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ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2010

GENERAL SECRETARIAT
ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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Approved by the Inter-American Commission on Human Rights on March 7, 2011

**ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS 2010**

TABLE OF CONTENTS

| | |
|-------------------|--|
| CHAPTER I | INTRODUCTION |
| CHAPTER II | LEGAL BASES AND ACTIVITIES OF THE IACHR DURING 2010 |
| A. | Legal bases, functions and powers |
| B. | The Commission's sessions in 2010 |
| 1. | 138 th regular period of sessions (Washington, D.C.) |
| 2. | 139 th regular period of sessions (Washington, D.C.) |
| 3. | 140 th regular period of sessions (Washington, D.C.) |
| C. | Visits |
| D. | Thematic and Country Reports |
| E. | Activities of the rapporteurships |
| 1. | Rapporteurship on the Rights of Indigenous Peoples |
| 2. | Rapporteurship on the Rights of Women |
| 3. | Rapporteurship on the Rights of the Child |
| 4. | Rapporteurship on the Rights of Persons Deprived of Liberty in the Americas |
| 5. | Rapporteurship on the Afro-Descendants and against Racial Discrimination |
| 6. | Rapporteurship on Rights of Migrant Workers and their Families |
| 7. | Unit for Human Rights Defenders |
| F. | Other events and activities |
| G. | Financial contributions |
| H. | Activities of the Inter-American Commission in connection to the Inter-American Court |
| I. | Thirty-eighth regular session of the General Assembly of the OAS |

CHAPTER III THE PETITION AND CASE SYSTEM

- A. Introduction
- B. Statistics
- C. Petitions and cases before the Inter-American Commission on Human Rights
 - 1. Precautionary measures granted or extended by the IACHR in 2010
 - 2. Petitions declared admissible – available at www.cidh.oas.org/casos/10.eng.htm
 - 3. Petitions declared inadmissible – available at www.cidh.oas.org/casos/10.eng.htm
 - 4. Friendly Settlements – available at www.cidh.oas.org/casos/10.eng.htm
 - 5. Reports on the Merits – available at www.cidh.oas.org/casos/10.eng.htm
 - 6. Archival decisions – available at www.cidh.oas.org/casos/10.eng.htm
- D. Status of compliance with the recommendations of the IACHR
- E. Petitions and cases before the Inter-American Court of Human Rights
 - 1. Provisional measures
 - 2. Contentious cases

CHAPTER IV HUMAN RIGHTS DEVELOPMENTS IN THE REGION

Introduction
Colombia
Cuba
Honduras
Venezuela

CHAPTER V FOLLOW-UP OF THE RECOMMENDATIONS FORMULATED BY THE IACHR IN ITS REPORTS ON THE SITUATION OF HUMAN RIGHTS IN MEMBER STATES

Follow-Up Report on the Situation of Human Rights in Haiti

REPORT OF THE OFFICE OF THE SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

CHAPTER I

INTRODUCTION

1. Impunity for human rights violations constitutes one of the major obstacles to the effective rule of law in the region. The Inter-American Commission and the Court have insisted repeatedly through its different mechanisms in the need and the obligation of the States to combat impunity. In the recent years significant progress has been made in bringing justice and truth to the victims of massive violations of human rights that took place in prior decades. An example of progress in this direction occurred on March 24, 2010 when Salvadoran President Mauricio Funes accepted responsibility and apologized for the extrajudicial execution of Monsignor Oscar Arnulfo Romero y Galdámez, Archbishop of San Salvador, 30 years after the crime. Other important symbols of willingness to combat impunity and recognize the right to truth were the inauguration of Chile's Museum of Memory in January 2010 and the presentation of the report from Ecuador's Truth Commission, which was jointly prepared by representatives of the Ecuadoran State and civil society. Likewise, the convictions of the persons responsible for serious human rights violations in Argentina and Peru are examples of the role the States and particularly the justice systems, can and have to play in order to bring human rights violations to justice, honor the memory of the victims of such violations and repair their families in the extent possible.

2. However, despite the achievements made during this year, the Inter-American Commission continued to receive disturbing information regarding the persistence of obstacles to the effective enjoyment of human rights by the inhabitants of the region, with particular impact on the sectors of society that have historically been subject to discrimination. For example, regarding human rights defenders, the IACHR has verified the persistence of murders, harassment, and threats against them as well as against judges and other agents of justice, among others. Likewise, the IACHR has verified the persistence in certain countries of the practice by government authorities of using expressions that tend to delegitimize the work of organizations defending human rights, even going so far as to stigmatize them as collaborators of terrorist groups whose purpose is to destabilize the State or as criminal gangs and illegal associations, which increases the risks for the life and integrity of the human rights defenders even more.

3. The IACHR has repeatedly indicated that individuals dedicated to the promotion and defense of human rights and the organizations with which many of them are affiliated play a crucial role both in litigating human rights cases and in civil society's oversight of democratic institutions. The Inter-American Commission believes that when there are attempts to silence or hamper the work of human rights defenders thousands of people are denied of the chance to obtain justice for violations of their human rights. Member States have the obligation to adopt the measures necessary to protect the life, personal integrity, and freedom of expression and association of those who work to ensure respect for fundamental rights.

4. Likewise, it is also necessary to reiterate the Inter-American Commission's great concern regarding threats, harassment, and violence against journalists as well as the failure to conduct effective investigations to determine the origin of such actions and identify the individuals responsible also bears repeating. The right to disseminate ideas of public interest through the press merits special protection from the courts. For this reason, the failure to conduct effective investigations regarding crimes committed against journalists and other actions that seek to indirectly limit freedom of expression creates fear of expressing criticism against those who hold power or reporting abuses and crimes, affecting the very foundations of democracy.

5. During 2010, it was noted with concern the forced displacement of thousands of people, particularly members of indigenous communities, due to the construction of large infrastructure projects and exploitation of natural resources. In many cases, such projects are

carried out without prior consultation with the indigenous peoples affected and without sufficient measures to protect their ancestral lands, in violation of the standards of international law. In addition, the IACHR received with concern information regarding the persistence of structural barriers to indigenous peoples' effective enjoyment of ownership rights over their lands, territories, and natural resources, such as the lack of legal recognition of indigenous territories, the appropriation of indigenous lands, the displacement of the original population by non-indigenous owners, and the proclamation of protected areas in traditional territories.

6. The IACHR reiterates that under inter-American human rights instruments, indigenous or tribal peoples and their members have the right to full ownership of their ancestral territories and the effective enjoyment of that ownership. As the Inter-American Commission has repeatedly maintained, protecting indigenous peoples' ownership rights over their ancestral territories is particularly important because the effective enjoyment thereof involves not only the protection of an economic unit but the protection of the human rights of a community that bases its economic, social, and cultural development on its relationship with the land. It is for this reason that one of the central components of protecting the right to indigenous ownership is for States to develop effective consultation with indigenous communities regarding actions and decisions that could affect their traditional territories.

7. The latter means that any legislative or administrative decision that could directly affect indigenous ownership, such as granting concessions to exploit natural resources in indigenous territories, must be based on a process of prior informed consultation with the indigenous community as a whole. This process demands that all members of the community must be fully and accurately informed of the nature and consequences of the process and have a real opportunity to participate individually or collectively. In addition, consultations must be carried out in accordance with the customs and traditions of the indigenous people involved and there must be constant communication among the parties. Finally, consultations must be conducted in good faith, in the initial stages of the legislative or administrative measures or the specific projects or plans, and the goal must be to reach an agreement.

8. On this issue, the Inter-American Commission has recently published a report entitled "Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources". In addition to analyze the scope of these rights in the light of the jurisprudence of the inter-American system, the purpose of this report is to point out problems, specific guidelines and best practices aimed at extending the enjoyment of human rights by the indigenous and tribal peoples in the hemisphere.

9. Regarding the situation of the afro-descendant population in the hemisphere during the period covered by this report, the IACHR confirmed that there are still serious problems of racial discrimination that are reflected, for example, in the social exclusion and high rates of poverty that afro-descendants continue to endure in many countries of the region. In addition, the Inter-American Commission received information regarding other serious violations perpetrated against the afro-descendant population, ranging from harassment, deprivation of liberty, to extrajudicial executions. The Inter-American Commission will continue monitoring the situation of the afro-descendants in the region and in 2011 will undertake a series of promotional activities to disseminate their rights in the frame of this year's recognition as the international year of Afro-descendants".

10. Further, during 2010 the IACHR received with great concern information regarding the situation of systemic discrimination and violence against lesbian, gay, transsexual, bisexual, and intersexual (LGTBI) persons in the region, reflecting the persistence of high levels of intolerance in society and the failure of governmental authorities to adopt positive measures to combat that discrimination and violence.

11. It is particularly disturbing that some States still have laws that criminalize the behavior of LGBTBI persons, with criminal penalties ranging from ten years in prison or forced labor to life in prison for consensual sexual behavior between adults of the same sex. The very existence of laws of this kind perpetuates improper stereotypes, creates fear within the sexually diverse community, and fosters impunity for serious crimes committed against that community's members. For this reason, the Commission calls for the repeal of these laws and for all States in the region to adopt measures to promote the enjoyment of human rights by all persons under conditions of equality and respect for decisions regarding the private life of every human being.

12. Another priority challenge is to protect the right of children and adolescents to live free of violence and discrimination. The promulgation of international instruments protecting the human rights of children and adolescents reflects consensus and recognition by the States in the region of the urgent need to eliminate violence against this group of persons who are subject to special protection. Nevertheless, during 2010 the Inter-American Commission received information regarding abusive practices in state-controlled institutions such as psychiatric institutions, boarding schools, and displaced persons' camps. For this reason, the Commission is currently preparing, in collaboration with the Office of the High Commissioner for Human Rights and UNICEF, a report on juvenile justice in the Americas and a regional report on the situation of institutionalized children.

13. The IACHR recognizes the initiative of some States in the region that have already legally prohibited the use of corporal punishment as a method for disciplining children and adolescents in both the public and private arenas and those States in which legislative initiatives have already been prepared. However, even though corporal punishment as the result of a criminal conviction is prohibited in most Member States, in many States it remains in the penal code as a disciplinary method. In addition, most Member States do not have legislation or express language prohibiting corporal punishment in the home or in educational institutions.

14. Therefore, the Commission reiterates the need for joint and immediate action by the Member States to address the problem of corporal punishment. The solution is to legally, explicitly, and absolutely prohibit it in all areas and additionally to adopt preventive, educational, and other suitable measures to ensure the eradication of this form of violence.

15. During 2010 women and girls in the region continued to be the victims of gender-based violence and discrimination. The right of women to live free of violence and discrimination has been established as a priority challenge in the regional systems of protection of human rights, both at a regional and an international level, and the Commission has noted in reiterated opportunities that a real access to the judicial guaranties and protection is indispensable for the eradication of the problem of violence against women, and for this reason, for the States to effectively comply with their international obligation to act with due diligence vis-à-vis this serious problem.

16. Regarding economic, social and cultural rights, discrimination against women continues to be reflected in the labor market; their limited access to social security; their high illiteracy rates compared to men; in the serious poverty, social exclusion, and in particular, in the limited political participation faced by indigenous and afro-descendant women. In this respect, the Inter-American Commission has emphasized the need to give priority to caring for women who suffer the consequences of armed conflict or are subject to multiple forms of discrimination and subordination due to race, ethnic origin, or poverty.

17. Further, with regards to the right to health of women, the Inter-American Commission calls upon the Member States to adopt measures to guarantee such right in order to reduce the high rates of maternal mortality currently existing in the Americas, the principal causes of which are preventable. The right to personal integrity is closely tied to the right to health, given

that the provision of adequate and timely maternal health services is one of the principal measures for guaranteeing women's right to personal integrity.

18. In relation to the situation of migrants persons the Inter-American Commission notes with concern that in several countries in the region, in addition to suffer constant discriminatory acts and expressions of xenophobia, migrants have been victims of acts of violence that this year included murder and kidnapping. The complaints received by the IACHR indicate that most kidnapping victims have been migrant children and women. The kidnappers' purpose is often to collect a ransom and the crime is aggravated by acts of torture committed against the victims. Here it is essential to repeat that all States have the obligation to respect the basic human rights of everyone within their borders, in accordance with the principles of equality and non-discrimination, regardless of their legal status.

19. Likewise, the IACHR expresses its concern for the serious conditions in which the persons deprived of liberty find themselves, in facilities that are insufficient and inadequate; with serious overcrowding; with no access to drinkable water, with no food in adequate quantity and quality, no access to health and sanitary services, education and rehabilitation services. For this reason, States have to design public policies directed at guaranteeing the effective enjoyment of the rights of persons deprived of liberty in conformity with the standards identified in the Document "Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas", which was adopted by the Commission in Resolution O1/08.

20. In addition, during 2010 numerous deaths were recorded among people deprived of liberty and held in prisons in various countries of the region. In some cases, the deaths were the result of fights among inmates, but several fires were reported that claimed the lives of more than a hundred people and left dozens more seriously wounded. The Inter-American Commission reiterates that the States serve as the guarantor of persons who are deprived of liberty and, as such, have an undeniable duty to guarantee the rights to life and personal integrity of those in their custody. In accordance with this fundamental obligation, States have the duty to adopt concrete measures to prevent the occurrence of violent acts in prisons, such as establishing early warning mechanisms to prevent crises or emergencies and reducing the overcrowding that leads to tense situations and fighting among inmates for the available space and services. Further, it is urgent and essential that States put in place emergency plans and other measures aimed at responding to fires or other emergencies.

21. In any case, the IACHR must state once again that the integrity and efficacy of the protection of human rights for the inhabitants of the hemisphere is essentially dependent on the efforts of the Member States to achieve the universality of the inter-American system by ratifying the American Convention and other human rights instruments, accepting the Court's jurisdiction, and complying with the decisions and orders of the Commission and the Court. Of course, to the aforesaid has to be added the provision of the financial resources needed for both bodies to effectively address the legitimate claims of the population of the Americas, as well as the needs of the member States in the process of strengthening the protection they provide.

22. The challenges enumerated here are no doubt complex and require serious and urgent measures. The Member States are in the best position to effectively move toward full respect for human rights in the region by organizing their institutional structures and defining the priorities in their respective government plans.

CHAPTER II

LEGAL BASES AND ACTIVITIES OF THE IACHR DURING 2010

A. Legal Bases, Functions, and Powers

1. The Inter-American Commission on Human Rights (“IACHR” or “the Commission”) is an autonomous organ of the Organization of American States (OAS), headquartered in Washington, D.C. Its mandate is prescribed in the OAS Charter, the American Convention on Human Rights, and the Commission’s Statute. The IACHR is one of the two bodies in the inter-American system responsible for the promotion and protection of human rights; the other is the Inter-American Court of Human Rights, based in San José, Costa Rica.

2. The IACHR consists of seven members who carry out their functions independently, without representing any particular country. Its members are elected by the General Assembly of the OAS for a period of four years and may be re-elected only once. The IACHR meets in regular and special sessions several times a year. The Executive Secretariat carries out the tasks delegated to it by the IACHR and provides the Commission with legal and administrative support in its pursuit of its functions.

3. In April 1948, in Bogotá, Colombia, the OAS adopted the American Declaration of the Rights and Duties of Man (“the American Declaration”), the first international human rights instrument of a general nature. The IACHR was created in 1959 and met for the first time in 1960.

4. In 1961, the IACHR began a series of visits to several countries for on-site observations of the human rights situation. Since then, the Commission has made more than 106 visits to the Organization’s member states. Based in part on these on-site investigations, to date the Commission has published 87 country reports and thematic reports.

5. In 1965, the IACHR was expressly authorized to examine complaints or petitions related to specific cases of human rights violations. By 2010, the Commission had received thousands of complaints, bringing the total number of cases and petitions to over 14,000. The final reports published by the IACHR on these individual cases can be found in its Annual Reports.

6. The American Convention on Human Rights (“the American Convention”) was adopted in 1969 and came into force in 1978. As of December 2010, a total of 24 member states were parties to the Convention: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. The Convention defines the human rights that the ratifying states have agreed to respect and guarantee. The Convention also created the Inter-American Court of Human Rights and established the functions and procedures of the Court and of the Commission. In addition to examining complaints of violations of the American Convention committed by the instrument’s states parties, the IACHR has competence, in accordance with the OAS Charter and with the Commission’s Statute, to consider alleged violations of the American Declaration by OAS member states that are not yet parties to the American Convention.

7. The principal responsibility of the IACHR is to promote the observance and defense of human rights in the Americas. In fulfillment of that mandate, the Commission:

- (a) Receives, analyzes and investigates individual petitions alleging human rights violations pursuant to Articles 44 to 51 of the Convention, Articles 19 and 20 of its Statute, and Articles 22 to 50 of its Rules of Procedure.

- (b) Observes the general human rights situation in the member states and, when it deems appropriate, publishes special reports on the existing situation in any member State.
- (c) Conducts on-site visits to member states to carry out in-depth analyses of the general situation and/or to investigate a specific situation. In general, these visits lead to the preparation of a report on the human rights situation encountered, which is then published and submitted to the OAS Permanent Council and General Assembly.
- (d) Fosters public awareness of human rights in the Americas. To that end, the Commission prepares and publishes studies on specific subjects, such as measures that should be adopted to guarantee greater access to justice; the impact of internal armed conflicts on certain groups of citizens; the human rights situation of children, women, migrant workers and their families, people deprived of their liberty, human rights defenders, indigenous peoples, and communities of African descent, racial discrimination, and freedom of expression.
- (e) Organizes and carries out visits, conferences, seminars, and meetings with representatives from governments, academic institutions, nongovernmental organizations, and other bodies, to disseminate information and promote a broader understanding of the work of the inter-American human rights system.
- (f) Makes recommendations to OAS member states for the adoption of measures that will contribute to the protection of human rights in the countries of the Hemisphere.
- (g) Requests that member states adopt "precautionary measures" in accordance with the provisions of Article 25 of its Rules of Procedure, to prevent irreparable harm to human rights in grave and urgent cases. It can also request that the Inter-American Court order the adoption of "provisional measures" in cases of extreme gravity and urgency to prevent irreparable harm to persons, even if the case has not yet been referred to the Court.
- (h) Submits cases to the Inter-American Court of Human Rights and appears in court during litigation.
- (i) Requests advisory opinions from the Inter-American Court in accordance with the provisions of Article 64 of the American Convention.

8. Any person, group of persons, or nongovernmental entity that is legally recognized in one or more OAS member states may petition the Commission with regard to the violation of any right protected by the American Convention, by the American Declaration, or by any other pertinent instrument, in accordance with the applicable provisions and its Statute and Rules of Procedure. Also, under the terms of Article 45 of the American Convention, the IACHR may consider communications from a State alleging rights violations by another state. Petitions may be filed in any of the four official languages of the OAS (English, French, Spanish, or Portuguese) by the alleged victim of the rights violation or by a third party, and, in the case of interstate petitions, by a government.

B. The Commission's Sessions in 2010

9. During the period covered by this report, the Commission met on three occasions: on March 15 to 26, 2010, at its 138th regular session; on July 12 to 16, 2010, at its 139th regular session; and on October 20 to November 5, 2010, at its 140th regular session.¹ During 2010, the Commission adopted a total of 73 admissibility reports, 10 inadmissibility reports, 11 friendly settlement reports, 55 decisions to archive, and 25 merits reports; it also decided to publish four merits reports. In total, it held 88 hearings and 47 working meetings.

1. 138th Regular Session

10. The Inter-American Commission on Human Rights (IACHR) held its 138th regular session from March 15 to 26, 2010. During the session, it elected its board of officers as follows: Felipe González as President, Paulo Sérgio Pinheiro as First Vice President, and Dinah Shelton as Second Vice President. The IACHR's other members are Commissioners María Silvia Guillén, Luz Patricia Mejía Guerrero, Rodrigo Escobar Gil, and José de Jesús Orozco Henríquez. Its Executive Secretary is Santiago Canton, and its Assistant Executive Secretary is Elizabeth Abi-Mershed.

11. At that regular session, the IACHR adopted reports on individual cases and petitions and held 35 hearings and 28 working meetings on individual petitions and cases, precautionary measures, and other general topics. During this period of sessions, the IACHR met with the President of the Inter-American Court. In addition, the Commission met with the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, and with the United Nations Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover.

12. During this session, the IACHR noted its extreme concern at the attacks and harassment suffered by human rights defenders in the region. In addition, the IACHR noted its concern at the forced displacement of thousands of people, indigenous peoples in particular, because of the construction of major infrastructure projects and the exploitation of natural resources. The IACHR saw that in many instances, those projects were being carried out without first consulting the affected indigenous peoples and without adequate measures for protecting their ancestral territories. In connection with this, the IACHR pointed out that the American Convention requires that states conduct free and informed prior consultations in order to secure the consent of indigenous peoples and communities that stand to be affected by development programs and investment projects carried out in their territories.

13. At the same time, the IACHR expressed its satisfaction at the recognition of responsibility and request for forgiveness made on March 24, 2010, by President of El Salvador Mauricio Funes for the extrajudicial killing of Msgr. Óscar Arnulfo Romero y Galdámez, Archbishop of San Salvador, thirty years after it took place. The IACHR also emphasized the progress made in cases that are undergoing friendly settlement proceedings.

14. The Commission adopted a total of 62 reports on petitions and cases: 23 admissibility reports; four inadmissibility reports; four friendly settlement reports; 27 decisions to archive; two merits reports; and two decisions to publish merits reports.

¹ For further details on the Commission's 2010 sessions, see IACHR Press Releases Nos. 38/10, 71/10, and 109/10 on the IACHR web site (www.cidh.oas.org).

2. 139th Regular Session

15. The Inter-American Commission held its 139th regular session on July 12 to 16, 2010. Because this was a session for internal matters, the IACHR held no public hearings or working meetings. The Commission adopted a total of 40 reports on petitions and cases: 13 admissibility reports; three inadmissibility reports; two friendly settlement reports; 14 decisions to archive; seven merits reports; and one decision to publish a merits report. In addition, between the 138th and 139th sessions, the IACHR adopted three admissibility reports using electronic channels.

3. 140th Regular Session

16. The Inter-American Commission held its 140th regular session from October 20 to November 5, 2010. At that session, it adopted reports on individual cases and petitions and held 53 public hearings and 19 working meetings. During the session, the IACHR met with representatives of the Justice Studies Center of the Americas (JSCA), who presented a study on preventive custody in the region.

17. The IACHR expressed its concern at the information received during the session regarding the continued existence of structural problems in the area of human rights in the region, affecting the right to life and the right to humane treatment, guarantees of due process and judicial protection, and the exercise of economic, social, and cultural rights. In addition, the Commission expressed its alarm at the information it received about the ongoing killings, harassment, and threats faced by human rights defenders, women's rights organizations, and judges and other judicial workers, and about the continued use by state authorities of statements that undermine the legitimacy of the work of organizations that defend human rights, some of which have even stigmatized them as collaborating with terrorist groups or working to destabilize the state, and it noted its concern at the effect such statements have on the security of human rights defenders.

18. The IACHR expressed its deep concern about the information it received regarding the situation of systematic discrimination and violence against lesbian, gay, bisexual, trans, and intersex persons (LGBTI) in the region. Most particularly, the IACHR expressed its concern about the situation in those countries of the English-speaking Caribbean where the conduct of LGBTI persons is criminalized, through laws in effect that impose criminal sanctions ranging from 10 years in prison or forced labor to life imprisonment for consensual sexual conduct between adults of the same sex. The Commission called for these laws to be repealed. The IACHR also received information about serious acts of violence and hate crimes perpetrated against the LGBTI community in countries of South America and Central America, as well as about the particular cruelty of the means of violence employed against members of the trans community. The Inter-American Commission decided to intensify its efforts to defend the rights of LGBTI persons, and to prepare a hemispheric report on the issue.

19. The IACHR received, with concern, information on serious problems with the implementation of precautionary measures in several of the region's countries and it called on the States to take urgent steps to provide effective protection for the beneficiaries of the measures granted by the IACHR. In addition, the Commission deplored the situations that arose during 2010 in which people attending IACHR hearings were targeted by attempts to discredit, persecute and harass them in their countries, some of which were carried out by government authorities.

20. At the same time, the IACHR expressed its satisfaction with the adoption of five friendly settlement reports in cases involving Argentina, Chile, and Mexico, and with the progress made in other friendly settlement proceedings involving Argentina, Guatemala, and Mexico. It also commended the willingness and cooperation shown by the parties at the meetings held in pursuit of those agreements and it announced its decision to strengthen this mechanism, which offers an

effective method for resolving petitions and cases. In addition, it noted the presentation of the report by the Truth Commission of Ecuador, jointly produced by state representatives and civil society, and it applauded this cooperation between government authorities and nongovernmental organizations in the defense of human rights.

21. The Commission also adopted a total of 66 reports on petitions and cases: 28 admissibility reports; three inadmissibility reports; five friendly settlement reports; 14 decisions to archive; 14 merits reports; and one decision to publish a merits report. Similarly, between the 139th and 140th sessions, the IACHR adopted four admissibility reports using electronic communications and, between November and December 2010, it adopted a further two admissibility reports using the same mechanism.

C. Visits

Argentina

22. Commissioner Luz Patricia Mejía Guerrero visited Argentina on February 15 to 17, 2010, in her capacity as Rapporteur for Argentina. The Commissioner led a delegation from the Executive Secretariat of the IACHR. The purpose of the visit was to encourage compliance with friendly settlement agreements and the IACHR's recommendations, to which end the delegation held meetings with senior authorities from the federal and provincial governments, as well as with representatives of civil society organizations.

23. Commissioner Rodrigo Escobar Gil visited Argentina on June 7 to 10, 2010, in his capacity as Rapporteur on the Rights of Persons Deprived of Liberty. During the visit, the Rapporteur for the Rights of Persons Deprived of Liberty and his delegation visited the following facilities: Greater Buenos Aires Northern Complex; Sierra Chica Unit 2; Lisandro Olmos Unit 1; the Ensenada Police Station, Third Precinct (El Dique); the Berisso Police Station, First Precinct; and the Lomas de Zamora Police Station, Sixth Precinct. The Rapporteur and his delegation also met with senior government officials and representatives of civil society organizations.

24. On December 2 and 3, 2010, Commissioner Luz Patricia Mejía Guerrero visited Argentina in her capacity as Rapporteur for Argentina, and she met with government authorities and representatives of civil society organizations.

Brazil

25. Commissioner Felipe González, President of the IACHR and Rapporteur for Brazil, made a working visit to the Federative Republic of Brazil on June 28 to July 2, 2010. During his visit, the Commissioner received the support of two attorneys from the IACHR Executive Secretariat. The aim of the visit was to prepare for the future on-site observation visit that the IACHR plans to make to Brazil in 2011, as well as to receive up-to-date information on the general human rights situation in Brazil, particularly as regards citizen security, and to make progress with cases and precautionary measures involving that country.

26. The visit began in Brasilia, where meetings were held with senior officials from the federal government and with civil society. The delegation later traveled to the city of Rio de Janeiro, to hold a series of working meetings on precautionary measures and friendly settlement proceedings in cases before the IACHR, attended by the petitioners and the corresponding federal and local authorities. It also held a meeting with broad participation by civil society organizations, and then several interviews with authorities responsible for public security and human rights. The visit concluded in the city of São Paulo, where further meetings on precautionary measures and friendly settlements were held, attended by the parties involved; in addition, the delegation met broadly with

civil society, with the governor of the state and with state authorities responsible for public security and the prisons service.

Ecuador

27. The IACHR's Rapporteurship on the Rights of Persons Deprived of Liberty visited the Republic of Ecuador on May 19 to 21, 2010, pursuant to the open and permanent invitation extended to the Commission by the State of Ecuador. The delegation comprised the Rapporteur, Commissioner Rodrigo Escobar Gil, and personnel from the Executive Secretariat. During its visit, the delegation met with government authorities, agencies of the United Nations system, and civil society organizations. It also visited the Women's Social Rehabilitation Center in Quito and Litoral Penitentiary in Guayaquil.

El Salvador

28. Commissioner Luz Patricia Mejía Guerrero visited El Salvador on November 17 to 19, 2010, in her capacity as Rapporteur on the rights of women, at the invitation of the Salvadorian government. The main aim of the visit was to gather information on forms of discrimination faced by women in the exercise of their economic, social, and cultural rights in the country, for the hemispheric report that the Rapporteur's office is preparing on that topic. During their visit, the Rapporteur and her delegation met with senior government officials, international cooperation agencies, and civil society organizations.

29. Commissioner Rodrigo Escobar Gil made a visit to El Salvador on October 5 to 9, 2010, in his capacity as Rapporteur on the Rights of Persons Deprived of Liberty. During this visit, the Rapporteur and his delegation visited the Sendero de Libertad Social Insertion Center (Ilobasco), the Quezaltepeque Penal Center, and the Zacatecoluca Maximum Security Penal Center. The Rapporteur and his delegation also met with senior government officials.

Honduras

30. The IACHR visited Honduras on May 15 to 18, 2010, in order to follow up on its August 2009 on-site visit² and its report *Honduras: Human Rights and the Coup d'État*.³

31. The delegation comprised Felipe González, President of the IACHR; Paulo Sérgio Pinheiro, First Vice President; Santiago A. Canton, Executive Secretary; Catalina Botero, the IACHR's Special Rapporteur for Freedom of Expression and personnel of the Executive Secretariat.

32. During its visit, the IACHR met with authorities from the three branches of government: the Minister Special Commissioner for Human Rights; the Office of the Attorney General and the Office of the Special Prosecutor for Human Rights; the Vice Minister for Security and the Directorate of the National Police; the Supreme Court of Justice; the officers of the National Congress and the Congressional Human Rights Committee; the Minister of Defense and the Head of the Joint Chiefs of Staff of the Armed Forces; and the Interinstitutional Human Rights Commission. In addition, it held meetings with human rights defenders, media workers, representatives of civil society, and members of the Truth and Reconciliation Commission. It also met with representatives

² IACHR, Press Release 60/09: IACHR Presents Preliminary Observations on its Visit to Honduras, August 21, 2009.

³ IACHR, Press Release 5/10: IACHR Publishes Report on Honduras, January 20, 2010. See the report *Honduras: Human Rights and the Coup d'État*.

of the United Nations system in Honduras and with ambassadors from the Stockholm Declaration Follow-up Group (G 16).

33. At the end of its visit, the Commission expressed extreme concern over the continuation of human rights violations in the context of the coup d'état of June 28, 2009. It was also able to note some progress with the restoration of democratic institutional⁴. On June 3, 2010,⁵ the IACHR published its preliminary observations⁶ on its May 2010 visit.

Panama

34. On December 14 to 19, Rapporteur Dinah Shelton, accompanied by a delegation of the Executive Secretariat, made a working visit to Panama, in order to gather evidence for the adoption of decisions on the merits in the cases of the Kuna de Madungandí and Embera de Bayano communities, and of the Ngöbe communities affected by the construction of the Chan 75 dam on the Changuinola River. During the visit, the Rapporteur met with various officials of the national government, and she traveled to the different communities involved in the cases, where she was able to talk with their authorities, members, and representatives and to observe their current situation for herself.

Paraguay

35. At the invitation of the government of Paraguay, the IACHR's Rapporteurship on the Rights of Indigenous Peoples arrived in Paraguay on September 2, 2010, to observe the general situation of the country's indigenous peoples as well as to visit indigenous communities with cases before the inter-American human rights system and to learn about the efforts of the national government in connection with them. The delegation from the Rapporteur's office was led by the Rapporteur, Commissioner Dinah Shelton. The delegation visited the communities of Yakye Axa, Sawhoyamaxa, and Kelyenmagategma, and it met with government authorities and with indigenous leaders and authorities.

D. Thematic and Country Reports

36. During 2010, the Inter-American Commission published the following thematic reports:

- *Report on Citizen Security and Human Rights.*
- *Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco.*
- *Report on Access to Maternal Health Services from a Human Rights Perspective.*

37. It also approved the following thematic reports:

- *Report on Migrations in the United States: Detention and Due Process.*

⁴ IACHR, Press Release 54/10: IACHR Expresses Concern about Human Rights Violations in Honduras at the Conclusion of its Visit, May 19, 2010. Released at a press conference held in Tegucigalpa by IACHR President Felipe González and Executive Secretary Santiago A. Canton.

⁵ IACHR, Press Release 59/10: IACHR Publishes Observations on its Follow-Up Visit to Honduras, July 7, 2010.

⁶ IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010.*

38. In addition, over this year the Inter-American Commission on Human Rights published the following reports on the situation of human rights in specific countries in the region:

- *Honduras: Impact of the Coup d'État on the Human Rights Situation* (published on January 20, 2010).
- *Democracy and Human Rights in Venezuela* (published on February 24, 2010).
- *Preliminary Observations on its Visit to Honduras, May 15 to 18, 2010* (published on June 3, 2010).

E. Activities of the Rapporteurships⁷

1. Rapporteurship on the Rights of Indigenous Peoples

39. For the organs of the inter-American system, protecting and ensuring respect for the rights of indigenous peoples is a matter of particular importance. Since 1972, the Inter-American Commission has maintained that for historical reasons and based on moral and humanitarian principles, States have a sacred and special commitment to ensure the rights of indigenous peoples. In 1990, the Rapporteurship on the Rights of Indigenous Peoples was created to attend the indigenous peoples of the Americas, who are particularly exposed to human rights violations on account of their vulnerable situations, and to strengthen, promote, and systematize the work of the Inter-American Commission in that area. Commissioner Dinah Shelton has served as the Rapporteur since January 2010 and, in March 2010, the Colombian attorney Federico Guzmán was hired as a specialist on the rights of indigenous peoples.

40. During 2010, the Rapporteurship took actions in several areas to protect and promote the rights of indigenous peoples and their members in the Americas: (a) the cases and petitions system, evaluating and adopting precautionary measures, and formalities before the Inter-American Court of Human Rights, (b) visits to OAS member countries, (c) organization of and participation at training seminars for lawyers, leaders, and defenders of the rights of indigenous peoples, (d) establishing interinstitutional ties with international financial agencies, (e) efforts to promote and publicize the human rights of indigenous peoples, (f) publishing thematic studies, and (g) general monitoring of the human rights situation among the Hemisphere's indigenous peoples.

a. During 2010, working with its specialized perspective, the Rapporteurship cooperated with the IACHR's various regional sections in pursuing and resolving individual cases and petitions; it participated, along with the specialists of the protection group, in evaluating and deciding on various requests for precautionary measures received during 2010; and it took part in preparing and presenting the IACHR's merits claims to the Inter-American Court of Human Rights.

b. During the year, the Rapporteur's office made two visits to OAS member countries:

- On September 3 to 7, Rapporteur Dinah Shelton, accompanied by attorney Federico Guzmán, made a working visit to Paraguay, with the twin goals of visiting various indigenous communities that have or have had cases before the inter-American system and of obtaining information on the general situation among Paraguay's indigenous population. The IACHR delegation met with senior State officials, and it held a meeting in Asunción with representatives of some 30 indigenous organizations and human rights organizations. It also

⁷ The activities of the Special Rapporteurship for Freedom of Expression may be found in Volume II of this Annual Report.

visited the Enxet-Sanapaná people's communities of Yakye Axa, Sawhoyamaxa, and Kelyenmagategma in the Chaco region, and the Guarani Mbya community of Y'aká Marangatú in the eastern region, where it met with traditional leaders and authorities, saw their living conditions, and gathered valuable information for the various proceedings before the Commission and the Court. Based on the comments made by the Rapporteurship and on the information available, a report on the human rights situation of Paraguay's indigenous peoples is being finalized.

- On December 14 to 19, Rapporteur Dinah Shelton, accompanied by attorney Federico Guzmán and attorney Lilly Ching of the Court Group, made a working visit to Panama to gather elements for the adoption of decisions on the merits in the cases of the Kuna de Madungandí and Embera de Bayano communities, and of the Ngöbe communities affected by the construction of the Chan 75 dam on the Changuinola River. During the visit, the Rapporteur met with various officials of the national government, and she traveled to the different communities involved in the cases, where she was able to talk with their authorities, members, and representatives and observe *in situ* their current situation.

c. During 2010, the Rapporteurship also organized and participated in training seminars for lawyers, leaders, and defenders of the rights of indigenous peoples. On June 3 and 4, in conjunction with the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, the Rapporteurship conducted a training seminar on the inter-American and international systems for the protection of indigenous peoples' rights; held in Washington, it was attended by a number of indigenous leaders and lawyers representing several peoples and organizations from the United States and Canada. On June 22, the Rapporteurship and various IACHR specialists gave a training workshop on the inter-American human rights protection system at the seminar on Mechanisms for Participation by Indigenous Peoples in the OAS, organized in Washington by the OAS Department of International Law and attended by indigenous leaders from several nations of the Americas. On September 14, attorney Federico Guzmán participated at the training seminar on "The Rights of Indigenous Peoples in the Inter-American System," organized by the Department of International Law in San José, Costa Rica, at which some fifteen indigenous leaders and lawyers from Central America received training in the various mechanisms offered by the IACHR for the protection of their human rights. On December 3 to 5, attorney Federico Guzmán spoke at a training workshop at the Hato Chamí indigenous community, in Panama's Ngöbe-Buglé *comarca*, at which various leaders, community promoters, and lawyers from the Ngöbe indigenous people received training regarding the scope of their territorial rights and the tools for their protection offered by the inter-American system.

d. During 2010, the Rapporteurship also forged a series of cooperative ties with international financial institutions that support projects that could affect the indigenous and tribal peoples of the Americas. On July 29, Rapporteur Dinah Shelton, the UN Rapporteur on the rights of indigenous peoples, and other international experts participated at a consultation panel organized by the International Financial Corporation on the topic of informed consent regarding development projects, investments, or exploitation of natural resources. On September 30, IACHR Assistant Executive Secretary Elizabeth Abi-Mershed and attorney Federico Guzmán gave technical and political officers of the Inter-American Development Bank an explanatory presentation on the inter-American system, the IACHR's protection mechanisms, and the scope of legal precedents *vis-à-vis* the territorial rights of indigenous peoples.

e. The Rapporteurship also carried out a number of activities to promote and disseminate the human rights of indigenous peoples during 2010. On April 14, attorney Federico Guzmán spoke at the discussion forum on the "Rights of Indigenous Peoples in the Inter-American Human Rights System," which was held in Lima and was organized by APRODEH, CEPES, and other organizations for the benefit of various indigenous leaders and defenders of the rights of indigenous

peoples in Peru. On November 12, IACHR Executive Secretary Santiago Canton and attorney Federico Guzmán gave an explanatory presentation on the IACHR's work and the territorial rights of indigenous peoples within the inter-American system at the virtual symposium "Centuries of Change: State of the Native Nations," which was jointly organized by the Smithsonian Institution's National Museum of the American Indian and the OAS, in Washington.

f. In 2010, the Rapporteurship also concluded the editing and updating of the IACHR's thematic report on indigenous peoples' rights over their ancestral territories and natural resources.

g. Finally, during 2010 the Rapporteurship conducted constant monitoring of the effective enjoyment of individual and collective human rights among indigenous peoples and their members, making use, when appropriate, of the different instruments for action available to it, including press releases (issued in 2010 for matters including the killings of various indigenous leaders in Colombia) or requests for information under Article 41 of the American Convention (made for cases including the confinement of the Guarani-Kaiowah community in Brazil, an oil spill on the Marañón River in the Peruvian Amazon, the arrest and prosecution of a Camentsá spiritual authority from Colombia by United States immigration authorities, or the Chilean authorities' criminal prosecution of children and young people of the Mapuche people).

2. Rapporteurship on the Rights of Women

41. The Rapporteurship on the Rights of Women, under Commissioner Luz Patricia Mejía, continued with various initiatives to gather qualitative and quantitative information for identifying the main progress made and challenges faced by women in exercising their rights without discrimination, particularly as regards their economic, social, and cultural rights, access to justice by women who have suffered sexual violence, political participation, and reproductive rights. These projects enjoy financial support from the governments of Finland and Spain and the United Nations Population Fund, and they are intended to lead to the publication of thematic reports with recommendations whereby the States can better meet their human rights obligations in those areas. The Rapporteurship also continued to support the activities of the individual petitions system and the studying and processing of precautionary measures, cases, and communications involving women's rights.

42. On April 15, 2010, the IACHR published a follow-up report on the recommendations made in the report *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, published on October 18, 2006. That report appears in Chapter V of the IACHR's Annual Report for 2009. In its follow-up report, the Commission noted the efforts of the Colombian State to adopt legislative and public-policy measures to protect the rights of women from the impact of violence and discrimination caused by the dynamics of armed conflict. However, the Commission found that the violence perpetrated by all the players in the internal conflict continues to have a differentiated effect, worsening the historical discrimination that Colombian women have endured. The Commission thus noted with concern that the main forms of violence against women identified in the 2006 report – physical, sexual, and psychological violence, forced recruitment, the imposition of guidelines for social behavior, and forced displacement – continued to affect women of all ages, races, and ethnic origins in Colombia. The Commission concluded by stating that major challenges remained before the recommendations made in the 2006 report could be fully implemented.

43. As a part of its initiative on women's reproductive rights, on August 2, 2010, the IACHR published its report *Access to Maternal Health Services from a Human Rights Perspective*, which was adopted on June 7, 2010. The report identifies the human rights obligations of OAS member States in guaranteeing all women effective and discrimination-free access to maternal health services. In addition, the report states that protecting women's right to physical integrity in the area of maternal health requires guaranteeing that women enjoy equality of access to health

services related to pregnancy, childbirth, and the postpartum period, as well as to other services and to information on reproductive issues. The report's recommendations deal chiefly with the duties of the State in protecting and promoting women's human rights in their discrimination-free access to maternal health services. The Rapporteurship is also preparing a report on access to information about reproductive matters, which it expects to publish next year.

44. As a part of its projects dealing with the economic, social, and cultural rights of women, during the IACHR's regular periods of sessions held this year, the Rapporteurship for Women organized two thematic hearings – one on March 23 and the other on October 26 – to receive information on the main forms of discrimination that women face in exercising their economic and social rights in the Americas, in particular in their access to and control of economic resources, educational opportunities, and employment conditions. In addition, a questionnaire was distributed among the states and the general public in order to gather information on the main progress made and challenges faced by the women of those countries in exercising their economic, social, and cultural rights, specifically in the areas of employment, education, and equitable access to and control of resources.

45. The Rapporteurship also organized two expert meetings in Washington, D.C.; held on October 18 and 19, which were attended by twenty experts from across the Americas, representing academia, civil society, international organizations, State agencies, and other sectors. On October 18, the work focused on identifying progress and challenges in the discrimination-free protection of the economic, social, and cultural rights of women in the areas of employment, education, and access to and control of resources in the Americas. The information gathered will be analyzed in a special report with specific recommendations intended to improve and strengthen laws, policies, and practices for dealing with the problem of discrimination and ensuring that women's economic, social, and cultural rights receive appropriate respect and protection. On October 19, the topic was sexual violence against women as an obstacle to the exercise of their rights to education and to health, and the main barriers that women face in securing access to effective judicial remedies to remedy that problem. The information gathered will be analyzed in a special report with specific recommendations intended to improve and strengthen laws, public policies, and practices for ensuring that acts of sexual violence against women, particularly those perpetrated in the areas of education and health, are appropriately punished.

46. The Rapporteurship also made a working visit to El Salvador on November 17 to 19, 2010, to gather information at the national level on the main progress made and challenges faced by women in exercising their economic, social, and cultural rights without discrimination. During this visit, on November 18, 2010, the Rapporteurship was able to present the report *Access to Maternal Health Services from a Human Rights Perspective*. In addition, on November 19, the Rapporteur's office organized two workshops to provide officials from all levels of government and civil society organizations with training on the standards and mechanisms of the inter-American human rights system as they apply to discrimination and women's economic, social, and cultural rights.

47. The Rapporteurship is also preparing a report, planned for publication next year, in which it will examine the main progress made and challenges remaining in the OAS member States' compliance with their positive and negative obligations in respecting and ensuring the equal participation and representation of women in the political field, from a human rights perspective.

48. Finally, in the context of its support for the IACHR's work in processing individual petitions and precautionary measures involving the women's rights and in litigating cases before the Inter-American Court of Human Rights, the Rapporteurship participated in two public hearings convened by the Inter-American Court. The public hearing in the case of *Inés Fernández Ortega et al. v. Mexico* was held on April 15 in Lima, Peru. The public hearing in the case of *Valentina Rosendo Cantú et al. v. Mexico* was held on May 27, 2010, in San José, Costa Rica. The

judgments in both these cases were published this year by the Inter-American Court of Human Rights.

3. Rapporteurship on the Rights of the Child

49. The Rapporteurship on the Rights of the Child, under Commissioner Paulo Sérgio Pinheiro, has continued its promotional work and to publish reports addressing the various forms of violence faced by children and adolescents in the Americas.

50. Thus, during the first half of 2010, with the cooperation of the Regional Office for Latin America and the Caribbean of United Nations Children's Fund (UNICEF) and with financial support from the Inter-American Development Bank, the IACHR concluded its research for the draft *Report on Juvenile Justice and Human Rights in the Americas*. In June 2010, using funds from the Government of Luxembourg, consultancy services were hired to make the final adjustments to the draft *Report on Juvenile Justice and Human Rights*. Those funds include the cost of its editing, translation, and publication. The report will be released during the first quarter of 2011.

51. In the second half of 2010, the Rapporteurship on the Rights of the Child embarked on a new cooperation agreement, signed by the IACHR and the Regional Office for Latin America and the Caribbean of the United Nations Children's Fund (UNICEF), to prepare the conceptual framework, methodology, questionnaire, surveys, and guidelines for a *Report on the Situation of Institutionalized Children and Adolescents in the Americas*. During 2011, the office of the Rapporteur on the Rights of the Child will gather and request information, organize surveys, meetings, and discussion groups, and it will draft, edit, and publish the report in question.

52. Between June and October 2010, with the support of UNICEF, the Rapporteur for the Rights of the Child attended several outreach events in the Americas related to the *Report on Corporal Punishment and Human Rights of Children and Adolescents*. These included events on citizen security and violence against children organized by the Regional Office of the United Nations High Commissioner for Human Rights and UNICEF in El Salvador⁸ and in Panama City.⁹

53. During his visit to El Salvador, the Rapporteur held meetings with government authorities, including the National Public Security Council, the Public Security Directorate of the National Civilian Police, the National Public Security Academy, and the Executive Directorate of the Salvadoran Institute for the Integral Development of Children and Adolescents. He also met with various organizations that work on children's issues, such as the Network for Children and Adolescents.

54. In addition, as part of his duties as Rapporteur on the Rights of Children, Commissioner Pinheiro attended conferences dealing with the eradication of corporal punishment and violence against children and adolescents in Brazil¹⁰ and Peru.¹¹ On October 14, Commissioner Pinheiro attended a parallel event to the United Nations General Assembly in New York, organized

⁸ Information may be found in the following press release on the UNICEF–El Salvador web site: http://www.unicef.org/spanish/infobycountry/elsalvador_53997.html.

⁹ Information may be found in the following press release on the UNICEF–Panama web site: http://www.unicef.org/panama/spanish/media_18138.htm.

¹⁰ Information may be found in the following press release on the web site of Save the Children Sweden (Regional Program for Latin America and the Caribbean): http://www.scslat.org/web/noticias_detalle.php?id=E&tip=N&cod=475&are=&sare=&rgc=9&srqc=&ani=2010.

¹¹ The interview with the Rapporteur on the Rights of Children may be seen on the web page of Save the Children Sweden: http://www.savethechildren.org.pe/web/upload/archivos/archivo_187.pdf.

by the Government of Norway and focused on the elimination of inhumane court rulings handed down against children and adolescents¹² and, on October 24, he attended the “International Forum on the Criminal Responsibility of Adolescents,” held in Bogotá, Colombia.¹³ Finally, the Rapporteur participated at the “Latin American Meeting on Indigenous Peoples and Governance: From Declaration to Action,” held in Cartagena de Indias, Colombia, which centered on forced labor among indigenous children and adolescents.¹⁴

55. During the hearings held in 2010, the Rapporteur received information on the obstacles faced by children and adolescents in connection with domestic and sexual violence in Nicaragua, the situation of children and adolescents forcibly recruited into military structures in Peru, the situation of indigenous children and adolescents in educational and psychiatric institutions in the United States, and the violations of the human rights of children and adolescents in the area of Ouanaminthe, Haiti.

56. In addition, he sent letters under Article 41 in connection with the situation of the Mapuche children detained and prosecuted under Chile’s antiterrorist legislation, with the violence faced by children and adolescents in El Salvador and Honduras, and with the forced recruitment of children and adolescents in Peru.

57. Finally, on November 15, a consultant was hired on a six-and-a-half-month contract to work on petitions and cases, assist with updating the web page of the office of the Rapporteurship on the Rights of the Child, and to support the activities of the Rapporteur’s office, using funds from Save The Children that will also be used to finance outreach travel by the Rapporteur.

4. Rapporteur on the Rights of Persons Deprived of Liberty

58. During 2010 the Rapporteurship on the Rights of Persons Deprived of Liberty in the Americas, under Commissioner Rodrigo Escobar Gil, continued with its activities in support of the individual petitions system and with the study and processing of precautionary measures, cases, and communications involving the rights of detained and imprisoned individuals. The Rapporteurship also continued with its efforts to promote recognition and respect for the rights of detainees in the region.

59. In that context, the Rapporteurship made a working visit to the Republic of Ecuador on May 19 to 21, 2010, under the open and permanent invitation extended to the IACHR by the Ecuadorian State. The Rapporteur met with the Vice Minister for Foreign Affairs, Trade, and Integration, the Minister for Justice and Human Rights, the President of the National Court of Justice, the National Director for Social Rehabilitation, the Under Secretary for Social Rehabilitation, and technical staff from the Ministry of Justice and Human Rights. In addition, the delegation met with the Human Rights Adviser for Ecuador of the United Nations Office of the High Commissioner for Human Rights and with representatives from civil society organizations.

¹² Information may be found on the web page of the Permanent Mission of Norway to the United Nations: <http://www.norway-un.org/Events/Event-Ending-inhuman-sentencing-of-children/>, as well as in the program of the 23rd National Congress of the ABMP, available at: <http://juecesinfanciamercosur.org/programaBrasilia.pdf>.

¹³ The information may be found on the web page of the University of the Andes: <http://cia.uniandes.edu.co/index.php/component/eventlist/details/6-FORO%20INTERNACIONAL%20SOBRE%20RESPONSABILIDAD%20PENAL%20PARA%20ADOLESCENTES>.

¹⁴ Information may be found in the following press release on the UNICEF Peru web page: http://www.unicef.org/peru/spanish/nueva_declaracion.pdf

60. It also visited the Women's Social Rehabilitation Center in Quito and Litoral Penitentiary in Guayaquil. At Litoral Penitentiary, the Rapporteur visited the Men's Prison, the Women's Center, and the Temporary Detention Center. The Rapporteur's office also organized a workshop on principles and good practices for protecting detainees, which was attended by prison service instructors, candidates for employment as prison guards, representatives of civil society, and the general public.¹⁵

61. Then, on June 7 to 10, the Rapporteurship made a working visit to the Argentine Republic under the open and permanent invitation extended to the IACHR by the Argentine State. In the city of Buenos Aires, the delegation met with the country's Vice Minister for Foreign Affairs, the federal Minister for Justice, Security, and Human Rights, the Director of the Federal Prisons Service, and the Vice President of the Supreme Court of Justice of the Nation. In the city of La Plata, the capital of the province of Buenos Aires, the delegation met with the President of the Supreme Court of Justice, the Attorney General, the Minister for Justice and Security, the Deputy Secretary for Criminal Policy, the head of the Buenos Aires Prisons Service, and the Buenos Aires Provincial Appeals Defender. The Rapporteurship also met with a major delegation of civil society organizations and with the Committee Against Torture of the Provincial Memory Commission.

62. The delegation's members visited the Greater Buenos Aires Northern Complex; Sierra Chica Unit 2; Lisandro Olmos Unit 1; the Ensenada Police Station, Third Precinct (El Dique); the Berisso Police Station, First Precinct; and the Lomas de Zamora Police Station, Sixth Precinct. During those visits the delegation met with the facilities' authorities and spoke with a large number of inmates. As a promotional activity, the Rapporteurship organized a workshop on principles and good practices for protecting detainees at the auditorium of the Supreme Court of Justice of the Province of Buenos Aires.¹⁶

63. In addition, as part of the Rapporteurship's cooperation with the universal human rights protection system, specialist attorney Andrés Pizarro Sotomayor of the Rapporteur's office participated as a panelist at the "Seminar on National Mechanisms for the Prevention of Torture," held on June 30 and July 1, 2010, in Montevideo, Uruguay. That event was organized by the Association for the Prevention of Torture (APT) and the Office of the United Nations High Commissioner for Human Rights.

64. The Rapporteurship made a working visit to the Republic of El Salvador on October 5 to 9. During his visit, the Rapporteur for the Rights of Persons Deprived of Liberty met with Carlos Castañeda, the Vice Minister for Foreign Affairs and Economic Integration and Promotion; David Morales, the Director General for Human Rights at the Ministry of Foreign Affairs; Manuel Melgar, the Minister of Justice and Public Security; Douglas Mauricio Moreno, the Director General of Penitentiaries; Nelson Rauda, the Deputy Director General of Penitentiaries; Irma Mejía, the Director General of Halfway Houses; Luis Enrique Salazar, the Executive Director of the Salvadoran Institute for the Integral Development of Children and Adolescents (ISNA); Israel Elías Figueroa Cárcamo, the Head of the Social Inclusion Division; Salvador Menéndez Leal, the Deputy Attorney for the Defense of Human Rights; Walter Gerardo Alegría, the Deputy Attorney for Civil and Political Rights; Leonor Arteaga, the Deputy Attorney for Children and Youth; and Rosa Elena Ramos, the Head of the Prisons Unit at the office of the Attorney for the Defense of Human Rights. In addition, Commissioner Rodrigo Escobar Gil met with Drs. Rodolfo González, Sidney Blanco, and Florentín Meléndez, judges of the Constitutional Chamber of the Supreme Court of Justice of the Republic.

¹⁵ IACHR, Press Release 56/10: "IACHR Rapporteurship on Persons Deprived of Liberty Concludes Visit to Ecuador," May 28, 2010.

¹⁶ IACHR, Press Release 64/10: "IACHR Rapporteurship Confirms Grave Detention Conditions in Buenos Aires Province," June 21, 2010.

65. The delegation's members visited the Sendero de Libertad Reeducation Center in Ilobasco, Quezaltepeque Penitentiary, and the Zacatecoluca Maximum Security Penitentiary. During those visits the delegation met with the facilities' authorities and spoke with a large number of inmates.¹⁷

66. In addition, as a part of his mandate to carry out outreach activities, Commissioner Rodrigo Escobar Gil participated at the following events in his capacity as Rapporteur on the Rights of Persons Deprived of Liberty:

- International Symposium on Prison Law and Human Rights, organized by Colombia's National Penitentiary Institute (INPEC). This academic event took place on July 28 to 30 at the Parque Biblioteca Belén Auditorium in the city of Medellín, and the speakers included Dr. Escobar Gil and attorney Andrés Pizarro Sotomayor of the Rapporteur's office.
- Second Human Rights Congress of the University of Chile, held at the university on August 11 to 13; Commissioner Escobar Gil gave a lecture on non-custodial measures.
- Sixth Meeting of Constitutional Jurisdiction: Dialogues with the Nation, held at the Gonzalo Jiménez de Quesada Convention Center in Bogotá on September 30 to October 3; Commissioner Escobar Gil gave a lecture titled: "The View of the Agencies of the Inter-American Human Rights Protection System vis-à-vis Constitutional Jurisprudence on Human Rights."
- Panel "Analysis of the prison situation, criminal policy, and judicial responses to that situation in Latin America," organized by the University of the Andes in November 2010. The Rapporteur participated with the paper "Overview of the Prison Situation in Latin America."

5. Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination

67. The Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination, under Commissioner María Silvia Guillén, continued its efforts to promote recognition of and respect for the rights of people of African descent in the region. During this year, the Rapporteur's office continued to advise the Executive Secretariat in the evaluation of petitions and requests for precautionary measures involving racial discrimination and/or the situation of people of African descent in the Americas; it also held various hearings on the topic at the IACHR's 138th, 139th, and 140th regular periods of sessions.

68. The Rapporteurship continued to provide technical assistance to the Working Group of the OAS Committee on Juridical and Political Affairs charged with preparing a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance. The sessions of the Working Group recommenced on February 18, 2010, and they ended on May 20, 2010, with the finalization of the draft resolution "Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance," which was submitted to the General Assembly in Lima, Peru. The Working Group's following period of sessions began on September 27, 2010.

69. The attorney from the Rapporteurship, Leonardo Hidaka, participated and gave a presentation on the inter-American system and discrimination against women of African descent at the event "Participation and Involvement of Afro-Descendant Women in the Organization of American States in the Context of the Inter-American Year of Women," organized by the organizations Global Rights – Partners for Justice and the Network of Afro-Latin-American, Afro-Caribbean, and Diaspora Women, held in Panama City on February 23 and 24, 2010

¹⁷ IACHR, Press Release 104/10: "IACHR Office of the Rapporteur Attests to Structural Deficiencies in Prison System of El Salvador," October 20, 2010.

70. The Rapporteurship also participated at a forum on "Participation and Involvement of Afro-Descendants in the Organization of American States," organized by the Global Rights – Partners for Justice organization and held in Lima, Peru, on June 4. The event discussed such topics as the situation of people of African descent in the Hemisphere, with particular emphasis on Peru, civil society participation in the OAS, and the recognition of the United Nations International Year for People of African Descent in 2011.

71. The Rapporteurship also participated and gave a presentation on the inter-American system at the training course "Increasing the Participation and Influence of People of African Descent in the Organization of American States and the Summits of the Americas Process," organized by Global Rights – Partners for Justice and held in Washington D.C., on September 15, 2010. The course was attended by 19 activists for Afro-descendants' human rights from 11 of the Hemisphere's countries.

72. Finally, the attorney from the Rapporteurship attended the "Second Meeting between Organizations of the Colombian Pacific and International Cooperation Agencies," organized by the USAID Human Rights Program and the Trust for the Americas and held in Tumaco, Colombia, on October 12, 2010; on that occasion he gave a presentation on the inter-American system and presented the report "Preliminary Observations of the IACHR after the visit of the Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination to the Republic of Colombia." The course was attended by more than 100 activists working for the human rights of Afro-Colombians from the cities of Tumaco (department of Nariño), Buenaventura (department of Valle del Cauca), and Quibdó (department of Chocó).

6. Rapporteurship on the Rights of Migrant Workers and Their Families

73. The Rapporteurship attended the "7th Regional Course on International Refugee Law in Latin America," which was hosted by the United Nations High Commissioner for Refugees (UNHCR) and took place in Panama City on September 9, 2010; at the event it gave a presentation on the protection mechanisms offered for migrants and refugees in the region by the inter-American system. The course was attended by State officials responsible for granting asylum and refugee status in the Hemisphere.

74. The Rapporteur also gave a special message at the "Meeting on Transnational Organized Crime and Migrant Security," held in Mexico City on October 8, 2010. His message emphasized the importance of respecting the human rights of migrants and other vulnerable groups, particularly in the context of crime-fighting efforts.

75. On November 8 and 9, 2010, the Rapporteurship attended the "Regional Humanitarian Conference on the Protection of Refugees and Displaced Persons," held in Quito, Ecuador, and sponsored by the IACHR, the UNHCR, and several other organizations. The event was organized at the initiative of civil society in order to encourage a regional dialogue on refugee-related topics, and it was attended by delegates from several of the region's countries, civil society organizations, and representatives of international agencies specializing in the area.

76. The Rapporteurship was also represented at the "7th Inter-American Course for Civil Society," held at the headquarters of the Inter-American Institute of Human Rights in San José, Costa Rica, on November 15 to 19, 2010. The course focused on the rights of women, indigenous peoples, and migrants in borderlands. The participation of the Rapporteurship included the presentation of an overview of the situation of migrants in Latin America and the Caribbean and of the protection mechanisms offered by the inter-American human rights system.

77. During 2010, the IACHR concluded its draft "Report on immigration in the United States: detention and due process". The draft was transmitted to the United States in August 2010 pursuant to the Rules of Procedure of the Inter-American Commission, and once the response was received it was incorporated, where relevant, in the final version approved on December 30, 2010. The Inter-American Commission Report is based on information gathered during the July 2009 visit to Texas and Arizona by the Rapporteur on Migrant Workers and their Families, Commissioner Felipe Gonzalez. It is also based on information received before, during and after the visit from several sources, including official reports and briefings, hearings before the IACHR, as well as consultations and interviews with immigration experts in the United States, international organizations, attorneys and defenders of the rights of migrants. The report, which will be published in early 2011, includes an analysis of relevant international standards on the human rights of immigrants; the IACHR's observations and concerns with regard to immigration detention, certain immigration enforcement procedures, detention conditions and the impact on due process; and it closes with final conclusions and recommendations. Throughout the report, the IACHR makes reference to certain particularly vulnerable groups where immigration detention is concerned, such as unaccompanied children, migrant families, those seeking asylum, persons with mental disabilities or disorders, and others.

7. Human Rights Defenders Unit

78. During 2010, the Human Rights Defenders Unit continued to receive information on threats, attacks, and harassment of human rights defenders in the region, with particularly grave situations reported in Mexico, Guatemala, El Salvador, Honduras, Nicaragua, Panama, Brazil, Colombia, Venezuela, and Paraguay. This can be seen in the fact that more than a third of the precautionary measures requested or expanded during the year were aimed at protecting the lives and persons of defenders in the region who were at risk on account of their work.

79. The Unit continued work on preparing the follow-up report on the *Report on the Situation of Human Rights Defenders in the Americas*, approved on March 7, 2006. For this, the Unit sent out questionnaires to gather updated information from the member states and civil society in late 2010. The information provided will be analyzed in a report specifically intended to follow up on compliance with the recommendations made in 2006 for increasing and improving the protection afforded to human rights defenders, to identify new problems that they face, and to encourage the full use of international standards in providing states with guidance on lines of action to be followed in providing effective protection for defenders' rights.

80. In addition, at the IACHR's 140th regular session, the Unit held a meeting with defenders from across the region to discuss the main challenges they face in their work, to coordinate activities with the Unit, and, in particular, to follow up on the 2006 report on defenders.

81. In late November 2010, Commissioner José de Jesús Orozco Henríquez attended the launch of the report on the situation of defenders in Mexico published by the Office in Mexico of the United Nations High Commissioner for Human Rights. Similarly, in early December 2010, the IACHR's Executive Secretary attended the "4th Regional Forum on Human Rights Defenders in Southeast Asia" at the invitation of the Forum Asia organization. The event was also attended by representatives from other international and regional agencies that work to protect defenders.

82. In addition, the Defenders Unit attended the "3rd Meeting of Protection Mechanisms for Human Rights Defenders," held in Warsaw, Poland, on December 8 and 9, 2010. Representing the IACHR were Commissioner José de Jesús Orozco and Executive Secretary Santiago Canton. Also present were the United Nations Special Rapporteur for defenders, Margaret Sekaggya; the Commissioner for Human Rights of the Council of Europe; the Special Rapporteur on the situation of defenders of the African Commission on Human and Peoples' Rights; the Focal Point for Human Rights Defenders and National Human Rights Institutions of the Organization for Security and

Cooperation in Europe (OSCE); as well as other international mechanisms for the protection of defenders.

83. Finally, in September 2010, the Mexican attorney Jorge Humberto Meza joined the Unit's team under an 11-month fellowship. The Unit for Human Rights Defenders Scholarship seeks to continue with the professional training program for young lawyers in the specific area of monitoring the situation of human rights defenders, as well as to provide technical support for the Unit's work.

F. Other Events and Activities

Inter-American Human Rights Treaties

84. The following developments took place in connection with the seven inter-American human rights instruments: On January 13, 2010, Chile ratified the Inter-American Convention on Forced Disappearance of Persons and, on January 26, 2010, it deposited its instrument of ratification.

85. On March 5, 2010, Nicaragua deposited its instrument of ratification of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights ("Protocol of San Salvador").

Scholarships and Internships

86. The Commission continued with its Rómulo Gallegos Scholarship Program during 2010. The program offers training on the inter-American system for the promotion and protection of human rights to young lawyers from the Hemisphere's countries, who are selected annually by means of a competition, at which time they must demonstrate their commitment to human rights as well as a solid academic record. Over 2010, 15 scholarship recipients worked with the Commission: nine in the first half of the year, for the 2009-2010 scholarship period, which included, in addition to three Rómulo Gallegos scholarships, four thematic scholarships – three with the office of the Special Rapporteur's on the Rights of Indigenous Peoples and one with the office of the Rapporteur for the Rights of Women – one University of Notre Dame scholarship, and one University of Quebec scholarship. During the second half of the year, six scholarship recipients began work. Those awarded for the 2010-2011 period included three Rómulo Gallegos scholarships, one thematic scholarship for the Human Rights Defenders Unit, one with the University of Notre Dame, and one with the University of Quebec.

| | | |
|-----------|--|----------|
| 2009-2010 | Alma Beltrán y Puga (Women's Rapporteurship Scholarship) | Mexico |
| | Lisa Cowan | USA |
| | Natalia Inés Chudyk Rumak | Paraguay |
| | Luis Alberto Cantoral Benavides | Peru |
| | Émilie Jutras (Brian Tittmore Scholarship) | Canada |
| | Camilo Mejía Gómez (Notre Dame Scholarship) | Colombia |

| | | |
|-----------|--|-----------|
| | Miriam Liz Andela (Indigenous Peoples Scholarship) | Colombia |
| | Helga Ybanova Tzicap González (Indigenous Peoples Scholarship) | Guatemala |
| | Maurilio Santiago Reyes (Indigenous Peoples Scholarship) | Mexico |
| 2010-2011 | Anya Mónica Victoria Delgado (Notre Dame Scholarship) | Mexico |
| | Matías Alonso Meza-Lopehandía Glaesser | Chile |
| | Adriana Caicedo Trujillo | Colombia |
| | Rushelle Amanda Liverpool | Guyana |
| | Étienne Chénier-Lafèche (Brian Titemore Scholarship) | Canada |
| | Jorge Humberto Meza Flores (Human Rights Defenders Unit Scholarship) | Mexico |

87. In addition to its scholarships, the Commission continued with and expanded its program of internships. These internships, which are administered in conjunction with the OAS Student Intern Program, are targeted at university students, graduates, and young professionals, to allow them to gain practical experience with the inter-American system as it relates to their fields of study. Specifically, the goal of the internships is to offer students and recent graduates in law or other related disciplines the opportunity to learn about the Commission's work. It also offers professionals an opportunity to acquire practical training in the human rights area and to work alongside the Executive Secretariat's attorneys in the different activities carried out by the IACHR. In 2010, the Commission received a total of 35 interns. Additional information on the scholarship and internship programs is available on the Commission's web site at www.cidh.org.

Activities of cooperation with other human rights institutions

88. Over 2010, the members of the Commission and the Secretariat took part in different activities of cooperation with other human rights institutions.

89. In April, the United Nations Secretary-General's Special Adviser for the Prevention of Genocide, Francis Deng, visited the Executive Secretariat in order to discuss areas for joint cooperation and exchanges of information.

90. In May, the Executive Secretary represented the IACHR at a meeting on cooperation between the United Nations universal system and the regional human rights protection systems, which was organized by the office of the United Nations High Commissioner for Human Rights (UNHCHR) and held in Geneva, Switzerland.

91. On June 14 to 25, 2010, the IACHR Executive Secretariat received a visit by a delegation from the African Commission on Human and Peoples' Rights, led by the Vice-Chairperson of the African Commission, Mumba Malila, its Executive Secretary, Mary Maboreke, and four staff members from its Secretariat.¹⁸ The Second Vice-President of the IACHR, Commissioner Dinah Shelton, along with members of the Commission's Executive Secretariat, attended the various activities organized at the IACHR's initiative for exchanging information on good practices for

¹⁸ In addition to the African Commission's Vice-Chairperson and Executive Secretary, the delegation included two lawyers from the Secretariat (Chafi Bakari and Feyi Ogunade), Finance and Administration Officer Dorica Kgwadi, and Documentation Officer Eliot Nsega.

handling cases, implementing recommendations, and publicizing the systems. The IACHR is currently working with the African Commission on establishing ties and information exchanges.

92. On August 25 to 27, 2010, the Executive Secretariat participated at the regional consultation of the office of the United Nations High Commissioner for Human Rights on the role of the UNHCHR's national offices in light of current political, social, and economic trends in the Americas.

93. On November 16, 2010, the Second Vice-President of the IACHR, Dinah Shelton, along with several specialists from the Executive Secretariat, met with the ten members of the recently created Intergovernmental Commission on Human Rights (AICHR) of the Association of Southeast Asian Nations (ASEAN) at the headquarters of the Inter-American Commission. The event saw an exchange of information on the mandates of the two human rights commissions and on the mechanisms available to each for promoting and protecting human rights in the regions over which they have jurisdiction. A dialogue also took place with representatives of some of the civil society organizations that interact with the inter-American system to share experiences and views on the achievements and challenges of the regional human rights protection system.

94. On November 22, the IACHR received a delegation from the National Human Rights Commission of Korea. The meeting involved an exchange of information on developments in the jurisprudence of the inter-American system and the work of the National Commission in protecting and promoting human rights.

Other Outreach Activities

95. Over 2010, the members of the Commission and the Secretariat took part in international conferences, seminars, and training sessions on the international protection of human rights and the inter-American system.

96. In January, Commissioner Luz Patricia Mejía Guerrero and Felipe González and Executive Secretary Santiago Canton represented the IACHR at the inauguration of the Museum of Memory in Chile.

97. In May 2010, in response to the invitation made by the Committee on Juridical and Political Affairs (CAJP), the Assistant Executive Secretary represented the IACHR at the Annual Meeting of the Inter-American Program for Migrants and Their Families in Washington, D.C. In addition, on May 14, the States held a dialogue on the inter-American human rights system at the CAJP, which was attended by the President of the IACHR, Commissioner Felipe González, and the President of the Inter-American Court of Human Rights.

98. In June, the Executive Secretariat participated at a meeting of experts on elderly rights, organized by American University in Washington, D.C.

99. During the year, the Executive Secretariat and Commissioner Paulo Sérgio Pinheiro participated at launch events for the *Report on Citizen Security and Human Rights* in Buenos Aires, Lima, San Salvador, Panama City, Guatemala City, Santo Domingo, Montevideo, Mexico City, and Washington, D.C.

100. In August, the Executive Secretariat attended the seminar on "Strengthening the Prevention and Prohibition of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishments," which was held in the city of Buenos Aires at the invitation of the Argentine Ministry of Foreign Affairs.

101. In October, the Executive Secretariat, IACHR President Commissioner Felipe González, and Ambassador Jorge Taiana, in his capacity as Special Representative of the IACHR, held a series of meetings with different authorities in Brussels, Madrid, and Paris, to set out the aims of the initiatives for strengthening the inter-American human rights system by obtaining the resources needed for its operations.

102. On October 7, 2010, at the Regional Conference on Mental Health organized by the Pan American Health Organization (PAHO), that agency launched the document *Support for Mental Health Policy Execution in the Americas: An Approach based on Human Rights. Findings, Trends, and Strategic Measures for Public Health Action*. At PAHO's invitation, the Executive Secretariat gave a presentation on the standards that have been developed by the agencies of the inter-American human rights system regarding state obligations toward people with mental disabilities and/or disorders.

