terms set out in the Court's decision. In its statement, the IACHR emphasized those aspects of the Constitutional Court's ruling that must be strictly observed by the state institutions involved in the implementation of Law 975. Specifically, it said that the free statements given by demobilized fighters wishing to avail themselves of the Law's generous benefits must be complete and truthful and must include disclosure of the causes and circumstances of time, means, and location in which the crimes were committed, in order to uphold the right to truth; the State must ensure the victims' right to participate in all the procedural formalities provided for by Law 975; those availing themselves of the benefits offered by Law 975 must reveal the whereabouts of victims of forced

¹⁴ See: *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, February 28, 2005, E/CN.4/2005/10; and Amnesty International, Press Release of April 26, 2005.

¹⁵ IACHR, Press Release 26/05, "IACHR issues statement regarding the adoption of the 'Law of Justice and Peace' in Colombia," July 15, 2005. Available on the web at <http://www.cidh.org/Comunicados/English/2005/26.05eng.htm>.

¹⁶ Republic of Colombia, Ministry of the Interior and Justice, Decree No. 4760 of December 30, 2005. In broad terms, this Decree regulates various aspects of Law 975 and, in particular, establishes certain rules regarding the deadlines for investigating those aspiring to the benefits of the law prior to their formal accusation, and regarding the principle of timeliness for third parties involved with the possession, holding, transfer, and, in general, ownership of illicit goods handed over to make redress to victims.

¹⁷ The full text of the ruling was published on July 13, 2006.

¹⁸ The Prosecutor General of the Nation appeared before the Constitutional Court and provided opinion No. 4030 of February 15, 2005, in connection with the suit filed by those human rights organizations.

¹⁹ Constitutional Court, Judgment C-370/06 (File D-6032), paragraphs 6.2.3.2.2.1 – 6.2.3.2.2.10.

²⁰ *Ibid.*, paras. 6.2.4.1 – 6.2.4.1.24.

²¹ *Ibid.*, paras. 6.2.2.1.1 – 6.2.2.1.7.30.

disappearances; they must redress the victims with their own assets, including legal assets if their illegal assets are inadequate, or even on a jointly responsible basis with other members of the demobilized group, when the courts so rule; recidivism or nonobservance of the obligations imposed during the duration of the sentence must result in the loss of the benefit; and the appointed inspectors of the National Justice and Peace Verification Unit must have a methodological program for conducting and completing serious investigations of the facts.

17. With reference to actions intended to ensure victims due redress, the IACHR recommended the establishment of guidelines to unify and standardize the criteria used by the appointed inspectors of the National Justice and Peace Verification Unit; the establishment of deadlines and mechanisms for implementing the victim redress process and ensuring interaction between the agencies involved, together with mechanisms to provide victims appearing at trial with due protection; and the strengthening of the notarial and land registry systems, so the agencies involved can ensure the due restitution of real property to the victims of the conflict.

18. In late August 2006, news broke of the arrest of a number of paramilitary leaders involved in the demobilization process – steps taken to keep them at the authorities’ disposal in compliance with their commitment to undergo the applicable legal processes and, ultimately, to serve the prison terms applicable for crimes committed during the armed conflict.²² The IACHR applauded this development as a first step forward in the administration of justice, and it hopes that further progress will be made in the search for truth, justice, and redress.

19. Then, on September 29, 2006, the Government adopted Decree No. 3391/2006, which partially regulated Law 975 of 2005.²³ This Decree embraced some of the comments offered by the Constitutional Court regarding providing victims with redress and about requiring demobilized fighters to confess, truthfully and fully, all the crimes committed during the period they belonged to the group. The Decree also provided that the time spent in government-established concentration zones by members of outlawed armed groups involved in processes of collective reintegration into civilian life would be considered as part of the noncustodial punishment in the event that the alleged incidents took place prior to the Constitutional Court’s ruling.

20. As regards the specific enforcement of the legal framework for the State’s participation and victim redress obligations during the final months of 2006, the IACHR is concerned by the complaints filed regarding shortcomings in the execution of the subpoenas issued to victims called on to participate in the processes of Law 975. The Commission has been informed that these

²² In its observations, the State refers to the advances reached in the receptions of the free versions and indicates that “the first confession has been realized for the following applicants [to the Law of Justice and Peace]: Mancuso Gomez, Salvatore; Salazar Sánchez, Jhon; Montoya Pamplona, Carlos; Salazar Carrascal, Wilson” and indicates that thanks to the testimony of one of them, the locations of four graves were identified. Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, page 13.

²³ The State makes reference to six prescribed decrees “that understood as a normative unit represent a progress in the implementation of the Law of Justice and Peace and the guarantees of the victims: Decree 4760 issued on the 20 of December of 2005 (Regulates the free versions and the direction and legal assistance for the victims); Decree 2898 of 2006 emitted the 29 of August of 2006 (Regulates the ratification of those demobilized so as to benefit from the Law of Justice and Peace); Decree 3391 emitted the 29 of September of 2006 (Regulates the confession, the mechanisms for the reparation of the victims and the use of the budget’s resources for the reparation of the victims); Decree 4417 issued the 7 of December of 2006 (Regulates the free versions and the preliminary stages to its proceeding); Decree 4436 emitted the 11 of December of 2006 (Regulates the situations in which the benefits of Law 782 of 2002 cannot be obtained); Decree 315 emitted the 7 of February of 2007 (Regulates the access of the victims, their representatives, the participation of the ONG’S and mass media in the different stages of the proceeding). Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, page 4.

subpoenas were issued in the areas where the outlawed armed groups operate, without indicating the aliases used at the time the crimes were committed by the demobilized fighters now seeking the benefits of the Justice and Peace Law. It should be noted that a large number of surviving victims were forcibly displaced to other areas of the country in search of refuge, because of which the subpoenas should be issued at the national level. The participation of victims in court proceedings is essential in meeting the obligations of establishing the truth and making due redress. On this point, the State has indicated in its observations to the present report that "at the present time proclamations are being published for 20 days in the Secretariat of the State Attorney's Office and for one day in one of the nation's leading newspapers - that include the complete name, photo, alias, name of the group to which he belonged and the location where the victims can go. Additionally, complete information is available that permit the victim to place himself in a real and determined context."²⁴ The State also informs that it assigned to each one of the offices of the National Unit of the State Attorney's Office for Justice and Peace, the documentation of information regarding the origin, structure, area of influence, members, sources of financing, property, facts and victims, with respect to the following demobilized groups".²⁵

21. Finally, it should also be said that during 2006 the Colombian State took steps toward negotiating the demobilization of other illegal armed groups, thus demonstrating its commitment to achieving pacification.

II. CONTINUED VIOLENCE RELATED TO THE ARMED CONFLICT: THE RIGHT TO LIFE, HUMANE TREATMENT, AND FREEDOM

22. In spite of the AUC's demobilization, violence derived from the armed conflict still occurs. The IACHR continues to receive complaints indicating that outlawed armed groups – both paramilitaries and guerrillas – and members of the security forces are still involved in the commission of crimes and breaches of international humanitarian law to the detriment of the civilian population; these translate into violations of the right to life, humane treatment, and freedom, and lead to the continued existence of the internal displacement phenomenon.

23. According to statistics produced by the Center for Investigation and Popular Education (CINEP), the first six months of 2006 saw a total of 969 human rights violations entailing political persecution, abuse of authority, and social intolerance,²⁶ and 739 serious breaches of

²⁴ The State indicates that it has been decided: to broadcast by television (direct and differed) the hearings that are made within the framework of Law 975 of 2005, on the Institutional Channel of Television, prior approval by the National Commission of Television - Decree 315 of 2007; publication of proclamation in substitution for unidentified victims in leading national and regional newspapers, in which a photo of the individual demobilized is published, as well as the broadcasting in the localities of the area of influence of the postulated person; Displacement of Public Prosecutors and investigators for justice and peace at the epicenters of the areas of influence of illegal groups, in attention to the victims; design for recording the acts attributable to illegal groups. To date, more than 22.000 have been dealt with; registry and publication of information of interest to the victims and the public in general on the page Web of the General Office of the State Attorney; implementation of a toll free 01 8000 line; creation of a photo album with the personal data and alias of each individual demobilized, with the aim of allowing the victims or witnesses to locate and inform them of the events in which they allegedly participated. Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, pages 5 and 20.

²⁵ Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, page 16.

²⁶ Violence figures. Human rights and political violence database. Available on the web at <http://www.nocheyniebla.org/>. These violations were recorded between January and June 2006, and classified into threats, attacks, disappearances, arbitrary arrests, extrajudicial killings, woundings, torture, and sexual violence.

international humanitarian law (IHL).²⁷ In the latter instance, 388 of these offenses were committed by the army, 241 by paramilitaries, and 251 by the police.²⁸ In turn, government figures recorded 4,020 killings and 52 massacre victims in the first quarter of 2006.²⁹ The state report indicates that the killings mostly took place in Valle del Cauca (20%), Antioquia (13%), the Capital District (8%), and Risaralda, Meta, and Nariño (5%).³⁰

24. During 2006 the IACHR learned of a study into the increased number of extrajudicial killings attributed to members of the security forces in 27 of the nation's 32 departments over the previous four years.³¹ Thus, the documentation of these cases by human rights organizations in Colombia would indicate an approximate figure of 726 extrajudicial killings committed by state agents between the years 2002 to 2006.³² The State, in its observations, indicates that "apparently, they are including as extrajudicial executions numbers corresponding to casualties which occurred during armed conflict [...] [that] are legitimate as long as they conform to International Humanitarian Law, and the operational procedures. Although it is certain that some accusations have been brought against members of the Public Forces for deaths that occurred outside the context of an armed conflict, these constitute exceptions and are being investigated in criminal and disciplinary proceedings."³³

25. The study³⁴ argues that, frequently, extrajudicial killings are recorded as combat deaths in contexts that follow a series of defined patterns: they take place in areas where military

²⁷ *Ibid.* These grave violations were recorded during the same period of January to June 2006 and were classified as threats, civilians wounded in actions of war, civilians killed in actions of war, use as shield, intentional wounding of protected persons, wounding by illicit means and methods, intentional homicide of protected persons, death through illicit means and methods, torture, and sexual violence. Antioquia and Nariño were the departments with the highest numbers of serious offenses.

²⁸ Human rights and political violence database. Available on the web at <http://www.nocheyniebla.org/>. These grave violations of international humanitarian law include threats, civilians wounded in actions of war, civilians killed in actions of war, use as shield, intentional wounding of protected persons, wounding by illicit means and methods, intentional homicide of protected persons, death through illicit means and methods, torture, and sexual violence.

²⁹ Observatory of the Presidential Human Rights and International Humanitarian Law Program. Figures on the human rights situation and law enforcement operational results. Comparison, January-March 2005 and 2006. The observations of the State object to the discrepancy between the numbers of the CINEP with the official numbers "without an explanation regarding the considerations in the compilation of the information." Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, page 22.

³⁰ Observatory of the Presidential Human Rights and International Humanitarian Law Program. Figures on the human rights situation and law enforcement operational results. Comparison, January-March 2005 and 2006.

³¹ A 92% increase in the number of extrajudicial killings carried out by the security forces over the 2002-2006 period is reported. See: Human Rights and International Humanitarian Law Observatory of the Colombia-Europe-USA Coordination, "False Positives: Extrajudicial killings directly attributed to the security forces in Colombia, July 2002 to June 2006." Information given to the IACHR by human rights organizations at the hearing held on October 23, 2006, at the Commission's 126th regular session.

³² *Ibid.*

³³ Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, page 22.

³⁴ The study was based on an analysis of 98 cases. In 73 cases arbitrary arrest had occurred prior to the extrajudicial killing, without the necessary steps for administrative preventive custody – a mechanism that allows detentions absent a court order – having been taken. In 14 of these cases illegal searches of homes and housebreaking had taken place. In 14, threats had been made against relatives or neighbors. In 8 cases property, livestock, or money had been stolen. Three cases involved cruel and inhumane treatment. In addition, in 24 of the 98 cases, the extrajudicial killing was preceded by forced disappearance; in nine of them the military denied having held or knowing the whereabouts of the individuals they extrajudicially killed, without having been able to hide the bodies. In 15 cases the military denied having detained the victims and lied about their fate; they also buried the bodies as persons unknown.

operations are taking place;³⁵ they are preceded by the arbitrary arrest of the victim or victims or even their disappearance for a period of several days; the bodies are found in locations other than where the detentions took place; following the execution, the evidence is manipulated and concealed; and, finally, they are reported as combat deaths. Determining the responsibility for the commission of these executions, it is claimed, is hindered by another series of patterns that ensures the perpetrators impunity: investigations begin immediately before military courts; the Prosecution Serves files for a negative conflict of jurisdiction so cases can be referred to the military criminal justice system; the military authorities generally file the cases, declaring that the deaths took place during combat operations. The motivation for these documented extrajudicial killings supposedly relates to the victims' political, social, and community activities.

26. In light of these reports, the Commission must point out that the active protection of the right to life and of the other rights enshrined in the American Convention is part of the State's duty of ensuring the free and full exercise of those rights by all persons under its jurisdiction, and it requires the State to take the steps necessary to prosecute and punish the arbitrary suppression of life, personal integrity, and freedom. In particular, it requires that steps be adopted to prevent those rights from being undermined by the State's own security forces.³⁶

27. Furthermore, use of the criminal military justice system to investigate members of the army suspected of involvement in extrajudicial killings undermines the guarantees established in Articles 8 and 25 of the American Convention. On that point, the Inter-American Court has ruled that in democratic states, the criminal jurisdiction of military courts must be restricted and exceptional in scope and must be intended to protect special juridical interests associated with the functions that the law assigns to the armed forces. It must therefore only be used to judge members of the military for the commission of crimes or offenses that, by their very nature, harm the juridical interests of the military.³⁷ The Court has also said that "when the military courts assume jurisdiction over a matter that should be heard by the regular courts, the right to the appropriate judge is violated, as is, *a fortiori*, due process," which, in turn, is intimately linked to the right of access to justice itself.³⁸ To guarantee due process, the judge hearing a case must be competent, independent, and impartial.³⁹ In its observations, the State indicates that "in relation to the limited

³⁵ *Ibid.* The information received by the IACHR seems to indicate that in some of the operations carried out, the death of a given number of guerrillas was reported and that, subsequently, human rights organizations demonstrated that a percentage of those deaths were campesinos who had been detained and extrajudicially killed.

³⁶ I/A Court H.R., *Case of Myrna Mack Chang*. Judgment of November 25, 2003. Series C No. 101, para. 153; I/A Court H.R., *Bulacio Case*. Judgment of September 18, 2003. Series C No. 100, para. 111; and I/A Court H.R., *Case of Juan Humberto Sánchez, Request of Interpretation of the Judgment of Preliminary Objections, Merits, and Reparations (Art. 67 of the American Convention on Human Rights)*. Judgment of November 26, 2003. Series C No. 102, para. 110.

³⁷ I/A Court H.R., *Las Palmeras Case*. Judgment of December 6, 2001. Series C No. 90, para. 51; I/A Court H. R., *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, para. 113; and I/A Court H. R., *Durand and Ugarte Case*. Judgment of August 16, 2000. Series C No. 68, para. 117.

³⁸ I/A Court H.R., *Las Palmeras Case*. Judgment of December 6, 2001. Series C No. 90, para. 52; I/A Court H.R., *Cantoral Benavides Case*. Judgment of August 18, 2000. Series C No. 69, para. 112; and I/A Court H.R., *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, para. 128.

³⁹ I/A Court H.R., *Las Palmeras Case*. Judgment of December 6, 2001. Series C No. 90, para. 53; I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, para. 174. With reference to Colombian legislation, Article 221 of the 1991 Constitution states that the military courts are to deal with "crimes committed by members of the security forces on active duty and in connection with those duties." This provision clearly indicates that the jurisdiction of military judges is exceptional and is restricted to dealing with actions of members of the security forces that are directly related to legitimate police or military duties. Thus, in resolving an unconstitutionality suit in a judgment of August 5, 1997, the plenary chamber of the Constitutional Court of Colombia gave a ruling on military courts and stated, *inter alia*, that [...] for a crime to come under the competence of the military criminal justice system [...] the punishable action must have arisen from an abuse or excess of power occurring within the framework of an activity directly linked to an inherent function of the armed forces. [...] If the agent has, from the outset, a criminal intent and then uses his position to carry out the punishable action, responsibility for the case shall fall to the regular courts, even in those instances in which there could be a certain abstract relationship between

competence of the Military's Criminal Court's to try human rights violations, a project of reform of the Military Penal Code will be presented to Congress, in which emphasis is made to matters such as reviewing the place of this particular jurisdiction within the structure of the State for greater independence, transparency and effectiveness, and to strengthen the rights and guarantees of the victims."⁴⁰

28. Finally, with reference to internal displacement, government sources speak of 20,004 victims of forced displacements in the first quarter of 2006⁴¹ and of 69,298 displaced persons between January 1 and August 31, 2006.⁴² These official sources indicate a reduction of 52% in the number of displaced persons in the first months of 2006 compared to the number of displacements recorded over the same period in 2005.⁴³ According to information published by the Consultancy for Human Rights and Displacement (CODHES), however, during the first half of 2006, a total of 112,000 individuals were forcibly displaced from 463 municipalities in the country's 32 departments.⁴⁴ In its observations, the State notes the different methodologies used by Social Action (as an official source) and CODHES, and affirms that the comparison of numbers does "not necessarily mean that there has been an increase in the number of displaced individuals, but instead that the displaced persons registration system has improved."⁴⁵

29. With regard to the situation of victims of displacement, on November 29, 2006, the Constitutional Court ruled on the admission of contempt proceedings against several public officials for noncompliance with judgment T-025 of 2004, in which the Court established obligations and goals to be met by the Government in attending to the displaced population. The Constitutional Court has also stressed the need to "speed up the adoption of the results indicators necessary to determine whether the state agencies have progressed, regressed, or stagnated in overcoming the unconstitutional situation that exists as regards forced displacements."⁴⁶

...continuation

the goals of the security forces and the agent's punishable action. [...] The link between the criminal act and the service-related activity is extinguished when the crime is of unusual gravity, such as those offenses deemed crimes against humanity. In such circumstances, the case shall be referred to the regular courts, given the total contradiction between the crime and the constitutional duties of the security forces.

⁴⁰ Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, page 23.

⁴¹ Observatory of the Presidential Human Rights and International Humanitarian Law Program. Figures on the human rights situation and law enforcement operational results. Comparison, January-March 2005 and 2006.

⁴² Note No. 1445 from the Mission of the Republic of Colombia to the OAS, dated September 18, 2006.

⁴³ Observatory of the Presidential Human Rights and International Humanitarian Law Program. Indicators on human rights and IHL in Colombia, forced displacement. January-March 2006.

⁴⁴ Bulletin No. 69 from the Consultancy for Human Rights and Displacement, Bogotá, Colombia. "More displaced persons or fewer."

⁴⁵ Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, page 24.

⁴⁶ Constitutional Court of Colombia, Third Review Chamber, Press Release, November 29, 2006. Decisions adopted by the Constitutional Court to Ensure Compliance with the Orders Issued in Judgment T-025 of 2004 and Related Documents.

III. THE SITUATION OF INDIGENOUS PEOPLES AND AFRO DESCENDANT COMMUNITIES

30. During 2006, the IACHR continued to receive information about the violence affecting vulnerable groups in various regions of the country, in particular indigenous peoples and Afro-descendant community councils and communities, the members of which are targeted by both individual and collective violence, endangering their autonomy and their territorial and cultural rights.

31. In Colombia there are 90 indigenous peoples, distributed among the country's 32 departments, with 64 languages and their own world views, histories, and spirituality. The cultural richness of these peoples is reflected in their various ways of life, which are generally tied in with the land, in their forms of social organization, and in their different methods of conflict resolution, which has enabled them to maintain their cultural identity.⁴⁷ This cultural richness is constantly threatened by the ongoing violence in many of the areas where these peoples live.

32. The indigenous territories are used by the various armed factions in Colombia as zones for their military and economic operations, as transit routes and refuge areas for their troops, for the trafficking of weapons, and for the cultivation, processing, and trafficking of drugs. The Commission notes that over recent years, the pressure brought to bear by the illegal armed groups on these indigenous territories has increased, on account of heightened economic interest in the riches of the indigenous territories with a view to the exploitation of natural resources and the construction of major road, mining, and hydroelectric projects.

33. According to figures from the Observatory of the Presidential Human Rights and IHL Program, 41 indigenous people were killed between January and September 2006. During the same period in 2005, 40 killings were recorded.⁴⁸ Additionally, figures compiled by the National Indigenous Organization of Colombia (ONIC) indicate that between January and June 2006, a total of 143,263 crimes and IHL violations were committed against indigenous peoples.⁴⁹

34. The complaints received indicate that the northern Cauca and Sierra Nevada de Santa Marta areas are among the most severely affected. Specifically, the IACHR has been informed of acts of intimidation and violence by the outlawed armed group known as the *Águilas Negras* ("Black Eagles") in Valledupar and its surrounding areas, which are inhabited by Arhuaco, Kogui,

⁴⁷ National Planning Department (DNP), Directorate of Sustainable Territorial Development, "The Indigenous Peoples of Colombia on the Threshold of the New Millennium," Bogotá 2004, page 33. According to the DNP, the largest peoples number between 32,899 and 149,827 members. Other groups have between 14,000 and 26,000 members. There are 39 indigenous peoples with fewer than 1000 inhabitants, and four peoples with fewer than 100 (the Dujos with 98, the Pisamira with 61, the Makaguaje with 50, and the Taiwano with 22). According to the National Indigenous Organization of Colombia (ONIC), 28 indigenous peoples number fewer than 500 inhabitants, 15 fewer than two hundred, and six fewer than a hundred. In 2001, Colombia's National Planning Department estimated an indigenous population of 785,356, accounting for 1.83% of the country's total population. The Colombian State has set up 648 indigenous reservations, which cover 27.02% of the nation's territory and most of which are special conservation areas. See: updated information as of February 2006, Colombian Rural Development Institute (INCODER).

⁴⁸ Observatory of the Presidential Human Rights and IHL Program, situation indicators and law enforcement operational results (Comparison, 2005 and 2006).

⁴⁹ These were made up of 10,818 death threats, 33,219 attacks on civilian property, 15,504 combat incidents, 63,000 individuals confined or blockaded, 28 forced or involuntary disappearances, 279 cases of arbitrary arrest, 5,731 individuals affected by internal forced displacement, 75 woundings, 32 killings, two deaths caused by antipersonnel mines, two reported cases of pressganging, twelve kidnappings, 12,532 peasant farmers singled out by the parties in the conflict, and three people were charged with rebellion by the Colombian justice system. In addition, seven cases of torture and thirteen cases of rape and other forms of sexual abuse committed against indigenous women were reported. See: Chart, Comparative level of compliance with the recommendations of the United Nations Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples. Bogotá D.C., September 2006. Information available on the web at <http://www.onic.org.co/nuevo/index.shtml>.

Wiwa, and Kankuamo indigenous peoples.⁵⁰ On March 5, 2006, a chief of the Makaguaje indigenous people was killed for failing to obey an order to halt in Arauca department and, the next day, his wife, a schoolteacher at Caño Claro, was killed by the FARC when she went to collect the body. During 2006, two teachers of the Wounaan indigenous people were also killed in Chocó department. The State itself has recognized the emblematic nature of those killings, in that they reflect the deliberate aim of destroying the identity of the people involved and attacking their cultural projects by murdering their leaders, chiefs, and teachers.⁵¹ Then, on August 9, 2006, (the International Day of the World's Indigenous Peoples), five indigenous community members, including one former chief and a teacher, were killed in a massacre among the Awa of Nariño department.⁵²

35. Of particular concern is the effect that forced displacements from their ancestral territories have on Colombia's indigenous peoples. According to figures compiled by CODHES, indigenous peoples were severely and disproportionately affected by this phenomenon during the first half of 2006; those most particularly affected included the Nukak Maku, the Wounaan, the Wayuu, the Paeces, the Koguis and Wiwas, and the Awa.⁵³ CODHES has reported that some 5,773 members of various indigenous peoples were displaced, both individually and collectively. It also states that 16% of the affected individuals belong to indigenous peoples that were displaced by combat operations and armed actions by the security forces, guerrillas, and paramilitary groups.⁵⁴ Government sources in turn indicate that one community belonging to the Makaguan people was displaced following the murder of two of its leaders.⁵⁵

36. In addition, in April 2006, 50 Wayuu families (260 people) living in the village of Poropo in Bahía Honda district, municipality of Uribia, abandoned their homes after AUC paramilitaries belonging to the Norte de la Guajira Bloc and that had not yet demobilized attacked several women, including one of 80 years of age, and killed a member of her family. These families initially arrived at the Uribia municipal seat, where the authorities gave them humanitarian assistance in exchange for an undertaking to return immediately, a condition that, according to Acción Social, 47 people met. However, in the field CODHES found that more than 150 people did not return and remained in Uribia; another 56 settled in Maracaibo, in the Venezuelan state of Zulia; and some families relocated to the city of Santa Marta in Magdalena department.⁵⁶

⁵⁰ Report of the International Verification Mission that visited Cauca, the Sierra Nevada, Córdoba, and Guaviare on September 19 to 29, 2006. Information available on the web at <http://www.onic.org.co/nuevo/mision/index.shtml>.

⁵¹ Observatory of the Presidential Human Rights and IHL Program, indicators on human rights and IHL in Colombia. January to March 2006. See also: United Nations, High Commissioner for Human Rights, office in Colombia, Bogotá, March 9, 2006.

⁵² United Nations, High Commissioner for Human Rights, office in Colombia, "Condemnation of the massacre of five members of the Awa indigenous people," August 9, 2006. Information available on the web at www.hchr.org.co/publico/comunicados/2006/comunicados2006.php3?cod=32&cat=64.

⁵³ Doris Puchana, chief of one of the Awa reservations, reported that 50 members of the Awa indigenous people have been killed by the armed conflict in recent years and that 1,650 members of the people were displaced by fierce fighting between the security forces and FARC guerrillas in the area. The indigenous leader was speaking at a press conference organized by the United Nations in Bogotá with several organizations and indigenous communities from around the country to commemorate the International Day of the World's Indigenous Peoples.

See: http://news.bbc.co.uk/hi/spanish/latin_america/newsid_4778000/4778361.stm.

⁵⁴ Bulletin No. 69 from the Consultancy for Human Rights and Displacement, Bogotá, Colombia, September 12, 2006. See: codhes@codhes.org.

⁵⁵ Observatory of the Presidential Human Rights and IHL Program, indicators on human rights and IHL in Colombia, January-March 2006.

⁵⁶ Bulletin No. 69 from the Consultancy for Human Rights and Displacement, Bogotá, Colombia, September 12, 2006. Information available on the web at codhes@codhes.org.

37. Forced displacements caused by the armed conflict have also affected the indigenous peoples found in the borderlands. According to CODHES, in the first half of 2006, 48 members of the Wounaan ethnic group⁵⁷ and 15 people from the Embera ethnic group took refuge in Panama, while 56 members of the Wayuu indigenous people took refuge in Venezuela.⁵⁸

38. The office in Colombia of the United Nations High Commissioner for Human Rights has noted its concern about the situation faced by the men, women, and children who make up Colombia's indigenous peoples as regards violations of their fundamental human rights, given the absence of any indication of reductions in the level of violence and given the fact that displacements lead to a breakdown of the social fabric and the undermining of their indigenous traditions.⁵⁹

39. ONIC has denounced the gravity of this situation, which affects the lifestyles, autonomy, and security of all Colombia's indigenous peoples.⁶⁰ The Office of the United Nations High Commissioner for Refugees (UNHCR) has also called attention to the humanitarian emergency affecting the communities and threatening them with extinction.⁶¹ In connection with this, the Commission notes with particular concern the situation of the Nukak Maku and Makaguaje indigenous peoples who, on account of their low numbers and the consequences of the armed conflict, are threatened with extinction. According to information received by the IACHR, 77 members of the Nukak Maku indigenous people⁶² were displaced to San José del Guaviare in March 2006. Thus, in April 2006, the displaced persons totaled 150.⁶³ Following these incidents, the Colombian State placed 170 members of this people in 20,000 hectares of jungle.⁶⁴ The Commission, in recent months, has learned of the death of their leader Mow'be⁶⁵ and that the Nuka Maku's new territory lacks what they need for subsistence and for the protection of their health.⁶⁶

40. The Commission again expresses to the Colombian State its concern about the vulnerable situation in which the indigenous peoples of Colombia live, which can be seen in the killings, forced disappearances, massacres, and forced displacements suffered by their members.

⁵⁷ See also: <http://www.un.org/spanish/News/fullstorynews.asp?NewsID=6926>. "Forty-seven indigenous Colombians seek political asylum in Panama after fleeing their ancestral lands following death threats made by unlawful armed groups."

⁵⁸ Bulletin No. 69 from the Consultancy for Human Rights and Displacement, Bogotá, Colombia, September 12, 2006. See: codhes@codhes.org.

⁵⁹ Presentation by the Director of the office in Colombia of the United Nations High Commissioner for Human Rights, Bogotá, August 9, 2006.

⁶⁰ Communiqué from the National Indigenous Organization of Colombia, August 8, 2006. Information available on the web at http://www.acompaz.org/article.php3?id_article=489. See also the report from Latin American Human Rights Association, which states that 22 of the 54 indigenous peoples in the Colombian Amazonia are at high risk from the armed conflict. See: *The Agony of the Jaguar: Human Rights of Indigenous Peoples in Colombian Amazonia*, ALDHU, November 2003.

⁶¹ "We have repeatedly warned that indigenous groups in Colombia are in danger from violence and even from extinction in this conflict. It is a tragedy not only for them, but for all humankind. Indigenous culture is intimately related to their ancestral lands, and forced displacements lead to the loss of traditions, culture, and language. To avoid that fate, many communities cling desperately to their lands, in spite of threats and violence." Information available on the web at the United Nations News Centre: www.un.org/spanish/News/fullstorynews.asp?NewsID=662.

⁶² In 1988 the Nukak Makuk numbered 1200 members, of whom only 500 survive today. See: "Drugs war forces nomads out of the jungle." Information available on the web at <http://www.survival.es/news.php?id=1522>.

⁶³ Drugs war forces nomads out of the jungle, April 3, 2006. See: <http://www.survival.es/news.php?id=1522>.

⁶⁴ *Ibid.*

⁶⁵ Available on the web at <http://www.onic.org.co/nuevo/actualidad.shtml?x=1994>.

⁶⁶ Available on the web at <http://www.survival.es/news.php?id=1992>.

The constant acts of violence carried out against indigenous peoples who demand respect for and protection of their basic rights threaten not only the life and personal integrity of their members, but also their existence as peoples; additionally, constant attacks on their leaders seek to break the cohesion of those indigenous peoples around the defense of their rights, in particular the right to life, to autonomy, and to territory. In its response, the State made reference to the humanitarian assistance afforded and other measures adopted in favor of the indigenous peoples of kogui-wiwa, wayúu, paez, awa, wounnan y nukak maku.⁶⁷

41. With regard to Colombia's Afro-descendants, their communities and community councils have limited access to educational services, to employment opportunities, to income, and to participation in local- and national-level decision-making. For example, in Chocó department, the population of African descent – which accounts for 85% of the total – lives in extreme poverty;⁶⁸ the department also has the country's lowest level of drinking water coverage, 81% of households have no drainage, the illiteracy rate stands at 19%, and there are high levels of childbirth-related deaths.⁶⁹ The Government has estimated that 72% of the Afro-Colombian population occupy the country's two lowest socioeconomic strata.⁷⁰ All those factors have served to prevent this segment of the population from enjoying their particular world view, traditions, and culture, and they have also made them largely invisible within the country's public policies.

42. Against this backdrop, during 2006 the IACHR continued to receive reports about acts of violence and intimidation intended to lead to the forced displacement of these individuals, who account for 26.83% of Colombia's total population⁷¹ and 30% of its displaced population,⁷² according to figures from CODHES. The IACHR, through its Special Rapporteurship on the Rights of Persons of African Descent and against Racial Discrimination, is planning to conduct and *in loco* visit in Colombia during 2007 in order to observe the situation of the afrocolombian population.

43. The IACHR underscores the need for the Colombian Government to effectively implement policies and initiatives such as those created in 2002 by the National Economic and Social Policy Council (CONPES),⁷³ together with the National Plan for the Comprehensive Attention of the Displaced Population which, during 2005, set the goal of "identifying community,

⁶⁷ Note DDH/OEA 8821/0420 from the Department on Human Rights and International Humanitarian Law of the Foreign Relations Ministry of the Republic of Colombia, dated February 26, 2007, received the 27 of February, 2007, pages 28 to 40.

⁶⁸ Statistics from the Chocó Administrative Health Department, included in the report "*Chocó: Territory of Riches and Survival: We Live to Resist, We Resist to Live.*"

⁶⁹ Report "*Chocó: Territory of Riches and Survival: We Live to Resist, We Resist to Live.*"

⁷⁰ National Economic and Social Policy Council, National Planning Department, Document CONPES 3310, *Affirmative Action Policy for the Black or Afro-Colombian Population*, Bogotá, D.C., September 20, 2004.

⁷¹ For a total of 11,745,403 individuals. Information submitted by the Colombian Commission of Jurists at the IACHR's 126 regular session, held on October 16 to 27, 2006. See also: United Nations, Report by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, E/CN.4/2004/18/Add.3, February 23, 2004, paragraph 6. Also: "The forced displacement of communities of African descent: Reflections on uprootings, territory, and cultural identity," Colombian Commission of Jurists. Chair of Scientific Research, Externado University of Colombia, Criminal Policy Research Center (CIPC).

⁷² Journal *Futuros* No. 14, 2006 Vol. IV. Information available on the web at <http://www.revistafuturos.info>. "Afro-Colombians, in search of laws against racism and inequality," Geiler Romaña, fragment of a presentation given to Organization of American States at the special meeting to examine and discuss the nature of a future Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. November 28, 2005. Washington, D.C.

⁷³ CONPES 3169, Policy for the Afro-Colombian Population; and CONPES 3310, Affirmative Action Policy for the Black or Afro-Colombian Population. The aim of these policies was to improve the living standards of the Afro-Colombian population, increase their access to state social programs, ensure compliance with the commitments assumed by the Colombian Government at the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance.

institutional, and legal mechanisms for protecting collective rights of the ethnic territories of indigenous peoples and Afro-Colombian communities.”⁷⁴ The IACHR also notes the need to strengthen the development of statistics to reflect the current human rights situation of Afro-descendants, as well as their prevailing socioeconomic circumstances.

IV. THE SITUATION OF HUMAN RIGHTS DEFENDERS AND SOCIAL LEADERS

44. A pattern of threats, harassment, and killings continued to hinder the endeavors of Colombia’s human rights defenders during 2006. Individuals who work to promote and protect human rights in Colombia remain at considerable risk of having their rights violated because of their professional activities. The IACHR has received complaints about the electronic distribution of threats against a number of human rights organizations operating in various regions of the country. Reports also continued to come in about judicial “setups” orchestrated against human rights defenders, some of whom have lodged complaints with the inter-American system.

45. The State has conveyed to the IACHR a communiqué from the Minister of Defense, Juan Manuel Santos, expressing his repudiation of the threats received by certain human rights organizations and by some of their members and expresses his commitment toward and support of those social organizations working in the human rights area, recognizing their contributions to the country’s democratic development.⁷⁵ The Commission trusts that the State will adopt, as a matter of urgency, effective measures to protect the lives and persons of human rights defenders and to eliminate the factors that endanger their work.

46. The IACHR again states the need for an intensification of efforts to clear up the numerous cases of serious human rights violations currently before the Colombian courts, in particular those carried out by armed agents against indigenous communities, Afro-descendants, women, children, human rights defenders, and social leaders.

V. CONCLUSIONS

47. The IACHR has on repeated occasions emphasized the need to use effective negotiation mechanisms in order to bring an end to the violence that, for four decades, has been affecting the inhabitants of the Republic of Colombia. The Commission has also stated that the durability of peace is tied in with the nonrepetition of crimes against international law, of human rights violations, and of serious breaches of international humanitarian law, and, consequently, with casting light on and making amends for the consequences of violence through appropriate mechanisms for establishing the facts of the matter, administering justice, and providing the victims of the conflict with redress.

48. The year 2006 marks the conclusion of the AUC demobilization process and Colombia is facing the challenge of displaying concrete results with dismantling its paramilitary armed units and implementing the legal framework adopted for prosecuting the crimes committed by the AUC.

⁷⁴ “The forced displacement of communities of African descent: Reflections on uprootings, territory, and cultural identity.” Colombian Commission of Jurists. Chair of Scientific Research, Externado University of Colombia, Criminal Policy Research Center (CIPC). See also: Ministry of the Interior and Justice, Decree Number 250 of February 7, 2005, “Issuing the National Plan for the Comprehensive Attention of Populations Displaced by the Violence and Enacting Other Provisions,” No. 5.1.1 f) 9).

⁷⁵ Communication from the Republic of Colombia, Ministry of Foreign Affairs, Directorate of Human Rights and International Humanitarian Law, No. DDH. OEA. 57304/2649, Bogotá D.C., November 7, 2006.

49. In light of those challenges, the Commission remains concerned regarding the impact of violence on the civilian population and, in particular, on its most vulnerable groups, such as indigenous communities, Afro-descendants, and displaced persons, and about the growing number of accusations alleging participation by agents of the State itself. In addition, the IACHR also remains concerned about the reported attacks on human rights defenders and social leaders by demobilized members of illegal armed groups. The Commission insists that these crimes must be cleared up by the justice and peace magistrates when verifying full compliance with the eligibility requirements set out in Law 975.

50. Respect for the rights to truth, justice, and full redress of the victims of the armed conflict are crucial in attaining a lasting peace, in strengthening the administration of justice in Colombia, and in guaranteeing that serious human rights violations are not repeated.

51. The IACHR will continue to pursue its mandate of promoting and protecting human rights in Colombia during the demobilization process and in the interpretation and enforcement of its legal framework, by preparing general and special reports and by analyzing and issuing decisions in individual cases.

CUBA

52. The authority of the Inter-American Commission on Human Rights to observe the human rights situation in Cuba derives from the wording of the OAS Charter, from its own Statute and its Rules of Procedure. Under the Charter, all member states undertake to respect fundamental individual rights, which, in the case of States not parties to the Convention, are the rights established in the American Declaration, a source of binding international obligations.⁷⁶ The Statute charges the Commission with paying special attention to the observance of human rights recognized in Articles I (right to life, to liberty, to security and humane treatment), XVIII (right to a fair trial) and XXVI (right to due process of law) of the Declaration when exercising its jurisdiction vis-à-vis countries that are not parties.⁷⁷

53. On January 26th of 2007 the Commission transmitted to the State of Cuba⁷⁸ a copy of the instant report and requested the submission of the State's comments to the IACHR within the inextensible term of one month.

54. Cuba is a member state of the Organization of American States since July 16, 1952, when it deposited its instrument of ratification of the OAS Charter. The Commission has maintained that the Cuban State "is juridically answerable to the Inter-American Commission in matters that concern human rights" inasmuch as it "is party to the first international instruments established in the American Hemisphere to protect human rights" and because "Resolution VI of the

⁷⁶ I/A Court H.R., Advisory Opinion OC-10/89 of July 14, 1989, Interpretation of the American Declaration on the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights. Ser. A No. 10, paras. 43-46.

⁷⁷ Statute of the IACHR, Article 20.a.

⁷⁸ The IACHR note of January 26th of 2007 was notified to the Minister of Foreign Affairs of Cuba and the Chief of the Section of Interests of Cuba in Washington, District of Columbia.

Eight Meeting of Consultation⁷⁹ excluded the Government of Cuba, not the State, from participating in the intra-American system."⁸⁰ In this connection the IACHR stated:

(...) it was not the intention of the Organization of American States to leave the Cuban people without protection. That Government's exclusion from the regional system in no way means that it is no longer bound by its international human rights obligations.⁸¹

55. The IACHR has observed and evaluated the status of human rights in Cuba in 2006, during which period it received, in particular, information on violations of freedom of expression; on the detention conditions of political dissidents; the systematic practice of actions to repudiate political opponents; and the violation of labor and labor-union rights.

56. In the exercise of its authority, the IACHR decided to include in this chapter considerations on the status of human rights in Cuba, particularly on the above-mentioned topics, and refer specifically to the need for ending economic and commercial sanctions against the Government of Cuba, inasmuch as they tend to aggravate restrictions on the actual exercise of economic, social and cultural rights by the Cuban people.

57. Restrictions on political rights, freedom of expression and dissemination of ideas have amounted for decades to a permanent and systematic violation of the fundamental rights of Cuban citizens, a situation that is made worse, in particular, by the lack of independence of the judiciary.

58. The Commission finds it necessary to reiterate that the absence of free and fair elections based on universal secret suffrage as the sovereign expression of the people⁸² violates the right to political participation established in Article XX of the American Declaration of the Rights and Duties of Man, which provides: " Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free." For its part, Article 3 of the Democratic charter signed in Lima, Peru, on September 11, 2001, defines as follows the components of a democratic system of government:

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations, and the separation of powers and independence of the branches of government.

59. All the same, and before discussing the 2006 highlights in the area of human rights, the Commission wishes to stress positive developments noted by various international organizations such as the United Nations Development Programme-UNDP- whose 2006 Report on Human

⁷⁹ The complete text of Resolution VI may be found in "Eighth Meeting of Consultation of Ministers of Foreign Affairs acting as Organ of Consultation in application of the Inter-American Treaty of Reciprocal Assistance, Punta del Este, Uruguay, January 22-31, 1962, Documents of the Meeting," Organization of American States, OEA/Ser.F/II.8, doc. 68, pp. 17-19.

⁸⁰ IACHR, 2002 Annual Report, Chapter IV, Cuba, para. 3-7. See also IACHR, 2001 Annual Report, Chapter IV, Cuba, para. 3-7. IACHR, Report on the Status of Human Rights in Cuba, Seventh Report, 1983, paras. 16-46.

⁸¹ IACHR, 2002 Annual Report, Chapter IV, Cuba, para. 7.a.

⁸² Article 3 of the Inter-American Democratic Charter provides that one of the essential elements of representative democracy is the holding of periodic, free and fair elections based on universal secret suffrage, as an expression of the sovereignty of the people; and a system of plurality of political parties and organizations.

Development shows a high index of human development in Cuba.⁸³ Likewise, of the 8 millennium development goals proposed in 2000 at the UN Millennium Summit, it was established in 2005 that Cuba has met the goals of reducing infant mortality, promoting gender equality and the empowerment of women, and achieving universal primary education, among others.⁸⁴ The Inter-American Commission values these accomplishments.

I. THE STATUS OF POLITICAL DISSIDENTS IN CUBA

60. The Commission has paid close attention to the situation of political dissidents in Cuba. In this chapter the IACHR will address the limitations on the right to freedom of expression, the detention conditions of political dissidents, and the actions taken to repudiate and harass opponents of the Cuban government in 2006.

A. Freedom of expression

61. On November 1, 2006, the Commission conveyed to Cuba and the petitioners its Report 67/06⁸⁵ on 78 political dissidents arrested and tried in 2003, under Article 91 of the Criminal Code and Law 88, for events connected with the exercise of fundamental freedoms such as freedom of thought, conscience, opinion and expression, the right to peacefully assemble and freedom of association.

62. Both the American Declaration, in Article IV, and Principle 1 of the IACHR's Declaration of Principles on Freedom of Expression refer to the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas as a right inherent to every human being.

63. Although freedom of expression is not an absolute right and may, as pointed out by the Inter-American Cord, be curtailed, such restrictions must be provided by law and intended to protect legitimate interests. In addition, the Court has indicated it that the social dimension of freedom of expression is a means to exchange ideas and information among people; this includes their right to try to communicate their viewpoint to others, but also the right of all to hear opinions, accounts and news from third parties.⁸⁶

64. The Commission deems it necessary to insist that peaceful expression of opinions differing from those of the Cuban government may not be criminalized.

B. Detention conditions

65. Under the American Declaration of the Rights and Duties of Man, every individual is entitled to humane treatment while in detention.⁸⁷ The Inter-American Court has repeatedly held that all persons in custody has the right to live in detention conditions consistent with their personal

⁸³ 2006 Summary Report on Human Development, p. 48. Available at <http://hdr.undp.org>.

⁸⁴ Millennium Development Goals - Cuba. Second Report, July 2005.

⁸⁵ Report by which the IACHR reiterates the conclusions and recommendations made on the 51/06 report concerning the merits of case 12476 (Oscar Elías Biscet et al). The Commission concluded that Cuba was responsible for violating Articles I, II, IV, VI, XX, XXI, XXII, XXV and XXVI of the American Declaration, to the detriment of the victims in this case.

⁸⁶ I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, para. 71.

⁸⁷ American Declaration, Article XXV.

dignity and the State must guarantee their right to life and personal safety.⁸⁸ It has also ruled that, because the State is responsible for detention facilities, it must guarantee to the inmates conditions that respect their rights.⁸⁹ The Commission has referred in several reports to the subject of detention conditions in Cuba.⁹⁰

66. In particular, the Commission continues to receive information on the precarious detention conditions of members of the group of 79 leaders of the Cuban dissident movement sentenced to prison in April 2003,⁹¹ as well as on the situation of other political prisoners.

67. The Commission has learned that several persons detained have been physically mistreated by prison authorities and even subjected to a long periods of isolation, causing serious deterioration in their physical and mental health. Such is the case of Mr. José Gabriel Ramón Castillo,⁹² said to have remained in isolation for 15 months in a punishment cell within the Villa Clara Prison for Juveniles and to be suffering, as a result, from disorders of the central nervous system, besides other pathologies.

68. The Inter-American Court, consistently with the Minimum Rules on Treatment of Prisoners, has held that isolation or punishment cells must be used only as a disciplinary measure or to protect people for the length of time that is strictly necessary and strictly in line with rationality, need and legality standards. Such places must meet minimum standards of habitability, space and ventilation and may be used only when a physician certifies that the prisoner can withstand [such confinement].⁹³

69. Likewise, the Commission has continued receiving information about mistreatment of political dissidents in Cuban jails by guards and other persons, with the authorities acquiescing to or condoning such mistreatment.⁹⁴ There is information, in particular, on Mr. Jorge Luis García Pérez-Antúnez, imprisoned since 1990 and nearing the end of his prison term. According to reports, the authorities have threatened Mr. García Pérez-Antúnez that he will not be leaving the Kilo 7 prison at Camaguey alive, and he has suffered frequent beatings at the hands of other inmates.

70. As regards health conditions, the Commission has already voiced its concern over the large number of convicts, some of them older than 60, who are said to be suffering from chronic visual, kidney, heart and lung ailments without receiving proper medical care. On the contrary, the IACHR has learned that prison officials have prevented families of imprisoned political

⁸⁸ I/A Court H. R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, para. 151; I/A Court H.R., *Castillo Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, para. 195; I/A Court H.R., *Neira Alegria et al. Case*. Judgment of January 19, 1995. Series C No. 20, para. 60.

⁸⁹ I/A Court H. R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 150; I/A Court H. R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, para. 126.

⁹⁰ IACHR, 1995 Annual Report, Chapter V, para. 71; IACHR, 1994 Annual Report, Chapter IV, p. 168; IACHR, 2004 Annual Report, Chapter IV, para. 59-66; IACHR, 2005 Annual Report, Chapter IV, paras. 76-81.

⁹¹ See IACHR, Report on the Merits 67/06, October 21, 2006.

⁹² José Gabriel Ramón Castillo is part of the group of 78 political dissidents the IACHR discussed in its Report on the Merits 67-06. See also Minimum Rules on the Treatment of Prisoners, adopted by the First UN Congress on Prevention of Crime and Treatment of Offenders held in Geneva in 1955, approved by the Economic and Social Council in resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXIII) of May 13, 1977, Articles 31 and 32.1.

⁹³ I/A Court H. R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 94.

⁹⁴ "Acción Democrática Cubana," Press Article, May 18, 2006. Available at: <http://www.adcuba.org/index.htm>.

dissidents from delivering medications they need, which are not provided by the State, to treat their ailments.

C. Acts of repudiation

71. Also highly worrisome to the Commission are the "acts of repudiation" against political dissidents who are not in jailed. These actions consist of harassment and intimidation carried out by groups of government supporters, among them the Committees to Defend the Revolution and the People's Rapid Response Outposts against people they consider "counterrevolutionaries."⁹⁵

72. Among the reported cases of acts of repudiation in 2006 are those of Martha Beatriz Roque, Miguel Valdés Tamayo, Juan Carlos González Leyva, Pedro Arturo Hernández Cabrera and Juan Francisco Sigler Amaya.

73. In January 2006 the chairman of the Cuban Foundation for Human Rights, Juan Carlos González Leiva as well as persons visiting him, were prevented from leaving his home for several days while water, power and telephone service was cut off and a group of persons blasted music supporting the revolution outside.⁹⁶ A similar treatment was given to Miguel Valdés Tamayo, president of the group called Brothers for Dignity and a member of the Assembly to Promotes Civil Society in Cuba. On October 27, 2006, Mr. Valdés Tamayo had to remain in his home in Havana while a large group of persons outside insulted him and physically attacked him when he tried to come out.⁹⁷

74. Former political prisoner Martha Beatriz Roque, who was one of the political dissidents arrested in 2003 and was paroled under supervision, reported various acts of harassment and attacks against her in 2006.