103. In October, the IACHR, along with the Inter-American Institute of Human Rights and the Norman Manley Law School of the University of the West Indies, organized a seminar on the inter-American human rights system and the Caribbean in Kingston, Jamaica. The event was attended by a delegation from the IACHR led by Commissioner Dinah Shelton and two specialists from the Executive Secretariat.

104. On October 18, 2010, a meeting with representatives of the CARICOM member states was held at IACHR headquarters. The meeting, attended by the President and Commissioner Dinah Shelton, discussed cooperation methods between the system and that subregion.

105. In December, at the invitation of the OAS Secretariat for Multidimensional Security, the Executive Secretariat attended a seminar of experts on human rights, citizen security, and crime, organized by the University of the State of Rio de Janeiro (UERJ), to examine the social situation in Brazil. Also in December, the Executive Secretary attended the OAS Policy Round Table on the occasion of International Human Rights Day.

106. As part of its promotional activities, in conjunction with the Art Museum of the Americas, the IACHR organized an exhibition of photographs by Petra Barth alongside an exhibition on the life and human rights legacy of Rabbi Marshall Meyer. The exhibition opened on November 18, 2010, and remained on display at the OAS General Secretariat Building until January 8, 2011. The 66 photographs in the exhibition "Al Margen" were selected from thousands of photos that Petra Barth took on her travels through Central America, South America, and the Caribbean, documenting scenes of everyday life. In turn, the exhibition on Rabbi Marshall Meyer, produced by Duke University, uses texts, photographs, and historical documents to showcase the important role Meyer played in defending human rights in Argentina during the military dictatorship. The inaugural ceremony heard addresses by Petra Barth; the United States Under Secretary of State for Democracy and Global Affairs, María Otero; IACHR Executive Secretary Santiago Canton; and attorney Débora Benchoam of the IACHR, who knew Rabbi Meyer when she was a political prisoner in an Argentine prison during the dictatorship.

107. Over the year the IACHR Executive Secretariat gave presentations on the inter-American human rights system at events and conferences organized by the Department of External Relations of the OAS, which coordinates visits by different agencies to the Organization's headquarters. Thus, an officer from the Executive Secretariat participated at the 29th Model OAS General Assembly for high-school students, held on December 1 to 4, 2010.

G. Financial Contributions

108. The IACHR expresses its gratitude for the contributions made during 2010 by the governments of the following member countries of the OAS: Canada, Chile, Colombia, Costa Rica, and the United States. It would also like to thank the observer countries that support the Commission's activities: Spain, Finland, France, Luxembourg, Sweden, Switzerland, and the United Kingdom. The Commission also appreciates and thanks the contributions received from the Canadian International Development Agency (CIDA), the European Commission, the United Nations Children's Fund, the United Nations Population Fund, the Swedish Foundation for Human Rights, Save the Children/Sweden, and the University of Notre Dame.

H. IACHR Activities Related to the Inter-American Court of Human Rights

109. During 2010, the Commission referred sixteen (16) cases to the Inter-American Court: *Abrill Alosilla et al.*, "Union of Employees, Professionals, and Technicians of Sedapal" (Peru); *Gelman* (Uruguay); *Vera Vera et al.* (Ecuador); *Alicia Barbani Duarte, María del Huerto Breccia, et al.* "Depositors of the Bank of Montevideo" (Uruguay); *Torres et al.* (Argentina); *Kichwa Indigenous People of Sarayaku* (Ecuador); *Narciso González Medina et al.* (Dominican Republic); *Grande* (Argentina); *Gregoria Herminia Contreras et al.* (El Salvador); *Barrios Family* (Venezuela); *Karen Atala and Daughters* (Chile); *Néstor José and Luis Uzcátegui et al.* (Venezuela); *Raúl José Díaz Peña* (Venezuela); *Milagros Fornerón and Leonardo Aníbal Fornerón* (Argentina); *Río Negro Massacre* (Guatemala); and *Fontevicchia and D'Amico* (Argentina).

110. In addition, the Commission filed eleven (11) requests for provisional measures in the matters of the Ngöbe Communities (Panama), Belfort Community Radio Stations (Venezuela), Wong Ho Wing (Peru), *Almonte Herrera et al.* (Dominican Republic), Inter-Ecclesiastic Justice and Peace Commission (Colombia), *Nitza Paola Alvarado et al.* (Mexico), *Gladys Lanza* (Honduras), *Aragua Prison Center "Tocorón Prison"* (Venezuela), *María Lourdes Afiuni* (Venezuela), *Luis Galdámez et al.* (Honduras), and *Unidade de Integração Socioeducativa* (Brazil).

111. During 2010, the IACHR attended hearings convened at the 86th, 87th, and 88th regular periods of sessions of the Inter-American Court, held at its headquarters, and at the 41st and 42nd special sessions, held in Lima, Peru, and Quito, Ecuador. As those sessions, public hearings were held in connection with the following cases: *Cepeda et al.* (Colombia); *Chitay Nech* (Guatemala); *Ibsen Cárdenas and Ibsen Peña* (Bolivia); *Xákmok Kásek* (Paraguay); *Inés Fernández Ortega* (Mexico); *Gomes Lund et al.* (Brazil); *Valentina Rosendo Cantú* (Mexico); *Vélez Loo* (Panama); *Cabrera and Montiel* (Mexico); *Gelman* (Uruguay); and *Abrill Alosilla* (Peru).

112. In addition, the Commission attended private hearings on compliance with the judgments in the following cases: *Serrano Cruz* (El Salvador); *Apitz Barbera* (Venezuela); *Las Palmeras* (Colombia); *El Amparo* (Venezuela); *Barrios Altos* (Peru); *Moiwana* (Suriname); *Cesti Hurtado* (Peru); *Acevedo Jaramillo et al.* (Peru); *María Teresa de la Cruz Flores* (Peru); *Yatama* (Nicaragua); *Heliodoro Portugal* (Panama); *Nineteen Merchants, Mapiripán Massacre, Gutiérrez Soler, Pueblo Bello Massacre, Massacre of La Rochela, Ituango Massacres, Escué Zapata, and Valle Jaramillo* (Colombia);¹⁹ *Twelve Saramaka Clans* (Suriname); and *Vargas Areco* (Paraguay).

113. The Commission also participated at public hearings on the implementation of provisional measures in the matters of *Meléndez Quijano* (El Salvador), *Eloisa Barrios* (Venezuela), *Giraldo Cardona* (Colombia), *Caballero Delgado and Santana* (Colombia), *Kichwa Indigenous People of Sarayaku* (Ecuador), *Communities of Jiguamiandó and Curbaradó* (Colombia), *San José de*

¹⁹ A joint hearing was held for the eight cases and was limited to redress for medical and psychological treatment.

Apartadó Peace Community (Colombia), Forensic Anthropology Foundation (Guatemala), and Prisons in Mendoza (Argentina), as well as at a hearing on provisional measures and compliance with the judgment in the case of García Prieto (El Salvador).

114. In the period covered by this report, the Commission also took note of several judgments handed down by the Court in cases submitted for its consideration. Those were rulings on preliminary exceptions, merits, reparations, and costs in the following cases: Chitay Nech *et al.* (Guatemala); Manuel Cepeda Vargas (Colombia); Fernández Ortega *et al.* (Mexico); Rosendo Cantú *et al.* (Mexico); Vélez Lóor (Panama); Gomes Lund *et al.*, “Guerrilha de Araguaia” (Brazil); and Cabrera García and Montiel Flores (Mexico). The judgments on merits, reparations, and costs were also noted in the cases of the Xákmok Kásek Indigenous Community (Paraguay) and Ibsen Cárdenas and Ibsen Peña (Bolivia).

I. 40th Regular Session of the OAS General Assembly

115. At the 40th regular session of the General Assembly of the Organization of American States, held in the city of Lima, Peru, on June 7 to 9, 2010, the Commission was represented by its President, Commissioner Felipe González, and by its Executive Secretary, Santiago A. Canton. The President spoke to the General Assembly on the situation of human rights in the OAS member states and officially presented the Annual Report for the year 2009.

116. The General Assembly adopted various resolutions with regard to human rights. Those resolutions can be found on the OAS web page at the following address: <http://www.oas.org>. Given their importance for the observance and protection of human rights in the Americas and the strengthening of the inter-American system, they are listed below:

Resolutions related to the organs of the inter-American system

1. AG/RES. 2601 (XL-O/10) Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights.
2. AG/RES. 2587 (XL-O/10) Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights.
3. AG/RES. 2605 (XL-O/10) Strengthening of Human Rights Systems pursuant to the Mandates Arising from the Summits of the Americas.

Resolutions on human rights in which the IACHR is urged to take action

4. AG/RES. 2540 (XL-O/10) Follow-up to the Meetings of Ministers Responsible for Public Security in the Americas.
5. AG/RES. 2562 (XL-O/10) Human Rights and Older Persons
6. AG/RES. 2606 (XL-O/10) Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.
7. AG/RES. 2593 (XL-O/10) The Human Rights of All Migrant Workers and of Their Families.
8. AG/RES. 2600 (XL-O/10) Human Rights, Sexual Orientation, and Gender Identity.

9. AG/RES. 2582 (XL-O/10) Protocol of San Salvador: Composition and Functioning of the Working Group to Examine the Periodic Reports of the States Parties.
10. AG/RES. 2595 (XL-O/10) Right to the Truth.
11. AG/RES. 2580 (XL-O/10) Protecting Human Rights and Fundamental Freedoms While Countering Terrorism.
12. AG/RES. 2607 (XL-O/10) Model Inter-American Law on Access to Public Information.
13. AG/RES. 2579 (XL-O/10) Human Rights Defenders: Support for the Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas.

Other resolutions on human rights

14. AG/RES. 2548 (XL-O/10) Prevention and Eradication of Commercial Sexual Exploitation and Smuggling of and Trafficking in Minors.
15. AG/RES. 2550 (XL-O/10) Recognition of the International Year for People of African Descent.
16. AG/RES. 2551 (XL-O/10) Work Plan against Trafficking in Persons in the Western Hemisphere.
17. AG/RES. 2561 (XL-O/10) Promotion of Women's Human Rights and Gender Equity and Equality.
18. AG/RES. 2565 (XL-O/10) Draft American Declaration on the Rights of Indigenous Peoples.
19. AG/RES. 2578 (XL-O/10) Internally Displaced Persons.
20. AG/RES. 2592 (XL-O/10) Study of the Rights and the Care of Persons under Any Form of Detention or Imprisonment.
21. AG/RES. 2594 (XL-O/10) Persons who have Disappeared and Assistance to Members of their Families.
22. AG/RES. 2596 (XL-O/10) Support for the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities.
23. AG/RES. 2604 (XL-O/10) Education on Human Rights in Formal Education in the Americas.

CHAPTER III

THE PETITION AND CASE SYSTEM

A. Introduction

1. This chapter refers to the work of the Inter-American Commission on Human Rights in 2010 in relation to the petition and case system.

2. Section B includes statistical information to provide a general overview of the different activities carried out by the Inter-American Commission on Human Rights. First it presents data concerning the cases and petitions being processed. These comprise the greater volume of the Commission's work. "Cases" is taken as meaning all those petitions declared admissible by means of a report on admissibility. "Petitions" is taken as meaning all those complaints that have been transmitted to the state involved but in which no report on admissibility has been issued. This report includes the statistics of the total number of petitions received by the Commission in 2010, indicating the number of petitions received by country, as well as a comparison of the number of petitions received in 2010 in relation to each of the last thirteen years. It also includes statistical information on the number of petitions it decided to transmit to the States, and the number of petitions being processed, also by country. The statistical information reflects as well the number of requests for precautionary requests received by the Commission in 2010, as well as the number of precautionary measures the Commission decided to grant during that same period. The statistics indicate how many reports on admissibility, inadmissibility, friendly settlement, archive, and the merits the Commission published in 2010. The section also includes statistical tables on the Commission's activity before the Inter-American Court. Finally, statistics are included on the number of hearings the Commission held in 2010.

3. Section C has two parts. The first, section C.1, contains an overview of the precautionary measures granted or extended by the IACHR in 2010, in relation to the various member States, under Article 25 of its Rules of Procedure. The precautionary measures are presented in alphabetical order of the States addressed in the requests, indicating the name of the person or persons on whose behalf they were requested, a summary of the information that was the basis for the request, the rights of the persons exposed to serious and imminent danger, and finally the date of the request and the name of the State referred to, as well as other relevant information.

4. The second part, section C.2, includes all the reports on which the Commission adopted a decision on admissibility, inadmissibility, the merits, or friendly settlement during the period covered by this report. This section contains a total of 174 reports that include 73 cases found admissible; 10 reports on petitions found inadmissible; 11 reports on friendly settlements; 55 decisions to archive, and 25 reports on the merits.

5. Section D includes an analysis of compliance by the States with the recommendations contained in the reports on individual cases published in the Annual Reports since 2000, in keeping with Article 46 of the Commission's Rules of Procedure.

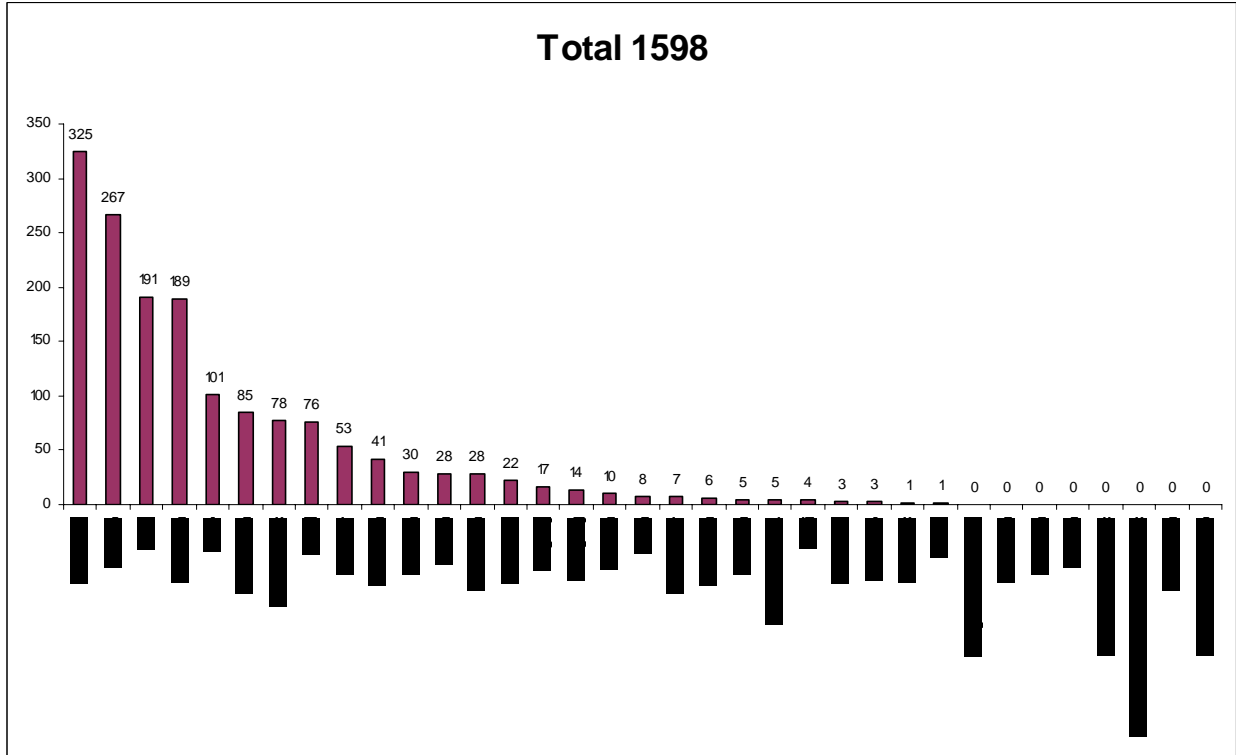
6. Section E refers to the Inter-American Commission's work litigating before the Inter-American Court of Human Rights. It presents the provisional measures issued by the Court at the request of the Commission in cases of extreme gravity and urgency, under Article 63(2) of the American Convention on Human Rights; a synthesis of the Court's decisions; and a summary of the Commission's pleadings in the contentious cases. The provisional measures are also described in the order in which they were requested, and include the name of the person or persons on whose

behalf they were sought, a summary of the facts and the rights involved, the date of the request, the name of the State in question, and the date on which the Court adopted the respective decision.

B. STATISTICS

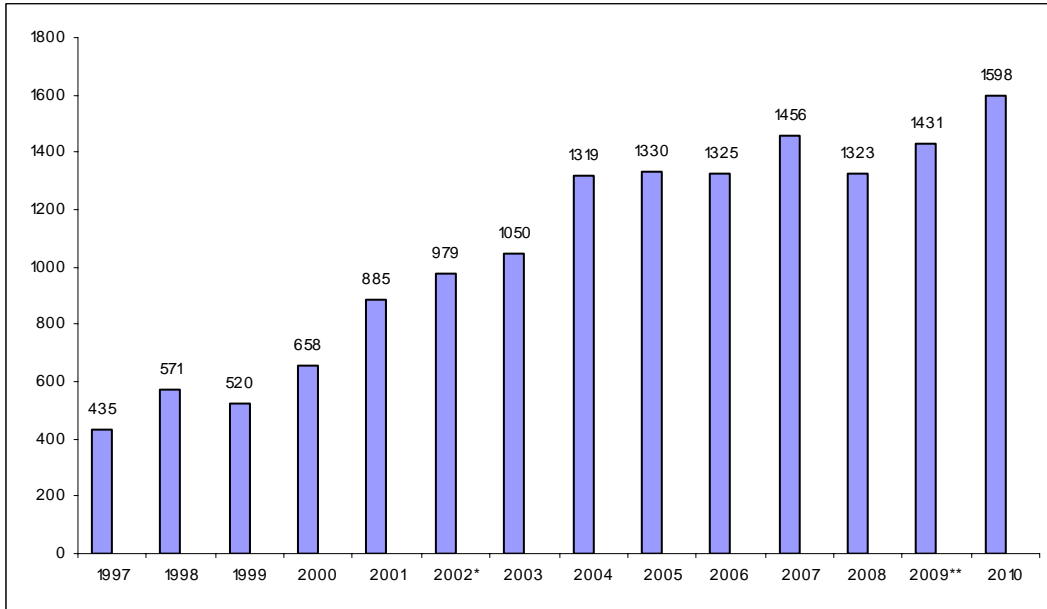
1. Petitions and cases

a. Total number of complaints received in the year 2010 by country



The preceding graph illustrates the total number of complaints received by the IACHR according to the OAS member States in respect of which the complaints were presented.

b. Total number of complaints received by year.

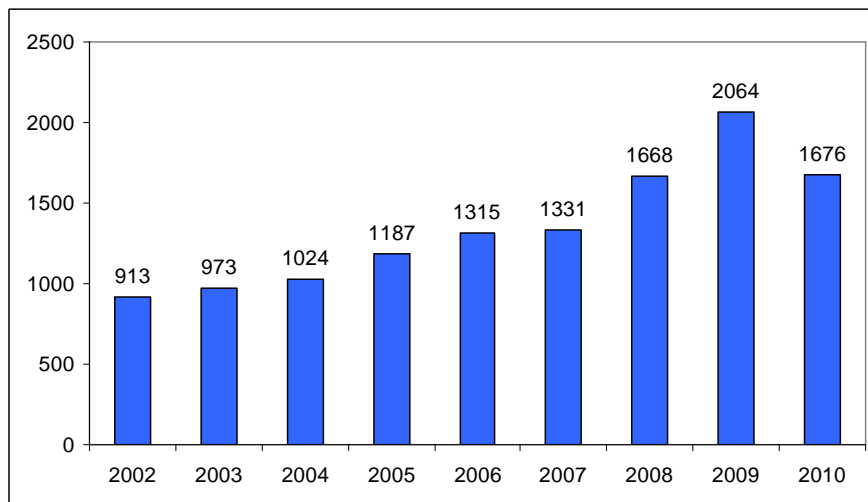


This graph illustrates the total number of complaints received by the Commission during the last eleven years. "Complaints" for the purposes of these statistics includes all complaints, presented in writing, concerning an alleged violation by an OAS member state of the Convention, the Declaration and/or other pertinent instrument.

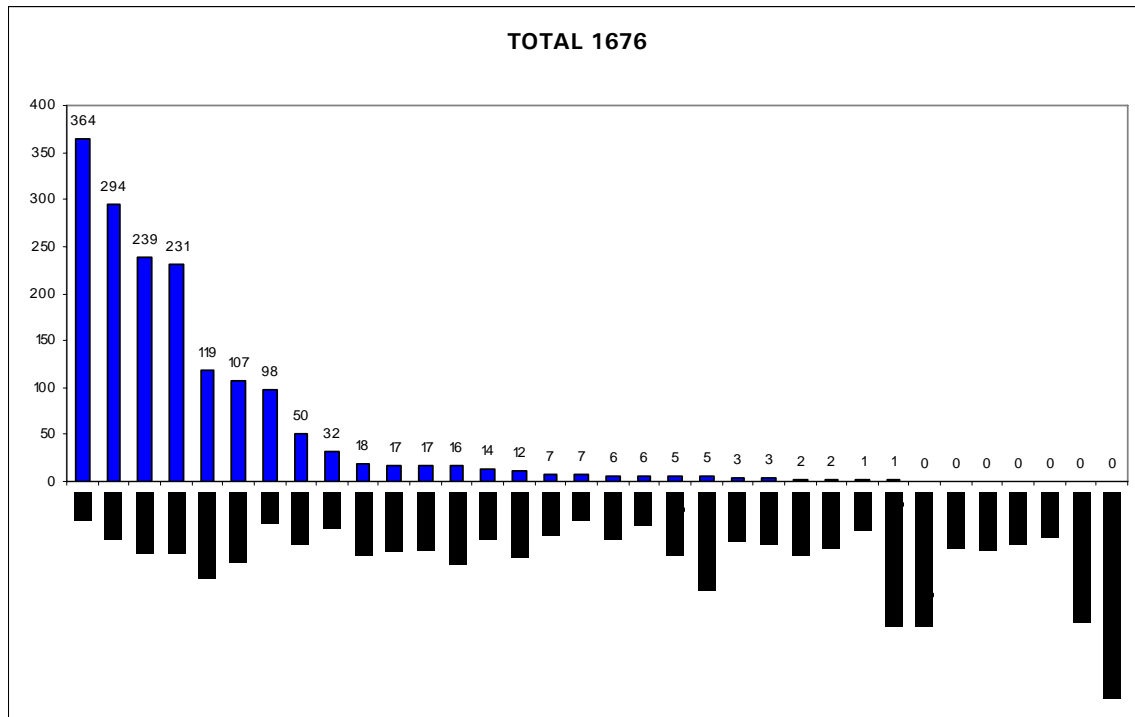
* In the year 2002, the Commission received 3,783 complaints in addition to those represented in the graph, which refer to the human rights situation of persons affected by various banking measures ("corralito") in Argentina.

** In the year 2009, petitions were received in addition to the number reflected in the graphic and which refer to the situation created by the *Coup d'État* in Honduras. The complete number of these petitions will be published in the future..

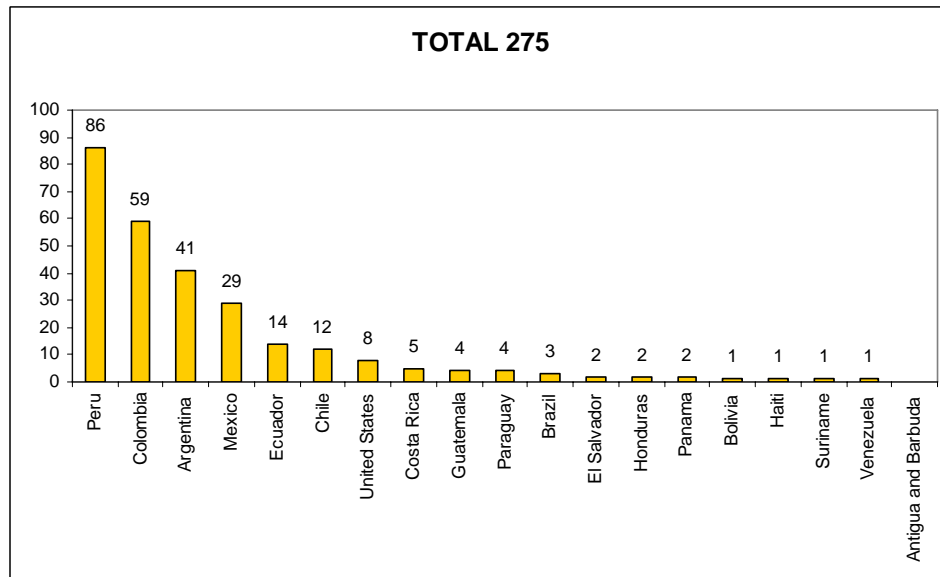
c. Total number of petitions evaluated by year



d. Total number of petitions evaluated during 2010 by country.

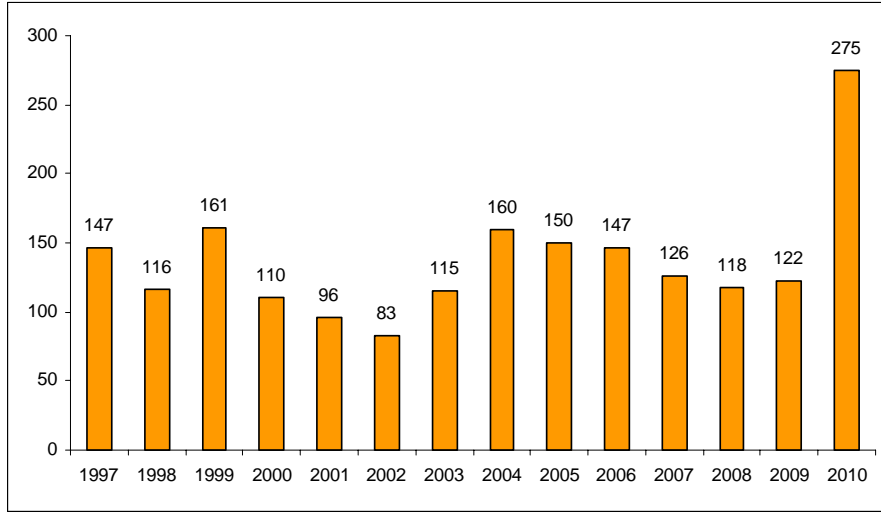


e. Petitions with refer to which there has been a decision to process during 2010, by country



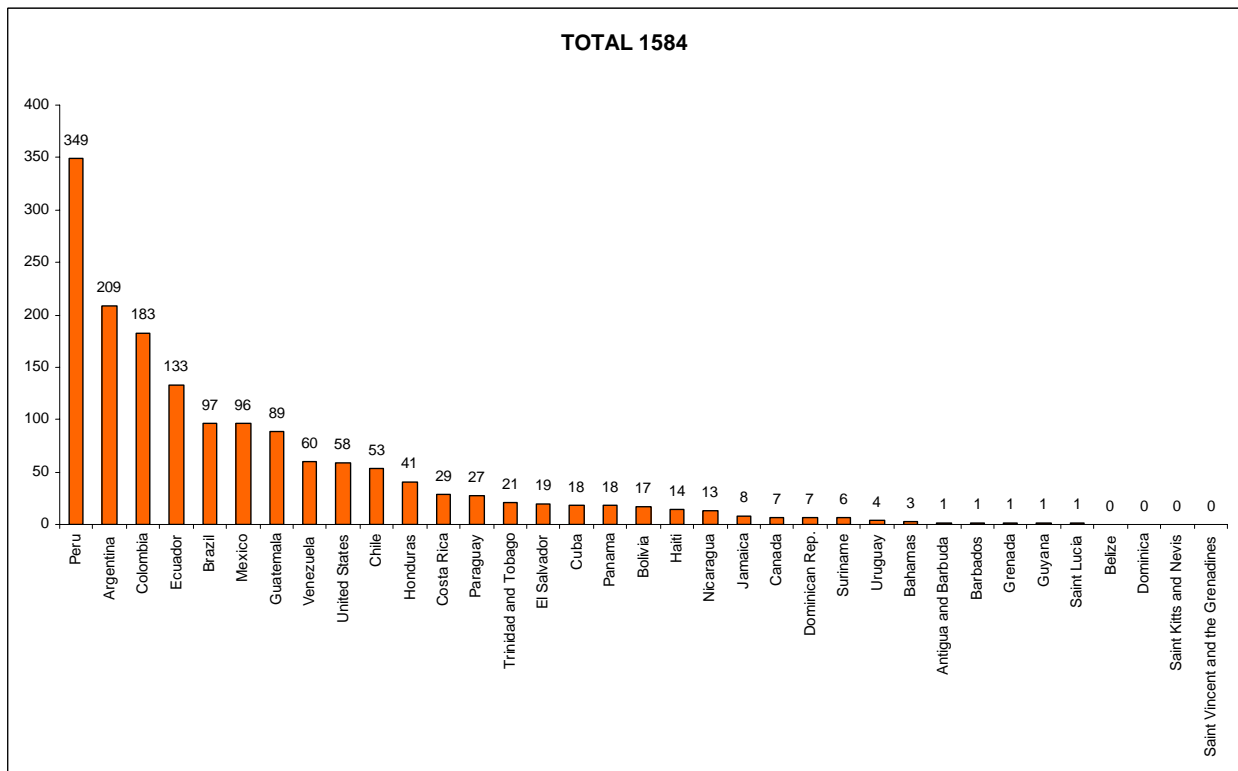
In the previous graphic is shown the total number of petitions with regard to which there has been a decision to process, taken between January 1st and December 31st of 2010, organized by Country against which the petition was filed.

- f. Total number of petitions with regard to which there has been a decision to process, by year.



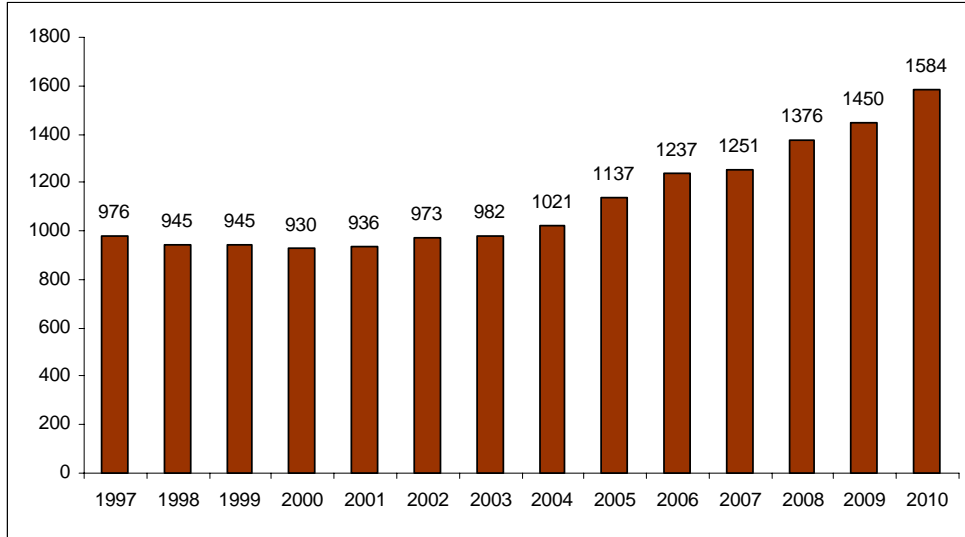
The preceding graph shows the total number of petitions transmitted to the States by year since 1997.

- g. Total number of cases and petitions pending to December 31, 2010 by country



This graph includes the total number of cases and petitions pending before the Commission and their breakdown by OAS Member State in descending order by country.

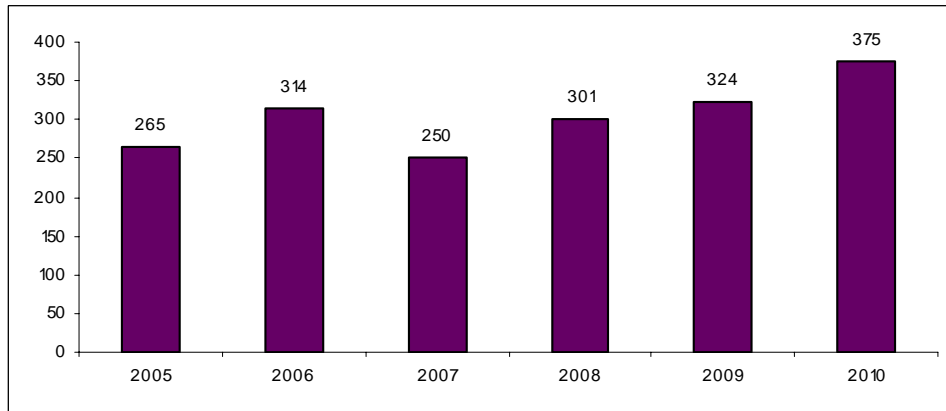
h. Total number of cases and petitions being processed by year.



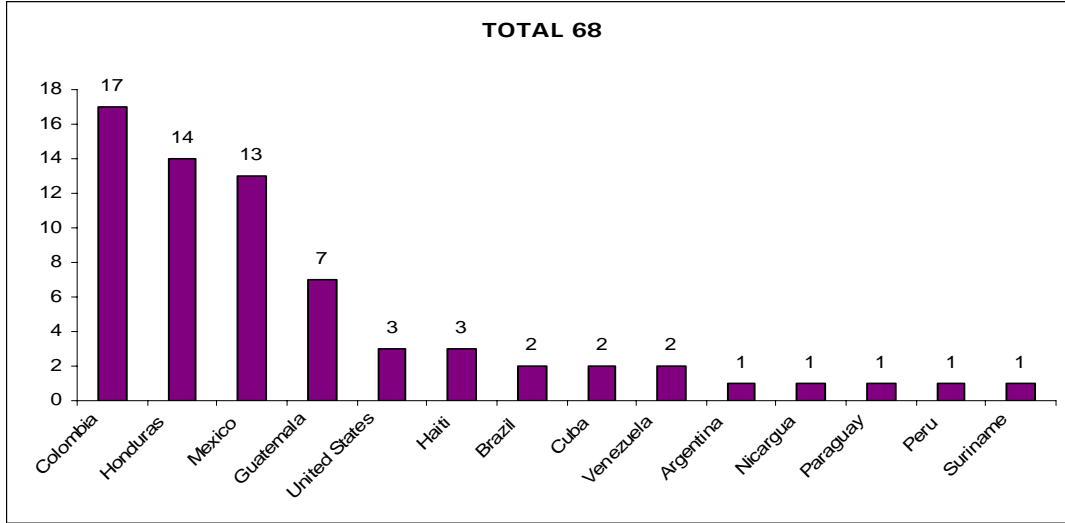
The preceding graph shows a comparison of the number of cases and petitions pending over the past fourteen years.

2. Precautionary measures

a. Total number of precautionary measures requests received by year.

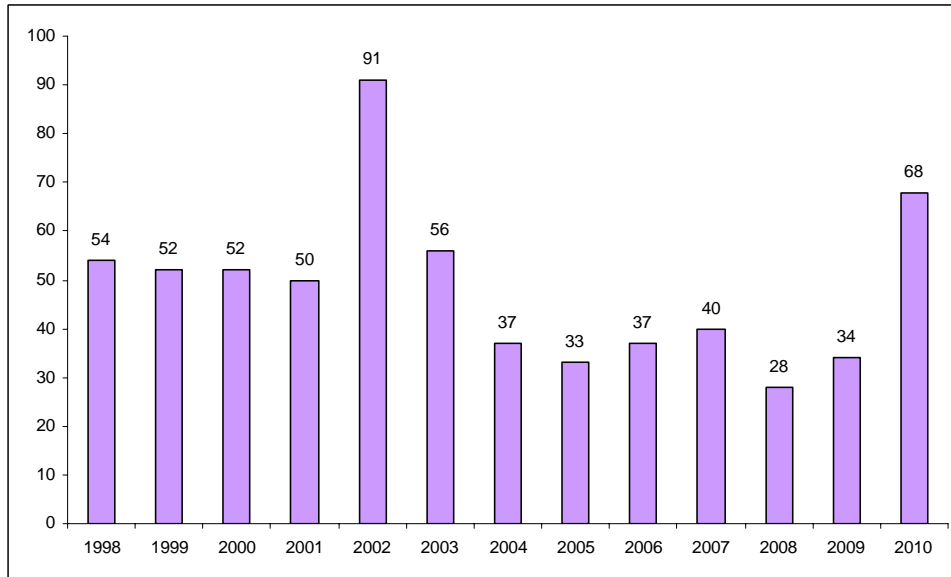


b. Total number of precautionary measures granted by country during 2010



This graph includes the total number of precautionary measures granted by country during the year 2010.

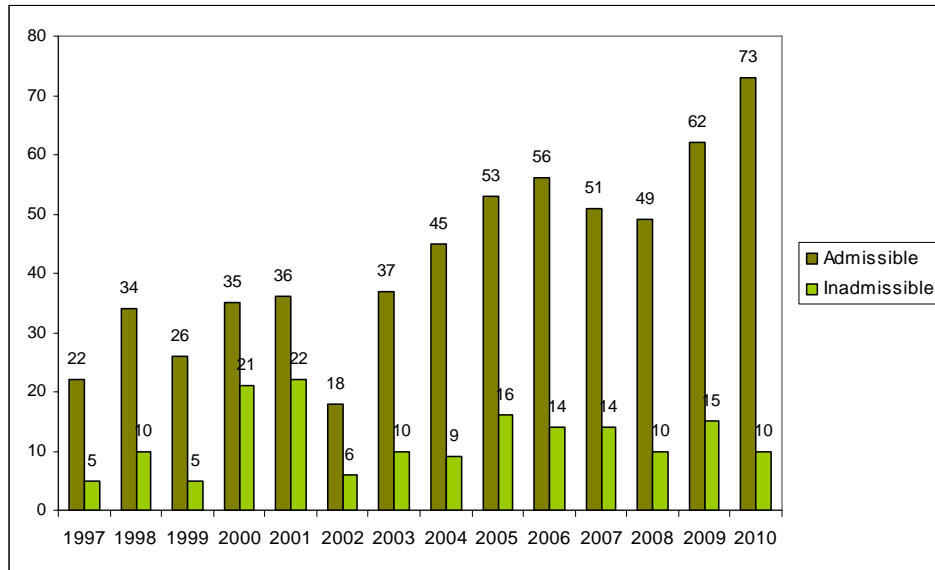
c. Total number of precautionary measures granted by year.



The preceding graph shows the total number and variation in the figure corresponding to precautionary measures granted by the IACHR in the past ten years. The number of precautionary measures granted does not necessarily reflect the number of persons protected when measures are adopted, since, on many occasions, several persons or entire communities receive protection.

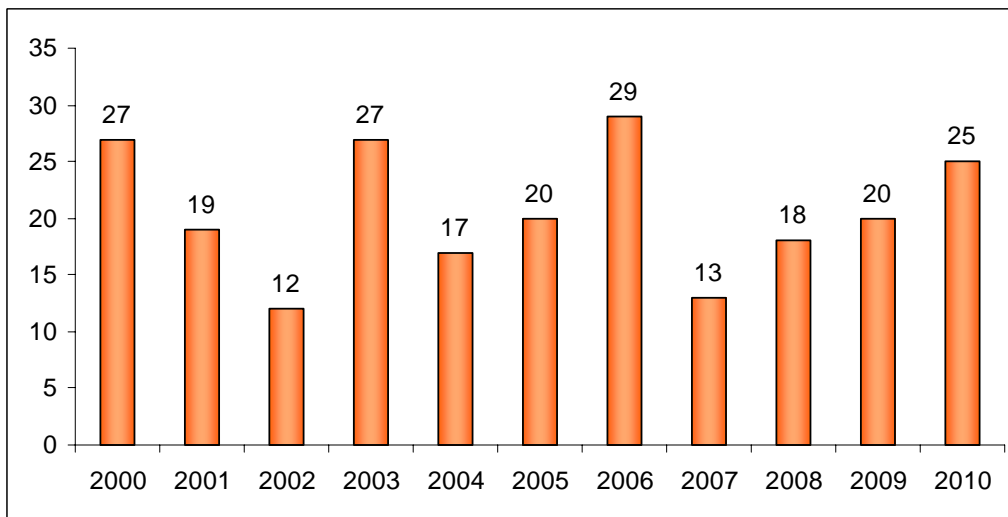
3. Reports

a. Total number of admissibility/inadmissibility reports published.

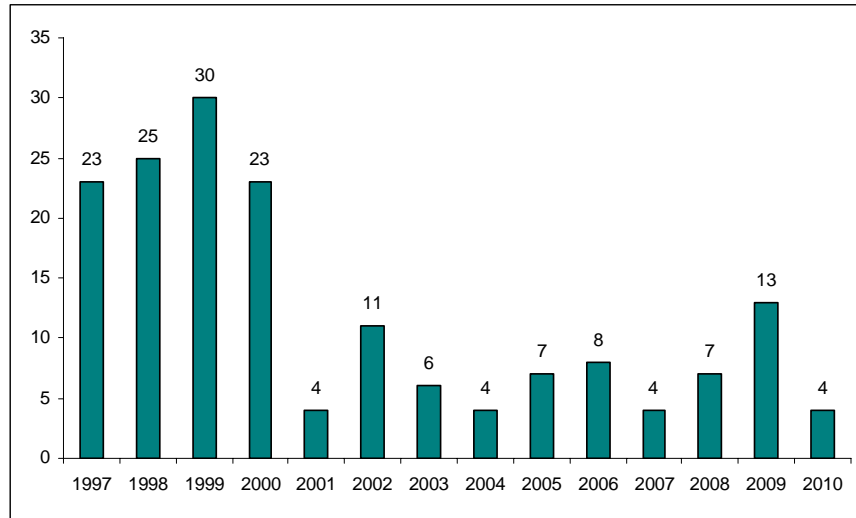


The chart shows the figures corresponding to admissibility and inadmissibility reports published in the past eleven years. These reports reflect the final decision of the IACHR on fulfillment of the admissibility requirements of petitions.

b. Total number of reports on the merits approved by year

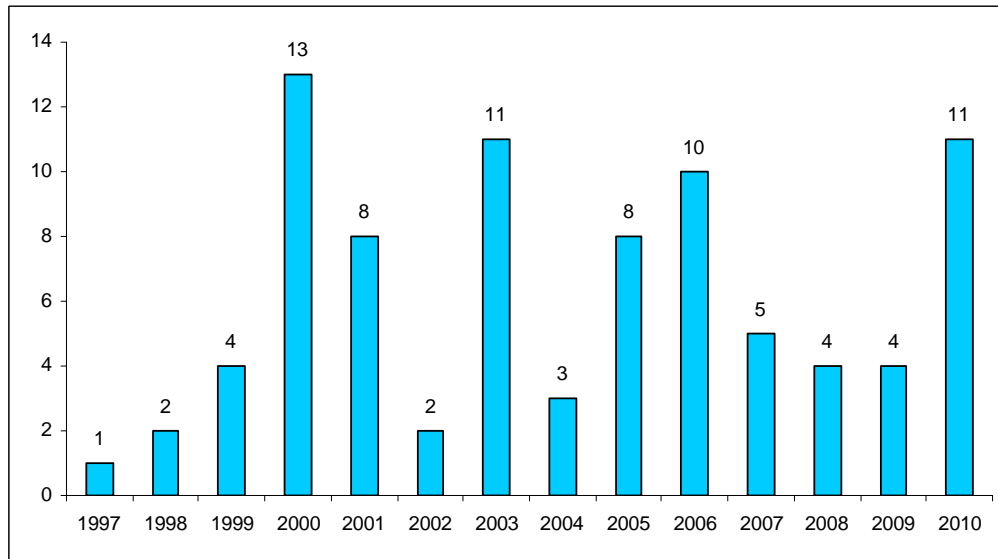


c. Total number of reports on the merits published by year.



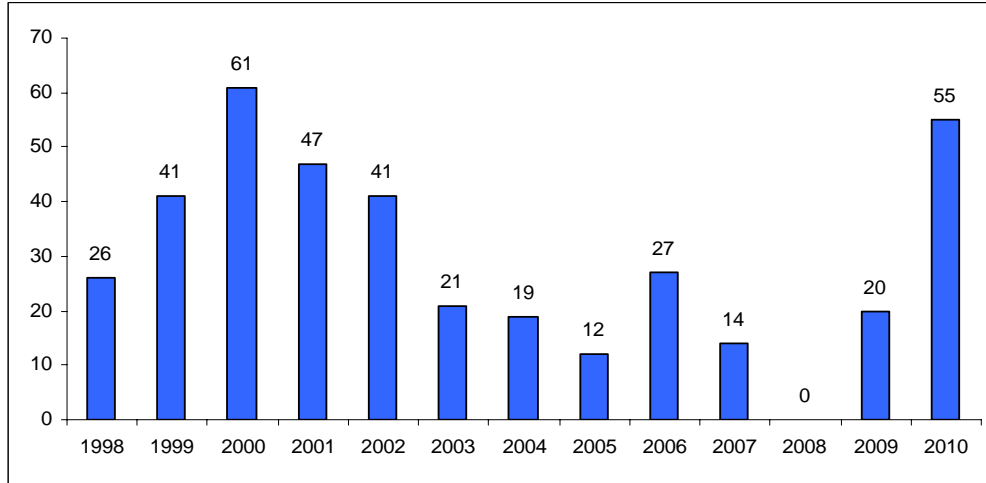
The graph illustrates the variation in the total number of reports on the merits of individual cases approved and published in the past thirteen years. The figures include reports in which the IACHR has rendered a decision on the alleged violation of the American Convention by the States parties and of the American Declaration by member States that have not yet ratified the Convention. It should be pointed out that a report on the merits of a case may include decisions on several individual cases that have been previously processed individually.

d. Total number of friendly settlement reports published by year.



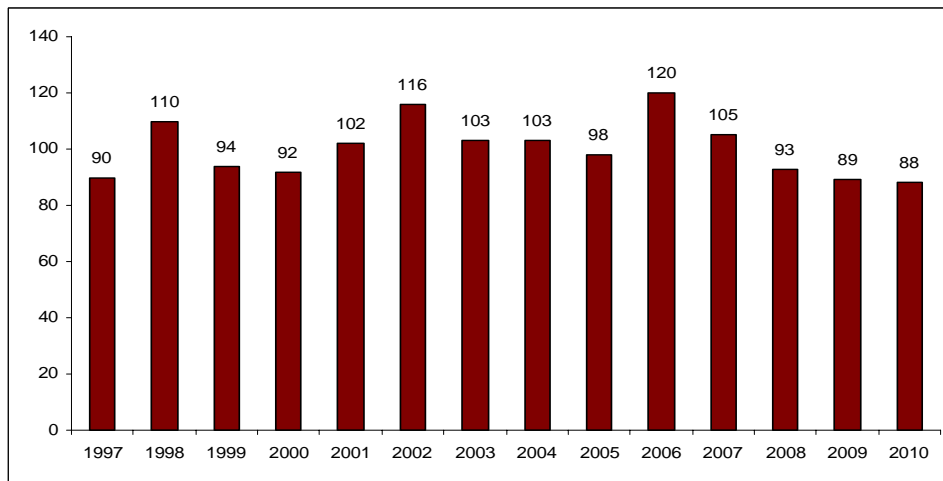
The preceding chart shows the number of cases in which under the auspices of the Commission the petitioners and the State have reached a friendly settlement agreement.

e. Total number of cases archived by year.



The preceding graph presents data corresponding to the total number of cases closed by the IACHR in the past twelve years, when it was decided that grounds did not exist for the petition.

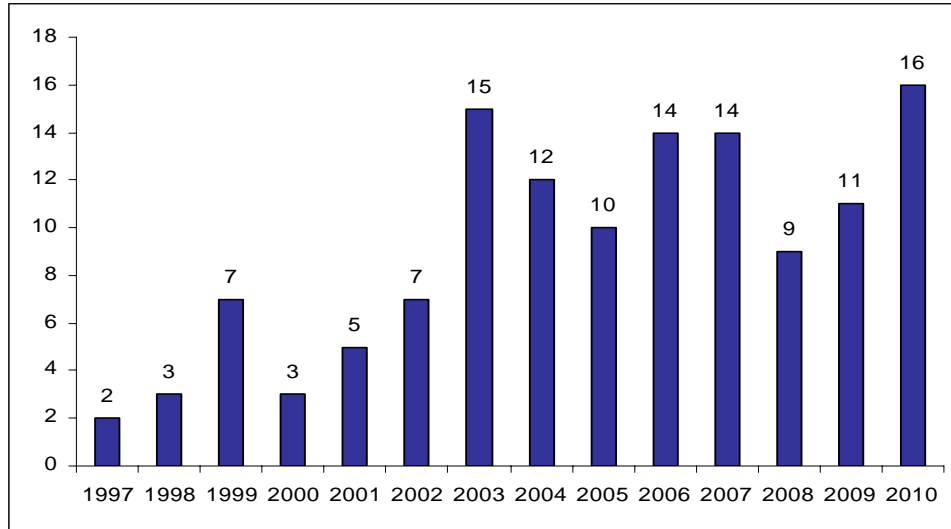
f. Total number of hearings held by year.



During its regular sessions, the Inter-American Commission held hearings on individual cases in order to receive information, evidence, and/or arguments regarding admissibility, merits, and fulfillment of obligations or in order to contribute to the friendly settlement of a case. The IACHR also held hearings in order to receive information on the general or specific human rights situation in member States.

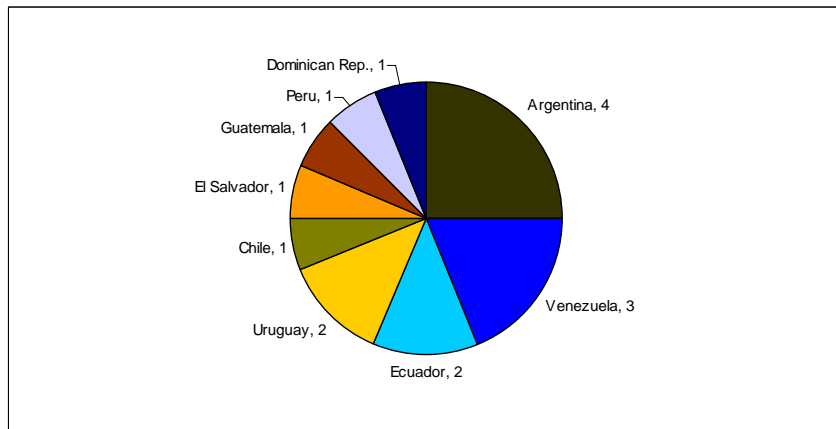
4. Cases before the Inter-American Court of Human Rights

a. Cases submitted to the Inter-American Court of Human Rights by year

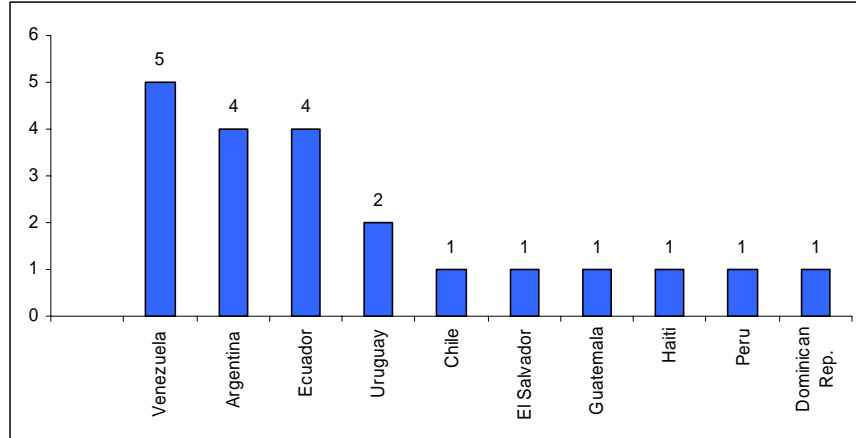


After a ruling on the merits of a case has been given pursuant to Article 50 of the American Convention, either the IACHR or the state(s) involved may submit a case to the contentious jurisdiction of the Inter-American Court of Human Rights.

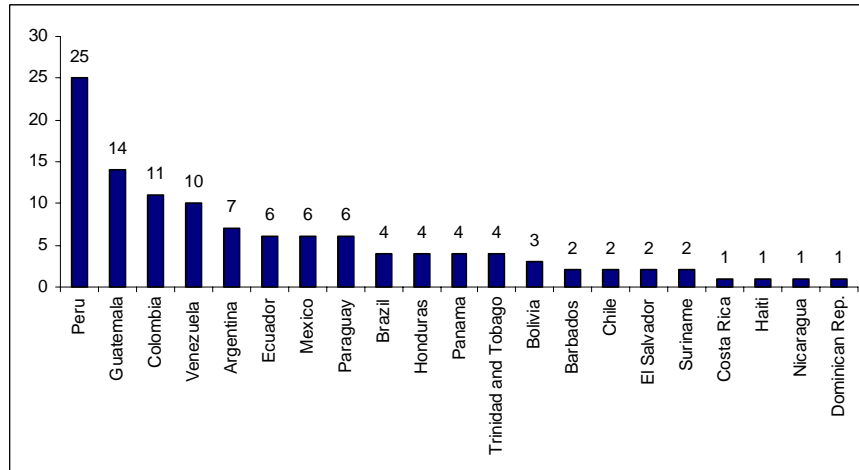
b. Cases presented to the Inter-American Court of Human Rights by country during the year 2010.



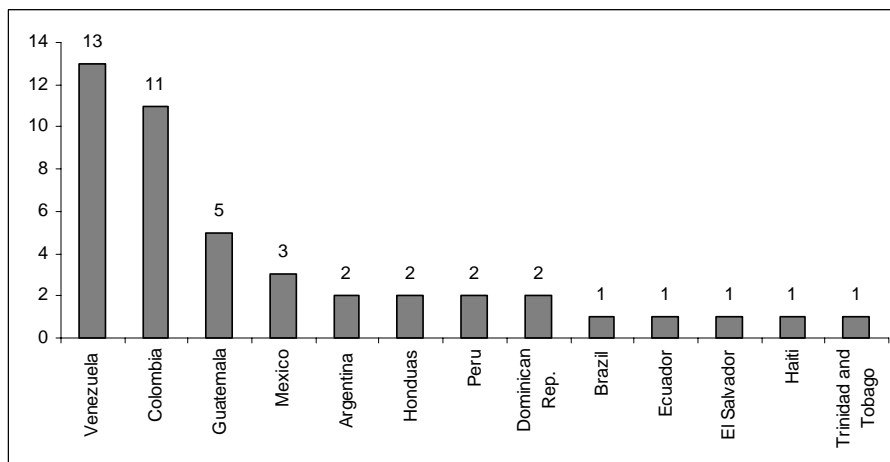
c. Cases in process before the Inter-American Court of Human Rights in 2010



d. Cases in compliance stage per country in 2010.



e. Provisional measures in force in 2010.



C. Petitions and cases before the Inter-American Commission on Human Rights

1. Precautionary measures granted by the IACHR in 2010

7. Article 25 of the Commission's Rules of Procedure establishes the mechanism for precautionary measures. The provision states that in serious and urgent cases, and wherever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons. If the Commission is not in session, the President or, in his absence, one of the Vice-Presidents shall consult with the other members, through the Executive Secretariat, on the application of this provision. If, because of the circumstances, it is not possible to consult within a reasonable period of time, the President or, as need be, one of the Vice-Presidents shall make the decision on behalf of the Commission and shall inform its members immediately. In accordance with the established procedure, the IACHR may request information from the interested parties concerning any matter related to the adoption and observance of the precautionary measures. In any event, the granting of such measures and their adoption by the State shall not constitute any prejudgment on the merits of the case.

8. During its 137th period of sessions, held in October and November of 2009, the Inter-American Commission approved its new Rules of Procedure, which entered into effect on December 31, 2009. Article 25 of the new rules establishes the following:

Article 25. Precautionary Measures

1. In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons or to the subject matter of the proceedings in connection with a pending petition or case

2. In serious and urgent situations, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures to prevent irreparable harm to persons under the jurisdiction of the State concerned, independently of any pending petition or case.

3. The measures referred to in paragraphs 1 and 2 above may be of a collective nature to prevent irreparable harm to persons due to their association with an organization, a group, or a community with identified or identifiable members.

4. The Commission shall consider the gravity and urgency of the situation, its context and the imminence of the harm in question when deciding whether to request that a State adopt precautionary measures. The Commission shall also take into account:

a. whether the situation of risk has been brought to the attention of the pertinent authorities or the reasons why it might not have been possible to do so;

b. the individual identification of the potential beneficiaries of the precautionary measures or the identification of the group to which they belong;

c. the express consent of the potential beneficiaries whenever the request is filed before the Commission by a third party unless the absence of consent is duly justified; and

5. Prior to the adoption of precautionary measures, the Commission shall request the State concerned relevant information, unless the urgency of the situation warrants the immediate granting of the measures.

6. The Commission shall evaluate periodically whether it is pertinent to maintain any precautionary measures granted.

7. A State may at any time file a duly grounded petition that the Commission withdraw its request that the State concerned adopt precautionary measures. Prior to the adoption of a decision on the State's petition, the Commission shall request observations from the petitioners or their representatives. The submission of such a petition shall not suspend the enforcement of the precautionary measures granted.

8. The Commission may request relevant information from the interested parties on any matter related to the granting, observance, and maintenance of precautionary measures. Material non-compliance by the beneficiaries or their representatives with such a request may be considered a ground for the Commission to withdraw a request that the State adopt precautionary measures. With regard to precautionary measures of a collective nature, the Commission may establish other appropriate mechanisms of periodic follow-up and review.

9. The granting of such measures and their adoption by the State shall not constitute a prejudgment on the violation of the rights protected by the American Convention on Human Rights or other applicable instruments.

9. The following is a summary of the precautionary measures granted in 2010, listed according to the member state concerned. It should be noted that the number of precautionary measures granted does not reflect the number of persons protected by their adoption; as will be seen below, many of the precautionary measures the Commission granted are for the purpose of protecting more than one person and, in some cases, groups of persons such as communities or indigenous peoples.

ARGENTINA

PM 187-10 – Persons Deprived of Liberty in the Third Precinct Police Station of Ensenada, Province of Buenos Aires, Argentina

10. On July 2, 2010, the IACHR granted precautionary measures for persons deprived of liberty in the Third Precinct Police Station of Ensenada, in the province of Buenos Aires, Argentina. This precautionary measure was granted at the Commission's initiative following a visit to that police station on June 8, 2010. During the visit, the IACHR observed that 20 individuals were being held in a situation of extreme overcrowding in the jail area, which consists of three windowless cells with no ventilation points and a corridor and bathroom. Three persons sleep in each cell, and eleven sleep on the floor in the corridor. Those in custody are shut inside 24 hours a day, with no access to natural light and without doing any type of productive or recreational activity. Although police station jails are meant to be temporary detention centers, at the time the IACHR visited, all those being held in the Third Precinct Police Station of Ensenada had been there for periods ranging from 3 to 18 months, according to the official records of the population in custody. The IACHR also verified the existence of two persons who were ill and were not receiving adequate medical care, and it was informed that those in custody would not receive medical attention unless it was ordered by a judge, in which case they would have to be transferred to an assistance center. The Inter-American Commission asked the State of Argentina that the persons being deprived of their liberty in the Third Precinct Police Station of Ensenada be immediately placed in a location that complies with the requirements for detention in conditions of dignity.

BRAZIL

PM 114-10 – Persons Deprived of Liberty in the Judicial Police Department (DPJ) of Vila Velha, Brazil

11. On April 28, 2010, the IACHR granted precautionary measures for those persons deprived of liberty in the Judicial Police Department (DPJ) of the city of Vila Velha, in the state of Espírito Santo, Brazil. The request for precautionary measures indicates that the life, personal integrity, and health of those deprived of liberty in the Vila Velha DPJ are at risk. It adds that an average of 160 people, both accused and convicted persons, are being held, in inhuman and degrading conditions, in a cell with the capacity to hold 36 persons. The Inter-American Commission asked the State of Brazil to adopt the necessary measures to protect the life, personal integrity, and health of those persons deprived of liberty in the Judicial Police Department of the city of Vila Velha, in the state of Espírito Santo, and to provide adequate medical attention to the beneficiaries and prevent the transmission of contagious diseases. The Commission also asked that the measures be adopted in consultation with the beneficiaries' representatives, that the Commission be informed as to the measures adopted to reduce overpopulation in the facility, and that it be informed regarding the failure to divide inmates who are accused from those who have been convicted.

PM 351/02 – Rosemary Souto Maior, *et al.*, Brazil

12. On July 23, 2010, the IACHR extended the precautionary measure registered under the number PM 351/02 on behalf of Rosemary Souto Maior de Almeida; Alcione Almeida de Lima and her two children; Nair Ávila; Moacir Bezerra de Mattos; Cynthia Ávila Mattos; Mackssuel Ávila Mattos; Luiz Couto; and Fernando Ferro in Brazil. The Commission received information from relatives regarding the situation of risk to Manoel Bezerra Mattos, a beneficiary of the precautionary measures who was murdered on January 24, 2009. The beneficiaries claimed to have received threats over the course of the investigation into the death of Mr. Mattos. The IACHR requested that the State adopt immediately all measures necessary to protect the life and personal integrity of Rosemary Souto Maior de Almeida, Alcione Almeida de Lima and her two children, Nair Ávila, Moacir Bezerra de Mattos, Cynthia Ávila Mattos, Mackssuel Ávila Mattos, Luiz Couto, and Fernando Ferro.

PM 113/07 (Extension) - Corporación para la Paz y el Desarrollo Social (CORPADES) [Corporation for Peace and Social Development], Colombia

13. On January 14, 2010, the IACHR extended Precautionary Measure PM 133-07 to protect Guillermo Osorio, Jairo Ivan Maya Rodríguez, Yeisme Romero Fuenmayor, Juan David Muñoz, and Rafael Emiro Bedoya, all of whom belong to the Corporación para la Paz y el Desarrollo Social (CORPADES). The request for precautionary measures alleges that the beneficiaries have received threats from alleged paramilitary groups, due to their community leadership and participation in criminal proceedings brought against members of organizations operating outside the law. The petitioners inform the Commission that on December 20, 2009, John Alexander Pulgarín—a member of CORPADES and a witness in a case brought against the paramilitary member Jhon William López—was killed, despite the fact that the State had apparently provided a protection scheme for him. The IACHR originally granted this precautionary measure on March 14, 2008, for Fernando Quijano, Carlos Mario Arenas, Teresa Muñoz Lopera, Alberto Manzo Monsalve, Dillier Fernando Vásquez Rúa, Santiago Quijano, and Marín Alonso Velásquez, all members of CORPADES. The request for precautionary measures alleges that the members of this organization have been targets of threats and attacks allegedly committed by groups operating outside the law. The Commission asked the Colombian State to adopt the necessary measures to guarantee the life and physical integrity of the beneficiaries, as well as to inform the Commission about the steps taken to

clarify judicially the events that led to the adoption of precautionary measures. The Commission will continue to monitor the situation.

PM 12-09 – Community of Alto Guayabal–Coredocito of the Emberá People, Colombia

14. On February 25, 2010, the IACHR granted precautionary measures for 87 families of the Emberá People's Community of Alto Guayabal-Coredocito—declared "So Bia Drua," a humanitarian area of the Uradá Jiguamiandó Indigenous Reserve—in the municipality of Carmen del Darién, department of Chocó, Colombia. The request for precautionary measure alleges that this community has been subject to acts of violence that placed their lives and personal integrity at risk. It is alleged, among other facts, that on January 30, 2010, two helicopters and a plane belonging to the armed forces carried out a machine-gun attack and bombing 300 meters from the community's main settlement, hitting the house of a family where there were three adults and two children, who were wounded. The request indicates, for example, that Mr. José Nerito Rubiano Bariquí was wounded in the thorax with a firearm, as a result of which he broke his spinal column and was left paraplegic. According to the applicants seeking the measures, the military presence in the area is related to the resumption of mining activity. The Inter-American Commission requested that the State of Colombia adopt the measures necessary to protect the life and personal integrity of 87 families of the Community of Alto Guayabal-Coredocito; that it come to an agreement with the beneficiaries and their representatives on the measures to be adopted; and that it inform the Commission on actions taken to investigate the events that led to the adoption of precautionary measures so as to remove the risk factors for the beneficiaries.

PM 1-10 - 14 Women in a Situation of Displacement, Colombia

15. On March 25, 2010, the IACHR granted precautionary measures for 14 women in a situation of displacement in Colombia, whose identity the IACHR is withholding because some of them have suffered sexual violence. The request for precautionary measures alleges that the 14 women are leaders of the displaced community in Bogotá and that as a result of these activities, they have been victims of sexual violence, physical attacks, threats, acts of harassment, and a violent home raid. The request indicates that the beneficiaries met with the Director of the Presidential Human Rights Program on December 22, 2009, and it was agreed that security measures would be taken, but that the agreement had not been implemented to date. It adds that in the time that has passed since that meeting, one of the beneficiaries has suffered an act of sexual violence, and there have been two acts of aggression and one death threat. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and physical integrity of the 14 women; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

16. On May 6, 2010, the IACHR extended the PM 1-10 precautionary measures for Ana María Perea Incel. According to the information sent by the petitioners, Ms. Perea Incel is a member of the Association of Afro Women for Peace and a participant in talks with the government of Colombia on the issue of the rights of the displaced population. It is alleged that on two occasions since December 2009, Ms. Perea Incel was approached in cars by unknown individuals who threatened her with violent acts if she does not leave her work with the Association.

PM 99-10 - Tránsito Jurado, María Eugenia González, and Members of the Corporación Sisma Mujer, Colombia

17. On April 8, 2010, the IACHR granted precautionary measures for Tránsito Jurado, María Eugenia González, her minor children, and the members of the Corporación Sisma Mujer, in Colombia. The request for precautionary measures alleges that Sisma Mujer and two women who

participate in a program coordinated by that organization have been subject to threats, harassment, and one act of violence, allegedly as a result of their work defending the rights of women in a situation of displacement. The request indicates that Ms. González began to receive intimidating telephone calls and to be the target of acts of harassment, starting in September 2009; that on December 4, 2009, an unknown individual approached her on the street and told her to leave Cali with her family; and that eight days later, her son, Jonathan Gómez, was murdered. The request adds that Ms. Jurado has also received death threats, and that on January 27, 2010, Sisma Mujer received an e-mail signed by the "Bloque Metropolitano de las Águilas Negras" [Metropolitan Bloc of the Black Eagles], in which the organization was declared a "military target." The request indicates that Sisma Mujer reported the aforementioned acts and met with the competent authorities, but alleges that the necessary protection measures have not been implemented to date. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and personal integrity of María Eugenia González, her minor children, Tránsito Jurado, and the members of the Corporación Sisma Mujer; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 304-08 - Diomedes Meneses Carvajalino, Colombia

18. On April 9, 2010, the IACHR granted precautionary measures for Diomedes Meneses Carvajalino, in Colombia. The request for precautionary measures alleges that the life and health of Mr. Meneses Carvajalino are in grave danger, as the prison he is in has not provided him with adequate medical care to address a health problem he has had since the beginning of 2009. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to provide adequate medical care that makes it possible to protect the life, personal integrity, and health of Mr. Meneses Carvajalino; to reach agreement with the beneficiary and/or his representative on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of the precautionary measures.

PM 36-10 - Rodrigo Callejas Bedoya and Family, Colombia

19. On April 12, 2010, the IACHR granted precautionary measures for Rodrigo Callejas Bedoya and his family, in Colombia. The request for precautionary measures alleges that Rodrigo Callejas Bedoya has subject to threats and harassment, allegedly because of his work as an independent journalist; as a result, his life and personal integrity, as well as that of his family, are at risk. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and physical integrity of journalist Rodrigo Callejas Bedoya and his family; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 141-10 – X and her two children, Colombia

20. On May 11, 2010, the IACHR granted precautionary measures for Ms. X, whose identity the IACHR is withholding, and for her two children, who are minors, in Colombia. The request for precautionary measures alleges that Ms. X has been subject to threats and acts of harassment since she reported having been raped by agents of the State in July 2009. The request indicates that following new threats she received in May 2010, Mrs. X moved to another city. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and physical integrity of X and her two children; to reach agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the events that led to the adoption of precautionary measures.

PM 221-09 – María Stella Jara Gutiérrez and son, Colombia

21. On June 2, 2010, the IACHR granted precautionary measures for María Stella Jara Gutiérrez and her son, in Colombia. In the request for precautionary measures and in additional information sent later, it is alleged that Judge Jara Gutiérrez, who is in charge of the Palace of Justice case, has received threats from alleged armed groups operating outside the law. It is also alleged that the threats have intensified in recent months, as the date for issuing the final judgment in the case draws near. The information also indicates that there has been a delay in the implementation of a security plan designed to safeguard the life and integrity of Judge Jara Gutiérrez and her youngest son. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and personal integrity of María Stella Jara Gutiérrez and her son; to reach agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the events that led to the adoption of precautionary measures.

PM 319/09 – Doris Berrio Palomino and family; Members of the *Liga de Mujeres Desplazadas* and the *Liga Joven* from LMD [League of Displaced Women (LMD), and LMD Youth League], Colombia

22. On June 11, 2010, the IACHR decided to extend the scope of precautionary measure PM 319/09 to cover the 12 members of the League of Displaced Women (LMD) and 16 members of the LMD Youth League. The IACHR received information that members of the League of Displaced Women and LMD Youth League had recently received threats from emerging gangs and armed groups operating outside the law. While the former organization allegedly had security measures in place, said measures and the response of authorities to their requests were deemed to be insufficient in view of the situation of risk facing their membership.

PM 104-09 – 29 Displaced Families from the Municipality of Argelia, Colombia

23. On July 1, 2010, the IACHR granted precautionary measures for 29 displaced families from the municipality of Argelia, in the department of Cauca, Colombia. The request for precautionary measures alleges that 29 families from this municipality had been displaced toward Popayán, after having been victims of alleged threats, acts of violence, pursuits, and disappearances. The request also alleges those who committed these acts were armed groups operating outside the law who had acted with the acquiescence of authorities in the area. The Inter-American Commission requested that the State of Colombia adopt the necessary measures to guarantee the life and physical integrity of 96 individuals who belong to these families identified in the request for precautionary measures and to an additional family that is currently displaced in Bogotá. The IACHR also requested that the State adopt the necessary measures to guarantee the definitive return of these families to the municipality of Argelia in conditions of dignity and security; that a mechanism be established for constant monitoring and ongoing communication with the families displaced from Argelia toward Popayán, so that the measures can be implemented by mutual agreement with the beneficiaries and their representatives; that the Commission be informed about the steps taken to discover the whereabouts of Over Herney Muñoz and Jesús Olivier Alvarado Muñoz; and that the State inform the IACHR about the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 252-10 – Álvaro Javier Martínez Torres et al., Colombia

24. On August 13, 2010, the IACHR granted precautionary measures for Álvaro Martínez Torres and others, in Colombia. The request for precautionary measures alleges that the Martínez family was in a situation of imminent risk, purportedly due to his activities to vindicate the rights of his family and other displaced persons on the "La Alemania" farm, in the town of San

Onofre, department of Sucre, as well as his actions to clarify the events that led to the death of Rogelio Martínez, who was allegedly murdered on May 18, 2010, by armed groups operating outside the law. The Inter-American Commission requested that the State of Colombia adopt the necessary measures to guarantee the life and personal integrity of Julia Isabel Torres, Luis Miguel Martínez Torres, Mabelis Martínez Torres, Luis Miguel Martínez Torres, Álvaro Javier Martínez Torres, Kelly Johana Martínez, Luis Fernando Martínez, Isabel Sofía Martínez, and Luz Nellis Martínez; that it reach agreement with the beneficiaries and their representatives on the measures to be adopted; and that it inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 97-10 – 179 Families of the Settlements of El Vergel and El Pedregal, Department of Cauca, Colombia

25. On August 13, 2010, the IACHR granted precautionary measures for 179 families living in the settlements of El Vergel and El Pedregal, in the department of Cauca, Colombia. The request for precautionary measures alleges that these families are in a situation of extreme danger as a result of the armed conflict and the lack of measures to protect civilians who live in the area. According to the information provided, the inhabitants of these settlements were victims of bullet wounds, forced displacements, and other alleged acts of violence. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and personal integrity of the 179 beneficiary families; to adopt the necessary measures to guarantee the return, in conditions of security, of the families displaced from El Vergel and El Pedregal; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission on the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 254-10 – Leiderman Ortiz Berrio, Colombia

26. On August 20, 2010, the IACHR granted precautionary measures for Leiderman Ortiz Berrio, in Colombia. The request for precautionary measures indicated that the journalist Leiderman Ortiz Berrio has been the victim of a series of attacks in recent months, purportedly because of his reporting on illegal gangs. It added that the last attempt on his life took place on May 20, 2010, with the explosion of a grenade in his house in the municipality of Cauca, in Colombia's department of Antioquia. According to the information received, to date the authorities have not provided protection arrangements for Ortiz Berrio. The Inter-American Commission requested that the State of Colombia adopt the necessary measures to guarantee the life and personal integrity of Leiderman Ortiz Berrio, that it reach agreement with the beneficiary and his representatives on the measures to be adopted, and that it inform the Commission about the steps taken to prevent new acts of violence or intimidation against the beneficiary.

PM 157-09 – Yesid Ramírez Bastidas, Colombia

27. On September 13, 2010, the IACHR granted precautionary measures for Yesid Ramírez Bastidas, in Colombia. The request for precautionary measures alleges that Yesid Ramírez Bastidas has been subject to illegal telephone interceptions and intelligence activities on the part of agents of the Administrative Department of Security (DAS). The request and additional information provided by the applicants further indicate that neither Yesid Ramírez Bastidas nor his family were guaranteed a security plan following his term as a magistrate, which ends on September 30, 2010. The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and personal integrity of Yesid Ramírez Bastidas, reach agreement with the beneficiary on the measures to be adopted, and inform the Commission on the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 243-10 – Sigifredo Espinosa Pérez and his Family, Colombia

28. On September 13, 2010, the IACHR granted precautionary measures for Sigifredo Espinosa Pérez and his family, in Colombia. The request for precautionary measures alleges that Sigifredo Espinosa Pérez has been subject to being followed, purportedly as a result of his participation in investigations into alleged ties between public officials and armed groups operating outside the law. The information received further indicates that Espinosa Pérez had allegedly been subject to illegal telephone interceptions and intelligence activities on the part of agents of the Administrative Department of Security (DAS). The Inter-American Commission asked the State of Colombia to adopt the necessary measures to guarantee the life and personal integrity of Sigifredo Espinosa Pérez and his family, reach agreement with the beneficiary on the measures to be adopted, and inform the Commission on the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 383/10 - John Jairo Palacios, Colombia

29. On November 23, 2010, the IACHR granted precautionary measures for John Jairo Palacios, in Colombia. The request for precautionary measures alleges that on July 30, 2010, John Jairo Palacios was a victim of forced disappearance, which had reportedly been carried out by paramilitary groups. The IACHR requested information from the State based on its authority under Article XIV of the Inter-American Convention on Forced Disappearance of Persons, but it did not receive information that would clarify his whereabouts. In view of the seriousness and urgency of the allegations and the lack of information on the whereabouts of the allegedly disappeared person, the IACHR granted precautionary measures so as to guarantee the life and humane treatment of John Jairo Palacios. The Commission requested that the State provide information on the whereabouts of John Jairo Palacios, his state of health, and his security situation; that it adopt the necessary measures to ensure the life and physical integrity of John Jairo Palacios; and that it report on the steps taken to investigate the facts that led to the adoption of precautionary

CUBA

PM 179-10 – Egberto Ángel Escobedo Morales, Cuba

30. On June 28, 2010, the IACHR granted precautionary measures for Egberto Ángel Escobedo Morales, in Cuba. The request for precautionary measures alleges that Escobedo Morales is being deprived of his liberty, that he suffers from health problems, and that the prison authorities are not giving him the medical attention that his health condition requires. The Inter-American Commission asked the government of Cuba to instruct the relevant authorities to conduct medical tests to evaluate the beneficiary's health and provide him with adequate treatment; to adopt these measures in consultation with the beneficiary and his family; and to inform the IACHR about the actions taken to implement the precautionary measures.

PM 214-10 – Reina Luisa Tamayo Danger, Cuba

31. On July 20, 2010, the IACHR granted precautionary measures for Reina Luisa Tamayo Danger, in Cuba. The request for precautionary measures alleges that Reina Luisa Tamayo Danger has suffered constant threats and acts of harassment, in light of her involvement in various public protests since the death of her son Orlando Zapata Tamayo in February 2010. The request further indicates that she has been the victim of acts of violence, in which she allegedly was beaten and one of her arms was fractured. The Inter-American Commission asked the State of Cuba to adopt the necessary measures to guarantee the life and physical integrity of Reina Luisa Tamayo Danger, reach agreement with the beneficiary on the measures to be adopted, and inform the

Commission on the actions taken to investigate the facts that led to the adoption of precautionary measures.

GUATEMALA

PM-364/09 Carlos Amilcar Orellana Donis, Guatemala

32. On January 19, 2010, the IACHR granted precautionary measures for Carlos Amilcar Orellana Donis, in Guatemala. The request for precautionary measures alleges that in the early morning hours of August 29, 2009, Mr. Carlos Amilcar Orellana Donis was transferred unexpectedly to a maximum-security prison, even though he had not yet been tried. It adds that of the eight persons who have been charged in the case against him, he was the only one who was transferred. It states that the maximum-security prison also houses those who in 2007 allegedly killed the four police officers charged in the same crime in which Mr. Orellana Donis has been accused. The request also alleges that courts in Guatemala have recently issued rulings ordering the return of Mr. Orellana Donis to a preventive detention center, and that the competent Guatemalan authorities have not complied with these rulings. The IACHR asked the State of Guatemala for information in December 2009 but received no response. The Inter-American Commission requested that the State of Guatemala adopt the necessary measures to guarantee the life and physical integrity of the beneficiary and to separate him from the persons deprived of liberty who have already been convicted.

PM 71-10 Claudia Samayoa, Erenia Vanegas, and Members of UDEFEGUA, Guatemala

33. On March 25, 2010, the IACHR granted precautionary measures for Claudia Samayoa Pineda, Erenia Yamileth Vanegas Zapata, and their families, as well as the other members of the Unit for the Protection of Human Rights Defenders (UDEFEGUA), in Guatemala. The request for precautionary measures alleges that the beneficiaries have been targets of harassment in recent months as a result of their work and their complaints about alleged abuses of authority committed by State officials. The request alleges that despite the fact that the acts had been reported to the competent authorities, effective protection measures had not been implemented. The Inter-American Commission asked the State of Guatemala to adopt the necessary measures to guarantee the life and physical integrity of Ms. Samayoa and Ms. Vanegas, their families, and the other members of UDEFEGUA; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 79-10 - Nineth Montenegro and Family, Guatemala

34. On March 25, 2010, the IACHR granted precautionary measures for Nineth Montenegro and her family, in Guatemala. The request for precautionary measures alleges that in early March 2010, Congresswoman Nineth Montenegro Cottom learned of a plan to try to kill her. The request indicates that on March 4, 2010, Ms. Montenegro Cottom met with personnel from the International Commission against Impunity in Guatemala (CICIG), who offered her security measures provided by the Secretariat for Administrative and Security Affairs (SAAS). The request adds that on March 10, Ms. Montenegro Cottom met with personnel from the Ministry of the Interior to discuss the security plan being offered, and expressed her lack of confidence in the services that the SAAS and the National Civilian Police could offer. It also indicates that Ms. Montenegro Cottom would have an armored vehicle, but she believes that she needs a more extensive security scheme. The Inter-American Commission asked the State of Guatemala to adopt the necessary measures to guarantee the life and physical integrity of Congresswoman Nineth Montenegro Cottom and her family, including Alejandra García Montenegro, Emilia García, Mario Alcidez Polanco Pérez, and Carlos Humberto Peraza Ramírez, as well as X, whose identity is being withheld as he is a minor.

The Commission also requested that the State reach agreement with the beneficiaries and their representatives on the measures to be adopted and inform the Commission on the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 260-07 – Communities of the Maya People (Sipakepense and Mam) of the Sipacapa and San Miguel Ixtahuacán Municipalities in the Department of San Marcos, Guatemala

35. On May 20, 2010, the IACHR granted precautionary measures for the members of 18 communities of the Maya indigenous people: Tres Cruces, Escupijá, Pueblo Viejo, La Estancia, Poj, Sipacapa, Pie de la Cuesta, Cancil, Chual, Quecá, Quequesiguán, San Isidro, Canoj, Ángel, San José Ixcaniché, San José Nueva Esperanza, San Antonio de los Altos, and Siete Platos, in Guatemala. The request for precautionary measures alleges that in November 2003, the Ministry of Energy and Mines granted the Montana company a license to mine for gold and silver for 25 years, within an area of 20 square kilometers in the municipalities of Sipacapa and San Miguel Ixtahuacán. The concession's environmental and hydrological impact area would encompass the territories of at least 18 communities of the Maya people in both municipalities. The petitioners allege that the mining concession was issued and mining began without the prior, complete, free, and informed consultation of the affected communities of the Maya people. Montana reportedly began constructing the Marlin I Mine in 2003 and extracting gold and silver in 2005. The petitioners maintain that the mining has produced grave consequences for the life, personal integrity, environment, and property of the affected indigenous people, since the Tzálá River and its tributaries are the only sources of water for consumption and subsistence activities. According to the request, a number of water wells and springs have dried up, and the metals present in the water as a result of the mining activity have had harmful effects on the health of members of the community. The Inter-American Commission asked the State of Guatemala to suspend mining of the Marlin I project and other activities related to the concession granted to the company Goldcorp/Montana Exploradora de Guatemala S.A., and to implement effective measures to prevent environmental contamination, until such time as the Inter-American Commission on Human Rights adopts a decision on the merits of the petition associated with this request for precautionary measures. The IACHR likewise asked the State to adopt the necessary measures to decontaminate, as much as possible, the water sources of the 18 beneficiary communities and to ensure their members access to water fit for human consumption; to address the health problems that are the subject of these precautionary measures, in particular to begin a health assistance and health care program for the beneficiaries aimed at identifying those who may have been affected by the consequences of the contamination, so as to provide them with appropriate medical attention; to adopt any other necessary measures to guarantee the life and physical integrity of the members of the 18 aforementioned Maya communities; and to plan and implement the protection measures with the participation of the beneficiaries and/or their representatives.

PM 259-10 – Marco Vinicio Hernández González *et al.*

36. On August 13, 2010, the IACHR granted precautionary measures for Marco Vinicio Hernández González and the immediate family of Juan Fidel Pacheco Coc, in Guatemala. The request for precautionary measures alleges that Juan Fidel Pacheco Coc, Secretary General of the General Labor Union of Employees of the General Directorate of Migration of Guatemala (USIGEMIGRA), was murdered on July 31, 2010, after receiving threats. That same day, Marco Vinicio Hernández González, Assistant Secretary General of USIGEMIGRA, allegedly received threats in which he was told that he was "next on the list." It is alleged that in May 2010, Mr. Pacheco Coc asked the appropriate authorities for protection measures for the members of the labor union, but that he had received no response. The Inter-American Commission requested that the State of Guatemala adopt the necessary measures to guarantee the life and physical integrity of Marco Vinicio Hernández González and the immediate family of Juan Fidel Pacheco Coc; that it reach agreement with the beneficiaries and their representatives on the measures to be adopted; and that

it inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 185-07 – Norma Cruz Córdova and Alan Maldonado Ordóñez, Guatemala

37. On August 18, 2010, the IACHR expanded Precautionary Measures 185-07 to incorporate as beneficiaries Norma Cruz Córdova and Alan Maldonado Ordóñez, members of the Survivors Foundation (Fundación Sobrevivientes) of Guatemala. It is alleged that in June 2010, Norma Cruz Córdova received death threats in connection with a legal case brought by the foundation. The Commission's decision modifies precautionary measures originally granted on October 26, 2007. The Commission asked the State of Guatemala to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, reach agreement with the beneficiaries and their representatives on the measures to be adopted, and inform the Commission on the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 410/10 – Héctor Francisco Lucas Méndez, Guatemala

38. On December 13, 2010, the Commission requested precautionary measures on behalf of Héctor Francisco Lucas Méndez. According to the information furnished, the beneficiary would be in a situation of risk, presumably due to the opening of proceedings that would result in investigations and trials in the alleged murder of his brother, Junio Maynor Lucas Méndez, which allegedly occurred on August 17, 2010. Specifically, the requesters noted that Mr. Héctor Francisco Lucas Méndez had suffered an attack on his life on September 28, 2010, one day after he had given his statement in the aforementioned legal proceeding. In view of the foregoing, the IACHR requested, *inter alia*, that the State adopt the necessary measures to protect the life and physical integrity of Héctor Francisco Lucas Méndez, and to investigate the events leading to the adoption of the precautionary measures.

HAITI

PM 278/10 – Organization of Volunteers for the Promotion of Human Rights (OVPDH), Haiti

39. On October 4, 2010, the IACHR granted precautionary measures on behalf of 11 members of the Organization of Volunteers for the Promotion of Human Rights (OVPDH) in Haiti. In the request for precautionary measures it was alleged that members of the organization had been the subject of threats and intimidation by unidentified persons since 2007, owing to their involvement in the defense of human rights in Haiti. Specifically, it was pointed out that on July 10, 2010, one of the organization's members had been kidnapped, while the authorities failed to provide any type of protection. The Inter-American Commission requested that the Haitian State adopt the necessary measures to protect the life and personal integrity of its 11 members, that it coordinate the measures to be adopted on behalf of the beneficiaries and their representatives, and that it provide an account of the actions adopted with a view to investigating the events that gave rise to the precautionary measures.

PM 367-10 - Forced Evictions from Five Camps for Displaced Persons, Haiti

40. On November 15, 2010, the IACHR granted precautionary measures for the residents of five camps for internally displaced persons in Haiti. The request for precautionary measures alleges that forced evictions were carried out in five encampments created by families that set up tents in open fields, on public or private property, following the destruction of their homes by the earthquake. The Inter-American Commission asked the State of Haiti to adopt a moratorium on the expulsions from the camps for internally displaced persons until a new government can take office; to ensure that those who have been illegally expelled from the camps

are transferred to places with minimum sanitary and security conditions; to guarantee that those who have been internally displaced have access to effective remedies in court and before other competent authorities; to implement effective security measures to safeguard the physical integrity of the camps' inhabitants, guaranteeing in particular the protection of women and children; to train security forces on the rights of displaced persons, in particular their right not to be expelled from the camps by force; and to ensure that international cooperation agencies have access to the camps for internally displaced persons.

PM 340/10 – Women and girls residing in 22 Camps for internally displaced persons in Port-au-Prince, Haiti

41. On December 22, 2010, the IACHR granted precautionary measures for all the displaced women and children living in 22 camps for internally displaced persons in Port-au-Prince, Haiti, in the wake of the January 10, 2010 earthquake. The request for precautionary measures alleges a pattern of sexual violence and a series of acts of violence against the women and girls residing in said camps. The Inter-American Commission called on the State to ensure the availability of adequate medical and mental health care for the victims of sexual violence located in accessible areas; to provide adequate security at the camps for internally displaced persons, including the lighting of public spaces, regular patrols within the camps as well as outlying areas, and to increase the presence of female police officers assigned to patrol details and local police precincts; to ensure that the law enforcement agencies tasked with responding to incidents of sexual violence receive the necessary training to respond appropriately to reported cases of sexual violence and provide the necessary security to the camps; to promote the establishment of special investigative police units within the Office of the Attorney General with a view to investigating rape cases and other crimes of sexual violence; and to ensure that grassroots women's groups fully participate in and have a steering role in the planning and implementation of policies and practices aimed at combating and preventing rape and other forms of sexual violence in the camps.

HONDURAS

PM 196/09, Amplification - Marbin Emilio Hernández Duarte and his immediate family, Honduras

42. On January 8, 2010, the IACHR expanded Precautionary Measure PM 196-09 for Marbin Emilio Hernández Duarte and his immediate family. Mr. Duarte belongs to a group that does outreach activities related to the Resistance Front and to situations of repression following the June 2009 coup d'état. The request for precautionary measures alleges that on October 18, 2009, the group organized the presentation of a video in the Divanna de Comayagüela neighborhood, where unknown individuals took photos of the group and of the coordinators of the Resistance Front. The request notes that the following day Marco Antonio Martínez Lezama, the coordinator of the resistance movement in that neighborhood, was found dead. The request adds that on October 28, 2009, the same video was shown in the neighborhood of La Fraternidad de Tegucigalpa, and that once again unknown individuals took photos of them. It was reported that on December 22, 2009, Edwin Renán Fajardo Argueta, a member of the group, was found dead at his home and that on that date unknown individuals had followed Mr. Duarte. The request adds that on December 29 journalist César Silva, another member of the group, was kidnapped. It adds that on December 31, 2009, two men with military-style haircuts approached Mr. Duarte's residence, where his two children were playing outside, asked the 9-year-old boy for water, and asked the 5-year-old boy what his father's name was. The Inter-American Commission asked the State to adopt the necessary measures to guarantee the life and personal integrity of Marbin Emilio Hernández Duarte and his family; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led

to the adoption of the these measures. The IACHR asked the State to provide information within a 20-day period and to provide updates on a regular basis.

PM 196-09 - Amplification of Precautionary Measure, Nuclear Family of Rasel Antonio Tome, Honduras

43. On January 19, 2010, the IACHR amplified Precautionary Measure PM 196/09 for relatives of Rasel Antonio Tome, in Honduras. Rasel Antonio Tome is a beneficiary of IACHR precautionary measures through the amplification granted on September 23, 2009, when he was in the Embassy of Brazil with President Manuel Zelaya. The request for precautionary measures indicates that Rasel Antonio Tome has received death threats, and posters have appeared on the streets of Tegucigalpa bearing his photograph, along with those of other leaders of the Resistance Front, with captions such as "People of Honduras: These are your enemies. Know them." The request also reports that this same message is contained in a TV announcement that runs on Channel 8. It alleges that the security of Rasel Antonio Tome's nuclear family, which consists of his wife and three minor children, is at risk. The Inter-American Commission requested that the State adopt the necessary measures to guarantee the life and personal integrity of the members of Rasel Antonio Tome's nuclear family; that it reach an agreement with the beneficiaries and their representatives on the measures to be adopted; and that it inform the Commission about the actions taken to investigate the events that led to the adoption of these measures. The IACHR asked the State to provide information within a period of 20 days and to provide regular updates.

PM 196/09, Amplification - Gilberto Vides and his immediate family, Honduras

44. On January 22, 2010, the IACHR expanded Precautionary Measure PM 196-09 for Gilberto Vides and his immediate family. The request for precautionary measures alleges that on January 7, 2010, Professor Gilberto Vides, of the National School of Fine Arts, was approached by two armed men when he was returning from a resistance march. It indicates that they shot at the windshield and back window of his car and then fled. It also alleges that his home was under surveillance on January 8 and 9, 2010. The Inter-American Commission asked the State to adopt the necessary measures to guarantee the life and personal integrity of Gilberto Vides and his wife and daughter; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of the these measures.

PM 18-10 – Indyra Mendoza Aguilar et al., Republic of Honduras

45. On January 29, 2010, the IACHR granted precautionary measures for Indyra Mendoza Aguilar, Nohelia Flores Álvarez (Noel Eduardo Flores Álvarez), Fátima Maritza Ulloa Becerra, and Ana Lourdes Ordóñez, in Honduras. Indyra Mendoza Aguilar is the director of Cattrachas, a nongovernmental organization that works for the rights of the lesbian, gay, bisexual, transgender, and intersex (LBGTI) community. The request for precautionary measures alleges that on December 17, 2008, in Tegucigalpa, Nohelia Flores Álvarez (Noel Eduardo), who belongs to Cattrachas, was forced to get into a vehicle of a member of the Preventive Police, who demanded sexual services at gunpoint. The request indicates that Nohelia Flores Álvarez refused, and the police officer threatened his life. It goes on to say that the next day, the policeman returned with two other men in a pickup truck and the three of them stabbed him a total of 17 times, in his throat, back, stomach, and arms. After he passed out, the men abandoned him in some bushes. In the hospital, Indyra Mendoza took photos that could serve as evidence in a trial and accompanied him in the process of filing the complaint, which is being investigated by Fátima Maritza Ulloa Becerra and Ana Lourdes Ordóñez, agents of the National Office of Criminal Investigation in Tegucigalpa. The request for precautionary measures alleges that the four beneficiaries are the object of threats and acts of harassment that place their lives and personal integrity at risk. The

Commission requested that the State of Honduras adopt the necessary measures to guarantee the life and personal integrity of Indyra Mendoza Aguilar, Nohelia Flores Álvarez (Noel Eduardo Flores Álvarez), Fátima Maritza Ulloa Becerra, and Ana Lourdes Ordóñez; that it come to an agreement with the beneficiaries and their representatives on the measures to be adopted; and that it inform the Commission about the actions taken with respect to the events that led to the adoption of the precautionary measures, so as to remove the factors placing the beneficiaries at risk.

PM 196/09, Amplification - Anselmo Romero Ulloa and María Brígida Ulloa Hernández, Honduras

46. On February 12, 2010, the IACHR expanded Precautionary Measure PM 196-09 for Anselmo Romero Ulloa and María Brígida Ulloa Hernández, in Honduras. The request for precautionary measures alleges that Mr. Anselmo Romero Ulloa, a member of the National Coordinating Committee for the Resistance, was attacked on November 3, 2009, by a man armed with an Uzi. It alleges that the attacker fired a volley of gunshots near Mr. Romero's face, which left him deaf in one ear, and that another volley passed very close to María Brígida Ulloa Hernández, who lives with Mr. Romero Ulloa. It adds that a complaint was filed with the National Office of Criminal Investigation in Comayagua, but that the Public Prosecutor's Office has yet to proceed with the case. It also indicates that on January 29, 2010, the same person who attacked Mr. Romero Ulloa in 2009 was prowling around the outside of his house, and that the house has been under surveillance at various times by unidentified individuals. The Inter-American Commission asked the State to adopt the necessary measures to guarantee the life and personal integrity of Anselmo Romero Ulloa and María Brígida Ulloa Hernández; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of these measures. The IACHR asked the State to provide information within a 20-day period and to provide updates on a regular basis.

PM 38-10 - Manuel de Jesús Varela Murillo *et al.*, Honduras

47. On February 25, 2010, the IACHR granted precautionary measures for Manuel de Jesús Varela Murillo, Ricardo Antonio Rodríguez, and their families, in Honduras. The request for precautionary measures alleges that the beneficiaries, who belong to the Resistance Movement against the coup d'état, had been subject to kidnapping, acts of torture, and death threats. It indicates that on February 2, 2010, they were attacked by 20 individuals in civilian clothing, who were heavily armed and wore ski masks over their faces. It alleges that the beneficiaries were taken to a house where they were blindfolded, hit about the head, and threatened with machetes while being asked where the arsenal was and where the dollars were and being told to abandon the resistance. The beneficiaries indicated that the attackers robbed them of money, a computer, personal documents, and one cell phone. They state that after more than three hours of interrogation and threats to kill their families, they were abandoned in the Víctor Ardon neighborhood. The Inter-American Commission asked the state to adopt the necessary measures to guarantee the life and personal integrity of Manuel de Jesús Varela Murillo, Ricardo Antonio Rodríguez, and their families; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of the precautionary measures, in order to remove the factors placing the beneficiaries at risk.

PM 91-10 - Pedro Brizuela, Mateo Enrique García Castillo, and their immediate families, Honduras

48. On March 19, 2010, the IACHR granted precautionary measures for Pedro Brizuela, Mateo Enrique García Castillo, and their respective immediate families, in Honduras. The request for precautionary measures alleges that Pedro Brizuela and Mateo Enrique García Castillo, who belong

to the National Front for Popular Resistance, have been targets of acts of violence and harassment. On February 24, 2010, Claudia Brizuela, daughter of Pedro Brizuela, was shot to death by unknown persons when she opened the door to her house. The request for precautionary measures indicates that both before and after his daughter's murder, Mr. Brizuela received threats on his cell phone. It also indicates that on February 26, 2010, Mr. Mateo Enrique García Castillo was the object of a kidnapping attempt by four men who the day before had infiltrated a march convened by the National Front for Popular Resistance. The Inter-American Commission asked the State to adopt the necessary measures to guarantee the life and personal integrity of Pedro Brizuela, Mateo Enrique García Castillo, and their immediate families; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of the precautionary measures, in order to remove the factors placing the beneficiaries at risk.

PM 95-10 - X and Family, Honduras

49. On March 24, 2010, the IACHR granted precautionary measures for X, whose identity the IACHR is withholding because he is a minor, as well as for his family, in Honduras. The request for precautionary measures alleges that X, an active member of various student groups and of the National Front for Popular Resistance, has been subject to a kidnapping and to death threats. The Inter-American Commission asked the State of Honduras to adopt the necessary measures to guarantee the life and physical integrity of X and his family; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 196-09, Amplification - Rebeca Ethel Becerra Lanza and Daughters, Honduras

50. On April 13, 2010, the IACHR expanded Precautionary Measure PM 196-09 for Rebeca Ethel Becerra Lanza and daughters, in Honduras. The request for precautionary measures alleges that Ms. Becerra had been subject to surveillance in front of her house, times in which she was followed, an attempted break-in at her house, and intimidating phone calls. The request indicates that the acts were reported to the Public Ministry, but that the authorities had not acted. The Inter-American Commission requested that the necessary measures be adopted to guarantee the life and personal integrity of Rebeca Ethel Becerra Lanza and her daughters, that the measures to be adopted be agreed on by the beneficiaries and their representatives, and that the Commission be informed about the steps taken to investigate the facts that led to the adoption of these measures.

PM 196-09, Extension – Inmer Genaro Chávez and Lucy Mendoza, Honduras

51. On May 3, 2010, the IACHR expanded Precautionary Measure PM 196-09 for Inmer Genaro Chávez and Lucy Mendoza, in Honduras. The request for precautionary measures alleges that journalist Inmer Genaro Chávez, who works at Radio Progreso, has received death threats, including a text message sent to his cell phone that said, "Resistance we are eliminating the chebes next come the priests," after journalist Luiz Chávez and his cousin Alberto Chávez were killed on April 11, 2010. The request also alleges that the lawyer and human rights defender Lucy Mendoza, who has been supporting Radio Progreso journalists in criminal proceedings, has also received death threats. The Inter-American Commission asked that the State adopt the necessary measures to guarantee the life and personal integrity of Inmer Genaro Chávez and Lucy Mendoza, that agreement be reached with the beneficiaries and their representatives on the measures to be adopted, and that the Commission be informed on the steps taken to investigate the facts that led to the adoption of these measures.

PM 196-09, Extension – Journalists from Radio Progreso, Honduras

52. On June 2, 2010, the IACHR expanded Precautionary Measure PM 196-09 for Karla Patricia Rivas Sánchez, José Pablo Peraza Chávez, Rita Suyapa Santamaría Velásquez, Alfredo Bográn, Iolany Mariela Pérez Parada, Rommel Alexander Gómez, Lesly Castro, José Domingo Miranda, Héctor Hernández, Víctor Emilio Borjas, Leticia Castellanos, and Pablo Ordóñez, in Honduras. The request for precautionary measures alleges that these journalists, who work at Radio Progreso, have been tailed by vehicles, and that unknown individuals have been keeping the entrance of the radio station under surveillance. The Inter-American Commission asked the State to adopt the necessary precautionary measures to guarantee the life and personal integrity of the journalists who are beneficiaries of this measure; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; to inform the Commission about the steps taken to investigate the events that led to the adoption of these measures; and to inform the IACHR on the implementation of the precautionary measures granted.

PM 180-10 – Juan Ramón Flores, Honduras

53. On June 21, 2010, the IACHR granted precautionary measures for Juan Ramón Flores, in Honduras. The request for precautionary measures alleges that the beneficiary, who belongs to the Resistance Movement against the coup d'état, had been subject to kidnapping and threatened at gunpoint. The Inter-American Commission asked that the necessary measures be adopted to guarantee the life and personal integrity of Juan Ramón Flores, that agreement be reached with the beneficiaries and their families on the measures to be adopted, and that the IACHR be informed about the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 194-10 – Carolina Pineda, José Luis Buquedano, and Delvid Ixcel Sánchez Ávila, Honduras

54. On July 2, 2010, the IACHR granted precautionary measures for Carolina Pineda, José Luis Buquedano, and Delvid Ixcel Sánchez Ávila, in Honduras. The request for precautionary measures alleges that the beneficiaries had been subject to acts of harassment and aggression that put their lives and personal integrity at risk. The request alleges that on June 10, 2010, armed and hooded men attempted to kidnap Carolina Pineda, Secretary of the Central Management Council of the College of Middle Education Professors of Honduras (COPEMH). It adds that on June 12, 2010, José Luis Buquedano, Secretary of the Unified Confederation of Workers (CUTH), Secretary General of the Independent Federation of Honduran Workers, and leader of the National Front for Popular Resistance (FNRP), had reportedly been chased by persons in a vehicle who fired gunshots at him. Finally, the request alleges that Delvid Ixcel Sánchez, a member of the National Front for Popular Resistance and collaborator with the Committee for the Defense of Human Rights (CODEH), had been pursued by an armed man on June 10, 2010. Delvid Ixcel Sánchez identified the assailant as one of a group of four armed individuals that had attacked him on February 25, 2010. The Inter-American Commission asked that the necessary measures be adopted to guarantee the life and personal integrity of the beneficiaries, that agreement be reached with the beneficiaries and their representatives on measures to be adopted, and that the Commission be informed about the investigations undertaken with regard to the facts that led to the adoption of these measures, in order to remove the risk factors.

PM 221-10 – Edwin Róbelo Espinal, Honduras

55. On July 22, 2010, the IACHR granted precautionary measures for Edwin Róbelo Espinal, in Honduras. The request for precautionary measures alleges that Edwin Róbelo Espinal has been subject to threats and harassment, purportedly on the part of police agents, since October

2009, and that this allegedly has to do with his participation in demonstrations. The request adds that on June 30, 2010, Edwin Róbelo Espinal was detained and physically abused by agents of the police. It also indicates that he had not received a response to a request for protection submitted to the relevant authorities. The Inter-American Commission requested that the State adopt the necessary measures to guarantee the life and personal integrity of the beneficiary; come to an agreement with the beneficiary and his representatives on the measures to be adopted; and inform the Commission on the steps taken to investigate the facts that led to the adoption of these measures.

MEXICO

PM 52-10 - Margarita Guadalupe Martínez Martínez and her immediate family, Mexico

56. On March 3, 2010, the IACHR granted precautionary measures for Margarita Guadalupe Martínez Martínez, her husband, Adolfo Guzmán Ordaz, and her two children, in San Cristóbal de las Casas, in the state of Chiapas, Mexico. The request for precautionary measures alleges that the beneficiaries are targets of threats and harassment. It indicates that on November 8, 2009, some 18 to 20 individuals, allegedly from the Ministerial Police, came to the beneficiaries' home without a search warrant, threatened Mrs. Martínez Martínez with a firearm, and searched the entire house, including the bedroom in which the children were sleeping. The request adds that this was reported to the authorities and that the beneficiaries asked the authorities for protection, but this was not granted. It also indicates that on February 25, 2010, Mrs. Martínez Martínez was kidnapped and tortured and that her life was threatened by unknown persons, who warned her to desist in her criminal complaint regarding abuse of authority, breaking and entering, psychological torture, and threats, a complaint lodged as a result of the events of November 8, 2009. The request alleges that the kidnappers told her that the attack was "a little gift from the municipal president of Comitán." The Inter-American Commission asked the State to adopt the necessary measures to guarantee the life and personal integrity of Margarita Guadalupe Martínez Martínez, her husband, Adolfo Guzmán Ordaz, and her children, Ada Saraí Martínez Martínez and Eduardo Abel de León Martínez; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of the precautionary measures, in order to remove the factors placing the beneficiaries at risk.

PM 14-10 - X and XX, Mexico

57. On March 3, 2010, the IACHR granted precautionary measures for two persons in Mexico whose identity the Commission will withhold because one of the them alleges having been the object of sexual abuse. The request for precautionary measures indicates that the beneficiaries have been subject to threats and harassment since the release of X, who had reportedly been kidnapped on July 6, 2009, in the city of Acapulco, in the state of Guerrero. During the 10 days she was held, she was allegedly drugged, raped, tortured, and kept in chains. The request for precautionary measures alleges that agents of the Ministerial Police were involved in the kidnapping, a connection made because XX had previously reported alleged unlawful actions on the part of State officials. At the time of her release, the kidnappers allegedly threatened to kill her if she reported what had happened. The request indicates that X and her mother, XX, filed a complaint with the Public Ministry and with the Attorney General's Office of the state of Guerrero, where they also requested personal protection measures, but they apparently received no response. The Inter-American Commission asked the State to adopt the necessary measures to guarantee the life and personal integrity of X and XX; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the steps taken to investigate the facts that led to the adoption of the precautionary measures, in order to remove the factors placing the beneficiaries at risk.

PM 55/10 – Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, Mexico

58. On March 4, 2010, the IACHR granted precautionary measures for Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera. The request for precautionary measures alleges that the aforementioned persons had been deprived of their liberty by state security forces on December 29, 2009, and that there has been no information as to their whereabouts. The Commission called on the Mexican State to furnish information regarding the whereabouts of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza, and Rocío Irene Alvarado Reyes, as well as their current health status and security situation; to adopt the necessary measures to protect their lives and physical integrity; and to report on the actions it has taken with a view to investigating the events that gave rise to the adoption of the precautionary measures. In that same communication, the State was asked to report on the security situation of the 11 family members and three representatives of the alleged disappeared. The Commission continued to follow up on the precautionary measures in force. On May 13, 2010, the IACHR decided to request the Inter-American Court of Human Rights to grant provisional measures, which were ordered on May 26, 2010.

PM 222-09 - Agustín Humberto Estrada Negrete, Leticia Estrada Negrete, and Guadalupe Negrete Silva, Mexico

59. On April 7, 2010, the IACHR granted precautionary measures for Agustín Humberto Estrada Negrete, Leticia Estrada Negrete, and Guadalupe Negrete Silva, in Mexico. The request for precautionary measures alleges that Mr. Estrada Negrete, a member of the nongovernmental organization Agenda Lesbianas Gays Bisexuales Transexuales [Lesbian, Gay, Bisexual, and Transsexual Agenda] had been subject to death threats, acts of physical violence, and harassment since February 2009. It adds that these acts had been reported to the appropriate authorities, but that the necessary protection measures had not been adopted. It indicates that Mr. Estrada Negrete, his mother, and his sister had received new threats in January and February of 2010. The Inter-American Commission asked the State of Mexico to adopt the necessary measures to guarantee the life and physical integrity of Agustín Humberto Estrada Negrete, Leticia Estrada Negrete, and Guadalupe Negrete Silva; to plan and implement the protection measures with the participation of the beneficiaries and/or their representatives; and to inform the Commission about the measures adopted to respond to the factors that place the beneficiaries at risk.

PM 250-09 – José Alejandro Solalinde Guerra and Members of the *Hermanos en el Camino* Migrant Shelter, Mexico

60. On April 23, 2010, the IACHR granted precautionary measures for José Alejandro Solalinde Guerra, David Álvarez Vargas, Areli Palomo Contreras, Mario Calderón López, and Norma Araceli Doblado Abrego, who work or can be found at the *Hermanos en el Camino* Migrant Shelter in Ixtepec, in the state of Oaxaca, Mexico. In the request for precautionary measures and in information provided during a working meeting held on March 20, 2010, during the Commission's 138th period of sessions, it is alleged that the beneficiaries had been subject to acts of intimidation and that in February 2010, Father Solalinde Guerra was detained and held at gunpoint by the Federal Police when he went to the Office of the Public Prosecutor of Oaxaca state in the context of investigations underway for the alleged murder of three migrants. The petitioners indicate that the protection measures implemented by the authorities turned out to be ineffective, and they inform the Commission that the acts of harassment continue. The Inter-American Commission asked that the State of Mexico adopt the necessary measures to guarantee the life and personal integrity of José Alejandro Solalinde Guerra, David Álvarez Vargas, Areli Palomo Contreras, Mario Calderón López, and Norma Araceli Doblado Abrego; that the planning and implementation of the protection

measures be done in agreement with the beneficiaries and their representatives; and that the Commission be informed about the measures adopted to remove the risk factors for the beneficiaries.

PM 312-09 - Father Pedro Pantoja Arreola and his Team of Collaborators at the Belén Migrant Shelter, Mexico

61. On April 23, 2010, the IACHR granted precautionary measures for Father Pedro Pantoja Arreola and his team of collaborators at the Belén Migrant Shelter in Saltillo, in the state of Coahuila, Mexico. In the request for precautionary measures and in information provided during a working meeting held on March 20, 2010, during the Commission's 138th period of sessions, it is alleged that the beneficiaries had been subject to acts of intimidation and harassment, an unsuccessful break-in attempt at the shelter's facilities, and surveillance by individuals in vehicles who take photographs of those who enter and leave the shelter. The Inter-American Commission asked that the State of Mexico adopt the necessary measures to guarantee the life and personal integrity of Father Pedro Pantoja Arreola and his team of collaborators at the Belén Migrant Shelter in Saltillo, in the state of Coahuila, Mexico. The IACHR also asked that the planning and implementation of the protection measures be done in agreement with the beneficiaries and their representatives, and that the Commission be informed about the measures adopted to remove the risk factors for the beneficiaries.

PM 131-09 – Blanca Mesina Nevárez, Silvia Vásquez Camacho, and their Families

62. On June 4, 2010, the IACHR granted precautionary measures for Blanca Mesina Nevárez, Silvia Vásquez Camacho, and their families, in Mexico. In the request for precautionary measures and in additional information provided to the IACHR, it is alleged that Ms. Mesina Nevárez and Ms. Vásquez Camacho have been subject to acts of intimidation and harassment that place their lives and personal integrity at risk. It is also alleged that this situation stems from their having reported alleged abuses of authority committed by Baja California public law enforcement agents. The additional information provided at the Commission's request indicates that there apparently have been delays in implementing a security plan for Ms. Mesina Nevárez, Ms. Vásquez Camacho and their families. The Inter-American Commission asked the State of Mexico to adopt the necessary measures to guarantee the life and personal integrity of Blanca Mesina Nevárez, Silvia Vásquez Camacho, and their families; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the IACHR on the steps taken to investigate the events that led to the adoption of precautionary measures.

PM 102-10 – Inhabitants of the Mixteca Indigenous Community of Lázaro Cárdenas, Putla, Oaxaca, Mexico

63. On August 4, 2010, the IACHR granted precautionary measures for the inhabitants of the Mixteca indigenous community of Lázaro Cárdenas, Putla, Oaxaca, Mexico. The request for precautionary measures alleges that a series of acts of violence have taken place against the inhabitants of the Mixteca indigenous community of Lázaro Cárdenas, in the state of Oaxaca, in the context of a violent dispute between two communities to define their territory and the access to it. According to the information received, the situation was aggravated in March and May of 2010, with the reported disappearance of Marcelino Pedro Hernández Jiménez and Eleazar Asunción Sánchez Hernández and the purported invasion by approximately 1,500 people from another community, which took place in July 2010 and which allegedly places all inhabitants of Lázaro Cárdenas at risk. The Inter-American Commission asked that the State of Mexico adopt the necessary measures to guarantee the life and personal integrity of the members of the Mixteca community of Lázaro Cárdenas; that it adopt the necessary measures to remove the risk factors tied to the demarcation of lands between both communities, in order to prevent further confrontations;

that it establish a mechanism for constant monitoring and ongoing communication with the beneficiaries, so that the measures can be implemented by mutual agreement with the beneficiaries and their representatives; and that it provide updated information on the steps taken to discover the whereabouts of Marcelino Pedro Hernández Jiménez and Eleazar Asunción Sánchez Hernández.

PM 264/10 – Gerardo Vera Orcino, Javier Martínez Robles, and Francisco de Asís Manuel, Mexico

64. On September 21, 2010, the IACHR granted precautionary measures for Gerardo Vera Orcino, Javier Martínez Robles, and Francisco de Asís Manuel, in Mexico. The request for precautionary measures alleges that the aforementioned persons had presumably disappeared at the hands of illegal armed groups that were operating in the vicinity of Santa María de la Ostula, in the municipality of Aquila, state of Michoacán, and that the authorities of said state failed to take the necessary steps to determine what had happened to the men, their whereabouts, or current situation. The Inter-American Commission asked the Mexican State to provide information regarding the whereabouts of Gerardo Vera Orcino, Javier Martínez Robles, and Francisco de Asís Manuel, as well as their current health and safety status. The Commission also requested that the State adopt the necessary measures to protect the lives and physical integrity of the men, and to provide information regarding the measures it had undertaken with a view to investigating the events that gave rise to the precautionary measures.

PM 197-10 - 135 Inhabitants of San Juan Copala, Mexico

65. On October 7, 2010, the IACHR granted precautionary measures for 135 inhabitants of San Juan Copala, Mexico. The request for precautionary measures alleges that 135 members of the Triqui indigenous people of San Juan Copala, in Oaxaca state, are displaced as a result of repeated violent attacks carried out against them by an armed group. The information received indicates that in the previous eleven months, 25 persons have been killed and 17 injured as a result of the acts of violence in San Juan Copala. The Inter-American Commission requested that the State of Mexico adopt the necessary measures to guarantee the life and personal integrity of the 135 inhabitants of San Juan Copala, Mexico; reach agreement with the beneficiaries and their representatives on the measures to be adopted; and inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 92-10 - Juan Manuel Martínez and Family, Mexico

66. On November 4, 2010, the IACHR granted precautionary measures for Juan Manuel Martínez Moreno and his family, in Mexico. The request for precautionary measures alleges that Juan Manuel Martínez and his family were the object of threats, were followed, and were subject to acts of harassment since the beginning of 2010, when Juan Manuel Martínez was released from prison. According to information provided by the petitioners, Juan Manuel Martínez was arrested in 2008 for acts connected with the death of U.S. videographer Bradley Roland Will of Indymedia, who was shot to death on October 27, 2006, in Oaxaca. The request indicates that the wife of Juan Manuel Martínez received an intimidating phone call on January 18, 2010, in which she was instructed to stop denouncing the alleged injustices committed against her husband and told that if she failed to do so, the lives of her three children would be at risk. From that point on, the family was reportedly the object of other threats, had been followed by automobiles with no tags and with tinted windows, and had had its residence under surveillance by individuals taking photographs and notes, among other things. The Inter-American Commission asked the State of Mexico to take the necessary steps to guarantee the life and integrity of Juan Manuel Martínez and his family; to reach agreement with the beneficiaries and their representatives on the measures to be adopted; and to report on the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 197/10 – 135 Inhabitants of San Juan Copala, Mexico

67. On October 7, 2010, the IACHR granted precautionary measures for 135 inhabitants of San Juan Copala, Mexico. The request for precautionary measures alleges that 135 members of the Triqui indigenous people of San Juan Copala, in Oaxaca state, are displaced as a result of repeated violent attacks carried out against them by an armed group. The information received indicates that in the previous eleven months, 25 persons have been killed and 17 injured as a result of the acts of violence in San Juan Copala. The Inter-American Commission requested that the State of Mexico adopt the necessary measures to guarantee the life and personal integrity of the 135 inhabitants of San Juan Copala, Mexico; reach agreement with the beneficiaries and their representatives on the measures to be adopted; and inform the Commission about the steps taken to investigate the facts that led to the adoption of precautionary measures.

NICARAGUA

PM 43-10 – “Amelia”, Nicaragua

68. On February 26, 2010, the IACHR granted precautionary measures for a person who the IACHR will identify as Amelia, in Nicaragua. The request seeking precautionary measures alleges that Amelia, mother of a 10-year-old girl, is not receiving the necessary medical attention to treat the cancer she had, because of her pregnancy. The request alleges that the doctors had recommended to urgently initiate chemotherapy or radiotherapy treatment, but the hospital informed Amelia’s mother and representatives that the treatment would not be given, due to the high risk that it could provoke an abortion. The Inter-American Commission asked the State of Nicaragua to adopt the measures necessary to ensure that the beneficiary has access to the medical treatment she needs to treat her metastatic cancer; to adopt the measures in agreement with the beneficiary and her representatives; and to keep her identity and that of her family under seal. Within the deadline set to receive an answer, the State of Nicaragua informed the IACHR that the requested treatment has been initiated.

PARAGUAY

PM 192-10 - LM, Paraguay

69. On November 10, 2010, the IACHR granted precautionary measures for LM, in Paraguay. The request for precautionary measures alleges that due to a series of legal proceedings to determine who was responsible for the care and custody of the child LM, his alleged biological relatives had not been able to have access to him. According to the last communications submitted by the petitioners, the Commission understands that the situation continues to this day with no decision that would determine the child's situation, which could lead to his rights being affected in a series of ways. Based on the principle of the best interests of the child, the IACHR granted precautionary measures so as to ensure that the time factor does not become a determining element for the domestic courts, to the detriment of LM's rights. Within this framework, the IACHR asked the State to take the necessary measures to ensure that the proceedings related to the guardianship and custody of the child LM are resolved within a period of three months, and to report on the steps taken to comply with this precautionary measure.

PERU

PM 199/09 – 300 Inhabitants of Puerto Nuevo, Peru

70. On December 27, 2010, the IACHR called for the adoption of precautionary measures to protect the life and personal integrity of 300 inhabitants of Puerto Nuevo Callao in Peru. According to the information furnished, activities involving the warehousing and transport of lead have seriously compromised the health of 300 inhabitants of the Puerto Nuevo human settlement, and have high levels of that substance in their blood. It is alleged that the lead poisoning victims lack the appropriate medical care in terms of diagnosis, treatment, and prevention of illness. Moreover, it has been noted that the actions undertaken by the State to protect the inhabitants of Puerto Nuevo from the effects of lead poisoning have not been effective in reducing their risk of exposure. Consequently, the Commission required the Peruvian State to adopt the necessary measures with a view to suspending lead warehousing and transport activities in Puerto de Callao until such time as it is able to adopt, *inter alia*, measures to effectively eliminate the situation of environmental contamination, relocate the population, or provide for an alternative lead warehousing site; to adopt the necessary measures to provide specialized medical diagnostic services for the beneficiaries as well as appropriate and specialized medical treatment to those whose diagnosis indicates a risk of irreparable harm to their personal integrity or life; and to continue adopting the necessary measures to mitigate harm to the environment.

SURINAME

PM 395/09 – Maho Indigenous Community, Suriname

71. On October 27, 2010, the IACHR granted precautionary measures for the inhabitants of the Maho indigenous community in Suriname. The request for precautionary measures alleges that, since 1990, the organization known as Stichtung Mohsiro and other groups have invaded the 65 hectares set aside for the Maho community in 1971. It is also alleged that, on occasions, the invaders destroyed the community's crops and physically threatened inhabitants. Moreover, as a result of these acts, it has been suggested that the disappearance of the community could well be imminent. The Inter-American Commission called on the Suriname State to adopt the necessary measures to ensure the survival of the Maho indigenous community on the 65 hectares reserved for it, and to prevent any further incursions of persons outside that community until such time as the Commission reaches a decision on the merits of the petition.

UNITED STATES

PM 385-09 – 31 Undocumented Immigrants Residing in Atlanta, Georgia, United States

72. On January 29, 2010, the IACHR granted precautionary measures for 31 undocumented immigrants residing in Atlanta, Georgia, whose dialysis treatments at Grady Memorial Hospital were scheduled to be terminated on February 3, 2010. The request seeking precautionary measures alleges that the lives and health of the 31 persons concerned are at grave risk due to the fact that they suffer from End-Stage Renal Disease and do not have the economic resources to obtain the dialysis treatments that their condition requires. It is alleged that Grady Memorial Hospital's decision to terminate the dialysis treatments had a disproportionate effect on the beneficiaries because, unlike the affected U.S. citizens, they are not eligible to receive assistance through programs such as Medicare or Medicaid. Furthermore, the petitioners claim that the beneficiaries were not informed of alternative means of obtaining the treatment that they require, but that they were instead encouraged to leave the state of Georgia and return to their countries of origin. The Inter-American Commission asked the United States to instruct the competent authorities to take the urgent measures necessary to ensure that the beneficiaries have

access to the medical treatment that may be required for their condition, and to inform the IACHR about compliance with these measures within 10 days, and thereafter on a periodic basis.

PM 184/10– David Powell, United States

73. On June 14, 2010, the IACHR granted precautionary measures for David Powell, who has been deprived of liberty since 1978 awaiting the death penalty. The precautionary measures were issued in the context of a petition alleging the violation of rights enshrined in the American Declaration. This petition, which is being processed by the Commission, alleges irregularities in the criminal proceedings and that Mr. Powell's lengthy incarceration on death row constitutes cruel and unusual punishment. Through the precautionary measures, the Commission asked the United States to refrain from executing Mr. Powell until the former has had an opportunity to issue its decision on the petitioner's claim regarding alleged violations of the American Declaration.

PM 189/10– Ronnie Lee Gardner, United States

74. On June 17, 2010, the IACHR granted precautionary measures for Ronnie Lee Gardner, who has been deprived of liberty since 1985 awaiting the death penalty. The request for precautionary measures was presented in the context of a communication about the alleged violation of rights enshrined in the American Declaration. The communication alleges that Mr. Gardner's lengthy incarceration on death row constitutes cruel and unusual punishment, as well as issues related to an alleged lack of due process. Through the precautionary measures, the Commission asked the United States to refrain from executing Mr. Gardner until the former has had an opportunity to issue its decision on the petitioner's claim regarding alleged violations of the American Declaration.

VENEZUELA

PM 380-09 – María Lourdes Afiuni, Venezuela

75. On January 11, 2010, the IACHR granted precautionary measures for Maria Lourdes Afiuni, Venezuela. The request seeking precautionary measures alleges that on Sunday, January 3, 2010, a group of persons deprived of liberty in the *Instituto Nacional de Orientación Femenina* (INOF) wore distinctive tape in their legs and head, which allegedly means "war" or "mutiny", and planned to "burn the judge alive," in reference to Mrs. Afiuni. It is alleged that they also planned to hurt other three persons detained who are perceived to be close to Mrs. Afiuni. The Inter-American Commission asked the State of Venezuela to adopt the measures necessary to guarantee the life and physical integrity of the beneficiary; to adopt the measures necessary to transfer the beneficiary to a safe place, and to inform the IACHR about actions taken to investigate through the Judiciary the facts that led to the adoption of precautionary measures.

PM 209-09 – Franklin José Brito Rodríguez, Venezuela

76. On January 11, 2010, the IACHR granted precautionary measures for Franklin José Brito Rodríguez, Venezuela. The request for precautionary measure alleges that in the early morning hours of December 13, 2009, agents of the Metropolitan Police of Caracas moved Franklin José Brito, who had been carrying out a hunger strike in front of the OAS office in Caracas, to the Military Hospital. Mr. Brito alleges that he is being unlawfully deprived of his personal liberty, as he is being held in the facility against his will. It is alleged that he was transferred to the Military Hospital in response to an amparo action filed by the Public Ministry on the grounds of safeguarding his life. However, the request argues that the amparo is arbitrary, since it does not meet any of the assumptions established in the law for an amparo action. The Commission was also informed that

as of January 6, 2010, Mr. Brito was still in the Military Hospital without having access to a medical doctor he trusted. Finally, the Commission was informed that on January 9, 2010, State officials allegedly sedated him against his will and transferred him again, telling his daughter that they were taking him for intensive therapy. The Inter-American Commission asked the State of Venezuela to adopt the measures necessary to permit access, treatment, and monitoring of Mr. Brito's health situation by a doctor he trusts, and to ensure that Mr. Franklin Brito can receive regular visits. The IACHR also requested that the State inform the Commission within a 10-day period on the adoption of precautionary measures and update that information on a regular basis.

D. Status of compliance with the recommendations of the IACHR

77. Complete compliance with the decisions of the Inter-American Commission is essential for ensuring that human rights have full force in the OAS member states, and for helping to strengthen the Inter-American system for the protection of human rights. For that purpose, the IACHR, in this section, analyzes the status of compliance with the recommendations in the reports adopted by the Commission in the last ten years.

78. In this regard, the OAS General Assembly, in its resolution AG/RES. 2522 (XXXIX-O/09), "Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights," urged the member states to follow up on the recommendations of the Inter-American Commission on Human Rights (operative paragraph 3.b) and to continue to take appropriate action in connection with the annual reports of the Commission, in the context of the Permanent Council and the General Assembly of the Organization (operative paragraph 3.c). Likewise, in its resolution AG/RES. 2521 (XXXIX-O/09), "Strengthening of Human Rights Systems pursuant to the mandates arising from the Summits of the Americas," it reaffirmed the intent of the OAS to continue taking concrete measures aimed at implementing the mandates of the Third Summit of the Americas, including follow-up of the recommendations of the Inter-American Commission on Human Rights (operative paragraph 1.b), and instructed the Permanent Council to continue to consider ways to promote the follow-up of the recommendations of the Inter-American Commission on Human Rights by member states of the Organization (operative paragraph 3.e).

79. Both the Convention (Article 41) and the Statute of the Commission (Article 18) explicitly grant the IACHR the authority to request information from the member states and to produce such reports and recommendations as it considers advisable. Specifically, Article 48 of the IACHR Rules of Procedure provides the following:

1. Once the Commission has published a report on a friendly settlement or on the merits in which it has made recommendations, it may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with friendly settlement agreements and its recommendations. 2. The Commission shall report on progress in complying with those agreements and recommendations as it deems appropriate.

80. In compliance with its powers under the Convention and the Statute and with the above-cited resolutions, and pursuant to Article 48 of the Rules of Procedure, the IACHR requested information from the States on compliance with the recommendations made in the reports published on individual cases included in its annual reports from 2000 through 2009.

81. The table the Commission is presenting includes the status of compliance with the recommendations made by the IACHR in the cases that have been decided and published in the last ten years. The IACHR notes that compliance with different recommendations is meant to be successive and not immediate and that some recommendations require a reasonable time to be fully implemented. The table, therefore, presents the current status of compliance, which the Commission acknowledges as being a dynamic process that may evolve continuously. From that perspective, the Commission evaluates whether or not compliance with its recommendations is complete and not whether it has been started.

82. The three categories included in the table are the following:

- Total compliance (those cases in which the state has fully complied with all the recommendations made by the IACHR. Having regard to the principles of

effectiveness and fully observed those recommendations where the state has begun and satisfactorily completed the procedures for compliance);

- Partial compliance (those cases in which the state has partially observed the recommendations made by the IACHR either by having complied with only one or some of them or through incomplete compliance with all of them);
- Compliance pending (those cases in which the IACHR considers that there has been no compliance with the recommendations because no steps have been taken in that direction; because the state has explicitly indicated that it will not comply with the recommendations made; or because the state has not reported to the IACHR and the Commission has no information from other sources that would suggest otherwise).

| CASE | TOTAL COMPLIANCE | PARTIAL COMPLIANCE | PENDING COMPLIANCE |
|--|------------------|--------------------|--------------------|
| Case 11.307, Report No. 103/01, María Meriadri de Morini (Argentina) ¹ | X | | |
| Case 11.804, Report No. 91/03, Juan Ángel Greco (Argentina) | | X | |
| Case 12.080, Report No. 102/05, Sergio Schiavini and María Teresa Schnack (Argentina) | | X | |
| Petition 12.298, Report No. 81/08 Fernando Giovanelli (Argentina) | | | X |
| Petition 12.159, Report No. 79/09, Gabriel Egisto Santillán Reigas (Argentina) | | X | |
| Petition 11.732, Report No. 83/09, Horacio Aníbal Schillizzi (Argentina) | | X | |
| Cases 12.067, 12.068 and 12.086, Report No. 48/01, Michael Edwards, Omar Hall, Briar Schroeter and Jeronimo Bowleg (Bahamas) | | | X |
| Case 12.265, Report 78/07 Chad Roger Goodman (Bahamas) | | | X |
| Case 12.513, Report 79/07 Prince Pinder (Bahamas) | | | X |
| Case 12.053, Report No. 40/04, May Indigenous Community of the Toledo District (Belize) | | | X |
| Case 12.475, Report No. 97/05, Alfredo Díaz Bustos (Bolivia) | | X | |
| Case 12.516, Report No. 98/05, Raúl Zavala Málaga and Jorge Pacheco Rondón (Bolivia) ² | X | | |

¹ See IACHR Annual Report 2008, <http://www.cidh.oas.org/annualrep/2008eng/Chap3.g.eng.htm>.

² See IACHR Annual Report 2009, <http://www.cidh.oas.org/annualrep/2009eng/Chap.III.g.eng.htm>.

| CASE | TOTAL COMPLIANCE | PARTIAL COMPLIANCE | PENDING COMPLIANCE |
|---|------------------|--------------------|--------------------|
| Petition No. 269-05, Report No. 82/07, Miguel Angel Moncada Osorio and James David Rocha Terraza (Bolivia) ³ | X | | |
| Petition No. 788-06, Report No. 70/07, Víctor Hugo Arce Chávez (Bolivia) ⁴ | X | | |
| Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil) | | X | |
| Cases 11.286, 11.406, 11.407, 11.412, 11.413, 11.415, 11.416 and 11.417, Report No. 55/01, Aluísio Cavalcante <i>et al.</i> (Brazil) | | X | |
| Case 11.517, Report No. 23/02, Diniz Bento da Silva (Brazil) | | X | |
| Case 10.301, Report No. 40/03, Parque São Lucas (Brazil) | | X | |
| Case 11.289, Report No. 95/03, José Pereira (Brazil) | | X | |
| Case 11.556, Report No. 32/04, Corumbiara (Brazil) | | X | |
| Case 11.634, Report No. 33/04, Jailton Neri da Fonseca (Brazil) | | X | |
| Cases 12.426 and 12.427, Report No. 43/06, Raniê Silva Cruz, Eduardo Rocha da Silva and Raimundo Nonato Conceição Filho (Brazil) ⁵ | X | | |
| Case 12.001, Report No. 66/06, Simone André Diniz (Brazil) | | X | |
| Case 12.019, Report No. 35/08 Antonio Ferreira Braga (Brazil) | | | X |
| Case 12.310, Report No. 25/09 Segastião Camargo Filho (Brazil) | | | X |
| Case 12.440, Report No. 26/09 Wallace de Almeida (Brazil) | | | X |
| Case 11.771, Report No. 61/01, Samuel Alfonso Catalán Lincoleo (Chile) | | X | |
| Case 11.715, Report No. 32/02, Juan Manuel Contreras San Martín <i>et al.</i> (Chile) ⁶ | X | | |
| Case 12.046, Report No. 33/02, Mónica Carabantes Galleguillos (Chile) ⁷ | X | | |
| Case 11.725, Report No. 139/99, Carmelo Soria Espinoza (Chile) | | X | |

³ See IACHR Annual Report 2009, <http://www.cidh.oas.org/annualrep/2009eng/Chap.III.g.eng.htm>.

⁴ See IACHR Annual Report 2009, <http://www.cidh.oas.org/annualrep/2009eng/Chap.III.g.eng.htm>.

⁵ See IACHR Annual Report 2008, <http://www.cidh.oas.org/annualrep/2008eng/Chap3.g.eng.htm>.

⁶ See IACHR Annual Report 2007, <http://www.cidh.oas.org/annualrep/2007eng/Chap.3k.htm>.

⁷ See IACHR Annual Report 2007, <http://www.cidh.oas.org/annualrep/2007eng/Chap.3k.htm>.

| CASE | TOTAL COMPLIANCE | PARTIAL COMPLIANCE | PENDING COMPLIANCE |
|---|------------------|--------------------|--------------------|
| Petition 4617/02, Report No. 30/04, Mercedes Julia Huenteao Beroiza <i>et al.</i> (Chile) | | X | |
| Case 12.142, Report No. 90/05, Alejandra Marcela Matus Acuña <i>et al.</i> (Chile) ⁸ | X | | |
| Petition 12.337, Report No. 80/09, Marcela Andra Valdés Díaz (Chile) | X | | |
| Petition 490-03, Report No. 81/09 "X" (Chile) | X | | |
| Case 11.654, Report No. 62/01, Ríofrío Massacre (Colombia) | | X | |
| Case 11.710, Report No. 63/01, Carlos Manuel Prada González and Evelio Antonio Bolaño Castro (Colombia) | | X | |
| Case 11.712, Report No. 64/01, Leonel de Jesús Isaza Echeverry (Colombia) | | X | |
| Petition 11.141, Report No. 105/05, Villatina Massacre (Colombia) | | X | |
| Petition 10.205, Report No. 53/06, Germán Enrique Guerra Achuri (Colombia) | X | | |
| Case 12.009, Report No. 43/08, Leydi Dayan Sanchez (Colombia) | | X | |
| Case 12.448, Report No. 44/08, Sergio Emilio Cadena Antolinez (Colombia) ⁹ | X | | |
| Petition 477-05, Report No. 82/08 X and family (Colombia) | X | | |
| Petition 401-05, Report No. 83/08 Jorge Antonio Barbosa Tarazona <i>et al.</i> (Colombia) | | X | |
| Case 12.476, Report No. 67/06, Oscar Elias Biscet <i>et al.</i> (Cuba) | | | X |
| Case 12.477, Report No. 68/06, Lorenzo Enrique Copello Castillo <i>et al.</i> (Cuba) | | | X |
| Case 11.421, Report No. 93/00, Edison Patricio Quishpe Alcívar (Ecuador) | | X | |
| Case 11.439, Report No. 94/00, Byron Roberto Cañaverl (Ecuador) | | X | |
| Case 11.445, Report No. 95/00, Ángelo Javier Ruales Paredes (Ecuador) ¹⁰ | X | | |
| Case 11.466, Report No. 96/00, Manuel Inocencio Lalvay Guamán (Ecuador) | | X | |
| Case 11.584, Report No. 97/00, Carlos Juela Molina (Ecuador) | | X | |

⁸ See IACHR Annual Report 2008, <http://www.cidh.oas.org/annualrep/2008eng/Chap3.h.eng.htm>.

⁹ See IACHR Annual Report 2009, <http://www.cidh.oas.org/annualrep/2009eng/Chap.III.i.eng.htm>.

¹⁰ See IACHR Annual Report 2008, <http://www.cidh.oas.org/annualrep/2008eng/Chap3.h.eng.htm>.

| CASE | TOTAL COMPLIANCE | PARTIAL COMPLIANCE | PENDING COMPLIANCE |
|--|------------------|--------------------|--------------------|
| Case 11.783, Report No. 98/00 Marcia Irene Clavijo Tapia, (Ecuador) | | X | |
| Case 11.868, Report No. 99/00, Carlos Santiago and Pedro Andrés Restrepo Arismendy (Ecuador) | | X | |
| Case 11.991, Report No. 100/00, Kelvin Vicente Torres Cueva (Ecuador) | | X | |
| Case 11.478, Report No. 19/01, Juan Clímaco Cuellar <i>et al.</i> (Ecuador) | | X | |
| Case 11.512, Report No. 20/01, Lida Ángela Riera Rodríguez (Ecuador) | | X | |
| Case 11.605, Report No. 21/01, René Gonzalo Cruz Pazmiño (Ecuador) | | X | |
| Case 11.779, Report No. 22/01 José Patricio Reascos (Ecuador) | | X | |
| Case 11.992, Report No. 66/01, Dayra María Levoyer Jiménez (Ecuador) | | X | |
| Case 11.441, Report No. 104/01, Rodrigo Elicio Muñoz Arcos <i>et al.</i> (Ecuador) | | X | |
| Case 11.443, Report No. 105/01, Washington Ayora Rodríguez (Ecuador) | | X | |
| Case 11.450, Report No. 106/01, Marco Vinicio Almeida Calispa (Ecuador) | | X | |
| Case 11.542, Report No. 107/01, Angel Reiniero Vega Jiménez (Ecuador) | | X | |
| Case 11.574, Report No. 108/01, Wilberto Samuel Manzano (Ecuador) | | X | |
| Case 11.632, Report No. 109/01, Vidal Segura Hurtado (Ecuador) | | X | |
| Case 12.007, Report No. 110/01 Pompeyo Carlos Andrade Benítez (Ecuador) | | X | |
| Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda (Ecuador) | | X | |
| Case 12.188 , Report No. 64/03, Joffre José Valencia Mero, Priscila Fierro, Zoreida Valencia Sánchez, Rocío Valencia Sánchez (Ecuador) | | X | |
| Case 12.394, Report No. 65/03, Joaquín Hernández Alvarado, Marlon Loor Argote and Hugo Lara Pinos (Ecuador) | | X | |
| Petition 12.205, Report No. 44/06, José René Castro Galarza (Ecuador) | | X | |
| Petition 12.207, Report No. 45/06, Lizandro Ramiro Montero Masache (Ecuador) | | X | |

| CASE | TOTAL COMPLIANCE | PARTIAL COMPLIANCE | PENDING COMPLIANCE |
|--|------------------|--------------------|--------------------|
| Petition 12.238, Report No. 46/06 Myriam Larrea Pintado (Ecuador) | | X | |
| Petition 533-01, Report No. 47/06 Fausto Mendoza Giler and Diógenes Mendoza Bravo (Ecuador) | | X | |
| Petition 12.487, Report No. 17/08, Rafael Ignacio Cuesta Caputi (Ecuador) | | | X |
| Petition 12.525, Report No. 84/09, Nelson Iván Serano Sáñez (Ecuador) | | | X |
| Case 12.249, Report No. 27/09, Jorge Odir Miranda Cortez <i>et al.</i> (El Salvador) | | X | |
| Case 12.028, Report No. 47/01, Donnason Knights (Grenada) | | X | |
| Case 11.765, Report No. 55/02, Paul Lallion (Grenada) | | X | |
| Case 12.158, Report No. 56/02 Benedict Jacob (Grenada) | | X | |
| Case 11.625, Report No. 4/01, María Eugenia Morales de Sierra (Guatemala) | | X | |
| Case 9207, Report No. 58/01, Oscar Manuel Gramajo López (Guatemala) | | X | |
| Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay <i>et al.</i> ; Case 10.799 Catalino Chochoy <i>et al.</i> ; Case 10.751 Juan Galicia Hernández <i>et al.</i> and Case 10.901 Antulio Delgado, Report No. 59/01 Remigio Domingo Morales <i>et al.</i> (Guatemala) | | X | |
| Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo <i>et al.</i> (Guatemala) | | X | |
| Case 11.382, Report No. 57/02, Finca "La Exacta" (Guatemala) | | X | |
| Case 11.312, Report No. 66/03, Emilio Tec Pop (Guatemala) | | X | |
| Case 11.766, Report No. 67/03, Irma Flaquer (Guatemala) | | X | |
| Case 11.197, Report No. 68/03, Community of San Vicente de los Cimientos (Guatemala) | | X | |
| Petition 9168, Report No. 29/04, Jorge Alberto Rosal Paz (Guatemala) | | X | |
| Petition 133/04, Report No. 99/05, José Miguel Mérida Escobar (Guatemala) | | X | |
| Case 10.855, Report No. 100/05, Pedro García Chuc (Guatemala) | | X | |
| Case 11.171, Report No. 69/06, Tomas Lares Cipriano (Guatemala) | | X | |
| Case 11.658, Report No. 80/07, Martín Pelicó Coxic (Guatemala) | | X | |

| CASE | TOTAL COMPLIANCE | PARTIAL COMPLIANCE | PENDING COMPLIANCE |
|---|------------------|--------------------|--------------------|
| Case 12.264, Report No. 1/06, Franz Britton (Guyana) | | | X |
| Case 12.504, Report 81/07 Daniel and Kornel Vaux (Guyana) | | | X |
| Case 11.335, Report No. 78/02, Guy Malary (Haiti) | | | X |
| Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique y Dalton Daley (Jamaica) | | X | |
| Case 12.069, Report No. 50/01, Damion Thomas (Jamaica) | | X | |
| Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica) | | X | |
| Case 12.275, Report No. 58/02, Denton Aitken (Jamaica) | | X | |
| Case 12.347, Report No. 76/02, Dave Sewell (Jamaica) | | X | |
| Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica) | | | X |
| Case 12.418, Report No. 92/05, Michael Gayle (Jamaica) | | X | |
| Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica) | | X | |
| Case 11.565, Report No. 53/01, González Pérez Sisters (Mexico) | | | X |
| Case 11.807, Report 69/03, José Guadarrama (Mexico) ¹¹ | X | | |
| Petition 388-01, Report 101/05 Alejandro Ortiz Ramírez (Mexico) ¹² | X | | |
| Case 12.130, Report No. 2/06, Miguel Orlando Muñoz Guzmán (Mexico) | | | X |
| Petition 161-02, Report No. 21/07, Paulina del Carmen Ramírez Jacinto (Mexico) | | X | |
| Case 11.822, Friendly Settlement Report No. 24/09, Reyes Penagos Martínez <i>et al.</i> (Mexico) | | X | |
| Case 12.228, Informe No. 117/09, Alfonso Martín del Campo Dodd (Mexico) | | | X |
| Case 11.381, Report No. 100/01, Milton García Fajardo (Nicaragua) | | X | |
| Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay) | | | X |

¹¹ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, available at: <http://www.cidh.oas.org/annualrep/2007eng/Chap.3p.htm#11.807>.