75. In addition, according to information received by the Commission on February 3, 2006, the chairman of the Health Care Commission, Pedro Arturo Hernández Cabrera, was attacked by a mob that entered his house and, after insulting him and seizing letters and other personal items, took him to the Revolutionary National Police Unit. According to reports from Amnesty International, when he returned from the police station his residence was surrounded by some 300 people insulting him.

76. In light of this situation, it needs to be understood that these kinds of repudiation actions against political dissidents, involving persons connected with the Government of Cuba, run counter to the American Declaration, inasmuch as they ignore human dignity and the freedom all persons are entitled to irrespective of their political ideas.

II. THE DEATH PENALTY

77. The Commission has repeatedly ruled that courts must apply the closest scrutiny to cases where there is a possibility of imposing the death penalty. Since life is the supreme right of

⁹⁵ The Committees to Defend the Revolution and the People's Rapid Response Outposts are made up of a large number of people who collectively guard against counterrevolutionary activities and confront any sign of opposition to the government.

⁹⁶ Amnesty International, *"Cuba: continúan los ataques contra las libertades fundamentales"* [Cuba, attacks against fundamental liberties continue], March 17, 2006, Index AI: AMR 25/001/2006.

⁹⁷ Amnesty International, *Fear for safety/fear of torture/Intimidation/Harassment*, November 8, 2006. Index AI: AMR 25/002/2006.

every human being and a prerequisite for the enjoyment of any other right, the death penalty, if imposed, must be limited to the most extreme cases and must strictly comply with the requirements of inter-American treaties on human rights, including the American Declaration.

78. The Commission is aware that judicial proceedings cannot last indefinitely and must be pressed forward with the proper diligence within a reasonable time frame, but this should not lead to deadlines being shortened to the point where they affect due process safeguards such as the right to defend oneself, especially when a person's life is at stake.

79. On November 1, 2006, the IACHR provided Cuba and the petitioners with Report on the Merits No. 68/06 on case 12477 (Lorenzo Enrique Copello Castillo et al.). In this report the Commission concluded that Cuba was responsible for violating Articles XVIII and XXVI of the American Declaration, having tried and applied the death penalty to three persons without proper procedural safeguards, inasmuch as Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García and Jorge Luis Martínez Isaac were executed by a firing squad after an extremely summary procedure that did not satisfy due process, impartiality and judicial independence, among other requirements.

80. The Commission observes that Cuba is not applying the *ultima ratio* principle, since death is the penalty established in its Criminal Code for a large number of offenses. No legislative change has been detected that will in practice limit the death penalty in practice to the most extreme offenses or guarantee due process to defendants when it is applied.

III. LABOR RIGHTS AND UNION FREEDOM

81. Under the American Declaration every person has the right to work,⁹⁸ to peacefully meet⁹⁹ and associate with other persons for the purpose of promoting, exercising and protecting their legitimate interests.¹⁰⁰ The Court has determined that the scope of the right to freely associate in the labor area translates into:¹⁰¹ the ability to set up labor organizations and set in motion their internal structure, activities and action programs without government authorities limiting or hampering the exercise of that right. Furthermore this freedom assumes that all persons may freely determine, without coercion of any kind, whether they wish to join the association. It is, therefore, the fundamental right to join together to achieve a common lawful end without pressures or interference that may alter or distort that end.¹⁰²

82. In 2006 the IACHR continued receiving information on the human rights status of workers and labor union leaders in Cuba. The information deals primarily with restrictions on union freedom.¹⁰³

83. Concerning freedom of association, the Commission reiterates its concern over the existence of a single labor organization officially recognized and mentioned in the laws of Cuba,

⁹⁸ American Declaration, Article XIV.

⁹⁹ *Id.* Article XXI.

¹⁰⁰ *Id.* Article XXII.

¹⁰¹ I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 156.

¹⁰² Cuba ratified ILO Agreement 87 on labor union freedom and protection of the right to form labor unions on June 25, 1952, and ratified ILO Agreement 98 on the right to join labor unions and collective bargaining on April 29, 1952.

¹⁰³ Part of the information is based on a comparative study "*La Realidad Laboral en Cuba y la Responsabilidad Social de los Inversores Extranjeros*" [Labor Reality and Cuba and the Social Responsibility of Foreign Investors], Jesús R. Mercader Uguina, Ed. Tirant Lo Blanch (Valencia, 2006).

which has attracted permanent attention from the International Labor Organization. The Commission stresses that one of the guiding principles of the ILO Charter, of which Cuba is a signatory, includes recognition of the principle of labor union freedom as a prerequisite for "universal peace and harmony." The Commission believes that acts of harassment against union leaders who try to defend union freedom are contrary to human rights.

IV. ECONOMIC SANCTIONS

84. The need to put an end to the economic, commercial and financial embargo placed on Cuba for more than 40 years has been recognized by the international community within the United Nations General Assembly.¹⁰⁴

85. The IACHR, in turn, has repeatedly pointed out the serious consequences that such economic sanctions have on the economic and social rights of the Cuban people and has insisted that the embargo must end. Even though the economic embargo imposed on Cuba does not excuse the State from complying with its international obligations, the Commission also reiterates the responsibility of the inter-American community in creating the external conditions needed for Cuban society to overcome its present situation and attain full respect for human rights, inasmuch as it believes that "the adverse effects of the economic sanctions and other unilateral measures aimed at isolating the Cuban regime constitute an obstacle to creating those conditions that are so necessary for achieving a peaceful and gradual transition to a democratic form of government."¹⁰⁵

HAITI

I. INTRODUCTION

86. The Inter-American Commission on Human Rights (IACHR or "the Commission") has decided to include in the present Chapter consideration dealing with the Republic of Haiti, a member state of the OAS whose human rights practices merit special attention because it can be said to be in a situation covered by the fifth criteria provided for in the Annual Report of the IACHR for 1997 and mentioned above, i.e. a

Temporary or structural situation that may appear in member states confronted, for various reasons, with situations that seriously affect the enjoyment of fundamental rights enshrined in the American Convention or the American Declaration. The criterion includes, for example: grave situations of violations that prevent the proper application of the rule of law; serious institutional crises; processes of institutional change which have negative consequences for human rights; or grave omissions in the adoption of the provisions necessary for the effective exercise of fundamental rights.

87. The Commission has prepared this section of Chapter IV of its Annual Report in accordance with Article 57.1.h of its Rules of Procedure and has based its analysis on information obtained during the visit described below as well as on other reliable publicly available sources. On 26 January 2007, the IACHR transmitted to the State a copy of a draft of the present section of Chapter IV of its Annual Report for 2006, in accordance with the aforementioned Article, and asked

¹⁰⁴ On November 8, 2006 the UN General Assembly approved Resolution 61/11 reiterating for the 15th time the call to the United States of America to end its embargo on Cuba. That resolution was adopted with 183 votes in favor, 4 against and 1 abstention.

¹⁰⁵ IACHR, 1999 Annual Report, Status of Human Rights in Cuba, Chapter IV, para 64, OEA/Ser.L/II .106, Doc. 3 rev., April 13, 2000; IACHR, 2000 Annual Report, Status of Human Rights in Cuba, Chapter IV, para. 92, OEA/Ser.L/II. 111, doc. 20 rev., April 16, 2001.

the Government of the Republic of Haiti to submit its observations on the section within thirty days. The State has not submitted observations within that time limit.

88. The year 2006 marked the year that Haiti made a formal transition from a 2-year interim transitional government under former president Boniface Alexandre to a democratically elected government under now President Rene Preval, and which was inaugurated in March 2006, following largely peaceful presidential and legislative elections in on February 7, 2006. This period is preceded by the turbulent events that took place at the end of February 2004, leading to the departure of former President Jean-Bertrand Aristide, the installation of a transitional government in March 2004, and the arrival of the United Nations Mission, United Nations Stabilization Mission in Haiti (MINUSTAH), in June 2004. Further, the transitional period was also characterized by increased insecurity and violence by armed gangs, the lack of effective control of certain sectors of the capital by the Haitian police and international forces, the lack of adequate institutional resources and capacity to function adequately, especially, endemic weaknesses in the administration of justice. While emphasis was placed on the successful organization of presidential elections, which were effectively held on February 7, 2006 in Haiti and which were reported to be credible, the insecurity and many of the other institutional weaknesses were not adequately addressed. Consequently, the issues of fundamental human rights protection, strengthening the rule of law and the need for economic and social development identified in previous annual reports of the Inter-American Commission remained key challenges yet to be seriously tackled by the state.¹⁰⁶ The Commission's activities in Haiti in 2006 were necessarily influenced by these developments and involved the close monitoring of the human rights situation during Haiti's emergence from its transitional period, with particular emphasis on the State's ability to secure the lives of its constituents, the disarmament process, and efforts to design and implement much needed institutional reforms in all sectors, especially in the area of the administration of justice. This included the publication of a thematic report on the administration of justice, *Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community*, released in March 2006, as well as visits by the Commission to Haiti in May and December 2006 in order to continue to evaluate the current situation of human rights and to conduct a follow up evaluation of the administration of justice in Haiti. Further, the Commission held several hearings on Haiti during its 124th and 126th Regular Period of Sessions where advocates and representatives of the state shared information about the current conditions and developments in the country.

89. Based upon its activities relating to Haiti during the year, the Commission continues to have grave concerns regarding numerous areas in which the basic rights of the Haitian people lack protection and guarantees. The Commission continues to be seriously preoccupied by the persistent degree of violence in Port-au-Prince, that which has claimed hundreds of lives and victims of kidnappings due to the marked deterioration in the security situation in Haiti. The Commission is alarmed with the persistence of such conditions without adequate and effective strategy and measures to control and prevent these acts of violence and the volatile situation of armed gang confrontations and intimidation of civilians without an immediate and effective state response risks taking firm hold in Haiti and crippling the nation from undergoing crucial social and economic development. The Commission notes that, while the level of violence diminished during the electoral period, and a new National Commission on Disarmament was created, since mid 2006, Haiti has witnessed a re-escalation of violence arising from conflicts between rival armed groups or with law enforcement, as well as increase in organized crime resulting in an acute rise in murder and

¹⁰⁶ See, e.g., Annual Report of the IACHR 2005, Chapter IV, available at <http://www.cidh.org/annualrep/2005eng/chap.4.htm>; Annual Report of the IACHR 2004, Chapter IV, available at <http://www.cidh.org/annualrep/2004eng/chap.4.htm>.

kidnapping cases, and the incapacity of the state to effectively prosecute and punish criminals.¹⁰⁷ The Commission recognizes the serious challenges to regaining control of the security situation, reforming the justice system and reinforcing the rule of law, therefore, the Commission urges the government with the assistance of the international community to take the urgent measures necessary, consistent with international human rights principles and standards, to assert control over security in Haiti and ensure justice for victims of human rights abuses. With the implementation of such measures, Haiti can begin to implement its much needed institutional reforms and long term plans for social and economic development.

Summary of Key Events in Haiti during 2006

90. As a context for its discussion of the human rights situation in Haiti during 2006, the Commission will provide a brief overview of the major events during the year.

91. The year 2006, was notable in that on February 7, 2006, Haiti held a successful presidential and legislative election, despite numerous delays and technical difficulties during the electoral period, the February 7th election was considered credible, fair and peaceful by Haitian and international electoral observers. The government of president, Mr. Rene Preval, follows Haiti's interim government under the stewardship of former president Mr. Boniface Alexandre and marks a new beginning for Haiti. Preval's government took over from a two-year term interim government, which at its conclusion continued to face significant challenges to ensuring security and protecting the basic rights of Haitians. While presidential elections were successfully organized early this year, much of the observed conditions in Haiti, as noted in past annual reports of the Commission¹⁰⁸ remained unaddressed, leading to increasingly precarious living conditions of Haitians unable to seek effective protection from the state due to the serious inadequacy of public services in nearly all the sectors. In this connection, in 2006, the President declared his public commitment to addressing social and economic conditions of the people through development programs, tackling insecurity and embarking on a number of institutional reforms.

92. Overall, the security and human rights situation in 2006, deteriorated considerably, largely due to the proliferation of armed gangs and the consolidation of organized criminal activities which continued to exert exclusive control over parts of the city and the inability of the police force to respond effectively and adequately to this growing phenomenon. Further, the national police remained weak, understaffed, under resourced and a significant percentage of its members suspected to be corrupt¹⁰⁹. This year witnessed more systematic acts of kidnapping, increasingly abusive tactics employed by perpetrators, the use of children by armed groups, the physical and sexual exploitation of women in criminal activities and the lack of an adequate response by the police and judiciary to bring perpetrators to justice. At the same time, access to medical facilities to treat wounded victims of violence remained severely inadequate, increasing the risk of loss of life.

93. Efforts to organize presidential elections proved difficult but successful on February 7, 2006. Plans were hampered by numerous delays and logistical challenges, which led the original date of October 9th, 2005 to be postponed to November 2005 and finally February of this year. Despite the technical difficulties during the registration process and numerous acts of intimidation received by the Provisional Electoral Council (PEC), approximately 3 million of an estimated 4

¹⁰⁷ For example, MINUSTAH, Human Rights Section, monthly reports for 2006 also available at http://www.minustah.org/droits_mens.html.

¹⁰⁸ See, e.g., Annual Report of the IACHR 2005, Chapter IV, available at <http://www.cidh.org/annualrep/2005eng/chap.4.htm>; Annual Report of the IACHR 2004, Chapter IV, available at <http://www.cidh.org/annualrep/2004eng/chap.4.htm>.

¹⁰⁹ 126th Period of Sessions, General Hearing on Haiti.

million, while 800 polling centers containing 9000 polling stations were set up.¹¹⁰ According to Haitian and international observers the process was largely free from serious irregularities, declared credible and was generally accepted by the political parties.

94. Since President Preval's inauguration, the events at the domestic political level in Haiti were characterized by President Preval's public commitment to address key issues of concern, namely security, social and economic conditions and the justice sector, while the international community expressed support for these plans by making pledges of aid for various programs from rebuilding the physical infrastructure of the country, to support in the areas of education, health, development projects, environmental protection and agricultural productivity, as well as institutional reform. At the same time, the President, having acknowledged and expressed concern for the conditions of extreme poverty of Haitians, has equally emphasized the importance of long-term support from the international community by calling for investment in Haiti's national economy and development projects. Specifically, the President nominated Jacques Edouard Alexis as Prime Minister and appointed his Cabinet of Ministers and other key posts, such as a new Secretary of State for Public Security, the Director General of the Haitian National Police, and created the new post of Secretary of State for Judicial Reform. The government further established the National Commission on Disarmament to implement a national disarmament plan targeting non-state actors to voluntarily relinquish their weapons in exchange for money and job training. The government largely set out to establish its five-year national policy plan in the various sectors, especially administration of justice, security and social and economic development, while the Ministry of Justice and Ministry of Women's Condition and the Rights of Women both presented draft laws for consideration at the National assembly and are both undertaking reform plans in their respective areas.

95. Over the past year, developments at the national level have also been accompanied by the presence of the United Nations Stabilization Mission in Haiti (MINUSTAH), which was initially authorized for six months beginning on June 1, 2004, and has since been extended on several occasions, including most recently on August 15, 2006 with an extension to February 15, 2007.¹¹¹ Recent resolutions, following the February election, significantly amended the mandate by calling on authorities to urgently undertake steps towards reform in the area of the rule of law and the protection of human rights, including enhancing the capacity of the Haitian National Police and rapidly implementing a national disarmament program that adopts a comprehensive community violence reduction approach.¹¹² As of September 30, 2006, MINUSTAH forces were comprised of a total of 8,342 uniformed personnel, including 6,642 troops and 1,700 police officers.¹¹³ Since the beginning of the mission, a total of 18 fatalities of UN personnel have been recorded through September 2006, and two Jordanian peacekeepers were reported dead following an attack by armed gunmen in November of 2006.¹¹⁴ According to public activity reports, MINUSTAH has engaged in a variety of initiatives to implement its mandate. In addition, visits to the country to assess the situation of peace and security were conducted by Mr. Kofi Annan, Secretary General of

¹¹⁰ Haiti KONPAY, "Ten Things the Media Hasn't Reported About the Elections", Haiti Report for February 11, 2006 also available at <http://www.konpay.org/wordpress/category/news/haitireports/page/5/>.

¹¹¹ See UN Security Council Resolution 1576 (2004), UN Doc. S/RES/1576 (2004) (29 November 2004); UN Security Council Resolution 1601 (2005), UN Doc. S/RES/1601 (2005) (31 May 2005); UN Security Council Resolution 1608 (2005), UN Doc. S/RES/1608 (2005); UN Security Council Resolution 1658 (2006), UN Doc. S/RES/1658 (2006); UN Security Council Resolution 1702 (2006), UN Doc. S/RES/1702 (2006); (available at <http://www.un.org/Depts/dpko/missions/minustah/res.html>).

¹¹² See United Nations Security Council Resolution 1658 (2006), UN Doc. S/Res/1658 (2006); See also United Nations Security Council Resolution 1702 (2006), UN Doc. S/Res/1702 (2006).

¹¹³ See MINUSTAH, Facts and Figures (as of September 30, 2006), available at <http://www.un.org/Depts/dpko/missions/minustah/facts.html>.

¹¹⁴ See MINUSTAH Press Release PIO/PR/284/FRA/2006.

the United Nations, Ms. Louise Arbour, United Nations High Commissioner for Human Rights in October¹¹⁵, and the Independent Expert on Haiti, Mr. Louis Joinet, presented his report on the situation in Haiti to the United Nations Secretary General.¹¹⁶

96. In July, Haiti was readmitted into the Caribbean Community (CARICOM), of which it was previously a member, after CARICOM condemned the circumstances which led to the departure of former President Aristide in February 2004 and subsequently decided not to allow the transitional government to participate in its Councils. Accordingly, in October 18, 2006 CARICOM members met for the first time since Haiti's re-entry into the organization in Port-au-Prince, to discuss ways to lend support to the Preval government.

97. For its part, the General Assembly of the Organization of American States (OAS) adopted Resolution AG.RES.2215 (XXXVI)-O/06,¹¹⁷ during its thirty-sixth regular session convened from June 4 to 6, 2005 in Santo Domingo, Dominican Republic. Therein, the General Assembly noted concerns regarding the situation of the Haitian judiciary and penitentiary systems, including prolonged pretrial detention and the need to strengthen due process and the challenges faced by the Haitian National Police. The General Assembly also urged collaboration and support of the international community, especially in the area of coordinating technical and financial support for the Government of Haiti to achieve sustainable development and specifically with regard to the professionalization of the Haitian National Police.

98. Numerous initiatives throughout the year have been undertaken by the organs and institutions of the OAS to implement the terms of General Assembly's Resolution. Over the course of the year, Mr. Ramdin made a number of visits to Haiti and issued statements reiterating the support of the OAS to the process of strengthening democratic institutions and announced OAS plans to coordinate and mobilize resources and efforts from the other inter-American bodies to fulfill its objectives.¹¹⁸

99. Following an initial international donor's conference in Washington, D.C. in July 2004 where over US \$1 billion was pledged to Haiti, several follow up donors meetings were held, and most recently on November 29-30 in Spain. According to the World Bank, Haiti was admitted into the World Bank's Highly Indebted Countries Program (HIPC) in November, and had US \$140.3 million of its national debt forgiven. According to the agreement, Haiti will receive interim debt relief from certain creditors, but in order to qualify for irrevocable debt relief at the completion point, Haiti is expected to implement a broad set of reforms including poverty reduction strategies and structural adjustment reforms.¹¹⁹

100. In conclusion, over the past year, Haiti emerged slowly from the two-year transitional period, marked by the significant challenge for the government to effectively regain

¹¹⁵ See MINUSTAH Press release on UN High Commissioner on Human Rights Mrs. Louise Arbour (17 October 2006).

¹¹⁶ See Report of the Independent Expert on Haiti to the United Nations Secretary General "Advisory Services and Technical Cooperation in the Field of Human Rights: Situation of Human Rights in Haiti", E/CN.4/2006/115, 62nd session UNCHR (January 26, 2006) also available at <http://daccessdds.un.org/doc/UNDOC/GEN/G06/104/54/PDF/G0610454.pdf?OpenElement>.

¹¹⁷ OAS General Assembly Resolution AG/RES.2215 (XXXVI)-O-06, "Strengthening Democracy and Socioeconomic Development in Haiti" (6 June 2006), available at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/consejo/GENERAL%20ASSEMBLY/default.asp>.

¹¹⁸ See OAS press release E-071/06, "Institution-Building and Infrastructure Crucial to Haiti's Progress, Says OAS" available at: http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/OASpage/press_releases/home_eng/press.asp.

¹¹⁹ International Monetary Fund, "Haiti Reaches Decision Point Under the Enhanced HIPC Debt Relief", Press Release No. 06/261 (November 22, 2006).

order and stability across the country, while lacking sufficient resources to adequately meet the duty to guarantee security, and thus affecting the progress in other areas such as economic development and rebuilding the national infrastructure. The security situation remains dire and although measures to suppress violence and disarm illegal armed groups and gangs have begun, these efforts need to be maintained and enhanced with the critical assistance of the international community to ensure effective security in the country. In addition, the Haitian government should seriously consider taking steps to bring all sectors of Haitian society together to foster dialogue and consensus to better achieve sustainable peace for the future. The ushering in of a newly elected government, and the support expressed from the international community to assist Haiti through this difficult transition to stability, presents an special opportunity for change and progress in the country. Against this backdrop, the Commission will provide an update on the overall situation of human rights in Haiti, which was first described in last year's annual report.¹²⁰

Commission's Activities Concerning Haiti in 2006

101. During Haiti's first year under President Preval's administration, the Commission continued to express its serious preoccupation regarding certain aspects of the human rights situation. This included the recent but growing trend of kidnappings by armed gangs, in some instances implicating members of the Haitian National Police, the persistent degree of armed violence between groups and the HNP, the lack of an effective investigation, prosecution and punishment of perpetrators of violent crimes or human rights abuses in accordance with due process standards, threats and intimidation against human rights defenders, and the arbitrary and prolonged pretrial detention of individuals closely associated with the former Lavalas regime.

102. The Commission issued press release 06/06 on March 16, 2006 publicly announcing the publication of the Commission's study on the administration of justice in Haiti and indicating its key findings. The report concluded that the justice system in Haiti was gravely deficient in nearly all respects and systematically has failed to protect the fundamental human rights of the Haitian people. The report also emphasized that efforts to address Haiti's present and serious political, economic and social problems will not succeed without urgent reforms to strengthen the administration of justice and the rule of law in Haiti, and will require ongoing, coordinated and sustained support from OAS Member States and other members of the international community.

103. In May 2006, the Commission was invited to make a two-day presentation on the IACHR system for a group of approximately forty NGOs, journalists, and members of the Haitian National Police in Haiti in order to promote greater understanding of the regional and universal human rights protection mechanisms.

104. The Commission considered the situation during its 124th and 126th regular period of sessions in February and October 2006, respectively. At the conclusion of both sessions, the Commission issued press releases on the elections and the general situation in the country.¹²¹

105. The Commission conducted a fact-finding visit from December 11-15, 2006 at the invitation of the Preval government of Haiti and with the financial support of the Government of France. The Commission delegation was composed of members of the Executive Secretariat. In the course of its visit, the Commission endeavored to obtain information on the status of human rights protections in Haiti generally, and the situation of women in Haiti. To this end the Commission met

¹²⁰ See, e.g., Annual Report of the IACHR 2005, Chapter IV, available at <http://www.cidh.org/annualrep/2005eng/chap.4.htm>.

¹²¹ See IACHR press release No. 7/06 (March 17, 2006) at <http://www.cidh.oas.org/Comunicados/English/2006/7.06eng.htm>; see also IACHR press release No. 37/06 (October 27, 2006).

with representatives of the Ministry of Justice and Ministry of Women's Condition and members of civil society as well as international organizations. During its visit, the Commission conducted an outreach session on the inter-American human rights system with members of the Ministry of Women's Condition and women's rights groups.