¹² See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, available at: <http://www.cidh.oas.org/annualrep/2007eng/Chap.3p.htm#388/01>.

| CASE | TOTAL COMPLIANCE | PARTIAL COMPLIANCE | PENDING COMPLIANCE |
|--|------------------|--------------------|--------------------|
| Case 11.607, Report No. 85/09, Víctor Hugo Maciel (Paraguay) | | X | |
| Case 11.800, Report No. 110/00, César Cabrejos Bernuy (Peru) | X | | |
| Case 11.031, Report No. 111/00, Pedro Pablo López González <i>et al.</i> (Peru) | | X | |
| Case 11.099, Report No. 112/00, Yone Cruz Ocalio (Peru) | | X | |
| Cases 10.247 and others, Report No. 101/01, Luis Miguel Pasache Vidal <i>et al.</i> (Peru) | | X | |
| Case 12.035; Report No. 75/02, Pablo Ignacio Livia Robles (Peru) ¹³ | X | | |
| Case 11.149, Report No. 70/03 Augusto Alejandro Zúñiga Paz (Peru) ¹⁴ | X | | |
| Case 12.191, Report No. 71/03, María Mamerita Mestanza (Peru) | | X | |
| Case 12.078, Report No. 31/04, Ricardo Semoza Di Carlo (Peru) | | X | |
| Petition 185-02, Report No. 107-05, Roger Herminio Salas Gamboa (Peru) | | X | |
| Case 12.033, Report No. 49/06, Rómulo Torres Ventocilla (Peru) ¹⁵ | X | | |
| Petition 711-01 <i>et al.</i> , Report No. 50/06, Miguel Grimaldo Castañeda Sánchez <i>et al.</i> (Peru); Petition 33-03 <i>et al.</i> , Report No. 109/06, Héctor Núñez Julia <i>et al.</i> (Peru); Petition 732-01 <i>et al.</i> , Report 20/07 Eulogio Miguel Melgarejo <i>et al.</i> ; Petition 758-01 and others, Report No 71/07 Hernán Atilio Aguirre Moreno <i>et al.</i> ; Petition 494-04 (Peru) | | X | |
| Petition 494-04, Report No. 20/08 Romeo Edgardo Vargas Romero (Peru) | | X | |
| Case 12.269, Report No. 28/09 Dexter Lendore (Trinidad and Tobago) | | | X |
| Case 9903, Report No. 51/01, Rafael Ferrer Mazorra <i>et al.</i> (United States) | | | X |
| Case 12.243, Report No. 52/01, Juan Raul Garza (United States) | | | X |

¹³ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 332-335.

¹⁴ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 336 and 337.

¹⁵ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 613-616.

| CASE | TOTAL COMPLIANCE | PARTIAL COMPLIANCE | PENDING COMPLIANCE |
|---|------------------|--------------------|--------------------|
| Case 11.753, Report No. 52/02, Ramón Martínez Villarreal (United States) | | X | |
| Case 12.285, Report No. 62/02, Michael Domingues (United States) ¹⁶ | X | | |
| Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States) | | | X |
| Case 11.193, Report No. 97/03, Shaka Sankofa (United States) | | X | |
| Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States) | | | X |
| Case 11.331, Report No. 99/03, Cesar Fierro (United States) | | X | |
| Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States) | | X | |
| Case 12.412, Report No. 101/03, Napoleon Beazley (United States) | | X | |
| CASE 12.430, Report No. 1/05 Roberto Moreno Ramos, (United States) | | X | |
| Case 12.439, Report No. 25/05, Toronto Markkey Patterson (United States) | | X | |
| Case 12.421, Report No. 91/05, Javier Suarez Medina (United States) | | X | |
| Case 12.534, Report No. 63/08 Andrea Mortlock (United States) | | | X |
| Case 12.644, Report No. 90/09 Medellín, Ramírez Cárdenas and Leal García (United States) | | | X |
| Case 11.500, Report No. 124/06, Tomás Eduardo Cirio (Uruguay) | X | | |
| Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay) | | X | |
| Petition 12.555 , Report No. 110/06, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola (Venezuela) | | | X |

Case 11.804, Report No. 91/03, Juan Ángel Greco (Argentina)

83. On October 22, 2003, by Report No. 91/03, the Commission approved a friendly settlement agreement in the case of Juan Ángel Greco. In summary, the petitioners alleged that on June 25, 1990, Mr. Greco, 24 years of age, was illegally detained and mistreated when he sought to obtain police assistance when lodging a complaint regarding an assault. The petitioners indicated that while Mr. Greco was detained at the police station in Puerto Vilelas, province of Chaco, there was a fire in his cell in circumstances that were not clarified that led him to suffer serious burns. In addition, they argued that the police were responsible for provoking the fire and for delaying the transfer of the victim to the hospital for several hours. Mr. Greco was hospitalized until his death on

¹⁶ See IACHR Annual Report 2005, <http://www.cidh.oas.org/annualrep/2005eng/chap.3f.htm>.

July 4, 1990, and buried, according to the petitioners' complaint, without an adequate autopsy. The petitioners also noted that the state did not perform an adequate investigation to clarify the facts adduced, with which it denied the family its right to have justice done, and to obtain compensation.

84. In this agreement the State agreed to the following:

1. Provide economic reparation to the family members of Juan Ángel Greco in the sum of three hundred thousand pesos (\$300,000) that shall be paid to Mrs. Zulma Basitanini de Greco in the amount of thirty thousand (\$30,000) per month in the time period specified in point 3 of the present item, that amount comprising material damages, moral damages, lost wages, costs, fees and any other classification that would arise from the responsibility assumed by the Province of Chaco.
2. Provide the petitioners and the Inter-American Commission on Human Rights, through the Office for Human Rights of the Foreign Ministry, a legalized and certified copy of two cases for which the Province of Chaco has requested reexamination.
3. Within the framework of its competences, encourage the reopening of the criminal case and the corresponding investigations.
4. Direct the reopening of the administrative case N° 130/91-250690-1401 once the criminal case has been reopened.
5. Commit itself, in the framework of its competences, to ensuring that the victim's family members have access to the judicial and administrative investigations."
6. Publish the agreement in the principle written press sources of the nation and the Province of Chaco."
7. Continue pursuing legislative and administrative measures for the improved protection of Human Rights. Specifically, it was placed on record that a draft law creating a Criminal Prosecutor's Office for Human Rights has been developed and transmitted to the Provincial Chamber of Deputies for its study and approval.
8. Strengthen the work of the Permanent Commission for Control of Detention Centers, created by Resolution No. 119 of the Ministry of Government, Justice and Labor of the Province of Chaco, on February 24, 2003.
9. Further emphasize the work of the Organ of Institutional Control (O.C.I) created by Article 35 of the Organic Police Law of the Province of Chaco N° 4.987, directing it toward the more effective protection of human rights on the part of the Provincial Police. At the initiative of the Executive, the Provincial Counsel for Education and Promotion of Human Rights created by Law N° 4.912 was constituted in the sphere of the Chamber of Deputies. The representatives of the distinct intervening organs and powers have already been designated and convoked.

85. On November 13, 2009, the Commission asked the parties to submit up-to-date information on the status of compliance with the recommendations.

86. Regarding the monetary reparations, as indicated in previous submissions, the State reported in its reply that through Decree 19/2004, the provincial executive authorized the Administration Directorate of the Ministry of the Government, Justice, and Labor to pay Mrs. Zulma Bastianini de Greco the amount of three hundred thousand pesos (\$300,000), to be delivered in ten equal, monthly, and consecutive payments of thirty thousand pesos (\$30,000) within the first ten (10) business days of each month. In addition, on March 1, 2005, the Minister of Government, Justice, and Labor of the province of Chaco reported that the tenth of the payments ordered by Decree 19/04 had been made on October 29, 2004. In that decree, the provincial executive

expressly stated that the compensation payments would be subject to no current or future tax, levy, or duty.

87. Regarding the nonmonetary reparations, the State reported that as stipulated by Decree 19/2004, the friendly settlement agreement was published in two national daily newspapers (*Clarín* and *Ámbito Financiero*) and four local papers (*Norte, El Diario, Primera Línea,* and *La Voz del Chaco*). Regarding the commitment to continuing to pursue legislative and administrative measures for the better protection of human rights, the State spoke of the creation, on May 16, 2006, of the Special Criminal Prosecutor's Office for Human Rights (Law 5702), which is currently operational. Finally, the State again notes that in this case, it reopened the criminal trial and administrative summary proceedings pursued against Principal Police Commissioner Juan Carlos Escobar, Deputy Police Commissioner Adolfo Eduardo Valdez, and First Sergeant Julio Ramón Obregon, in order to identify the corresponding responsibilities, and it also states that the case files are at the evidentiary phase.

88. On November 23, 2010, the Commission requested updated information from the parties as to the status of compliance with the pending recommendations.

89. As for the judicial inquiries, in its communication of January 12, 2011, the State submitted the report prepared by the Chaco Provincial Government in connection with the intervention of the Special Criminal Prosecutor for Human Rights in the judicial proceedings on the court case titled "Escobar, Juan Carlos *et al* on Neglect and Subsequent Death of a Person," Case File No. 5.145/03, according to which as of October 20, 2010, the court authorities had still not reported the decision made regarding that office's intervention in the case.

90. For their part, in their communication of December 21, 2010, the petitioners reported that they had repeatedly complained of the lack of progress made in the investigations, which they attributed to reticence on the part of the judicial authorities. They stated that now that the victim's mother was deceased, the State's obligation is even more in evidence and that concrete progress on the case would not happen unless the federal state and the provinces took on a more pro-active attitude.

91. The petitioners again reported that the Office of the Special Criminal Prosecutor for Human Rights of El Chaco Province had asked to be named a "private plaintiff" in the case. Here, the petitioners observed that while in their judgment the function of the Public Prosecutor's Office is not to serve as a plaintiff in a case, but rather to prosecute the state's case, the petitioners did not know what the court authorities' decision on that request had been, or what measures the Prosecutor's Office may have sought in that capacity. They also observed that at the working meeting the parties held in February 2010 at the urging of the IACHR, the Secretariat of Human Rights of Argentina promised to explore the possibility of becoming a plaintiff in the case. The petitioners have not received any information in that regard.

92. As for the administrative proceeding, the petitioners observed that they still do not know the status of the administrative case; they again underscored their concern that the statute of limitations would apply and that the outcome of the administrative proceeding would be dictated by the outcome of the criminal proceeding, when in fact criminal law and administrative law are separate and differ in nature.

93. Finally, as for the legislative reforms, the petitioners applauded the passage and enactment of 2010 Provincial Law No. 6483, which creates the Provincial Mechanism for the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The petitioners observed that this basic step must materialize in the form of specific measures taken to put the law into practice.

94. With regard to point 7 of the Agreement, the petitioners insisted on the serious deficiencies in the powers and authorities that Law No. 5.702 invests in the Special Criminal Prosecutor's Office for Human Rights. They add that the office does not have functional autonomy and again make the point that while the law labels the function that the new law creates as being that of "prosecutor," it is in fact simply a public office; as in the present case, it only has authority to file complaints and act as a plaintiff in a case, and then only if the judge so declares. As for compliance with this point in the Agreement, the petitioners contend that legislative reform is needed to modify the nature and functions of the Special Criminal Prosecutor's Office for Human Rights.

95. With respect to the commitments acquired by the State, the Commission has already identified the aspects of the friendly settlement agreement dealing with the monetary compensation and with the publication of the agreement as having been met. However, based on the information received, the Commission believes that the aspects relating to the duty of investigating and punishing those responsible for violating the human rights violations of Juan Ángel Greco, together with those relating to the affording the victim's next-of-kin access to the judicial and administrative investigations, still remain pending.

96. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has partially been implemented. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.080, Report No. 102/05, Sergio Schiavini y María Teresa Schnack (Argentina)

97. On October 27, 2005, by Report 102/05, the Commission approved a friendly settlement agreement in the case of Sergio Schiavini and María Teresa Schnack. In summary, the petitioners had made arguments referring to the responsibility of the State for the death of Sergio Andrés Schiavini, on May 29, 1991, during a confrontation between members of the Police of the Province of Buenos Aires and a group of assailants who held several persons hostage, including the young Schiavini. The petitioners stated as injuries inflicted by grievous conduct on the part of the State the excessive use of force during the exchange of fire; the denial of judicial protection and judicial guarantees; and the acts of persecution to which María Teresa Schnack has been subjected since the death of her son, Sergio Schiavini, for giving impetus to the investigation.

98. In the friendly settlement agreement, the State recognized its responsibility for "the facts of what transpired in the aforementioned jurisdiction and the attendant violation of the rights and guarantees recognized by the American Convention on Human Rights as described in Admissibility Report No. 5/02, adopted by the IACHR during its 114th regular session."

99. According to that agreement, the State undertook as follows:

1. The parties agree to set up an "ad-hoc" Arbitration Tribunal to determine the amount of economic reparation due Sergio Andrés Schiavini's heirs, in keeping with the rights acknowledged to have been violated and the applicable international standards. The Tribunal shall be made up of three independent experts, with recognized expertise in human rights and of the highest moral caliber. The petitioners will designate one expert, the national State shall propose a second, and the third shall be proposed by the two experts designated by the parties. The Tribunal shall be formed no later than 30 days following the approval of this agreement by Decree of the Executive Branch of the Nation.

2. The procedure to be followed shall be determined by common agreement among the parties, and set forth in writing, a copy of which shall be submitted to the Inter-American Commission on Human Rights. To this end, the parties shall designate a representative to

participate in the discussions of the procedure. In representation of the national State, the Ministry of Foreign Affairs, International Trade, and Worship and the Ministry of Justice and Human Rights shall be charged with designating an official in the area with competence in human rights matters in both Ministries.

3. The parties agree to form a technical working group, in which the Government of the Province of Buenos Aires shall be invited to participate, to carry out the studies and take such other steps as may be necessary to submit for the consideration of the Legislature and, where appropriate, the competent federal authorities, the following initiatives, aimed at implementing the necessary measures to bring existing law into harmony with international standards, in accordance with point 2 of the Act dated November 11, 2004:

a) Draft legislative reform bill making it mandatory, with no exceptions, to perform an autopsy in all cases of violent or criminally suspicious deaths. It will also prohibit members of the security forces from being involved in this process with respect to facts in which they have participated;

b) Draft reform of the Criminal Procedures Code of the Nation granting a victim's relatives the right to choose to designate their own expert before the autopsy is performed;

c) Analysis of the legislation in force on the procedures followed by the forensic medical office to evaluate possible modifications that could contribute to ensuring transparency and effectiveness in its performance;

d) Draft reform of the Criminal Procedures Code of the Nation to incorporate the violation of human rights as grounds for review;

e) Draft reform of the Criminal Procedures Code of the Nation incorporating the violation of human rights as grounds for the immediate suspension or interruption of the statute of limitations;

f) Evaluation of domestic law concerning hostage-taking and the use of force to bring it into harmony with international standards in accordance with principle No. 3 of UN Resolution 1989/65;

g) Proposal that, in the event that the appeal for review in the Schiavini case filed by the Provincial Office of the General Prosecutor before Chamber 111 of the Criminal Court of Cassation of Buenos Aires Province is unsuccessful, a "Truth Commission" is established at the federal level to help effectively safeguard that right;

h) Development of draft reforms setting forth the procedures for processing and responding to petitions under study by the Commission and before the Inter-American Court of Human Rights, that include the establishment of a specific entity with jurisdiction in the decision-making process—including the institution of "friendly settlement"—and a mechanism to ensure compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights.

4. The Government of the Argentine Republic pledges to facilitate the activities of the working group and make available the technical support and facilities it requires in order to perform its task. It also pledges to periodically inform the Inter-American Commission on Human Rights regarding the outcomes of the task entrusted to the technical group and invites the Commission to participate actively in evaluating the draft reforms, as well as the follow-up and evolution of these initiatives.

5. The Government of the Argentine Republic pledges to publish this agreement in the Official Gazette of the Argentine Republic, in the newspapers "La Unión" of Lomas de Zamora, "Clarín", "La Nación," and "Página/12", once it has been approved by the Inter-American Commission on Human Rights in accordance with the provisions of Article 49 of the American Convention on Human Rights.

100. On November 19, 2010, the Commission asked the parties to submit up-to-date information on the status of compliance with the friendly settlement agreement.

101. By a communication dated January 13, 2011, the State submitted information concerning the measures taken to comply with the terms of the above friendly settlement agreement. As for the pecuniary damages, the State invoked the Commission's finding in its 2009 Annual Report to the effect that the aspects of the agreement that pertain to pecuniary compensation had been duly implemented. In effect, the corresponding arbitral award was paid to the beneficiaries on October 22, 2007, by means of a bank deposit.

102. As for the non-pecuniary damages, the State reported the following progress: first, it reported that the Truth Commission had been formed, composed of Dr. Dr. Martín Esteban Scotto, named by the petitioner party, Dr. Carlos Alberto Beraldi, nominated by the Federal Government, and Dr. Héctor Granillo Fernández, appointed by the Ministry of Justice of the Province of Buenos Aires. It further indicated that to enable that Commission to begin its work, the provincial government was asked to supply a copy of the three court cases and one administrative case, which the State had listed in its presentation. It also reported on the working meeting held on September 1, 2010, where the experts serving on the Commission agreed to work together to prepare the Commission's draft Rules of Procedure.

103. Second, regarding the agreed upon legal reforms, the State reported that the respective drafts are under evaluation in the appropriate sections of government. As for the reforms intended to set forth the procedures for processing and responding to petitions with international agencies that promote and protect human rights, the State reported that a working meeting was convened and held during the Commission's 140th session; participating were Commissioner Luz Patricia Mejía, representatives of CELS and CEJIL, and officials of the Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights and of the Foreign Ministry. That meeting discussed the progress made on preparation of the joint draft resolution, and the possibility of working out a draft law of a higher order, in keeping with the agreement reached in the present follow-up.

104. Based on the information available, the Commission concludes that while the matter of the pecuniary damages has been carried out, the same cannot be said of the other measures of reparations, which are still pending.

105. In view of the foregoing, the Commission concludes that the friendly settlement agreement has partially been implemented. Accordingly, the Commission will continue to monitor the items still pending compliance..

Case 12.298, Report No. 81/08, Fernando Horacio Giovanelli (Argentina)

106. On October 30, 2008, by means of Report No. 81/08, the Commission approved the friendly settlement agreement signed by the parties in Case 12.298, Fernando Horacio Giovanelli. To summarize, the petitioners had lodged claims alleging the State's responsibility for the death of Fernando Horacio Giovanelli, who at around 9:45 p.m. on October 17, 1991, in the close vicinity of his home, was approached by officers of the Buenos Aires Provincial Police who asked him for his ID, detained him, and took him in an unmarked vehicle to the Third Police Station in Quilmes. The petitioners claimed that at that police facility, the alleged victim was brutally beaten and then taken to the 14 de Agosto Bridge in Quilmes district, a few meters from the police station, where he was thrown onto the footpath and killed by one of the police officers who shot him in the head (with the bullet entering through his left earlobe). They also claimed that the victim's body was later taken to Villa Los Eucaliptos, a shanty town that is under the jurisdiction of that police station, where it was

dumped approximately two and a half hours after his death. The petitioners maintained that the version of events contained in the police report, which was used as the basis for the criminal proceedings, was plagued with inconsistencies; that the police investigation was deliberately geared toward covering up the truth of the killing; and that the different judges that heard the case merely produced evidence that was largely irrelevant for clarifying the facts of Mr. Giovanelli's death and failed to address the confusing, suspicious, and contradictory evidence in the proceedings.

107. By means of a friendly settlement agreement signed on August 23, 2007, the government of the Argentine Republic expressed its willingness to assume objective international responsibility as a state party to the Convention and asked the Commission to accept its acknowledgment of the alleged violations as set out in the petition.

108. Under that agreement, the State agreed to:

a. Economic reparation

1. The parties agree to set up an ad-hoc Arbitration Tribunal to determine the amount of economic reparation due to the petitioners, in keeping with the rights acknowledged to have been violated and the applicable international standards.

2. The Tribunal shall be made up of three independent experts, with recognized expertise in human rights and of the highest moral caliber. The petitioners will designate one expert; the National State shall propose a second; and the third shall be proposed by the two experts designated by the parties. The Tribunal shall be formed no later than 30 days following the approval of this agreement by Decree of the Executive Branch of the Nation.

3. The procedure to be followed shall be determined by common agreement among the parties, and set forth in writing, a copy of which shall be submitted to the Inter-American Commission on Human Rights. To this end, the parties shall designate a representative to participate in the discussions of the procedure. In representation of the National State, the Ministry of Foreign Affairs, International Trade, and Worship and the Ministry of Justice and Human Rights shall be charged with designating an official in the area with competence in human rights matters in both Ministries.

4. The arbitration tribunal's award shall be final and not subject to appeal. It shall contain the amount and type of monetary reparation agreed upon, the beneficiaries thereof, and a calculation of any applicable costs and fees incurred in the international proceeding and by the arbitration entity. These shall be submitted to the Inter-American Commission on Human Rights for evaluation in the framework of the process to follow up on compliance with the agreement, in order to verify whether the latter is consistent with the applicable international parameters. The payments set forth in the award shall be immune from seizure and shall not be subject to currently applicable taxes, contributions, or fees, or any that may be imposed in the future.

5. The petitioners relinquish, definitively and irrevocably, the ability to initiate any other claim of a monetary nature against the National State associated with the instant case. In addition, they cede and transfer to the National State all litigation rights they may have in the framework of the suit brought against the government of the Province of Buenos Aires and undertake to sign the respective instrument before a national Notary Public within ten working days following the effective delivery of the payment resulting from the arbitration award.

6. Without prejudice to the foregoing transfer in its favor, the National State declares that it reserves the right to recover the amounts actually paid out to the petitioners as determined by the Arbitration Tribunal from the Government of the Province of Buenos Aires by subtracting those amounts from the totals that might correspond to that province under the federal sharing law (*ley de coparticipación*), and/or any other lawful means.

b. Measures of non-monetary reparation

1. The Government of the Argentine Republic pledges to publish this agreement by means of a notice, whose text shall be agreed in advance with the victim's next of kin, in the Official Gazette of the Argentine Republic and in a nationally distributed newspaper, once it has been approved by the Inter-American Commission on Human Rights in accordance with the provisions of Article 49 of the American Convention on Human Rights.

2. The Government of the Argentine Republic undertakes to invite the Government of the Province of Buenos Aires to report on the status of the following cases being heard by courts in the provincial jurisdiction until their final conclusion:

a) Case 1-2378, titled "N.N. re. Homicide – victim: Giovanelli, Fernando Horacio," proceeding before the Third Transitory Criminal Court of First Instance in Quilmes Judicial District, Province of Buenos Aires.

b) Case 3001-1785/00, titled "Supreme Court of Justice – General Secretariat re. Irregular situation observed in the processing of case 1-2378 before the Third Transitory Criminal Court in Quilmes," proceeding before the Supreme Court of Justice of the Province of Buenos Aires – Judicial Oversight and Inspection Office.

3. The Government of the Argentine Republic undertakes to invite the Government of the Province of Buenos Aires to evaluate the possibility of including the Giovanelli case in the current study programs at police training academies, as a measure to ensure non-repetition of practices that violate human rights.

4. The Government of the Argentine Republic commits to developing a law setting forth the procedures for processing and responding to petitions under study by the Commission and before the Inter-American Court of Human Rights, that includes the establishment of a specific entity with jurisdiction in the decision-making process – including the institution of "friendly settlement" – and a mechanism to ensure compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights, in accordance with the provisions of Article 28 (federal clause) of the American Convention on Human Rights, in connection with Articles 1.1 (general obligation to observe and ensure rights) and 2 (duty to adopt domestic legal provisions) of said international instrument.

109. On December 22, 2009, the State reported that an ad hoc Arbitration Tribunal had been created for the purpose of fixing the pecuniary damages to be paid to the next of kin of Fernando Horacio Giovanelli. On June 1, 2010, the petitioner sent the Commission a copy of the arbitration award issued in April 2010, and asked for its approval. The petitioners repeated their request on July 4 and August 18, 2010, the date on which they reported the death of Mr. Guillermo Giovanelli.

110. According to the documentation the Commission received, on April 8, 2010, the Arbitration Tribunal for Fixing Pecuniary Damages in the Case of Giovanelli v. Argentina, composed of arbiters Fabián Omar Salvioli, Chair, and Oscar Schiappa-Pietra and Ricardo Monterisi, issued the arbitral award in which they set the reparations owed to Esther Ana Ramos de Giovanelli, mother of Fernando Giovanelli; Horacio José Giovanelli, father of Fernando Giovanelli; Guillermo Jorge (brother) and Enrique Jose Giovanelli (brother). The ruling set the sum of US\$100,000 (one hundred thousand United States dollars) as *lucrum cessans*; the sum of US\$ 3,000 (three thousand United States dollars) as *damnum emergens*; and US\$ 15,000 (fifteen thousand United States dollars) in damages to the family estate. For non-pecuniary damages, the Tribunal ordered US\$60,000 (sixty thousand United States dollars) for Fernando Giovanelli; US\$50,000 for Horacio José Giovanelli; US\$50,000 for Esther Giovanelli; US\$20,000 for Guillermo Giovanelli and US\$20,000 for Enrique José Giovanelli. As for costs and expenses, the Tribunal, based on the rules of sound judgment, set the costs and expenses of the proceedings before the Commission at US\$3,700; of that amount,

the sum of US\$ 1,800 was awarded to COFAVI and US\$ 1800 to Mariana Bordones. In addition it assigned US\$2000 as the costs and expenses of the proceedings before the CIDJ, plus US\$ 1,600 to be paid to Mariana Bordones to cover her fees in the case before the Arbitration Tribunal.

111. Under the terms of the arbitration decision, the Argentine State must make payment "within three months from the date of notification of the approval of this [award] by the Inter-American Commission on Human Rights." In response to that decision and at the express request of the parties, at its 140th session the Commission evaluated the process that resulted in the arbitral ruling, and the decision the arbitral tribunal issued on the matter of pecuniary reparations in the case. By a note dated November 15, 2010, it advised the parties that the award was consistent with the applicable international standards.

112. On November 22, 2010, the Commission requested updated information on the status of compliance with the recommendations. On December 16, 2010, the petitioner sent a record of the note she sent on January 13 of that year to the Foreign Ministry, notifying it of the identity of Horacio José Giovanelli's legal heirs for purposes of payment of the arbitral award. For its part, in a note dated January 12, 2010, the State reported that subsequent to the IACHR's approval of the arbitral award ordered by the Ad Hoc Tribunal for Fixing Pecuniary Damages in the instant case, it instituted the administrative measures aimed at making payment of the amount ordered by the Tribunal.

113. The Commission therefore concludes that the friendly settlement agreement is pending compliance. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.159, Report No. 79/09, Gabriel Egisto Santillán (Argentina)

114. On August 6, 2009, through the adoption of its Report No. 79/09, the Commission approved the friendly settlement agreement signed by the parties of the Case 12.159, Gabriel Egisto Santillán. Summarizing, the petitioner asserts that the State is responsible for the death of Gabriel E. Santillán, which happened on December 8, 1991, when he was 15 years old. The victim died from a bullet wound he sustained on December 3, 1991, when members of the Buenos Aires Provincial Police were in pursuit of unidentified persons accused of stealing a vehicle. The complaint also alleges that judicial protection and guarantees were denied by virtue of the lack of due diligence in the investigation into the facts and failure to punish those responsible for the death of Gabriel E. Santillán.

115. On May 28, 2008, the State of Argentina and the victim's mother signed a friendly settlement agreement, which was approved by National Executive Decree No. 171/2009 of March 11, 2009. The main points of the agreement are the following:

III. Measures to be adopted

a. Pecuniary damages

1. The parties agree to set up an ad-hoc Arbitration Tribunal to determine the amount of pecuniary damages owed to the petitioners, in keeping with the rights acknowledged to have been violated and with applicable international standards.

2. The Tribunal shall be made up of three independent experts [...] and shall be formed no later than 30 days following approval of this agreement by Decree of the Executive Branch of the Nation.

3. The procedure to be followed shall be determined by common agreement among the parties [...]
4. The Arbitration Tribunal's award shall be final and not subject to appeal [...]
5. The petitioners relinquish, definitively and irrevocably, the ability to initiate any other claim of a pecuniary nature against the national State associated with the instant case [...]
6. Without prejudice to the foregoing concession in this favor, and in any event, the National State declares that it reserves the right to recover from the Government of the Province of Buenos Aires the amounts actually paid out to the petitioners, as determined by the Arbitration Tribunal [...]

b. Non-pecuniary damages

1. The Government of the Republic of Argentina pledges to publish this agreement—once it has been officially approved by the Inter-American Commission on Human Rights, in accordance with the provisions of Article 49 of the American Convention on Human Rights—by means of a notice in the “Official Gazette of the Argentine Republic” and in a nationally distributed newspaper. The text of the notice shall be agreed in advance with the victim's relatives.
2. The Government of the Republic of Argentina undertakes to invite the Government of the Province of Buenos Aires to report on the status of the following cases being heard by courts in the provincial jurisdiction until their final conclusion:
 - a. Case 5-231148-2, entitled “Perpetration of Crime and Resisting Authority, along with Assault with Weapons, Homicide, and Discovery of Vehicle. Victim: Santillán, Gabriel Egisto,” before the Second Transitional Court of the Court of First Instance for Criminal and Correctional Matters of the Morón Judicial District, Buenos Aires Province.
 - b. Cases 3001-2014/99, entitled “Ministry of Justice. Santillán, Gabriel Egisto. Case report No. 23.148/91,” and 3001-465/05, entitled “Executive Power of Buenos Aires Province – Sub-Secretariat of Justice Remits Case 12.159—Santillán, Gabriel Egisto,” both before the Supreme Court of Justice of Buenos Aires Province.
3. The Government of the Republic of Argentina commits to carrying out its best efforts to hold an academic event, as soon as possible, on questions having to do with the interaction and coordination between the Federal State and the Provincial States in the area of compliance with international obligations, in light of the provisions of Article 28 of the American Convention on Human Rights.

116. In Report 79/09, the Commission expressed its appreciation for the Republic of Argentina's acknowledgment of responsibility for its failure to comply with its international obligations with regard to the rights protected under articles 4, 5, 8 and 25 of the American Convention on Human Rights, in conjunction with Article 1(1) thereof. It also acknowledged the efforts the parties made to arrive at the friendly settlement agreement, and declared that the agreement was compatible with the Convention's object and purpose.

117. The Commission also decided to continue to monitor and supervise compliance with the points the parties agreed upon.

118. By a communication dated November 19, 2010, the IACHR asked the parties for follow-up information. In a communication dated December 7, 2010, the petitioning party indicated that the Ad Hoc Arbitration Tribunal has been formed and that the rules of procedure for the arbitration proceeding had been approved. The petitioning party submitted a brief seeking pecuniary

damages, which was forwarded to the State. The State, for its part, has already submitted its observation on that brief. The petitioning party asserted that nothing had been done with regard to the non-pecuniary damages.

119. For its part, in its January 12, 2011 note the State reported that the case is fully underway with the Ad Hoc Tribunal for Fixing the Pecuniary Damages, in accordance with the procedural deadlines established in the rules of procedure that the parties agreed to for that purpose.

120. The Commission thus concludes that the friendly settlement agreement has been partially complied with, and will therefore continue to supervise the points that have not yet been carried out.

Case 11.732, Report No. 83/09, Horacio Aníbal Schillizzi Moreno (Argentina)

121. In Report No. 83/09 dated August 6, 2009, the Commission concluded that the State of Argentina had violated Mr. Horacio Aníbal Schillizzi Moreno's right to a fair trial and his right to judicial protection, upheld in articles 8 and 25 of the Convention, in connection with Article 1(1) thereof. Summarizing, the petitioners alleged that in response to his motion of recusal, on August 17, 1995 the judges of Chamber "F" of the National Court of Appeals in Civil Matters for the Federal Capital sentenced Mr. Schillizzi to three days' incarceration for tactics intended to obstruct justice." The petitioners argued that the sentence of incarceration was imposed without observing the proper judicial guarantees: his trial was not impartial; the grounds for the decision were not given; he was not permitted to exercise his right of defense, and there was no judicial review of the ruling. The punishment of incarceration was arbitrary and illegal, as it was a violation of the right to personal liberty; compounding all this was the violation of Mr. Schillizzi Moreno's rights to humane treatment and equality before the law by the court authorities' denial of his request to serve his sentence under house arrest.

122. The IACHR advised the State of Argentina as follows:

1. To publicly acknowledge international responsibility for the human rights violations determined by the Commission in this report. In particular, to conduct a public ceremony, with the participation of senior Government authorities and Mr. Horacio Aníbal Schillizzi Moreno, to acknowledge the State's international responsibility for the events in the instant case.
2. To adopt -as a measure to prevent repetition- the necessary actions to guarantee that in the future, the disciplinary measures are imposed, following due process.

123. On November 22, 2010, the IACHR requested updated information from the parties concerning compliance with the above recommendations.

124. By note dated December 21, 2010, the petitioners told the Commission that regrettably they had thus far been unable to obtain any information on the State's compliance with the recommendations. Prior to publication of Report No. 83/09, the petitioners had told the Commission that they had lost contact with Mr. Schillizzi after their last interview with him back in 2006, and that all their attempts to communicate with him had been to no avail.

125. For its part, in a communication dated January 12, 2011, the State addressed only the second of the two recommendations, and submitted a report prepared by the Supreme Court of Argentina which states that as of December 21, 2010, "all national and federal chambers in the country's capital and its interior were in compliance with the recommendation to adopt regulatory measures so that they are able to discharge the disciplinary authorities that the law gives to the

courts in a manner that is respectful of due process, as ordered in Administrative Decision No. 26/08 of the Supreme Court.”

126. The Commission takes note of the progress the State has made toward compliance with the second recommendation contained in Report No. 25/08. According to the information reported by the State, the latter had fully complied with that recommendation inasmuch as the Argentine judicial authorities had reportedly adopted the necessary measures to ensure that disciplinary sanctions would be applied in accordance with the guarantees of due process and the right to judicial protection, recognized in articles 8 and 25 of the American Convention.

127. As the petitioners did not have the information they needed to come up with observations regarding compliance with the Commission’s recommendations, before issuing its findings on compliance with the recommendations the Commission will forward the State’s report to the petitioners. Nevertheless, the IACHR is calling upon both parties to spare no effort to locate Mr. Horacio Anibal Schillizzi Moreno and comply with the first of the two recommendations.

128. The Commission thus concludes that the State of Argentina has partially complied with the IACHR’s recommendations and will, therefore, continue to supervise the pending points.

Cases 12.067, 12.068 and 12.086, Report No. 48/01, Michael Edwards, Omar Hall, Brian Schroeter and Jeronimo Bowleg (Bahamas)

129. In Report No. 48/01 of April 4, 2001, the Commission concluded that the State was responsible for: a) violating Articles I, XVIII, XXV and XXVI of the American Declaration by sentencing Messrs. Edwards, Hall, Schroeter and Bowleg to a mandatory death penalty; b) violating Messrs. Edwards’, Hall’s, Schroeter’s and Bowleg’s rights under Article XXIV, of the American Declaration, by failing to provide the condemned men with an effective right to petition for amnesty, pardon or commutation of sentence; c) violating Messrs. Hall’s, Schroeter’s and Bowleg’s rights under Articles XI, XXV, and XXVI of the American Declaration, because of the inhumane conditions of detention to which the condemned men were subjected; d) violating Messrs. Edwards’, Hall’s, Schroeter and Bowleg’s rights under Articles XVIII, and XXVI of the American Declaration, by failing to make legal aid available to the condemned men to pursue Constitutional Motions; and e) violating Messrs. Schroeter’s and Bowleg’s rights to be tried without undue delay under Article XXV of the Declaration.

130. The IACHR issued the following recommendations to the State:

- Grant Messrs. Edwards, Hall, Schroeter and Bowleg, an effective remedy which includes commutation of sentence and compensation;
- Adopt such legislative or other measures as may be necessary to ensure that the death penalty is imposed in compliance with the rights and freedoms guaranteed under the American Declaration.
- Adopt such legislative or other measures as may be necessary to ensure that the right to petition for amnesty, pardon or commutation of sentence is given effect in The Bahamas.
- Adopt such legislative or other measures as may be necessary to ensure that the right to an impartial hearing and the right to judicial protection are given effect in The Bahamas in relation to recourse to Constitutional Motions.
- Adopt such legislative or other measures as may be necessary to ensure that the right to be tried without undue delay is given effect in The Bahamas.

- Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment and the right not to receive cruel, infamous, or unusual punishment are given effect in The Bahamas.

131. On November 18, 2010 the Commission requested information from both parties about compliance with the recommendations set forth in Report No. 48/01, pursuant to Article 48.1 of the Commission's Rules of Procedure. The Commission has not received any responses from either party to these communications.

132. Based on these considerations, the Commission concludes that compliance with the aforementioned recommendations remains pending. Accordingly, the Commission will continue to monitor compliance with its recommendations.

Case 12.265, Report 78/07 Chad Roger Goodman (Bahamas)

133. In Report No. 78/07 of October 15, 2007 the Commission concluded that the State of the Bahamas was responsible for the violation of Articles I, XXV and XXVI of the American Declaration by sentencing Mr. Goodman to a mandatory death penalty. On the basis of its conclusions, the IACHR recommended to the State that it:

1. Grant Mr. Goodman an effective remedy, which includes commutation of sentence and compensation for the violations of Articles I, XVIII, XXIV, XXV, and XXVI of the American Declaration.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is imposed in compliance with the rights and freedoms guaranteed under the American Declaration, including and in particular Articles I, XXV, and XXVI, and to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in The Bahamas.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article XXV of the American Declaration to be tried without undue delay is given effect in The Bahamas.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment and the right not to receive cruel, infamous, or unusual punishment under Articles XI, XXV, and XXVI of the American Declaration are given effect in The Bahamas in relation to conditions of detention.

134. On November 18, 2010 the Inter-American Commission requested information from both parties about compliance with the recommendations set forth in aforementioned report, and established a one month deadline to that effect. The IACHR did not receive any responses from either party to these communications within the deadline. Based on these considerations, the Commission concludes that compliance with the aforementioned recommendations remains pending. Accordingly, the Commission will continue to monitor compliance with its recommendations.

Case 12.513, Report 79/07 Prince Pinder (Bahamas)

135. In Report No. 79/07 of October 15, 2007 the Commission concluded that by authorizing and imposing a sentence of judicial corporal punishment on Mr. Pinder, the State of the Bahamas is responsible for violating Mr. Pinder's rights under Articles I, XXV, and XXVI of the American Declaration. On the basis of its conclusions, the IACHR recommended to the State that it:

1. Grant Prince Pinder an effective remedy, which includes commutation of the sentence of judicial corporal punishment and rehabilitation;
2. Adopt such legislative or other measures as may be necessary to abolish judicial corporal punishment as authorized by its Criminal Law (Measures) Act 1991.

136. On November 18, 2010 the Inter-American Commission requested information from both parties about compliance with the recommendations set forth in aforementioned report, and established a one month deadline to that effect. The IACHR did not receive any responses from either party to these communications within the deadline. Based on these considerations, the Commission concludes that compliance with the aforementioned recommendations remains pending. Accordingly, the Commission will continue to monitor compliance with its recommendations.

Case 12.053, Report No. 40/04, Maya indigenous communities of the Toledo District (Belize)

137. In its October 12, 2004 Report No. 40/04, the Commission concluded that the State was responsible for: a) violating the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people, by failing to take effective measures to recognize their communal property right to the lands that they have traditionally occupied and used, without detriment to other indigenous communities, and to delimit, demarcate and title or otherwise established the legal mechanisms necessary to clarify and protect the territory on which their right exists; b) violating the right to property enshrined in Article XXIII of the American Declaration to the detriment of the Maya people, by granting logging and oil concessions to third parties to utilize the property and resources that could fall within the lands which must be delimited, demarcated and titled or otherwise clarified and protected, in the absence of effective consultations with and the informed consent of the Maya people; c) violating the right to equality before the law, to equal protection of the law, and to nondiscrimination enshrined in Article II of the American Declaration to the detriment of the Maya people, by failing to provide them with the protections necessary to exercise their property rights fully and equally with other members of the Belizean population; and d) violating the right to judicial protection enshrined in Article XVIII of the American Declaration to the detriment of the Maya people, by rendering domestic judicial proceedings brought by them ineffective through unreasonable delay and thereby failing to provide them with effective access to the courts for protection of their fundamental rights.

138. The IACHR issued the following recommendations to the State:

1. Adopt in its domestic law, and through fully reported consultations with the Maya people, the legislative, administrative, and any other measures necessary to delimit, demarcate and title or otherwise clarify and protect the territory in which the Maya people have a communal property right, in accordance with their customary land use practices, and without detriment to other indigenous communities.
2. Carry out the measures to delimit, demarcate and title or otherwise clarify and protect the corresponding lands of the Maya people without detriment to other indigenous communities and, until those measures have been carried out, abstain from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the Maya people.
3. Repair the environmental damage resulting from the logging concessions granted by the State in respect of the territory traditionally occupied and used by the Maya people.

139. On February 1, 2006, the Commission wrote to both the State and the Petitioners and requested up-dated information concerning compliance with the Commission's

Recommendations in Report No. 40/04. The Petitioners responded to the Commission by letter of March 01, 2006, stating that the State of Belize had so far failed to comply with the Commission's recommendations. The Petitioners also requested the Commission to grant precautionary measures aimed at enforcing compliance of the recommendations. In July 2006, the Commission considered the Petitioners' request and declined to grant precautionary measures.

140. On November 2, 2007, the Commission wrote to both the State and the Petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report No. 40/04. The Petitioners responded to the Commission by letter of November 30, 2007, stating that the State of Belize had so far failed to comply with the Commission's recommendations. However, the Petitioners informed the Commission of a judgment of the Supreme Court of Belize delivered on October 18, 2007, that "found that Belize is obligated not only by the Belize Constitution but also by international treaty and customary international law to recognize, respect, and protect Maya customary land rights." The Petitioners added that the judgment was "significantly informed throughout by the 2004 final report of the Inter-American Commission on Human Rights". The Petitioners stated that leasing, logging, and oil exploration activities have continued on Maya lands in the Toledo District, despite the Supreme Court judgment and the Commission's recommendations contained in Report No. 40/04.

141. On September 2, 2008, the State presented a document called "Report on the measures taken by the Government of Belize to comply with the recommendations of the Inter-American Commission on Human Rights as set forth in Report No. 40/04". Belize mentions in that report that it has carried out efforts guided by its obligation to comply with the IACHR's recommendations in the case and also with the judgment of the Supreme Court in the case of *Cal et al v The Attorney General et al*. The State highlights the fact that in the Cal case the Chief Justice considered the Report of the Commission; that the recommendations of the Commission and the judgment of the Supreme Court contain similar provisions with respect to delimiting, demarcating, titling or otherwise protecting Mayan communal property based on customary use and practice. However, it also notes that the Case before the IACHR involved the entire Maya Indigenous communities in the Toledo District, while the Cal case was brought by only two Maya communities in the Toledo District: the Santa Cruz and Conejo villages. The State adds that for practical reasons, it focused only at the time only on the implementation of the Cal judgment, but it notes that the Maya Leaders alliance had widened its claim and filed a class action suit in June 2008, which seeks to have the Court recognize the Mayas' customary land rights of thirty eight villages in the Toledo District.

142. The report goes on to mention attempts by the Government of Belize at "delimiting, demarcating, titling or otherwise protecting Mayan communal property rights based on customary use and practices", including meetings held on December 2007 and January 2008, but clarifies that "the attempts failed". According to the State, such failure could be attributed to a lack of information by the affected Community, the intervention by Maya organizations and the disagreement regarding common boundaries. Further, it mentions that after the general elections and the change of government, the parties in this case met on April 10th 2008 and agreed to develop a framework for the implementation of the Cal judgment. Among the interim measures adopted by the Government of Belize, a blanket cease-and-desist order was issued by the Attorney General on March 27, 2008 with respect to land in the Toledo District. Shortly after the measure was reconsidered because it had the effect of a shut-down on land-related activities in the Toledo District, the timber industry was completely halted with serious economic implications, and the laborers --most of whom belong to the Maya communities of the Toledo District-- suddenly found themselves out of their jobs. The order was modified to apply only to lands in the villages of Santa Cruz and Conejo, and according to the State of Belize the parties continued communication despite not reaching a consensus.

143. As regards the mitigation of damage to the environment caused by logging, the State informs that the Forestry Department of Belize had reported a change in the situation in 2004 that resulted in the IACHR's recommendations. Among other things, it mentions that there are only three long-term license holders operating in the Toledo District, and that no new long-term licenses have been issued since the first directive of the Attorney General of March 2008. The State also expresses that the Forestry Department is working in a partnership with Toledo Maya-based NGOs and the private sector in the Toledo Healthy Forest Initiative, with the aim of moving away from conventional logging and engage in sustainable forest practices using international standards. Finally, Belize reaffirms its commitment to "continued discussions and dialogue with the Maya people of Belize in order to implement the ruling of the Supreme Court of Belize and to comply with the recommendation of the Inter-American commission of Human Rights".

144. On October 27, 2008, the IACHR held a hearing with both parties in this matter in order to receive information on compliance with its recommendations. The petitioners stated that the Maya Leaders Alliance has been trying to engage the Government elected in February 2008 in conversations concerning compliance with the Supreme Court judgment. According to the petitioners, the actions of the Government were initially "quite encouraging" in that "it acknowledged that the judgment had implications for all Maya lands in Toledo District, not just the two that brought the lawsuit" and that it "took a concrete, effective step to protect Maya customary rights, and issued a directive suspending leasing, permitting, and other land dealings in Toledo, until further notice, pending the implementation process". The petitioners state that there was "an abrupt about-face" just weeks after the directive was issued, whereby the directive was "effectively revoked" by "limiting its application to the claimant villages of Conejo and Santa Cruz, and leaving the lands of the 36 other Maya villages in Toledo District unprotected and vulnerable to exploitation by third parties". According to the petitioners, the lack of protective measures has resulted in "numerous infringements, violations, and expropriations of Maya lands". The Maya Leaders Alliance filed an action in the Supreme Court of Belize asking that it maintain the status quo in the Maya lands of the Toledo District until the Government "enacts a legal or administrative framework to recognize and protect Maya land rights".

145. On November 3, 2008, the IACHR sent a letter to both parties in this case to request information on compliance with the recommendations of its report. The State responded on November 25, 2008 reiterating the content of its report dated September 2, 2008. The petitioners presented their observations on December 3, 2008, which include the assertion that "the State has not complied, even minimally, with the recommendations of the Inter-American Commission on Human Rights". The petitioners consider that the statements by Belize during the hearing before the IACHR are encouraging, but that in practical terms the State "continues to behave as if those rights do not exist and do not merit effective protection", and they quote authorities expressing that they would only apply the Cal decision to other Maya villages if they bring their respective cases before the Supreme Court of their country.

146. With respect to the delimitation of the lands of the Maya people, the petitioners hold that the State has made no efforts yet, even in the villages of Santa Cruz and Conejo, where they were ordered to do so by the courts of Belize. They further state that the members of the Maya villages throughout the District have started to demarcate their own boundaries in agreement with the neighboring villages, so once the Government develops a mechanism it will be relatively easy because the boundaries will already be clarified. The petitioners also add that despite its initial actions during 2008 mentioned above, the State "continues to treat Maya land as unburdened land for the purposes of issuing leases, grants and concessions for natural resource exploitation, including logging and oil concessions", and they list several specific examples.

147. As to the IACHR recommendation on repairing environmental damage, the petitioners admit that "there has been some respite to the large-scale logging" but consider that this

is not attributable to the State of Belize. However, they mention that logging continues on a smaller scale and that in some communities this is negatively affecting Maya hunting and fishing activities. According to the petitioners, in the absence of affirmative steps by the authorities of Belize, the Maya themselves have been taken action to minimize the environmental damage from logging, such as creating co-management organizations, supporting ecological and conservation efforts. The petitioners conclude by requesting that an IACHR delegation conduct an on-site visit to Belize in order to observe the situation.

148. On November 11, 2009 the Inter-American Commission requested both parties to submit information on compliance with the above-mentioned recommendations. The State did not submit its response during the time established. The petitioners responded on December 10, 2009 with a report where they submit several legal and factual considerations that lead them to conclude that there has been no compliance with the recommendations in this case.

149. As to the first recommendation, the petitioners mention that "the Government has not complied in any way", and specifically they mention that during 2009 they met with the new Solicitor General to discuss implementation of the judgment in the above mentioned Supreme court case, but there have been no concrete advances. The petitioners then explain the impact of the National Policy on Local Governance, funded by the United Nations Development Programme; however, they stress their concern that the Maya people's customary land rights may not be considered, since the demarcation process is set to begin in December 2009 but they have not been consulted. With respect to the new draft legislation that would regulate the functions of the "alcalde" (a customary Mayan public officer), the petitioners hold that the information session held to explain it was insufficient, given the complexity of the undertaking and the lack of background in the Mayan culture of the person who delivered it.

150. In the opinion of the petitioners, the second recommendation was not complied with either. Although they do admit that government dealings in Maya lands have been reduced, the petitioners point out that they were never communicated this circumstance and that they found out by reading the United Nations Universal Periodic Review (UPR) on Belize. Ultimately, they submit that during the current litigation regarding this matter in Belize, the government has issued property interests, including resource concessions, to third parties over lands belonging to Maya villages and families. The petitioners refer to permits for oil exploration issued in April 2009; the concession for constructing a hydroelectric project awarded in late 2008 and ongoing in 2009; as well as a January 2009 logging concession including areas used by several Maya villages, none of which were consulted with them. The petitioners conclude that "in the absence of affirmative government actions to comply with this recommendation of the inter-American Commission on Human Rights, interference and destruction of Maya lands and resources continue on an *ad hoc* basis throughout Toledo".

151. Regarding the third recommendation, the petitioners mention that "logging does continue on a smaller scale, which can still negatively impact Maya hunting and fishing practices" and that Belize "has taken no affirmative steps at all to repair the damage caused by the logging or other extraction activities on Maya lands". In spite of this, they submit that the Maya themselves have taken steps to minimize environmental damage from logging, such as the creation of joint organizations to manage national parks and supported ecological and conservation efforts.

152. On November 18, 2010 the Inter-American Commission requested both parties to submit updated information on compliance with the above-mentioned recommendations. The State did not submit its response during the time period established. The petitioners responded on December 20, 2010 with a document labeled "report on non-compliance" which contains several considerations and the conclusion that there has been no compliance with the recommendations in this case.

153. In their December 2010 document, the petitioners hold that the State of Belize “remains unwilling to acknowledge the rights of the Maya people to their lands, despite the findings of numerous international human rights institutions and its own Supreme Court”. They mention that the Supreme Court issued a decision on June 28, 2010 which favors the Maya villages of Toledo “in a constitutional action to enjoin all government dealings in Maya lands until a mechanism for demarcating and titling those lands exists”, but that the State appealed the judgment. The petitioners further indicate that the appeal is scheduled to be heard in February or March of 2011.

154. With respect to the first recommendation, the petitioners mention that the June 28, 2010 judgment “once again affirmed the existence of Maya customary land tenure in all of the Toledo Maya villages” and that “the judge indicated that the same is true for Maya villages in Stann Creek District”. They further point out that the June 2010 judgment clarified the following:

The fact that individual members of the community...enjoy only usufructuary rights that are not proprietary in nature is no impediment to the recognition of a proprietary community title. Indeed, it is not possible to admit traditional usufructuary rights without admitting a traditional proprietary community title.

155. The petitioners indicate that, subsequent to this judgment, they attempted unsuccessfully to engage the State of Belize in discussions regarding the implementation of the recommendations in IACHR Report 40/04. They consider that “on the basis of the legal test advanced by the government, none of the remaining Maya villages will be able to establish their land title”. The petitioners also describe the official position of the United Democratic Party, in office at the time of the decision to appeal the June 2010 judgment, as incurring in misunderstanding and misinformation with respect to the effect of the appeal. In their December 2010 submission, the petitioners add other considerations with respect to the lack of independence of the judiciary in Belize, which in their view could affect full compliance with the recommendations of the Inter-American Commission in their case.

156. They allude also to the announcement by the State of Belize of a National Policy on Local Governance, funded by the United Nations Development Program, which among other things involves enacting a Village Boundaries demarcation law and a new Alcalde Act. Even though they consider that this legislation has “the potential to be very positive, and could provide at least a partial mechanism for demarcating and protecting customary title lands”, the petitioners highlight that it was not properly consulted with the Maya people and that in the context of a refusal by the government to recognize Maya customary land rights, they consider that “the new legislation threatens to restrict the jurisdiction and scope of Maya customary governance institutions and further impede the exercise of Maya customary rights”. The petitioners further mention that in November 2010 the Toledo Alcaldes Association presented an interim draft bill to the government for consideration, which received no response from the authorities; and that the alcaldes have not yet been provided “with any draft demarcation bill”.

157. Regarding the second recommendation of IACHR Report 40/04, the petitioners inform that “the most important aspect of the June 28, 2010 judgment was the Court’s issuance of a broad injunction against the government interfering, or tolerating third parties’ interference, with Maya use and occupation of their lands throughout Toledo, encompassing all of the Maya villages, until there is an official mechanism for demarcating and documenting their title”. However, the petitioners indicate that “due to the government of Belize’s failure to recognize and protect Maya customary land rights, intrusions by third parties purportedly acting on the authority of government issued leases and permits, continue to interfere with Maya property rights” and mention several incidents that took place in May, June, July and October of 2010.

158. As to the third of the recommendations, the petitioners indicate that “the Government has taken no affirmative steps at all to repair the damage caused by the logging or other extraction activities on Maya lands”. They further mention that even though the State of Belize is apparently honoring the 20100 injunction against issuing leases and permits in Maya lands, it “has not taken any measures to prevent activities under existing leases or permits, nor to take any action to prevent or respond to individuals who enter and use Maya lands purportedly on the authority of permits or leases”, and that “enforcing the injunction against such third parties has been left to Maya villages and their leadership organizations”. Finally, the petitioners request that the recommendations be reiterated by the Inter-American Commission to the State of Belize.

159. On the basis of the information supplied by both parties, the Inter-American Commission observes that compliance with the aforementioned recommendations remains pending. Accordingly, the Commission again encourages both parties to continue efforts to engage and reach agreements that may contribute to a positive advance toward compliance. The Commission will continue to monitor the items still pending compliance.

Case 12.475, Report No. 97/05, Alfredo Díaz Bustos (Bolivia)

160. On October 27, 2005, by Report No. 97/05, the Commission approved a friendly settlement agreement in the case of Alfredo Díaz Bustos. In summary, the petitioner alleged that Mr. Alfredo Díaz Bustos was a Jehovah’s Witness in respect of whom the State violated the right to conscientious objection to military service, directly affecting the right to freedom of conscience and religion. In addition, the petition indicated that Mr. Díaz Bustos suffered discrimination based on his status as a Jehovah’s Witness given that the very Law on National Defense Service of Bolivia established inequality between Catholics and those who follow other religions, such that exemption from military service was possible for Catholics, but not for others. The petitioner also alleged that the Bolivian State had violated the right to judicial protection of the alleged victim since, by final judgment of the Constitutional Court, it was established that the matters concerning the right to conscientious objection to compulsory military service cannot be submitted to any judicial organ.

161. In the friendly settlement agreement, the State undertook to:

- a. Give Alfredo Díaz Bustos his document of completed military service within thirty (30) working days after he submits all the required documentation to the Ministry of Defense;
- b. Present the service document free of charge, without requiring for its delivery payment of the military tax stipulated in the National Defense Service Act, or the payment of any other amount for any reason or considerations of any other nature, whether monetary or not;
- c. Issue, at the time of presentation of the service record, a Ministerial Resolution stipulating that in the event of an armed conflict Alfredo Díaz Bustos, as a conscientious objector, shall not be sent to the battlefield nor called as an aide;
- d. Include, in accordance with international human rights law, the right to conscientious objection to military service in the preliminary draft of the amended regulations for military law currently under consideration by the Ministry of Defense and the armed forces;
- e. Encourage, together with the Deputy Ministry of Justice, congressional approval of military legislation that would include the right to conscientious objection to military service;

162. After studying the information in the record, the Commission had concluded in its annual reports for 2006 and 2007 that items 1, 2, and 3 of the agreement were being carried out, but not items 4 and 5.

163. In this respect, on December 17, 2007, the petitioner presented a brief communication in which he reported that the new Bolivian Constitution did not include among the rights listed the right to "conscientious objection" and that accordingly the State continued to be in breach of items (d) and (e) of the friendly settlement agreement. Subsequently, on June 4, 2008, a communication was received from the petitioner by which he reported that the Proposed Law on Compulsory Military Service was being debated in the National Congress, and asked the Commission to call on the Bolivian State to incorporate the right to conscientious objection into the new constitutional text.

164. On November 3, 2008, the Commission asked the parties to provide updated information implementation of the agreement. The State did not present any response to this request. On January 13, 2009, the petitioner submitted a document reporting that the Draft Constitution that was the subject of the referendum of January 25, 2009, did not include any reference to conscientious objection.

165. On January 21, 2009, the Commission received a communication from the State, informing that even though the conscientious objection is not included in the Constitution, the proposed law on Compulsory Military Service is currently being debated by the Parliament, and that it is expected to be widely discussed with the participation of all the interested parties. The State also noted that on May 2, 2008, it ratified the Ibero-American Convention on Rights of Youth, which in its Article 12 establishes that: "1. Youth have the right to make conscientious objection towards obligatory military service. 2. The States Parties undertake to promote the pertinent legal measures to guarantee the exercise of this right and advance in the progressive elimination of the obligatory military service." It added that this ratification implies an incorporation of the conscientious objection to internal law and announced the presentation of a future report on this matter. The Commission awaits such report in order to evaluate compliance with items d) and e) of the friendly settlement agreement.

166. On January 6, 2011, the Commission requested updated information to both parties, regarding the compliance with the friendly settlement agreement. On January 26, 2011, the State requested an extension. On February 4, 2011, the IACHR explained that in view of the deadline for the approval of the 2010 Annual Report, it was not possible to grant an extension. It pointed, however, that any additional observations submitted by the Bolivian State would be subject to the regular follow-up of Report No. 97/05.

167. On February 2, 2011, the applicant asserted that on February 7, 2009, a new Constitution was enacted in Bolivia, but did not incorporate the conscientious objection. He alleged that this right is not protected by any statute and neither under the law of Compulsory Military Service, which was drafted by the Ministry of Defense and is currently pending of approval in the Congress.

168. The applicant affirmed that although Law No. 3845 of May 2, 2008 ratified the Iberia-American Convention on the Rights of Youth, it contains a reservation to Article 12 of the aforesaid Convention, which protects the conscientious objection. The applicant maintained that this reservation reveals the non-compliance with the friendly settlement agreement by the Bolivian State.

169. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has been implemented in part. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil)

170. In Report No. 54/01 of April 16, 2001, the Commission concluded that (a) the Federative Republic of Brazil was responsible for violating the rights to judicial guarantees and judicial protection, guaranteed by Articles 8 and 25 of the American Convention, in keeping with the general obligation to respect and ensure the rights provided for in Article 1(1) of that instrument, due to the unwarranted delay and negligent processing of this case of domestic violence in Brazil; (b) the State had taken some measures aimed at reducing the scope of domestic violence and state tolerance of it, although those measures have not succeeded in significantly reducing the pattern of state tolerance, in particular in the wake of the ineffectiveness of police and judicial action in Brazil, with respect to violence against women; and (c) the State had violated the rights and failed to carry out its duties as per Article 7 of the Convention of Belém do Pará to the detriment of Ms. Fernandes; and in connection with Articles 8 and 25 of the American Convention and in relation to its Article 1(1) for its own omissions and tolerance for the violence inflicted.

171. The IACHR made the following recommendations to the Brazilian State:

1. Complete, rapidly and effectively, criminal proceedings against the person responsible for the assault and attempted murder of Mrs. Maria da Penha Fernandes Maia.
2. In addition, conduct a serious, impartial, and exhaustive investigation to determine responsibility for the irregularities or unwarranted delays that prevented rapid and effective prosecution of the perpetrator, and implement the appropriate administrative, legislative, and judicial measures.
3. Adopt, without prejudice to possible civil proceedings against the perpetrator, the measures necessary for the State to grant the victim appropriate symbolic and actual compensation for the violence established herein, in particular for its failure to provide rapid and effective remedies, for the impunity that has surrounded the case for more than 15 years, and for making it impossible, as a result of that delay, to institute timely proceedings for redress and compensation in the civil sphere.
4. Continue and expand the reform process that will put an end to the condoning by the State of domestic violence against women in Brazil and discrimination in the handling thereof. In particular, the Commission recommends:
 - a. Measures to train and raise the awareness of officials of the judiciary and specialized police so that they may understand the importance of not condoning domestic violence.
 - b. The simplification of criminal judicial proceedings so that the time taken for proceedings can be reduced, without affecting the rights and guarantees related to due process.
 - c. The establishment of mechanisms that serve as alternatives to judicial mechanisms, which resolve domestic conflict in a prompt and effective manner and create awareness regarding its serious nature and associated criminal consequences.
 - d. An increase in the number of special police stations to address the rights of women and to provide them with the special resources needed for the effective processing and investigation of all complaints related to domestic violence, as well as resources and assistance from the Office of the Public Prosecutor in preparing their judicial reports.
 - e. The inclusion in teaching curriculums of units aimed at providing an understanding of the importance of respecting women and their rights recognized in the Convention of Belém do Pará, as well as the handling of domestic conflict.
 - f. The provision of information to the Inter-American Commission on Human Rights within sixty days of transmission of this report to the State, and of a report on steps taken to implement these recommendations, for the purposes set forth in Article 51(1) of the American Convention.

172. On December 20, 2010, the State submitted information regarding compliance with these recommendations. The Commission observes that the State also submitted compliance-

related information on January 19, 2010, in response to the request that the Commission sent back in 2009.¹⁷ The petitioners presented information on compliance with the Commission's recommendations on December 23, 2010.

173. Preliminarily, the IACHR notes that, in its 2008 Annual Report, the Inter-American Commission considered that there was full compliance with recommendations Nos. 1 and 3 *supra*¹⁸. Accordingly, the Commission will subsequently examine the degree of compliance with recommendations Nos. 2 and 4, pursuant to the information provided by the petitioners.

174. With respect to recommendation No. 2 *supra*, the State reiterated that the Secretariat for Human Rights of the Office of the President brought the matter to the attention of the National Council of Justice (hereinafter the "CNJ"), which found no irregularities inasmuch as the prisoner was convicted and was serving the sentence he was given. In this regard, the petitioners again made the point that at a public hearing held on September 3, 2009, the victim, Maria da Penha Maia Fernandes, entered a new request seeking a re-investigation of the blame for the unwarranted delay in the prosecution of the case against her assailant. The petitioners indicated that the new case, No. 200910000052964, has been pending since October 10, 2010. They further point out that the CNJ refused to provide the victim with updated information on the case on the grounds that the information was confidential.

175. As for the various points included in recommendation No. 4 *supra*, the State reported that the "National Pact to Curb Violence against Women" (hereinafter "the Pact") was signed by 26 states of Brazil. It argued that the Pact represented a major step forward in the implementation of public policies at the level of federal, state and municipal government, such as increasing the budget to fight violence; strengthening and increasing the number of special police units for crimes against women; bolstering the expanded concept of violence against women, which encompasses violence of various types (trafficking in women, domestic and family violence, institutional violence, sexual harassment, among others). The Pact also serves as an incentive to combine measures conducted by various organs and spheres of government; to put into place and strengthen the "Women's Help Line – Dial 180," a direct access line for women experiencing violence; to increase the number of specialized services for women; to include the topic of violence against women on the policy agenda of government at all levels; to organize a model for managing policies to curb violence against women; to prepare a diagnostic study, and to plan measures by states, municipalities and the Federal District.

176. The State also acknowledges that despite the progress made, obstacles and problems have been encountered in the first three years of the Pact's implementation. It observed that in the executive branch of government, greater negotiating authority needed to be given to those who manage policies for women. It observed that greater sensitivity was needed within the judicial branch of government if women victims of violence are to be afforded their rightful access to justice and if the Maria da Penha law is to be properly enforced. According to the state, reformulation of laws to strengthen women's rights and the existence of budgets sensitive to the gender issue are essential for an effective public policy to combat violence against women. Finally, the State reiterated its commitment to implementing policies to prevent, punish and eradicate violence against women and promised to keep the Commission up-to-date on the most recent developments in this case.

¹⁷ The IACHR did not include that information in its 2009 Annual Report, because it received the State's communication subsequent to the approval of that Annual Report.

¹⁸ IACHR, Annual Report 2008. Chapter III.D, paras. 101 and 103.

177. In connection with recommendation No. 4 *supra*, the petitioners observed that the state of Rio Grande do Sul had still not signed the “National Pact to Curb Violence against Women.” They also noted that point e) of that recommendation had yet to be carried out and observed that the acknowledged efforts made by the State of Brazil in connection with that recommendation were still not sufficient, as more far-reaching measures were still needed, with indices and results that were more impactful in the short, medium and long term, and encompassing all levels of education. The petitioners concluded that the IACHR’s recommendations had not been fully carried out.

178. In view of all the foregoing, the Commission reiterates that the State has significantly carried out the recommendations outlined, while recommendations Nos. 2 and 4 have only been partially carried out. The IACHR urges the State to continue implementing public policies so as to prevent, punish, and eradicate violence against women, in particular by effectively implementing the Maria da Penha Law nationwide. Accordingly, the Commission will continue to monitor the items still pending compliance.

Cases 11.286, 11.406, 11.407, 11.412, 11.413, 11.415, 11.416 and 11.417, Report No. 55/01, Aluísio Cavalcante *et al.* (Brazil)

179. In Report No. 55/01 of April 16, 2001, the Commission concluded that the Federative Republic of Brazil was responsible for violating the right to life, integrity, and personal security (Article I of the American Declaration), the right to judicial guarantees and protections (Article XVIII of the Declaration, and Articles 8 and 25 of the Convention), and the obligation the State has to ensure and respect the rights (Article 1(1)) recognized in the American Convention on Human Rights, in relation to the homicide of Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati, and in relation to the attacks on and attempted homicide of Cláudio Aparecido de Moraes, Celso Bonfim de Lima, Marcos Almeida Ferreira and Carlos Eduardo Gomes Ribeiro, all by military police agents of the state of São Paulo, as well as the failure to investigate and impose an effective sanction on the persons responsible.

180. The IACHR made the following recommendations to the Brazilian State:

1. That it carry out a serious, impartial, and effective investigation into the facts and circumstances of the deaths of Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati, and of the assaults on and attempted homicides of Cláudio Aparecido de Moraes, Celso Bonfim de Lima, Marcos Almeida Ferreira, and Carlos Eduardo Gomes Ribeiro, and that it duly prosecute and punish the persons responsible.
2. That such investigation include the possible omissions, negligence, and obstructions of justice that may have resulted from the failure to convict the persons responsible in a final judgment, including the possible negligence and mistakes of the Public Prosecutor’s Office and of the members of the judiciary who may have decided to waive or reduce the corresponding sentences.
3. That the necessary measures are taken to conclude, as soon as possible and in the most absolute legality, the judicial and administrative proceedings regarding the persons involved in the above-noted violations.
4. That the Brazilian State makes reparation for the consequences of the violations of the rights of the victims and their families or those who hold the right for the harm suffered, described in this report.
5. That the necessary measures be taken to abolish the jurisdiction of the military justice system over criminal offenses committed by police against civilians, as proposed by the

original bill, introduced in due course, to repeal Article 9(f) of the Military Criminal Code, and to approve, to take its place, the single paragraph proposed in that bill 27.

6. That the Brazilian State takes measures to establish a system of external and internal supervision of the military police of São Paulo that is independent, impartial, and effective.

7. That the Brazilian State present the Commission, within 60 days of transmittal of this report, a report on compliance with the recommendations, for the purpose of applying the provision at Article 51(1) of the American Convention.

181. On December 20, 2010, the State presented information regarding compliance with the Commission's recommendations. The IACHR notes that the State also presented information on the matter of compliance on May 28, 2010, in response to a request the Commission made in 2009.¹⁹ For their part, on December 22, 2010 the petitioners presented information concerning the judicial proceedings in this case.

182. In connection with recommendation No. 1 *supra*, the State reported that the São Paulo Court (Fourth Chamber of the Criminal Law Section) granted the appeal filed by the Public Prosecutor's Office to challenge the verdict of acquittal on the grounds that the verdict was manifestly at odds with the evidence presented in the case. As a result, the case was remanded for re-trial. The State also indicated that while the new trial was set for September 27, information from the Office of the Attorney General of the State indicated that the trial was postponed. The State noted that it would inform the Commission of the reasons for the postponement and of the new date set for the trial. The petitioners pointed out that the reason why the trial was canceled was that the prisoners could not be located in time for trial, and no new trial date had as yet been set. As for two other prisoners, the petitioners observed that the trial initially scheduled for November 10, 2010, was not held either, and was rescheduled for May 23, 2011. They also asserted that the situation with respect to the other proceedings had not changed.

183. Concerning recommendation No. 2 *supra*, the State asserted that it found no grounds to warrant any investigation of the members of the Public Prosecutor's Office and the Judicial Branch. As to the reference to administrative proceedings in recommendation No. 3 *supra*, the State indicated that all the defendants faced disciplinary proceedings before the Justification Board and the Disciplinary Board. It said that four of the eight accused agents were expelled from the São Paulo State Military Police Force; one of them was retired *ex officio*; the proceedings being conducted in the case of the remaining three were closed. The State therefore considered that it had fully complied with the recommendation in question. For their part, the petitioners pointed out, in general, that the recommendations related to the investigation of the facts were not properly carried out.

184. In connection with recommendation No. 4 *supra*, the State reported that on June 1 and November 26, 2010, the Secretariat of Human Rights of the Office of the President of the Republic urged the Office of the Attorney General of the State to decide the question of payment of reparations to the victims and/or their next of kin. It pointed out that the Office of the Attorney General had still not decided this matter. The petitioners, for their part, said that the State has not complied with this recommendation.

185. Concerning recommendation No. 5 *supra*, the State again made the point that 2006 Law No. 9299 held that crimes willfully committed by military police against the lives of civilians shall be prosecuted in the civilian courts. As for other crimes, the State asserted that they were

¹⁹ The IACHR did not include that information in the 2009 Annual Report since by the time the State's communication was received, that Annual Report had already been approved.

prosecuted by the civil law judge in the military justice system. It also observed that while the military courts retained jurisdiction, the military do not participate in the prosecution of a case in which the victim is a civilian. The State asserted that the presiding judge in a military trial must have a degree in law, and can only join the ranks of the military justice system by public competition.

186. In connection with recommendation No. 5, the State observed that the change in jurisdiction for prosecution of crimes committed by military police necessitated administrative reforms. It pointed out that, as previously observed, some of those reforms had already been introduced; the other reforms were pending review in the Legislative Branch. Among these were the following bills, which are being discussed as a package: Bill No. 2014 of 2003, which establishes the competence of the Trial by Jury to prosecute military accused of willful crimes committed against civilians; Bill No. 1837 of 2003, which provides that the crimes of homicide and battery, committed by state military police against civilians, come under the jurisdiction of the regular courts and that the Public Prosecutor's Office must be part of the police investigation when the crime being investigated has been committed in the performance of police functions; and Bill No. 5096 of 2009, which establishes the jurisdiction of the regular courts to prosecute military personnel accused of the willful commission of crimes against the lives of civilians.

187. Finally, in connection with Recommendation No. 6 *supra*, the State observed that the supervision mechanism being requested already existed; it therefore concluded that it had fully complied with this recommendation. It mentioned in this regard that by Decree No. 39,900 of January 1, 1995, the state of São Paulo had created the "*Ouvidoria da Polícia*", a kind of ombudsman of state public security, headed by a representative of civil society and with complete autonomy and independence; its main function was to serve as the spokesperson for the public on any irregularities attributed to civilian or military police. The State observed that this institution had no organic or hierarchical link to the Civil or Military Police. The petitioners, for their part, observed that the State had not adequately complied with the recommendation in question.

188. Based on the foregoing, the Commission reiterates that the State has partially carried out the recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 11.517, Report No. 23/02, Diniz Bento da Silva (Brazil)

189. In Report No. 23/02 of February 28, 2002, the Commission concluded that the Federative State of Brazil was responsible for violating the right to life (Article 4) of Mr. Diniz Bento da Silva, which occurred in the state of Paraná on March 8, 1993, and for violating the right to judicial guarantees (Article 8), the right to judicial protection (Article 25), and the right to obtain guarantees and respect for the rights spelled out in the Convention (Article 1(1)).

190. The IACHR made the following recommendations to the Brazilian State:

1. Conduct a serious, effective, and impartial investigation through the ordinary justice system to determine and punish those responsible for the death of Diniz Bento da Silva, punish those responsible for the irregularities in the investigation by the military police, as well as those responsible for the unjustifiable delay in conducting the civil investigation, in accordance with Brazilian law.
2. Take the necessary steps to ensure that the victim's family receives adequate compensation for the violations established herein.

3. Take steps to prevent a repetition of such events and, in particular, to prevent confrontations with rural workers over land disputes, and to negotiate the peaceful settlement of these disputes.

191. On December 23, 2010, the State submitted information in connection with its compliance with the Commission's recommendations. The Commission observes that the State also submitted information on January 26, 2010, in response to a request made by the Commission in 2009.²⁰ The petitioners, for their part, submitted their observations on the compliance with those recommendations on December 23, 2010.

192. Concerning recommendation No. 1 *supra*, both parties concurred that the police investigation was still underway in the 15th Subdivision of the Civilian Police Force Guaraniacú, Paraná. The Commission notes with concern that, more than 17 years after the victim's death, the respective criminal case has not moved beyond the initial phase of police investigation.

193. Concerning recommendation No. 2 *supra*, both parties stated that the compensation for damages set in the verdict in civil suit No. 30798 had not yet been paid to the next of kin of the victim (the daughter-in-law and grandchildren since the widow and son of the victim are deceased). The State claimed that the nonpayment was due to the fact that an error was discovered in the calculation of the compensation. It indicated that although the attorney for the victim's next of kin had the authority to request execution of the amount not in dispute, he failed to do so. The petitioners, for their part, reported that an attempt was made to strike an agreement between the victim's next of kin and the State, but the latter did not agree to the terms proposed by the victim's next of kin for the payment; as a result, the payment had not materialized.

194. Concerning recommendation No. 3 *supra*, the State provided updated information on the creation of institutions specializing in agrarian issues, under the National Program to Combat Rural Violence. It pointed to the creation of special federal and state agrarian courts (*varas agrárias*); a special agrarian chamber in the Federal Public Prosecutor's Office; special state agrarian prosecution offices that specialized in settling agrarian conflicts or disputes; state agrarian ombudsman's offices; police units specializing in agrarian disputes, in both the federal and state jurisdictions; and specialized public defender's offices. The petitioners acknowledged the State's efforts to implement public policies to resolve agrarian conflicts. They nonetheless observed that these public policies had been inadequate. In this regard, they pointed out that between January and July 2010, the state of Paraná recorded 11 agrarian disputes, 7 murders and 62 persons deprived of their liberty as a consequence of those disputes. They stated further that the number of arrests and assaults stemming from those disputes increased in the southern and southeastern regions of the country. They also pointed out that Decree No. 7177/2010 introduced an amendment to the National Human Rights Program (PNDH-3) in connection with the mediation of rural disputes, in which mediation ceased to be a mandatory first step and became instead a simple recommendation.

195. The Commission therefore reiterates that the State has partially carried out the recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

²⁰ The IACHR did not include that information in the 2009 Annual Report since by the time the State's communication was received, that Annual Report had already been approved.

Case 10.301, Report No. 40/03, Parque São Lucas (Brazil)

196. In Report No. 40/03 of October 8, 2003, the IACHR concluded that the Brazilian State violated the human rights of Arnaldo Alves de Souza, Antonio Permoniam Filho, Amaury Raymundo Bernardo, Tomaz Badovinac, Izac Dias da Silva, Francisco Roberto de Lima, Romualdo de Souza, Wagner Saraiva, Paulo Roberto Jesuino, Jorge Domingues de Paula, Robervaldo Moreira dos Santos, Ednaldo José da Fonseca, Manoel Silvestre da Silva, Roberto Paes da Silva, Antonio Carlos de Souza, Francisco Marlon da Silva Barbosa, Luiz de Matos, and Reginaldo Avelino de Araújo, enshrined in Articles I and XVIII of the American Declaration and Articles 8 and 25 of the American Convention, and that it did not carry out the obligations established in Article 1(1) of the same Convention.

197. The IACHR made the following recommendations to the State:

1. That it adopt the legislative measures needed to transfer to the regular criminal courts the trial of common crimes committed by military police officers in the performance of their public order functions.
2. That use of the cells designed for solitary confinement (*celdas fortes*) be discontinued.
3. That it punish, in keeping with the gravity of the crimes committed, the civilian and military police officers involved in the facts that gave rise to the instant case.
4. In those cases in which it has not done so, that it pay fair and adequate compensation to the victims' next-of-kin for the harm caused as a result of the breaches of the above-mentioned provisions.

198. In the same Report, the Commission stated the extent of compliance with those recommendations at that time in the following terms:

[T]he Commission considers that the recommendation that Brazil "adopt the legislative measures needed to transfer to the regular criminal courts the trial of common crimes committed by military police in the performance of their public order functions" has met with partial compliance. In effect, the IACHR reiterates that although Law No. 9,299/96 represents major progress in this respect, it is insufficient, as it merely transfers to the regular courts crimes against life committed by military police in the performance of their functions, and keeps jurisdiction over all other crimes committed by members of the Military Police under the Military Police.

199. The State did not supply any information regarding compliance with the aforementioned recommendations of the IACHR, for inclusion in this Annual Report. The petitioners did provide information on compliance with those recommendations on December 23, 2010.

200. The petitioners indicated that recommendation No. 1 *supra* had not been fully carried out, since Federal Law No. 9299/96 did not transfer jurisdiction for conducting the police inquiry. They observed that in practice, this meant that the law allowed the military police to conduct its own investigations into cases of suspected murder with intent committed by military police against civilians. They further asserted that the other crimes committed by military police that are not willful crimes committed against life remain within the jurisdiction of the military courts. They pointed out that passage of Bill No. 2014/2003 would not constitute full compliance with the Commission's recommendation, since that bill adds to the list of military crimes provided for in the law and thus amplifies the jurisdiction of the military justice system.

201. As for recommendation No. 2 *supra*, the petitioners again made the point that 36 solitary confinement cells still existed and that the Federal District and three other states had not yet not reported on whether they still have such cells.

202. Concerning recommendation No. 3 *supra*, the petitioners pointed out that in the last year no significant headway was made on the criminal cases; that recommendation, therefore, had still not been carried out. They observed that a petition filed by the Public Prosecutor's Office in the case brought against the investigator had been pending with the 5th Criminal Law Chamber since August 23, 2010. That investigator had been acquitted on April 16, 2001, after a second trial. The petitioners also reported that another of the accused was acquitted and the case against him closed in September 2003. As for the 29 military police officers involved, the petitioners reported that on December 20, 2007, the 5th Chamber of the Criminal Section of the São Paulo State Court ordered extinguishment of the criminal case against two of them; it upheld the ruling delivered with respect to the others, which had declared the complaint out of order. This meant that the case did not go to trial by jury (ruling of *impronúncia*, or a finding of no probable cause in which the judge is not convinced that a crime has been committed or of the evidence to support it).

203. As for recommendation No. 4 *supra*, the petitioners observed that the families of some of the victims could not be identified and/or located, and therefore did not receive the compensation that the Commission recommended. To this respect, the IACHR urges the parties to overcome the remaining obstacles so that this recommendation can be carried out for the next of kin of all the victims.

204. The Commission therefore reiterates its finding that the State has partially complied with the indicated recommendations. Accordingly, the Commission will continue to monitor those points whose compliance is still pending.

Case 11.289, Report No. 95/03, José Pereira (Brazil)

205. On October 24, 2003, by Report No. 95/03, the Commission approved a friendly settlement agreement in the case of José Pereira. By means of this agreement, the State recognized its international responsibility in the case, given that "the state organs were not capable of preventing the occurrence of the grave practice of slave labor, nor of punishing the individual actors involved in the violations alleged."

206. Pursuant to that agreement, the State undertook to:

1. Publicly recognize its responsibility by the solemn act of creating the National Commission for the Eradication of Slave Labor – CONATRAE (created by Presidential Decree of July 31, 2003), which will take place on September 18, 2003.
2. Keep under reserve the identity of the victim at the moment of the solemn act recognizing State responsibility and in public declarations about the case.
3. Continue with the efforts to carry out the judicial arrest warrants against the persons accused of the crimes committed against José Pereira. To this end, the friendly settlement agreement will be forwarded to the Director-General of the Department of the Federal Police.
4. Compensate José Pereira for material and moral damages suffered.
5. Implement the actions and proposals for legislative changes contained in the National Plan for the Eradication of Slave Labor, drawn up by the Special Commission of the Council for the Defense of Human Rights, and initiated by the Government of Brazil on March 11, 2003, in order to improve the National Legislation aimed at prohibiting the practice of slave labor in Brazil.

6. Make every effort to secure the legislative approval (i) of Proposed Law No. 2130-A, of 1996, which includes among the violations of the economic order the use of “unlawful means of reducing production costs such as the non-payment of labor and social taxes, exploitation of child, slave, or semi-slave labor”; and (ii) the version presented by the Deputy Zulaiê Cobra to take the place of the proposed law No. 5,693 of Deputy Nelson Pellegrino, which amends Article 149 of the Brazilian Criminal Code.

7. Defend the establishment of federal jurisdiction over the crime of reduction to conditions analogous to slavery, for the purpose of preventing impunity.

8. Strengthen the Public Ministry of Labor; ensure immediate compliance with the existing legislation, by collecting administrative and judicial fines, investigating and pressing charges against the perpetrators of the practice of slave labor; strengthen the Mobile Group of the MTE; take steps along with the Judiciary and its representative entities to guarantee that the perpetrators of the crimes of slave labor are punished.

9. Revoke, by the end of the year, by means of the appropriate administrative acts, the Cooperation Agreement signed between the owners of estates and authorities of the Ministry of Labor and Public Ministry of Labor, signed in February 2001, and which was denounced in this proceeding on February 28, 2001.

10. Strengthen gradually the Division of Repression of Slave Labor and Security of Dignitaries (STESD), established under the Department of the Federal Police by means of Administrative ruling (*Portaria*)-MJ No. 1,016, of September 4, 2002, so as to give the Division adequate funds and human resources for the proper performance of the functions of the Federal Police in the actions to investigate reports of slave labor.

11. Take initiatives *vis-à-vis* the Federal Public Ministry to highlight the importance of Federal Prosecutors according priority to participating in and accompanying the actions to perform inspections for slave labor.

12. Undertake in October 2003 a national campaign to raise awareness of and oppose slave labor with a particular focus on the state of Pará. On this occasion, through the presence of the petitioners, publicity will be given to the terms of this Friendly Settlement Agreement. The campaign will be based on a communication plan that will include the preparation of informational materials geared to workers, inserting the issue in the media through the written press, and through radio and TV spots. In addition, various authorities are to make visits to the targeted areas.

13. Evaluate the possibility of holding seminars on the eradication of slave labor in the state of Pará no later than the first half of 2004, with the presence of the Federal Public Ministry, ensuring that the petitioners are invited to participate.

207. With respect to items 1, 2, and 4 *supra* regarding the friendly settlement agreement, the Commission has previously considered that said obligations had been fully discharged.²¹

208. The State did not furnish any information regarding compliance with the friendly settlement agreement to be included in this Annual Report. For their part, on December 23, 2010, the petitioners submitted information regarding compliance with that agreement.

209. Concerning the execution of the court-ordered arrest warrants issued for the persons accused of the crimes committed against José Pereira (*supra* point 3), the petitioners asserted that the State made no effort to have those warrants carried out and the accused remained fugitives from justice.

²¹ IACHR, Annual Report 2008. Chapter III.D, para. 137.

210. With respect to the legislative changes proposed in the National Plan for the Eradication of Slave Labor (*supra* item 5), the petitioners made reference to several proposed legislative reforms that are still pending. Concerning Bill 1.985/2003, which sets the fines to be levied against those guilty of profiting from slave labor and that would amend the Rural Labor Act, they observed that the House Committee on Justice and Citizenship had had that bill under consideration since May 2009.

211. Concerning Bill 207/2006, which would create a list of those landowners who are repeat offenders in enforcing a condition analogous to slavery, the petitioners observed that no significant progress had been made. As for the Proposed Constitutional Amendment 438, under which the land of those found to have engaged in the practice of slave labor would be forfeit, which was introduced for the first time back in 1995, the petitioners indicated that the second round of voting on this bill by the full membership of the House of Deputies had still not taken place. Also pending passage is Bill 2002/1996, under which no business that either directly or indirectly uses slave labor could win a contract or participate in competitive bidding.

212. As for amendment of Article 149 of Brazil's Criminal Code, the petitioners reiterated that Law No. 10,803/2003 amended the penalty for the crime of slave labor set forth in that article, increasing it from two to eight years. As for establishing federal jurisdiction over the crime of "reduction to conditions analogous to slave labor" (*supra*, point 7), the petitioners pointed out that subsequent to the Federal Supreme Court's 2006 ruling, which upheld the jurisdiction of the federal courts to try a crime of that nature that occurred in Pará, the Federal Supreme Court took up this matter again in February 2010. They reported that thus far one vote had been cast in favor of the state's jurisdiction, and one vote favoring federal jurisdiction. They also stated that the definition of federal jurisdiction in the matter was still being debated.

213. As for the adoption of measures to strengthen the Office of the Public Prosecutor for Labor Matters and the MTE's Mobile Group, as well as measures taken with the Judicial Branch and its representative bodies (*supra*, point 8), the petitioners regretted that despite the MTE Mobile Group's efforts, it was able to answer only 44% of the complaints of slave labor filed with the Pastoral Land Commission in 2010. The petitioners also underscored the point that low prosecution rates pointed up the limits to what mobile prosecution can accomplish. The state of Pará reportedly had only one team for rural prosecutions, which between January and October 2010 reportedly prosecuted only three cases (half of the number prosecuted in the same period in 2009), rescuing 18 workers in the process. The petitioners also expressed concern over the government's failure to publish important statistics regarding the efforts to combat slave labor in Brazil.

214. On revocation by the applicable administrative acts of the Cooperation Agreement signed between estate owners and authorities of the Ministry of Labor and the Public Ministry for Labor (*supra* item 9), the petitioners reiterated that said cooperation agreement has not yet been revoked, meanwhile the State underscored it had entirely abandoned its use.

215. As for point 10 *supra*, the petitioners observed that they did not have access to current information. However, they did say that there were no signs suggesting any improvements in the Federal Police's organization and prioritization of such measures. They pointed out that in almost half of the 178 cases prosecuted during the first ten months of 2010, the Federal Police Force was replaced by other police forces. Concerning point 11 *supra*, the petitioners again observed that as a rule, Federal Prosecutors did not participate in the Mobile Group's actions, except in the state of Mato Grosso.

216. With respect to raising awareness of and opposition to the practice of slave labor, (*supra* item 12), the petitioners are unaware if any publicity on the friendly settlement agreement

was carried out during the launch of the “Slave Labor: We Must Abolish this Scourge” campaign. The State indicated that the Second National Plan for the Eradication of Slave Labor was launched on September 10, 2008. Furthermore, the State emphasized that according to the International Labor Organization (ILO), 68.4% of the targets included in the First National Plan had been met. Finally, with regard to item 13 *supra*, the petitioners noted their frustration with the State’s Campaign for the Eradication of Slave Labor and Anti-Slavery Commission, particularly regarding the meager progress made and the fact that said Commission has not met since March 2009. The State did not offer specific or up-to-date information on this item.

217. In view of the foregoing, the IACHR concludes that the State has carried out the friendly settlement agreement in part. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 11.556, Report No. 32/04, Corumbiara (Brazil)

218. In Report No. 32/04, of March 11, 2004, the Commission concluded that the State of Brazil was responsible for: (a) violation of the rights to life, humane treatment, judicial protection, and judicial guarantees, enshrined in Articles 4, 5, 25, and 8, respectively, of the American Convention, to the detriment of the landless workers identified in the report due to extrajudicial executions, injury to their personal integrity, and violations of the duty to investigate, the right to an effective remedy, and the right to judicial guarantees, committed to their detriment; (b) the violation of its duty to adopt provisions of domestic law, in the terms of Article 2 of the American Convention, and of the obligation imposed on it by Article 1(1) to respect and ensure the rights enshrined in the Convention; and (c) the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

219. The Commission made the following recommendations to the State:

1. Conduct a complete, impartial, and effective investigation into the events, by nonmilitary organs, to determine responsibility for the deaths, personal injuries, and other acts that occurred at Santa Elina ranch on August 9, 1995, and to punish all the material and intellectual authors, whether civilian or military.
2. Make adequate reparations to the victims specified in this report or to their next-of-kin, as appropriate, for the human rights violations determined in this report.
3. Adopt the necessary measures to prevent similar events from occurring in the future.
4. Amend Article 9 of the Military Criminal Code, Article 82 of the Code of Military Criminal Procedure, and any other domestic legal provisions that need to be amended in order to abolish the competence of the military police to investigate human rights violations committed by the military, and to transfer that competence to the civilian police.

220. On December 21, 2010, the State submitted information regarding compliance with the above-mentioned recommendations from the IACHR. The Commission notes also that on December 18, 2009 the State submitted compliance-related information in response to a request the IACHR made back in 2009.²² On December 23, 2010, the petitioners submitted information on compliance with the Commission’s recommendations.

²² The IACHR did not include that information in the 2009 Annual Report since by the time the State’s communication was received, that Annual Report had already been approved.

221. Concerning recommendation No. 1 *supra*, the State reiterated what was reported in the Commission's 2007 Annual Report to the effect that the Jury Trial convicted three military police officers and two rural workers and sentenced them to prison. The State added that the convictions became *res judicata* and all those convicted were currently serving their sentences. The State also reported that on December 6, 2010, the Rondonia Court of Justice declared State Constitutional Amendment No. 23 to be unconstitutional. That constitutional amendment had granted each of the convicted military police officers the right to be put on inactive duty, even while they were being criminally prosecuted and until such time as conviction became *res judicata*. The State maintained that it had complied with this recommendation. The petitioners, for their part, again made the point that a full, impartial and effective investigation of the facts was never conducted, beyond what was described by the Commission in Report No. 32/04; they therefore maintained that the recommendation in question had not been carried out.

222. Both parties agreed that recommendation No. 2 *supra* had not been carried out owing to a lack of consensus as to the number of victims. The State indicated that although the Commission's report on the merits set the total number of victims at 28, the petitioners were reportedly demanding compensation for a much larger number of persons, and allegedly had not officially presented that list of alleged victims. It pointed out that under the Program titled *Balcão de Direitos Humanos*, of the Secretariat for Human Rights, a suit was filed seeking pecuniary and non-pecuniary damages against the state of Rondonia, which was still pending. That legal action, which is No. 0000450-05.2010.822.0001, included 198 persons who were victims of abuse and torture committed during the Corumbiara Massacre. Finally, the State expressed its willingness to resume negotiations with the new state government that would take office in January 2011, in order to secure payment for the next of kin of the deceased victims named by the Commission.

223. The petitioners, for their part, stated that according to the Commission's report on the merits of the case, there were another 50 injured victims. They also reported on two legal actions currently underway in state court seeking compensatory damages. As to Case No. 0027840-97.1999.822.0012, brought on June 29, 1999 by some of the victims of the excessive use of force by state military police, on October 20, 2009 the Rondonia Tribunal upheld the lower court ruling which set compensation ranging from R\$5,000 (five thousand *reales*) to R\$ 10,000 (ten thousand *reales*). However, recently, in June 2010, the Public Treasury reportedly received a summons for execution of the judgment, which is why the compensations have not yet been paid. As for Case No. 0027858-21.1999.822.0012, which some of the next of kin of the deceased victims had brought back on June 28, 1999, the Rondonia Tribunal upheld the compensation set in the lower court's ruling, but held that minors 18 years of age and under would be entitled to receive a pension only until the age of 25. The petitioners stated that on June 8, 2010, the Public Treasury reportedly received a summons for execution of the judgment, which was why the compensations were not paid in this case either.

224. As for this recommendation, the Inter-American Commission reiterates that Merits Report No. 32/04 mentions 28 victims: 11 deceased and 17 injured (Merits Report No. 32/04, paragraph 306). The Commission again urges the parties to overcome existing obstacles so that this recommendation can be carried out, and asks both parties to provide accurate information concerning this recommendation, in terms of the 28 victims named in Report No. 32/04.

225. Concerning recommendation No. 3 *supra*, both parties reported on the April 15, 2010 Decree which declared the Santa Elina Hacienda, the site of the Corumbiara Massacre, to be rural property "of social interest for purposes of agrarian reform." The State wrote that once that land was expropriated, it would go to the agrarian reform settlements. Furthermore, the State observed that according to the figures of the National Agrarian Ombudsperson's Office, between January and September 2010 there were 50 homicides in rural areas, five of which occurred in the context of agrarian disputes. It also supplied updated information on the National Program to

Combat Rural Violence. Among the specialized agrarian institutions created under that program, the State made specific mention of the agrarian prosecutorial offices created in the state of Rondonia.

226. The petitioners acknowledged the efforts of the State of Brazil in connection with Recommendation No. 3, but again made the point that rural violence was still a very serious problem in Brazil. They observed that according to figures from the Pastoral Land Commission (CPT), in the period from January to July 2010, there were 222 land disputes nationwide, which resulted in 7 murders, 43 victims of assault, and 12 persons who received death threats. They also emphasized the lack of efficient preventive measures and that impunity was one of the major obstacles to reducing violence in rural areas.

227. With regard to recommendation No. 4 *supra*, the State reported that Committee on Constitution, Justice and Citizenship was studying three bills related to the purpose of this recommendation: 2003 Bill No. 2014; 2003 Bill No. 1837, and 2009 Bill No. 5096. It also reiterated that the Federal Supreme Court had already held that the Public Prosecutor's Office had constitutional authority to investigate the conduct of police officers. The petitioners, for their part, reiterated that passage of Federal Law No. 9.299/1996, which transferred jurisdiction to prosecute a crime of willful murder committed by military police against civilians, to the regular courts did not transfer jurisdiction for conducting the police investigation. They emphasized that the other crimes remained within the jurisdiction of the military justice system. They also observed that the bills referenced by the State did not alter the authority of the military police to investigate crimes committed by military police. The petitioners pointed out that under Bill No. 2014, the military courts retained jurisdiction to prosecute common crimes committed by military personnel and the list of military offenses was amplified.

228. In view of the foregoing, the IACHR concludes that the State has partially implemented the recommendations noted. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 11.634, Report No. 33/04, Jailton Neri da Fonseca (Brazil)

229. In Report No. 33/04 of March 11, 2004, the Commission concluded that: (a) the State of Brazil was responsible for the violation of the rights to personal liberty, humane treatment, life, special measures of protection for children, judicial protection, and judicial guarantees, enshrined, respectively, in Articles 7, 5, 4, and 19, to the detriment of Jailton Neri da Fonseca, and in Articles 25 and 8 of the American Convention in conjunction with Article 1(1) to the detriment of his next-of-kin; and that (b) the State violated its duty to adopt provisions of domestic law, in the terms of Article 2 of the American Convention, and also violated the obligation imposed on him by Article 1(1) to respect and ensure the human rights enshrined in the Convention.

230. The Commission made the following recommendations to the State:

1. That it make full reparations, in consideration of both moral and material damages, to the next-of-kin of Jailton Neri da Fonseca, for the human rights violations determined in this report, and, more specifically, that it do the following:
2. Ensure a full, impartial, and effective investigation into the crime conducted by nonmilitary organs, with a view to establishing responsibility for the acts related to the detention and murder of Jailton Neri da Fonseca and punishing the responsible parties.
3. Pay the next-of-kin of Jailton Neri da Fonseca compensation computed in accordance with international standards, in an amount sufficient to make up for both the material damages and the moral damages suffered on the occasion of his murder. Such compensation, to be paid by the Brazilian State, should be computed in accordance with international

standards, and should be in an amount sufficient to make up for both the material damages and the moral damages suffered by the next-of-kin of Jailton Neri da Fonseca on the occasion of his murder and other violations of his human rights referred to in this report.

4. Amend Article 9 of the Military Criminal Code and Article 82 of the Code of Military Criminal Procedure, in addition to any other domestic legal provisions that need to be amended to abolish the competence of the military police to investigate human rights violations committed by members of the military police, and transfer that competence to the civilian police.

5. Adopt and implement measures to educate officers of the justice system and members of the police to prevent acts involving racial discrimination in police operations, and in criminal investigations, proceedings, or sentencing.

6. Adopt and implement immediate measures to ensure observance of the rights established in the American Convention, the Convention on the Rights of the Child, and the other national and international standards on the matter, in order to ensure that the right to special protection of children is enforced in Brazil.

231. On December 22, 2010 the State submitted information regarding compliance with the above-mentioned recommendations of the Commission. The petitioners did likewise on December 23, 2010.

232. As observed in the Commission's 2009 Annual Report, both parties coincide that recommendations Nos. 1 and 3 had been carried out.

233. As for the recommendations that concern the measures of non-repetition (Nos. 4, 5 and 6 *supra*), both parties reported that on December 8, 2010 a meeting was held to discuss compliance with those recommendations. In attendance were the petitioners, representatives from Rio de Janeiro's Secretariat of Social Action and Human Rights, the Secretariat of Human Rights of the Office of the President of the Republic, and the Ministry of Foreign Affairs. They also pointed out that another meeting was scheduled for January 2011 where implementation of the petitioners' proposals was to be discussed.

234. None of the parties made specific reference to recommendation No. 2 *supra*.

235. Consequently, the IACHR concludes that the recommendations have been partially carried out. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.001, Report No. 66/06, Simone André Diniz (Brazil)

236. In Report No. 66/06 of October 21, 2006, the IACHR concluded that the State of Brazil was responsible for violating the human rights to equality before the law, judicial protection, and judicial guarantees, enshrined, respectively, in Articles 24, 25, and 8 of the American Convention, to the detriment of Simone André Diniz. In addition, the Commission determined that the State had violated the duty to adopt provisions of domestic law, in the terms of Article 2 of the Convention, and also in violation of the obligation imposed by Article 1(1) to respect and ensure the rights enshrined in that instrument.

237. The Commission made the following recommendations to the State of Brazil:

1. Fully compensate the victim, Simone André Diniz, in both moral and material terms for human rights violations as determined in the report on the merits, and in particular,

2. Publicly acknowledge international responsibility for violating the human rights of Simone André Diniz;
3. Grant financial assistance to the victim so that she can begin or complete higher education;
4. Establish a monetary value to be paid to the victim as compensation for moral damages;
5. Make the legislative and administrative changes needed so that the anti-racism law is effective, in order to remedy the limitations indicated in paragraphs 78 and 94 of this report;
6. Conduct a complete, impartial and effective investigation of the facts, in order to establish and sanction responsibility with respect to the events associated with the racial discrimination experienced by Simone André Diniz;
7. Adopt and implement measures to educate court and police officials to avoid actions that involve discrimination in investigations, proceedings or in civil or criminal conviction for complaints of racial discrimination and racism;
8. Support a meeting with organizations representing the Brazilian press, with the participation of the petitioners, in order to draw up an agreement on avoiding the publicizing of complaints of racism, all in accordance with the Declaration of Principles on Freedom of Expression;
9. Organize government seminars with representatives of the judicial branch, the Public Ministry and local Public Safety Secretariats in order to strengthen protection against racial discrimination or racism;
10. Ask state governments to create offices specializing in the investigation of crimes of racism and racial discrimination;
11. Ask Public Ministries at the state level to create Public Prosecutor's Offices at the state level specializing in combating racism and racial discrimination;
12. Promote awareness campaigns against racial discrimination and racism.

238. On December 22, 2010, the State submitted information concerning compliance with the above-mentioned recommendations. The petitioners did likewise on December 23, 2010.

239. As observed in the Commission's 2009 Annual Report, both parties considered that recommendations Nos. 1, 2 and 4 *supra* had already been carried out. In that 2009 report, the Commission observed that according to information from the petitioners, neither the victim nor the petitioners were present for the ceremony at which the State publicly acknowledged responsibility, as they were reportedly not invited to the event.

240. With regard to recommendation No. 3 *supra*, the State simply asserted that it had still not found the proper way to make good on that recommendation. The petitioners, for their part, stated that the victim passed the entrance examination for the University of Guarulhos in 2009, and that the deadline for registration was December 21, 2009. They asserted that at the time, the State indicated that, in addition to the entrance examination, the victim would have to meet other requirements stipulated under the "University for All" Program. The State had allegedly told them that it would consult the Ministry of Education to find out what those requirements were. The petitioners pointed out that they had thus far not been told what those requirements were, and as a result the victim lost her place in the university because the deadline for registration had passed.

241. Concerning recommendation No. 5 *supra*, both parties reported on approval of the Statute on Racial Equality with passage of Law No. 12,288 of July 20, 2010. The State observed that the Statute dealt with a variety of issues and expressly provided for the adoption of affirmative action measures, programs and policies. The petitioners, for their part, observed that while the Statute did introduce certain advances, it was largely composed of provisions that required regulation; as a result, the efficacy of such provisions was not immediate. They were also critical of the fact that the Statute failed to establish quotas for Afro-descendants in political parties, universities, businesses and the media –which is one of the main demands of the Afro-descendant movement-. The petitioners observed that the Statute also left out health policies specifically targeting the Afro-descendant population, the need to repara slavery and classification of slavery as a crime against humanity for which there is no statute of limitations.

242. Concerning recommendation No. 6 *supra*, the State asserted that in response to the request filed by the Secretariat for Human Rights asking that the case be reviewed, the Public Prosecutor's Office of São Paulo determined that in order to reopen the police inquiry, new evidence had to be produced. Accordingly, the State took the position that it had taken the necessary measures to have the case reopened. The petitioners reiterated that the police inquiry was still closed.

243. Concerning recommendations Nos. 7 and 9 *supra*, the State made reference to its observations in the Commission's 2009 Annual Report, where it noted that a course on human rights, racial/ethnic diversity and racial equality had already been included within curricula of the Civil and Military Police of São Paulo, and also listed a series of seminars held by the Secretary of Justice and Citizenship of São Paulo in 2007 and 2008 for civil servants in the criminal justice system and members of the Public Prosecutor's Office, the Judicial Branch, and the Secretariat of Public Security of São Paulo. The petitioners indicated that these events were limited to the state of São Paulo and that the information supplied by the State did not include measures for officers of the court, such as the Public Prosecutor's Offices, the Public Defenders Offices and the state and federal courts. They also emphasized that the petitioners should be consulted when such measures are crafted.

244. Regarding recommendation No. 8 *supra*, the State made reference to its statements reported in the Commission's 2009 Annual Report where it observed that such a document had existed since 2006. It was a document condemning discrimination in advertising, and was prepared as a result of the Seminar on "Reflections on the Role of Advertising in the Dissemination and Fight against Discrimination," organized and held by the São Paulo Secretariat of Justice and Citizenship. The petitioners again observed that they did not participate in any gathering with agencies of the Brazilian press and that they were still waiting to be contacted by representatives of the Brazilian State.

245. As for recommendation No. 10, the State reiterated that a Special Precinct for Racial Crimes and Intolerance had been established in the state of São Paulo. It also made reference to the cooperation between the Office of the Attorney General and the São Paulo Police Ombudsperson, intended to make cooperation in cases involving human rights complaints routine. The petitioners, for their part, indicated that there was no information on the establishment of specialized precincts in the other states of the nation.

246. Concerning recommendation No. 11 *supra*, the State emphasized that the Office of the Prosecutor for Human Rights was established in São Paulo and while it did not limit its interests to the topic of racism specifically, its Special Social Inclusion Group has been effective by using court cases to combat all forms of discrimination against Afro-Brazilians. For their part, the petitioners stated that the problem of racial discrimination was systemic and compounded other human rights violations; accordingly, it demanded special attention. The petitioners observed that

the Group Specializing in Combating Discrimination, Racism and Prejudice was created two years ago within the Office of the Public Defender; in 2010 alone that group handled the cases of 64 victims of racial prejudice. The petitioners' contention was that this underscored how important it was for the Public Prosecutor's Office to have personnel specialized in preventing and combating racial discrimination.

247. The State reiterated that it had fully complied with recommendation No. 12 *supra*. The petitioners made no comments in this regard.

248. In view of the foregoing, the Commission concludes that the recommendations outlined have been partially carried out. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.019, Report No. 35/08 Antonio Ferreira Braga (Brazil)

249. In Report No. 35/08 of July 18, 2008, the IACHR concluded that the Brazilian State had violated Mr. Antônio Ferreira Braga's rights to personal integrity, to personal liberty, to due process and to judicial protection, which are recognized in articles 5, 7, 8(1) and 25 of the American Convention, pursuant to the general obligations set forth under Article 1(1) of said Convention, and had failed to comply with its obligation to prevent and punish all acts of torture committed within its jurisdiction, as set forth in Articles 1, 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture.

250. The Commission made the following recommendations to the Brazilian State:

1. That it adopt the necessary measures to give legal effect to the obligation to effectively investigate and punish those who unlawfully detained and tortured Antonio Ferreira Braga; in this regard, the State must ensure due criminal process so as to prevent the statute of limitations from being invoked as grounds for annulling criminal punishment for crimes such as torture, and from any unjustified procedural delays in this regard.
2. That it open an investigation to determine the civil and administrative responsibility for the unreasonable delay in the criminal proceeding regarding the torture inflicted on Antonio Ferreira Braga, especially among those judicial authorities who had knowledge of the file, in order to appropriately punish those who are found to be responsible, with a view to determining whether said judicial authorities acted with negligence.
3. That it make appropriate reparations to Antonio Ferreira Braga for the above-cited violations of his human rights, including the payment of reparations.
4. That it provide training to Civil Police officers to provide them with basic knowledge regarding the fundamental rights enshrined in the American Convention, particularly with respect to proper treatment.

251. To date, neither the State nor the petitioners have furnished information on compliance with the foregoing recommendations of the IACHR. Consequently, the Commission concluded that the compliance with the indicated recommendations is still pending. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.310, Report No. 25/09 Sebastião Camargo Filho (Brazil)

252. In Report No. 15/09 of March 19, 2009, the IACHR concluded that the Brazilian State breached its obligation to ensue the right to life of Sebastião Camargo Filho, provided for at Article 4 of the American Convention, on not preventing the victim's death, despite being aware of the imminent risk to the workers who had settled on the *Boa Sorte* and *Santo Ângelo* estates, and

on failing to duly investigate the facts and punish those responsible. In addition, the IACHR established that the Brazilian State is responsible for violations of judicial guarantees and judicial protection, under Articles 8 and 25 of the American Convention, due to lack of due diligence in the process of investigating and collecting evidence, without which judicial proceedings cannot go forward. Finally, the Inter-American Commission concluded that the State breached the general obligation established at Article 1(1) of the Inter-American Convention.

253. Based on the analysis and conclusions of Report 25/09, the Inter-American Commission recommended to the Brazilian State that it:

1. Conduct a complete, impartial, and effective investigation of the incident, with a view to identifying and punishing the material and intellectual perpetrators of Sebastião Camargo Filho's murder.
2. Make full amends to the next-of-kin of Sebastião Camargo Filho, including both moral and material damages, for the human rights violations identified in this report.
3. Adopt, on a priority basis, a global policy for eradicating rural violence, including preventive measures and measures to protect communities at risk, and stronger measures to protect leaders of movements working for the equitable distribution of rural land.
4. Adopt effective measures to dismantle illegal armed groups involved in conflicts related to land distribution.
5. Adopt a public policy to tackle the impunity surrounding violations of the human rights of individuals involved in agrarian conflicts and seeking the equitable distribution of land.

254. On January 20, 2011, the IACHR forwarded communications to the State and the petitioners in which it asked them for information on the measures to carry out those recommendations. That period elapsed without the parties submitting the information requested.

255. Based on the information available, the Inter-American Commission considers that the State has yet to carry out the recommendations. Accordingly, the Commission will continue to monitor the items still pending.

Case 12.440, Report No. 26/09 Wallace de Almeida (Brazil)

256. In Report No. 26/09 of March 20, 2009, the IACHR concluded that the Brazilian State is responsible for the death of Wallace de Almeida, a poor young black man who resided in a marginal area who was wounded by police agents and then bled to death without having been assisted by those agents; that racial and social considerations came into play in this case; that the investigation into the case was very poor; that it did not meet the requirements of due diligence, to the point that even the date of the report continued at a standstill and unfinished, it not being possible to file charges against anyone responsible for committing the crimes.

257. As of result of those facts, the Inter-American Commission found violations of the rights to life, humane treatment, judicial guarantees, equality, and judicial protection, enshrined respectively at Articles 4, 5, 8, 24, and 25 of the American Convention. State responsibility for violations of Articles 4, 5, and 24 of the American Convention has been to the detriment of Wallace de Almeida, whereas in relation to the violations of Articles 8 and 25, in conjunction with Article 1(1) of the American Convention, the violations run to the detriment of his next-of-kin. The Inter-American Commission also determines that there were violations of the obligations imposed by the American Convention at its Article 1(1) to respect and ensure the rights enshrined therein; at Article 2, which establishes the duty to adopt provisions of domestic law for the purpose of upholding the

rights contained in the American Convention; and at Article 28, regarding the obligation of both the federal State and the state of Rio de Janeiro to implement the provisions of the American Convention.

258. Based on its analysis and the conclusions of the instant report, the Inter-American Commission on Human Rights makes the following recommendations to the Brazilian State:

1. That a thorough, impartial and effective investigation of the facts, be conducted by independent judicial bodies of the civilian/military police, in order to establish and punish those responsible for the acts involved in the murder of Wallace de Almeida, and the impediments that kept both an effective investigation and prosecution from taking place.
2. Fully compensate the relatives of Wallace de Almeida both morally and materially for the human rights violations established in this report, and in particular,
3. Adopt and implement the measures needed for effective implementation of the provision in Article 10 of the Brazilian Code of Criminal Procedure,
4. Adopt and implement measures to educate court and police officials to avoid actions involving racial discrimination in police operations, in investigations, in proceedings and in criminal convictions.

259. On January 20, 2011, the IACHR sent communications to the State and the petitioners in which it asked for information on the measures adopted to carry out these recommendations. That date passed without the parties submitting the information requested.

260. Based on the information available, the Inter-American Commission considers that the State has yet to carry out the recommendations.

Case 11.771, Report No. 61/01, Samuel Alfonso Catalán Lincoleo (Chile)

261. In Report No. 61/01 of April 16, 2001, the Commission concluded that the Chilean State had violated, with respect to Samuel Alfonso Catalán Lincoleo, the rights to personal liberty, life, and personal security, enshrined at Article I of the American Declaration and Articles 4, 5, and 7 of the American Convention. In addition, the IACHR concluded that the Chilean State violated, to the detriment of Mr. Catalán Lincoleo's next-of-kin, the rights enshrined in Articles 8 and 25 of the American Convention, in keeping with Articles 1(1) and 2 of that instrument. In addition, the IACHR reiterated that Decree-Law No. 2,191, on self-amnesty, issued in 1978 by the past military regime of Chile, is incompatible with Articles 1, 2, 8, and 25 of the American Convention. All the foregoing was in connection with the forced disappearance of Samuel Alfonso Catalán Lincoleo, 29 years of age, who was an agricultural technical expert with ties to the Communist Party when he was detained on August 27, 1974, in his domicile in the city of Lautaro, Chile, by members of the Carabineros, soldiers, and civilians. The family members turned to the Chilean courts in 1979 with a complaint stating the facts, but the matter was archived in October 1981 by application of Decree-Law 2,191 of 1978, which ordered amnesty for the violations committed since the September 1973 coup in Chile. In 1992 an effort was made to bring a new judicial action, which culminated in November 1995 with the dismissal with prejudice by application of the self-amnesty decree-law cited above. Finally, the Supreme Court of Justice of Chile decided on a motion for cassation on the merits of the case with its ruling of January 16, 1997, which found that the legal action had prescribed.

262. The IACHR made the following recommendations to the Chilean State:

1. Establish the parties responsible for the murder of Samuel Alfonso Catalán Lincoleo through due judicial process, so that the guilty parties may be effectively punished.
2. Adapt its domestic legislation to the American Convention, for which purpose it must declare Decree-Law No. 2191 of 1978 null and void.
3. Adopt the necessary measures to ensure that the victim's next-of-kin receive adequate, timely reparations, including full satisfaction for the violations of the human rights established herein, as well as payment of fair compensation for material and nonmaterial damages caused, including pain and suffering.

263. In 2009, the IACHR asked the parties to submit up-to-date information on the implementation of those recommendations.

264. By means of a note dated March 13, 2009, the Chilean State presented the following information: Regarding the first recommendation, it reported that on January 29, 2001, a complaint was filed with the Santiago Court of Appeal against Mr. Augusto Pinochet Ugarte and others for the crimes of qualified abduction, illicit association, and illegal burials of persons, including that of Samuel Catalán Lincoleo, whose proceedings were registered as No. 2182-98. On August 25, 2003, the proceedings were totally and definitively dismissed, on the grounds that the 4th Military Court of Valdivia had already established *res judicata* in connection with those same incidents. On August 31, 2005, the Ninth Chamber of the Santiago Court of Appeal, in resolving the jurisdictional consultation placed before it, upheld the definitive dismissal of the proceedings.

265. In 2010, the Commission again requested updated information from the parties.

266. In a note dated December 30, 2010, the State observed that the Special Visiting Judge from the Temuco Appeals Court had presided over case No. 113,958 (Catalán Lincoleo), which is in the preliminary inquiry phase; no one is currently standing trial or has been convicted. At the present time, investigative measures still need to be carried out. The State observed that in this proceeding, the Law No. 19,123 Continuation Program of the Ministry of the Interior is a coadjutor party.

267. Regarding the second recommendation, related to amending its domestic law, the State reported that since 1990, Chile's democratic governments have made great efforts to leave Decree Law No. 2.191 – known as the amnesty decree and enacted by the military regime – void of all effect. However, the State indicated that, regrettably, the congressional majorities necessary for such a change had not been attained. It also reported that a congressional motion for the interpretation of Article 93 of the Criminal Code had been presented, in order to ensure compliance with the judgment of the Inter-American Court of Human Rights in the case of *Almonacid Arellano v. Chile*. That judgment by the Inter-American Court ordered the Chilean State to amend its laws so that the decree in question would not pose an obstacle for investigating and punishing those responsible for the human rights violations committed during the 1973 to 1978 period. As of the date of its communication, the State reported, the legislative bill seeking to exclude crimes against humanity and war crimes covered by international instruments ratified by Chile from statutory limitations was at its first reading in the Senate and was on the docket for examination by the Constitution, Legislation, and Justice Committee.

268. In its communication of December 30, 2010, the State reiterated this information and reported that the bill was currently in the Senate for the second reading required under the Constitution. It had been sent to the Senate on May 6, 2009. The State said that another bill had

reportedly been introduced to establish a new mechanism of review for cases involving human rights violations. That bill was currently in its first reading.

269. As regards the third recommendation appearing above, the State identified each of the reparation measures specifically adopted on behalf of the next-of-kin of Mr. Samuel Alfonso Catalán Lincoleo: Sofía Lincoleo Montero, the victim's mother; Gabriela Isidoro Bucarey Molinet, mother of the victim's daughter; Elena del Carmen Catalán Bucarey, the victim's daughter; Adriana del Carmen Albarrán Contres, mother of Samuel Miguel Catalán Albarrán, the victim's son; and Mr. Catalán Lincoleo's eight siblings. In particular it stressed the amounts given to each of the reparations beneficiaries through both the lifetime compensation pension provided for in Law 19.123 and the redress bonus of Law 19.980. It also referred to physical and mental health care benefits they received, and the educational benefits extended to the victim's children.

270. From the available information, the Commission believes that the Chilean State has implemented the recommendation requiring redress to be given to the victim's next-of-kin, who have benefited from economic compensation, health care, and access to education. At the same time, the IACHR notes with concern that its recommendation to identify the parties responsible for the murder of Samuel Alfonso Catalán Lincoleo has not been heeded, since the Chilean judicial authorities ordered definitive dismissal of the case brought against Mr. Augusto Pinochet Ugarte *et al.* for the crimes of qualified abduction, conspiracy to commit crime and unlawful burial of persons. In Case No. 113,958, no person has been indicted or tried. Finally, the Commission notes the efforts made to bring domestic law into line with the American Convention, which is an international obligation of the State still pending compliance that requires the participation of all branches of government, particularly the legislature.

271. In light of the above, the Commission concludes that the Chilean State has partially implemented the above recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 11.725, Report No. 139/99, Carmelo Soria Espinoza (Chile)

272. In Report No. 139/99 of November 19, 1999, the IACHR concluded that the State violated the rights to personal liberty and humane treatment, and the right to life, of Carmelo Soria, enshrined in Article I of the American Declaration of the Rights and Duties of Man. The Commission also found that the dismissal with prejudice of the criminal charges that had been brought for the detention and disappearance of Carmelo Soria Espinoza negatively affects the right to justice of the petitioners, and as a result, the Chilean State has violated its international obligations enshrined at Articles 8 and 25, 1(1) and 2 of the American Convention; that Decree-Law 2,191 of 1978, the self-amnesty law, is incompatible with the American Convention, which was ratified by Chile on August 21, 1990; that the judgment of the Supreme Court of Chile that finds said Decree-Law 2,191 constitutional of binding application, when the American Convention had already come into force for Chile, violates Articles 1(1) and 2 of said Convention; that the Chilean State has not carried out Article 2 of the American Convention, for it has not brought its legislation into line with the provisions of the Convention; that it has ceased to be in compliance with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons for having adopted Decree-Law 2,191 and because its administration of justice organs have not punished the perpetrators of the crimes committed against Carmelo Soria. Mr. Carmelo Soria Espinoza, 54 years of age, and a dual Spanish and Chilean national, worked as the chief of the editorial and publications section at the Latin American Demography Center (CELADE) in Chile, an entity of the Economic Commission for Latin America and the Caribbean (ECLAC), which is part of the United Nations, accordingly Mr. Soria was an international civil servant.

273. On November 19, 1999, the Inter-American Commission made the following recommendations to the Chilean State:

1. To establish the responsibility of the persons identified as guilty of the murder of Carmelo Soria Espinoza by due process of law, in order for the parties responsible to be effectively punished and for the family of the victim to be effectively ensured the right to justice, enshrined in Articles 8 and 25 of the American Convention.
2. To comply with the provisions of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, in order for human rights violations, committed against international officials entitled to international protection, such as the execution of Mr. Carmelo Soria Espinoza in his capacity as an officer of ECLAC, to be appropriately investigated and effectively punish those responsible. Should the Chilean State consider itself unable to fulfill its obligation to punish those responsible, it must, consequently, accept the authorization of universal jurisdiction for such purposes.
3. To adapt its domestic legislation to reflect the provisions contained in the American Convention on Human Rights in such a way that Decree Law No. 2.191 enacted in 1978 be repealed, in order that human rights violations committed by the de facto military government against Carmelo Soria Espinoza may be investigated and punished.
4. To adopt the necessary measures for the victim's family members to receive adequate and timely compensation that includes full reparation for the human rights violations established herein, as well as payment of fair compensation for physical and non physical damages, including moral damages.

274. On March 6, 2003, the IACHR published Report No. 19/03, which contains the agreement on implementation the parties reached with respect to Case 11,725.

275. In the terms of the agreement on implementation, the State committed to:

- a) Issue a public declaration recognizing the responsibility of the State, through the action of its agents, for the death of Mr. Carmelo Soria Espinoza.
- b) Erect a monument of remembrance to Mr. Carmelo Soria Espinoza in a location designated by his family in Santiago.
- c) Pay a single lump sum of one million five hundred thousand United States dollars as compensation to the family of Mr. Carmelo Soria Espinoza.
- d) Declare that Mr. Carmelo Soria Espinoza had the status of an international official of the United Nations, assigned to the Economic Commission for Latin America, ECLAC, as a senior staff member, and that he therefore had the status of a senior international staff official.
- e) Present before the Courts of Justice of Chile an application to reopen criminal proceedings that were initiated to prosecute those who killed Mr. Carmelo Soria Espinoza.

276. For their part, the petitioners agreed to:

- a) Terminate the action before the Inter-American Commission on Human Rights and expressly declares that all the recommendations contained in the Commission's report 133/99 have been complied with.
- b) Desist from the suit for extra-contractual liability of the State, in the case "*Soria con Fisco*" now before the Fourth Civil Court of Santiago under case N° C-2219-2000, declaring that it agrees to terminate judicial proceedings initiated and that the reparations agreed before the Inter-American Commission on Human Rights are all that will be demanded of the State and that, consequently, the family will not pursue further judicial action for State liability, whether in connection with action of its agents or for physical or non physical damages, including

moral damages. An authenticated copy of the judicial decision approving the withdrawal of action must be presented before the Commission by the petitioner, for purposes of demonstrating compliance with this agreement.

277. On July 31, 2007, the Chilean State sent a communication to the IACHR in which it reported that on July 18, 2007, the legislative processing of the bill aimed at approving the agreement on implementation of the recommendations mentioned, and that it was referred, for its promulgation, to the Presidency of the Republic of Chile. On August 30, 2007, the State sent the IACHR a joint statement signed by the Director for Human Rights of the Ministry of Foreign Relations of Chile, and by attorney Alfonso Insunza Bascuñan, the petitioners' representative, in which the petitioners indicate that they "consider concluded, definitively, the international complaint or claim filed against the Chilean State before the Inter-American Commission on Human Rights" and that "they consider that all of the recommendations contained in Report 139/99 have been carried out," requesting they be "archived accordingly." On September 4, 2007, the Chilean State reported that item 3.III.c of the Report of the Agreement on Implementation No. 19/03 had been complied with by virtue of the petitioner abandoning her complaint for extra-contractual liability of the State as a result of the facts of the instant case, and her agreement to accept the reparations agreed upon before the IACHR as the only ones that may be enforced as against the State.

278. On January 16, 2008, the State informed the IACHR that it had carried out the commitments to pay monetary compensation, by making payment for an *ex gratia* pension as compensation to the family of Mr. Carmelo Soria and, with the acts of symbolic reparation established in Agreement on Implementation No. 19/03, by recognition of the responsibility of the Chilean State in the death of Mr. Carmelo Soria and building a memorial in tribute to his life and work. Specifically, the State indicated that on November 8, 2007, the ceremony was held "Unveiling the Plaque in Tribute to Carmelo Soria" at the headquarters of the Economic Commission for Latin America and the Caribbean (ECLAC) in Santiago, at which Carmelo Soria's widow and children were present, along with the President of the Republic of Chile, the President of the Government of Spain, and the UN Secretary General. The Ministry of Foreign Relations gave the Secretary General of ECLAC four checks for US\$ 375,000 issued by the General Treasury of the Republic of Chile, to Carmelo Soria's widow and three children.

279. Subsequently, on October 21, 2008, the State reported that the Human Rights Program of the Ministry of Interior, created by Law 19,123, became a party to case No. 7.891-OP "C", which is investigating the crimes of illicit association and obstruction of justice, under the responsibility of the Judge Alejandro Madrid, of the Court of Appeals of Santiago, carrying out what was indicated by the IACHR in its Report No. 133/99. The State indicates that the previous case was begun on October 25, 2002, upon complaint submitted by Ms. Carmen Soria González-Vera against four members of the Dirección de Inteligencia Nacional (DINA) and any others who turn out to be responsible, as perpetrators, accomplices, or aiders and abettors in the crimes of obstruction of justice and illicit association to the detriment of Carmelo Soria, for the homicide of DINA chemist Eugenio Berríos Sagredo, who was taken out of the country to Uruguay to keep him from testifying in some judicial proceedings, including in the case of Mr. Carmelo Soria.

280. At the Commission's request, the petitioners sent a communication on November 13, 2008, in which they reported that, as expressed by the State, in Case No. 7.981-C there is a petition pending to issue an indictment for the crime of illicit association and others. In addition, the petitioners indicated that based on the new information in that case, they will ask that Case No. 1-93, in the homicide of Carmelo Soria Espinoza before the Supreme Court, be reopened so that the persons responsible may be punished and to set aside the dismissal with prejudice due to application of Decree-Law 2,191 of 1978 on Amnesty.

281. Based on the information that the parties provided, the Commission concluded that all the commitments undertaken by the parties in Report No. 19/03 had been duly carried out. In its 2008 Annual Report, the Commission expressed its appreciation for the efforts made by the Chilean State to comply with those commitments. At the same time, the Commission also concluded that the State had partially complied with the Commission's recommendations in Report No. 139/99.

282. By a communication received on June 8, 2010, the petitioners reported that on March 5, 2010, the petitioners and representatives of the Chilean Government's Human Rights Program had, in separate submissions, both asked the Supreme Court to reopen the case into the murder of Mr. Carmelo Soria. On March 29, 2010, the Special Justice of the Supreme Court, don Héctor Carreño Seaman, did not agree to the request on the grounds that "the case was closed as a result of the complete and definitive dismissal of the punishable offense charged, in a judgment that had become final." They added that on April 1, 2010, the Government's Human Rights Program and the petitioners both appealed that decision. On April 28, 2010, the Second Chamber of the Supreme Court heard the arguments in which it was asked to overturn the decision being appealed and to order the case record reopened. The Second Chamber of the Supreme Court decided to confirm the ruling, solely on the grounds that the proceedings and the ends thereby sought were not properly explained. The Court therefore held that the investigation had been completed. The petitioners regretted that the Supreme Court had refused to reopen the case record, which in practice meant that the perpetrators of the murder of Carmelo Soria Espinoza never faced punishment, i.e., they enjoy complete and absolute impunity.

283. In November 2010, the Commission requested updated information from the parties. The State sent its response by note dated December 30, 2010. It reaffirmed the information reported in the preceding paragraph as to the proceedings and current status of the case prosecuted into the murder of Carmelo Soria. As to Case No. 7,981, prosecuted for the crimes of conspiracy to commit crime and obstruction of justice in the case that investigated the murder of Carmelo Soria, the State indicated that it had been underway since September 7, 2009, with seven defendants.

284. Concerning the second recommendation in Report No. 139/99, the State asserted that it was gathering sufficient information to enable it to fully comply with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. As for the third recommendation, the State observed that various alternatives had reportedly been examined, the most viable being the enactment of a law interpreting Article 93 of the Penal Code. An effort was made to reconcile non-application of the Amnesty Law (DL 2191) with the institution of *res judicata* and the principle of *ne bis in idem*. As a result two bills were reportedly introduced: a) an interpretative law that brings Chilean criminal law in line with international human rights treaties, a bill that is currently in its second reading in the Senate; b) a modification that establishes a new review mechanism for cases of human rights violations, a bill that is currently in its first reading.

285. The Commission therefore concludes that the Chilean State has partially complied with the recommendations made in Report No. 139/99. Accordingly, the Commission will continue to monitor the points still pending.

Petition 4617/02, Report No. 30/04, Mercedes Julia Huenteao Beroiza *et al.* (Chile)

286. On March 11, 2004, by Report No. 30/04, the Commission approved a friendly settlement agreement in the petition of Mercedes Julia Huenteao Beroiza *et al.* In summary, the petitioners, who are members of the Mapuche Pehuenche people, from the sector known as Alto del Bío Bío, Region VIII in Chile, had made arguments regarding the State's responsibility for the development of the Ralco Hydroelectric Project, carried out by the Empresa Nacional de Electricidad S.A. (ENDESA), in the areas in which they lived.

287. According to that agreement, the State committed to the following:

1. Measures to improve the legal institutions protecting the rights of indigenous peoples and their communities, including: a) constitutional recognition for the indigenous peoples in Chile; b) ratification of ILO Convention No. 169 by Chile; c) strengthening of indigenous participation in the Indigenous Development Area of the Alto Bío Bío; and d) Establishment of mechanisms that ensure the participation of indigenous communities in management of the Ralco Forest Reserve.

2. Measures designed to strengthen the territorial and cultural identity of the Mapuche Pehuenche people, as well as mechanisms for participation in their own development, including: a) creation of a municipality in the Upper Bío Bío sector; b) agreement on mechanisms to solve the land problems that affect the indigenous communities in the Upper Bío Bío sector; c) strengthen indigenous participation in the Upper Bío Bío Indigenous Development Area (ADI); and d) agreement on mechanisms designed to ensure the participation of indigenous communities in the management of the Ralco Forest Reserve.

3. Measures to foster development and environmental conservation in the Upper Bío Bío sector, including: a) agreement on mechanisms to ensure that indigenous communities are informed, heard, and taken into consideration in follow-up and monitoring of the environmental obligations of the Ralco Hydroelectric Project; b) strengthen economic development in the Upper Bío Bío sector, in particular in its indigenous communities, through mechanisms that are acceptable to the petitioners; c) agree on mechanisms to facilitate and improve tourism development of the reservoirs in the Upper Bío Bío for the benefit of the indigenous communities; and d) agree on binding mechanisms for all state organs to prevent the construction of future megaprojects, in particular hydroelectric projects, on indigenous lands in the Upper Bío Bío.

4. Agree, as soon as possible, on urgent measures with respect to the lawsuits against indigenous leaders who have been prosecuted for acts connected with the construction of the Ralco Plant.

5. Measures to satisfy the private demands of the Mapuche Pehuenche families concerned.

288. In 2010, the Commission requested updated information from the parties on the matter of compliance with these recommendations.

289. In a communication received on January 5, 2011, the State reported that the text of a constitutional amendment currently under discussion in the Senate Committee on the Constitution, Legislation and Regulation was the product of a political agreement among all the forces represented in the National Congress, reached in April 2009. It added that before that agreement was reached, the Senate Committee had received and heard from over 50 indigenous organizations and leaders. After agreeing upon the text of the constitutional amendment, the Executive Branch conducted a "Consultation on Constitutional Recognition," the results of which were reported to the Senate Committee.

290. The State reported that on September 15, 2008, it ratified ILO Convention 169, which entered into force in September 2009, in keeping with Article 38(3) of that Convention. With that commitment 2(a) of the above agreement was fulfilled. In this regard, the State informed the Commission that the Constitutional Court had delivered a ruling in which it held that the consultation provisions contained in Article 6 of the Convention are self-executing in nature and therefore applicable to all organs of government.

291. The State report that commitment 3(a) was carried out back in July 2004. Concerning commitment 3(b), the State reported that lands had been bought for almost all the Pehuenche communities that belonged to the *Comuna* of the Upper Bío Bío and that in the three-year period from 2008 through 2010, an area of 180 hectares was purchased for the Butaleibun indigenous community and an area of 353.7 hectares was purchased for the Newen Mapu community of Malla Malla. It added that henceforth, every land-grant will be coupled with an agreement to provide productive support and technical assistance. As for commitment 3(c), the State indicated that in June 2009 the technical board for monitoring public investment in the Area of Indigenous Development of the Upper Bío Bío was launched; in 2011, resources will be earmarked to strengthen the participation of the Indigenous Development Area in the project on "Participation of indigenous peoples for the sake of social cohesion in Chile." As for commitment 3(d), the State observed that an agreement was concluded with the National Forestry Corporation (CONAF) under which members of the indigenous communities would be able to enter and make use of the Reserve. That agreement includes the communities of Quepuca Ralco and Ralco Lepoy.

292. With respect to commitment 4(b), the State reported that a meeting had been held between CONADI and the Municipality of Upper Bío Bío at which it was agreed to initiate a process of coordination during January 2009. As regards commitment 4(c) the State reported that tourism projects have been financed on the banks of Lake Ralco, that works have been promoted and financed to strengthen tourism services catering to tourists with special interests in the high cordillera, and that as a result of the commitment made by ENDESA regarding the return of the remaining lands not flooded by the Ralco reservoir, CONADI is processing the restitution of the remaining lands to their original owners, which presents the opportunity to develop tourism projects associated with the reservoir. With respect to commitment 4(d) the State indicated that it is studying the existence of culturally significant sites in the lands that the project will affect, though to date the existence of indigenous lands in the areas to be affected has not been shown. The State added that improvements in the tourism area were introduced. It pointed out that the consultant was to hold meetings with the indigenous communities to evaluate compliance with the tourism-related measures. At least one visit is planned for 2011 to analyze how the environmental measures that the project must carry out are progressing.

293. As for commitment 4(b), the State reported that CONADI prepared the "Productive Development Plan for relocated families on the *El Porvenir* estate, Quilaco, province of Bío Bío"; working in conjunction with the relocated families and the National Agricultural Development Institute (INDAP), it is preparing a work plan for the communities in the Upper Bío Bío sector. As for commitment 4(c), the State reported that tourism projects on the banks of Lake Ralco had been funded. Works had been promoted and financed to strengthen the ability to service the tourism trade with a particular interest in the Southern Andes. Regarding commitment 4(d), the State indicated that the national laws were being observed; accordingly, the limits set by the current laws and regulations must be respected.

294. As for commitment 5, the State indicated that "this particular point concerns the case of don Víctor Ancalaf LLaupe, who is currently at liberty." With regard to commitment 6, it reported that in late 2006, the plots of land were handed over to each person; lots were drawn to determine which plot of land each would receive. Each one received land suitable for habitation, agriculture, tourism development, and forestry management. It clarified that three plots had yet to be handed over; the delay had to do with boundary issues. It also reported that the *ex gratia* pensions had already been paid and study grants had been awarded in June 2009.

295. In 2010, the petitioners did not provide any additional information concerning compliance with the pending commitments. In 2007, the petitioners sent a communication in which they discussed each point of the agreement in detail. In that communication they highlighted compliance with that point of the agreement that concerned creation of a municipality [*comuna*] in

the Upper Bío Bío sector; they were of the view that the provision of the agreement concerning the mechanism to ensure the indigenous communities' participation in the administration of the Ralco Forestry Reserve had been complied with, and reported that a memorandum of understanding had been signed with the Government and the Pehuenche families with measures to meet the particular demands of the affected Mapuche Pehuenche families.

296. Finally, the petitioners sent a communication on December 15, 2008, in which they indicated that the State has failed to carry out commitment 4(d) of the friendly settlement agreement, on having accepted to undertake an environmental impact study of a hydroelectric megaproject in Mapuche Pehuenche territory known as the Angostura Project. According to the petitioners, this project would affect indigenous lands of the Alto Bío Bío in which there are at least four sacred sites for the Mapuche Pehuenche and on which some Mapuche Pehuenche families currently live. The petitioners indicated that the National Corporation of Indigenous Development (CONADI: Corporación Nacional de Desarrollo Indígena), an agency of the State entrusted with ensuring the protection of indigenous lands, issued a report on July 31, 2008 (Official Note 578) in which it confirms the importance of the sector for the heritage of the Mapuche Pehuenche communities. The petitioners indicated, based on what was stated above, that the State breached its commitment to adopt land-use management measures so that the indigenous lands in the Upper Bío Bío may be "characterized as an area for protection of resources of natural or cultural heritage value, and, accordingly, that they be declared as zones not fit for building or with building restrictions." They also indicated that pursuant to Indigenous Law 19,300 and Convention 169, the Chilean State has a special obligation to protect indigenous persons and their lands and territories. The petitioners reported that the Angostura Hydroelectric Project has plans to begin construction in the first half of 2009 and is to come on line in the second half of 2012. This project includes the construction and operation of a hydroelectric plant, and will have a total volume of water in the reservoir of approximately 100 million cubic meters.

297. The Commission appreciates the measures taken by the State to comply with the commitments undertaken in the Friendly Settlement Agreement. At the same time, it sees that some measures are still being implemented, and has no up-to-date information on the implementation of commitment 4(d). Because of the above, the Commission concludes that the friendly agreement has been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.337, Report No. 80/09, Marcela Andrea Valdés Díaz (Chile)

298. In Report No. 80/09 of August 6, 2009, the Commission approved a friendly settlement agreement in the case of Marcela Andrea Valdés Díaz. Summarizing, the petitioner had alleged that Mrs. Marcela Andrea Valdés Díaz was a member of the *Carabineros de Chile* [the Chilean police] and that upon getting married in 1994 to Claudio Vázquez Cardenalli, a captain in the Carabineros de Chile, she was subjected to physical and psychological abuse inflicted by her husband, a fact that was brought to the attention of both the Carabineros de Chile and the judicial authorities. In 1999, Mrs. Marcela Andrea Valdés obtained a court order of permanent protection. Based on a request to live separately, which the couple's superiors authorized, the Police Prefect of Valdivia opened a summary proceeding to investigate Mrs. Valdés' marital relationship, which resulted in the adoption of resolution 14 of June 4, 1999 in which she was held under arrest for 15 days, while two lower-ranking members of the Carabineros received less severe penalties. Before the final decision was delivered, Mrs. Valdés filed for relief from the courts, whereupon she was again placed under arrest for having resorted to the courts before exhausting the administrative channels. As a result of these sanctions, she was ultimately discharged. Mrs. Valdés went to court to appeal her discharge but her appeals were denied without the court examining the merits of her claims.

299. On October 10, 2003, the Inter-American Commission on Human Rights adopted Report No. 57/03 in which it decided to hear the petition alleging violations of articles 5, 8, 11, 24 and 25 of the American Convention, in conjunction with articles 1(1) and 2 thereof, and Article 7 of the Convention of Belém do Pará

300. Under the terms of the friendly settlement agreement, the State undertook to adopt the following measures:

1. Non Repetition Measures:

a. Review, update, and enhancement of legal and regulatory standards on domestic violence, with an emphasis on situations that affect police officials and on prevention measures, inter alia, on sexual harassment.

b. Strengthening of study course contents connected with human rights at all levels and in all education processes in the institution.

c. Continue to hold training workshops and seminars on matters related to protection for women and the police role, strengthening, in particular, assistance for victims of domestic violence, the social dimension of the socio-cultural phenomenon of domestic violence and its legal implications, domestic violence, femicide, and learning disorders in children.

d. Bearing in mind that the State of Chile, under the coordination of the Gender Equity Advisory Office of the Ministry of Defense, set up a working group composed of representatives of the Armed Services, Security Forces, and the Investigation Police, as well as their respective retirement funds, in order to detect possible gender inequities through a complete review of institutional rules and regulations, this group will strengthen its attention to matters connected with domestic violence in the above-mentioned institutions. Furthermore, taking into account that at an initial stage various nongovernmental organizations and leading scholars participated, describing their experiences and contributing their views and observations on the matters with which the working group is concerned, an invitation will be sent to the petitioner's lawyers before the IACHR, in their capacity as members of the organization representing this case, Fundación Pro-Bono.

2. Specific Reparation Measures:

Publication of a summarized version of the text of the present agreement in the Official Gazette of the Republic of Chile as well as on the web sites of the Ministry of Defense and Carabineros de Chile.

3. Health Care Services:

The petitioner will continue to receive care at, irrespectively, Hospital de Carabineros "DEL GENERAL HUMBERTO ARRAIGADA VALDIVIESO" or the Hospital of the Carabineros Social Security Department, "HOSPITAL TENIENTE HERNAN MERINO CORREA, under the modalities and conditions offered by the National Health Fund (FONASA).

4. Economic reparation:

As reparation for material and non-pecuniary damages, the petitioner will receive a one-time total payment of the equivalent in pesos of US\$ 50,000 (fifty thousand US dollars), which amount shall be paid directly by means of a money order to Mrs. Marcela Valdés Díaz.

5. Court costs:

The State of Chile shall reimburse part of the litigation costs which have been appraised at the one-time total sum of US\$ 6,000, which it is requested be paid directly to Fundación Pro Bono, a Chilean nongovernmental organization, whose support, provided in the situation that she had to face as a result of the acts denounced in the petition to the IACHR, Marcela Valdés hereby acknowledges.

301. In Report No. 80/09, the Commission took note of the measures taken by the State in furtherance of the friendly settlement agreement and concluded that the agreement had been substantially fulfilled within the terms of the American Convention. The IACHR was very grateful for the efforts made by both parties to reach the agreement and carry it out.

302. In that report, the Commission deemed the friendly settlement agreement to have been fully complied with.

Petition P490/03, Report No. 81/09, X (Chile)

303. In Report No. 81/09 of August 6, 2009, the Commission approved a friendly settlement agreement in the case of Ms. X. Summarizing, the petitioners had alleged that the State was responsible for the violations of the alleged victim's honor and dignity as a result of a complaint that a female police officer filed in which she accused Ms. X of a lesbian relationship with Ms. Y. The complaint concerns the excesses committed by the police authorities tasked with the investigations, which ordered a search of the alleged victim's home and intruded upon her private and family life. The complaint also alleges denial of judicial protection by virtue of the fact that the alleged victim's motion for protection was declared inadmissible and the fact that the female police officer who filed the original complaint was not adequately disciplined for having made a reckless charge.

304. Under the friendly settlement agreement the State undertook to adopt the following measures:

1. Satisfaction

The Minister of National Defense, through the Sub-secretariat of Police, shall send a letter to the petitioner and her family for the purpose of conveying a formal apology for the events reported and the consequences these entailed for their personal and family lives and privacy, and to spell out the measures provided to remedy the negative consequences thereof.

2. Guarantees of non-repetition

The Chilean State pledges to adopt two specific measures to prevent the recurrence of the events described or similar events. The first of these measures is already in place and was applied to a specific case in August 2007, the aims for which it was established having been accomplished in their entirety:

Drafting and publication, in the Official Bulletin of the Chilean Police, of Circular No. 1.671, dated January 18, 2007, which set forth criteria and guidelines for protecting the privacy of individuals in administrative investigations, establishing the importance of guaranteeing due administrative process, investigating only situations of administrative relevance, and respecting private lives and personal privacy.

The adoption of necessary, adequate internal administrative measures to ensure that the petitioner may carry out her police duties in a normal way, which measures include that the person who issued the accusation against her which gave rise to this petition and the petitioner shall not work at the same police station or in the same unit at any time henceforth.

3. Reparations

The Chilean State, through the Police, pledges to adopt two specific measures for the purpose of increasing the police operations experience and enhancing the skills and professional development of the petitioner:

The petitioner shall be transferred to a police operations unit located in any of the special economic treatment zones, in accordance with the country's geographic division, local characteristics, and the cost of living, where she shall remain as long as she meets the requirements for continuing in service, without extension of the timeframe established in Police personnel policy, the relevant sections of which are contained in General Order No. 1.484 of August 1, 2002, which is known to the petitioner and published as Annex 2 to Official Bulletin 3922 of August 17, 2002.

The petitioner shall have the opportunity to take the Police Force's English courses for one year, at the Force's educational facilities in the city of Santiago, and shall present her formal request through the Police Personnel Directorate, Superior Division, which shall channel it to the Education Directorate, so that she may be enrolled in the regular courses, at which time she shall be informed of the duration and beginning and ending dates of the level or levels to be taught during that academic year. This shall take place while the petitioner is assigned to an operations unit in the city of Santiago, i.e., once her regional assignment period has concluded. For that purpose the petitioner [alleged victim] shall be given a maximum period of two years from when she is assigned to an operations unit in the metropolitan region.

4. Dissemination of the friendly settlement agreement

The State undertakes to publish an extract of the commitments set forth in this friendly settlement agreement, ratified by the IACHR, one time only, in the Official Gazette of the Republic of Chile.

In addition, it shall publish the full text of the friendly settlement agreement on the micro-sites of the Ministry of Defense and Chilean Police websites, making it visible on the portal and keeping it there for at least three months.