106. Based upon its visits and other activities relating to Haiti during 2005 and 2006, the Commission has identified key areas of fundamental concern and that directly impact the degree of protection of the basic rights of Haitians, which are discussed below. It is important to note that many of these problems are long-standing and deep seated, stemming from institutional weaknesses that require immediate and serious review and reform in order to diminish the number and nature of gross human rights violations occurring on a daily basis in the country. Further, these areas have been the subject of the Commission's study and monitoring over the past several years and have equally been the subject of discussion in previous Commission Annual Reports and press releases.¹²²

Commission's Observations on the Situation of Human Rights in Haiti during 2006

107. During the previous year, the Commission issued a number of statements expressing preoccupation with the serious human rights problems, and stressed the importance and necessity of the government, the people of Haiti and the international community to enhance cooperation and coordination of their efforts to fully guarantee the security of civilians.¹²³ Since that time, while the Commission welcomes the positive developments in the country, including the successful presidential election in February of this year, the inauguration of a constitutional government, the elaboration of reform plans and the establishment of the National Commission on Disarmament, the Commission continues to be gravely concerned by the lack of effective control over the security situation in the country, and the direct impact this has had on the protection of the right to life and physical integrity of all Haitians, especially women and children, who constitute a significant percentage of the victims of violence. The acts of violence by armed gangs, confrontations by armed groups and security forces have largely become a daily occurrence during 2006, characterized by significant numbers of deaths and wounded, victims of kidnappings, murder, acts of torture or cruel and unusual punishment, and rape. As a result, there has been a notable increase of persons fleeing volatile pockets of the city where armed gangs wield great influence and power and where residents' safety is constantly at risk, many schools delayed opening at the start of the academic year while local businesses have been affected, forced to relocate, or close operations.

108. In light of the current situation in the country, President Preval has made a public commitment to prioritizing social and economic development, with emphasis on the education, health, and agricultural sectors as well as developing programs to eradicate poverty and building up the infrastructure of the country. In support of these initiatives and the President's plea for long-term development assistance, the international community has responded favorably with public statements of support from several countries.¹²⁴ Implementation of some such objectives included the launching of a program in September for urban rehabilitation reportedly having created five

¹²² See, e.g., Annual Report of the IACHR 2005, Chapter IV, available at <http://www.cidh.org/annualrep/2005eng/chap.4.htm>; Annual Report of the IACHR 2004, Chapter IV, available at <http://www.cidh.org/annualrep/2004eng/chap.4.htm>; Annual Report of the IACHR 2003, Chapter IV, available at <http://www.cidh.org/annualrep/2003eng/chap.4.htm>; Annual Report of the IACHR 2002, Chapter IV, available at <http://www.cidh.org/annualrep/2002eng/chap.4d.htm>; IACHR Press Release No. 24/03 (August 22, 2003); IACHR Press Release No. 11/00 (August 25, 2000); See also IACHR Press Release No. 20/05 (June 6, 2005).

¹²³ See, e.g., Annual Report of the IACHR 2005, Chapter IV, available at <http://www.cidh.org/annualrep/2005eng/chap.4.htm>; IACHR Press Release No. 20/05 (June 6, 2005), available at <http://www.cidh.oas.org/Comunicados/English/2005/20.05.htm>.

¹²⁴ Radio Solidarite interview, February 3, 2006; "Haiti's president-elect meets Rice, Mbeki", Agence France-Presse, March 13, 2006.

thousand jobs for Haitians. Further, Prime Minister Alexis has encouraged the private sector to engage in cooperation agreements with the government to carry out social development projects for the country.

109. The Commission reiterates the importance of immediately addressing the several key areas identified during its visits to the country in 2005 and in its report on the administration of justice published in March 2006¹²⁵. In particular, securing a lasting peace in Haiti requires the state, in cooperation with the Haitian population and with support from the international community, to take decisive steps to effectively disarm all those in possession of illegal weapons, engage in constructive and conciliatory dialogue among the sectors to promote social and political consensus, take firm steps to end impunity for human rights abuses and crimes and to support the national economy in order to provide greater employment options and self-sustainability for Haitians. Over the many years that the Commission has monitored the developments in Haiti, the Commission has observed the uniquely complex and challenging nature of the human rights situation in the country characterized by repeated periods of political crisis and some of the Hemisphere's most worrisome social and economic conditions, that which has caused extreme deficiencies in its state institutions and which have consequently failed to effectively tackle the longstanding problems in the areas of social, economic, civil and political rights. Consequently, such matters, which continue to prevent the country from making significant progress in its development, can not be fully resolved with short-term solutions, but will require long-term institutional reforms and sustained international assistance to address a number of central problems identified in this chapter and noted in the Commission's previous statements and reports on the situation in Haiti.

Security and Disarmament

110. Among the Commission's principal concerns since 2004 through 2006 has been the security situation in Haiti. According to the information received by the Commission in 2006, the lack of effective security for the population throughout much of Haiti remains an urgent problem. Since the rebellion in February 2004, the majority of police officers abandoned their posts, leaving the government with the task of recruiting, training and deploying new officers. Due to the weak presence of the police in the country, and the seriously under-resourced force, illegal armed groups continue to exert control over security in many parts of Haiti, and it has been reported that in some instances these groups have operated in cooperation with, or in the place of, the national police.

111. The situation of violence has markedly deteriorated since the month of June, and despite slight periods of improvement, statistics show the problem to be alarming and clearly the most worrisome in the region. Although the figures on the victims of violence vary, reports by MINUSTAH indicate 50 cases of kidnapping and more than 90 people killed during July 2006 in Port-au-Prince, while for the month of August there were 80 recorded kidnappings and 70 killings in Port-au-Prince.¹²⁶ Meanwhile, the Haitian human rights group, the Justice and Peace Episcopal Commission recorded 228 people dead between the months of June to September 2006, including 11 HNP officers, 2 security guards, 19 women and six children.¹²⁷ One of the areas of the capital most severely hit has been Martissant, where during the months of July to September, a total of 72 persons have reportedly been killed in violent confrontations.¹²⁸ On July 7, 2006, the population,

¹²⁵ See IACHR Press Release No. 16/05 (April 22, 2005), available at <http://www.cidh.oas.org/Comunicados/English/2005/16.05eng.htm>; See IACHR Report, Haiti: Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community, OEA/Ser/L/V/II.123 doc.6 rev 1 (26 October 2005) also available at <http://www.cidh.oas.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf>.

¹²⁶ MINUSTAH, Human Rights Section, Monthly reports: July and August 2006.

¹²⁷ MINUSTAH, Monitoring the Local Radios, 13 November 2006 (Radio Vision 2000).

¹²⁸ MINUSTAH, Human Rights Section, Monthly reports: September 2006.

national and international human rights groups expressed outrage and alarm when more than twenty people were killed in Grand Ravine and numerous houses burned and destroyed by rival armed gangs, causing many residents to seek refuge in a nearby church.¹²⁹ With multiple kidnappings and assaults reported daily of Haitians from all classes and age groups, Port-au-Prince figures on kidnappings have surpassed those of other countries in the Hemisphere, namely Colombia.¹³⁰ Ransom demands range from a couple hundred to several thousands of United States dollars, although in many cases the captors will agree to a lesser amount than the original demand. Meanwhile, foreigners have not been spared from the violence, during last year, 43 Americans were reportedly kidnapped in Haiti, including three who were killed in attempted abductions.¹³¹ Further, the acts of violence have claimed the lives of several children causing the United Nations Special Representative of the Secretary General in Haiti, Mr. Edmond Mulet, to express his indignation towards the violence being committed against children and their families, especially in the area of Grand Ravine where in July several women and children were victims of a deadly shoot out between rival gangs. Mr. Mulet asked for the violence against children to cease and that the physical integrity of women and children to be respected.¹³²

112. The areas most affected by the violence are typically those areas where there is limited to no police presence and therefore these areas have become the strongholds of armed gangs who govern the streets and activities of the residents. The number of these areas, commonly referred to as, *zone de non-droit*¹³³ have increased during 2006. Inhabitants indicate that most parts of downtown Port-au-Prince continue remain no-go zones due to the volatility of these areas. These areas are also largely inhabited by those individuals with one of the lowest standards of living, and no means of obtaining better shelter than the make-shift dwellings they inhabit, such as in the sprawling slum-neighborhood of Cite Soleil. This constitutes an already severely vulnerable category of the population which systematically experiences multiple violations based on its exposure to the violence and its lack of access to basic services (medical treatment, legal services) following acts of abuse. As a consequence, the security of the population in many of these areas has not been effectively guaranteed by the State, forcing residents to relocate where possible in order to maintain their safety.

113. The need for an effective arms control policy, including disarmament can not be underestimated after noting the climbing figures of victims of armed violence since 2004 to the present. To further illustrate the situation, a survey conducted in 2005 on small arms and disarmament in Haiti found that there are an estimated 170,000 small arms (largely pistols and revolvers) in circulation in Haiti, and an additional unknown number of assault rifles.¹³⁴ It further expressed concern over the lack of a regulatory framework or national registry for domestic possession of weapons and stressed the need to develop a broadly targeted program to encompass all those in possession of illegal weapons. Thus, the Commission welcomes the creation of the National Commission for Disarmament, Demobilization and Reintegration, as one step in a longer

¹²⁹ MINUSTAH reports; and interview with human rights monitors.

¹³⁰ Haiti KONPAY, "New wave of Kidnappings in Port-au-Prince (22 July 2006)", Haiti Report for July 25, 2006 also available at <http://www.konpay.org/wordpress/category/news/haitireports/page/2/>.

¹³¹ Washington Post, "Two kidnapped missionaries freed in Haiti", July 20, 2006.

¹³² "Le représentant spécial du Secrétaire Général des Nations Unies et le représentant de l'UNICEF en Haïti expriment leur inquiétude face à l'augmentation de la violence et ses conséquences sur les enfants et leurs familles", Communiqué de presse MINUSTAH/UNICEF, July 8, 2006.

¹³³ The *zones de non-droit* are located across the city and are extremely dangerous as they are characterized by indiscriminate violence and confrontations between armed groups and police attempting to carry out security operations.

¹³⁴ "Securing Haiti's Transition: Reviewing Human Security and the Prospects for Disarmament, Demobilization and Reintegration," by Robert Muggah, Small Arms Survey, Graduate Institute of International Studies, Geneva, 2005.

process of effective arms control. According to reports, the program will place special emphasis on targeting children who are often the primary victims of the armed groups. At the same time, those who are suspected to have been implicated in killings, human rights abuses or other serious crimes will not be eligible to participate in the disarmament program and should expect to face justice for their actions.¹³⁵ Since the official launching of the program, the UN reports that roughly 109 Haitians are said to have been enrolled in the program and dozens of weapons collected.¹³⁶ Despite the slow start to the process, the Commission is encouraged by the creation of the NCDDR and hopes that a comprehensive and systematic strategy will be implemented rapidly in respect of all armed groups, including the former military and gangs.

114. Another essential aspect to guaranteeing security is the need to reinforce the Haitian National Police force, which remains weak, under-resourced, ill-equipped and minimally trained, as noted in the Commission's report on the administration of justice released in March 2006.¹³⁷ Recent figures indicate that the force stands between 5,500 and 6,000 police officers, while the national population is estimated at 8 million inhabitants.¹³⁸ Accordingly, police presence across the country is severely limited, leaving the security of residents in their own hands or in some cases reliant upon the armed gangs that wield power in certain parts of the city and country. At the same time, the police have exhibited efforts to fight crime by conducting more operations in the city and in some cases have successfully liberated victims of kidnappings and made arrests of suspected criminals. The HNP has also developed a new anti-kidnapping unit composed of HNP and UN officers, which has led to 30 arrests of kidnapping suspects in the month of September and 40 in October. Meanwhile, an extra challenge that the HNP is expected to overcome is the current reputation of the force that has become tarnished by reports of corruption and members of the force suspected to be involved in criminal activities. In particular, the Director General of the HNP, Mario Andresol declared that some 25% of the force is suspected to be corrupt.¹³⁹ Such involvement in criminal activity on the part of police officers seriously damages the integrity and credibility of the police as an institution and prevents it from fulfilling its mandated role of law enforcement. In response to these perceived problems, the government has taken steps towards designing a reform plan for the police force, which includes the implementation of a vetting procedure to rid it of members involved in corrupt or criminal activities.

115. Finally, the Commission acknowledges that the United Nations Stabilization Mission in Haiti has undertaken efforts to improve the situation by stressing a community based approach to the disarmament process and by placing greater emphasis in its revised mandate on institution strengthening and reform, especially in the area of the administration of justice. In effect, MINUSTAH peacekeepers have a robust presence in the country and a portion of resources is allocated for the disarmament process and strengthening of the police through technical assistance, and the design of appropriate security and reform plans for implementation. At the same time, continued reports of abuse of force and wounded civilians arising out of MINUSTAH security operations has caused increased animosity by the population and some members of parliament

¹³⁵ Radio Metropole, «La Commission Nationale de Désarmement entend privilégier le dialogue dans son action», 22 September 2006.

¹³⁶ Radio Métropole, «La MINUSTAH déterminée à rétablir un climat sécuritaire à Cité Soleil», 25 October 2006.

¹³⁷ See IACHR Report, Failed Justice or the Rule of Law? Challenges Ahead for Haiti and the International Community, OEA/Ser/L/V/II.123 doc.6 rev 1 (26 October 2005) also available at <http://www.cidh.oas.org/countryrep/HAITI%20ENGLISH7X10%20FINAL.pdf>.

¹³⁸ Report of the Secretary-General On the United Nations Stabilization Mission in Haiti". Security council, 28 July 2006, S/2006/592. A further 1,623 weapons donated by the US to trained HNP officers were being tracked through a database system.

¹³⁹ Agence Haitienne de Presse, "Police Director General Andresol Denounces Corruption in Judicial System", 21 March 2006.

towards the presence of the mission. In response to alleged acts of abuse of force by soldiers, the Commission recommends that the duty to provide public security should be coupled with the duty to protect the life and physical integrity of persons at all times.

Administration of Justice

116. It is apparent from the information available that the lack of progress on security has been attributable in part to deficiencies in the state of the administration of justice in Haiti. The sources available to the Commission have indicated that the justice system remains severely weak, slow and continues to suffer from fundamental failings. These include a severe shortage of resources for judges, magistrates, courts, and the police as well as prevalent due process violations such as the prolonged detention of individuals without being brought before a judge. Further, reports of widespread corruption across the public sector, including the judiciary has had a serious impact on the duty to guarantee a fair trial and judicial guarantees under articles 8 and 25 of the American Convention. As indicated above, the police and judges have also become victims of the violence, having become targets in attacks by armed groups in some cases and preventing them from freely exercising their official duties.

117. The Commission has also taken note of information indicating that some instances of unlawful killings and abuse of force may be attributable to the police.¹⁴⁰ However, far more cases of mistreatment and beatings have been reported during the year, both at the time of arrest and while in police custody. Human rights reports have documented cases of police officers regularly engaging in the abuse of force especially with criminal suspects in their custody.¹⁴¹ Several detainees have reported being the victims of beatings and torture during police interrogations, especially at the holding cell at the Central office of the Judicial Police (Direction Centrale de la Police Judiciaire). Human rights monitors have regularly interviewed detainees and witnessed physical evidence of the abuse and mistreatment, which according to monitors, has become systematic in the holding cells of police stations across the country.¹⁴² Some of the officers responsible for these acts have been apprehended and prosecuted for their actions; while others who were in the custody of the state for alleged crimes, have reportedly been released by judges even though incriminating evidence was presented against them. This was similarly the case of two senior officers arrested for their suspected roles in the killings in Martissant (August 2005) and Grand Ravine (July 2006) but were released by a judge in March 2006.¹⁴³ Accordingly, the Commission emphasizes the need for police recruits to receive robust training in the area of human rights, including the international rules and principles governing the use of force, and that any allegations of police involvement in killings and other human rights abuses are promptly and effectively investigated and those responsible are tried and punished.

118. The Commission is also concerned about apparent arbitrary arrests and detentions that appear to have increased during 2006, largely due to the police's aggressive efforts to apprehend suspected criminals, and in several cases, by conducting mass arrests of at least twenty to thirty people at once. Reports indicate that as of October, there were a total of 4599 detainees being held in detention facilities across the country, with a mere 749 of this total having been

¹⁴⁰ MINUSTAH, Human Rights Section, monthly report, August 2006.

¹⁴¹ MINUSTAH, Human Rights Section, monthly report, July, August and September 2006.

¹⁴² MINUSTAH, Human Rights Section, monthly report, July 2006.

¹⁴³ The Martissant massacre in August 2005 occurred when several people were killed during a police raid on a football match; and the second took place in July 2006 where approximately twenty one people were killed and hundreds of homes burned or destroyed.

convicted.¹⁴⁴ Also, as the police step up their operations to apprehend criminals, monitors have reported that on one occasion in July, 24 out of 29 individuals were being detained illegally¹⁴⁵ in the holding cell at the DCPJ, while on a separate occasion, 25 out of 28 individuals were being held without having seen a judge. The Commission notes that the perpetration of arbitrary arrests and detentions is not a new problem in Haiti but has been the subject of criticism by the Commission in the past.¹⁴⁶ Accordingly, the Commission while stressing the importance of crime prevention and apprehending dangerous criminals to ensure greater security for the population, the Commission once again emphasizes the prohibition against arbitrary arrests and detentions enshrined in Article 7 of the American Convention, and reiterates the State's obligation to ensure that its efforts to investigate and prosecute crimes are undertaken through demonstrably fair and effective procedures that conform to international standards of due process, including a detainee's right to be promptly notified of the charge or charges against him and to be brought promptly before a judge.

119. As with previous years, the Commission continued to receive reports of violence against and among inmates in prisons and other detention facilities, as well as generally substandard and overcrowded conditions in those institutions, and in many cases such conditions constituting a critical health risk to the inmates. According to a director of the prison administration interviewed in 2005, only 17 of Haiti's 22 prisons were actually functional,¹⁴⁷ and to date, no reports of their repair have been received. In particular, petitioners during the Commission's 126th Regular Period of Sessions elaborated on the extremely dire conditions of detainees in Gonaïves, the prison which was destroyed and never rebuilt. Poor conditions have led to several jailbreaks around the country. On May 14, 2006 inmates broke the locks of their door cells at the National Penitentiary (Port-au-Prince) the same day René Preval was being sworn in as President of Haiti. Armed with bottles and sharp instruments, with several wounded.¹⁴⁸ A similar incident was registered in Arcahaïe's penitentiary on August 27, 2006 where six convicts escaped. It is said that those events are the results of negligence from authorities because the prisons are not well managed and are under financed.¹⁴⁹

120. Further, human rights monitors indicate that prisoners and detainees are continuing to suffer from a lack of access to potable water, proper sanitation, sufficient and nutritious food, and their cells are bare, small, and lack adequate ventilation and light, with most detainees subject to 24-hour confinement. In many cases, due to overcrowding and poor facilities and a history of prison breaks across the country, authorities indicate that the lack of security of the facilities

¹⁴⁴ See *Journee Internationale des Prisonniers: Le RNDDH fait le point autour de la detention preventive prolongee et des conditions de detention des detenus*, RNDDH, October 2006.

¹⁴⁵ In Haiti, individuals who are the subject of an arrest can be held up to 48 hours in a holding cell before they must be heard by a judge to determine the legality of the arrest and issue an order for his continued detention, see Article 26, 1987 Constitution of Haiti.

¹⁴⁶ See, e.g., Annual Report of the IACHR 2004, Chapter IV, available at <http://www.cidh.org/annualrep/2004eng/chap.4.htm>; Annual Report of the IACHR 2003, Chapter IV, available at <http://www.cidh.org/annualrep/2003eng/chap.4.htm>; Annual Report of the IACHR 2002, Chapter IV, available at <http://www.cidh.org/annualrep/2002eng/chap.4d.htm>; IACHR Press Release No. 24/03 (August 22, 2003); IACHR Press Release No. 11/00 (August 25, 2000).

¹⁴⁷ See IACHR Press Release No. 13/05 IACHR To Conduct On-site Visit to Haiti (April 15, 2005).

¹⁴⁸ RNDDH, "Les Evénements Survenus au Pénitencier National le 14 Mai 2006", Rapport 14 Mai 2006 (18 Juillet 2006). RNDDH reports that there were 45 detainees wounded from the use of blunt arms by the guards among which 6 were also wounded.

¹⁴⁹ RNDDH, "Prison civile de l'Arcahaïe: une autre évasion enregistrée", L'Indicateur des Droits Humains No. 4, p. 4 (October 2006). RNDDH reports that, since April 2004, at least 16 prison breaks have been recorded, leaving 590 fugitives. Only around 50 escaped prisoners have since been re-incarcerated.

prevents them from allowing detainees leisure outside their cells.¹⁵⁰ Likewise, access to health services at the detention facilities is generally lacking, causing the increase and spread of preventable diseases such as beriberi, dysentery, and tuberculosis, and in some cases, such illnesses have claimed the lives of detainees solely due to the lack of access to adequate and timely medical care. As with the issue of arbitrary arrests and detention, violence and poor conditions in prisons is not a new problem in Haiti, and the Commission strongly reiterates its call for the State to ensure that persons subject to detention or imprisonment are not the victims of violence or other ill-treatment at the hands of state agents or other inmates and are not subjected to conditions that fail to satisfy minimum international standards for the treatment of detainees, including those under the UN Standard Minimum Rules for the Treatment of Prisoners.

121. The Commission has received information that the State is publicly committed to introducing a number of reforms in the area of the administration of justice in particular through the elaboration of policy reforms and initiatives in these areas. The Commission has received information that the Ministry of Justice has elaborated a plan for reform and has also presented three draft laws for consideration by the parliament. The reforms reportedly address the independence of the judiciary, the status of judges and constitutional procedures for appointment, terms and removal from office. Further, the draft law on the creation of a Superior Council for the judicial branch was reported to have been passed recently. There is also a plan to construct 123 peace tribunals, seven courts of first instance, and seven courts of appeal.¹⁵¹ The Commission is encouraged by these initiatives taken by the Ministry of Justice and hopes that the efforts to address the problem of prolonged pretrial detention and other longstanding issues in the judicial system, initiated in 2005 under the previous Justice Minister, will be maintained and enhanced during the current Preval administration. The Commission further welcomes the announcement made by the HNP reiterating its public commitment to maintaining the vetting procedure in order to cleanse the force of criminals and/or persons with records of violating human rights.

Impunity

122. Connected with the weak state of administration of justice in Haiti is the ongoing problem of impunity for past human rights abuses and crimes. In recognition of the problem, the government has demonstrated efforts to address this issue through the holding of criminal trials in the latter half of 2006. The Commission notes with satisfaction the holding of these trials between the months of July to September by the first instance courts in several parts of the country, resulting in a reported total of 232 cases heard, of which 181 suspects were convicted. Port-au-Prince had the highest number of cases heard, resulting in 72 convictions. In particular, of the cases heard in Port-au-Prince, 31 dealt with abductions and kidnappings of which 18 suspects were found guilty (a few police officers), and 11 convictions for the rape of minors.¹⁵² At the same time, several deficiencies were noted by monitors, such as in many cases indigent clients frequently did not have a lawyer to represent them in court, and in the cases where a legal representative was present, they were frequently not prepared to adequately represent their client as they had not been sufficiently briefed about the case beforehand. The problem of adequate legal representation for defendants in criminal proceedings is one that has been noted in the past and the Commission hopes that the Ministry of Justice will seek appropriate solutions to address this need in order to ensure that

¹⁵⁰ MINUSTAH News Clippings, "L'actualité dans les Régions: Radio Massacre 102.5 FM (Fort Liberté)", 26 September 2006. The inspector responsible of the prisons in Hinche denounces the poor conditions in which the prisoners are living. As much as 127 individuals are regrouped in one cell.

¹⁵¹ Agence Haïtienne de Presse interviews Georges Moïse, October 2, 2006.

¹⁵² RNDDH, «Assises Criminelles de l'Été 2006 : L'appareil judiciaire marque un point important dans la lutte contre la détention préventive prolongée», Rap/No4A06, September 2006.

defendants enjoy their rights to a fair trial and judicial guarantees are protected in the Haitian Constitution and the American Convention on Human Rights.

123. On the other hand, also during 2006 the Commission continued to receive information regarding serious human rights abuses, which have not received adequate attention or follow-up by the judicial authorities. In particular, in July 2006, the incident in Grand Ravine claimed the lives of 22 members of the community, including nearly half of the victims being women (5) and children (4) but investigation reports have not been published and monitors indicate that investigations have not progressed in recent months.¹⁵³ Further, the Haitian judiciary has not yet ensured justice for past cases, such as the murder of journalists, Jean Dominique, Jacques Roches, and Brignol Lindor, nor has it succeeded in investigating, prosecuting and punishing perpetrators of outstanding atrocities such as the killing of 13 individuals in Fort National in 2004, and the hundreds of cases of abduction and rape that have become a near daily occurrence, and in which members of the HNP are suspected of being involved. The Commission expresses its concern over the continuing impunity in these cases.

124. Finally, the Commission welcomes the recent efforts made by the judiciary to hear pending criminal cases and hopes that this initiative is maintained and enhanced in order to address the numerous cases of impunity, which remain a challenge for judicial authorities to overcome and may require innovative approaches to resolving longstanding human rights cases from years past. In respect of these matters, the Commission reiterates its concerns regarding the State's obligation to end impunity for all human rights abuses through demonstrably fair and effective procedures that conform with international standards, as well as the corresponding right of all persons to due process of law and to be heard by a competent, independent, and impartial tribunal, without discrimination of any kind. The Commission has also noted that although certain legal procedures may comply with domestic law, the State is obliged to ensure that the investigation, prosecution and punishment of human rights violations accord with international standards. The Commission considers it important to emphasize the State's responsibility to investigate and prosecute human rights abuses in accordance with the foregoing standards whoever may be responsible and whenever those abuses may have occurred. In light of the task ahead, the Commission emphasizes the important role of the international community to support the reinforcement of the judicial system in Haiti, and hopes that it will lend crucial support to the Haitian judiciary, especially through the donation of financial resources and equipment, reconstruction of court houses, training for judges, technical assistance and the implementation of reforms to transform an archaic judicial system to one that reflects current standards of justice.

Situation of Particular Persons and Groups

125. The Commission's concerns during 2006 have also included circumstances relating to groups of particular focus in the Commission's work, including women, children, human rights defenders, and journalists. Women in Haiti have been the victims of gender discrimination affecting their participation in government and the national economy as well as being the targets of a number of abuses ranging from sexual violence, trafficking in persons and domestic violence. Women are particularly hard-hit by serious deficiencies in the health and education systems. In particular, information received by the Commission from 2005 to date, indicates that with the increase of criminal violence in the capital city, there has been an acute increase in the number of cases of sexual violence against women and girls either during raids and abductions by armed groups, or forcibly using them as accomplices in their criminal activities.¹⁵⁴ Even more alarming, information

¹⁵³ MINUSTAH, Human Rights Section, monthly reports, July 2006.

¹⁵⁴ Interview, Myriam Merlet, Chief of Cabinet, Ministry of Gender, October 2006.

received indicates that some young women are being forced to provide sexual services for gang members, which has also contributed to an increase in the number of HIV/AIDS infection cases. In a study conducted by Action AID, nearly half of the 23 kidnapping victims interviewed, involved rape of the female victim.¹⁵⁵ The incidence of rape of women and children remains high, as long as the aggressors are not brought to justice for their crimes. Although the law prohibits the act of rape, and in 2005, the law was amended to enhance the punishment for rape, the Commission is aware of few cases that have reached the stage of prosecution and punishment, and can cite at least one emblematic case where the aggressors were held accountable for their acts, a case of collective rape of a mother, Mrs Jules, and her daughter, Yveline Adrass, the daughter killed after she denounced the rapists.¹⁵⁶ Further, the impact of the violence on women has caused an increase in the rate of suicide by victims, who are frequently ostracized from society due to this form of abuse, and who, as a result, commonly experience severe emotional trauma, without having access to psychosocial counseling to treat this condition.¹⁵⁷ In response to the escalation of violence, journalists and advocates who speak out against gang activity, human rights abuses or corruption in the judiciary have received reprisal attacks and threats from armed groups, creating an atmosphere of fear and intimidation within society and reinforcing the state of impunity for crimes and human rights abuses. The Commission condemns incidents of this nature and has continued to emphasize the State's obligation to investigate allegations of such violence and, where substantiated, prosecute and punish those responsible.

126. With respect to these problems, the Commission has reiterated the need for the State to take concrete steps to promote and protect the rights of women, which includes the effective investigation and prosecution of complaints of sexual violence perpetrated against women and girls, as mandated by the Inter-American Convention on the Protection, Punishment, and Eradication of Violence Against Women, adopted by Haiti on June 2, 1997. In this respect, the Commission is encouraged by the government's several initiatives to improve the rights of women in Haiti, including the submission of three draft laws for consideration by parliament, including one on domestic labor (*restavek*),¹⁵⁸ a second on cohabitation (ensuring legal rights equivalent to legal marriage status), and the third on paternity (ensuring that fathers assume responsibilities for their children). Other draft bills are contemplated for submission, such as a bill on violence against women that will address gender based violence in different spheres (including domestic, sexual, and criminal violence), as well as a bill to legalize abortion and one on gender equality.¹⁵⁹ The draft laws are part of a greater action plan by the Ministry of Gender, set for the years 2006 to 2011, which includes the promotion of women's rights, increasing the public's awareness of the problem of violence against women, the analysis of the disparities between men and women in various sectors, and poverty reduction.¹⁶⁰ With the support of the gender advisor at MINUSTAH and USAID, the ministry is making violence against women a priority issue to be tackled systematically. Accordingly, the ministry recently announced the creation of a unit mandated to support victims of rape and organized a forum for the adoption of measures favoring gender parity.¹⁶¹

¹⁵⁵ "Disarmament, demobilization, and reintegration: What Role should the EU play in Haiti? Recommendations for change", Action Aid International (October 2006).

¹⁵⁶ Eliphete Beljean and Mackenson Joseph were sentenced by the criminal court without jury on March 22, 2006 to forced labor for life, as in conformity with Article 281 of the Penal Code.)

¹⁵⁷ Interview, Myriam Merlet, Chief of Cabinet, Ministry of Gender, October 2006.

¹⁵⁸ See Haiti's Dirty Little Secret: the Problem of Child Slavery, Council on Hemispheric Affairs, (September 14, 2006). Over 70% of the *restaveks* (domestic servants) are girls, most of whom range from as young as 3 to 15 years of age. It is common for young female *restaveks* to be subjected to repeated rape by male members of the "host family".

¹⁵⁹ Interview, Myriam Merlet, Chief of Cabinet, Ministry of Gender, October 2006.

¹⁶⁰ MCFDF/Priorités 2006-2011, Proposition/Document de travail, September 2006.

¹⁶¹ Press conference with Marie Laurence Jocelyn Lassegue, Radio Métropole, September 6, 2006.

127. Children also appear to have been the victims of particularly egregious human rights violations in Haiti during 2006. While the Commission found in 2005 evidence of children subjected to child labor, organized trafficking, kidnappings, abuse, arbitrary arrest and detention by police forces and increased cases of victims of criminal violence perpetrated by armed groups, information received in 2006 indicated that the problems largely persisted and in some cases worsened under conditions of weak state institutional response and impunity. In statements by UNICEF, children are said to be emotionally and psychologically affected by these acts of abuse committed against family and relatives, and found that there is a serious problem of children abandoning their homes for social and economic reasons, and left to live in the streets with no protection.¹⁶² Due to their lack of access to shelter, education, employment or proper health services, these children, estimated at 2,500 by the Ministry of Social Affairs, are highly susceptible to getting involved in criminal activity, and have reportedly been the targets of recruitment by the armed gangs to aid in the execution of kidnappings and other illegal activities. In response to this phenomenon, UNICEF has denounced the practices of gang members who offer drugs to children and use them as human shields against police attacks or as accomplices for kidnappings and robberies.¹⁶³

128. Other forms of violations that have been documented and which constitute a serious cause for concern by the Commission is the increase in the cases of sexual violence against children and the trafficking of minors. The Report of the U.N. Secretary General on Children and Armed Conflict, emphasized the urgent situation of girls being the subject of systematic rape and sexual violence. The report found that up to 50% of girls living in conflict zones such as Cite Soleil are victims of rape or sexual violence while in areas such as Martissant and Carrefour, acts of gang rape have been reported.¹⁶⁴ The report further noted documented cases of abuse by the Haitian police, namely illegal detention and sexual violence of those in their custody. Although Haiti is not witnessing an internal armed conflict, as with other states, the nature, characteristics and impact of the urban violence between the armed gangs and authorities in Haiti may be similarly compared to the situations in other states and constitutes a serious cause for concern and action by the government.

129. Further, the Commission previously noted and wishes to reiterate its concern for children being held in detention in conflict with the Haitian law on juvenile delinquency of 1961¹⁶⁵, and the fact that minors are frequently detained with adults in detention facilities where sufficient space to hold minors separately is lacking. Such practices are contrary to what Haitian law stipulates as well as international human rights standards on detention.¹⁶⁶ According to Haitian law, children between the ages of 13 and 16, found to have committed a criminal offense, should be placed in the state-run center for education for a period of time rather than serve a criminal sentence in prison.¹⁶⁷ In its press statement issued at the conclusion of its visit in late 2005¹⁶⁸, the delegation stated that proper attention to the rights of Haitian children and adolescents cannot wait

¹⁶² MINUSTAH Press release with Njanja Fassu of UNICEF, September 7, 2006.

¹⁶³ *Id.*

¹⁶⁴ See U.N. Report of the Secretary General on Children and Armed Conflict. (A/61/529- S/2006/826), October 26, 2006.

¹⁶⁵ See Articles 50, 51, Loi du 11 septembre 1961 «Sur l'Enfance Délinquante en Danger Physique ou Moral».

¹⁶⁶ See Standard Minimum Rules for the Treatment of Prisoners, adopted Aug.30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No.1) at 11, U.N. Doc E/3048 (1957), amended E.S.C.res. 2076, 62 U.N. ESCOR Supp. (No.1) at 35, U.N. Doc. E/5988 (1977).

¹⁶⁷ See Article 51, Loi du 11 septembre 1961 «Sur l'Enfance Délinquante en Danger Physique ou Moral».

¹⁶⁸ See CIDH press release No. 37/05 available at <http://www.cidh.oas.org/Comunicados/French/37.05fr.htm>.

until Haiti's complex political and social problems are resolved. In that connection, it is important that the relevant government authorities take immediate steps to address the problem of detention of minors, in particular because they constitute a vulnerable class of persons who are especially protected under Haitian law. In light of this, the Commission reiterates the necessity to make available resources to refurbish and reform the *Centre d'accueil*, the state-run center mandated to house and rehabilitate juvenile delinquents, or other requisite measures, to adequately address the problem of delinquency and prepare them for reintegration into their society.

130. The Commission and UNICEF have found that the violence in Haiti has had a particularly severe impact upon street children in Port-au-Prince and girls who work as domestic servants across the country. Consequently, street children have been some of the primary targets for recruitment into gangs, and have been increasingly been victims of rape and kidnappings. The government, via the Minister of Social Affairs, has released statistics showing that there is a large population of children in need of immediate attention. Figures indicate approximately 2,500 street children (80% in Port-au-Prince); 173,000 in domesticity; 2,000 trafficked annually to the Dominican Republic, 122 children in detention, of which 23 were girls in Delmas/Petion-Ville prison; 300,000 AIDS orphans and 9,000 infected with HIV.¹⁶⁹ Despite these figures, state institutions have been weak to respond promptly and adequately to these issues, although the Commission is encouraged by a number of recent initiatives to raise awareness of these problems including receiving information about a recently proposed Children's code for consideration at the Parliament. As the Commission has noted on previous occasions, children are among the most vulnerable members of our societies and are entitled to special protection from the State in order to effectively safeguard their rights. The Commission reiterates its concern for the seriously precarious situation of children in Haiti, notes the near absolute lack of protection afforded children and urges the State to take the measures necessary to give full effect to the right of children under Article 19 of the American Convention to the measures of protection required by their condition as minors on the part of their families, society and the state, as well as the rights and freedoms provided for under the Convention on the Rights of the Child, which Haiti ratified on July 8, 1995.

131. The Commission has received multiple complaints relating to violence and threats made in retaliation against human rights defenders for their work, especially in areas of the country where state presence is lacking. In these areas, defenders are one of the only sources of information about human rights abuses being perpetrated on residents. The Commission places value on the important work of the defenders who, under difficult circumstances continue to promote and protect the rights of Haitians. In this sense, the Commission reminds the state of its duty to ensure the necessary conditions to facilitate the work of defenders. Particularly, the Commission expresses its preoccupation for the failure to apply the request for precautionary measures in favor of defenders in Haiti since 2005. During 2005 and 2006, the Commission granted requests for precautionary measures on behalf of the members of CONOCS, an NGO working in Cite Soleil, once again the Commission granted measures on behalf of an investigating judge in Jeremie who suffered an attempt on his life in 2005 and finally in 2006, the Commission made a request to the government of Haiti to take measures to guarantee the life and physical integrity of Mr. Evel Fanfan and members of his group AUMOHD. To date, the Commission has not received information from the state indicating the measures taken to protect the life and integrity of the petitioners in these three cases, noting specifically that information regarding the investigation into these matters has yet to be communicated to the Commission.

¹⁶⁹ Agence Haitienne de Presse, "Lancement à Port-au-Prince d'un symposium de 2 jours autour de la validation d'un plan national de la protection de l'enfant en Haïti", 26 Octobre 2006.

Social, Economic and Cultural Rights Situation

132. The foregoing concerns identified by the Commission must also be viewed in light of the fundamental societal problems such as extreme poverty, high illiteracy and malnutrition, which have for years deprived Haitians of fundamental economic, social and cultural rights and which have at the same time exacerbated the consequences resulting from denials of basic civil and political rights. On numerous occasions in the past, the Commission has recognized that this presents a formidable challenge to the Haitian State and urges it, in cooperation with all sectors of society and with the support of the international community, to design and implement a long-term plan for development that will address the fundamental economic and social needs of each Haitian citizen.

133. Conditions in 2006 do not appear to have improved since last year, when the Commission found that the Haitian people were faced with severe social and economic problems, including poverty, lack of access to adequate health care, unemployment and illiteracy. As noted in its previous annual report chapter on Haiti, the Commission notes that more than 80% of the population in Haiti live below the poverty line and more than two-thirds of the labor force do not have formal jobs. Further, only 53% of the total population is considered literate while 21 percent of children ages 6-9 do not go to school at all and only 15 percent of teachers meet the academic requirements to teach. Meanwhile, the health system in Haiti is in a desperate state, where hospitals are severely understaffed and ill-equipped and much of the population lacks adequate access to medical services. Most worrisome is the holding of labor strikes at the state hospital to protest the poor working conditions, imperiling the lives and health of the patients. Such desperate measures to draw attention to the need for assistance in the public health sector communicate the gravity of the situation and the need of the state and the international community to take immediate and long-term measures to improve the public health administration in Haiti.

134. These deficiencies in turn have contributed to the problems relating to security, the administration of justice, and other failures in the guarantee of basic political and civil rights. While the situation of insecurity in Haiti has resulted from a variety of factors, it is also the case, as noted by the Prime Minister, that lasting security cannot be achieved without addressing underlying social and economic deficiencies such as poverty and unemployment. Therefore, these serious difficulties require urgent attention, to address the immediate threats to the lives and integrity of Haitians caused by the spread of disease and the lack of adequate medicine and health care, and to devise strategies for the longer-term development of Haiti's health and education systems.

Concluding Observations

135. During 2006, the Commission witnessed Haiti's emergence from two years of a transitional government, marked by the presidential and legislative election held on February 7, 2006. Accordingly, the year was characterized by significant steps to restoring democracy to the country, while the critical human rights and security situation, as described in the annual report of 2004 and 2005, largely persisted and considerably worsened beyond previous years. In response to the perceived problems, the Commission witnessed the government's proactive steps to tackle the security issue, institute judicial reform and engage the international community to secure much needed assistance in the areas of social and economic development and the building up of its infrastructure. While facing significant challenges to securing sustainable peace and development, the government illustrated political will to address the most critical deficiencies, nevertheless, the state is overwhelmed by the dimension of the security challenges, a severely weakened judiciary and does not possess sufficient capacity or resources to single handedly tackle the areas of security, justice and strengthening the rule of law without the critical support of the international community. With the support of the international community, and through technical assistance provided by MINUSTAH and others, the longstanding issues that have delayed Haiti's progress in past years may begin to be in earnest addressed through the effective implementation of such plans and with the

support of the population. The Commission however would like to emphasize its paramount concern for the security of the Haitian people and notes with extreme preoccupation, the immediate threat that the persisting violence presents to the lives and physical integrity of Haitians. In light of these considerations, the Commission once again urges the government to take the urgent measures necessary, consistent with international human rights principles and standards, to assert control over security in Haiti and calls upon the international community to strengthen its efforts to assist the government in this endeavor.

136. In addition, the Commission applauds the commitment of support by members of the international community to engage in numerous social and economic development projects. Financial and related support should also be given to the efforts by the OAS, the UN and others to fully implement their mandates of support to the Haitian government in areas such as democratic governance, human rights protection, the administration of justice, and security.

137. The Commission will continue to monitor the situation in Haiti and to offer its assistance to the government and people of Haiti in their efforts to reinforce democratic institutions and strengthen the rule of law during the coming year.

VENEZUELA

I. INTRODUCTION

138. This section of Chapter IV of the Annual Report of the IACHR was prepared pursuant to Article 57.1.h of its Rules of Procedure. The Commission's analysis was based on information received over the course of 2006 from both civil society organizations and the State, as well as on official documents published on the web sites of state institutions and, in general, information provided by the press. On January 26, 2007 the Commission transmitted a preliminary draft of this section to the government of the Bolivarian Republic of Venezuela in accordance with the above-cited Article and requested it to convey its observations within one month. The Commission received the observations and comments of the State on February 26, 2007 and have been incorporated, on the pertinent in the final version of this report¹⁷⁰.

139. The present report has been prepared with the purpose of promoting a constructive exchange with the Venezuelan State in the search of policies and practices for the full respect of human rights.

140. The Commission has monitored the human rights situation in Venezuela closely. The Commission here addresses issues that, in its opinion, hinder the completion of the mandate assigned by the States to the IACHR, as well as such matters as the administration of justice, the problem of *sicariato* [paid killings] in Venezuela, the impunity that surrounds reports of extrajudicial

¹⁷⁰ Article 57 of the IACHR's Rules of Procedure stipulates that: "1. The Annual Report presented by the Commission to the OAS General Assembly shall include the following: [...] h. any general or special report the Commission considers necessary with regard to the situation of human rights in the Member States, and, as the case may be, follow-up reports noting the progress achieved and the difficulties that have existed with respect to the effective observance of human rights; [...] 2. For the preparation and adoption of the reports provided for in paragraph 1(h) of this article, the Commission shall gather information from all the sources it deems necessary for the protection of human rights. Prior to its publication in the Annual Report, the Commission shall provide a copy of said report to the interested State. That State may send the Commission the views it deems pertinent within a maximum time period of one month from the date of transmission. The contents of the report and the decision to publish it shall be within the exclusive discretion of the Commission." *Rules of Procedure of the Inter-American Commission on Human Rights* (approved by the Commission at its 109th special session, held from December 4 to 8, 2000; amended at its 116th regular session, held from October 7 to 25, 2002, and at its 118th regular session, held from October 6 to 24, 2003).

executions at the hands of agents of the State, the substandard prison conditions, and the climate of political pressure to reportedly imposed on various sectors of civil society, in particular those that do not express open alignment with the discourse and objectives of the present government.

II. PRELIMINARY CONSIDERATIONS

141. In its observations to this Chapter, the State questions the sources of information on the grounds that they are partial or incomplete in verifying some of the subjects analyzed by the Commission.

142. The Commission considers it appropriate to emphasize that the information utilized in the preparation of the present Chapter consists of diverse sources of information such as press releases, information sent to the Commission by diverse Venezuelan civil society organizations and international organizations, as well as information presented by the State during hearings or in responses to requests of information, or from case decisions and urgent measures already published by the bodies of the System. Additionally, on diverse occasions, the Commission has suggested the possibility of visiting the country in order to carry out more a comprehensive review and analysis of the human rights situation in Venezuela and to make contact with the diverse governmental institutions and civil society in order to obtain a variety of information. Despite these requests, to date, the visit has not been realized. Furthermore, on various occasions the Commission has requested specific thematic information from the State so as to obtain additional data for the analysis of matters that concern the Commission without having received an answer or having received vague information in response.

143. Taking into consideration that human rights constitute a fundamental pillar for strengthening Latin American democracies, it is the Commission's intention that this Chapter serve to fortify the relationship between the Commission and the State to further the development of policies and practices to promote, guarantee, and protect human rights in Venezuela.

III. THE IMPOSSIBILITY OF ARRANGING A VISIT TO VENEZUELA

144. One area to which the Commission devoted part of its work in 2006 was the attempt to arrange a visit to Venezuela, an effort that was severely frustrated by the lack of response from the State to propose an exact date for the visit.

145. Since its last on-site visit to Venezuela in May 2002, the Commission has fruitlessly sought the consent of the State, both verbally and in writing, to visit the country again. The President of the Republic, Hugo Chávez Frías had expressed his government's complete willingness for the Commission to make all the visits necessary to follow up on the issues observed in 2002. However, in 2006, the Commission did not observe additional attempts and initiatives to carry out such visits nor any advances in the possibility of a visit to the country by Commissioner Paulo Sergio Pinheiro, Rapporteur for Venezuela, accompanied by thematic Rapporteurs.

146. The lack of consent from the government prevents the IACHR from exercising the powers and attributes granted to it by the States under the Charter of the OAS, the IACHR Statutes, and the American Convention on Human Rights.

147. It has been 20 years since the IACHR began its practice of on-site visits to the different countries of the Hemisphere to verify the situation of human rights in them. The possibility of firsthand knowledge on the ground of different issues and programs connected with human rights in the countries has helped to strengthen a close dialogue with government authorities and society as a whole, with a common objective: to promote observance and protection of human rights and improve quality of life for the inhabitants of the countries in the region.

148. The inter-American system allows progressively broad protection of human rights and democracy by strengthening with a regional perspective domestic institutions and rules and ensuring access to increasing protection for the values of human dignity. One of the major contributions of international human rights law is that prior to its creation each state had exclusive jurisdiction over the way in which it treated its inhabitants. At present, the responsibility of the State for protecting human rights is a legitimate concern of the international community.

149. A feature of democracy is its ability to be refined and, on that premise, erecting a hemispheric position on the issues of due process, emergency situations, equality before the law, and prohibition of discrimination, creates increasing avenues at the domestic level to foment the growth of democracy. With the vision of contributing to the construction of democratic societies based on full observance of human rights, the States created, among other instruments, the inter-American system for protection of human rights, consisting of a set of provisions and two specialized organs: the Inter-American Commission and the Inter-American Court of Human Rights. The States, the creators of the system, voluntarily undertook to fulfill their commitments and to act as guarantors of the system both individually and collectively.

150. The system has different instruments at its disposal in order to perform its role. One of the main instruments available to the IACHR to carry out the mandate issued by the States to stimulate the consciousness of human rights,¹⁷¹ are the on-site visits, through which it can evaluate human rights conditions in a country, verify the situation of certain rights, or promote the value of human rights overall. Upon concluding an on-site visit, the Commission usually offers preliminary observations which it makes public. On-site visits normally conclude with a comprehensive and detailed report on the situation of human rights in the country. In past reports the Commission has warned of situations of decline in the rule of law in various countries. In addition, the reports have been essential for the restoration of democracy in certain countries in the region or to advance democratic consolidation. Implementation of the recommendations contained in these reports has made it possible to improve the quality of democratic life in a number of different states in the region. These reports and the recommendations they contain then become the subject of continuous monitoring and periodic follow-up reports, which are enriched by fruitful dialogue established with the state and civil society and the possibility of continued follow-up visits. On-site visits have also contributed to set in motion investigations on cases before the Commission, promotes and monitor their follow-up, friendly settlements, precautionary measures as a mean of cooperation with the Member States.

151. Recognizing the importance of the visits and reports of the IACHR as guiding instruments for the enhancement and protection of human rights in the countries of the region, at the fourth plenary session of the General Assembly held on June 6, 2006, in Santo Domingo, the heads of state and government reaffirmed the essential value of the work carried out by the Inter-American Commission on Human Rights (IACHR) to enhance the protection and promotion of human rights and the reinforcement of the rule of law in the Hemisphere, as well as encouraging the member states to continue the practice of inviting the IACHR to visit their respective countries.¹⁷² The Inter-American Commission values the open invitations expressed by various Member States which allows the Commission to visit those countries at any moment with the common aim of strengthening human rights.

¹⁷¹ See the American Convention on Human Rights, Chapter VII: Inter-American Commission on Human Rights, Section 2. Functions, Article 41.

¹⁷² General Assembly of the Organization of American States (OAS). Thirty-Sixth Regular Session. Resolution AG/RES. 2227 (XXXVI-O/06), "Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights " (adopted at the Fourth Plenary Session held on June 6, 2006) at Santo Domingo, Dominican Republic.

152. The Commission considers that the position of the Venezuelan Government counteract the good practices pointed out in the previous paragraphs and makes idle the manifestations express by the State since the last visit of the IACHR to Venezuela six years ago, in which is being asserted the interest of the State that the Commission and/or the thematic Rapporteurs visit the country.