5. Follow-up mechanism

Under the coordination of the Ministry of Foreign Affairs, Directorate of Human Rights, a commission shall be formed and tasked with following up on compliance with the agreed measures, and shall work in coordination with a representative of the Inter-American Commission on Human Rights, a representative of the Ministry of Defense, and the victim's representatives.

305. In Report No. 81/09, the Commission took note of the measures taken by the State in furtherance of the friendly settlement agreement and concluded that the agreement had been substantially fulfilled, in keeping with the terms of the American Convention. The IACHR highly valued the efforts made by both parties to arrive at and carry out the agreement.

306. In that report, the Commission deemed that the friendly settlement agreement had been carried out.

Case 11.654, Report No. 62/01, Ríofrío Massacre (Colombia)

307. In Report No. 62/01 of April 6, 2001, the Commission concluded that the State was responsible for the violation of the right to life, enshrined in Article 4 of the American Convention, in the massacre perpetrated by State agents and members of paramilitary groups of the following persons: Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio Cesar Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano. In addition, it concluded that the State was responsible for having breached its special duty of protection, under Article 19 of the American Convention, to the detriment of minors Dora Estrella Gaviria Ladino and Luz Edelsy Tusarma Salazar. The Commission also concluded that the Colombian State was responsible for violating the right to

humane treatment, enshrined in Article 5 of the Convention, to the detriment of Hugo Cerdeño Lozano, Miguel Ladino, Ceniaida Ladino, Ricardo Molina Solarte, and Celso Mario Molina Sauza, and of breaching its duty to provide effective judicial protection to the victims in this case under Articles 8 and 25 of the American Convention, in conjunction with Article 1(1) of the same.

308. The IACHR made the following recommendations to the Colombian State:

1. Conduct an impartial and effective investigation in ordinary jurisdiction with a view to prosecuting and punishing those materially and intellectually responsible.
2. Take steps to ensure that the families of the victims are duly compensated.
3. Take steps to prevent any future occurrence of similar events in accordance with its duty to prevent and guarantee the basic rights recognized in the American Convention, as well as adopting the measures necessary to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission in investigating and prosecuting similar cases through the ordinary criminal justice system.

309. On December 17, 2010, the State reiterated that the proceedings had been reassigned to the Office of Special Prosecutor No. 48 of the International Humanitarian Law Unit of the Office of the Attorney General, which is currently in the stage of collecting evidence as ordered by the investigating prosecutor.

310. The State submitted information to the effect that the Ministry of Defense had permanently introduced policies on human rights and international humanitarian law, intended for all members of law enforcement. Specifically, it said that the integral policy on human rights and international humanitarian law was being implemented in order to develop the system for teaching human rights and international humanitarian law, to tailor the teaching methods to the needs of law enforcement in the current context, and to combine the tools that law enforcement has to fulfill its obligations in the area of human rights and international humanitarian law.

311. As for observance of the principles developed by Colombia's Constitutional Court, the State emphasized the work done by the High Council of the Judiciary to carry out the Constitutional Court's 1997 judgment C-358 regarding the regular courts' jurisdiction in matters involving serious violations of human rights. It also reported that the military criminal judges had voluntarily referred cases involving violations of human rights and international humanitarian law committed by members of the armed forces to the regular courts. The petitioners did not reply to the request seeking information.

312. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendations. Therefore, the Commission will continue to monitor the items that remain pending.

Case 11.710, Report No. 63/01, Carlos Manuel Prada González, and Evelio Antonio Bolaño Castro (Colombia)

313. In Report No. 63/01 of April 6, 2001, the Commission established that the State was responsible for violating the American Convention at Articles 4, to the detriment of Evelio Antonio Bolaño Castro; 4 and 5, to the detriment of Carlos Manuel Prada González; and 8(1), 25, and 1(1) to the detriment of both victims and their families. This was as the result of the extrajudicial execution, at the hands of state agents, of Carlos Manuel Prada González and Evelio Antonio Bolaño Castro, and the failure to judicially clarify the incident.

314. The IACHR made the following recommendations to the State:

1. Carry out a full, impartial, and effective investigation within the ordinary jurisdiction with a view to judging and punishing those responsible for the extrajudicial execution of Carlos Manuel Prada and Evelio Antonio Bolaño Castro
2. Adopt the measures necessary to ensure that the victims' next-of-kin receive adequate and timely reparations for the violations determined in the Report.
3. Take the steps necessary to prevent any future occurrence of similar events in accordance with its duty to prevent and guarantee the basic rights recognized in the American Convention, as well as adopt the measures necessary to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission in investigating and prosecuting similar cases through the ordinary penal justice system.

315. On November 19, 2010, the IACHR asked both parties to supply information on the measures taken to comply with the points of the agreement. The State submitted information regarding the measures it has taken to comply with all three recommendations. In the case of the first recommendation, the State reported that the investigation had moved to trial, which was being conducted in the Turbo (Antioquia) District's First Criminal Court. At this stage of the proceedings, a ruling on an appeal was pending. The State pointed out that six persons were in custody by order of the court and that the aforementioned court had held a number of public hearings during which the defendants had been questioned with a view to crafting a well-founded decision. The State was of the view that the second recommendation had been fulfilled with payment of the compensatory damages to the next of kin of Carlos Manuel Prada and Evelio Antonio Bolaño, by virtue of Defense Ministry resolution No. 46014 of October 27, 2009. In the case of the third recommendation, the State submitted information concerning the introduction of policies in human rights and international humanitarian law intended for all members of law enforcement, and the measures taken to transfer cases involving possible human rights violations from the military justice system to the regular courts. Given the importance of the topic and its heavy impact on the evaluation of the duty to guarantee and protect human rights, and inasmuch as all branches of government were constantly monitoring this problem, the State asked the Commission to find that recommendation No. 3 had been fully carried out. The petitioners did not reply to the request for information.

316. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendations. Therefore, the Commission will continue to monitor pending items.

Case 11.712, Report No. 64/01, Leonel de Jesús Isaza Echeverry (Colombia)

317. In Report No. 64/01 of April 6, 2001, the Commission concluded that the State was responsible for violating the right to life of Leonel de Jesús Isaza Echeverry, enshrined in Article 4 of the American Convention; the right to human treatment of Ms. María Fredesvinda Echeverry, enshrined in Article 5 of the American Convention; the right to humane treatment and the breach of the obligation to adopt special measures of protection with regard to the child Lady Andrea Isaza Pinzón, established in Articles 5 and 19 of the American Convention; as well as the breach of the duty to afford effective judicial protection to the victims of this case, in keeping with Articles 8 and 25, in conjunction with Article 1(1) of the Convention. This case has to do with the responsibility of state agents for the death of Mr. Leonel de Jesús Isaza Echeverry, the harm to the personal integrity of Ms. María Fredesvinda Echeverry and the child Lady Andrea Isaza Pinzón, and the failure to clarify these events judicially.

318. The IACHR made the following recommendations to the Colombian State:

1. Conduct an impartial and effective investigation before ordinary jurisdiction for the purpose of judging and sanctioning those responsible for the extrajudicial execution of Mr. Leonel de Jesús Isaza Echeverry.
2. Adopt the measures necessary to redress the consequences of the violations committed against María Fredesvinda Echeverry and Lady Andrea Isaza Pinzón, as well as providing due indemnity for the relatives of Leonel de Jesús Isaza Echeverry.
3. Take the steps necessary to prevent any future occurrence of similar events in accordance with its duty to prevent and guarantee the basic rights recognized in the American Convention, as well as adopting the measures necessary to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission in investigating and prosecuting similar cases through the ordinary criminal justice system.

319. In a note of December 17, 2010, the State reiterated that the Coordinator of Special Criminal Prosecution Offices had said that the action filed seeking a review of the Military Superior Court's ruling was, from the legal standpoint, not viable since the analysis revealed that in the prosecution of the criminal case neither the District Attorney's Office nor the Public Prosecutor's Office had argued that alleged evidence had yet to be taken or that the State was flagrantly derelict in its duty to investigate. The Commission observes with concern that said proceeding, carried out under military criminal jurisdiction, which ended in the acquittal of the members of the National Army in the military criminal court, has yet to be transferred to the regular criminal courts.

320. The State reiterated that by Payment Resolution No. 2512 the conciliation agreement was carried out, as the payment of compensation was made to María Fredesvinda Echeverri de Isaza and Lady Andrea Isaza Pinzón. The State submitted information concerning the measures taken by the Ministry of Defense to permanently introduce policies in human rights and international humanitarian law for all members of law enforcement. Specifically, it said that the integral policy on human rights and international humanitarian law was being implemented in order to develop the system for teaching human rights and international humanitarian law, to tailor the teaching methods to the needs of law enforcement in the current context, and to combine the tools that law enforcement has to fulfill its obligations in the area of human rights and international humanitarian law.

321. As for observance of the principles developed by the Constitutional Court, the State emphasized the work done by the High Council of the Judiciary to carry out the Constitutional Court's 1997 judgment C-358 regarding the regular courts' jurisdiction in matters involving serious violations of human rights. It also reported that the military criminal judges had voluntarily referred investigations into violations of human rights and international humanitarian law committed by members of the armed forces to the regular courts.

322. The petitioners observed that they had petitioned the Attorney General's Office to find out why it did not consider an action seeking review to be a viable avenue to pursue.

323. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendations. Therefore, the Commission shall continue to monitor pending items.

Case 11.141, Report No. 105/05, Villatina Massacre (Colombia)

324. On July 29, 2002, by Report No. 105/05²³, the Commission approved and recognized the partial implementation of a friendly settlement agreement signed on July 29, 1998, in the case known as the "Villatina Massacre." In summary, the petition alleged the responsibility of state agents in the massacre of children Johana Mazo Ramírez, Johny Alexander Cardona Ramírez, Ricardo Alexander Hernández, Giovanni Alberto Vallejo Restrepo, Oscar Andrés Ortiz Toro, Ángel Alberto Barón Miranda, Marlon Alberto Álvarez, Nelson Dubán Flórez Villa, and the youth Mauricio Antonio Higueta Ramírez, perpetrated on November 15, 1992 in the Villatina neighborhood of the city of Medellín.

325. That friendly settlement agreement incorporates the terms of an agreement originally signed on May 27, 1998, in the course of an initial attempt to reach a friendly settlement in the matter. The agreement recognizes the responsibility of the State for the violation of the American Convention, the right to justice and individual reparation for the victims' next-of-kin, as well as an element of social reparation with components related to health, education, and a productive project. In addition, it provides for erecting a monument in a park in the city of Medellín so as to recover the historical memory of the victims. The Commission observes that the operative part of the agreement reflects the recommendations of the Committee to Give Impetus to the Administration of Justice (Comité de Impulso para la Administración de Justicia) created in the context of the agreement originally signed on May 27, 1998.

326. In Report No. 105/05, the Commission highlighted the implementation by the State of a large part of the commitments assumed in the agreement, and it called on it to continue carrying out the rest of the commitments assumed, in particular the commitment to provide effective guarantees and judicial protection to the victims and their next-of-kin, as prescribed in Articles 8(1) and 25 of the American Convention, by continuing the investigation into the facts so as to allow for the identification, prosecution, and sanction of the persons responsible.

327. The State, on December 17, 2010, reported with respect to the commitments pending implementation. It indicated that at present a preliminary investigation is under way in the Human Rights Unit of the Office of the Attorney General, and that the office in charge ordered a series of measures be taken to make progress in determining the possible perpetrators and accomplices of the events that are the subject matter of the case. It also reported that the entities with jurisdiction are studying the possibility of presenting a complaint seeking a review of the proceedings that concluded favorably for the persons being investigated. As for the publication and dissemination of the friendly settlement agreement, the State reported that measures were being taken to comply with that commitment. The petitioners did not respond to the request for information.

328. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission shall continue to monitor pending items.

²³ Report No. 105/05, Case 11.141, Villatina Massacre, Colombia, October 27, 2005, available at <http://www.cidh.oas.org/annualrep/2005eng/Colombia11141.eng.htm>.

Case 10.205, Report No. 53/06, Germán Enrique Guerra Achuri (Colombia)

329. On March 16, 2006, by Report No. 53/06²⁴, the Commission approved a friendly settlement agreement in the case of Germán Guerra Achuri. In summary, the petition alleged state responsibility in the events of February 8, 1988, at the workers' encampment on the "La Perla" farm situated in the municipality of Remedios, Antioquia, as a result of which Mr. Guerra Achurri lost a leg.

330. In the friendly settlement agreement, the State undertook as follows:

1. To make reparations for the material and moral damages sustained by Mr. Germán Enrique Guerra Achurri as a result of the incidents of February 8, 1988, at the La Perla estate workers' camp, located in the municipality of Remedios, Antioquia Department, as a consequence of which Mr. Guerra Achurri lost a leg.
2. Request the Office of the Attorney General of the Nation to file an action seeking review of the January 23, 1995 ruling of the Military Criminal Court.

331. The State reported on December 17, 2010, that by Resolution No. 3003 of July 15, 2008 payment for reparations was made to Mr. Guerra Achurri.

332. The State reported that in a ruling of August 19, 2009, the Supreme Court's Chamber of Criminal Cassation had accepted the third argument for revision in favor of the victims and decided to nullify the rulings delivered by the military criminal justice system and the proceedings conducted in that jurisdiction, starting with and including the ruling delivered on September 19, 1990. The State reported that the Special Prosecutor's Office No. 86 in the Unit on Human Rights and International Humanitarian Law of the Attorney General's Office was tasked with the investigation, which is currently in the preliminary phase, in which members of the National Army are being investigated. The petitioners did not reply to the Commission's request for information.

333. Based on the foregoing, the Commission concludes that there has been total compliance with the friendly settlement agreement.

Case 12.009, Report No. 43/08 Leydi Dayán Sánchez (Colombia)

334. On February 28, 2006, the Commission approved a report pursuant to Article 50 of the American Convention by which it concluded that the State was responsible for violating the rights to life, judicial guarantees, rights of the child, and right to judicial protection, corresponding to Articles 4, 8, 19, and 25 of the American Convention in relation to its Article 1(1), to the detriment of the child Leydi Dayán Sánchez Tamayo, and that the State had violated the rights to judicial guarantees and judicial protection corresponding to Articles 8 and 25 of the American Convention in relation to Article 1(1) of that international instrument, to the detriment of the next-of-kin of Leydi Dayán Sánchez Tamayo. This case has to do with the responsibility of state agents in the death of the child Leydi Dayán Sánchez Tamayo, which occurred on March 21, 1998, in Ciudad Kennedy, Bogotá, and the failure to clarify the facts of the case judicially.

335. With the approval of the referenced report, the Commission established a series of deadlines for the State to carry out the recommendation made therein in relation to truth, justice,

²⁴ Report No. 53/06, Case 10.205, Germán Enrique Guerra Achuri, Colombia, March 16, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/COLOMBIA.10205eng.htm>

and reparation. After considering the information provided by both parties and the actions carried out by the State in furtherance of the recommendations on promoting an action for review before the regular courts, the ceremonies to recover the historical memory of Leydi Dayán Sánchez, the trainings for the National Police on the use of firearms in keeping with the principles of necessity, exceptionality, and proportionality; and the payment of compensation to the victim's next-of-kin, it decided to issue Report 43/08 pursuant to Article 51 of the American Convention, and to publish it.

336. In its Report, the Commission indicated that while the investigation that is currently under way before the regular courts had not yielded results, one should value the impetus given to the action for review, specifically, the decision of the Chamber of Criminal Cassation of the Supreme Court of Justice, which declared the grounds for review that set aside the judgments of acquittal handed down by the military criminal courts based on the conclusion adopted in the Article 50 report, and ordered that the case be removed to the Office of the Attorney General so that a new investigation could be initiated before the regular courts. Nonetheless, given that the information provided by the State did not indicate that the review process had produced any results in relation to implementation of the recommendation on administration of justice, on July 23, 2008, by Report No. 43/08, the IACHR made the following recommendation to the State:

1. Carry out an impartial and effective investigation in the general jurisdiction with a view to prosecuting and punishing those responsible for the death of Leydi Dayán Sánchez Tamayo.

337. By a communication received on December 17, 2010, the State reported that the case was being tried in the Thirty-ninth Criminal Court of the Bogota Circuit, and that during the course of the proceedings a public hearing was held on August 18, 2009, at which documentary evidence and witness testimony were ordered. Thereafter, a hearing was held on January 15, 2010, at which they were dismissed. It also reported that a public hearing was scheduled for December 2, 2010. The petitioners did not reply to the Commission's request for information.

338. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendation. Therefore, the Commission will continue to monitor the items pending.

Petition 477-05, Report No. 82/08, X and Relatives (Colombia)

339. In its Report No. 82/08²⁵ of October 30, 2008, the Commission approved and recognized partial compliance with a friendly settlement agreement signed on July 19, 2007, during its 128th regular session regarding Petition 477-05 X and Relatives. Briefly stated, the petition claimed that the State was responsible for failing to identify, capture, and prosecute all those responsible, including three members of the Colombian Army, who participated in the facts, for the sexual assault of which Ms. X was a victim. .

340. The friendly settlement agreement includes the terms of the agreement signed on July 19, 2007. In the agreement the State undertakes to pay pecuniary damages in compliance with Law 288 of 1996, as well as non-pecuniary damages including those related to health and education, a letter of apology for the acts of which Ms. X was a victim, and the commitment to adopt measures to ensure non-repetition. It also includes future action towards having the Office of the Attorney General of the Nation review the decision ordering the dismissal of the investigation, in order to continue with it and thus clarify the facts, and prosecute and punish those responsible.

²⁵ Report No. 82/08, Petition 477-05, X and Family, Colombia, October 30, 2008, available at <http://www.cidh.oas.org/annualrep/2008eng/Colombia477-05.eng.htm>.

341. In Report No. 82/08 the Commission underscored the State's compliance with a considerable number of the commitments it had made in the agreement and recognized the efforts made by both parties to reach a solution. It also remarked that it would continue to monitor some items whose compliance remained pending.

342. The State submitted a report on December 20, 2010 with respect to its pending commitments. It reiterated that in issuing Decision No. 5109 of November 25, 2009, it had complied with the agreement to reach an out of court settlement and an order had been issued to deposit the established amount in the current account of the petitioners.

343. It reported that on October 6, 2009, the Fourth Criminal Court of the Medellín Special Circuit delivered an early conviction against two of the defendants and sentenced them to 84 months in prison. The petitioners did not respond to the request for information.

344. Based on the foregoing, the Commission concludes that there has been total compliance with the friendly settlement agreement.

Petition 401-05, Report No. 83/08, Jorge Antonio Barbosa Tarazona (Colombia)

345. On October 30, 2008, in its Report No. 83/08²⁶, the Commission approved and recognized partial compliance of a friendly settlement agreement signed on September 22, 2006 regarding Petition 401-05 of Jorge Antonio Barbosa Tarazona. Briefly stated, the petition claimed that agents of the State were responsible for the disappearance of Jorge Antonio Barbosa Tarazona on October 13, 1992 in the Department of Magdalena, and that the judicial authorities were unjustifiably delayed in investigating, prosecuting, and punishing those allegedly responsible.

346. The aforementioned friendly settlement includes the terms of the agreement signed on September 22, 2006. It recognizes the responsibility of the State for the facts of the petition, for pecuniary damages to be paid to the victim's next of kin, as well as non-pecuniary damages including components related to health and education, the presenting of a plaque to the memory of Jorge Antonio Barbosa Tarazona and formal document with the same content, signed by an officer of the Ministry of National Defense. The agreement also includes the undertaking of judicial action towards the identification of those responsible for the disappearance and subsequent death of Jorge Antonio Barbosa Tarazona and for the search of the victim's remains.

347. In its Report No. 83/08 the Commission underscored the State's compliance with the commitments made in the agreement and recognized efforts made by the Republic of Colombia and the next of kin of Jorge Antonio Barbosa to reach a friendly settlement. The Commission also stated that it will give a special follow-up to compliance with the commitments related to the clarification of the facts, the recovery of the victim's remains, and the prosecution and punishment of those responsible.

348. The State submitted a report on December 17, 2010 regarding pending commitments. It indicated that once the agreement had been authorized, steps were initiated pursuant to Law 288 of 1996 and that Decision No. 01 was issued in December 2008, issuance of which the petitioner was notified on February 4, 2009. It reiterated that the Ministry of Defense is currently coordinating with the victims' representatives to celebrate a conciliation hearing.

²⁶ Report No. 83/08, Petition 421-05, Jorge Antonio Barbosa Tarazona, Colombia, October 30, 2008, available at <http://www.cidh.oas.org/annualrep/2008eng/Colombia401-05.eng.htm>.

349. The State reported that the Attorney General's Office was pursuing the investigation into the facts and several suspects had been found and that there had been convictions in the case. The State submitted information concerning the measures taken by the Ministry of Defense to permanently introduce policies in human rights and international humanitarian law for all members of law enforcement. Specifically, it said that the integral policy on human rights and international humanitarian law was being implemented in order to develop the system for teaching human rights and international humanitarian law, to tailor the teaching methods to the needs of law enforcement in the current context, and to combine the tools that law enforcement has to fulfill its obligations in the area of human rights and international humanitarian law.

350. As for the search to find Mr. Jorge Antonio Barboza Tarazona's mortal remains, the State reported that this case was included in the Attorney General's Program, referred to as the Unified Virtual Identification Center (CUVI). Thus far, no information has turned up concerning the location of his remains. It reiterated that a petition seeking review had been filed with the Criminal Chamber of the Supreme Court in connection with the proceedings that had been closed and the final judgment handed down by the military criminal justice system. On March 30, 2009, the Supreme Court agreed to hear the petition. The petitioners did not reply to the Commission's request for information.

351. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 12.476, Report No. 67/06, Oscar Elias Biscet *et al.* (Cuba)

352. In Report No. 67/06 of October 21, 2006, the IACHR concluded that the Cuban State was responsible for violations of Articles I (right to life, liberty, personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), X (right to the inviolability and transmission of correspondence), XI (right to preservation of health and well-being), XVIII (right to justice), XX, (right to vote and to participate in government), XXI (right of assembly), XXII (right of association), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration, to the detriment of Messrs. Nelson Alberto Aguiar Ramírez, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramo, Pedro Argüelles Morán, Víctor Rolando Arroyo Carmona, Mijail Bárzaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Eduardo Díaz Fleitas, Antonio Ramón Díaz Sánchez, Alfredo Rodolfo Domínguez Batista, Oscar Manuel Espinosa Chepe, Alfredo Felipe Fuentes, Efrén Fernández Fernández, Juan Adolfo Fernández Saínez, José Daniel Ferrer García, Luís Enrique Ferrer García, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez, Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso, Diosdado González Marrero, Léster González Pentón, Alejandro González Raga, Jorge Luís González Tanquero, Leonel Grave de Peralta, Iván Hernández Carrillo, Normando Hernández González, Juan Carlos Herrera Acosta, Regis Iglesias Ramírez, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña, Librado Ricardo Linares García, Marcelo Manuel López Bañobre, José Miguel Martínez Hernández, Héctor Maseda Gutiérrez, Mario Enrique Mayo Hernández, Luís Milán Fernández, Rafael Millet Leyva, Nelson Moline Espino, Ángel Moya Acosta, Jesús Mustafá Felipe, Félix Navarro Rodríguez, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, Arturo Pérez de Alejo Rodríguez, Omar Pernet Hernández, Horacio Julio Piña Borrego, Fabio Prieto Llorente, Alfredo Manuel Pulido López, José Gabriel Ramón Castillo, Arnaldo Ramos Lauzurique, Blas Giraldo Reyes Rodríguez, Raúl Ramón Rivero Castañeda, Alexis Rodríguez Fernández, Omar Rodríguez Saludes, Martha Beatriz Roque Cabello, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba, Ariel Sigler Amaya, Guido Sigler

Amaya, Miguel Sigler Amaya, Ricardo Enrique Silva Gual, Fidel Suárez Cruz, Manuel Ubals González, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo, Héctor Raúl Valle Hernández, Manuel Vázquez Portal, Antonio Augusto Villareal Acosta, and Orlando Zapata Tamayo.

353. The international responsibility of the Cuban State derived from the events of March 2003, when there were massive detentions of human rights activists and independent journalists based on the argument that they had engaged in subversive, counterrevolutionary activities against the State and that they had disseminated illicit propaganda and information. Subsequently, all of them were tried in very summary proceedings, in which their rights to defense were violated, and they were convicted and subjected to prison terms ranging from six months to 28 years.

354. The Commission made the following recommendations to the Cuban State:

1. Order the immediate and unconditional release of the victims in this case, while overturning their convictions inasmuch as they were based on laws that impose unlawful restrictions on their human rights.
2. Adopt the measures necessary to adapt its laws, procedures and practices to international human rights laws. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.
4. Redress the victims and their next of kin for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration herein established.
5. Adopt the measures necessary to prevent a recurrence of similar acts, in keeping with the State's duty to respect and ensure human rights.

355. On November 19, 2010, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case. The Cuban State did not submit any information.

356. In 2010, one of the victims in case 12,476, who had been sentenced to three years in prison, died from hunger after staging a hunger strike that lasted 85 days. He was protesting the constant beatings by the prison guards and other prison abuses. In the first week of July 2010, the Cuban government announced the release of 52 political prisoners, all victims in case 12,476, who were still in prison. According to the information received, thanks to the mediation of the Catholic Church in Havana, on July 7, 2010 the Cuban Government, through President Raúl Castro, informed the representative of the Catholic Church in Cuba, Cardinal Jaime Ortega, and the then Minister of Foreign Affairs of Spain, Miguel Ángel Moratinos, that within three to four months it would release the 52 political prisoners (victims in case 12,476) to their families. It is worth noting that as of the date of preparation of this document, 40 of the victims in case 12,476 had reportedly been released.

357. Furthermore, the Cuban government stated that it would grant "*licencia extrapenal*" [a type of parole] to those prisoners of conscience who refused to leave the country upon their release.²⁷ In this way, they would be able to remain at liberty on the island, but would nonetheless be regarded as parolees who might face re-imprisonment for a parole violation. This would be the case of Arnaldo Ramos Lauzerique, who was reportedly released recently under the *licencia extrapenal*.

²⁷ Article in *Diario El País*, "Cuba deja quedarse a los ex presos que no quieren exiliarse" ["Cuba allows former prisoners who do not want to go into exile to remain in Cuba"], September 23, 2010.

358. In the recommendations made to the Cuban Government in Merits Report No. 67/06, the Commission did not make reference to the *licencia extrapenal*; instead it recommended that the Cuban Government order the immediate and unconditional release of the victims. Therefore, the *licencia extrapenal* given to the victims in Case 12,476 who do not wish to leave the island does not constitute full compliance with the Commission's recommendations.

359. As for the Commission's second, third and fourth recommendation the Government of Cuban has thus far taken no steps to comply.

360. Because of the above, the Commission concludes that compliance with the recommendations that were indicated continues to be pending. As a result, it shall continue to monitor its compliance.

Case 12.477, Report No. 68/06, Lorenzo Enrique Copello Castillo *et al.* (Cuba)

361. In Report No. 68/06 of October 21, 2006, the IACHR concluded that the Cuban State was responsible for: (1) violations of Articles XVIII and XXVI of the American Declaration to the detriment of Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac; (2) violations of Article I of the American Declaration to the detriment of Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac. The responsibility of the Cuban State derives from submitting the victims to very summary trials that did not guarantee respect for the procedural guarantees of a fair trial, and the subsequent execution of the victims on April 11, 2003, pursuant to a judgment handed down in a procedure that did not have the proper guarantees of protection.

362. The Commission made the following recommendations to the Cuban State:

1. Adopt the measures necessary in order to adapt its laws, proceedings, and practices in line with international human rights law, especially those that relate to situations described in the present report. In particular, the Commission recommends the Cuban State reform its Constitution to ensure the independence of its judiciary.
2. Make reparations to the families of the victims for the material and psychological damages they have suffered by virtue of the violations of the American Declaration established here.
3. Adopt all measures necessary to ensure that similar events may not occur again, in accordance with the duty of the State to protect and guarantee human rights.

363. On November 19, 2010, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case. The Cuban State did not submit any information. As for the petitioners, on December 10, 2010, they reported that there is no evidence that the Cuban State has complied with the recommendations made by the IACHR.

364. Because of the above, the Commission concludes that compliance with the recommendations that were indicated continues to be pending. As a result, it shall continue to monitor its compliance.

Case 11.421, Report No. 93/00, Edison Patricio Quishpe Alcívar (Ecuador)

365. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its

responsibility for violating, through the actions of its state agents, the right to life, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The incident that led to the agreement was the death of Edison Patricio Quishpe at a police station on September 7, 1992, after he had been arrested and subjected to torture and other forms of inhuman, cruel, and degrading treatment.

366. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 93/00²⁸, in which it acknowledged that the State had complied with the payment of a compensation in the amount of US\$30,000, and decided:

2. To urge the State to take the necessary measures to carry out the commitment to pursue civil and criminal proceedings and to seek to impose punishment on those persons who, in the performance of government functions or under the color of public authority, are considered to have participated in the alleged violation, and the payment of interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise implementation of the friendly settlement, and in that context to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months as to performance of the obligations assumed by the State under this friendly settlement.

367. In November 18, 2010, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported that no final judgment punishing those responsible for the facts of the case had yet been handed down. The State did not reply to the request for information.

368. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 11.439, Report No. 94/00, Byron Roberto Cañaverl (Ecuador)

369. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Mr. Byron Roberto Cañaverl on May 26, 1993, at the hands of state agents who subjected him to torture and other forms of cruel and inhumane treatment.

370. On November 19, 2000, the IACHR adopted Friendly Settlement Report No. 94/00, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$7,000, and decided:

2. To urge the State to take the measures needed to carry out the pending commitment to bring civil, criminal, and administrative proceedings against those persons who, in the performance of state functions, participated in the alleged violations, and to pay interest for the delinquency in payment of the compensation.

²⁸ Report No. 93/00, Case 11.421, Edinson Patricio Quishpe Alcívar, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.421.htm>

3. To continue to monitor and supervise implementation of the friendly settlement agreement, and in this context to remind the Ecuadorian State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on progress in carrying out the obligations assumed by the State under this friendly settlement.

371. The IACHR requested information from both parties regarding compliance with the pending items on November 19, 2010. The petitioners responded that the Ecuadorian State had not initiated civil, criminal or administrative proceedings to punish those responsible for the alleged facts. The State did not respond to the request for information.

372. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 11.466, Report No. 96/00, Manuel Inocencio Lalvay Guamán (Ecuador)

373. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with a series of arrests of Mr. Manuel Inocencio Lalvay Guamán that took place between 1993 and 1994 at the hands of state agents, who subjected him to torture and other forms of cruel and inhumane treatment.

374. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 96/00²⁹, in which it acknowledged that the State had complied with the payment of a compensation in the amount of US\$25,000, and decided:

2. To urge the State to take the measures needed for carrying out the commitments still pending with respect to bringing to trial the persons considered responsible for the facts alleged.

3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR, every three months, as to the performance of the obligations assumed by the State under this friendly settlement agreement.

375. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded by stating that the statute of limitations for criminal action had expired on April 28, 1999, due to inaction on the part of the Police Magistrate. That decision was confirmed on June 23, 1999 by the First District Police Court. The petitioners stated that thus far, the State had not taken any action to discipline the police magistrate for his unreasonable delay in trying the case and failing to punish those responsible. The State did not reply to the Commission's request for information.

376. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

²⁹ Report No. 96/00, Case 11.466, Manuel Inocencio Lalvay Guzmán, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.466.htm>.

Case 11.584, Report No. 97/00, Carlos Juela Molina (Ecuador)

377. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of the minor Carlos Juela Molina on December 21, 1989, by an agent of the State who subjected him to torture and other forms of cruel and inhumane treatment. The investigation of the police officer involved in the incident was taken up by the police criminal justice system, which sent the proceedings to the archive.

378. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 97/00³⁰, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$15,000, and decided:

2. To urge the State to take the measures needed to comply with the pending commitments to punish the persons responsible for the violation alleged.
3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreement, and in this context to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months regarding performance of the obligations assumed by the State under this friendly settlement agreement.

379. The IACHR requested information from both parties regarding compliance with pending items on November 18, 2010. The petitioners responded that the State has not initiated any new legal action for the punishment of those responsible of the alleged violation. They also maintained that the State has not punished the judge who caused the unjustified delay, as prescribed by Ecuadorian law. The State did not respond to the request for information.

380. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 11.783, Report No. 98/00, Marcia Irene Clavijo Tapia (Ecuador)

381. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Marcia Irene Clavijo Tapia, carried out without an arrest warrant on May 17, 1993. The victim was subjected to torture and other forms of cruel and inhumane treatment at the time of her arrest, kept in preventive custody for four years, and then the charges against her were dismissed.

³⁰ Report No. 97/00, Case 11.584, Carlos Juela Molina, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.584.htm>.

382. On October 5, 2000³¹, the IACHR adopted Friendly Settlement Report No. 98/00, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$63,000, and decided:

2. To urge the State to take the measures necessary to carry out the commitments pending with respect to bringing to trial and punishing the persons responsible for the violations alleged, and to paying interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State of its commitment to report to the IACHR every three months regarding performance of the obligations assumed by the State under this friendly settlement agreement.

383. On November 18, 2010, the IACHR asked both parties to report on compliance with the items still pending; however, no replies were received.

384. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 11.868, Report No. 99/00, Carlos Santiago and Pedro Restrepo Arismendy (Ecuador)

385. On May 14, 1998, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged that “the domestic judicial proceeding was characterized by unjustified delays, excessive technicalities, inefficiency, and denial of justice. The Ecuadorian State could not demonstrate that it was not its official agents who illegally and arbitrarily detained brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy, to the point of torturing them and taking their lives, nor could it refute that those actions were at odds with the Constitution, with our country’s legal framework, and with respect to the international conventions that guarantee human rights.” The State also agreed to pay compensatory damages, to conduct a search for the bodies, and to prosecute the guilty. The case deals with the detention and subsequent disappearance of the brothers Carlos Santiago and Pedro Andrés Restrepo on January 8, 1988, at the hands of officers of the National Police.

386. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 99/00³², in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$2,000,000, and decided:

2. To urge the State to take the measures needed to comply with the commitments still pending to carry out the total, definitive, and complete search for the bodies of the two brothers, and the criminal trial of the persons considered to have participated in the torture, disappearance, and death of the Restrepo Arismendy brothers, as well as in covering up those acts.

3. To continue to monitor and supervise compliance with the settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report “periodically, upon request of the Inter-American Commission on

³¹ Report No. 98/00, Case 11.783, Marcia Irene Clavijo Tapia, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.783.htm>.

³² Report No. 99/00, Case 11.868, Carlos Santiago and Pedro Restrepo Arismendy, Ecuador, October 5, 2000, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.868.htm>.

Human Rights or the Inter-American Court of Human Rights, as to the performance of the obligations assumed by the State under this friendly settlement.”

387. On November 19, 2010, the IACHR asked both parties to report on the steps taken in compliance with the pending items; however, no replies were received.

388. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 11.991, Report No. 100/00, Kelvin Vicente Torres Cueva (Ecuador)

389. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Kelvin Vicente Torres Cueva, detained without an arrest warrant on June 22, 1992. The victim was subjected to torture and other forms of cruel and inhumane treatment, kept incommunicado for 33 days, and held in preventive custody for more than six years, after which he was released.

390. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 100/00³³, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$50,000 ,and decided:

2. To urge the State to make the decisions needed to carry out the pending commitments to bring to trial the persons considered responsible for the facts alleged, and to pay interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in that context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on performance of the obligations assumed by the State under this friendly settlement agreement.

391. On November 20, 2010, the IACHR requested information from both parties on the state of compliance with pending items. Within the established time period, information was received from the petitioners, who maintained that the State had not initiated any legal or administrative proceedings to investigate, identify, and punish the police officers, judges, and prosecutors responsible for the alleged violation. In addition, they reported that a decision by the National Court of Justice is still pending, regarding a cassation appeal against a judgment convicting Kelvin Vicente Torres Cueva as a front man of the principal accused party. The petitioners claim that the judgment convicting Torres Cueva constitutes a violation of the friendly settlement agreement. The State did not respond to the request for information.

392. In consideration whereof, the IACHR concludes that the State has only partially complied with the friendly settlement agreement. Therefore, the Commission will continue monitoring the items pending.

³³ Report No. 100/00, Case 11.991, Kelvin Vicente Torres Cueva, October 5, 2000, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.991.htm>.

Case 11.478, Report No. 19/01, Juan Clímaco Cuéllar *et al.* (Ecuador)

393. On June 25, 1998, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals the arrests of Froilán Cuéllar, José Otilio Chicangana, Juan Clímaco Cuéllar, Henry Machoa, Alejandro Aguinda, Demetrio Pianda, Leonel Aguinda, Carlos Enrique Cuéllar, Carmen Bolaños, Josué Bastidas, and Harold Paz, which were carried out without arrest warrants between December 18 and 21, 1993, by hooded members of the Army. The victims were kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment; they were then held in preventive custody for between one and four years, after which they were released.

394. On February 20, 2001 the IACHR adopted Friendly Settlement Report No. 19/01³⁴ in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$100,000 to each of the victims, and decided:

2. To urge the State to adopt the measures needed to comply with the commitments pending with respect to the trial of the persons presumed to be responsible for the facts alleged.
3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR every three months of compliance with the obligations assumed by the State under this friendly settlement.

395. On November 20, 2010, the IACHR asked both parties to provide information concerning compliance with the pending points. The State reported that the events that constituted violations of human rights were brought to the attention of the competent authorities to have them investigated and the guilty parties punished. The petitioners reported that the State had not taken the measures necessary to comply with the pending commitments pertaining to prosecution of the persons responsible for the alleged violation, payment of interest in arrears, and the public apology to be made to the victims. The petitioners further indicated that contrary to the terms of the friendly settlement agreement, on December 9, 2003 the Single Chamber of the Superior Court of Sucumbios confirmed the October 23, 2003 decision to provisionally dismiss the case against the accused.

396. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.512, Report No. 20/01, Lida Ángela Riera Rodríguez (Ecuador)

397. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals the

³⁴ Report No. 19/01, Case 11.478, Juan Clímaco Cuéllar *et al.*, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.478.htm>.

duration of the preventive custody in which Lida Ángela Riera Rodríguez was held in her trial for abetting the crime of embezzlement. The victim was detained on January 7, 1992, on June 26, 1995, she was convicted to a two-year prison term as an as an accessory after the fact, when she had already been in custody for three years and six months.

398. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 20/01³⁵, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$20,000 to the victim, and decided:

2. To urge the State to adopt the necessary measures to conclude implementation of the commitment regarding the trial of persons implicated in the facts alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR, every three months, of its compliance with the obligations assumed by the State under this friendly settlement agreement.

399. On November 18, 2010, the IACHR asked both parties to report on compliance with the items still pending. In their response the petitioners reported that the State had imposed no judicial or administrative sanctions on the perpetrators of the facts alleged before the Commission. The State did not respond to the request for information.

400. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.605, Report No. 21/01, René Gonzalo Cruz Pazmiño (Ecuador)

401. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This was in connection with the death of René Gonzalo Cruz Pazmiño, which took place on June 20, 1987, at the hands of a member of the Army.

402. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 21/01³⁶, in which it acknowledged that the State had complied with the payment of compensation damages in the amount of US\$30,000 to the victim, and decided:

2. To urge the State to adopt the necessary measures to conclude implementation of the commitment to prosecute the persons implicated in the facts alleged.

3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR every three months of compliance with the obligations assumed by the State under this friendly settlement.

³⁵ Report No. 20/01, Case 11.512, Lida Ángela Riera Rodríguez, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.512.htm>.

³⁶ Report No. 21/01, Case 11.605, René Gonzalo Cruz Pazmiño, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.605.htm>.

403. On November 18, 2010, the IACHR asked both parties to report on compliance with the items still pending. In reply, the State reported that the criminal investigation and punishment process started with the order setting the preliminary hearing. The petitioners reported that the State had imposed no judicial or administrative sanctions on the person responsible for the facts alleged.

404. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.779, Report No. 22/01, José Patricio Reascos (Ecuador)

405. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This was in connection with the duration of the preventive custody in which José Patricio Reascos was held during his prosecution for narcotics use. The victim was detained on September 12, 1993, and, on September 16, 1997, he was sentenced to an 18-month prison term, when he had already been in custody for four years.

406. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 22/01³⁷, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$20,000 to the victim, and decided:

2. To urge the State to adopt the measures needed to comply with the commitments pending with respect to the trial of the persons presumed to be responsible for the facts alleged.

3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR every three months of compliance with the obligations assumed by the State under this friendly settlement.

407. On November 19, 2010, the IACHR requested information from both parties regarding the state of compliance with pending items. The petitioners responded by saying that the State had not initiated any judicial or administrative proceeding towards the investigation and punishment of those responsible for the alleged facts. The State did not respond to the request for information.

408. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.992, Report No. 66/01, Dayra María Levoyer Jiménez (Ecuador)

409. In Report No. 66/01 of June 14, 2001, the IACHR concluded that the Ecuadorian State had violated, with respect to Mrs. Dayra María Levoyer Jiménez, the following rights

³⁷ Report No. 22/01, Case 11.779, José Patricio Reascos, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.779.htm>.

enshrined in the American Convention: the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in conjunction with the general obligation of respecting and ensuring those rights. This was in connection with the violations of physical integrity and the denial of liberty suffered by Mrs. Levoyer Jiménez, who was detained on June 21, 1992, without an arrest warrant, and kept incommunicado for 39 days, during which time she was subjected to psychological torture. She was held in custody without a conviction for more than five years, and finally all the charges against her were dismissed.

410. The Commission issued the following recommendations to the State:

1. Proceed to grant full reparations, which involves granting adequate compensation to Mrs. Dayra María Levoyer Jiménez;
2. Order an investigation to determine responsibility for the violations detected by the Commission and eventually to punish the individuals responsible;
3. Take such steps as are necessary to reform *habeas corpus* legislation as indicated in the present report, as well as to enact such reforms with immediate effect.

411. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded by saying that to date, regarding recommendations 1 and 2, the State had not “begun a judicial or administrative investigation against the police officers, prosecutors, and judges who participated actively in the facts that were proven during the processing of the case before the IACHR that established that several of the rights guaranteed by the American Convention had been violated” and that neither had it taken any “steps to repair the harm suffered by the victim.” The State did not respond to the request for information.

412. The State reported that it planned to pay the compensation and make public apologies to the victim sometime in the first quarter of 2011. It reported that measures were being taken to determine what responsibility the state officials bear. It also reported that in 2008 Ecuador amended its *habeas corpus* legislation in the Constitution and the Organic Law on Jurisdictional Guarantees and Constitutional Oversight.

413. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.441, Report No. 104/01, Rodrigo Elicio Muñoz Arcos *et al.* (Ecuador)

414. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with arrest of the Colombian citizens Rodrigo Elicio Muñoz Arcos, Luis Artemio Muñoz Arcos, José Morales Rivera, and Segundo Morales Bolaños, who were detained without an arrest warrant on August 26, 1993, by officers of the National Police. The victims were kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment.

415. On October 19, 2001, the IACHR adopted Friendly Settlement Report No. 104/01³⁸, in which it acknowledged that the State had complied with paying each victim the amount of US\$10,000 as indemnification, and decided:

2. To remind the State that it must comply fully with the friendly settlement agreement by instituting judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreements, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months as to compliance with the obligations assumed by the State under these friendly settlements.

416. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded by saying that the State had not complied with the element requiring the commencement of a judicial or administrative proceeding to investigate, identify, and punish the police officers responsible for the facts alleged before the Commission. The State did not respond to the request for information.

417. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.443, Report No. 105/01, Washington Ayora Rodríguez (Ecuador)

418. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Washington Ayora Rodríguez, detained without an arrest warrant on February 14, 1994. The victim was kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment, after which he was released on the grounds that there was no motive for his arrest.

419. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 105/01³⁹, certifying that the victim had been paid compensatory damages in the amount of US\$30,000, and decided:

2. To remind the State that it should fully implement the friendly settlement by beginning judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR, every three months, on the implementation of the obligations assumed by the State under this friendly settlement agreement.

³⁸ Report No. 104/01, Case 11.441, Rodrigo Elicio Muñoz Arcos *et al.*, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11441.htm>.

³⁹ Report No. 105/01, Case 11.443, Washington Ayora Rodríguez, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11443.htm>.

420. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded that “to date no sentence has been handed down to punish the perpetrators of the facts”. The State did not respond to the request for information.

421. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.450, Report No. 106/01, Marco Vinicio Almeida Calispa (Ecuador)

422. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the death of Marco Vinicio Almeida Calispa, which occurred on February 2, 1988, while he was in the custody of police officers, and with the failure of the courts to clear up the incident.

423. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 106/01⁴⁰, certifying that the amount of US\$30,000 had been paid as compensatory damages to the victim’s next-of-kin and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

424. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported that the State had taken no action toward the imposing civil or administrative sanctions on the police officers responsible, nor had it investigated the actions of the police magistrates of the First District Court involved in acquitting the state agents involved and that allowed the case to remain unpunished. The State did not respond to the request for information.

425. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.542, Report No. 107/01, Ángel Reiniero Vega Jiménez (Ecuador)

426. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to

⁴⁰ Report No. 106/01, Case 11.450, Marco Vinicio Almeida Calispa, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11450.htm>.

prosecute the guilty. This case deals with the arrest of Ángel Reiniero Vega Jiménez, violently detained in his home by state agents without an arrest warrant on May 5, 1994. After being subjected to torture and other forms of cruel and inhumane treatment, the victim died in a hospital. The charges against the officers involved were dismissed by the police criminal justice system.

427. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01⁴¹, certifying that the amount of US\$30,000 had been paid as indemnification to the victim's next-of-kin, and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.
3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

428. On November 19, 2010, the IACHR requested information from both parties regarding compliance with the pending items. In their response, the petitioners reported that the Office of the Prosecutor has yet to file an appeal for the Police District Court to review in depth the case and overturn the previous acquittal. They maintain that the Office of the Attorney General has failed to comply with its prosecuting duty and hence the death of the victim has met with impunity. They furthermore affirm that the State has not initiated any civil or administrative proceedings to sanction those responsible. The State did not respond to the request for information.

429. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.574, Report No. 108/01, Wilberto Samuel Manzano (Ecuador)

430. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the death of Wilberto Samuel Manzano as a result of the actions of state agents on May 11, 1991. The victim was wounded with a firearm and then illegally detained by police officers in civil clothing, following which he died in a hospital. The charges against the officers involved were dismissed by the police criminal justice system.

431. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01⁴², certifying that the amount of US\$30,000 had been paid as compensatory damages to the victim's next-of-kin, and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

⁴¹ Report No. 107/01, Case 11.542, Ángel Reiniero Vega Jiménez, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11542.htm>.

⁴² Report No. 108/01, Case 11.574, Wilberto Samuel Manzano, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11574.htm>.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

432. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded by saying that the State has not initiated legal proceedings against the judges that heard this unjustifiably delayed case over the course of five years. The State did not respond to the request for information.

433. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.632, Report No. 109/01, Vidal Segura Hurtado (Ecuador)

434. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the arrest of Vidal Segura Hurtado, detained without an arrest warrant by officers of the National Police in civilian clothing on April 8, 1993. The victim was subjected to torture and other forms of cruel and inhumane treatment; he was then executed and his body was found on May 8, 1993, on the beltway surrounding the city of Guayaquil.

435. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 109/01⁴³, in which it acknowledged that the State had complied with the payment of compensatory damages in the amount of US\$30,000 to the victim's next-of-kin, and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

436. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported that the State had begun no criminal or administrative investigation with a view to punishing the police officers responsible for Vidal Segura Hurtado's murder. The State submitted no information.

437. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

⁴³ Report No. 109/01, Case 11.632, Vidal Segura Hurtado, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11632.htm>.

Case 12.007, Report No. 110/01, Pompeyo Carlos Andrade Benítez (Ecuador)

438. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Pompeyo Carlos Andrade Benítez, detained without an arrest warrant on September 18, 1996. After he had been held for ten months, the preventive custody order was canceled and a dismissal order was issued; however, the victim remained in detention.

439. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 110/01⁴⁴, in which it acknowledged that the State had complied with paying the victim the amount of US\$20,000 as compensatory damages, and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

440. On November 19, 2010, the IACHR requested both parties to report on the state of compliance with pending items, but neither party submitted information.

441. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda (Ecuador)

442. On July 17, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the duration of the preventive custody in which Bolívar Franco Camacho Arboleda was held during his trial for illegal possession of cocaine. The victim was placed in detention on October 7, 1989. On January 24, 1995, he was acquitted and, in February 1995, he was released, after he had been imprisoned for more than five years (63 months).

443. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 63/03⁴⁵, in which it acknowledged that the State had complied with paying the victim the amount of US\$30,000 as compensatory damages, and decided:

⁴⁴ Report No. 110/01, Case 12.007, Pompeyo Carlos Andrade Benítez, October 11, 2001, available at <http://www.cidh.oas.org/annualrep/2001eng/Ecuador12007.htm>.

⁴⁵ Report No. 63/03, Case 11.515, Bolívar Franco Camacho Arboleda, October 10, 2003, available at: <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.11515.htm>.

2. To remind the State that it must comply fully with the friendly settlement agreement by initiating judicial proceedings against the persons involved in the alleged violations.

3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlement, and in this context to remind the State, through the Attorney General, of its commitment to report every three months to the IACHR on compliance with the obligations assumed by the State under this friendly settlement.

444. On November 19, 2010, the IACHR asked both parties to report on compliance with the pending points. The State reported that the events that constituted violations of human rights were brought to the attention of the competent authorities to have them investigated and the guilty parties punished. The petitioners reported that the State had not instituted any judicial or administrative proceeding to investigate, identify and punish the police, judges and prosecutors responsible for the facts alleged to the Commission. The State did not reply to the Commission's request for information.

445. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 12.188, Report No. 64/03, Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, Rocío Valencia Sánchez (Ecuador)

446. On November 12, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, and Rocío Valencia Sánchez, detained without an arrest warrant by police officers on March 19, 1993. On March 28, 1993, the victims were placed in preventive custody as part of their prosecution for the crimes of drug trafficking and asset laundering. The victims were kept in preventive custody for more than five years, following which they were acquitted.

447. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 64/03⁴⁶, in which it acknowledged that the State had complied with paying each victim the amount of US\$25,000 as indemnification, and decided:

2. To remind the State that it must comply fully with the Friendly Settlement Agreement by initiating judicial proceedings against the persons involved in the alleged violations.

3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlement; and, in this context, to remind the State, through the Attorney General, of its commitment to report every three months to the IACHR on compliance with the obligations assumed by the State under these friendly settlements.

⁴⁶ Report No. 64/03, Case 12.188, Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, Rocío Valencia Sánchez, October 10, 2003, available at <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.12188.htm>.

448. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported that the State had not yet initiated any civil, criminal or administrative actions to punish the police officers, judges, and prosecutors responsible for the facts alleged. The State did not respond to the request for information.

449. In consideration whereof, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 12.394, Report No. 65/03, Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos (Ecuador)

450. On November 26 and December 16, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the firearm attack on the vehicle carrying Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos on May 22, 1999, perpetrated by officers of the National Police. Following the attack the victims were taken into custody, without arrest warrants, and subjected to torture and other forms of cruel and inhumane treatment; they were later released, on the grounds that the attack and arrest were the result of a "police error."

451. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 65/03⁴⁷, in which it acknowledged that the State had complied with paying compensation in the amounts of US\$100,000 to Mr. Hernández, US\$300,000 to Mr. Loor, and US\$50,000 to Mr. Lara, and decided:

2. To remind the State that it must comply fully with the friendly settlement agreements by initiating judicial proceedings against the persons involved in the alleged violations.
3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlements; and, in this context, to remind the State, through the Attorney General, of its commitment to report every three months to the Commission on compliance with the obligations assumed by the State under these friendly settlements.

452. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending, but received no response.

453. Based on the foregoing, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Petition 12.205, Report No. 44/06, José René Castro Galarza (Ecuador)

454. On October 10, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, and the duty of adopting domestic legal provisions, in breach of the American

⁴⁷ Report No. 65/03, Case 12.394, Joaquín Hernández Alvarado, Marlon Loor Argote and Hugo Lara Pinos, October 10, 2003, available at: <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.12394.htm>.

Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty.

455. This case deals with the duration of the preventive custody in which José René Castro Galarza was held during his prosecution for drug trafficking, acting as a front, and illegal enrichment. The victim was detained, without an arrest warrant, on June 26, 1992. He was then kept incommunicado for 34 days. On November 22, 1996, the illegal enrichment charges against the victim were dismissed; on March 23, 1998, the fronting charges were dismissed; and he was sentenced to an eight-year prison term for drug trafficking, which was reduced to six years on September 15, 1997. The victim was kept in prison even though he had been in custody for six years, and he was released on June 16, 1998.

456. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 44/06⁴⁸, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$80,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation.

457. On November 19, 2010, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners indicated that the State had not initiated any action to punish the police officers and prosecutors responsible for the facts, nor had it carried out all necessary reparations measures and lifted the prohibition against transferring ownership of the property of the alleged victim. The State did not respond to the request for information.

458. Based on the foregoing, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Petition 12.207, Report No. 45/06, Lisandro Ramiro Montero Masache (Ecuador)

459. On September 20, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Lisandro Ramiro Montero Masache, detained without an arrest warrant on June 19, 1992. The victim was held in preventive custody for more than five years, following which the charges were dismissed.

460. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 45/06⁴⁹, in which it acknowledged that the State had complied with the payment of compensation to the victim in the amount of US\$60,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation.

461. On November 19, 2010, the IACHR asked both parties to report on compliance with the pending points. In reply, the petitioners asserted that the State had not instituted any actions

⁴⁸ Report No. 44/06, Case 12.205, José René Castro Galarza, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12205eng.htm>.

⁴⁹ Report No. 45/06, Case 12.207, Lisandro Ramiro Montero Masache, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12207eng.htm>.

(civil, criminal or administrative) to punish all those responsible, and the Property Registry Office had not lifted the measures ordered against the victim's property, thereby violating the order of Pichincha's Seventh Criminal Judge. The State did not reply to the Commission's request for information.

462. Based on the foregoing, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 12.238, Report No. 46/06, Myriam Larrea Pintado (Ecuador)

463. Following the adoption of Admissibility Report No. 8/05, the parties reached a friendly settlement agreement on February 23, 2005. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages, to remove her name from the public criminal records, to publish its acknowledgment of responsibility, and to prosecute the guilty. The case deals with the duration of the preventive custody in which Myriam Larrea Pintado was held during her prosecution for an alleged fraudulent transfer of property. The victim was imprisoned from November 11, 1992, to May 6, 1994, and was acquitted on October 31, 1994.

464. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 46/06⁵⁰, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$275,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation.

465. On November 19, 2010, the Commission asked both parties to report on compliance with the pending points. Neither party responded.

466. Based on the foregoing, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Petition 533-01, Report No. 47/06, Fausto Mendoza Giler and Diógenes Mendoza Bravo (Ecuador)

467. On September 20, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to life, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty.

468. This case deals with the arrest of Fausto Mendoza Giler and Diógenes Mendoza Bravo on March 19, 2000, by members of the Special Operations Group (GOE) of the police. The victims were beaten, following which Fausto Fabricio Mendoza died. Diógenes Mendoza Bravo

⁵⁰ Report No. 46/06, Case 12.238, Myriam Larrea Pintado, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12238eng.htm>.

lodged a private suit against the police officers involved in the arrest and, on July 20, 2000, a generalized trial commencement deed was adopted in which none of those officers was named.

469. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 47/06⁵¹, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$300,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation.

470. On November 19, 2010, the IACHR requested both parties to report on the state of compliance with the pending items, but received no response. The petitioners responded that they have no knowledge that the State has punished the persons directly responsible of the facts of the case, nor the judges for atributing themselves jurisdiction they did not have. The Stae did not respond.

471. Based on the foregoing, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 12.487, Report No. 17/08 Rafael Ignacio Cuesta Caputi (Ecuador)

472. In Report No. 17/08⁵² of March 14, 2008, the Commission concluded that the Ecuadorian State had incurred international responsibility for violation of Rafael Ignacio Cuesta Caputi's rights to judicial guarantees, to judicial protection and to freedom of expression, set forth in articles 8(1), 25 and 13 of the American Convention, in conjunction with its general obligation under Article 1(1) to respect and ensure the Convention-protected rights. The present case concerns the Ecuadorian State's responsibility for failure to properly investigate the facts surrounding the explosion of a bomb that Mr. Cuesta Caputi was holding in the course of practicing his profession of journalism.

473. The Commission made the following recommendations to the State:

1. Publicly acknowledge international responsibility for the human rights violations established by the IACHR in the present report.
2. Carry out a complete, impartial, and effective investigation into the attack on Rafael Ignacio Cuesta Caputi.
3. Grant adequate reparation to Mr. Rafael Ignacio Cuesta Caputi for the violations of his right to judicial guarantees, to judicial protection, to personal integrity, and to freedom of thought and expression.

474. On January 22 and June 17, 2010, the petitioner reported that the State had not complied with the recommendations made in the report.

475. By note dated November 15, 2010, the State reported on the measures taken to comply with the recommendations made in Merits Report No. 36/08. It stated that on October 20,

⁵¹ Report No. 47/06, Petition 533-01, Fausto Mendoza Giler *et al.*, March 15, 2006, available at <http://www.cidh.oas.org/annualrep/2006eng/Ecuador533.01eng.htm>.

⁵² Report No. 17/08, Case 12.497, Rafael Ignacio Cuesta Caputi, March 14, 2008, available at: <http://www.cidh.oas.org/annualrep/2008eng/Ecuador12487eng.htm>.

2010, the parties signed two agreements: a) an Agreement on Compliance with Recommendations, and b) an Agreement on Fulfillment of Public Apologies. It also indicated that the two agreements had a document attached setting out the timetable for implementing the recommendations. The State also reported that there was still some disagreement over the amount of compensation, so that the amount to be paid was going to be reassessed. That information was transmitted to the petitioner.

476. On November 19, 2010, the Commission asked both parties to report on the compliance measures taken. In reply, the petitioner reported that on November 29, 2010, the Ministry of Justice and Human Rights had published the State's public apologies to Rafael Cuesta Caputi in the *Diario El Universo*. In that apology the State acknowledged its responsibility for the bomb attempt he suffered. It thus complied with one of the Commission's recommendations. The petitioner observed that despite the timetable agreed upon for fulfillment of the Commission's recommendations, in which it was determined that the State would mount a commemorative plaque before December 31, 2010, the State had informed the petitioner that it would not be installing the plaque until sometime in the first two weeks of January 2011. As for the State's compliance with the economic reparations, the petitioner reported that according to the timetable, payment would be made prior to April 2010. The petitioner also reported that the Guayas Prosecutor's Office had reopened the criminal investigation, which meant that the State would have to provide Mr. Caputi with measures of protection.

477. The Commission therefore concludes that the recommendations made in Report 17/08 have not been carried out. Accordingly, it will continue to monitor for compliance.

Case 12.525, Report No. 84/09 Nelson Iván Serrano Sáenz (Ecuador)

478. In Report No. 84/09⁵³ of August 6, 2009, the Commission concluded that the State was responsible for violation of the rights to humane treatment, personal liberty, due process, nationality, freedom of movement and residence, and judicial protection, recognized in articles 5, 7, 8, 20, 22 and 25, respectively, of the American Convention, in relation to articles 1(1) and 2 thereof, by virtue of the unlawful detention of Nelson Iván Serrano Sáenz, a citizen with dual Ecuadorian and United States citizenship, and his immediate deportation to the United States to face trial for the murder of four people in the state of Florida, where he was subsequently convicted and sentenced to die.

479. The IACHR made the following recommendations to the Ecuadorian State:

1. Continue granting legal assistance to Nelson Iván Serrano Sáenz according to international law.
2. Modify domestic legislation to ensure simple and effective recourse to courts pursuant to Article 25 of the American Convention for anyone subject to deportation proceedings.
3. Provide adequate reparations for the violations of Nelson Iván Serrano Sáenz's rights established in this report.

480. On November 19, 2010, the IACHR asked both parties to report on the measures taken to comply with the above recommendations but received no response.

⁵³ Report No. 84/09, Case 12.535, Nelson Iván Serrano Sáenz, August 6, 2009, available at: <http://www.cidh.oas.org/annualrep/2009eng/Ecuador12525eng.htm>.

481. The Commission therefore concludes that the recommendations made in Report 84/09 have not been carried out. Accordingly, it will continue to monitor compliance with those recommendations.

Case 12.249, Report No. 27/09, Jorge Odir Miranda Cortez *et al.* (El Salvador)

482. In Report No. 47/03, of October 8, 2003, the IACHR concluded that the Salvadoran State was responsible for: i) violation of Article 25 of the American Convention on Human Rights, to the detriment of Jorge Odir Miranda Cortez and 26 other persons identified in the processing of the petition, by virtue of the fact that a petition they attempted to file seeking *amparo* relief was not the simple and effective remedy required under the international human rights obligations undertaken by the Salvadoran State; ii) violation of Article 2 of the Convention, by virtue of the fact that El Salvador's *amparo* law did not meet the requirements set forth in Article 25 of the American Convention, as it was not the simple and prompt recourse required under Article 25 of the Convention; and iii) violation of Article 24 of the Convention, to the detriment of Mr. Jorge Odir Miranda Cortez. The Commission did not find a violation of Article 26 of the Convention.

483. According to the complaint, the State had failed to provide the 27 victims –all of whom were infected with the HIV/AIDS virus- the medications that together constitute the HIV/AIDS triple therapy needed to save their lives and improve their quality of life, thereby placing them in a situation that, in their judgment, constituted cruel, inhuman and degrading treatment. They also alleged that they were discriminated against by the Salvadoran Social Security Institute because they had HIV/AIDS. They said that the almost two years that passed before a decision was handed down on the petition they filed seeking *amparo* relief in order to claim violation of their rights was an unreasonable period and violated their rights to judicial guarantees and judicial protection.

484. The IACHR made the following recommendations to the Salvadoran State:

- a) Implement legislative measures to amend the provisions governing *amparo*, in order to make it the simple, prompt and effective remedy required under the American Convention, and
- b) Make adequate reparations to Jorge Odir Miranda Cortez and the other 26 victims mentioned in the record of Case 12,249 –or their beneficiaries, as appropriate- for the human rights violations herein established.

485. In its Merits Report No. 42/04 (Article 51), dated October 12, 2004, the IACHR evaluated the measures that El Salvador had taken to comply with the recommendations made. It concluded that those recommendations had not been fully carried out. Accordingly it reminded the Salvador State of its previous recommendations.

486. Subsequently, the IACHR adopted its Merits Report No. 27/09 (Article 51 – Publication), of March 20, 2009. There, the Commission concluded that the Salvadoran State had complied with the second recommendation made in Report No. 47/03, but observed that the recommendation it had made suggesting legislative amendment of the *amparo* laws had still not been carried out. Accordingly, it reiterated this recommendation.

487. On November 30, 2010, the IACHR asked the parties to provide updated information on the status of compliance with the pending recommendation.

488. In its response, the Salvadoran State reported information pertaining to both recommendations. With regard to the first, it pointed out that in November 2002, a Constitutional

Procedure bill was introduced in the Legislative Assembly. It observed that the Assembly's Committee on Legislation and Constitutional Provisions had had that bill under study since May 2003. The State also pointed that it was ready to take the measures necessary to persuade the legislative body to pass the bill "quickly."

489. The State also provided updated information on the recommendation that the Commission deemed fulfilled in its Report No. 27/09. It indicated that the agreed upon time period for the victims or their next of kin to claim the compensation ordered on their behalf had passed and the Ministry of Foreign Affairs had opened bank accounts in which said compensation would be deposited. On December 1, 2010, those funds –totaling US\$42,000- were handed over to the National Anti-AIDS Commission, in accordance with the terms of paragraph 2 of Title III of the Agreement on Compliance with Recommendations, which the parties signed on November 30, 2007.

490. The Commission therefore concludes that the recommendations made in the present case have been partially carried out. Accordingly, the Commission will continue to monitor compliance.

Case 12.028, Report No. 47/01, Donnason Knights (Grenada)

491. In Report No. 47/01 dated April 4, 2001, the Commission concluded the State was responsible for: a) violating Mr. Knights' rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Knights to a mandatory death penalty; b) violating Mr. Knights' rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Knights' with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Knights' rights under Article 5(1) and 5(2) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of Mr. Knights' conditions of detention; and d) violating Mr. Knights' rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

492. The IACHR issued the following recommendations to the State:

1. Grant Mr. Knights an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) and Article 5(2) of the American Convention in respect of the victim's conditions of detention is given effect in Grenada.

493. On December 23, 2002, the petitioner wrote to the Commission and reported of the following: On May 2001, Anslem B. Clouden, Attorney-at-Law had written to the Attorney General of Grenada requesting adoption of the necessary measures in compliance with the Commission's recommendations. To date, as far as we are aware, there has been no response from the Attorney General, and Mr. Knights remains on death row, and we are unaware of any legislative measures, or any measures being adopted in relation to conditions of detention. In March 2002, the Judicial Committee of the Privy Council delivered landmark decisions in 3 cases, Patrick Reyes, Peter Hughes & Bertil Fox. They declared that the mandatory death penalty imposed on all those convicted of murder in the Eastern Caribbean and Belize is unconstitutional. The effect of this decision means that Mr. Knights' sentence will have to be reviewed as he was automatically sentenced to death upon conviction. Mr. Knights will now have an opportunity to place before the courts mitigating circumstances as to why the death penalty may not be appropriate in his case. Whilst the adoption of new legislative measures were as a result of the appeal to the Privy Council in the trilogy of cases mentioned above, and, not as a result of the Commission's recommendations in this case, the views of the Commission in relation to the mandatory issue were an important aspect of the arguments before the courts. The Commission's recommendations and its decisions have played an instrumental role in these decisions." Based on these considerations, the IACHR presumes that the Government of Grenada has not complied with the Commission's recommendations.

494. By communications of November 9, 2004, the Commission requested information from the parties about compliance with the recommendations set forth in Report No. 47/01, pursuant to Article 46.1 of the Commission's Rules of Procedure. To date, the Commission has not received any response from the State.

495. By letters of January 10, 2005, the Petitioners reported the Commission that the Judicial Committee of the Privy Council ruled in March 2002, that the mandatory death penalty was unconstitutional for certain Caribbean countries, including Grenada. The Petitioners added that all of the alleged victims remain on death row, awaiting judicial hearings to allow the Grenadian courts to re-sentence the alleged victims after hearing submission in mitigation of sentence. The petitioners stated that it is unlikely that any of the alleged victims will be re-sentenced to death; they have all been on death row for a period in excess of five years. According to the petitioners, execution of the alleged victims would, in these circumstances, be unconstitutional.

496. The petitioners submitted that apart from the judicial abolition of the mandatory death penalty, Grenada has not taken any steps to comply with the recommendations of the Commission.

497. On November 2, 2007 and on November 5, 2008 the Commission wrote to both the State and the petitioners and requested updated information concerning compliance with the Commission's Recommendations in Report No. 47/01. The request made in 2007 was not responded by either party, but on January 6, 2009 the petitioners forwarded a communication in response to the most recent request. Among other considerations, the petitioners mention that by February 2008 the State of Grenada "had still failed to quash and reconsider the sentences of those sentenced to the mandatory death penalty (including Donnason Knights)". As a result of the delay in providing Mr. Knights with a remedy, the petitioners had to request the Judicial Committee of the Privy Council the quashing of the death sentence followed by an individualized sentence hearing. On June 11 2008 the Privy Council quashed the mandatory death sentence and ordered the case to be sent back to the Supreme Court of Grenada for the appropriate sentence. The petitioners add that the mandatory death penalty is clearly unconstitutional in Grenada by virtue of the jurisprudence of the Privy Council, whereby the law of that country has been brought into conformity with the American Convention on Human Rights. However, they submit that Grenada failed to grant Mr. Knights a remedy in relation to the mandatory death penalty, since his death

sentence was quashed as a result of his own petition to the Privy Council. Finally, the petitioners mention that they "have requested further information on the present conditions of confinement on death row in Grenada" and that they would forward it to the IACHR as soon as they received it.

498. The Commission observes that the legal situation of Mr. Knights has improved substantially in 2008 by virtue of the actions filed by his representatives, in partial compliance with the recommendations issued in the report on his case. However, there is no information on legal recourses established to guarantee the rights that were violated in this case, or on the measures taken to ensure Mr. Knights' right to humane treatment in Grenada.

499. On November 22, 2010 the Commission again requested both parties updated information concerning compliance with the Recommendations in Report No. 47/01. Neither party responded within that time period.

500. The IACHR concludes that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 11.765, Report No. 55/02, Paul Lallion (Grenada)

501. In Report No. 55/02 dated October 21, 2003, the IACHR concluded that the State of Grenada was responsible for: a) violating Mr. Lallion's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Lallion to a mandatory death penalty; b) violating Mr. Lallion's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Lallion with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Lallion's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of its failure to respect Mr. Lallion's right to physical, mental, and moral integrity by confining him in inhumane conditions of detention; d) for violating Mr. Lallion's rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to Mr. Lallion to pursue a Constitutional Motion; and e) violating Mr. Lallion's right to personal liberty as provided by Article 7(2), 7(4), and 7(5) of the Convention, in conjunction with Article 1(1) of the Convention by failing to protect his right to personal liberty, and to be brought promptly before a judicial officer.

502. The IACHR issued the following recommendations to the State:

1. Grant Mr. Lallion an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in Grenada.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.

5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) of the American Convention in respect of Mr. Lallion's conditions of detention is given effect in Grenada.

6. Adopt such legislative or other measures as may be necessary to ensure that the right to personal liberty under Article 7(2), Article 7(4), and 7(5) of the American Convention in respect of Mr. Lallion is given effect in Grenada.

503. By letters of January 10, 2005, the petitioners reported the Commission that the Judicial Committee of the Privy Council ruled in March 2002, that the mandatory death penalty was unconstitutional for certain Caribbean countries, including Grenada. The petitioners added that all of the alleged victims remain on death row, awaiting judicial hearings to allow the Grenadian courts to re-sentence the alleged victims after hearing submission in mitigation of sentence.

504. The petitioners stated that it is unlikely that any of the alleged victims will be re-sentenced to death; they have all been on death row for a period in excess of five years. According to the Petitioners, execution of the alleged victims would, in these circumstances, be unconstitutional.

505. The petitioners submitted that apart from the judicial abolition of the mandatory death penalty, Grenada has not taken any steps to comply with the recommendations of the Commission. To date the Commission has not received any information from the State.

506. On November 2, 2007 and November 5, 2008, the Commission wrote to both the State and the petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report No. 55/02. The request made in 2007 was not responded by either party, but on January 6, 2009 the petitioners forwarded a communication in response to the most recent request. Among other considerations, the petitioners mention that by February 2008 the State of Grenada "had still failed to quash and reconsider the sentences of those sentenced to the mandatory death penalty (including Paul Lallion)". As a result of the delay in providing Mr. Jacob with a remedy, the petitioners had to request the Judicial Committee of the Privy Council the quashing of the death sentence followed by an individualized sentence hearing. On June 11 2008 the Privy Council quashed the mandatory death sentence and ordered the case to be sent back to the Supreme Court of Grenada for the appropriate sentence. The petitioners add that the mandatory death penalty is clearly unconstitutional in Grenada by virtue of the jurisprudence of the Privy Council, whereby the law of that country has been brought into conformity with the American Convention on Human Rights. However, they submit that Grenada failed to grant Mr. Lallion a remedy in relation to the mandatory death penalty, since his death sentence was quashed as a result of his own petition to the Privy Council. Finally, the petitioners mention that they "have requested further information on the present conditions of confinement on death row in Grenada" and that they would forward it to the IACHR as soon as they received it.