153. With regard to the country visit, in its report of observations, the State reiterates “in the most emphatic manner, the need of the Commission, instead of remaining silent as it has until now and criticize the alleged silence on behalf of the Venezuelan State, to carry out a critical and public review of the complacent attitude that it maintained regarding those who organized and executed the coup d'etat that took place in the month of April of 2002 in Venezuela. [...] For these reasons, based upon the norms of the system, both substantive and procedural, of the principles that serve to secure the credibility, effectiveness and efficiency of the system and the conduct that the Commission has maintained, it is surprising that this body pretends that the Venezuelan State maintain a moderate relationship without evidence of the will, materialized by concrete actions on the part of the Commission, to ensure its correct performance”. Subsequently, the State argued that “it never committed itself to arranging a visit to Venezuela for the reasons previously indicated. In any case, the State considered the possibility of a working visit, conditional upon the autocratic recognition of the Commission’s actions during the coup d'etat in April of 2002, which would be fundamental for the development of the visit and for working together with an agenda of subjects of interest to the State.”¹⁷³

154. With the purpose of advancing in the dialogue, the Commission wishes to recall that during the serious events that occurred on April 11, 2002, the Commission condemned the coup d'etat against the constitutional order by emitting a press release, in which it expressed, among other things, its most emphatic condemnation of the violent acts, deplored the dismissal of the highest officers from all branches of government, and noted that the events constituted an interruption of the constitutional order.¹⁷⁴ In this opportunity the Commission reiterated one more time its emphatic condemnation of the coup d'etat occurred in Venezuela on April 11, 2002.

¹⁷³ Observations from the Venezuelan State to “Draft of the General Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela.” Ministry of Foreign Relations: II: Visit by Commissioner Paulo Sérgio Pinheiro, Rapporteur for Venezuela, pages 3-4.

¹⁷⁴ See IACHR, Press Release No. 14/02: *Events of Venezuela*, Washington, D.C., April 13, 2002 in which the Commission said:

The Commission deplores the dismissal, by a decree issued by the government that took office on April 12, of the highest officers of the judiciary and of independent officials within the executive branch, and the suspension of the mandate of the members of the legislature. These developments, in the IACHR’s opinion, could constitute an interruption of the constitutional order as defined in the Democratic Charter. The IACHR urges Venezuela to promptly restore the rule of law and the democratic system of government by guaranteeing full observance of human rights and basic freedoms.

In addition, see Letter sent to Mr. Nicholas Maduro Moro, Minister of Foreign Relations of the Bolivarian Republic of Venezuela the 12 of September of 2006, for the presentation of the Annual Report of the Inter-American Commission during the XXXVI ordinary period of sessions of the General Assembly of the Organization of American States. In the mentioned letter the Commission indicated that because of the events that occurred in Venezuela in April of 2002, the then President of the Inter-American Commission, Juan Méndez, during the presentation of the 2001 Annual Report of the IACHR before the Committee on Juridical and Political Affairs of the Permanent Council of the O.A.S., indicated:

[...]I would like to thank the government of President Hugo Chavez the invitation extended to the IACHR, confirmed on April 8, 2002. I take advantage of this important occasion to express the Commission’s approval of the reestablishment of the constitutional order and democratic government chose by President Chavez. In view of the attempted coup d’etat, the Inter-American Commission publicly and immediately expressed, among others, its most emphatic condemnation of the violent acts that cost the lives of at least 15 people and injured more than a hundred others. The Commission also expressed its regret over the arbitrary arrests and other human rights violations that took place over April 12 and 13 deplored the

Continued...

155. From the antecedents and the arguments furthered, the IACHR considers that the impossibility, for lack of consent or political will on behalf of a State, of the IACHR to visit a Member State, contradicts the spirit itself that lead the States to create the organs of the system for the protection of human rights as they defined in the Charter of the Organization of American States, the American Convention on Human Rights, and the Commission's Statute.

156. According to the intentions of the member states, the Commission and the Court are mechanisms to contribute to the development of "a system of personal liberty and social justice", which is the ultimate objective mentioned in the preamble of the American Convention. The Commission plays a crucial role of support and assistance to the states for reinforcing observance of human rights in their jurisdictions. In keeping with these principles, the Commission renews its commitment to work with the Venezuelan State and society and, in particular, reiterates its interest in visiting the country in the near future in order to contribute to the development and enhancement of human rights in Venezuela and to strengthen dialogue with the State.

IV. ADMINISTRATION OF JUSTICE AND IMPUNITY FOR VIOLATIONS OF THE RIGHTS TO LIFE AND HUMANE TREATMENT

157. In recent years, the Commission has given particular attention to the administration of justice in Venezuela, analyzing compliance with the guarantees of independence and impartiality of justice sector operators and the situation as regards impunity for violations of human rights, in particular the right to life. Also in its recent annual reports, the Commission has expressed particular concern at the high percentages of provisional or temporary judges and prosecutors and the disregard of certain legal and constitutional procedures in the system used for their appointment and dismissal.

158. Based on the information it obtained in 2006, in its analysis the Commission divides the issue into two segments: A) Guarantees of independence and impartiality of the judiciary and the Office of the Attorney General [*Ministerio Público*]; and, B) Right to life and impunity.

...continuation

dismissal of top authorities from the three branches of government, and warned that those actions would constitute an interruption of the constitutional order as defined in the Democratic Charter. Against that backdrop and in fulfillment of its conventional and statutory obligations, on April 13, the Executive Secretariat of the Commission asked the *de facto* government for information on the arrest and incommunicado status of Mr. Hugo Chávez Frías, and it sought precautionary measures related to the freedom, personal integrity, and right to a fair trial of Mr. Tarek William Saab, chairman of the Foreign Affairs Committee of the Venezuelan National Assembly. During the final days, the Ministry of Foreign Affairs, Luis Alfonso Davila, documented as "ambiguous" the IACHR's position in response to the events that occurred in Venezuela. In order to sustain this affirmation, Minister Davila cited our communication addressed to Jose Rodriguez Iturbe, the Minister of Foreign Affairs appointed during the transitional government. The Commission finds itself obligated to indicate that this communication cannot be interpreted as any type of recognition of the *de facto* regimen. At no moment, explicitly or implicitly, has the Commission recognized the *de facto* government in Venezuela. In accordance with its practice and that of other international bodies on human rights, the Commission addressed those who on April 13, 2002, deposed *de facto* the Venezuelan state authorities, since the exercise of authority, whether usurped or not, entails the obligation to respect and guarantee human rights. On multiple occasions in the past, the Commission has maintained communication with *de facto* governments in various countries in the Hemisphere, while emphatically and categorically condemning the institutional attack. In accordance with its conventional and statutory powers, the Commission cannot recognize governments, rather protect the human rights of persons, and that is precisely what it has done in this case.

A. Guarantees of independence and impartiality of the judiciary and the Office of the Attorney General

159. In first place, the Commission considers it appropriate to mention an incident that drew internal criticism about the independence and impartiality of the judiciary. The Commission received information according to which a number of judges, including some that sit on administrative courts, wearing robes at the inauguration of the current judicial year on January 26, 2006, had shouted slogans in support of the president of the Republic.¹⁷⁵ While these acts do not constitute irrefutable evidence of bias or subordination of the courts in Venezuela, the Commission considers that, over and above the political inclinations of each judge as a citizen and the legitimate expression of those inclinations, the institution of the judiciary and its officials, in the exercise of their respective powers, cannot be identified with a particular political opinion, whether it be that of the government of the day or of the opposition lest questions be raised about their independence.

160. As regards the nation-wide problem of provisional judges, the Commission notes that as a result of the modernization process that the State has been implementing in the judicial branch through the National Magistracy School and competitive examinations,¹⁷⁶ by the end of 2006, more than 80% of the positions of justice operators were filled by tenured officials.¹⁷⁷ In particular, in criminal matters, the State informed that currently there is an 80% of tenured judges who in relation to the remaining 20% the evaluations concluded in the last semester of 2006 and went on to the final phase of evaluation to obtain tenure in the first trimester of 2007.¹⁷⁸ This constitutes a significant stride in terms of job stability for judges and the guarantee of their independence.

161. The foregoing notwithstanding, the Commission has noted that the problem of the provisional status of judges continues to affect in particular the First and Second Courts for Contentious Administrative Matters. According to the information available, at present all of the members of both courts have temporary status.¹⁷⁹ As it mentioned in its 2005 Annual Report, the Commission considers it highly problematic that courts that must analyze important acts of the executive branch and, in particular, of the government have for several years lacked tenured judges with full guarantees of job stability.

162. In addition, the Commission has received information that the processes to regularize the status of, or grant tenure to, provisional judges and the competitive examinations that have led to the appointment of new titular judges lack transparency and have not been carried out strictly in accordance with Article 255 of the Constitution and the Rules on Evaluation and Competitive Examinations for Entry to and Promotion in the Judiciary.¹⁸⁰ According to information provided to

¹⁷⁵ Information received from civil society organizations in the framework of the hearings at the 124th regular session; http://buscador.eluniversal.com/2006/02/03/pol_art_03106C.shtml. Press release of February 1, 2006, February 3, 2006, February 4, 2006 in *El Universal* newspaper, in which consideration is given to their position on the Joint Directive of the School of Attorneys, the University of Judicial and Political Sciences of the Central University of Venezuela, the dean of the School of Law of the Metropolitan University, the dean of the School of Law of the Catholic University Andres Bello, Jesus Maria Casal, and the President of the Supreme Court of Justice, Omar Mora Diaz.

¹⁷⁶ Brief of the Venezuelan State received by the IACHR on February 7, 2006, containing observations on Chapter IV of the 2005 Annual Report.

¹⁷⁷ Remarks of the President of the Electoral Chamber of the Supreme Court of Justice at the work meeting held during the 126th regular session of the IACHR.

¹⁷⁸ Observations from the Venezuelan State to "Draft of the General Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela." Ministry of Foreign Relations: II: Administration of Justice and Impunity related to violations of the right to live and personal integrity. Page 6.

¹⁷⁹ Information received from civil society organizations in the framework of the hearings at the 124th regular session; http://buscador.eluniversal.com/2006/02/03/pol_art_03106C.shtml. Report of February 3, 2006, in *El Universal* newspaper.

¹⁸⁰ Published by the Supreme Court of Justice on June 6, 2005, in keeping with Article 255 of the Constitution.

the Commission, some of the objections concerning the tenurization process had to do with a supposed lack of reasoned grounds not to grant tenure to certain judges and an alleged breach of statutory rules that require the public announcement of competitions in notices published in two widely distributed national or regional newspapers as well as on the website of the Supreme Court of Justice.¹⁸¹

163. On this point, the State indicated that all of the results of evaluations are justified pursuant to a three part assessment: i) academic curriculum, post graduate studies, degrees and courses throughout the career; ii) evaluations in the performance as a judge; iii) oral and written exam in opposition to others judges of same rank. According to the States, all of the competitions have been public and announced through the press and on website of the Supreme Court of Justice.¹⁸²

164. The Commission observes that the information presented by the State and by some civil society organizations is contradictory, and regrets that it has not receive sufficient documentation, especially from the State, to verify the existence of irregularities concerning the tenurization process of temporary judges. In any case, the Commission considers it appropriate to reiterate that the consolidation of a transparent judicial career and the resulting job stability that have obtained tenure in strict compliance with the procedures established constitutionally and legally, is fundamental to guarantee the independence and impartiality in their performance and has direct effects on the strengthening the access to justice. In this sense, the Commission will monitor with special attention these processes and the additional information alleged in order to give greater attention to this especially important element for the transparency of the judiciary.

165. Finally, as regards the situation of provisional state prosecutors, it came to the attention of the Commission that from January to October 2006, 287 provisional, acting, or alternate prosecutors were appointed.¹⁸³

166. For its part, the State indicated that it entails a historical situation and that the Political Constitution of 1999 established public competition for the entry into a career as state prosecutor, whereas before it was a direct attribute of the General State Prosecutor. Likewise, the State indicated that through the reform of the Organic Law of the Public Ministry – approved in first and second discussion – contemplates the regulation of the career of a state prosecutor to guarantee the stability of these state employees. It also indicated the existence of a Plan of Institutional

¹⁸¹ Information received from civil society organization during the 126th regular period of sessions. The norms indicated by these organizations are articles 4 and 5 of the Rules on Evaluation and Competitive Examinations for Entry to and Promotion in the Judiciary, and expressly establish: Article 4: Public Competition: “entry into a judicial career can only be achieved through a public competition, based upon principles of honesty, aptitude, and competence. The public competition includes the approval of the Programs of Initial Formation, medical and psychological evaluation, and an examination of expertise. Only Paragraph: promotion is subject to methods based upon a merits system, seniority and the position vacant, in accordance with that established by the regulation in effect.” Article 5: Call to Competition. “The Supreme Court of Justice through the National Magistracy School will announce the competition, through advertisements published in two (2) widely distributed national newspapers, one (1) regional newspaper, depending upon the case, and on the website of the Supreme Court of Justice, in order to guarantee its proper dissemination. This announcement shall indicate the requirements and deadlines for applications, the category or categories and districts of the competition, the number of vacancies open for competition, the programs, and any other relevant information.

¹⁸² Observations from the Venezuelan State to “Draft of the General Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela.” Ministry of Foreign Relations: II: Administration of Justice and Impunity related to violations of the right to live and personal integrity. Page 6.

¹⁸³ Information received from civil society organizations in the framework of the hearings at the 126th regular session.

Growth corresponding to the period 2000 - 2007 whose main aim is the adjustment of the institutional structure to the necessities of the population.¹⁸⁴

167. The Commission values the efforts made by State with these types of programs, however, it observes that despite these programs, the situation has not improved substantially, considering it continues to receive information on the selection of public prosecutors without job stability. The Commission reiterates that it finds this situation particularly troubling since, in addition to possible irregularities in terms of independence and impartiality as well as the lack of transparency that may underlie the constant dismissals and new appointments, the provisional status and correlative lack of job stability of the officials responsible for conducting criminal investigations and moving them forward inevitably also impairs the pursuit and conclusion of specific lines of investigation as well as compliance with deadlines in the investigation stage. Changes of investigative prosecutors adversely affect the progress of investigations, bearing in mind the importance, for example, of continuity in the collection and appraisal of evidence.¹⁸⁵ Accordingly, this situation may have negative consequences for victims' rights in the context of criminal proceedings related to human rights violations

B. Right to life and impunity

168. The Commission wishes to emphasize that, as the Inter-American Court has established, it is the obligation of the States to reasonable prevent, investigate, and punish actions that implicate violations of the right to life, including those committed by State agents or individuals.¹⁸⁶ In this sense, citizen security in Venezuela is an aspect of particular concern for the Commission given the high level of impunity with regard to numerous extrajudicial executions committed by States agents in the context of the phenomenon known as *sicariato* [paid killings] for the supposed "protection of citizen security." Moreover, it is a subject especially relevant because troublesome numbers of assassinations committed by hit-men have been confirmed and because of the slow-moving investigations in respect. During the regular periods of sessions of 2006, the Commission received information on these topics. In this Chapter, the Commission gives special attention to this situation and the impunity that surrounds these crimes.

169. According to official data provided by the Office of the Attorney General between 2000 and 2005, the number of victims of homicides committed by agents of the state security forces came to 6,377, in which a total of 6,110 police officials were involved. Of these cases, 3346 were homicides reputedly committed by agents of state police forces; 1,198 by agents of the Penal and Criminal Scientific Investigations Corps; 706 by municipal police forces; 140 by members of the National Guard; and 72 by members of the Directorate of Intelligence and Prevention Services (DISIP).¹⁸⁷ Thus, based on the information available, the Commission finds that serious levels of impunity similar to those of the last five years would appear to persist since it transpires from the report presented by the Prosecutor General to the National Assembly in April 2006 that in the more

¹⁸⁴ Observations from the Venezuelan State to "Draft of the General Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela." Ministry of Foreign Relations: II: Administration of Justice and Impunity related to violations of the right to live and personal integrity. Page 7.

¹⁸⁵ In effect, in a considerable number of cases that are being processed by the Commission, it has been observed that the investigations of human rights violations are not carried out by the same authorities of the Public Ministry and that the continuous necessity to preserve the evidence has been affected by the provisional nature of the public prosecutors.

¹⁸⁶ I/A Court H. R., *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 131; I/A Court H. R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, para. 85; I/A Court H. R., *Case of the Indigenous Community Sawhoyamaya*. Judgment of March 29, 2006. Series C No. 146, para. 153.

¹⁸⁷ Speech of the Prosecutor General on the occasion of the presentation of the 2005 Performance Report. April 25, 2006.

than 5,684 cases investigated by the Office of the Attorney General in which government servants are thought to be involved, only 1,560 officials have been accused, 760 formally charged, 315 deprived of their liberty, and 113 policemen convicted.¹⁸⁸

170. Another partial indication of the degree of impunity that cloaks violations of the right to life allegedly committed by agents of state security forces can be seen in the State of Bolívar. According to publicly available information, in 2006, of the 891 cases of persons thought to been killed in presumed confrontations with the police of that state, only four have gone to trial due to the difficulties encountered by prosecutors in mustering reliable information with which to secure an indictment.¹⁸⁹

171. It also came to the attention of the Commission that, for example, in the State of Lara there were an alleged 249 violent deaths in the first six months of 2006, 90% of which reportedly occurred at the hands of the state police.¹⁹⁰ By the same token, during 2006, the Commission was informed of a number of cases that received a great deal of press attention. Cases in point include a group of street children who were allegedly set on fire by four military policemen in Caracas on August 21, 2006;¹⁹¹ a massacre at a farm in Alto Apure on July 20, 2006, where seven adults and two children were murdered with the alleged participation of soldiers in the area;¹⁹² and a massacre on September 29, 2006, in La Paragua, Bolívar State, in which four miners were killed, supposedly as a result of the use of force by soldiers.¹⁹³ With respect to the massacre in La Paragua, both the Minister of the Interior and Justice, Jesse Chacón, and the President of the Republic, said at a press conference that the investigations indicate at least “excessive use of force” by the military”.¹⁹⁴

172. The Commission values the advancements in the investigation of some of these events outlined in the information alleged by the State. With regard to events of August 21, 2006 in Caracas, the State informed that public officers part of the Metropolitan Police were accused of homicide. In relation to the massacre at Alto Apure, the State indicated that this case is currently at trial after the accusation against a member of the armed forces of homicide and illegal use of a firearm. Concerning the massacre in La Paragua, Bolivarian State on September 22, 2006, the State informed of the accusations against various members of the armed forces of homicide as principals in fact and as accomplices.¹⁹⁵

173. On other hand, the Commission is concerned at information it has received that witnesses and relatives who push forward investigations of violations of the right to life alleged to have involved state officials are victims of acts of violence and intimidation. Such is the case, for instance, of the Mendoza family, who, while under the protection of precautionary measures

¹⁸⁸ Speech of the Prosecutor General on the occasion of the presentation of the 2005 Performance Report. April 25, 2006.

¹⁸⁹ Press report. *El Nacional* newspaper of February 19, 2006.

¹⁹⁰ Press report. *El Universal* newspaper of July 12, 2006, which contains data provided by the “Committee of Victims against Impunity”.

¹⁹¹ Press report. *Últimas Noticias* newspaper of August 30, 2006.

¹⁹² Press report. *El Universal* newspaper of July 22, 2006.

¹⁹³ Press report. *El Universal* newspaper of September 29, 2006.

¹⁹⁴ See report of *Radio Nacional de Venezuela* at <http://www.rnv.gov.ve/noticias/?act=ST&f=&t=38309>.

¹⁹⁵ Observations from the Venezuelan State to “Draft of the General Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela.” Ministry of Foreign Relations: II: Administration of Justice and Impunity related to violations of the right to live and personal integrity, page 10.

requested by the Commission in 2002, were the target of an attack with firearms on March 4, 2006.¹⁹⁶ According to the information received, persons wearing ski masks fired 30 rounds from nine millimeter pistols at the home of the Mendoza family situated in Sector 8, Baraure II, Araure, Portuguesa State. In the house at the time were two girls aged 11 and 13; two boys aged five and 12; two other boys aged eight; the boys' grandmother Gabriela Carvajal, aged 60, and Messrs. Ramón Mendoza (45), José Mendoza (40), and César Mendoza (39). According to information in the possession of the Commission, the Mendoza family have participated actively in a complaint concerning the murder of three persons by so-called para-police groups: the brothers Ender (16), Alexander (25), and Gonzalo Mendoza (28), who were reportedly arrested in the presence of family members on November 28, 2000, by a detachment of uniformed officials of the Portuguesa State police, and later appeared dead in the morgue at J.M. Casal Ramos Hospital.

174. According to the information provided by the State, a public prosecutor from the Public Ministry was assigned to the case and is currently being investigated.¹⁹⁷ The Commission calls upon the State to initiate in a serious and diligent manner the investigations and criminal proceedings of the events as a measure of effective protection and guarantee of non repetition.

175. The impunity in cases of extrajudicial executions committed by State agents mentioned above, is exacerbated by the small number of prosecutors assigned to cases involving violations of fundamental rights. According to publicly available information, a mere 27 prosecutors are charged with the approximately 5,680 cases and their activities are not necessarily limited exclusively to those. There are also other structural difficulties, such as the fact that investigative procedures are carried out with the participation of colleagues of the accused, which gives rise to the risk that the scene of the crime could be altered or evidence tampered with out of what the Office of the Prosecutor General has referred to as "reflex complicity" or "misconstrued solidarity."¹⁹⁸

176. The Commission reiterates the necessity of the Venezuelan State to investigate the events which could have resulted in violations of the right to life as a result of the use force by the State's agents. The Commission recalls the reiterated position of the Inter-American Court, which holds that "force should only be used by the State security agencies as an exception, and be planned and limited proportionately by the authorities."¹⁹⁹ The Inter-American Court has also ruled that, "Any loss of life resulting from excessive use of force is arbitrary."²⁰⁰ The Commission values that more these situations are known due to an increase in statistical information available, which has seen repercussion in public policies such as the adjustment of the relevant regulations. Among the legislative measures adopted, the State emphasized the Law of Protection of Victims and

¹⁹⁶ Press report. *Última Hora* newspaper of March 4, 2006.

¹⁹⁷ Observations from the Venezuelan State to "Draft of the General Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela." Ministry of Foreign Relations: II: Administration of Justice and Impunity related to violations of the right to live and personal integrity, page 11.

¹⁹⁸ Speech of the Prosecutor General on the occasion of the presentation of the 2005 Performance Report. April 25, 2006.

¹⁹⁹ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 69. I/A Court H.R., *Case of Yare I and Yare II Capital Region Penitentiary Center*. Provisional Measures. Order of the Court of March 30, 2006, whereas clause 15, and I/A Court H.R., *Case of Monagas Judicial Confinement Center ("La Pica")*. Provisional Measures. Order of the Court of February 9, 2006, whereas clause 17.

²⁰⁰ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, para. 68.

Witnesses and others, as well as the Code of Conduct for Civilian and Military Civil Officers, in the context of National, State, and Municipal Police Forces.²⁰¹

177. In this connection, the Commission considers that in the context of the police reform under discussion in the country, measures to prevent cases of abuse of authority that result in deprivation of the right to life or attacks on the physical integrity of persons should be addressed as core issues.

178. The Commission has also been following with concern the situation of impunity in cases of contracted or paid killings [*sicariato*] perpetrated against *campesinos* or persons involved in land claims, and extrajudicial executions of socially marginalized persons by death squads.

179. This year the Commission continued to receive information from both civil society organizations and the State, and has noted a number of initiatives adopted by the State, as well as factors that would appear to generate and perpetuate impunity for this type of violation of the right to life.

180. For example, the Commission has become aware of complaints against the Penal and Criminal Scientific Investigations Corps for negligence in examination of evidence, a situation that reportedly obstructs and delays investigations of extrajudicial executions, in particular in the Eastern Region of Venezuela.²⁰² In addition, the Commission has also learned that the Office of the Attorney General is underfunded.²⁰³

181. Accordingly, the commission values such initiatives of the Office of the Attorney General as the creation of Technical and Scientific Advisory and Investigation Units as mechanisms to detect inconsistencies and omissions in the investigative activities of the judicial police, as well as a plan to create Physical Evidence Custody Areas.²⁰⁴

182. In contrast to the impunity that surrounds the majority of the cases described in paragraphs 21 to 24 of this chapter, in cases of paid killings of *campesino* leaders in the context of the agrarian reform process, the Commission observes with satisfaction various initiatives adopted by the State to combat impunity.

183. Indeed, the Commission takes note of the measures adopted by the Office of the Prosecutor General, such as the creation of Anti-Impunity Coordination Units, which are teams composed of representatives of different government agencies as a response to crimes committed in the wake of the application of the Land Law.²⁰⁵ The Commission also regards as positive the classification of the crime of "paid killing" in Article 12 of the Law against Organized Crime,²⁰⁶ as

²⁰¹ Observations from the Venezuelan State to "Draft of the General Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela." Ministry of Foreign Relations: II: Administration of Justice and Impunity related to violations of the right to live and personal integrity, page 9.

²⁰² Press report. *El Universal* newspaper of April 28, 2006.

²⁰³ Speech of the Prosecutor General on the occasion of the presentation of the 2005 Performance Report. April 25, 2006.

²⁰⁴ Speech of the Prosecutor General on the occasion of the presentation of the 2005 Performance Report. April 25, 2006.

²⁰⁵ Report presented by the State of Venezuela to the IACHR at the hearing on the situation of human rights in Venezuela, held during the 126th regular session: Measures adopted and progress made in connection with the *campesino* issue in Venezuela, p.1.

²⁰⁶ Published on September 27, 2005. The article provides that "Anyone who kills a person in response to a commission or the instructions of a criminal organization shall be punished with 25 to 30 years of imprisonment. The same

well as the initiatives implemented by the Office of the Attorney General in conjunction with the Ombudsman to provide assistance to families of victims to provide for their needs in the areas of housing, health, social security, and education.²⁰⁷

184. As regards investigations, the State informed that in August 2005, based on the number of paid killings of which it was aware in rural areas, it commissioned 18 prosecutors at the regional level and seven at the national level. According to this information, after whittling down the initial number, the aforementioned authorities managed to identify 69 alleged victims, of which 34 could be placed in the category of paid killings and the remainder were presumed ordinary homicide victims.²⁰⁸ From the information presented by the State in 2006, no further cases have been officially identified.

185. The State reported that the 34 cases "gave rise to 40 indictments, 17 court-issued arrest warrants that are waiting to be served, and eight final judgments that involve 18 persons, 12 of whom have been given prison sentences. Furthermore, according to the results of 16 investigations, 24 persons have been identified as being involved in the commission of these crimes. At present, 26 persons who have been indicted are awaiting public oral trial in nine proceedings, and 17 proceedings are pending at the preparatory stage, in which efforts are underway to identify the culprits."²⁰⁹

186. In addition, the State informed the Commission that in the context of the investigations, the collaboration of the National Armed Forces has been fundamental in locating and bringing the relatives of the campesinos that have been assassinated to the Office of the Vice-President to hear directly their positions and needs on June 9, 2006. Also, it informed that the President of the Republic approved a budgetary amount to attend to the necessities of the immediate relatives of the victims, which is being administered by the Ministry of Agriculture and Land.²¹⁰

187. The Commission values the will of the State to eliminate impunity in the cases of paid killings of *campesinos*. However, the Commission notes disparity between the figures of the Office of the Attorney General and those gathered from the press, civil society organizations and even the Ombudsman. This is an aspect of particular concern for the Commission since, on one hand, it suggests that to some degree the crimes are being rendered invisible, and, on the other, that the mechanisms adopted by the State to prevent and combat impunity are not sufficient to

...continuation

sentence shall be imposed on the person who orders the killing, and on any members of the organization who ordered or transmitted the order. Report presented by the State of Venezuela to the IACHR at the hearing on the situation of human rights in Venezuela, held during the 126th regular session: Measures adopted and progress made in connection with the *campesino* issue in Venezuela, p. 10.

²⁰⁷ Report presented by the State of Venezuela to the IACHR at the hearing on the situation of human rights in Venezuela, held during the 126th regular session: Measures adopted and progress made in connection with the *campesino* issue in Venezuela, p. 11.

²⁰⁸ Report presented by the State of Venezuela to the IACHR at the hearing on the situation of human rights in Venezuela, held during the 126th regular session: Measures adopted and progress made in connection with the *campesino* issue in Venezuela, p. 1.

²⁰⁹ Report presented by the State of Venezuela to the IACHR at the hearing on the situation of human rights in Venezuela, held during the 126th regular session: Measures adopted and progress made in connection with the *campesino* issue in Venezuela, p. 3.

²¹⁰ Observations from the Venezuelan State to "Draft of the General Report on the Situation of Human Rights in the Bolivarian Republic of Venezuela." Ministry of Foreign Relations: II: Administration of Justice and Impunity related to violations of the right to live and personal integrity, p. 13.

address the problem in its real dimension and in a manner consistent with the State's obligation to investigate and prosecute violations of the right to life *ex officio* when they come to its attention.

188. In conclusion, the Commission calls on the State to take all necessary steps to eradicate the impunity that cloaks the matters outlined in this section, overcoming institutional and other barriers that appear to obstruct a prompt, meaningful and diligent investigation, the resulting identification of both the perpetrators and planners and, as the case may be, imposition of the appropriate penalties.

189. Finally, the Commission reiterates that any measures adopted to combat impunity should be based on actual analyses, both of the dimension of human rights violations committed by individuals and agents of the State, and of each of the factors at the institutional level, in the Office of the Attorney General as well as the judiciary, that would appear to generate patterns of impunity.

V. SITUATION OF PERSONS DEPRIVED OF LIBERTY²¹¹

190. The situation of persons deprived of liberty in Venezuela continues to be a cause of distinct concern for the Commission. In 2006 and early 2007 acts of violence have been recorded that led to loss of life and the serious physical injury of hundreds of prisoners.

191. At the regular sessions held by the Commission in 2006 and the observations of February 26, 2007, the Venezuelan State presented information on a "Humanization Plan" pursued by the Ministry of the Domestic and Justice Relations, that encompasses all of the country's prisons and aims to reduce violence in them, improve sanitation, and strive toward the social reintegration of inmates.²¹² The State also presented specific information on the prisons of "La Pica" and "Yare I and II" which are currently under the protection of provisional measures ordered by the Inter-American Court on February 9, 2006, and on March 30, 2006, respectively. The State provided information on a number of measures implemented at the aforementioned facilities, including improvements in infrastructure; an increase in custodial staff; periodic inspections to confiscate, *inter alia*, firearms, cutting and thrusting weapons, projectiles, and drugs; introduction of creative workshops and sports activities; enrolment of inmates in the Rivas and Robinson I and II education programs; and and doctor's consultations.

192. In spite of the steps taken by the State, the Commission is troubled by the continued acts of violence recorded at Venezuelan prison facilities in general. Overall, the figures are alarming. From January to November 2006, approximately 378 deaths and 883 injuries were registered at prisons in Venezuela,²¹³ and there were approximately 1,034 violent incidents in the first three quarters of 2006.²¹⁴

²¹¹ The State mentioned that in Venezuela there are 13 penitentiaries and 17 judicial confinement centers with a combined population of 19,243 inmates, of whom 10,742 are standing trial and 8,501 have received convictions. According to information received from the Venezuelan Prisons Observatory, there are 18,858 people deprived of liberty in Venezuela, of whom 91% are male and 70% aged 18 to 30.

²¹² The State informed the Commission that the measures adopted have included the removal of directors and deputy directors of various penitentiaries for involvement in acts of corruption. In addition officials have been recruited into the Human Rights Department at a number of penitentiaries and a telephone hotline (0800 DHumanos) has been set up, through which approximately 241 complaints had been made as of October 2006.

²¹³ See report of the Venezuelan Prisons Observatory: "... from January to November 2006, 378 prisoners died and more than 850 were injured." See statistics at <http://www.ovprisiones.org/index1.html>.

²¹⁴ Information provided at the 126th regular session of the IACHR.

193. In September, for example, another five inmates (William Mesías Brito, Jhonny José Cabezas, José Gregorio Rojas Padrino, Joan José Alcoba Salazar, and Orlando José Montilla Guevara) reportedly died and two were injured (Jonás Cortés Sánchez and Arquímedes Bermúdez). Furthermore, two inmates (Joan Alcoba Salazar and Orlando José Morillo) were reported to have died on November 20, 2006.²¹⁵ There have also been repeated reports of escapes, including a mass breakout on April 16, 2006, and the escape of the prisoner José Andrés Díaz Rodríguez, on May 25, 2006.²¹⁶ To compound this there have been reiterated hunger strikes²¹⁷ and incidents of visiting family members locking themselves in as hostages.²¹⁸

194. In addition, from March 30 to December 2006 at least seven people are reported to have been killed and nine injured by firearms inside Yare I Capital Region Penitentiary Center, as well as one death caused by a firearm at Yare II.

195. According to figures on public record, 91% of the total deaths were caused by firearms, while 50% of those injured received their wounds from cutting and thrusting weapons.²¹⁹ The highest number of fatalities and injuries was registered at Uribana prison where there were 51 reported deaths as of October 2006.²²⁰ In the first two months of 2006 it was estimated that at other prisons considered equally dangerous, 15 of every 100 inmates suffered injury or death. In

²¹⁵ *El Universal* newspaper, "Murieron dos reos en una riña en La Pica" ["Two inmates die in brawl at La Pica"], available at http://buscador.eluniversal.com/2006/11/20/imp_sucgc_art_74690.shtml [December 10, 2006].

²¹⁶ See in this regard the report published in *El Universal* newspaper of May 27, 2006, entitled "Se produjo otra fuga en la cárcel de La Pica" ["Another escape from La Pica"] available as of August 24, 2006 at http://economia.eluniversal.com/2006/05/27/ccs_art_27482D.shtml.

²¹⁷ See in this regard the report published in *El Universal* newspaper of June 21, 2006, entitled "En huelga presos de La Pica" ["Prisoners strike at La Pica"] available as of August 24, 2006 at http://www.eluniversal.com/2006/06/21/ccs_art_21472A.shtml.

²¹⁸ See in this regard the report published in *El Universal* newspaper of July 27, 2006, entitled "Doce autosequestrados han registrado autoridades en el primer semestre" ["Authorities report twelve self-sequestrations in the first semester"] available as of August 24, 2006 at http://www.eluniversal.com/2006/07/27/ccs_art_27488CX.shtml. In the mentioned article it is indicated that: "In the first six months of the year, twelve situations of self-sequestrations of prisoners' relatives in various prisons in the country have been reported. Inmates and their relatives have joined to pressure the authorities to comply with the regulations established by law. The calculations of non-governmental organization report that more than four thousand persons have remained voluntarily secluded inside different prisons. The demands are based upon judicial delay, maltreatment of the relatives and detainees, application of the Organic Procedural Penal Code and the precarious conditions of detention. The so called self-sequestrations have been reported, among others, at La Pica, Vista Hermosa, El Rodeo, Coro, Barinas, Sabaneta, Portuguesa, Tocarón and Uribana prisons. In the latter prison, located in the state of Lara, for the past five days, prisoners together with their relatives and visitors have been secluded. The authorities, as indicated by the current operative plan, decided to suspend visits and the entry of food, medicines and clothes. The suspension of the visits immediately generated protests. In Uribana, some relatives who affirm they are not taking part in the self-sequestrations, demonstrated their opposition to the measure. They manifested that the conflict is exclusive to prisoners detained in maximum security prisons. They admitted, nevertheless, that the protest is justified, among other reasons, because in the prisons there is no drinking water. They affirm that salty water from nearby wells comes out of the faucets. Also they denounce the inhumane treatment. Yesterday, in the afternoon, the self-sequestration involving more than 200 persons that had begun last weekend in Uribana, ended. In addition, the commander of the National Guard at La Pica, captain Franklin Arias, was replaced by captain Anderson Rendón, and another 31 officials of this group were also removed from their positions, as a result of the of the escapes that occurred this year at this penitentiary, the last of which occurred on Sunday. "

²¹⁹ Provea. *Noticias en Derechos Humanos*, August 31, 2006. Estimates of the Venezuelan Prisons Observatory (OVP) in August. The director of the OVP delivered the monthly report on the prison situation in the country in the framework of the debate on the partial reform of the Organic Code of Criminal Procedure in the National Assembly. He also paid tribute to the efforts of the Vice Chair of the Committee for Interior Policy in handling of the hunger strike staged by prison inmates in the country in recent weeks.

²²⁰ See *El Universal*, Report titled "En Uribana se totalizan 51 reclusos muertos en 2006" ["51 inmate deaths at Uribana in 2006"] of November 11, 2006, at http://www.eluniversal.com/2006/11/11/sucgc_art_65404.shtml.

Barinas nine deaths and 16 injured were reported; and at Rodeo I and II, three deaths and 16 injured.²²¹

196. The Commission considers that this situation is partly caused by a lack of effective controls to prevent the entry of weapons into prisons, a shortage of properly trained custodial staff, procedural delays, and substandard prison conditions. In its observations to the present chapter, the State indicated that to confront the situation of violence in the detention centers and prisons, it has been applying “safety mechanisms among which it highlights the ordinary and extraordinary inspections [...] resulting in large part, in the confiscation of psychotropic, and narcotic substances, arms made in prison, firearms, mobile communication devices, alcoholic beverages, among other prohibited items. Likewise, metal detectors have been implemented.

197. These causes mentioned by the IACHR were also reported by the Ombudsman of Venezuela following the incidents that occurred in the early days of 2007 at Uribana and Guanare prisons, in which approximately 22 prisoners died and 13 were injured, and about which the IACHR expressed concern in a press release.²²²

198. In his recent statement on the events in Uribana and Guanare, the Ombudsman of Venezuela said, “According to our enquiries, these events came about as a result of a confrontation between bands propitiated by overcrowding in judicial confinement centers, procedural delays, shortages of custodial staff, possession of drugs and weapons by inmates, and the absence of a proper system to separate prisoners according to the types of crime committed.”²²³

199. The situation in Venezuelan prisons has also led inmates to organize mass strikes which have, on occasion, ended in acts of violence resulting in loss of life and physical injuries. Indeed, it came to the attention of the Commission that in 2006 prisoners staged hunger strikes at several prisons in the country that, in some instances, ended with acts of violence and fatalities.²²⁴ In July 2006 there were reports that inmates at eight prison facilities declared themselves on hunger strike, demanding the reform of certain articles of the Organic Code of Criminal Procedure and the Criminal Code as well as the application of the Constitution. Inmates at the prisons of Cumaná, Carúpano, Uribana, and La Pica later joined the strike.²²⁵ The State indicates that in face of the hunger strikes to protest the deficiencies of the Venezuelan criminal procedural system, a “temporary commission of Judges, adopted and coordinated by the Supreme Court of Justice in order to hear the demands related to judicial and procedural matters made by the inmates” was

²²¹ Information presented at the 126th regular session of the IACHR.

²²² See, IACHR, Press Release N° 1/07 of January 5, 2007.

²²³ See the web page of Ombudsman with respect to the violent situation in Uribana and Guanare: situation of human rights in prisons detracts from acknowledged progress in other areas of society, January 4, 2007, at <http://www.defensoria.gov.ve/detalle.asp?sec=20&id=767&plantilla=1>.

²²⁴ For example, the records on violent incidents include information that on July 16, 2006, of four people were reported killed and 16 injured in the last two days of a hunger strike. On July 18, 2006, it was reported that at Uribana prison in Lara State, two inmates were killed (one by gunshots) and eight injured. On July 22, 2006, a total of 188 family members of inmates at the Uribana and Vista Hermosa prisons locked themselves in as hostages to draw the attention of the Ministry of the Interior and Justice to a variety of demands. The inmates demanded that the measures agreed on procedural delays with the Ministry, the Office of the Prosecutor General, and the courts be implemented. They also demanded that children be allowed access to the prison. See, *Informe Derechos Humanos y Coyuntura*. Provea, Electronic Newsletter 173, July 12 to August 1.

²²⁵ See *El Universal*, report entitled: *Se estimo que a esta huelga se adhirieron aproximadamente diez mil reclusos. 10 mil reos en huelga de hambre: La Iglesia pide la intervención de la Cruz Roja. 65% de la población penal del país, en 19 prisiones, exige la reforma de varios artículos del Copp de de 14 de julio de 2006*. [An estimated 10,000 inmates join strike. 10,000 prisoners on hunger strike: Church asks Red Cross to intervene. 65% of the country’s prison population at 19 prisons demand reform of several articles of the Code of Criminal Procedure of July 14, 2006].

established. In addition, it informed that with the Law of the Reform of the Organic Code of Criminal Procedure, the National Assembly gave an adequate response emphasizing improvements in the application and granting of alternative means of serving a sentence.

200. In October 2006, the Bureau for Custody and Rehabilitation of Prisoners of the Ministry of the Interior and Justice and the National Guard declared themselves on alert after three hunger strikes broke out simultaneously. At Barinas 660 inmates announced themselves on strike as a result of alleged physical and psychological abuse and also to demand an end to procedural delays.²²⁶ They also demanded the introduction of measures to enable sentences to be served under the open system, work details and parole. According to press reports, the crisis erupted on October 19 when members of the National Guard entered the prison and, following an altercation, left three inmates injured (Pedro Torres, Jeikson Camargo, and José Garrido) and another inmate dead (Juan Carlos González). At Uribana prison 30 inmates declared a hunger strike, announcing that over the following hours the rest of the 1,720-strong prison population would join their cause. At the prisons of Vista Hermosa and El Dorado a total of 459 inmates declared themselves on strike.²²⁷

201. Furthermore, in November 2006, the inmates of Rodeo I and II prisons held a strike in protest at the July 2002 decision of the Juvenile Court of Guatire to prohibit the entry of minors to these prisons because neither offered adequate conditions for visits. Following the intervention of judges from the Criminal Circuit Court of the State of Miranda, the inmates ended their hunger strike after an agreement was reached to improve conditions at the prisons so that the children of prisoners could visit them.²²⁸

202. The Commission is also concerned at the high percentage of prison inmates in Venezuela who have not received a conviction and comprise approximately 56% of the prison population, or 10,000 prisoners of a total of 19,000.²²⁹ Also troubling is the absence of guidelines for segregation and classification of prisoners according to categories, a situation that directly contributes to overcrowding and substandard infrastructure, sanitary, and security conditions.

203. In light of the situations of violence indicated above, the Venezuelan State recognizes the deterioration of the penitentiary system and indicates that although a number of programs and policies have been adopted to confront this crisis, these have not lead to “absolute results that will help prevent eventual violations of the rights of the inmates.” The State also indicates that the “the Venezuelan State’s efforts are manifested in the new penitentiary management, represented in the current Ministry of the Interior and Justice and the Vice- Minister of Citizen Security who have defined the specific strategies to tackle the penitentiary issue.” The Commission acknowledges the efforts taken to confront the penitentiary crisis and calls on the

²²⁶ It should be noted that the Minister of the Interior and Justice, Jesse Chacón, recognized that the problem of procedural delays affects 56% of the prison population; in other words 10,000 of a total of 19,000 prisoners. See *Ultimas Noticias* of July 15, 2006, p. 26.

²²⁷ See *El Universal*, report entitled: Tres mil reos en huelga de hambre en cuatro cárceles del país: Reclusos en conflicto exigen se les aplique lo que establecen las leyes de 28 de octubre de 2006. [Three thousand inmates on hunger strike at four prisons in the State: Striking inmates demanded observance of October 28, 2006 laws] http://www.eluniversal.com/2006/10/28/sucgc_art_47166.shtml. The mentioned article states: “In the prisons of Vista Hermosa and El Derado hunger strike declared. The inmates, in total 459, protest the measures recently taken by the judge of First Court for the Execution of Sentences, Saul Olivares. They consider that the transfers generate more violent acts and increase crime in the prisons. The inmates protest their transfer to the El Dorado prison, in the Bolivarian State.

²²⁸ See *El Universal*, report entitled: *En Uribana se totalizan 51 reclusos muertos en 2006* [51 inmates die at Uribana in 2006], November 11, 2006, in *Informe Derechos Humanos y Coyuntura*. Provea, Electronic Newsletter 173, July 12 to August 1.

²²⁹ It should be noted that the Minister of the Interior and Justice, Jesse Chacón, recognized that the problem of procedural delays affects 56% of the prison population. See *Ultimas Noticias* of July 15, 2006, p. 26.

Venezuelan State to increase and redouble efforts to take the necessary steps to guarantee the life and humane treatment of persons deprived of liberty in prisons and other detention centers in the country. In particular, the State should adopt preemptive measures to prevent repetition of acts of violence and loss of human life, ensuring control of the use of force by strengthening discipline at detention centers, as well as through the appropriate administrative and judicial investigations.

204. The Commission reiterates that the State is the guarantor of the rights of all persons who are in its custody. The obligation that stems from this position requires the machinery of the state and its agents to refrain from any acts that might violate the fundamental rights of detainees and must seek, by all available means, to ensure that detained persons can exercise their rights. Therefore, the State has the *erga omnes* obligation²³⁰ to protect prisoners from any attacks on their life and person by third parties, including other prisoners.²³¹ As the Court has ruled, one of the inalienable obligations of the State as the guarantor of the life and physical integrity of persons deprived of liberty is to provide for them conditions at least compatible with their dignity.²³²

VI. DEMOCRACY, PARTICIPATION IN GOVERNMENT AND HUMAN RIGHTS

205. The Commission commends the Venezuelan citizenry on their large and peaceful turnout at the polls in the presidential elections of December 4, 2006, which resulted in the reelection of President Hugo Chávez Frías.²³³ The Commission takes note of the political and social change taking place in Venezuela designed to consolidate democratic socialism, which the president-elect proposes to deepen on the basis of his continued presidential mandate.

206. The Commission considers that it is an inherent part of the democratic transformation and enhancement processes undertaken by the countries in the Hemisphere to safeguard observance of human rights, fundamentally through policies and practices designed to ensure for persons the full exercise of their civil and political rights, as well as their economic, social, and cultural rights. These processes benefit from the existence of government policies that promote a plurality of ideas and eliminate any measures that discriminate against individuals or groups of persons by preventing their equal and full participation in the political, economic, and social life of their country for reasons of "race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition".²³⁴

207. The Inter-American Commission has held that the concept of representative democracy is founded upon the principle that it is the people who have political sovereignty and that in exercise of that sovereignty, they elect their representatives to exercise political power. These

²³⁰ See in this regard, I/A Court H.R., *Case of Urso Branco Prison*, Provisional Measures, Order of the Court of July 7, 2004, Opinion of Judge Antônio Augusto Cançado Trindade, para. 9.

²³¹ See in this regard, I/A Court H.R., *Bulacio Case*. Judgment of September 18, 2003. Series C No. 100, para. 126; I/A Court H.R., *Cantoral-Benavides Case*. Judgment of August 18, 2000. Series C No. 69, para. 45; I/A Court H.R., *Durand-Ugarte Case*. Judgment of August 16, 2000. Series C No. 68, para. 45; I/A Court H.R., *Castillo-Petruzzi et al. Case*. Judgment of May 30, 1999. Series C No. 52, para. 61; I/A Court H.R., *Neira-Alegría et al. Case*. Judgment of January 19, 1995. Series C No. 20, para. 60; See also, IACHR, Report N° 41/99, Case 11.491, *Minors in Detention*, Honduras, March 10, 1999, para. 125.

²³² I/A Court H.R., *Case of the Mendoza Prisons*, Provisional Measures, Order of the Court of June 18, 2005, whereas clause 7; I/A Court H.R., *Case of the Mendoza Prisons*, Provisional Measures, Order of the Court of November 22, 2004, whereas clause 10; I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, para. 159.

²³³ See, Remarks of Ambassador Juan E. Fisher, Chief of the OAS Electoral Observation Mission in Venezuela, December 13, 2006.

²³⁴ American Convention on Human Rights, Article 1.1, San José, Costa Rica, November 22, 1969.

representatives, moreover, are elected by the citizens to apply certain policy measures, which in turn means that the nature of the policies to be applied has been widely debated --freedom of thought-- among organized political groups --freedom of association-- that have had an opportunity to voice their opinions and assemble publicly --right of assembly--. The observance of these rights and freedoms calls for a legal and institutional order wherein the law take precedence over the will of the governing and where certain institutions exercise control over others so as to preserve the integrity of the expression of the will of the people --a constitutional state or a state in which the rule of law prevails.²³⁵

208. In this context, the democratic system and the observance of the rule of law are crucial for effective protection of human rights. In accordance with international instruments on human rights. A state in which the rule of law prevails is one that functions soundly and that equitably and effectively fulfils its responsibilities in the areas of justice, security, education, and health. In the final analysis, the rule of law entails full respect and effective exercise of the human, political, economic, social, and cultural rights of the inhabitants of states, ensuring access to better and increased protection of the values of human dignity.

209. One of the main challenges for the consolidation of democracies has been the harmonization of political differences within states in order to ensure tolerant, active, participatory and peaceful dialogue among all social and political sectors. The UNDP's Human Development Report 2000 highlights the willingness to participate of the peoples of the world: "People do not want to be passive participants, merely casting votes in elections. They want to have an active part in the decisions and events that shape their lives."²³⁶ Upon signing the American Convention, states parties recognize in its preamble the "intention to consolidate in this Hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights" of persons, and so established that essential rights include civil, political, economic, social, and cultural rights. In its Report, the State indicates that the legal structure of the country has been designed to invigorate individual and communal participation in order to strengthen the democratic bodies, in this sense, article 2 of the Law on Communal Councils establishes: "The communal councils within the constitutional framework of a participatory democracy, are occasions for participation, articulation, and integration between diverse organizations, social groups and citizens, that permit the public to directly initiate public policies and projects aimed at responding to the necessities and aspirations of the communities in the construction of a society of equality and social justice."²³⁷

210. The Commission wishes to underscore that political rights, which are understood as those that recognize and uphold the right and duty of all citizens to participate in the political life of their country, are essentially rights that foster the strengthening of democracy and political pluralism. With respect to this right, the Inter-American Court of Human Rights has ruled that "it is indispensable for the State to create optimal conditions and mechanisms for the effective exercise of political rights, observing the principle of equality and nondiscrimination."²³⁸

211. Contrary to the aforementioned concepts and case law of the inter-American system, the Commission regrets that it received information in 2006 denouncing the existence of

²³⁵ IACHR, *Annual Report 1990-1991*, Chapter V, Section III, "Human rights, political rights, and representative democracy in the inter-American system".