507. The Commission observes that the legal situation of Mr. Lallion has improved substantially in 2008 by virtue of the actions filed by his representatives, in partial compliance with the recommendations issued in the report on his case. However, there is no information on legal recourses established to guarantee the rights that were violated in this case, or on the measures taken to ensure Mr. Lallion's right to humane treatment in Grenada.

508. On November 22, 2010 the Commission again requested both parties updated information concerning compliance with the recommendations in Report No. 55/02. Neither party responded within the one month time period established.

509. The IACHR concludes that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 12.158, Report No. 56/02 Benedict Jacob (Grenada)

510. In Report No. 56/02 dated October 21, 2003, the Commission concluded that the State was responsible for: a) violating Mr. Jacob's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Jacob to a mandatory death penalty; b) violating Mr. Jacob's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Jacob with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Jacob's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of its failure to respect Mr. Jacob's rights to physical, mental, and moral integrity by confining him in inhumane conditions of detention; and d) violating Mr. Jacob's rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

511. The IACHR issued the following recommendations to the State:

1. Grant Mr. Jacob an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in Grenada.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) of the American Convention in respect of Mr. Jacob's conditions of detention is given effect in Grenada.

512. By letters of January 10, 2005, the petitioners in Case 12.158 (Benedict Jacob) reported the Commission that the Judicial Committee of the Privy Council ruled in March 2002, that the mandatory death penalty was unconstitutional for certain Caribbean countries, including Grenada. The petitioners added that all of the alleged victims remain on death row, awaiting judicial hearings to allow the Grenadian courts to re-sentence the alleged victims after hearing submission in mitigation of sentence.

513. The petitioners stated that it is unlikely that any of the alleged victims will be re-sentenced to death, as they have all been on death row for a period in excess of five years. According to the petitioners, execution of the alleged victims would, in these circumstances, be unconstitutional.

514. Finally, the petitioners submitted that apart from the judicial abolition of the mandatory death penalty, Grenada has not taken any steps to comply with the recommendations of the Commission. The IACHR has not received any information from the State.

515. On November 2, 2007 and on November 5, 2008 the Commission wrote to both the State and the petitioners and requested updated information concerning compliance with the Commission's Recommendations in Report No. 55/02. The request made in 2007 was not responded by either party, but on January 6, 2009 the petitioners forwarded a communication in response to the most recent request. Among other considerations, the petitioners mention that by February 2008 the State of Grenada "had still failed to quash and reconsider the sentences of those sentenced to the mandatory death penalty (including Benedict Jacob)". As a result of the delay in providing Mr. Jacob with a remedy, the petitioners had to request the Judicial Committee of the Privy Council the quashing of the death sentence followed by an individualized sentence hearing. On June 11 2008 the Privy Council quashed the mandatory death sentence and ordered the case to be sent back to the Supreme Court of Grenada for the appropriate sentence. The petitioners add that the mandatory death penalty is clearly unconstitutional in Grenada by virtue of the jurisprudence of the Privy Council, whereby the law of that country has been brought into conformity with the American Convention on Human Rights. However, they submit that Grenada failed to grant Mr. Jacob a remedy in relation to the mandatory death penalty, since his death sentence was quashed as a result of his own petition to the Privy Council. Finally, the petitioners mention that they "have requested further information on the present conditions of confinement on death row in Grenada" and that they would forward it to the IACHR as soon as they received it.

516. The Commission observes that the legal situation of Mr. Jacob has improved substantially in 2008 by virtue of the actions filed by his representatives, in partial compliance with the recommendations issued in the report on his case. However, there is no information on legal recourses established to guarantee the rights that were violated in this case, or on the measures taken to ensure Mr. Jacob's right to humane treatment in Grenada.

517. On November 22, 2010 the Commission again requested both parties for updated information concerning compliance with the Recommendations in Report No. 56/02, and set a one month period to that effect. Neither party responded within that time period.

518. The IACHR concludes that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 11.625, Report No. 4/01, María Eugenia Morales de Sierra (Guatemala)

519. In Report No. 4/01 of January 19, 2001, the IACHR concluded that the Guatemalan State was responsible for having violated the rights of María Eugenia Morales de Sierra to equal protection, respect for her family life, and respect for her private life, established at Articles 24, 17, and 11 of the American Convention on Human Rights in relation to the title and section 1 of Article 110 and Article 317(4), and that accordingly the State was responsible for breaching the obligation imposed by Article 1 to respect and ensure those rights enshrined in the Convention, as well as the obligation imposed on it by Article 2 to adopt legislation and other measures necessary for upholding those rights of the victim.

520. The Commission made the following recommendations to the Guatemalan State:

1. Adapt the pertinent provisions of the Civil Code to balance the legal recognition of the reciprocal duties of women and men in marriage and take the legislative and other measures necessary to amend Article 317 of the Civil Code so as to bring national law into conformity with

the norms of the American Convention and give full effect to the rights and freedoms guaranteed to María Eugenia Morales de Sierra therein.

2. Redress and adequately compensate María Eugenia Morales de Sierra for the damages done by the violations established in this Report.

521. On March 3, 2006, the petitioners and the Guatemalan State signed an "Agreement for Specific Compliance with Recommendations" for the purpose of formalizing the obligations of the State. In that agreement, María Eugenia Morales de Sierra expressly waived the economic reparation that the IACHR recommended be paid to her in her status as victim because "her struggle consists of uplifting the dignity of women."

522. On November 22, 2010, the Commission asked the parties to provide updated information on the status of compliance with the recommendations.

523. In 2010, the State reported that in keeping with a suggestion from the General Secretariat of the Office of the President, on June 10, 2010 a copy of bill 3688 –which proposes amendment of Article 317 of the Civil Code- was sent to the Chair of the Women's Commission of the Guatemalan Congress. Attached were two opinions –one from the SEPREM and the other from the Ministry of Government- both of which were in favor of the bill. The State reported that on November 26, 2010, the Women's Commission reintroduced the bill. On the matter of reparations, the State reported that on November 22, 2010, a panel of judges issued a decision on the research paper that won the Academic Contest for Mayan, Garifuna, Xican and Mestizo Women. It was forwarded to the petitioner, and the State is awaiting her reply in order to be able to move to the prize phase, which will consist of publication of the paper by the *Editorial Cultura* of the Ministry of Culture and Sports. As for study grants for girls, the State reported that it would need the petitioner's agreement in order to begin arranging grants for secondary-school studies, because these were the grants that were available; it also had to determine whether the petitioner wanted to be included in the process of selecting the students who would receive grants. The State pointed out that there were no grants for elementary-school studies since in 2008 elementary education was declared to be *gratis*.

524. For their part, the petitioners pointed out that Article 317, paragraph 4 of the Guatemalan Civil Code was not amended this year. They also asserted that the State had not complied with recommendation No. 2, as it had not taken the following measures through COPREDEH: promote a plan for cooperating with FUNDADIG on education and training in the human rights of vulnerable groups, organized for officials and personnel of the Office of the President; arrange funding and resources to enable FUNDADIG to conduct three research projects on women in Guatemala; secure grants for girls of elementary-school age; undertake measures to conduct a diagnostic study of the violence against women in the departments that report the highest figures on violence; conduct a study on the nutritional condition of girls and women in the country's central region; conduct campaigns to raise awareness of the vulnerability of women in Guatemala; coordinate review of educational materials in order to eliminate any hint of discrimination against women; conduct research into the possible link between sexual exploitation and adoptions. They also reported that the State had not taken any steps with SEPREM and DEMI to identify the existing laws or provisions that discriminate against women.

525. The Commission observes that to date, Article 317 of the Civil Code has not been amended and that the recommendation concerning reparations has not been carried out.

526. Because of this, the IACHR concludes that the Guatemalan State has partially complied with the recommendations indicated. As a result, it shall continue monitoring the items that are pending.

Case 9207, Report No. 58/01, Oscar Manuel Gramajo López (Guatemala)

527. In Report No. 58/01 of April 4, 2001, the IACHR concluded that the Guatemalan State had violated the rights of Mr. Oscar Manuel Gramajo López to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), and judicial protection (Articles 8 and 25), in conjunction with the obligation to ensure the rights protected in the Convention, established at its Article 1(1). According to the antecedents, on November 17, 1980, Oscar Manuel Gramajo López and three companions were detained by members of the National Police, who had the help of members of the Treasury Police and some members of the military. The detention took place in circumstances in which the victim and his friends were in the home of one of the latter, listening to the radio with the volume turned all the way up, having a few drinks, when a neighbor reported them to the police because of the noise they were making.

528. In Report No. 58/01 the Commission made the following recommendations to the Guatemalan State:

1. Conduct an impartial and effective investigation of the facts reported to determine the circumstances and fate of Mr. Oscar Manuel Gramajo López, which would establish the identity of those responsible for his disappearance and punish them in accordance with due process of law.
2. Adopt measures for full reparation of the violations determined, including: steps to locate the remains of Mr. Oscar Manuel Gramajo López; the necessary arrangements to accommodate the family's wishes in respect of his final resting place; and proper and timely reparations for the victim's family.

529. On November 22, 2010, the Commission asked the parties to supply updated information on the status of compliance with the recommendations made in this case.

530. In a communication dated December 8, 2010, the State reported that it continued to take the relevant measures to carry out an effective investigation. Specifically it wrote that the "Unit for Prosecution of Special Cases, Human Rights Violations and Historical Clarification," which is part of the Public Prosecutor's Office, has drawn up a research plan and that the case is currently classified as confidential. It added that the steps taken in 2010 consisted of interviews conducted with members of the victim's family, from whom the necessary DNA samples were taken; and gathering of information from various institutions in order to determine the fate of Oscar Manuel Gramajo López.

531. As for the second recommendation, the State reports that information was requested from the National Compensation Program for that institution to check its database to determine whether the family of Oscar Manuel Gramajo López had received any type of compensation. It reported that officials with that agency had confirmed that Mrs. Edelia López Escobar, the victim's mother, had received economic compensation on December 5, 2008, for her son's forced disappearance. The State therefore contends that that aspect of the recommendation has been carried out; still pending is the coordination with the family members as to the arrangements that must be made for the final resting place of Oscar Manuel Gramajo López' remains, once they are found.

532. The Commission therefore concludes that the recommendations have been partially fulfilled. Accordingly, the Commission will continue to monitor for compliance with the pending points.

Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay *et al.*; Case 10.799 Catalino Chochoy *et al.*; Case 10.751 Juan Galicia Hernández *et al.*; and Case 10.901 Antulio Delgado, Report No. 59/01 Remigio Domingo Morales *et al.* (Guatemala)

533. In Report No. 59/01 of April 7, 2001, the IACHR concluded that the Guatemalan State was responsible for violating the following rights: (a) the right to life, to the detriment of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, José María Ixcaya Pixtay, José Vicente García, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajiataz, Manuel Ajiataz Chivalán, Catrino Chanchavac Larios, Miguel Tiu Imul, Camilo Ajqú Gimón, and Juan Tzunux Us, as established at Article 4 of the American Convention; (b) the right to personal liberty in the case of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, and Camilo Ajqú Gimón, as established at Article 7 of the American Convention; (c) right to humane treatment, to the detriment of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, and Camilo Ajqú Gimón, as established at Article 5 of the American Convention and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; in addition, in the case of the attempts to extrajudicially execute Messrs. Catalino Chochoy, José Corino, Abelino Baycaj, Antulio Delgado, Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez, and Orlando Adello Galicia Gutiérrez, the Commission concluded that the Guatemalan State was responsible for violating the right to humane treatment, as established at Article 5 of the American Convention; (d) the rights of the child in the case of children Rafael Sánchez and Andrés Abelicio Galicia Gutiérrez, as established at Article 19 of the American Convention; (e) judicial guarantees and judicial protection, to the detriment of all the victims, both those extrajudicially executed and those who suffered attempted extrajudicial execution, as established at Articles 8 and 25 of the American Convention. (f) In addition, the IACHR considered the Guatemalan State responsible in all cases for having breached the obligation to respect and ensure the rights protected in the American Convention on Human Rights, as established at Article 1 thereof.

534. According to the background information, the IACHR determined that each of cases 10,626; 10,627; 11,198(A); 10,799; 10,751; and 10,901 referred to complaints in which it was indicated that the alleged material perpetrators of the various human rights violations were the Civil Self-Defense Patrols (PAC) or the Military Commissioners, and after considering the nature of the operations of the PAC and the Military Commissioners, the chronological framework of the various complaints, and the *modus operandi* used in each of the facts alleged, the Commission decided, in keeping with Article 40 of its Regulations in force at the time, to join the cases and refer to them in a single report.

535. In Report No. 59/01, the Commission made the following recommendations to the States:

1. That it conduct a thorough, impartial and effective investigation to determine the circumstances of the extrajudicial executions and attempted extrajudicial executions of each victim and the attendant violations, and punish those responsible.
2. That it takes the necessary measures so that the next-of-kin of the victims of the extrajudicial executions might receive adequate and prompt compensation for the violations herein established.
3. That it takes the necessary measures so that the victims of the attempted extrajudicial executions might receive adequate and prompt compensation for the violations herein established.
4. That it effectively prevents a resurgence and reorganization of the Self-defense Civil Patrols.

5. That in Guatemala the principles established in the United Nations "Declaration on the right and responsibility of individuals, groups and institutions to promote and protect universally recognized human rights and fundamental freedoms" be promoted and that the necessary measures be taken to ensure that the right of those who work to secure respect for fundamental rights is respected and that their life and personal integrity are protected.

536. By a communication dated November 22, 2010, the Commission requested the parties to provide updated information on compliance with the recommendations contained in Report No. 59/01. Below, reference shall be made to compliance with the recommendations for each one of the cases joined in Report No. 59/01 in conformity with the information available up to the time of the drafting of the present report.

Case 10.626 Remigio Domingo Morales and Rafael Sánchez (Guatemala)

537. The Inter-American Commission, by resolution 1/06 of April 24, 2006, resolved to rectify Report No. 59/01, published and approved on April 7, 2001, so as to declare that on June 28, 1990, Messrs. Remigio Domingo Morales and Rafael Sánchez were detained by members of the Civil Self-Defense Patrols, and that same day were taken to the Hospital at Huehuetenango to receive care for multiple blunt cutting wounds; both were discharged from the hospital on July 3, 1990. That resolution found that the State violated the right to humane treatment to the detriment of Messrs. Remigio Domingo Morales and Rafael Sánchez.

538. On December 15, 2010, the State pointed out that in the instant case Mr. Remigio Morales decided not to pursue investigations on the domestic front. Nevertheless, COPREDEH asked the Public Prosecutor's Office to carry on with the investigations.

Case 10.627 Pedro Tiu Cac (Guatemala)

539. According to the background information in Case 10.627, on July 2, 1990, in the village of Chiop, Santa María Chiquimula, Totonicapán, Pedro Tiu Cac, a Mayan indigenous man, member of the "Runujel Junam" Council of Ethnic Communities, was attacked while engaged in agricultural work by men in civilian dress, presumably members of the PAC, who detained him and took him to an unknown location. A few days later his corpse was found in a clearing, with signs of torture.

540. On February 18, 2005, the petitioners and the Guatemalan State signed an "Agreement on Compliance with Recommendations" for the purpose of formalizing the State's obligations with respect to compliance with the IACHR's recommendations set out in Report on the Merits No. 59/01. In that agreement, the State recognized its institutional responsibility for the violation of the rights to life, personal liberty, humane treatment, judicial guarantees, and judicial protection, and for breaching its obligation to respect and ensure the rights protected in the American Convention, to the detriment of Pedro Tiu Cac. In addition, the State recognized that the years from 1990 to 1992 were marked by systematic violations of the right to life in the form of forced executions and attacks on physical integrity perpetrated by state agents.

541. As regards reparations, the State recognized that the acceptance of international responsibility for the violations of the victim's human rights implied the responsibility to pay fair compensation to the petitioners, following the parameters established by domestic and international law. Moreover, the State undertook to make public its recognition of institutional responsibility for the violations of human rights to the detriment of Pedro Tiu Cac, and to publicly apologize to his next-of-kin in a public ceremony. The State also undertook to adopt measures to honor the victim's memory. On December 9, 2005, the parties signed an agreement on economic compensation.

542. On the measures to make reparation and restore dignity, in 2005 the State made payment of the compensation agreed upon to the victim's next-of-kin, and on December 21, 2006, the State reported that, at the request of the victim's next-of-kin, the apologies were made to the family members in private. On July 29, 2007, a ceremony was held placing and unveiling a plaque commemorating Mr. Pedro Tiu Cac at the parish church of the Municipality of Santa María de Chiquimula, department of Totonicapán.

543. The parties have not supplied updated information regarding compliance with the recommendations.

Case 11.198(A) José María Ixcaya Pixtay *et al.* (Guatemala)

544. In Case 11,198(A) a total of 12 extrajudicial executions were alleged, said to have occurred in 1990 and 1991 in different parts of Guatemala, and in every case members of the PAC or Military Commission were accused of being the direct perpetrators. On February 18, 2005, the petitioners and the Guatemalan State signed an "Agreement on Compliance with Recommendations" for the purpose of formalizing the obligations of the State with respect to carrying out the recommendations of the IACHR set forth in Report on the Merits No. 59/01. In that agreement, the State recognized its institutional responsibility for violations of the right to life, the right to personal liberty, the right to humane treatment, and judicial guarantee and judicial protection, and for not having carried out the obligation to respect and ensure the rights protected in the American Convention, to the detriment of José María Ixcaya Pixtay, José Vicente García, Mateo Sarat Ixcoy, Celestino Julaj Vicente, Miguel Tzoy Calel, Pedro Raguez, Pablo Ajiataz, Manuel Ajiataz Chivalan, Catrino Chanchavac Larios, Miguel Tiu Imul, Camilo Ajuquí Gimón, and Juan Tzunux Us. In addition, the State recognized that the years 1990 to 1992 were marked by systematic violations of the right to life in the form of forced executions and attacks on physical integrity perpetrated by state agents.

545. Based on the information provided by the parties, it appears that the State has made economic reparation to the victims' next-of-kin, yet reparation has not yet been made to the following family members of the victims: Camila Ixcoy Julat, Catarina Ixcoy Ixchop, and José Sarat Tzum. In relation to the measures to restore dignity, a commemorative plaque with respect to Miguel Tiu Imul has yet to be delivered.

546. The parties have not supplied updated information regarding compliance with the recommendations.

Case 10.799 Catalino Chochoy *et al.* (Guatemala)

547. It appears in Report 59/01 that on January 31, 1991, in the municipality of Santo Domingo Xenacoj, department of Sacatepéquez, a military commissioner and armed men in civilian dress who were driving in vehicles with tinted glass grievously wounded, with firearms, agricultural workers Messrs. Catalino Chochoy, José Corino Teshen, and Abelino Baycaj when they attempted to forcibly recruit them for military service. Once wounded, they were immediately taken to the hospital in Antigua, Guatemala, by family and friends. According to the complaint, these facts were made know to the respective court and the local press.

548. At the request of the Commission, on December 27, 2006, the State reported that it had not been possible to contact the petitioners to reach an agreement on reparation, and thereby carry out the recommendations in Report No. 59/01.

549. In the period between 2008 and 2010, the IACHR did not receive any information from the parties. The IACHR hopes that the State shall continue making the efforts needed to locate the next-of-kin of the victims for the purpose of providing them adequate reparation. It also expects the State to report about the progress made in investigating the facts that led to the complaint.

Case 10.751 Juan Galicia Hernández *et al.* (Guatemala)

550. The facts alleged indicate that on November 25, 1990, in the hamlet of El Chiltepe, village of Buenos Aires, department of Jutiapa, Mr. Juan Galicia Hernández, along with his sons Andrés Abelino Galicia Gutiérrez (22 years) and Orlando Galicia Gutiérrez (15 years) were attacked with firearms while engaged in agricultural work by a group of men in civilian dress who belonged to the PAC, and suffered critical injuries. This group of men subsequently searched the home of the Galicia Gutiérrez family. The wounded were taken in due course to the regional hospital at Cuilapa, Santa Rosa, by family members and friends. The facts were reported to the corresponding authorities and the press.

551. The State has not provided updated information regarding compliance with the recommendations.

Case 10.901 Antulio Delgado (Guatemala)

552. The facts alleged indicate that on May 29, 1991, in San Rafael Pie de la Cuesta, San Marcos, Mr. Antulio Delgado was at home and was attacked by firearms by military commissioners, as a result of which he was seriously injured. He was immediately taken by family members to the Hospital at San Marcos. The day before the facts the victim had been released by judicial resolution after the same military commissioner who tried to execute him had detained and imprisoned him. The facts were reported to the corresponding authorities and the press.

553. The parties have not supplied updated information regarding compliance with the recommendations.

554. Because of the above, the IACHR concludes that the State has partially complied with the recommendations set forth in Report No. 59/01, which includes cases 10.626; 10.627; 11.198(A); 10.799; 10.751; and 10.901. As a result, the Commission shall continue to monitor the items that are pending.

Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo *et al.* (Guatemala)

555. In Report on the Merits No. 60/01 of April 4, 2001, the IACHR concluded that the Guatemalan State had violated the rights of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), judicial guarantees (Article 8), and judicial protection (Article 25), all in conjunction with the obligation to ensure the rights protected in the Convention, as established in Article 1(1) of the same Convention. These violations occurred as a result of the detention and subsequent forced disappearance of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández at the hands of agents of the Guatemalan State on September 25, 1982, in the case of Ms. Solares Castillo; and on November 21, 1982, in the case of Ms. López Rodríguez and Ms. Hernández.

556. The Commission made the following recommendations to the State:

1. Conduct an impartial and effective investigation into the facts of this complaint to determine the whereabouts and condition of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, to identify the persons responsible for their disappearance, and to punish them in accordance with the rules of due legal process.
2. Take steps to make full amends for the proven violations, including measures to locate the remains of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, the arrangements necessary to fulfill their families' wishes regarding the final resting place of their remains, and adequate and timely compensation for the victims' relatives.

557. On November 22, 2010, the Commission requested the parties to provide updated information on compliance with the recommendations set forth in Report No. 60/01.

558. On December 22, 2010, the State reported that, on December 19, 2007, it had signed a Compliance Agreement to carry out the recommendations made in the present case with the representative of the Solares Castillo family and that the two other families did not accept the proposal for financial compensation submitted by the State. The State reported that the items of the agreement signed with Ms. María Olimpia Castillo widow of Solares, included a ceremony paying tribute to Ileana del Rosario, scheduled for December 12, 2008, as well as various measures to honor the memory of the victim, among which there is the installation of memorial plaque in her honor and the printing of 5,000 copies of an executive summary of the case. The agreement also includes the State's commitment to undertake the relevant steps to include the issues of the armed conflict and peace-making process in the contents of social studies as a subject taught in primary and basic education. The Agreement also included financial compensation.

559. Regarding these commitments, the State reported that it had fulfilled its obligation to hold a ceremony unveiling the memorial plaque, which took place on December 12, 2008 in the Town Park of Casillas, Santa Rosa, which was presided by several state authorities. It also informed that during the unveiling ceremony, the President of COPREDEH publicly requested forgiveness to the family for the violations perpetrated against Ileana Solares and rendered a letter of public apologies from the President of the republic of Guatemala, Engineer Alvaro Colom Caballeros and an amplified portrait of the victim to be placed in the Municipality Building.

560. The State also indicated that the Solares family said that it would like to have the biography and a summary of the case delivered to be reproduced in computer format, and asked for 50 to 100 copies. The State acceded to their request and on September 22, 2009, delivered 100 copies to the family's representative. It also observed that arrangements had been made with the Ministry of Education to have the requested topic –armed conflict- included in the curriculum. The topic was introduced, thereby in compliance with the agreement.

561. As for economic reparations, the State indicated that it had fully complied with this commitment. It also stated that at the present time arrangements were being made with the Ministry of Government for authorization to set up the Ileana del Rosario Solares Foundation. COPREDEH set aside the seed capital for the Foundation and the forms to open the account have already been signed. The State also reported that the Ministry of Government's observations on the Foundation's Charter had not yet been received.

562. As for the family of Ana María López, the State reported that on October 14, 2010, an Agreement on Compliance with the Recommendations was signed with the representatives in the case. One provision of that agreement calls for a ceremony for public apologies, which is being set up. As for measures to honor the victim's memory, it was reported that the next of kin opted to

have a room in an educational facility named in her honor; they were therefore asked to suggest a facility so that arrangements could get underway. It was also agreed that an educational pamphlet would be prepared; the petitioners would present the contents of that pamphlet to the State for its approval; the 5,000 copies printed up would be circulated by members of the family. The State also reported that the commitment to add the topic of armed conflict to the curriculum had already been carried out, as it was in the preceding case. As for economic reparations, the State reported that it planned to make payment sometime in the period from December 27 to 30, 2010. As for other forms of reparation, the State observed that measures would get underway to secure authorization to set up the Ana María López Rodríguez Foundation.

563. As for the investigation, the State reported that information had been requested from the Office of the Prosecutor for Human Rights since the case was the subject of a Special Inquiry Proceeding. As for including the case among those to be taken up by the Search Committee for the Disappeared once it was formally established, the State reported that bill 3590, the purpose of which is to set up the Search Committee for Victims of Forced Disappearance and Other Forms of Disappearance, must get through the Committee on Legislation and Constitutional Points before it can go to the plenary for approval. In the meantime, meetings have been held with a number of organizations to discuss the idea of creating a temporary committee to search for persons who disappeared during the internal armed conflict.

564. For their part, the petitioners reported that on October 15, 2010, they signed a friendly settlement agreement in which the State reconfirmed its commitment to comply with the recommendations. They also stated that COPREDEH had said that it would comply with the economic reparations before the end of 2010. They said they had had meetings with COPREDEH to discuss the question of the pamphlet, which would contain a summary of the case, and were told of the arrangements being made to have a room where the offices of the National Compensation Program are located named the "Ana María López Rodríguez" Room. They also said that they showed COPREDEH the text containing the case summary, but the pamphlet had not yet been published. As for the other forms of reparation, the petitioners stated that they had only had discussions about the legal requirements associated with the Foundation's creation; the Foundation itself had not yet been set up.

565. As for the case of Luz Leticia Hernández Agustin, the State reported that on March 10, 2010, a meeting was held with the victim's next of kin, who reiterated their position, which was that before coming to any agreement concerning economic reparations or measures of moral compensation, the State would have to hand over the remains of Luz Leticia. It also said that the family's position was stated in a communication dated November 11, 2010.

566. The Commission therefore concludes that the recommendations have been partially fulfilled. Accordingly, the Commission will continue to monitor for compliance with the pending points.

Case 11.382, Report No. 57/02, Workers at the Hacienda San Juan, Finca "La Exacta" (Guatemala)

567. In Report No. 57/02, of October 21, 2002, the IACHR concluded that the Guatemalan State had failed to carry out the obligations imposed on it by Article 1(1) of the Convention, and had violated, in conjunction with Article 1(1) of the Convention, the right to life, enshrined at Article 4 of the Convention, as regards Efraín Recinos Gómez, Basilio Guzmán Juárez, and Diego Orozco; the right to humane treatment, enshrined in Article 5 of the Convention, in relation to Diego Orozco, the whole group of workers/occupants and their families, who suffered the attack of August 24, 1994, and especially the 11 persons who suffered grievous injuries: Pedro Carreto Loayes, Efraín Guzmán Lucero, Ignacio Carreto Loayes, Daniel Pérez Guzmán, Marcelino

López, José Juárez Quinil, Hugo René Jiménez López, Luciano Lorenzo Pérez, Felix Orozco Huinil, Pedro García Guzmán, and Genaro López Rodas; the right of freedom of association, enshrined in Article 16 of the Convention, in relation to the workers at the La Exacta farm who organized a labor organization to put forth their labor demands to the landowners and administrators of the La Exacta farm, and to the Guatemalan courts, and who they suffered reprisals for this reason; the right of the child to special protection stipulated in Article 19 of the Convention, as regards the minors who were present during the August 24, 1994 incursion; the right to due process and judicial protection, protected by Articles 8 and 25 of the Convention, in relation to the organized workers who sought access to judicial remedies in relation to their labor demands, and in relation to the victims of the events of August 24, 1994, and their family members who sought justice in relation to those events. In addition, it concluded that the Guatemalan State had violated Articles 1, 2, and 6 of the Convention on Torture in relation to the torture suffered by Diego Orozco.

568. The Commission made the following recommendations to the Guatemalan State:

1. That it begins a prompt, impartial and effective investigation of the events that took place on August 24, 1994 to be able to detail, in an official report, the circumstances of and responsibility for the use of excessive force on that date.
2. That it takes the necessary steps to subject the persons responsible for the acts of August 24, 1994 to the appropriate judicial proceedings, which should be based on a full and effective investigation of the case.
3. That it makes reparations for the consequences of the violations of the rights listed, including the payment of fair compensation to the victims or their families.
4. That it takes the necessary measures to ensure that violations of the type that took place in this case do not recur in future.

569. By means of a communication dated November 22, 2010, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case.

570. Where the investigation is concerned, the State reported that a request had again been filed seeking confirmation of the warrant that the Coatepeque Criminal Court of First Instance issued back in 2002 for the arrest of Harry Omar Hernández.

571. On the matter of reparations, specifically the school infrastructure, the State reported that this year a technician from the National Fund for Peace was sent to the hamlet of San José Campo Libre and the hamlet of La Ayuda, where he examined the schools' needs. The budget for the necessary modifications and repairs is awaiting approval with a view to doing the work in 2011.

572. As for the 96 housing units to be provided, the State reported that on November 30, 2010, the Center for Legal Action on Human Rights delivered 63 of the 96 case files, and indicated that a preliminary screening was done to eliminate those who did not meet some of the requirements or who had already requested a subsidy from FOGUAVI. With that in mind, in conjunction with the institutions involved, a visit is planned in February 2011 to the communities of Campo Libre and La Ayuda for the purpose of interviewing each beneficiary, to ascertain the causes of this situation and find viable solutions.

573. As for the monument to honor the memory of the victims, the State reported that on November 30, 2010, the petitioners presented COPREDEH with a single copy of the public deed containing the sales contract for a small plot on a rural property. The deed showed that the

property was sold to the La Ayuda Integral Development Association (ADICA). On the plot of land purchased by ADICA, the community set aside space for construction of the monument. The paperwork was handed over to the National Fund for Peace, which will draw up the agreement based on the petitioners' specifications and guidelines.

574. As for access to drinking water, representatives of the Municipal Development Institute said that a study of the community would have to be done to determine whether water could be brought from the river. For budgetary reasons, that study would be done in 2011.

575. Because of the above, the Commission concludes that the recommendations as indicated were partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

Case 11.312, Report on Friendly Settlement No. 66/03, Emilio Tec Pop (Guatemala)

576. On October 10, 2003, by Report 66/03, the Commission approved a friendly settlement agreement in the case of Emilio Tec Pop. In summary, the petitioners had alleged that on January 31, 1994, Emilio Tec Pop, 16 years of age, was heading from the municipality of Estor, department of Izabal, to the departmental capital of Cobán, Alta Verapaz, and in the early morning hours was detained by unknown individuals. Thirty-two days later, on March 3, 1994, the authorities from the military garrison at Estor handed Emilio Tec Pop over to his family members. The petitioners in this case stated that he was detained against his will and physically and psychologically abused; the soldiers are alleged to have threatened to kill Emilio, they beat him and cut up his hands with a knife.

577. Through this agreement the State undertook to:

- a. Pay compensation.
- b. To provide seed capital in the form of basic grains to Emilio Tec Pop with the aim of improving his standard of living.
- c. Take steps to get the investigation into these events back on course and to be able to punish those responsible.

578. By means of a communication dated November 23, 2010, the Commission requested the parties to provide updated information on the status of compliance with the agreements that were signed with the State in the present case.

579. By means of a communication dated December 23, 2010, the State indicated that it has complied with the aspect referring to acknowledgment of international responsibility for the acts that were perpetrated, as provided for in section III of the Friendly Settlement Agreement and that, regarding financial reparation, the equivalent of US\$2,000.00 has been delivered, as indicated in the above-mentioned agreement.

580. In that communication, and in reference to that part of the investigation that was still pending, the State observed that the Supreme Court had reported that at the present time the Izabal Court of First Instance had no complaint pending. But, the State reported, in order to explore every avenue that might lead to information, the record of criminal cases with the Izabal Justice of the Peace was also checked; there again, however, no record of a complaint pending on that court's docket was found. The State indicated that the information supplied by the Supreme Court was also being checked, which had reported case 325-94 in Izabal Department's Court of First Instance

for Criminal Matters, Drug Trafficking and Crimes against the Environment, where the suspect was one José Taquín. The case was still under investigation.

581. As for the commitment to provide seed capital in the form of basic grains –the nature of which have to be determined by visiting Mr. Emilio Tec Pop’s place of residence- the State reported that a meeting was held with Mr. Emilio Tec Pop and his father. They were asked what type of seeds they needed; they said they needed coffee, cacao, tree seedlings, tomatoes, radishes, chard, corn, rice, peppers, bananas, carrots and pineapple. With that information, COPREDEH asked the Ministry of Agriculture, Livestock and Food to supply the seeds required under the agreement sometime in this most recent two-month period. It also stated that a representative from the Ministry in question said that a plan of implementation for the seeds requested by Emilio Tec Pop and his family would be coordinated as soon as possible.

582. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

Case 11.766, Report No. 67/03, Irma Flaquer (Guatemala)

583. On October 10, 2003, by report No. 67/03, the Commission approved a friendly settlement agreement in the case of Irma Flaquer. By way of background, on October 16, 1980, journalist Irma Flaquer Azurdia was kidnapped while driving in a vehicle accompanied by her son Fernando Valle Flaquer in Guatemala City. In the incident Fernando Valle Flaquer was injured; he subsequently died at the Hospital General San Juan de Dios. As of that same date, the whereabouts of Irma Flaquer have not been known. The petitioners also argue that during the investigation of the case by the Guatemalan authorities, it was noted that while the government of that period formally lamented Flaquer’s presumed death, there were few official efforts to investigate the incident. In addition, the minimal efforts made in the official investigation were excused by an amnesty law that in 1985 granted a general pardon, diluting both the responsibility and the participation of some sector of the state apparatus.

584. By means of the friendly settlement agreement, the State recognized its institutional responsibility for the facts of the case and recognized the need “to continue with and vigorously reinforce administrative and legal measures aimed at identifying those responsible, determining the whereabouts of the victim and applying the appropriate criminal and civil punishment.” In addition, at the third item in that agreement, the State undertook to study the petitions put forth by the petitioners as reparations, which consisted of the following points:

- (a) Establishment of a committee to expedite the judicial proceeding composed of two representatives each from COPREDEH and IPS;
- (b) Establishment of a scholarship for the study of journalism;
- (c) Erection of a monument to journalists who sacrifice their lives for the right to freedom of expression, symbolized in the person of Irma Marina Flaquer Azurdia;
- (d) Designation of a wing of a public library as a repository for all material related to the works of the journalist in question;
- (e) Naming of a public street after her;
- (f) Establishment of a university chair in journalism history;
- (g) Writing of letters to the relatives asking for forgiveness;

- (h) Organization of a course for the training and social rehabilitation of inmates in the Women's Correctional Centre (COF);
- (i) Compilation and publication of a book containing a selection of the best columns, writings and Articles of the disappeared journalist;
- (j) Production of a documentary;
- (k) Holding of a public ceremony to honor her memory.

585. In conformity with the friendly solution agreement, the parties agreed to “establish an Impetus Commission” and set March 19, 2001 as the date for starting activities, after a public ceremony to be held in the city of Fortaleza, Brazil, in the framework of the half-yearly meeting of the Inter-American Press Association (Sociedad Interamericana de Prensa—SIP). As of that date and in the subsequent 30 days, the State and the petitioners agreed that the Commission must begin the task and process of investigating the case of Irma Marina Flaquer Azurdia, as well as set up a timetable and calendar of activities for restoring the dignity of the missing journalist, previously setting the date, that is, September 5, 2001, which is the birth date of the missing journalist, to hold a public ceremony with the parties involved in Guatemala City.

586. In the Friendly Settlement Report, the Commission indicated that it had been informed about the satisfaction of the petitioners regarding the SIP for compliance with the large majority of the items of the agreement. Nevertheless, compliance with the following was still pending: a) creation of a scholarship for journalism studies; b) establishment of a university chair on the history of journalism, and c) presentation of a letter extending apologies to next-of-kin. The State’s obligation to investigate the forced disappearance of the journalist Irma Flaquer Azurdia and the extrajudicial execution of Fernando Valle Flaquer is still pending.

587. By a communication dated November 23, 2010, the Commission asked the parties to report updated information on the status of compliance with the pending points of the agreement reached in this case.

588. As recounted in the Commission’s 2009 Annual Report, the Guatemalan State asserted that it had complied with the commitment it undertook to provide the next of kin of Irma Flaquer with a letter of apology. Therefore, this point of the agreement would appear to have been complied with.

589. Concerning the creation of a scholarship, the State reported that while the Director of the School of Communications Sciences of Guatemala’s Universidad de San Carlos had started to make the necessary arrangements to obtain such a scholarship, he had still not managed to do so. Efforts to set up that scholarship would therefore continue in 2011.

590. The State also reported that in order to comply with that recommendation, assistance was requested from the Secretariat of Planning and Programming of the Office of the President (SEGEPLAN), which indicated its willingness to help by using the National Scholarship and Educational Loan Trust Fund (FINABECE). The State reported that on December 22, 2009, Government Agreement No. 344-2009 was amended to include in FINABECE’s budget a line item specifically for scholarships required under friendly settlement agreements, agreements to comply with recommendations and judgments of the Inter-American Court of Human Rights.

591. The State also reported that COPREDEH was currently negotiating a special representation authority that would enable it to negotiate and sign a “specific agreement on compliance with the commitment to provide a scholarship for studies in journalism,” since neither

Report No. 67/03 nor the friendly settlement agreement specified the means by which the scholarship was to be set up and managed. The State pointed out that the special representation authority had not yet been entered into the computerized record of authorities in the general archive of protocols, a necessary step before the specific draft agreement could be made available to the petitioners for comment and finally signed.

592. As for the creation of a university chair in the history of journalism, the State reiterated that a course on "Guatemalan Journalism" was currently being offered at the School of Communications Sciences of Guatemala's State University of San Carlos. That course featured a specific section on the life of journalist Irma Flaquer Azurdia. The State's contention was that this constituted compliance with that item of the "Friendly Settlement Agreement that required the State to educate new generations of Guatemalan journalists in the life and struggle of journalist Irma Flaquer Azurdia. The State's contention was that this obviated the need to establish another university chair on this subject.

593. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue monitoring the items that are pending.

Case 11.197, Report on Friendly Settlement Agreement No. 68/03, Community of San Vicente de los Cimientos (Guatemala)

594. On October 10, 2003, by Report No. 68/03, the Commission approved a friendly settlement report in the case of the "Community of San Vicente de los Cimientos." In summary, on August 24, 1993, the Centro para la Acción Legal en Derechos Humanos (CALDH) and the Consejo de Comunidades Étnicas Runujel Junam (CERJ), in representation of 233 indigenous families, filed a complaint with the IACHR in which they alleged that during the armed conflict the sector called Los Cimientos, located in Chajul, department of Quiché, where 672 indigenous families lived who were the owners in the sector, was invaded in 1981 by the Guatemalan Army, which established a garrison in the area. After threats of bombardment of the community and the assassination of two community members, the community of Los Cimientos was forced to abandon its lands in February 1982, leaving behind harvests of corn, beans, and coffee, and animals. One month after they fled, some families returned to the place, and found their homes had been burned and their belongings stolen. Subsequently, the community of Los Cimientos was expelled once again in 1994. On June 25, 2001, the community was violently evicted from their lands, of which they were the legal owners, by neighbors and other persons, apparently supported by the Government.

595. In this agreement the State committed to:

1. Purchase, on behalf of all the members of the Los Cimientos Quiché community comprising the civic association "Community Association of Residents of Los Cimientos Xetzununchaj," the San Vicente Osuna estate, and its annex, the Las Delicias estate, which are adjacent to each other and are located in the municipality of Siquinalá, Escuintla department.
2. The community of Los Cimientos, through the Community Association of Residents of Los Cimientos Xetzununchaj civic association, and the Government, shall identify and negotiate, within sixty days following the settlement of the community, urgent projects to reactivate its productive, economic, and social capacities, with a view to fostering the community's development and wellbeing, and in consideration of the agrological study carried out and the record of the landmarks and limits of the San Vicente Osuna estate and its annex, the Las Delicias estate.

3. The individual land owners, land holders, and assigns of the estates comprising the Los Cimientos community, as a part of the commitments arising from the government's purchase on their behalf of the estates known as San Vicente Osuna and its annex, the Las Delicias estate, shall cede their current rights of ownership, holding, and inheritance to the Land Fund, in compliance with the provisions of Article 8(h) of the Land Fund Law, Decree No. 24-99.

4. The State shall be responsible for relocating the 233 families of the community of Los Cimientos, Quiché, together with their property, from the village of Batzulá Churranchó, Santa María Cunén municipality, Quiché department, to the San Vicente Osuna estate and its annex, the Las Delicias estate, located in Siquinalá municipality, Escuintla department.

5. The government shall provide the resources necessary to feed the 233 families during their transfer to and settlement in their new homes, and it shall accompany them with a duly equipped mobile unit for the duration of the transfer and until such time as a formal health facility is established in their settlement, in order to cater for any emergency that may arise.

6. For the community's location and resettlement, the government of the Republic will provide humanitarian assistance, minimal housing, and basic services.

7. The government of Guatemala agrees to organize the creation of a promotion committee that will be responsible for monitoring progress with the legal proceedings initiated against the individuals involved in the events of June 25, 2001, perpetrated against the owners of the Los Cimientos and Xetzununchaj estates.

596. By a communication dated November 23, 2010, the Commission asked the parties to supply updated information on the status of compliance with those points of the agreement that were still pending in this case.

597. Concerning the commitment to provide housing, in a communication dated December 15, 2010, the State reported that in a ceremony staged at the National Palace of Culture on July 28, 2010, an Interinstitutional Cooperation Agreement was signed to address the housing commitment. The State reported that the agreement spelled out the commitments that each participating state institution and the beneficiary community undertook with respect to execution of the housing project.⁵⁴

598. It added that on April 7, 2010, an inter-institutional working group was formed, composed of the Office of the Vice Minister of Communications, Infrastructure and Housing, the Guatemalan Housing Fund (FOGUAVI), the National Compensation Program (PNR), the National Fund for Peace (FONAPAZ), the Center for Legal Action in Human Rights (CALDH) and COPREDEH. It reported that a series of coordination meetings was held with the institutions involved, and visits were made to the community to inform the community leaders about the housing project to be carried out and to ask them to submit the information and documentation necessary to comply with the requirements of the competent institutions. The State reported that the leaders expressed their approval of the project and that the requested information was delivered and was recently forwarded to COPREDEH for review.

599. The State also reported that it had acceded to the petitioners' request that the files that did not meet FOGUAVI's requirements be admitted; accordingly, a new list of requirements was prepared, which omitted any reference to certification by the Property Registry to prove that

⁵⁴ Inter-Institutional Cooperation Agreement signed by the Presidential Steering Committee for Executive Policy on Human Rights (COPREDEH); the Secretariat for Peace (SEPAZ); the Guatemalan Housing Fund (FOGUAVI); the National Compensation Program (PNR); the National Fund for Peace (FONAPAZ) in cases 11.763 Plan de Sánchez Massacre; 11,197 the "San Vicente Los Cimientos" Community, and 11.382 Finca "La Exacta".

the beneficiary owned the property; the Property Registry requirement was replaced with a simple statement swearing to the family group's ownership of the property.

600. Concerning the transfer of rights, the State reiterated that a working group on this matter had been formed with the Office of the Attorney General of the Nation, the Office of the Government Notary, the Secretariat of Agrarian Affairs, the Land Fund, the Bureau of State Assets and the Bureau of Property Registry and Assessment. With that operating framework, the State observed that the pertinent steps were being taken; that COPREDEH had put together the files for each person, and that the Secretariat for Agrarian Affairs would proceed to draw up the deed of unilateral grant. Meetings had been held to coordinate with the institutions involved.

601. As for the investigation, the State reported that the Public Prosecutor's Office had advised that the appropriate steps were being taken to detain the suspect in the case, who has been a "fugitive from justice" since 2002. There has been an outstanding order for his arrest ever since.

602. The State also reported that it would continue to follow up with the Ministry of Agriculture, Livestock and Food on the requests that community leaders had formally made to the State during the visits to that community in May 2010, in which they had asked for technical advisory assistance on cultivation of the land. It also said that it would continue to work on the commitments related to water services, marketing services and trash removal, as well as the health services to ensure that they continue to be provided to the inhabitants of "Los Cimientos."

603. Finally, the State reported that a meeting was held on December 7, 2010, where a two-year timeframe was agreed upon for fulfillment of the specific agreement on compliance; that timeframe could be extended if the parties mutually agree that such an extension is necessary.

604. In a communication received on October 4, 2010, the petitioners stated that on September 22, 2010, a meeting was held at the offices of COPREDEH. In attendance were representatives of the Guatemalan Housing Fund (FOGUAVI), the National Compensation Program (PNR), and the National Fund for Peace (FONAPAZ). The meeting focused its attention on the issue of the requirements that FOGUAVI demands for the subsidies it provides for housing construction on an owner's property, for improvements and repairs, or for construction of additions and/or introduction of basic services. They also reported that the requirements that the petitioners had been unable to satisfy were examined; the measures needed to make compliance possible or to adapt them to the beneficiaries' advantage were analyzed. Specifically, on the matter of the "simple sworn statement to the effect that no public or private property has been unlawfully occupied," the petitioners reported that an observation was made at the meeting to the effect that in the specific case of the "San Vicente Los Cimientos Community" this requirement should be eliminated inasmuch as that community was unlawfully dispossessed of the lands it had in the Department of El Quiché. They reported that the FOGUAVI representative had said that the matter would be put to the FOGUAVI board for consideration.

605. They also reported that the files presented for housing construction had been examined. Some had irregularities, such as no single property title in those cases in which title was being transferred from parents to children so that the older offspring could build their own homes. Here, the pertinent Guatemalan institutions were being asked to accept all the files, given the particular situation of the affected families; that way they would be able to obtain the subsidy for housing construction.

606. As for the process whereby title to the property is transferred, the petitioners reported that they were waiting for COPREDEH, the coordinating body, to take the necessary

measures; the beneficiaries were ready to collaborate in the process whereby title to their property in the Department of El Quiché would be transferred to the Guatemalan State.

607. The petitioners observed that what mattered most was the investigation of the facts and those responsible, which warranted special attention. Their contention was that the juridical investigation was not what it should be, which is why it was not producing the basic information necessary to arrest, try and punish those responsible for these events. They also alleged that the State provided scant information concerning the investigation, when the information on this point should be abundant and detailed.

608. Finally, in connection with the signing of a specific agreement on compliance, the petitioners reported that the petitioners and the beneficiaries have agreed upon its content; all their observations would be forwarded to COPREDEH for review and then final signing of the document. They also stated that the priorities were the issues related to productive projects and basic services.

609. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue monitoring the items that are pending.

Petition 9168, Report No. 29/04, Jorge Alberto Rosal Paz (Guatemala)

610. On March 11, 2004, by Report 29/04, the Commission approved a friendly settlement agreement in the petition of "Jorge Alberto Rosal Paz." In this matter, on August 12, 1983, Mr. Jorge Alberto Rosal Paz was detained while driving between Teculután and Guatemala City; his whereabouts are unknown to this day. On August 18, 1983, the IACHR received a petition submitted by Ms. Blanca Vargas de Rosal, alleging that the Guatemalan State was responsible for the forced disappearance of her husband.

611. In the agreement, the State recognized its institutional responsibility for breaching its obligation, under Article 1(1) of the American Convention on Human Rights, to respect and ensure the rights enshrined in the American Convention, in addition to Articles 4, 5, 7, 8, 11, 17, 19, and 25. In addition, it stated that the main basis for reaching a friendly settlement was the search for the truth and the administration of justice, restoring dignity to the victim, reparations resulting from the violation of the victim's human rights, and strengthening the regional human rights system.

612. On February 15, 2006, Ms. Blanca Vargas de Rosal reported that the only commitment carried out by the State was economic reparation; the commitments regarding education, actions to restore the victim's name, housing, investigation, and justice were still pending.

613. In a communication dated November 23, 2010, the Commission asked the parties to provide updated information on the status of compliance with the pending points of the agreement in this case.

614. By a communication dated December 16, 2010, the State reported that with respect to the scholarships, at a public ceremony held at Guatemala's National Palace on May 25, 2010, the Vice President of the Republic awarded the "Rosal Paz Scholarship" to María Luisa Rosal Vargas, daughter of the victim in the present case. She accepted the scholarship on her own behalf and on behalf of her brother, Jorge Alberto Rosal Vargas. The State went on to say that the ceremony in question had important implications in terms of the education-related commitments undertaken by the State as a consequence of cases prosecuted before the Inter-American System, as the university scholarships provided to the petitioners in other cases did not have their own financing mechanism. The State said that the National Scholarship and Educational Loan Trust Fund

(FINABECE) was modified to include in its budget “a line item specifically for scholarships required under friendly settlement agreements, agreements to comply with recommendations and judgments of the Inter-American Court of Human Rights.” That change was introduced through Government Agreement No. 344-2009, published in Guatemala’s Official Gazette of December 22, 2009.

615. The State reported that María Luisa Rosal Vargas is currently pursuing a Master’s Degree at McGill University in Montreal, Canada, and will complete her studies in 2014. It stated that FINABECE is financing the costs of her enrollment, credits and study materials, as well as room and board and health insurance. The State also reported that it is arranging a full scholarship for Jorge Alberto Rosal Vargas that will cover secondary school studies, and studies at Northern Virginia Community College and George Mason University, respectively, so that he can pursue his studies in psychology.

616. As for the grant of a plot of land to Mrs. Blanca Elvira Vargas Cerdón de Rosal, the State reported that thus far it had been unable to make good on this commitment since the property identified in the friendly settlement agreement had been assigned to the Ministries of Labor and Social Security, Public Finance and Education on October 13, 2003; under the country’s legal system it is unlawful to turn over State property to private persons. Under Guatemalan law, the State can only grant a usufruct over such properties, and then only to decentralized State entities or legal persons who conduct proven projects of benefit to society.

617. That being the case, the State reported that it had asked the Property Information Office for an assessment of the sales value of the property in question and that in February 2007, that plot of land had a sales value of 165,971.34 quetzales (national currency). That amount was offered to the petitioner since, for the reasons already explained, the State was unable to offer her the plot of land identified in the friendly settlement agreement. The petitioner turned down the offer at that time. The State reported that at the working meeting held on November 4, 2009, at IACHR headquarters during its 137th session, the State had suggested that a new assessment of the plot be done, which would reflect the current value of the land. The petitioner agreed to that proposal. The State observed that this necessitated a modification of the friendly settlement agreement signed on January 9, 2004, to explain that the sum paid out by the Ministry of Public Finance was equivalent to the property’s current value. The State reported that the necessary steps were being taken to give COPREDEH special representation authority enabling it to negotiate and sign, in the present case, a “family housing commitment enabling agreement”.

618. As for the investigation of the facts of this case, the State reported that the Public Prosecutor’s Office had reactivated the investigations into the facts surrounding the detention and disappearance of Jorge Alberto Rosal Paz. It explained that the investigations thus far had revealed that on August 12, 1983, at approximately 5:00 p.m., a group of soldiers –some on a motorcycle and the others in a vehicle (in civilian dress)- seized Jorge Alberto Rosal Paz as he was driving from Zacapa to Tecultán. It stated that the state agents stopped him, forced into their vehicle, and took him to the Zacapa Military Zone, where he was held in custody. It reported that because of his strategic importance as a member of the Revolutionary Organization of the People at Arms (ORPA), the victim was transferred to the Santa Ana Berlin Military Base in Coatepeque, Quetzaltenango, a center of counter-subversive operations; he was then taken to Army General Headquarters in Guatemala City. The authorities had denied that he was being held in custody and concealed his whereabouts. The State added that the investigation had identified three suspects, and was now in the process of conducting the appropriate inquiries concerning the suspects.

619. As for the information that the investigation had uncovered, the State reported that: 1) it had information in the National Police’s Historical Archives which showed that the National Police had “no record of any complaint or report concerning the victim’s disappearance”; 2) the investigation turned up a newspaper account about a visit that Dr. García Bojarro made to

Guatemala in 1983, where he had an interview with Lieutenant Colonel Djalma Domingo, Chief of Information and Dissemination of the Office of the President, in which he stated that his visit to Guatemala was in response to numerous complaints of forced disappearances in Guatemala, one of which was that of Jorge Alberto Rosal Paz; 3) the investigation had an informative statement that the Minister of Government at the time made in connection with this case; 4) a court order was sought in order to require the Ministry of Defense to provide information on the establishment of the Santa Ana Berlin Military Base and the names its commanding officers, and 5) the Guatemalan Forensic Anthropology Foundation had DNA samples from the victim's next of kin, to compare them with any skeletal remains found in exhumations conducted at various places throughout the country. Finally, the State reported that the Guatemalan Forensic Anthropology Foundation informed the Public Prosecutor's Office that Jorge Alberto Rosal Paz was in its database of disappeared persons.

620. The Commission therefore concludes that the friendly settlement agreement has been partially complied with. Accordingly it will continue to monitor for compliance with those points still pending.

Petition 133-04, Report No. 99/05, José Miguel Mérida Escobar (Guatemala)

621. On October 27, 2005, by Report No. 99/05, the Commission approved a friendly settlement agreement in the petition in the matter of "José Mérida Escobar." In summary, on February 19, 2004, the IACHR received a petition submitted by Amanda Gertrudis Escobar Ruiz, Fernando Nicolás Mérida Fernández, Amparo Antonieta Mérida Escobar, Rosmel Omar Mérida Escobar, Ever Obdulio Mérida Escobar, William Ramírez Fernández, Nadezhda Vásquez Cucho, and Helen Mack Chan alleging that the Guatemalan State was responsible for the extrajudicial execution of José Miguel Mérida Escobar on August 5, 1991. According to the petition, Mr. Mérida Escobar worked as Chief of the Homicide Section of the Department of Criminological Investigations of the National Police, and was in charge of the criminal investigation into the assassination of anthropologist Myrna Mack Chang. In the context of this criminal investigation, on September 29, 1990, he concluded that the main suspect in the assassination of Myrna Mack Chang was a member of the Security Department of the Presidential High Command of the Guatemalan Army. On August 5, 1991, Mr. Mérida Escobar was assassinated with gunshot wounds to the head, neck, left torso, and left arm; he died instantly.

622. In the friendly settlement agreement, the State recognized its international responsibility for the violation of the rights enshrined in Articles 4, 5, 8, and 25 of the American Convention. Among the main commitments assumed in friendly settlement agreement No. 99/05 are:

- To take steps to ensure that the *Ministerio Público* conducts a serious and effective investigation.
- To make appropriate arrangements to establish a fellowship for police studies abroad.
- To look into the feasibility of drawing up a letter of recognition of the international responsibility of the State of Guatemala for the extrajudicial execution of José Miguel Mérida Escobar, which will be circulated to international organizations by way of the Official Gazette and the Internet.
- To take the relevant steps for the placement of a plaque in honor of police investigator José Miguel Mérida Escobar at the facilities of the Palace of the Civil National Police, in memory of José Miguel Mérida Escobar.

- To ensure that the appropriate authorities will take steps to determine the viability of changing the name of the Santa Luisa district in the Municipality of San José del Golfo, department of Guatemala, to the name of José Miguel Mérida Escobar.
- To take steps to ensure that the Executive Agency provides a life pension to the parents of José Miguel Mérida Escobar, Amanda Gertrudis Escobar Ruiz, and Fernando Nicolás Mérida Hernández, and a pension to his youngest son, Edilsar Omar Mérida Alvarado, until he completes his advanced technical studies.
- To take the relevant steps to ensure that the Ministry of Public Health provide for psychological treatment for Mrs. Rosa Amalia López, the widow of the victim, and for the youngest of his sons, Edilsar Omar Mérida Alvarado.
- The Government of the Republic pledges to take the relevant steps to ensure that the Ministry of Education arranges for a scholarship to be granted to the youngest son of the victim, Edilsar Omar Mérida Alvarado.

623. On December 21, 2006, the State reported that on November 30, 2006, the ceremony was held in which a plaque in memory of José Mérida Escobar was unveiled at the new headquarters of the National Civilian Police that was attended, on behalf of the State, by the Director General of the National Civilian Police and the President of COPREDEH. In addition, it reported that the municipality of San José del Golfo approved, by act No. 59-2006, naming the street where the victim lived with his family after him (José Miguel Mérida Escobar). With respect to the institution of the "José Miguel Mérida Escobar" scholarship, the State indicated that its regulation is pending approval. Finally, the State indicated that the victim's younger child, Edilsar Omar Mérida Alvarado, would be hired as of January through the "My First Job" program.

624. On December 6, 2007, the State reported that it continues following up on the commitments related to granting a lifetime pension to the victims' parents, as well as the creation of a scholarship for police studies named after Commissioner José Miguel Mérida Escobar.

625. By means of a communication dated November 23, 2010, the Commission requested the parties to provide updated information on compliance with the friendly settlement agreement in Report No. 99/05.

626. The State reported that it was taking measures to comply with the agreements signed and asked the Commission to take into account the material and legal difficulties it has encountered in endeavoring to comply with the commitments undertaken. As for the investigation the State reported that in July 2010, COPREDEH had asked the Attorney General of the Republic and the Head of the Public Prosecutor's Office to reopen the criminal prosecution of the case, which was assigned to a Special Prosecutor's Office. It also indicated that the details of the measures taken thus far were confidential so as not to obstruct the investigation and to protect the personal integrity of Mr. Mérida Escobar's next of kin.

627. As for the scholarships for police studies, the State reported that meetings were held with a number of State institutions and that in 2011, additional meetings would be held with the Secretariat of Planning and Programming of the Office of the President –SEGEPLAN- to draft the scholarship rules and arrange a government agreement for the scholarship for police studies.

628. As for the lifetime pension, the State reported that the file to arrange the lifetime pension for the parents of José Miguel Mérida Escobar and Edilsar Omar Mérida Alvarado was with the Ministry of Government's legal department and already had the approval of the Office of the Attorney General of the Nation and the Budget Office; the National Civil Police had made it a line

item in its budget. The government agreement was drawn up and would soon be sent to the General Secretariat for the President's signature.

629. The pension for Edilsar Omar Mérida Alvarado would continue until he completes his advanced technical studies. The State reported that in the meetings held with the petitioners, Edilsar Mérida said in a sworn statement that he was not pursuing studies; hence, the State could not comply with this point so long as Edilsar Mérida did not change his mind about studying.

630. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

Case 10.855, Report on Friendly Settlement Agreement No. 100/05, Pedro García Chuc (Guatemala)

631. In Report No. 5/00 of February 24, 2000, the Commission concluded that the Guatemalan State was internationally responsible for the arbitrary execution of Mr. Pedro García Chuc and the violation of his rights to life, judicial protection, and judicial guarantees, among other rights enshrined in the American Convention. In this case, on March 5, 1991, at kilometer 135 of the route to the Western region, department of Sololá, several members of the state security forces captured Mr. García Chuc in the early morning hours. Two days later, the victim's corpse was located at the same place where he was captured, with several gunshot wounds. It is presumed that the extrajudicial execution was due to his work as president of the Cooperativa San Juan Argueta R.L., as well as his active participation in obtaining benefits for his community. The petition was presented by the victim's next-of-kin, and was one of a total of 46 petitions received by the Commission in 1990 and 1991 in which the State was allegedly responsible for the extrajudicial execution of a total of 71 men, women, and children, including Mr. García Chuc. After processing the cases before the IACHR, the Commission decided, in keeping with Article 40 of its Regulations, to join those cases and resolve them together.

632. In that report, the IACHR recommended to the Guatemalan State that it:

1. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and related violations in the cases of the victims named in section VII, and to punish the persons responsible pursuant to Guatemalan law.
2. Adopt the measures necessary for the family members of the victims identified in paragraph 289 to receive adequate and timely reparation for the violations established herein.

633. On April 13, 2000, the Guatemalan State issued a formal statement in which it recognized its international responsibility for breaching Article 1(1) of the American Convention, accepted the facts set forth in Report No. 5/00 of the Commission, and undertook to make reparation to the victims' next-of-kin, based on the principles and criteria established in the inter-American human rights system. It also undertook to promote investigations into the facts, and, to the extent possible to prosecute the persons responsible. Finally, it undertook to report on progress in carrying out its obligations. On that same date the IACHR published Report No. 39/00.

634. On February 18, 2005, the State and the petitioners signed an "Agreement on Implementation of Recommendations. Case 10,855. Pedro José García Chuc," and on July 19, 2005, they signed an agreement on compensation.

635. By means of a communication dated November 23, 2010, the Commission requested the parties to provide updated information on compliance with the friendly settlement agreement appearing in Report No. 100/05.

636. In its December 22, 2010 reply, the Guatemalan State observed that while it had complied with some commitments, its compliance with other commitments was still "pending". Among those that the States said it had complied with, were those related to payment of economic reparations to the victim's next of kin; the establishment of the Indigenous Association for Business Development –ASINDE-; the public apologies, and measures to honor the victim's memory. As for the commitments listed as "pending," Guatemala reported that: i) on the question of the investigation, the Public Prosecutor's Office had taken a number of measures, among them depositions from the victim's next of kin and various requests sent to the National Civil Police seeking information; ii) concerning the grant of usufruct over a property where ASINDE headquarters were to be established, it reported that meetings had been held with the Director of State Properties, who had reportedly required, as a condition precedent to any further action on the grant of usufruct, that information be provided regarding the association's financial condition. The State observed that, as a result, COPREDEH was currently coordinating efforts to respond to that request; and iii) as for the State's commitment to provide technical training to the members of ASINDE, it reported that by notes sent to the Technical Training Institute –INTECAP- the State had been following up on requests received from the members of ASINDE; in addition, meetings were held between the INTECAP staff and Walter García to discuss the matter. The State reported that it was waiting for those parties to reach an agreement, whereupon it would be able to comply with the commitment undertaken.

637. Earlier, in a note dated October 14, 2010, the petitioners had told the Commission the following: i) the criminal investigations were going nowhere, since those suspected of the crime committed against the victim were no longer on the police force, in addition to which "the investigators [had turned out] to be members of the very same National Police Force"; ii) as for the grant of a property in usufruct, the petitioners stated that despite the amount of time that had passed, no progress had been made; and iii) on the matter of technical training, they said that while there had been talks with INTECAP officials, no significant headway had been made.

638. Because of the above, the Commission concludes that the State has partially complied with the friendly settlement agreement. As a result, the Commission shall continue to monitor the items that are pending.

Case 11.171, Report No. 69/06, Tomas Lares Cipriano (Guatemala)

639. In Report No. 69/06 of October 21, 2006, the IACHR concluded that the Guatemalan State was responsible for: (a) the violation of the human right to life in keeping with Article 4 of the American Convention, in relation to Article 1(1) of that instrument, due to the extrajudicial execution, by state agents, on April 3, 1993, of Tomas Lares Cipriano; (b) the violation of the human rights to humane treatment, judicial guarantees, and judicial protection, enshrined at Articles 5, 8, and 25 of the American Convention, in relation to Article 1(1) of that instrument, for the events that occurred April 3, 1993, and their consequences of impunity, to the detriment of Tomas Lares Cipriano and his next-of-kin; and (c) consequently, for the breach of the obligation to respect the human rights and guarantees, imposed by Article 1(1) of the American Convention. The victim, Tomás Lares Cipriano, was a farmer, 55 years of age, a member of the Consejo de Comunidades Étnicas "Runujel Junam" (CERJ), and of the Comité de Unidad Campesina (CUC). As an active community leader in his town, Chorraxá Joyabaj, El Quiché, he had organized numerous demonstrations against the presence of the army in his zone, and against the apparently voluntary but in fact compulsory service by the campesino farmers in the so-called Civilian Self-Defense Patrols (PAC). In addition, he had filed numerous complaints in relation to the threats against the

local population by the Military Commissioners who acted as civilian agents of the army, patrol chiefs, and, on occasion, as soldiers. On April 30 of that same year, Tomas Lares Cipriano was ambushed and assassinated by Santos Chich Us, Leonel Olgadez, Catarino Juárez, Diego Granillo Juárez, Santos Tzit, and Gaspar López Chiquiaj, members of the PAC.

640. The IACHR made the following recommendations to the Guatemalan State:

1. To carry out a complete, impartial and effective investigation of the events reported, to judge and punish all those responsible, either as abettors or perpetrators, for human rights violations with prejudice to Tomás Lares Cipriano and his family members.
2. To make reparation for the violation of the aforementioned rights as established in paragraph 128 of this report.
3. To effectively prevent the resurgence and reorganization of the Civil Self-defense Patrols.
4. To adopt the necessary measures to avoid similar events in the future, pursuant to the duty of prevention and guarantee of fundamental human rights, recognized by the American Convention.

641. On November 23, 2010, the Commission requested the parties to provide updated information on the status of compliance with the recommendations issued in its Report No. 69/06. The parties did not reply within the time-limits set to provide the requested information.

642. In its reply of December 23, 2010, the Guatemalan State reported the following: i) with respect to the first recommendation, it observed that the 1996 conviction of Santos Chic Us notwithstanding, there were another three arrest warrants that had yet to be executed; ii) concerning the recommendation that measures of reparation be adopted, the State again noted that the victim's next of kin had expressed no interest in this case and observed that while the most recent attempts made in December 2010 succeeded in contacting some of the victim's children, the situation had reportedly remained unchanged. As to the possibility of establishing "a special fund for reparations to the relatives of the victim in the event they decided to accept reparations in the future",⁵⁵ the State's contention was that this could not be done since in order to be able to request payment of the compensation established in the Agreement on Friendly Settlement, Compliance with Recommendations or Judgment of the Inter-American Court of Human Rights, it needed the legal justification in order for the Ministry of Finance to be able to pay out the corresponding amounts; and iii) concerning the recommendation intended to avoid a resurgence of the PAC, the State reported that Decree No. 143-96 of November 28, 1996 had overturned Decree 19-86 of January 17, 1986, which had established those patrols.

643. The Commission deems it necessary to insist that even without the participation and acquiescence of the victim's next of kin, the State must comply with recommendations one, three and four of Report No. 69/06.

644. Because of the above, the Commission concludes that the recommendations have been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

⁵⁵ IACHR, Merits Report No. 69/06, Case 11.171, Tomas Lares Cipriano, Guatemala, October 21, 2006, paragraph 128.

Case 11.658, Report No. 80/07, Martín Pelicó Coxic (Guatemala)

645. In Report No. 48/03 of October 8, 2003, the IACHR concluded that the Republic of Guatemala was responsible for: (1) violating Article 4 of the American Convention on Human Rights to the detriment of Martín Pelicó Coxic, in relation to Article 1(1) of said instrument; (2) violating Articles 5, 8, and 25 of the American Convention on Human Rights, in relation to Article 1(1) of that instrument, to the detriment of Martín Pelicó Coxic and his next-of-kin. The Commission determined that the responsibility of the Guatemalan State emanated from the extrajudicial execution perpetrated on June 27, 1995, by state agents, of Mr. Martín Pelicó Coxic, a Mayan indigenous member of an organization for the defense of the human rights of the Maya people, as well as the injuries inflicted on the victim and his next-of-kin by virtue of the facts mentioned and the subsequent impunity for the crime.

646. The Commission made the following recommendations to the Guatemalan State:

1. Conduct a complete, impartial, and effective investigation of the reported events leading to the prosecution and punishment of the material and intellectual authors of the human rights violations committed to the detriment of Martín Pelicó Coxic and his next of kin.
2. Effectively prevent the reemergence and reorganization of the Civil Self-defense Patrols.
3. Promote in Guatemala the principles set forth in the United Nations "Declaration of the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," and take the necessary measures to ensure respect for the freedom of expression of those who have undertaken to work for the respect of fundamental rights and to protect their lives and personal integrity.
4. Adopt all necessary measures to prevent the recurrence of similar acts, in accordance with the responsibility to prevent and to guarantee the fundamental rights recognized in the American Convention."
5. Comply with the obligations still pending in the area of reparations to the victim's next of kin.

647. After this report, the parties of the present case, on July 19, 2005, entered into an Agreement to Comply with the Recommendations of Report No. 48/03. The IACHR has been able to appreciate with satisfaction the major progress achieved in complying with the recommendations that were made, because of which, on October 26, 2006, at its 126th Regular Session, the Commission decided to not submit the case to the Inter-American Court of Human Rights and rather to follow up on compliance with the recommendations by means of the mechanism enshrined in Article 51 of the American Convention.

648. For this purpose, on March 8, 2007, Report No. 12/07 (Article 51 Report), where the IACHR repeated its recommendations to the State of Guatemala and also recommended that the obligations that are pending with respect to reparations for the next-of-kin of the victim should be complied with, was adopted.

649. Finally, on October 15, 2007, the IACHR approved Report No. 80/07, which provides for the publication of the previously mentioned reports. On this occasion, once again the Commission expressed its satisfaction at fulfillment of most of the commitments made in the Agreement to Comply with the Recommendations of Report No. 48/03, but it also reiterated to the State of Guatemala recommendations two and three as set forth in Report No. 12/07 and recommended that the investigation of the facts that were reported be completed impartially and

effectively investigated to bring to trial and punish the principal offenders and accessories who violated the human rights against Martín Pelicó Coxic and his next-of-kin.

650. By means of a communication dated November 22, 2010, the IACHR requested the parties to provide updated information on the status of compliance with the recommendations made for the present case.

651. In its reply of December 23, 2010, Guatemala supplied information concerning the two recommendations reiterated in Report 80/07, namely: i) prosecution and punishment of the material and intellectual authors of the human rights violations committed; and ii) adoption of State measures to avoid resurgence and reorganization of the PAC. On the first point, the Guatemalan State told the Commission that on July 18, 2007, the Criminal Court had acquitted Pedro Acabal Chaperón, who had been accused of the murder of Mr. Martín Pelicó Coxic; it went on to say that as of now, that decision was final. It also reiterated that the joint plaintiff and civil complainant in the case withdrew in favor of the accused, with the result that the case was dismissed. As to the second recommendation, the State reported that Decree No. 143-96 of November 28, 1996 had overturned Decree 19-86 of January 17, 1986, which had established the Civilian Self-Defense Patrols (PAC).

652. The State asked the Commission to take in consideration the efforts made to comply with the commitments undertaken upon signing the "Agreement on Compliance with the Recommendations made in Report No. 48/03."

653. In a communication dated December 21, 2010, the petitioners indicated that although the State of Guatemala had taken substantive measures to comply with the agreement on compliance with the Commission's recommendations, some aspects of the agreement were still pending. They wrote that the investigation had failed to make any substantive progress. The petitioners expressed their concern over the State's silence on the subject of the measures undertaken to conduct a diligent and effective investigation. As to the State's reference to the plaintiff's withdrawal from the case, the petitioners had previously reported that the action was taken because the family members were of the view that, after so much time, they would be unable to continue in the case. They added that the State nonetheless has an obligation to investigate, on its own initiative, the violations committed against Mr. Pelicó.