²³⁶ UNDP, Human Development Report 2000, p. 38.

²³⁷ See <http://www.asambleanacional.gov.ve/ns2/leyes.asp?id=735>: Asamblea Nacional, Ley de los Consejos Comunales, April 6, 2006.

²³⁸ I/A Court H.R., *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127, para. 192.

acts of harassment and intimidation through discourse belittling human rights defenders and groups or individuals who are critical of the policies or objectives of the government.

212. The Commission received complaints from public sector workers that mentioned that they are forced to attend acts organized by the government party wearing clothes that identify them as party supporters under the threat of possible dismissal if they fail to comply with the orders of their superiors. The complaints received also give accounts of public servants who have allegedly been subjected to pressures at their places of work in the context of the electoral campaign in December 2006. To provide an example of the type of pressure placed on public servants, one complaint transcribed parts of a speech given by Mr. Rafael Ramires, Minister of Energy and Petroleum and president of the state-owned company PDVSA, in which he reputedly said:

We had to speak clearly, as you have heard me say about the things I am talking about and which we are repeating, and which yesterday we said in the press, that the new PDVSA is red, red as can be from top to bottom [...] We are not afraid to act; we removed 19,500 enemies of the country from this company and we are prepared to carry on doing so to guarantee that this company is in line and responds to the love that our people as expressed for our President [...] We support Chávez here ... and anyone who is not comfortable with that position must give up their post to a Bolivarian [...] we had to get rid of a person, a man in our operations area, who permitted the candidate Rosales to land and move about in the middle of our area. What the hell? What kind of nonsense is that? Have they all gone mad? Have we really being infiltrated by these scrawny animals? By the enemies of this revolution? Know this: we are not going to stand for it. If we find anyone doing anything like that they'll be fired like a shot.

213. According to information received, these expressions had been endorsed by other high-ranking state officials, which has a menacing effect on the exercise by public servants of their political rights and freedoms of association and expression.

214. The Commission also received in 2006 information about other intolerant tendencies towards sectors of society that are openly critical of or express dissent with the policies of the government. These tendencies had been reflected in public statements or speeches made both by high-ranking officials of the executive branch and by members of the National Assembly.

215. Such was the case of a group of more than 70 civil society organizations that work on different issues, which, in the framework of the participation process on what was then the draft International Cooperation Bill, made their position publicly known on June 8, 2006. Subsequently at the session of the National Assembly of June 13, 2006, at which the first debate on the draft bill was held, several members of the assembly referred to the organizations as "coup plotters" who "give the impression of being human rights defenders when what they do is receive financing from the US Department of State to conspire against the Bolivarian Republic of Venezuela and the sovereignty of our people."²³⁹ The Commission issued a statement on this dubious incident, expressing concern in press release 26/06.²⁴⁰

216. The Commission also continued to receive complaints in 2006 about expressions designed to discredit professionally human rights defenders. It came to the attention of the Commission that following the request and participation of the coordinator of the Venezuelan Prisons Observatory, Humberto Prado in the framework of the provisional measures for La Pica prison, he was the object of a number of derogatory remarks by government officials. The Court

²³⁹ Minutes of the Session of June 13, 2006, of the Committee on Foreign Policy of the National Assembly.

²⁴⁰ IACHR, Press Release 26/06: IACHR concerned over Venezuelan draft legislation on international cooperation. July 19, 2006.

took this incident into consideration in its decision and even made a special request for the work of human rights defenders to be respected.

217. Subsequently, the Commission received information that on July 11, 2006, a member of the National Assembly said that Humberto Prado had instigated a "prison disturbance." Furthermore, he said, "He is also a member of Opus Dei; he is part of a conspiracy and not just recently. There are also three proceedings pending against him on which decisions have not been reached and we are going to write to the Office of the Attorney General to inquire what happened. He was also pardoned when he was a prisoner at Yare I. He tries manipulate things to his advantage (...) We all know who he is. He goes from prison to prison stirring up trouble."²⁴¹

218. The Commission was also informed that other deputies reportedly linked the organization Caritas Venezuela to Colombian paramilitaries, a situation which, according to the complaint, created increased risk for members of organizations who work in highly dangerous border areas.²⁴²

219. The Commission again calls on the state to prevent a repeat of these situations since in addition to belittling and discrediting the essential work of human rights defenders, they can help to endanger or increase the risk to their lives and physical well-being. Therefore, it specifically reiterates one of the recommendations made to the states to "refrain from making statements that stigmatize human rights defenders or that suggest that human rights organizations act improperly or illegally, merely because of engaging in their work to promote and protect human rights [...]" (See Report on the Situation of Human Rights Defenders in the Americas, recommendation 10, p. 90)."

220. The Commission considers that the conduct described in paragraphs 65 to 71 of this chapter do not foment a climate of political tolerance that encourages the active participation of all sectors of Venezuelan society. Participation in government and political rights are not guaranteed simply by the observance of and possibility to exercise the right to vote or the possibility to stand for election, but, necessarily entail the observance of a whole series of other rights that includes the right of association, freedom of assembly and freedom of expression.

221. The rights freely to express political opinions that are critical of the government administration or to associate and participate actively and critically in the political, economic, and social life of a country inevitably require a system of laws and institutions in which the law comes before the will of the governors, the existence of controls exercised by some institutions over others to preserve observance of the rule of law, and the notion of collectiveness, as opposed to a monopoly of power in the hands of a single person or a like-minded group of people.²⁴³

222. In this connection, within the parameters of the law and in keeping with the limits established by international human rights law, political rights should not only be guaranteed for persons with ideas that are favorably received by the government of the day or regarded as inoffensive or as a matter of indifference, but also for those that are actively critical and which, therefore, are unwelcome to the state or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society."²⁴⁴

²⁴¹ Provea. Newsletter 173 of 2006.

²⁴² Information provided by civil society organizations during the hearings at the 126th regular session of the Commission.

²⁴³ IACHR, *Report on the Situation of Human Rights in Peru*, 2000.

²⁴⁴ I/A Court H.R., *Herrera Ulloa Case*, *supra* note 5, para. 113; I/A Court H.R., *Ivcher-Bronstein Case*, *supra* note 133, para. 152; I/A Court H.R., *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)* *supra* note 138, para. 69; Scharsach and News Verlagsgesellschaft v. Austria, no. 39394/98, § 29, ECHR 2003-XI; Perna v. Italy [GC], no.48898/98, § 39, ECHR

223. Based on the foregoing, the Commission calls on the Venezuelan state to ensure a plural framework for discussion that permits inclusive and democratic dialogue on all public matters for all sectors of Venezuelan society.

VII. THE INTERNATIONAL COOPERATION BILL

224. The Commission examined the text of the International Cooperation Bill adopted at its first debate on June 13, 2006, which warrants particular attention, given its possible implications that the text, as approved at its first debate by the National Assembly, could present for the exercise of the right to freedom of association in general, and, in particular, to the work of organizations of human rights defenders that receive external financing for their activities.²⁴⁵

225. Pursuant to the powers provided for in Article 41.b of the American Convention and with the intention of contributing to discussion before the National Assembly on the bill mentioned, the Commission presents the following recommendations and observations. These have the purpose of advancing measures, regulations and laws that strengthen the respect of human rights in accordance with the standards and jurisprudence of the system.

A. The need for registration not to hinder or restrict the possibility of free association and the activities of organizations

226. The organs of the inter-American system have consistently held that the rights to freedom of assembly and of association are significant rights that protect against arbitrary interference by the state when persons choose to associate with others, and are fundamental to the existence and functioning of a democratic society.²⁴⁶ In that regard, the standards of the inter-American system²⁴⁷ require that any restrictions that states are permitted to impose must be established strictly by law and be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.

227. In the Report on the Situation of Human Rights Defenders in the Americas, the IACHR referred to some of the conditions that states must ensure for the exercise of freedom of association. In this connection, the Commission recommended that states adopt measures to

Ensure that the procedure for entering human rights organizations in the public registries will not impede their work and that it will have a declaratory and not constitutive effect. The states should guarantee that the registry of the organizations will be processed quickly and

...continuation

2003-V; *Dichand and others v. Austria*, no. 29271/95, § 37, ECHR 26 February 2002; Eur. Court H.R., *Case of Lehideux and Isorni v. France*, Judgment of 23 September, 1998, para. 55; Eur. Court H.R., *Case of Otto-Preminger-Institut v. Austria*, Judgment of 20 September, 1994, Series A, No. 295-A, para. 49; Eur. Court H.R. *Case of Castells v. Spain*, Judgment of 23 April, 1992, Series A, No. 236, para. 42; Eur. Court H.R. *Case of Oberschlick v. Austria*, Judgment of 25 April, 1991, para. 57; Eur. Court H.R., *Case of Müller and Others v. Switzerland*, Judgment of 24 May, 1988, Series A, No. 133, para. 33; Eur. Court H.R., *Case of Lingens v. Austria*, Judgment of 8 July, 1986, Series A, No. 103, para. 41; Eur. Court H.R., *Case of Barthold v. Germany*, Judgment of 25 March, 1985, Series A, No. 90, para. 58; Eur. Court H.R., *Case of The Sunday Times v. United Kingdom*, Judgment of 29 March, 1979, Series A, No. 30, para. 65; and Eur. Court H.R., *Case of Handyside v. United Kingdom*, Judgment of 7 December, 1976, Series A, No. 24, para. 49.

²⁴⁵ See, IACHR Press Release 26/06.

²⁴⁶ IACHR, *Report on Terrorism and Human Rights*, 2002, para. 359.

²⁴⁷ See, I/A Court H.R., *The Word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion 6 (1986).

that only the documents needed to obtain the information appropriate for registering will be required. Domestic laws should clearly establish the maximum time frames for state authorities to answer requests for registration.

228. By the same token, the IACHR also called on member states to

Refrain from promoting laws and policies regarding the registration of human rights organizations that use vague, imprecise, and broad definitions of the legitimate motives for restricting their establishment and operation.

229. According to the case law of the Inter-American Court and other international organizations, such as the ILO Committee on Freedom of Association, to require prior authorization for the creation or operations runs contrary to the exercise of freedom of association. This does not mean that, in principle, registry systems are at odds with international standards. However, laws that confer on authorities discretionary powers for the authorization of organizations in registries could contravene that right. Accordingly, international standards recommend that for a registry system to be in accordance with these standards it must guarantee that it shall be of a declaratory nature (notification system) but not constitutive (authorization or permit system).

230. In this regard, the IACHR notes that some articles in the bill at present under discussion by the National Assembly could be interpreted as granting powers of authorization and not of notification to the registry proposed in Article 17 of the bill. Article 18 of the bill provides that the entry of nongovernmental organizations in the "Integrated Registry System" is "compulsory and constitutes an essential requisite in order to be recognized by the Venezuelan State as entities eligible to engage in cooperation activities with their counterparts in other countries." The Commission finds that said provision could be interpreted in the sense that only organizations accepted in the registry could pursue their activities.

231. The risk that this provision be interpreted in a restrictive manner to limit the exercise of freedom of association arises from the general vagueness of the bill's language, which accords broad powers of regulation and implementation of the law to the government. Thus, Article 16 of the bill contains the definition of what is considered a "nongovernmental organization" for the purposes of the law. Apart from requiring organizations to have, *inter alia*, legal standing to operate, the bill also provides that they shall "have a structure that sufficiently guarantees the fulfillment of their objectives." The bill does not set out clear guidelines for the authorities in charge of that certification.

232. The Committee on Freedom of Association has found in similar cases that provisions that set out vague guidelines empower the authorities in charge of registration to act in a discretionary manner, which could lead to the negation of its declaratory nature. In the words of the Committee:

Although registration procedure very often consists in a mere formality, there are a number of countries in which the law confers on the relevant authorities more or less discretionary powers in deciding whether or not an organization meets all the conditions required for registration, thus creating a situation which is similar to that in which previous authorization is required.²⁴⁸

²⁴⁸ Committee on Freedom of Association, Digest of Decisions of the Committee on Freedom of Association, 1985, para. 281.

233. In this regard, international organizations recommend that any requisites demanded by authorities be clearly and precisely stipulated by law.²⁴⁹ In this connection, the Commission calls on the National Assembly to debate those requirements so that they are formulated in a legal manner. Such requisites should be limited to those necessary to ensure the openness of the registration system in accordance with the above-transcribed recommendations in the Report on the Situation of Human Rights Defenders in the Americas.

234. The Commission also recommends that the wording of the bill be amended to remove any possibility of interpretation that entry in the said registry shall be a condition in order to partake in the corporation resources centralized by the State and that lack of registration shall not prevent organizations from seeking additional resources (distinct from those contained in the cooperation fund created by the law) or from engaging in activities paid for with those resources.

235. Finally, the IACHR considers that advantage could be taken of the law under discussion to implement the recommendation made in the aforementioned report on human rights defenders so as to "[e]nsure that the human rights organizations whose registrations are rejected have available to them a remedy to challenge that decision before an independent court."

B. The establishment of priorities with regard to cooperation should not limit the autonomy of organizations or prevent them from carrying out activities not considered a priority by the State

236. Many civil society organizations in the Hemisphere receive financing from the governments of the States where they pursue their activities and, furthermore, implement projects that they co-manage with local and national authorities. By contrast, other organizations devote themselves to issues that either are not a priority in the policies of the States where they carry out their work, or are designed to monitor government activities, criticize and suggest alternatives to improve the performance of States, and draw attention to obstacles to the advancement and realization of collective interests.

237. Under the standards of the inter-American system, either of these two forms of association is legitimate and, therefore, States should protect and encourage both of them. As Article 6 of the Inter-American Democratic Charter provides, "It is the right and responsibility of all citizens to participate in decisions relating to their own development. This is also a necessary condition for the full and effective exercise of democracy. Promoting and fostering diverse forms of participation strengthens democracy."

238. Chapter II of the bill under consideration creates the "International Cooperation and Assistance Fund," the purpose of which, according to Article 12 of the bill, is "to finance technical and scientific cooperation programs, projects and activities in keeping with foreign policy priorities and the national interest". The introductory articles of the bill set out the "Areas of cooperation" and cooperation "priorities" that would guide the allocation of resources. These include "primarily those established in the National Development Plan, as well as humanitarian assistance; training for integral human development; human exchange, scientific and technical assistance; social measures; provision of services and materials; support for domestic industry and improvements in quality of life" (Article 6). The bill also says that "[i]nternational cooperation priorities shall be center on the

²⁴⁹ By the same token, the Committee on Freedom of Association has "drawn attention to the desirability of defining clearly in the legislation the precise conditions which trade unions must fulfil in order to be entitled to registration and on the basis of which the registrar may refuse or cancel registration, and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not." Committee on Freedom of Association, Digest of Decisions of the Committee on Freedom of Association, 1985, para. 277.

areas of education and culture, science and technology, social assistance, and economy and finance" (Article 7).

239. The way these provisions are worded at present makes it impossible to determine if cooperation priorities or areas would be restricted to the funds attracted by or managed in this fund, or if those priorities would apply to all cooperation funds executed in Venezuela. Furthermore, the current wording of these provisions can be interpreted in the sense that in carrying out their activities social organizations would have to abide by government policy priorities set out in development plans. Such an interpretation would limit the possibility to associate freely and could result in a restriction of the ability of civil society to take steps to exercise genuine public oversight of the activities of the State.

240. In this regard, the Inter-American Court has ruled that freedom of association consists of the ability not only to constitute organizations, but also "to set into motion their internal structure, activities and action programme, without any intervention by the public authorities that could limit or impair the exercise of the respective right."²⁵⁰ Consequently, the IACHR calls on the National Assembly to amend the language of the aforementioned provisions in keeping with the above-cited standards and recommends that the State engage the human rights organizations concerned in a public dialogue, in order to discuss and examine the criteria and rationale contained in the bill currently under consideration and come up with a law consensualized with these and other civil society organizations, taking into account international instruments for protection of human rights.

VII. FREEDOM OF EXPRESSION

241. The exercise of the right to freedom of expression in Venezuela continues to be a matter of special concern for the Commission. In 2006, the IACHR received continuous reports, in particular through the Office of the Rapporteur for Freedom of Expression, of situations that impaired the normal exercise of this basic right. The information received told of the murder of two journalists; acts of aggression and threats directed at journalists; an increase in the number of criminal proceedings against social communicators, and acts that could constitute forms of indirect restriction of the exercise of the right to freedom of expression in Venezuela.

242. The following paragraphs outline some of the more emblematic cases reported to the IACHR in this connection. The information contained in this chapter can be supplemented with the analysis of the situation of freedom of expression in Venezuela made by the Office of the Special Rapporteur for Freedom of Expression in its Annual Report 2006 at the request of the IACHR.²⁵¹

243. In 2006, the IACHR was informed of the murders of the photographer Jorge Aguirre of *El Mundo* newspaper²⁵² and of the journalist Jesús Flores Rojas, who worked for the newspaper *Región*.²⁵³ These murders could be connected with the exercise of their profession as journalists.

²⁵⁰ I/A Court H.R., *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 156.

²⁵¹ Office of the Special Rapporteur for Freedom of Expression. Annual Report 2006, Chapter 2.

²⁵² Office of the Special Rapporteur for Freedom of Expression. Press Release 134/06 of April 6, 2006. *Office of the Special Rapporteur for Freedom of Expression Deplores Assassination in Venezuela*.

²⁵³ Office of the Special Rapporteur for Freedom of Expression. Press release 152/06 of August 31, 2006. *Office of the Special Rapporteur for Freedom of Expression Condemns the Murder of Journalist in Venezuela and Demands Prompt Investigation*.

244. In its observations, the State indicated that in relation to the assassination of Jorce Aguirre a “serious, impartial and effective investigation was conducted that helped to establish the facts, determine the motives of the assassination, and to identify and punish those responsible.” The State indicates that these investigations led to the conclusion that the death of Mr. Aguirre is due to a common crime not connected to the exercise of his profession. Concerning the case of Flores Rojas, the State informed that the Office of Fundamental Rights of the Public Ministry informed that the public prosecutors investigating the case had not yet established the circumstances surrounding the assassination, and that the Public Ministry had granted protective measures in favor of the journalist’s daughter. The Commission appreciates the information alleged by the State, and requests it to continue to inform the Commission on the investigations and its results. Furthermore, the Commission recalls that the Declaration of Principles on Freedom of Expression adopted by the Inter-American Commission on Human Rights says at principle 9 that, “The murder [...]of [...] social communicators [...] violate[s] the fundamental rights of individuals and strongly restrict[s] freedom of expression. In the aforementioned cases, the Commission through the Office of the Special Rapporteur for Freedom of Expression deplored the acts, expressed its concern, and urged the State to undertake a meaningful, impartial, and effective investigation to elucidate the facts, including the determination of the motives for the murders, and identify and punish the culprits in order to prevent a repetition of such acts.

245. With respect to acts of aggression against journalists and other media workers, the Commission expresses its concern at acts of this nature, which would appear to obstruct the free practice of journalism, both by communicators of media organizations regarded as opponents of the government, as well as those belonging to the state-owned media.²⁵⁴

246. The Commission continued to receive information with respect to an increase in lawsuits against journalists that could act as a deterrent against the exercise of freedom of expression. In this regard, the IACHR was informed of criminal proceedings against those who criticize matters of public interest, through allegation either of the crime of contempt, or of the crimes of libel, criminal defamation, slander or affront [*villipendio*].²⁵⁵

247. While it is clear that in Venezuela the media and their social communicators engage in broad discussion and criticism of government policies, in some cases that legitimate activity has given rise to acts of intimidation or indirect pressure that are contrary to the exercise of freedom of expression in a democratic society.²⁵⁶

248. In 2006, the Commission received information that the government announced the review of the broadcasting concession granted to certain media organizations for reasons that could include the reporting of those organizations.

²⁵⁴ An account of the acts of aggression directed at media workers in the exercise of their profession as journalists in 2006 can be found in Chapter II of Annual Report 2006 of the Office of the Special Rapporteur for Freedom of Expression and in the section concerning Venezuela of the press releases of the Special Rapporteur for Freedom of Expression for April, June, July, September, October and December 2006, available at <http://www.cidh.org/relatoria>.

²⁵⁵ An account of the judicial proceedings against journalists in Venezuela can be found in Chapter II of Annual Report 2006 of the Office of the Special Rapporteur for Freedom of Expression and in the section concerning Venezuela of the press releases of the Special Rapporteur for Freedom of Expression for April, June, July, September, October and December 2006, available at <http://www.cidh.org/relatoria>.

²⁵⁶ On May 19, 2006, the regional parliament of Bolívar State recommended that the Office of the Mayor of Caroní proceed with the eviction and demolition of the offices of the newspaper *El Correo del Caroní* in order to “recover areas in leisure zones for public use.” According to information received by the IACHR, the measure could be a reprisal for the newspaper’s critical reporting of the administration of the governor, Francisco Rangel. See Office of the Special Rapporteur for Freedom of Expression. Quarterly Report of the Office of the Special Rapporteur for Freedom of Expression, July-September 2006, available at: <http://www.cidh.org/relatoria>.

249. The Commission recognizes the power of the government to manage the radio spectrum, to establish in advance the duration of concessions, and to decide whether or not to renew them upon their expiration. Nevertheless, the State should also exercise that power bearing in mind its international obligations, which include ensuring the right freely to express ideas and thoughts of any kind without indirect restrictions on the exercise of the right to freedom of expression by reason of the editorial opinion of media organizations. The Commission believes that one of the fundamental requisites of the freedom of expression is the existence of a wide range of information and availability of opinions to the public without being subject to direct and/or indirect pressures. That is to say, freedom of speech not only has to be guaranteed as for the circulation of information or ideas that are received favorably or considered inoffensive or indifferent, but also to that might offend, turn out to be ungrateful or disturb the State or to any sector of the population.²⁵⁷ In effect, the media allow individuals to form their own political opinion and then compare it with that of others. Only when the individual is informed he/she will be able to evaluate and freely adhere or take a position within the political spectrum.²⁵⁸

250. Article 13.3 of the American Convention on Human Rights and Principle 13 of the IACHR Declaration of Principles on Freedom of Expression prohibit any indirect pressure by the State to influence the reporting of social communicators or undermine the independent exercise of the right to impart information. In other words, it is not permissible under international human rights standards to control or impose pressure on the media so that the only ones that exist are those whose reporting is either in favor or critical of the government, weakening any critical oversight of the performance of the State by individuals and media organizations in the framework of the democratic game. Indeed, Principle 13 of the Declaration of Principles on Freedom of Expression provides that, "[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law." The CIDH believes that in the processes of tender for the awarding of licenses of the radio electronic spectrum, the States must strive, under the principle of equality of opportunities, to provide open and transparent procedures that contain clear and reasonable criteria that avoid any political discriminatory consideration linked to the editorial line of the media.

251. Furthermore, in 2006, the Supreme Court of Justice of Venezuela ratified the validity of contempt laws that had prompted the Commission to express concern in past press releases and reports. It should be recalled that, echoing the interpretation of the European Court of Human Rights, the Inter-American Court has ruled that:

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 (art. 10-2) enables the reputation of others - that is to say, of all individuals - to be protected,

²⁵⁷ Castells v. Spain, Eur. Ct. H.R. (Ser. A., No. 236) (1992), para. 20.

²⁵⁸ IACHR. Annual Report 2004, Report of the Special Rapporteur for Freedom of Expression: Chapter V - Indirect Violations of the Freedom of Expression: The Impact of the Concentration of Media Ownership, para. 15, OEA/Ser.L/V/II.122, Doc. 5 rev. 1, February 23, 2005.

and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.

Thus, in the case of public officials, individuals who exercise functions of a public nature, and politicians, a different threshold of protection should be applied, which is not based on the nature of the subject, but on the characteristic of public interest inherent in the activities or acts of a specific individual. Those individuals who have an influence on matters of public interest have laid themselves open voluntarily to a more intense public scrutiny and, consequently, in this domain, they are subject to a higher risk of being criticized, because their activities go beyond the private sphere and belong to the realm of public debate. Therefore, in the context of the public debate, the margin of acceptance and tolerance of criticism by the State itself, and by public officials, politicians and even individuals who carry out activities subject to public scrutiny, must be much greater than that of individuals.²⁵⁹

252. In this connection, the Commission reiterates its position with respect to the need for Venezuela to make its criminal laws consistent with the recommendations contained in the case law of the inter-American system and in the Declaration of Principles on Freedom of Expression that set the standards for interpretation of Article 13 of the American Convention.

²⁵⁹ I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, paras. B102 and 103.