654. They also pointed out that nothing was done to provide a scholarship to Eliseo David Pelicó –the victim's son- even though this was one of the commitments the State had undertaken in the Agreement on Compliance with Recommendations.

655. Because of the above, the Commission concludes that the recommendations have been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.264, Report No. 1/06, Franz Britton (Guyana)

656. In Report No. 1/06, dated February 28, 2006 the Commission concluded that agents of the State security forces abducted and/or detained Franz Britton and that during the following six years his whereabouts have not been identified and that, as a result, Guyana violated the rights of Franz Britton to life, liberty, personal liberty, judicial protection, arbitrary arrest and due process of law, all recognized, respectively, in Articles I, XVIII, XXV, XXV and XXVI of the American Declaration.

657. The Commission issued the following recommendations to the State:

1. Carry out a serious, impartial and effective investigation by means of the competent organs, to establish the whereabouts of Franz Britton and to identify those responsible for his detention-disappearance, and, by means of appropriate criminal proceedings, to punish those responsible for such grave acts in accordance with the law.
2. Adopt the necessary legislative or other measures to prevent the recurrence of such events and provide, in all cases, the required due process and effective means of establishing the whereabouts and fate of anyone held in State custody.
3. Adopt measures to make full reparation for the proven violations, including taking steps to locate the remains of Franz Britton and to inform the family of their whereabouts; making the arrangements necessary to facilitate the wishes of his family as to an appropriate final resting place; and providing reparations for the relatives of Franz Britton including moral and material damages in compensation for the suffering occasioned by Mr. Britton's disappearance and not knowing his fate.

658. On November 2, 2007; November 4, 2008; November 12, 2009, and November 22, 2010 the Commission requested up-to-date information from the State and the petitioner regarding the compliance with the recommendations issued in this case. The Commission did not receive a response within the specified timeframe from either party.

659. Based on the information available, the Commission considers that compliance with the recommendations is pending. As a result, the Commission shall continue to monitor its compliance.

Case 12.504, Report 81/07 Daniel and Kornel Vaux (Guyana)

660. In Report 81/07 of October 15, 2007 the IACHR concluded that the State of Guyana is responsible for the infliction of violence by police officers on brothers Daniel and Kornel Vaux while in their custody; and for failing to accord a fair trial to the Vaux brothers, particularly in the treatment of the confession evidence by the courts of that country, which prevented them from fully contesting the voluntariness of the confession evidence tendered by the prosecution. Accordingly, the IACHR concluded that the State of Guyana violated the rights of the Vaux brothers under Articles XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man; and that execution of the Vaux brothers based upon the criminal proceedings for which they are presently convicted and sentenced would be contrary to Article I of the American Declaration.

661. On the basis of its recommendations, the IACHR recommended to the State that it:

1. Grant an effective remedy, which includes compensation for the maltreatment inflicted on the Vaux brothers; a re-trial of the charges against the Vaux brothers in accordance with the fair trial protections under the American Declaration, or failing that, an appropriate remission or commutation of sentence.
2. Adopt such legislative or other measures as may be necessary to ensure that criminal defendants are afforded access to evidence under the control of the State that they might reasonably require necessary to challenge the voluntariness of confession evidence.
3. Undertake an investigation to identify the direct perpetrators of the beatings inflicted on Daniel Vaux and Kornel Vaux while in custody to extract confessions and to apply the proper punishment under law;

4. Adopt such legislative or other measures as may be necessary to ensure that any confession of guilt by an accused is valid only if it is given in an environment free from coercion of any kind, in accordance with Article XXV of the American Declaration.

662. On November 22, 2010 the Inter-American Commission requested information from both parties about compliance with the recommendations set forth in aforementioned report, and established a one month deadline to that effect. The IACHR did not receive any responses from either party to these communications within the deadline. Based on these considerations, the Commission concludes that compliance with the aforementioned recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

Case 11.335, Report No. 78/02, Guy Malary (Haiti)

663. In Report No. 78/02 of December 27, 2002, the IACHR concluded that: a) the Haitian State violated the right to life enshrined in Article 4 of the American Convention to the detriment of Mr. Guy Malary; b) the Haitian State violated the right to a fair trial and the right to judicial protection enshrined in Articles 8(1) and 25 of the American Convention to the detriment of the next-of-kin of Mr. Guy Malary; and c) that these violations of human rights involves that the Haitian State breached the general obligation to respect and guarantee rights under Article 1(1) of the above-cited international instrument, to the detriment of Mr. Guy Malary and his next-of-kin.

664. The IACHR issued the following recommendations to the State:

1. Carry out a full, prompt, impartial, and effective investigation within the Haitian ordinary criminal jurisdiction in order to establish the responsibility of the authors of the violation of the right to life of Mr. Guy Malary and punish all those responsible.
2. Provide full reparation to the next-of-kin of the victim, *inter alia*, the payment of just compensation.
3. Adopt the measures necessary to carry out programs targeting the competent judicial authorities responsible for judicial investigations and auxiliary proceedings, in order for them to conduct criminal proceedings in the accordance with international instruments on human rights.

665. Despite repeated requests to both parties for information, most recently on November 12, 2009, neither of them has provided the Commission with up-dated information concerning compliance with the Commission's recommendations in Report No. 78/02.

666. Based upon the information available, the Commission considers that compliance with the Commission's recommendations is pending. As a result, the Commission shall continue to monitor its compliance.

Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley (Jamaica)

667. In Report No. 49/01 dated April 4, 2001 the Commission concluded that the State was responsible for: a) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with violations of Article 1(1) of the American Convention, by sentencing these victims to a mandatory death penalty; b) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 4(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide these victims with an effective right to apply for amnesty, pardon

or commutation of sentence; c) violating the rights of the victims in Case Nos. 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 7(5) and 7(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to promptly bring the victims before a judge following their arrests, and by failing to ensure their recourse without delay to a competent court to determine the lawfulness of their detention; d) violating the rights of the victims in Case Nos. 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delays in trying the victims; e) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the victims' conditions of detention; f) violating the rights of the victims in Case Nos. 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 8(2)(d) and 8(2)(e) in conjunction with violations of Article 1(1) of the Convention, by denying the victims access to legal counsel for prolonged periods following their arrests; and g) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to make legal aid available to these victims to pursue Constitutional Motions.

668. The IACHR issued the following recommendations to the State:

1. Grant the victims an effective remedy which included commutation of their death sentences and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5 and 8, in particular that no person is sentenced to death pursuant to a mandatory sentencing law.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4.6 of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.
4. Adopt such legislative or other measures as may be necessary to ensure that the victims' rights to humane treatment under Articles 5.1 and 5.2 of the Convention, particularly in relation to their conditions of detention, are given effect in Jamaica.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8.1 of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions.

669. By note dated January 22, 2007, the State informed the Commission that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been executed within a five-year period after sentence. Furthermore, the State expressed that it regarded the first recommendation as "vague and incoherent" considering that the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. According to the State, if the Commission's argument is that compensation is due because the State has not provided an effective remedy in death penalty cases, this point is unfounded because as a result of the decision in *Lambert Watson v. R* [2004] the mandatory death penalty was declared unconstitutional and that

the law was revised. Therefore, the State would only contemplate compensation for those persons given a mandatory sentence of death after the ruling in *Lambert Watson*, because to do otherwise, would be to apply the law retroactively.

670. Concerning the second recommendation, the State informed that it had adopted legislative measures to ensure that the mandatory death penalty is not imposed with amendments to the Offences Against the Persons Act 1992, the Parole Act 1978, the Criminal Justice [Reform] Act of 1978 and the Gun Court Act 1974, pursuant to the Offences Against the Persons (Amendment) Act 2005 and the Offences Against the Persons (Amendment) Act 2006. Specifically, the State indicated that the present legislation effectively discarded the two-classification of murder into categories of capital murder, which attracted an automatic and obligatory sentence, and non-capital murder, and, therefore, the sentence of death is now optional for all cases in which previously involved mandatory death sentences. In this regard, the State indicated that the court is mandated, before passing sentence, to hear submissions, representations and evidence from the prosecution and the defense in relation to the issue of the sentence to be passed. In addition, the State of Jamaica informed that whenever a sentence of life imprisonment is imposed, the court has the duty to specify the period of imprisonment that should be served before the offender is eligible for parole. The State similarly indicated that provisions have been made for a review of all mandatory sentences of death previously imposed under the Offences Against the Persons (Amendment) Act 1992 and that as a result, sentences have been quashed and a judicial determination has been made, or is to be made, as to the appropriate sentence to be imposed for each convict.

671. With regard to the Commission's third recommendation, the State informed that the Governor General is empowered under Section 90 of the Jamaican Constitution to grant pardon to any person convicted of any offence, grant respite to any person either indefinitely or for a specified period from the execution of any punishment imposed on that person, or, to substitute a less severe form of punishment for that imposed on any person. The Governor General acts in this on the recommendation of the Jamaican Privy Council under Section 91 of the Constitution. The State referred that the ruling of the Judicial Committee of the Privy Council in *Neville Lewis v. The Attorney General of Jamaica* [2000], regarding fair and proper procedures for the grant of mercy, has become part of Jamaican law, individuals are given notice of hearings and the opportunity to present submissions on their behalf. The State also pointed out that by virtue of the Offences Against the Persons (Amendment) Act 2005, there is no longer a mandatory sentence of death in Jamaica and that judicial consideration of submissions, representation and evidence, as to the appropriateness of the sentence to be passed, is required in all circumstances where a sentence of death may be imposed. Furthermore, the State indicated that persons sentenced to death in Jamaica have always enjoyed a right of appeal against sentence, which is evidenced by the several death row cases that have gone before the Court of Appeal and the Judicial Committee of the Privy Council. Appeal from a sentence of death can and has led to either confirmation or to a quashing of the sentence and the substitution of a more appropriate sentence. According to the State, it effectively guarantees persons condemned to death the right to seek a review of their sentence which can lead to the commutation of their sentence.

672. In respect of the Commission's fourth recommendation, the State pointed out that Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley are inmates that have benefited under the *Lambert Watson v. Jamaica* [2004]. The State indicated that as a result of the decision in *Lambert Watson* decision, all persons on "death row" were removed from "death row" and placed within general prison population, pending the outcome of the hearings as to the appropriateness of the death sentence previously imposed mandatorily. Furthermore, the State indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in

all correctional facilities and where necessary the Unit makes recommendations for systematic improvements.

673. Finally, concerning the fifth recommendation, the State indicated that it retained the view that judicial protections and fair hearing procedures are effectively guaranteed under the laws of Jamaica. As to the provision of legal aid assistance to persons wishing to bring Constitutional Motions, the State expressed it is not adverse to giving consideration to such a course of action but maintained, however, that this is not a requirement of Article 8 of the Convention.

674. The Commission points out that in its 2004 and 2005 and 2006 Annual Reports, the Commission stated there had been partial compliance with the Commission's first, second, and third recommendations. The Commission notes that the last information from the parties following its request for details on compliance with its recommendations was received on January 22, 2007, and that since then it has received no more up-to-date information. Based upon the latest information presented by the State, the Commission now considers that there has been compliance with the Commission's second recommendation with the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law. With respect to the remaining recommendations, however, the Commission notes that the latest communication presented by the State of Jamaica, for the most part, reiterates the information provided in its previous response considered by the Commission in its 2004 Annual Report.

675. On June 19, 2008, the petitioners for Kevin Mykoo sent a letter where they informed that their client expressed that the environment at his new prison, South Camp, is much better than the previous one. However, Mr. Mykoo raised the following issues that pertain to the recommendation on conditions of detention: water leaking through the roof of his cell < an infestation of red ants in the cell; and the lack of access to a dentist since 2005.

676. The IACHR requested updated information to both parties on November 4, 2008 and November 12, 2009, but neither of them replied within the established deadlines.

677. A new request for informatiios was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitoners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

678. In its January 2010 letter, the State of Jamaica reiterates its position with respect to compliance with each of the four recommendations, as it stated previously in the January 22, 2007 communication to the IACHR summarized above.

679. The Commission concludes that the State complied partially with the aforementioned recommendations. The IACHR will continue supervising until full compliance is reached.

Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)

680. In Report No. 50/01 dated April 4, 2001 the Commission concluded that the State was responsible for failing to respect the physical, mental and moral integrity of Damion Thomas and, in all of the circumstances, subjecting Damion Thomas to cruel or inhuman punishment or treatment, contrary to Articles 5(1) and 5(2) of the Convention, all in conjunction with violations of the State's obligations under Article 1(1) of the Convention.

681. The IACHR issued the following recommendations to the State:

1. Grant the victim an effective remedy, which included compensation.
2. Conduct thorough and impartial investigations into the facts of the pertinent incidents denounced by the Petitioners in order to determine and attribute responsibility to those accountable for the violations concerned and undertake appropriate remedial measures.
3. Review its practices and procedures to ensure that officials involved in the incarceration and supervision of persons imprisoned in Jamaica are provided with appropriate training concerning the standards of humane treatment of such persons, including restrictions on the use of force against such persons.
4. Review its practices and procedures to ensure that complaints made by prisoners concerning alleged mistreatment by prison officials and other conditions of their detention are properly investigated and resolved.

682. In a letter dated December 21, 2006, Mr. Damion Thomas' representatives indicated that, based upon information available to them and to the best of their knowledge, the State of Jamaica had not taken any steps to comply with the four recommendations contained in Report No. 50/01. By note dated January 22, 2007, the State indicated that it regarded the first recommendation as "vague and incoherent" considering that the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. As to the second recommendation, the State indicated that it had taken the initiative to bring the matter concerning Mr. Damion Thomas to the attention of the Office of the Public Defender, the one empowered under Jamaican law to receive and investigate complaints from inmates. With regard to the Commission's third recommendation, the State indicated that the Inspectorate Unit of the Correctional Services Department periodically undertakes awareness training exercises for all Correctional Officers to raise awareness of the standards of humane treatment set by the United Nations, international treaties and Jamaican law. Concerning the fourth recommendation, the State informed that periodic reviews of various internal and external prisoner complaints mechanisms continue to be a part of the agenda of the Jamaican Correctional services. The mechanisms include internal investigations of complaints by the superintendent of Correctional Services and the Inspectorate Unit of the correctional services.

683. On November 4, 2008, the IACHR requested updated information from both parties on compliance with the recommendations. The State did not respond, but the petitioners sent a letter dated November 17, 2008. In this communication, the petitioners indicated their position as follows:

1. Damion Thomas has not been granted any remedy by the State of Jamaica, nor has he been granted any compensation;
2. The State of Jamaica has not conducted any investigation into the facts of the incidents which we denounced to the Commission on behalf of Damion Thomas. As far as we are aware, responsibility has not been attributed to anyone in respect of the violations of Damion Thomas' human rights and no remedial measures have been undertaken;
3. The State of Jamaica has not carried out any review of the practices and procedures of officials involved in the incarceration and supervision of prisoners in Jamaica (in either St. Catherine District prison or the Horizon Remand Centre, to which Damion Thomas was transferred on the 3d March 2007). Neither are we aware of officials being given any training relating to the humane treatment of prisoners and restrictions on the use of force against them; and

4. The State of Jamaica has not undertaken any review of the practices and procedures through which prisoners may complain of any alleged mistreatment, or about their conditions of detention. We therefore understand that complaints of mistreatment by Jamaican prisoners, or complaints about their conditions of detention, are still not being properly investigated and resolved.

684. The IACHR requested updated information to both parties on November 12, 2009 and set a one month period to that effect. The petitioners responded on November 25, 2009 and reiterated their position as expressed in the four paragraphs above. For its part, the State did not respond within the referenced period.

685. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. The petitioners sent a communication on December 3, 2010, which reproduces literally the position they had expressed in their November 17, 2008 letter copied above. For its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

686. With respect to the first recommendation, the State reiterates in January 2010 its position set forth in the January 2007 letter referred to above, to which it adds that "the proper course of action is for Mr. Thomas to seek redress through the local courts" and that "domestic remedies have not been exhausted and that Mr. Thomas retains the option of obtaining legal aid under the Legal Aid Act if he is impecunious and believes that he has a good cause of action".

687. As to the second recommendation, the State indicates that it "has conducted thorough and impartial investigations into the allegations made by Mr. Thomas" and that it "is currently in the process of obtaining additional information". Regarding the third and fourth recommendation, the State of Jamaica reiterates its position expressed in the January 2007 letter, summarized above.

688. Based on the information at its disposal, the Commission considers that there has been partial compliance with the recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)

689. In Report No. 127/01, dated December 3, 2001, the Commission concluded that the State was responsible for: a) violating Mr. Thomas' rights under Articles 4(1), 5(1), 5(2) and 8(1) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Mr. Thomas' rights under Article 4(6) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by failing to provide Mr. Thomas with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Thomas' rights under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention; and d) violating Mr. Thomas' rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the manner in which the judge instructed the jury during Mr. Thomas' trial.

690. The IACHR issued the following recommendations to the State:

1. Grant the victim an effective remedy, which included a re-trial in accordance with the due process protections prescribed under Article 8 of the Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.

2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.

3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.

4. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which the victim is held comply with the standards of humane treatment mandated by Article 5 of the Convention.

691. By communication dated January 22, 2007, the State expressed its reservation with the recommendation that Mr. Joseph Thomas be granted an effective remedy which includes a retrial or in the alternative, his release and compensation. In this regard, the State indicated that after Mr. Joseph Thomas' first trial leading to his conviction, the case was brought before the Jamaican Court of Appeal and also before the Jamaican Privy Council Mercy Committee. According to the State, at both appellate hearings Mr. Thomas raised the issue of the judge's conduct at the summing up and the failure to hold an identification parade, and that Mr. Joseph Thomas was unsuccessful on both occasions. Given this situation, the State indicated that it can grant no further remedies to Mr. Joseph Thomas through the courts nor grant him compensation without a judicial order.

692. Concerning the second recommendation transcribed above, the State of Jamaica indicated it had adopted legislative measures to ensure that the mandatory death penalty is not imposed with amendments to the Offences Against the Persons Act 1992, the Parole Act 1978, the Criminal Justice [Reform] Act of 1978 and the Gun Court Act 1974, pursuant to the Offences Against the Persons (Amendment) Act 2005 and the Offences Against the Persons (Amendment) Act 2006. Specifically, the State informed the Commission that the pre-existing legislation classified all cases of murder into categories of capital murder, which attracted an automatic and obligatory sentence, and non-capital murder. The present legislative effectively discarded this two-tiered classification of murder and, therefore, the sentence of death is now optional for all cases in which previously involved mandatory death sentences. In this regard, the State indicated that the court is mandated, before passing sentence, to hear submissions, representations and evidence from the prosecution and the defense in relation to the issue of the sentence to be passed. In addition, the State informed that whenever a sentence of life imprisonment is imposed, the court has the duty to specify the period of imprisonment that should be served before the offender is eligible for parole. The State similarly indicated that provisions has been made for a review of all mandatory sentences of death previously imposed under the Offences Against the Persons (Amendment) Act 1992 and that a result, these sentences have been quashed and a judicial determination has been made, or is to be made, as to the appropriate sentence to be imposed for each convict.

693. With regard to the Commission's third recommendation, the State informed that the Governor General is empowered under Section 90 of the Jamaican Constitution to grant pardon to any person convicted of any offence, grant respite to any person either indefinitely or for a specified period from the execution of any punishment imposed on that person, or, to substitute a less severe form of punishment for that imposed on any person. The Governor General acts in this on the recommendation of the Jamaican Privy Council under Section 91 of the Constitution. The State referred that the ruling of the Judicial Committee of the Privy Council in *Neville Lewis v. The Attorney General of Jamaica* (2000), regarding fair and proper procedures for the grant of mercy, has become part of Jamaican law, individuals are given notice of hearings and the opportunity to present submissions on their behalf. According to the State, it effectively guarantees persons condemned to death the right to seek a review of their sentence which can lead to the commutation of their sentence.

694. Concerning the fourth recommendation, the State pointed out that Mr. Joseph Thomas is one of the inmates to benefit under the *Lambert Watson v. Jamaica* [2004]. The State indicated that as a result of the decision in *Lambert Watson* decision, all persons on "death row" were removed from "death row" and placed within general prison population, pending the outcome of the hearings as to the appropriateness of the death sentence previously imposed mandatorily. The State similarly referred that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been made effective within a five-year period after sentence. Finally, the State indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all correctional facilities and where necessary the Unit makes recommendations for systematic improvements.

695. In its 2004, 2006, 2007, 2008, and 2009 Annual Reports, the Commission stated there had been partial compliance with the Commission's second and third recommendations in Report No. 127/01. The Commission notes that the last information from the parties following its request for details on compliance with its recommendations was received on January 22, 2007, and that since then it has received no more up-to-date information. Based upon the latest information presented by the State, the Commission considers that there was compliance with the Commission's second recommendation with the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law. With respect to the remaining recommendations, however, the Commission notes that there is no updated information, since the request sent to both parties on November 12, 2009 was not responded by either of them within the established time period.

696. In its 2004, 2006, 2007, 2008, and 2009 Annual Reports, the Commission stated there had been partial compliance with the Commission's second and third recommendations in Report No. 127/01.

697. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

698. With respect to the first recommendation, the State reiterates its "reservation" and adds the following:

First, the State takes the position that concerns with respect to the conduct of any trial should be addressed by an appellate court, not the Commission. In this regard, the Commission is reminded that the Court of Appeal reviewed the Trial Judge's directions to the jury and found that the directions were "fair, balanced and presented with clarity to the jury." Secondly, having reviewed the recommendation of the Commission, the Jamaican Privy Council took the decision that the ruling of the Court of Appeal was satisfactory. Thirdly, the applicant's petition for special leave to appeal to the Judicial Committee of the Privy Council was denied notwithstanding the claim that there had been flaws in the judge's summing up.

699. As regards the second, third and fourth recommendations, the State also reiterates the position it expressed in its January 2007 submission to the IACHR, summarized above.

700. The Commission concludes that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)

701. In Report No. 58/02 dated October 21, 2002, the Commission concluded that the State was responsible for: a) violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Aitken, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Article 4(6) of the Convention in respect of Mr. Aitken, in conjunction with violations of Articles 1(1) and 2 of the Convention, by failing to provide him with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Aitken, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention; and d) violating Articles 8(1) and 25 of the Convention in respect of Mr. Aitken, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Aitken of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

702. The IACHR issued the following recommendations to the State:

1. Grant Mr. Aitken an effective remedy, which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.
4. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which Mr. Aitken is held comply with the standards of humane treatment mandated by Article 5 of the Convention.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions in accordance with the Commission's analysis in this report.

703. By note dated January 22, 2007, the State of Jamaica indicated that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been carried out within a five-year period after sentence. Furthermore, the State expressed that it regarded the first recommendation that compensation be granted to Denton Aitken, as "vague and incoherent" because the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. According to the State, if the Commission's argument is that compensation is due because the State has not provided an effective remedy in death penalty cases, this point is

founded on a false premise because as a result of the decision in *Lambert Watson v. Jamaica* [2004], the mandatory death penalty was declared unconstitutional in Jamaica and that the law of Jamaica was revised. Therefore, the State would only contemplate compensation for those persons given a mandatory sentence of death after the ruling in *Lambert Watson*, because to do otherwise, would be to apply the law retroactively.

704. Concerning the second recommendation transcribed above, the State of Jamaica indicated that it had adopted legislative measures to ensure that the mandatory death penalty is not imposed with amendments to the Offences Against the Persons Act 1992, the Parole Act 1978, the Criminal Justice [Reform] Act of 1978 and the Gun Court Act 1974, pursuant to the Offences Against the Persons (Amendment) Act 2005 and the Offences Against the Persons (Amendment) Act 2006. Specifically, the State informed the Commission that the pre-existing legislation classified all cases of murder into categories of capital murder, which attracted an automatic and obligatory sentence, and non-capital murder. The present legislative effectively discarded this two-tiered classification of murder and, therefore, the sentence of death is now optional for all cases in which previously involved mandatory death sentences. In this regard, the State indicated that the court is mandated, before passing sentence, to hear submissions, representations and evidence from the prosecution and the defense in relation to the issue of the sentence to be passed. In addition, the State informed that whenever a sentence of life imprisonment is imposed, the court has the duty to specify the period of imprisonment that should be served before the offender is eligible for parole. The State similarly indicated that provisions have been made for a review of all mandatory sentences of death previously imposed under the Offences Against the Persons (Amendment) Act 1992 and that as a result, sentences have been quashed and a judicial determination has been made, or is to be made, as to the appropriate sentence to be imposed for each convict.

705. With regard to the Commission's third recommendation, the State informed that, pursuant to a recommendation of the Jamaican Privy Council under Section 91 of the Constitution, the Governor General is empowered under Section 90 of the Jamaican Constitution to grant pardon to any person convicted of any offence, grant respite to any person either indefinitely or for a specified period from the execution of any punishment imposed on that person, or, to substitute a less severe form of punishment for that imposed on any person. The State referred that the ruling of the Judicial Committee of the Privy Council in *Neville Lewis v. The Attorney General of Jamaica* (2000), regarding fair and proper procedures for the grant of mercy, has become part of Jamaican law, individuals are given notice of hearings and the opportunity to present submissions on their behalf. According to the State, it effectively guarantees persons condemned to death the right to seek a review of their sentence which can lead to the commutation of their sentence.

706. With respect to the Commission's fourth recommendation, the State indicated that by virtue of the *Lambert Watson* decision, all persons on "death row" were removed from "death row" and placed within general prison population, pending the outcome of the hearings as to the appropriateness of the death sentence previously imposed mandatorily. The State also indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all correctional facilities and where necessary the Unit makes recommendations for systematic improvements.

707. Concerning the fifth recommendation, the State indicated that it retained the view that judicial protections and fair hearing procedures are effectively guaranteed under the laws of Jamaica. With regard to the provision of legal aid assistance to persons wishing to bring Constitutional Motions, the State expressed it is not adverse to giving consideration to such a course of action but maintained, however, that this is not a requirement of Article 8 of the Convention.

708. In its 2004, 2005, 2007, 2008 and 2009 Annual Reports, the Commission stated that there had been partial compliance with the first, second, and third recommendations in Report No. 58/02. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

709. With respect to the first recommendation, the State informs that the Governor General of Jamaica extended the prerogative of mercy to Mr. Aitken, on the advice of the Jamaican Privy Council and that, accordingly, his sentence was commuted to life imprisonment. The decision was taken pursuant to above mentioned ruling of the Judicial Committee of the Privy Council in *Pratt and Morgan v. the Attorney General of Jamaica*. As to the compensation to be granted to Mr Aitken, the State reiterates its concern "based on the Commission's failure to indicate the purpose for or the basis on which compensation is to be granted" and because it considers that the IACHR "also failed to articulate the principles which should govern such compensation".

710. As regards the second recommendation, the State reiterates the information submitted previously and summarized above, and concludes that it "complied fully with the above recommendation by adopting legislative measures to ensure that the mandatory death penalty is not imposed in contravention of Articles 4, 5 and 8 of the Convention". The IACHR reiterates that there was compliance with the second recommendation by virtue of the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law.

711. With respect to the third, fourth and fifth recommendations, the State also reiterates the position it expressed in its January 2007 submission to the IACHR, summarized above.

712. The Commission concludes that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)

713. In Report No. 76/02 dated December 27, 2003, the Commission concluded that the State was responsible for: a) violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of his treatment and conditions in detention; c) violating Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delay in trying Mr. Sewell; and d) violating Articles 8(1) and 25 of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Sewell of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

714. The IACHR issued the following recommendations to the State:

1. Grant Mr. Sewell an effective remedy which includes commutation of sentence in relation to the mandatory death sentence imposed upon Mr. Sewell, and compensation in respect of the remaining violations of Mr. Sewell's rights under the American Convention as concluded above.

2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which Mr. Sewell is held comply with the standards of humane treatment mandated by Article 5 of the Convention.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions in accordance with the Commission's analysis in this report.

715. By note dated January 22, 2007, the State informed the Commission that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been carried out within a five-year period after sentence. Furthermore, the State expressed that it regarded the first recommendation that compensation be granted to Mr. Sewell, as vague and incoherent because the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. According to the State, if the Commission's argument is that compensation is due because the State has not provided an effective remedy in death penalty cases, this point is founded on a false premise because as a result of the decision in *Lambert Watson v. Jamaica* [2005] 1 A.C. 472, the mandatory death penalty was been declared unconstitutional in Jamaica and that the law of Jamaica was revised. Therefore, the State would only contemplate compensation for those persons given a mandatory sentence of death after the ruling in *Lambert Watson*, because to do otherwise, would be to apply the law retroactively.

716. Concerning the second recommendation transcribed above, the State of Jamaica indicated that it had adopted legislative measures to ensure that the mandatory death penalty is not imposed with amendments to the Offences Against the Persons Act 1992, the Parole Act 1978, the Criminal Justice [Reform] Act of 1978 and the Gun Court Act 1974, pursuant to the Offences Against the Persons (Amendment) Act 2005 and the Offences Against the Persons (Amendment) Act 2006. Specifically, the State informed the Commission that the pre-existing legislation classified all cases of murder into categories of capital murder, which attracted an automatic and obligatory sentence, and non-capital murder. The present legislative change effectively discarded this two-tiered classification of murder and, therefore, the sentence of death is now optional for all cases in which previously involved mandatory death sentences. In this regard, the State indicated that the court is mandated, before passing sentence, to hear submissions, representations and evidence from the prosecution and the defense in relation to the issue of the sentence to be passed. In addition, the State informed that whenever a sentence of life imprisonment is imposed, the court has the duty to specify the period of imprisonment that should be served before the offender is eligible for parole. The State similarly indicated that provisions have been made for a review of all mandatory sentences of death previously imposed under the Offences Against the Persons (Amendment) Act 1992 and that as a result, sentences have been quashed and a judicial determination has been made, or is to be made, as to the appropriate sentence to be imposed for each convict.

717. With regard to the Commission's third recommendation, the State pointed out that Mr. Sewell is one of the inmates to benefit under the *Lambert Watson v. Jamaica* [2005] 1 A.C. 472 decision. The State indicated that as a result of the decision in *Lambert Watson* decision, all persons on "death row" were removed from "death row" and placed within general prison

population, pending the outcome of the hearings as to the appropriateness of the death sentence previously imposed mandatorily. The State similarly referred that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been carried out within a five-year period after sentence. Finally, the State indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all correctional facilities and where necessary the Unit makes recommendations for systematic improvements.

718. Finally, concerning the fourth recommendation, the State indicated that it retained the view that judicial protections and fair hearing procedures are effectively guaranteed under the laws of Jamaica. As to the provision of legal aid assistance to persons wishing to bring Constitutional Motions, the State expressed it is not adverse to giving consideration to such a course of action but maintained, however, that this is not a requirement of Article 8 of the Convention.

719. The Commission notes that the last information from the parties following its request for details on compliance with its recommendations was received on January 22, 2007, and that since then it has received no more up-to-date information. Based upon the latest information presented by the State, the Commission considers that the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law has led to compliance with the Commission's second recommendation. With respect to the remaining recommendations, however, the Commission notes that there is no updated information, since the request sent to both parties on November 12, 2009 was not responded by either of them within the established time period.

720. In its 2004, 2005, 2007, 2008 and 2009 Annual Reports, the Commission stated that there had been partial compliance with the first, second, and third recommendations in Report No. 76/02. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

721. With respect to the first recommendation, the State reiterates the information regarding the effect of the *Pratt and Morgan* decision referred to above, and adds that "the Prerogative of Mercy was extended to Mr. Sewell, who had been on death row in excess of five years, and his sentence was commuted to life imprisonment". As to the compensation to be granted to Mr. Sewell, the State reiterates its position that Commission has not indicated "the purpose for or the basis on which compensation is to be granted" and that it considers the IACHR "also failed to articulate the principles which underlie such compensation".

722. As regards the second recommendation, the State reiterates the information submitted previously and summarized above, and concludes that it "complied fully with the above recommendation by adopting legislative measures to ensure that the mandatory death penalty is not imposed in contravention of Articles 4, 5 and 8 of the Convention". The IACHR reiterates that there was compliance with the second recommendation by virtue of the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law.

723. With respect to the third and fourth recommendations, the State also reiterates the position it expressed in its January 2007 submission to the IACHR, summarized above.

724. The Commission concludes that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)

725. In Report No. 41/04 of October 12, 2004, the IACHR concluded the State was responsible for: a) violating Mr. Myrie's rights under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his conditions of detention; b) violating Mr. Myrie's rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, due to the trial judge's failure to ensure that the jury was not present during the *voir dire* on Mr. Myrie's statement, and the trial judge's failure to postpone the trial when Mr. Myrie's counsel was not present and thereby denying Mr. Myrie full due process during his trial; c) violating Mr. Myrie's rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide him with the assistance of competent and effective counsel during his trial; and d) violating Mr. Myrie's rights under Articles 25 and 8 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide Mr. Myrie with effective access to a Constitutional Motion for the protection of his fundamental rights.

726. The IACHR issued the following recommendations to the State:

1. Grant Mr. Myrie an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Myrie's conditions of detention comply with international standards of humane treatment under Article 5 of the American Convention and other pertinent instruments, as articulated in the present report.
3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Article 25 of the Convention and the right to a fair hearing under Article 8(1) of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions.

727. By note dated January 22, 2007, the State expressed its reservation with the recommendation that Mr. Myrie be granted an effective remedy, which includes a re-trial or in the alternative, his release and compensation. In this regard, the State indicated that after Mr. Myrie's first trial leading to his conviction, the case was brought before the Jamaican Court of Appeal where Mr. Myrie was successful in having his sentence of death commuted to life imprisonment. Given this situation, the State indicated that it can grant no further remedies to Mr. Myrie through the courts nor grant him compensation without a judicial order. Furthermore, according to the State, the recommendation for compensation is vague and incoherent because the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. Concerning the Commission's second recommendation transcribed above, the State indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all correctional facilities and where necessary the Unit makes

recommendations for systematic improvements. With regard to the third recommendation, the State indicated that it retained the view that judicial protections and fair hearing procedures are effectively guaranteed under the laws of Jamaica. As to the provision of legal aid assistance to persons wishing to bring Constitutional Motions, the State expressed it is not adverse to giving consideration to such a course of action but maintained, however, that this is not a requirement of Article 8 of the Convention.

728. The last information from the parties following the IACHR's request for details on compliance with its recommendations was received on January 22, 2007, and since then it has received no more up-to-date information, despite requests by the IACHR in November 2008 and November 2009.

729. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

730. With respect to the first recommendation, in the January 5, 2010 submission, the State reiterates its reservations and adds that "the Executive cannot encroach on powers conferred on the judiciary by purporting to grant a further remedy to Mr Myrie- a matter which falls squarely within the purview of the Jamaican courts". The State also reiterates its position on the second and third recommendations, as summarized above.

731. The Commission, therefore, concludes that compliance with the recommendations of Report 41/04 remains pending. As a result, the Commission shall continue to monitor its compliance.

Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)

732. In Report No. 92/05, issued on October 24, 2005, the Commission concluded that the State was responsible for: a) violating Mr. Gayle's right to life under Article 4 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful killing at the hands of members of the Jamaican security forces; b) violating Mr. Gayle's right not to be subjected to torture and other inhumane treatment under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of the assault perpetrated upon him by State agents and its effects, which led to his death; c) violating Mr. Gayle's right to personal liberty under Article 7 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful detention and arrest on false charges; and d) violating Mr. Gayle's rights to a fair trial and to judicial protection under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to undertake a prompt, effective, impartial and independent investigation into human rights violations committed against Mr. Gayle and to prosecute and punish those responsible.

733. The IACHR issued the following recommendations to the State:

1. Grant an effective remedy, which includes the payment of compensation for moral damages suffered by Michael Gayle's mother and next-of-kin, Jenny Cameron, and a public apology by the State to the family of Michael Gayle.
2. Adopt such legislative or other measures as may be necessary to undertake a thorough and impartial investigation into the human rights violations committed against Mr. Gayle, for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations.

3. Adopt such legislative or other measures as may be necessary to prevent future violations of the nature committed against Mr. Gayle, including training for members of Jamaican security forces in international standards for the use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, summary executions and arbitrary detention, and undertaking appropriate reforms to the procedures for investigating and prosecuting deprivations of life committed by members of Jamaica's security forces to ensure that they are thorough, prompt and impartial, in accordance with the findings in the present report. In this respect, the Commission specifically recommends that the State review and strengthen the Public Police Complaints Authority in order to ensure that it is capable of effectively and independently investigating human rights abuses committed by members of the Jamaican security forces.

734. In communication dated December 29, 2006, the State indicated that compensation had already been paid to Michael Gayle's mother and next-of-kin, Jenny Cameron, and did not accept the Commission's recommendation that the matter of compensation be "revisited between the parties." The State specified that the matter was settled by arm's length negotiations, the sum offered was in keeping with Jamaican precedents and rules, and it was accepted by Ms. Cameron when she had the opportunity to challenge it. In addition, the State informed the Commission that a public apology was given by the Attorney General and Minister of Justice and was published in full in the Sunday Herald, March 14-20, 2004, under the heading "The Michael Gayle Case," and reported with substantial quotation in the Daily Gleaner, dated March 11, 2004, under the heading "Government 'regrets' Michael Gayle's Death." Again the State did not agree with the Commission's recommendation that this matter be "revisited between the parties." With regard to recommendation No. 2 transcribed above, the State informed the IACHR that thorough and impartial investigations were carried out in the Michael Gayle case. Additionally, the State indicated that training of members of the security forces is sufficient and appropriate to bring those members up to international standards and that it has in place appropriate procedures for the pursuit of against members of the security forces for wrongful killing, though there are significant concerns concerning the garnering and safeguarding of evidence in some cases. With respect to the strengthening of the Public Police Authority, the State informed that draft legislation concerning the creation of an investigative agency independent of the police force that will investigate matters concerning police abuse and related accusations brought against representatives is currently being discussed in various Ministries of Government. In a letter dated January 9, 2007, the Petitioners informed the Commission that the State had not taken any steps to comply with the Commission's recommendation transcribed above.

735. On February 27, 2009, the Petitioners submitted a communication where they expressed that the Jamaican State has failed to comply with the first of the recommendations, despite verbal and written requests from Jamaicans for Justice (JFJ) to the Prime Minister of that country. With respect to the second recommendation, the petitioners mention that the State has failed to "undertak[e] a thorough and impartial investigation into the specific human rights violations committed against Mr. Gayle, for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations". With respect to the third recommendation, they mention that the State of Jamaica is in the process of enacting legislation to create an Independent Commission of Investigation to investigate deaths, abuses and excesses by state agents. Further, the petitioners mention that draft legislation is also pending in the Jamaican Parliament for the following: the creation of an Office of the Special Coroner to conduct inquests in cases where deaths occur at the hands of State agents; and for establishing a whistleblower law as well as an Office of the Special Prosecutor to investigate and prosecute corruption. In the final comment regarding compliance with the third recommendation, the Petitioners indicate that steps have been taken to train police officers in human rights, with the participation of JFJ representatives. The petitioners consider that Jamaica has made some progress in complying with the third recommendation, and believe that there are indications that the Government is considering

compliance with the second recommendation. However, JFJ expresses that it “is not aware of any attempts to comply with recommendation two of the report”.

736. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners, but they had sent a letter previously, dated April 7, 2010, in response to the IACHR’s 2009 request for information. For its part, the State sent a communication dated December 15, 2010 in which it reiterates the contents of its January 5 and September 20, 2010 letters sent in response to the request for information that the IACHR had submitted in November of the previous year.

737. With respect to the first recommendation, the petitioners informed in their April 2010 submission that until that date compensation for moral damages had not been paid to the family of Michael Gayle and that “the sum already received is viewed as an inadequate remedy to compensate the family”. In response to this, the September 2010 letter from the State reiterates its position mentioned above, and it also cites certain precedents in the inter-American and European human rights systems to indicate that the payment of reparations to the family of Michael Gayle was “in excess of the range of awards given as compensation for human rights violation[s] in other jurisdictions, even in the instance of death. The State also adds that, in its view, “moral damages were not proved in the Michael Gayle Case at the time of arriving at the settlement for compensation” and that “the petitioner had full legal representation and accepted the settlement amount as full payment”. Regarding the public apology, the petitioners point out that the letter they sent to the Prime Minister of Jamaica requesting compliance with this point was responded with the copy of an opinion issued by the Solicitor General in the sense it was in the discretion of the Prime Minister to apologize, but cautioned that it could have implications in other cases. The petitioners indicate that the Prime Minister ultimately did not issue a public apology. For its part, the State reiterates that the apology was published in two newspapers and publicized on the radio; and that it “was sufficient given that there was an expression of regret and an acknowledgement of the wrong on the part of the State against Michael Gayle”.

738. With respect to the second recommendation, the petitioners mentioned in April 2010 that the State had made no indication whether there was an intention to “review the circumstances leading to the death of Michael Gayle or take any steps to identify, prosecute or punish his attackers” if the legislative reform pending at the time was eventually enacted. In turn, the State reiterates its position that “thorough and impartial investigations were undertaken in the Michael Gayle case”. The State adds that “section 94 of the Constitution provides that it is within the sole purview of the Director of Public Prosecutions (DPP) to institute and undertake criminal proceedings at any stage before judgment”; that “the Constitution clearly provides that the DPP is not subject to the direction or control of any person or authority in the exercise of his power” and that “in the instant case, the DPP ruled that there was insufficient evidence for prosecution”. In the submission it is also mentioned that “the Government should therefore not be asked to intervene in this or any other case” because this “would undermine the constitutional integrity of the DPP’s role”.

739. Regarding the third recommendation, the petitioners indicate that Jamaicans for Justice had participated, along with Amnesty International, in training sessions with the Jamaica Constabulary Force, and that since 2008 this force had “begun to incorporate human rights issues into their general training sessions”, which had “been geared towards focusing their officers on the importance of human rights through programs such as the use of Force and Firearms, Safe Encounter Training and Critical Incident Management”. The petitioners’ submission of April 2010 further points out that the Office of the Special Coroner was established pursuant to an amendment to the Coroner’s Act, but that the officer had not yet been appointed and that there were no facilities made available for the institution’s headquarters. In its September 2010 the State also informs that “interim facilities have now been identified for the Special Coroner’s Court and that the challenge being faced with respect to the Special Coroner is being addressed”. The State further

adds that a proposed “whistle blower” legislation is before a Joint Select Committee of Parliament under the name “The Protection Disclosures Act, 2010”, which has the intention to encourage and facilitate employees making disclosures of improper conduct in the public interest; to regulate the reception and investigation of disclosures of improper conduct; and to protect employees who make such disclosures. With respect to the Police Public Complaints Authority, the petitioners indicated that the Independent Commission of Investigations had been created to replace it. Despite describing the additional powers given by law to this new institution as “encouraging”, the petitioners express their concern that it may not receive enough resources to function properly and with effectiveness. The State, in turn, indicated its commitment to “ensuring that legislative measures are taken to prevent the future violations of the nature committed against Michael Gayle” and in that regard it points out that the Independent Commission of Investigations Act, 2010” was enacted and came into operation on April 15, 2010. As explained by the State:

The purpose of the independent Commission, which replaces the Police Public Complaints Authority, is to undertake independent investigations concerning actions by members of the security forces and other agents of the State that result in death or injury to persons or the abuse of the rights of persons.

An important feature of the Independent Commission is that it is not subject to the direction or control of any other person or authority pursuant to section 5 of the Act. This will ensure that the duties of the Commission are executed without interference.

Further, the function of the Independent Commission will not be performed by members of the security forces. In this regard, it removes the notion of the police being unwilling or incapable of conducting fair and impartial investigation[s] of other police and [places] this responsibility with persons who are not members of the security forces.

740. The Commission concludes that the State has complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)

741. In Report No. 61/06, adopted on July 20, 2006, the Commission concluded that the State was responsible for: a) violations of Mr. Tracey’s right to counsel and his right to obtain the appearance of persons who may throw light on the facts contrary to Article 8(2)(d), (e) and (f) of the Convention, in conjunction with Articles 1(1) and 2 of the Convention, in connection with the use of his statement against him at trial; b) violating Mr. Tracey’s right to a fair trial under Article 8(2)(c) of the Convention, in conjunction with a violation of Article 1(1) of the Convention, due to the inadequate time and means provide to Mr. Tracey and his attorney to prepare his defense; and c) violations of Mr. Tracey’s right to a fair trial and his right to judicial protection under Article 8(2)(e) and (h) and 25 of the Convention, in conjunction with a violation of Articles 1(1) and 2 of the Convention, due to the State’s failure to provide Mr. Tracey with legal counsel to appeal his judgment to a higher court.

742. The IACHR issued the following recommendations to the State of Jamaica:

1. Grant an effective remedy, which includes a re-trial of the charges against Mr. Tracey in accordance with the fair trial protections under the American Convention.
2. Adopt such legislative or other measures as may be necessary to ensure that indigent criminal defendants are afforded their right to legal counsel in accordance with Article 8.2.e of the American Convention, in circumstances in which legal representation is necessary to ensure the right to a fair trial and the right to appeal a judgment to a higher court.

3. Adopt such legislative or other measures as may be necessary to ensure that any confession of guilt by an accused is valid only if it is given in an environment free from coercion of any kind, in accordance with Article 8.3 of the Convention.

743. The IACHR sent requests for information to both parties in 2007, 2008 and 2009 but did not receive a response from either of them in the deadline established. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

744. With respect to the first recommendation, in its January 2010 letter the State of Jamaica informed the following:

By virtue of the nature of the constitutional framework governing the Westminster system of government in Jamaica, the State is unable to grant the remedy proposed by the Commission. Under the Westminster system, there is a clear separation of powers among the three branches of government, namely the Executive, the Legislature and the Judiciary. As a direct result of this constitutional structure, the Executive may not encroach on powers conferred on the judiciary by purporting to grant a further remedy to Mr. Tracey- a matter which falls squarely within the purview of the Jamaican courts.

The trial transcript suggests that the additional issues which were not raised by Mr. Tracey before the Court of Appeal would not be sufficient to form the basis for a retrial. It will be recalled that leave to appeal was denied because the Court of Appeal was of the view that all the legal issues had been properly dealt with and there was no point of law on which to appeal. A retrial would not cure this defect.

745. As regards the second recommendation, the State indicates that under the norm enacted in 2000, "legal aid may be granted to any person accused of a criminal offence where the person's means are insufficient to enable him to obtain legal services". It adds that "under the Legal Aid Scheme, every citizen of Jamaica who is detained or charged is entitled to Duty Counsel regardless of the offence he is charged with or the suspected offence". The State further informs that duty counsel is provided to persons held at a police station, lock up, correctional institution or any other place of detention before a court appearance. According to the State, the duty counsel "gives legal advice to the detained person; attends identification parades, if such parades are being held; is present at the taking of a cautioned statement, if one is to be taken or at a questioning by the police, whether the questioning will be recorded by the police or not; makes representation for bail at the lockup; and represents the accused as counsel on his appearance in court". Also, the Legal Aid Council has implemented a "Weekend Duty Counsel Programme" to strengthen access and increase the use of the Legal Aid System. The State indicates finally that the Council provides legal aid in the Resident Magistrates' Courts, Circuit Courts, Gun Courts and the Appeal Court; and that it also provides attorneys who conduct the defense on behalf of the accused when an application is made and granted by the appropriate authority.

746. The State also referred to the third recommendation in the following terms:

Under Jamaican law, a confession is only admissible if it is clearly established that it was made voluntarily. Where an accused alleges that a confession was made by force, a *voire dire* or a trial within a trial is held in which the issue of voluntariness of the statement must be determined by the trial judge. A confession will not be admitted into evidence unless the prosecution proves that it was made voluntarily.

Further, in order to ensure that statements from the accused are taken in an environment which is free from coercion, the Jamaica Constabulary Force Manual on Force Standing Orders, Volume II, Chapter 44 sets out mandatory procedures to be adopted by the police when taking statements of accused persons.

747. In light of the available information, the Commission considers that the State has complied with the second and third recommendations. As a result, the Commission shall continue to monitor compliance with the first recommendation.

Case 11.565, Report No. 53/01, González Pérez Sisters (Mexico)

748. In Report No. 53/01, of April 4, 2001, the Commission concluded that the Mexican State had violated, to the detriment of Ms. Delia Pérez de González and her daughters Ana, Beatriz, and Celia González Pérez, the following rights enshrined in the American Convention: the right to personal liberty (Article 7); the right to humane treatment and protection of honor and dignity (Articles 5 and 11); judicial guarantees and judicial protection (Articles 8 and 25); with respect to Celia González Pérez, the rights of the child (Article 19); all those in conjunction with the general obligation to respect and ensure the rights, provided for in Article 1(1) of the Convention. In addition, it concluded that the State was responsible for violating Article 8 of the Inter-American Convention to Prevent and Punish Torture.

749. According to the complaint, on June 4, 1994, a group of soldiers detained the González Pérez sisters and their mother Delia Pérez de González, in the state of Chiapas, to question them, and deprived them of their liberty for two hours. The petitioners allege that during that time the three sisters were separated from their mother, beaten, and raped repeatedly by the soldiers; that on June 30, 1994, the complaint was filed with the Federal Public Ministry (Office of the Attorney General, or "PGR" - Procuraduría General de la República) based on a gynecological medical exam, which was corroborated before that institution by the statements by Ana and Beatriz, the two older sisters; that the case was removed to the Office of the Attorney General for Military Justice ("PGJM": Procuraduría General de Justicia Militar) in September 1994; and that it finally decided to archive the case given their failure to come forward to make statements once again and to undergo expert gynecological exams. The petitioners argue that the State breached its obligation to investigate the facts alleged, punish the persons responsible, and make reparation for the violations.

750. The Commission made the following recommendations to the State:

1. Conduct a full, impartial and effective investigation in the ordinary criminal jurisdiction of Mexico to determine the responsibility of all those involved in violating the human rights of Ana, Beatriz and Celia González Pérez and Delia Pérez de González.
2. Provide adequate compensation to Ana, Beatriz and Celia González Pérez and to Delia Pérez de González for the human rights violations established herein.

751. The parties held a working meeting during the Commission's 138th session, where Commissioner Escobar gave the State one month in which to report on the reparations proposal that the petitioners presented back in 2001 and to report the measures it was taking to move jurisdiction to the regular criminal justice system.

752. By a communication dated August 11, 2010, the State reported that where the investigation into the case was concerned, the State had managed to get the petitioners to come forward to undergo the examinations necessary to enable the prosecuting authorities to "make a decision on the inquiry." As for the matter of reparations, it said that in March 2010, the Governor of Chiapas State, Juan Sabines Guerrero, expressed his willingness to collaborate with the Mexican

State in complying with the recommendations made in this case. It said that the reparations proposal submitted by the petitioners had been examined. The State submitted a counter-proposal in which it offered reparations that included a monetary sum for the González Pérez sisters totaling \$1,500,000.00 Mexican pesos, which would cover the pecuniary damages, *lucrum cessans* and non-pecuniary damages. The reparations also included measures of satisfaction, such as medical and psychological treatment, educational assistance, economic activation, and additional assistance. Later, in a communication dated December 30, 2010, the State, in collaboration with the Governor of Chiapas, offered to add reparations for Delia Pérez de González in the amount of \$ 500,000.00 Mexican pesos.

753. By communications dated November 4, 2010 and December 23, 2010, the petitioners indicated that the State had not reported what measures had been taken to have the regular criminal justice system carry the investigations in the case forward. The petitioners said that to the contrary, the State continued to allow the human rights violations committed by the military to go unpunished. They observed that the decision by the prosecuting authority to which the State alluded was not to bring criminal charges and to close the case, on the grounds that no violation of military discipline had been proved.

754. As for the obligation to make adequate reparations to the victims, the petitioners stated that the proposal the State of Chiapas put forward was incomplete and insufficient, because it did not include Mrs. Delia Pérez de González among the beneficiaries; they were therefore demanding that she be included in any reparations. They also indicated that the amounts offered should be increased. As for the "measures of satisfaction," the petitioners rejected them for the following reasons: in the case of the medical and psychological assistance, the victims decided on their own not to accept them because they did not meet the requirement of cultural appropriateness for the victims and their communities; as for the educational assistance, the victims did not accept the scholarships offered; regarding the proposed economic activation, the victims did not agree to the proposal that they join programs run by productive projects since such programs require fees to be paid over a specific period of time, which would saddle them with debt that they would then not be able to repay; as for the additional assistance, the petitioners stated that the assistance that these services provide to those who availed themselves of them did not meet the standard of cultural appropriateness for the victims and their communities; furthermore, those services and programs were public in nature and could not be counted as reparations in the case of the Tzeltal sisters and their mother since these were services to which every citizen was entitled.

755. The Commission observes that the investigation into this case is still with the military courts and the State has not complied with recommendation that it compensate the victims. It therefore concludes that the State has not complied with the recommendations outlined above. It will therefore continue to monitor its compliance.

Case 12.130, Report No. 2/06, Miguel Orlando Muñoz Guzmán (Mexico)

756. In Report No. 2/06 of February 28, 2006, the Commission concluded that the record in the case of Miguel Orlando Muñoz Guzmán did not contain elements that would allow one to attribute international responsibility to the Mexican State for his forced disappearance. Accordingly, it did not find the Mexican State responsible for the violation of the rights to life, humane treatment, or personal liberty, to the detriment of Miguel Orlando Muñoz Guzmán; nor of the right to humane treatment of his next-of-kin. On the other hand, the IACHR determined in that report that the Mexican State was responsible for the violation of the rights to judicial guarantees and judicial protection contained in Articles 8 and 25 of the American Convention, in connection with Article 1(1) of the same international instrument.

757. According to the complaint, Mr. Miguel Orlando Muñoz Guzmán, a lieutenant in the Mexican Army, disappeared on May 8, 1993, at the age of 25 years. He was last seen on that date by his comrades of the 26th Battalion of Ciudad Juárez, state of Chihuahua, Mexico, when he was preparing to go on leave. Lt. Muñoz Guzmán's family indicates that he was an officer devoted to his career, and therefore they call into question the credibility of the Army's official version, according to which he deserted and then traveled to the United States. They explain that to date no serious investigation has been carried out in Mexico to determine his whereabouts or to punish the persons responsible for his forced disappearance. They argue that the irregularities that have surrounded this case have been deliberate, with the intent of covering up the persons responsible. They also mention the fact that the family began to receive anonymous threats, which they attribute to members of the military, from the moment they went to report the facts to the authorities.

758. The IACHR made the following recommendations to the State:

1. Conduct a complete, impartial, and effective investigation in the Mexican general jurisdiction to determine the whereabouts of Miguel Orlando Muñoz Guzmán; and, if it were determined that he was a victim of forced disappearance, to sanction all those responsible for such crime.
2. Provide adequate compensation to the relatives of the family of Miguel Orlando Muñoz Guzmán for the human rights violations established herein.

759. By means of a communication dated November 22, 2010, the IACHR requested both parties to report on the measures taken to comply with these recommendations.

760. By means of a communication dated December 21, 2010, the petitioners mentioned the working meeting on the case, which was held on November 4, 2009 at the headquarters of the IACHR during its 137th Regular Session. They indicated that, at this meeting, the State committed to inform the IACHR about: 1) a detailed report of the activities that have been undertaken and will be done in the investigation by the Attorney General's Office of the state of Chihuahua, 2) the revision of the internal file in a meeting with the participation of the petitioners, the Attorney General's office of Chihuahua and the Secretariat of External Relations of Mexico, and 3) the calling to a meeting to discuss the prior points during the month of January 2010. The petitioners informed that such meeting never took place and that letters have been sent to the Government of Mexico asking this meeting to be scheduled, but no answer has been received. They added that the State has not provided any response regarding the proceedings of the petition either.

761. Because of the above, the Commission concludes that the State has not complied with the above-mentioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Petition 161-02, Report No. 21/07, Paulina del Carmen Ramírez Jacinto (Mexico)

762. On March 9, 2007, by Report No. 21/07, the Commission approved a friendly settlement agreement in the case of Paulina del Carmen Ramírez Jacinto. In summary, the petitioners alleged that on July 31, 1999, when Paulina del Carmen Ramírez Jacinto was 14 years old, she was the victim of a rape perpetrated in her home. The act was reported immediately to the Agency of the Public Ministry Specialized in Sexual Crimes and Family Violence. The petitioners alleged that the Public Ministry did not inform Paulina del Carmen Ramírez Jacinto or her mother of the existence of emergency oral contraception, and the rape led to a pregnancy. The petitioners state that under Article 136 of the Criminal Code of Baja California, Paulina del Carmen Ramírez Jacinto had the right to a legal abortion, upon authorization from the Public Ministry, since the rape is one of the exceptions in which abortion is not criminalized. Nonetheless, despite the insistence in

performing that procedure to which she had a right, representatives of the Public Ministry and of the hospitals to which Paulina Ramírez Jacinto was referred imposed various administrative and psychological barriers, providing false information on the procedure and its consequences, to the point of influencing her decision. Finally, the interruption of the pregnancy was not performed.

763. According to the friendly settlement agreement, the State undertook as follows:

ONE: The Government of Baja California shall hand over, on March 4, 2006, as consequential damages covering the legal expenses incurred in processing the case and the medical expenses incurred by Paulina del Carmen Ramírez Jacinto and I. R. J. (sic) as a result of the incident, the amount of \$60,000 (sixty thousand pesos).

TWO: Paulina del Carmen Ramírez Jacinto acknowledges that the Government of Baja California gave to her, in June and August 2001, as assistance for maintenance expenses and assistance with spending on necessities and school supplies, the amount of \$114,000 (one hundred and fourteen thousand pesos).

THREE: Paulina del Carmen Ramírez Jacinto acknowledges that the Government of Baja California gave to her, in June 2001, as support for housing expenses, the amount of \$220,000 (two hundred and twenty thousand pesos).

FOUR: Both Paulina del Carmen Ramírez Jacinto and I. R. J. (sic) shall be provided with health services by the Social Services and Security Institute of the Government and Municipal Workers of Baja California State (ISSSTECALI), in which they are both enrolled as of March 13, 2006. For this purpose, the head of ISSSTECALI's Department of Enrollments and Entitlements shall be the agent of record on behalf of the Government of Baja California.

Said health services shall be given to Paulina del Carmen Ramírez Jacinto and to I. R. J. (sic) on a continuous and permanent basis until I. R. J. (sic) reaches adult age or, should I. R. J. (sic) decide to pursue higher or university studies, until he concludes his higher education.

FIVE: Psychological care for I. R. J. (sic) and Paulina Ramírez Jacinto shall be provided by the specialists of the Mental Health Center of the Baja California State Health Secretariat. For this purpose, they shall be assigned an account executive and they may avail themselves of those services whenever needed at any time following the signature of this agreement.

The account executive to be appointed on March 13, 2006, shall be the head of the Psychology Department of the Mental Health Center, who shall receive them at the premises of that Center (Calle 11 & Río Papaloapan S/N, Fraccionamiento Viña Verde, in Mexicali, Baja California).

SIX: The Government of Baja California shall provide I. R. J., at the start of each academic year, with school supplies, enrollment fees, and text books up to and including the high school level. For this purpose, it will grant, in coupons, at the start of each school year, the amount of \$5,290 (five thousand two hundred and ninety pesos), through the offices of the State Secretariat for Education and Social Welfare.

The school supplies to be given to I. R. J. (sic) are those set out in the "List of school supplies" (Annex 1) and any others added to that list over time by the State Secretariat for Education and Social Welfare.

In order for these items to be provided on a timely basis, Paulina del Carmen Ramírez Jacinto shall report to the offices of the relevant school level section in the two weeks prior to the start of the corresponding school year, so she can be given the aforesaid amount.

The Government of Baja California agrees to provide I. R. J. (sic), should he decide to continue with higher or university studies following the conclusion of his high school or vocational education, with the corresponding studies at a public institution. The support shall

consist of enrollment fees, transportation, and academic supplies for as long as he continues to obtain passing grades in his studies. This support shall increase over time in accordance with the needs of I. R. J. (sic) and taking into consideration the inflation index published by the Bank of Mexico.

SEVEN: On January 15, 2006, the Government of Baja California handed over, as a one-off presentation, a computer and printer.

EIGHT: On March 4 the Government of Baja California will hand over the sum of \$20,000.00 (twenty thousand pesos) through the State Social Development Secretariat's Productive Projects program, to help Paulina del Carmen Ramírez Jacinto in setting up a microenterprise. In implementing this project, she will receive direct assistance from the aforesaid Productive Projects office.

These advisory services shall be provided by the productive projects director of the Social Development Secretariat, at its premises located on the second floor of the executive branch building (Calzada Independencia No. 994, Civic and Commercial Center, Mexicali, Baja California). This assistance shall be provided in three-hour sessions over four weeks (for a total of four sessions) and shall commence once this agreement has been signed.

NINE: The Government of Baja California shall deliver to Paulina Ramírez on March 31, 2006, the sum of \$265,000 (two hundred and sixty-five thousand pesos) as a one-off payment for moral damages.

TEN: The Government of Baja California offered a Public Acknowledgement of Responsibility in accordance with the terms set out in the documents attached to this agreement, published in the local newspapers *La Voz de la Frontera* and *La Crónica* on December 30, 2005, (Annex 2) as well as in the Official Gazette of the State of Baja California on February 10, 2006 (Annex 3).

ELEVEN: The Government of Baja California, through the Directorate of Legislative Studies and Projects, shall submit to and promote before the State Congress the legislative proposals submitted by the petitioners and agreed on with the state government.

For this purpose a working committee was set up, comprising both parties; this committee is currently working on a final proposal, which is to be presented no later than the last day of April, 2006. Once the legislative proposal agreed on by the parties has been made available, it will be submitted to the Baja California State Congress on May 16, 2006 (Annex 4; draft under analysis by the parties).

As regards the proposed amendment of Article 79 of the Regulations of the Organic Law of the +Office of the Attorney General for Justice and the proposed circular from the Health Secretariat, the Government of the State of Baja California agrees, within the confines of its competence and powers, to begin the corresponding legal formalities as requested by the petitioners during the first half of April 2006 (Annexes 5 and 6).

Additionally, the local government agrees to schedule the training courses to be conducted by the petitioners, as agreed on at the technical analysis meeting held in Mexicali, Baja California, on January 12, 2006.

TWELVE: The Mexican State, through the Health Secretariat, agrees to:

1. Conduct a national survey, involving state representation, to assess the enforcement of Official Mexican Standard NOM 190-SSA1-1999 regarding medical assistance in cases of domestic violence, and to measure progress with the implementation of the National Program for the Prevention and Attention of Domestic, Sexual, and Violence against Women.
2. Update the aforesaid Official Standard, to expand its goals and scope and to expressly include sexual violence occurring outside the family context. To this end, the

petitioners shall be given the preliminary draft of the amendments to the Standard, so they can present whatever comments they deem relevant to the National Consultative Committee for Standardization and Disease Control and Prevention.

3. Draw up and deliver a circular from the federal Health Secretariat to the state health services and other sector agencies, in order to strengthen their commitment toward ending violations of the right of women to the legal termination of a pregnancy, to be sent out no later than the second half of March 2006.

4. Through the National Center for Gender Equality and Reproductive Health, conduct a review of books, indexed scientific articles, postgraduate theses, and documented governmental and civil society reports dealing with abortion in Mexico, in order to prepare an analysis of the information that exists and detect shortcomings in that information, to be delivered to the petitioners in November 2006.

764. On March 11, 2008, a working meeting was held with the parties. At that meeting the parties agreed that the following points needed follow-up in relation to the friendly settlement agreement:

- School Support: The sum already set in the agreement shall be paid, for which the government of the State shall develop a mechanism to ensure it is handed over on a timely basis, which will be within 30 days of the beginning of the school year.
- Legislative Reform: The State will seek to foster lobbying of the new local congress to encourage the amendment of Article 136 of the local Criminal Code, Article 20 (f, XI) of the Code of Criminal Procedure, and add 22 bis and 22 bis 1 of the health law.
- Training: The State will seek to take initiatives with the appropriate offices to hold training courses, after receiving a proposal from the petitioners.
- Circular: The State will seek, with the appropriate offices, to see to it that the local circular is published in the official gazette of the State. Both parties undertake to continue a dialogue on this point of the agreement.
- Productive Project: The State shall inform the petitioners on implementation of this point, and a copy of the permit will be given to them. The State will take up anew the commitment to give the technical training course for the productive project.

765. The Commission requested updated information from the parties in a letter dated November 23, 2010.

766. The State told the Commission that it had complied with the commitments stemming from the agreement and asked the Commission to acknowledge the willingness and spirit of collaboration the State had conveyed in its October and December 2009 responses.

767. As for the schooling-related assistance, the State again made the point that it was in full compliance with the terms of the friendly settlement agreement on this point.

768. As for lobbying for legislative reform, the State asserted that the petitioners agreed not to pursue this point further. On the matter of training, the State reported that it was ready and willing to implement the courses and asked the Commission to urge the petitioners to explain the barriers they allege they encountered when two seminar workshops were given in 2007 and 2008.

769. The State said that the Circular issued by the Secretary of Health on October 4, 2006 need not be published in the State's Official Gazette since, as the circular states, it concerns

provisions contained in laws already in force and which were duly published when they took effect. The State believes that it has fully complied with this item of the agreement.

770. As for the productive project, the State reported that the Government of Baja California State has always been willing to help Mrs. Paulina del Carmen Ramírez Jacinto get her business licensed and a permit for the property where she is operating. It also promised to waive the fees that are owed to the State and even pay the municipal authority for the land-use permit.

771. As for updating Mexican official norm NOM-190-SSA1-1999, the State indicated that the petitioners were of the view that this item in the agreement had been complied with.

772. For their part, in a communication dated April 21, 2010, and another dated December 28, 2010, the petitioners reported that while schooling related assistance had thus far been provided, it reportedly had not been done on time in previous years. They said it was troubling that no mechanism had been devised to ensure compliance with this point in the future.

773. On the matter of legislative reform, the petitioners reported that all the State had done was send a couple of memoranda to the Baja California legislature; nonetheless, they had agreed not to pursue this matter further in order to concentrate on compliance with the other points in the agreement.

774. As for the training, the petitioners said that they were willing to sit down with the Government of the State to agree upon a new proposed timetable to organize training with officials from the state Secretariat of Health and that the person the state designated should take this commitment seriously and organize the attendance of the personnel involved in decisions related to the legal interruption of a pregnancy, publicize the training in advance and the topics to be covered, provide the venue and appropriate materials, coordinate the agenda for the training and ensure the trainers' integrity.

775. The petitioners asserted that the State had to take steps to ensure that the Baja California circular titled "General Guidelines for Organizing and Operating Health Services related to the Interruption of Pregnancy in the State of Baja California," issued by that state's Secretariat of Health is published in the Baja California State official gazette, as required under the terms of the agreement. This, the petitioners said, was an important step to be taken to formalize the procedure to be followed to obtain access to legal abortion.

776. As for the productive project, the petitioners reported that they had to take the initiative and incur expenses in order to get Paulina full access to the productive project, which they believed was contrary to the State's obligation under the agreement. They reported that the land-use permit was still pending.

777. As for the amendment to update Mexican Official Norm NOM-190-SSA1-1999, the petitioners indicated that this point was deemed to have been complied with in 2009, despite the fact that the language used in the norm had left gaps and created ambiguities that could be used to make it more difficult for women to exercise their rights.

778. The Commission concludes that the State has complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 11.822, Friendly Settlement Report No. 24/09, Reyes Penagos Martínez *et al.* (Mexico)

779. On March 20, 2009, in Report No. 24/09, the Commission approved a friendly settlement agreement for the case of Reyes Penagos Martínez, Enrique Flores González and Julieta Flores Castillo. The complaint the petitioners filed was based on the victims' alleged unlawful detention, the acts of torture to which they were reportedly subjected and the alleged extrajudicial execution of Mr. Reyes Penagos Martínez. Summarizing, the petitioners reported that the victims were detained on December 16, 1995, when a protest sit-in organized on the *ejido* of Nueva Palestina was forcibly broken up; in the days following their arrest, the victims were tortured. In the case of Mrs. Flores Castillo, the petitioners added that she had also been raped. In the early morning hours of December 18, Mr. Reyes Penagos Martínez was taken to an unknown location. Some hours later, his lifeless body was found near Jaltenango. The petitioners asserted that Enrique Flores González and Julieta Flores Castillo were released two months later. The petitioners stated that a preliminary inquiry was launched by the Office of the Attorney General of the State of Chiapas to look into Mr. Reyes Penagos Martínez' detention and subsequent death. However, the petitioners were of the view that the investigation was riddled with problems and not properly carried out.

780. By an agreement signed on March 1, 1999, the Mexican State undertook the following:

- a) "To investigate the events of which Mr. Reyes Penagos Martínez was victim, bringing the persons responsible to trial, so that they may be punished in keeping with the final judicial resolution.
- b) To continue the investigations and, in due course, bring the corresponding criminal actions, based on the statements made by Enrique Flores and Julieta Flores and all other evidentiary elements for the acts of torture that they note they suffered. This is for the purpose of bringing to trial and punishing those who turn out to be responsible for these facts.
- c) To determine and deliver the amount of economic aid or compensation and reparation to the victims and their family members, with the participation of the petitioners...

781. Thereafter, in the "Agreement on Reparation for the Harm to the Victims and Their Next of Kin," signed on November 3, 2006, the parties agreed that:

"THIRD. Measures of Satisfaction and Guarantees of Non-Repetition. (...)

a) Public Recognition of the International Responsibility of the Mexican State

The State undertakes to make a public pronouncement in which it recognizes ITS RESPONSIBILITY IN the facts described in the first section, considering that the death of Reyes Penagos Martínez and the detention and torture of Julieta Flores Castillo and Enrique Flores González, committed by various public servants of the state of Chiapas, are imputable to it.

The State also undertakes to apologize publicly to the victims and their family members for the facts reported to the IACHR, which were the result of a violation of human rights.

This pronouncement may be made at the moment the payment is made to make reparation for the material and non-material injury agreed upon in the preceding paragraphs.

Likewise, the State undertakes to publish the public pronouncement in two local newspapers.

b) Investigation and punishment of the persons responsible

In addition, the State undertakes to continue the investigations until attaining the sanction of the persons responsible for those crimes, through a serious and impartial investigation according to the international human rights standards, for the purpose of avoiding their re-victimization due to lack of access to justice.

[...]

SIXTH. Material injury. [...]

In this regard, the following sums have been agreed upon:

| Beneficiary | For | Amount |
|-----------------------------|-----------------|-------------------------|
| 1. Penagos Roblero family * | Actual damages | \$ 52,548.00 MN |
| | Lost profit | \$ 105,354.00 MN |
| | SUBTOTAL | \$ 157,902.00 MN |
| 2. Julieta Flores Castillo | Actual damages | \$ 52,548.00 MN |
| | Lost profit | \$ 12,640.00 MN |
| | SUBTOTAL | \$ 65,187.00 MN |
| 3. Enrique Flores González | Actual damages | \$ 52,548.00 MN |
| | Lost profit | \$ 12,640.00 MN |
| | SUBTOTAL | \$ 65,187.00 MN |
| | TOTAL 1 | \$ 288,278.00 MN |

SEVENTH. Non-material injury. [...]The sums agreed upon are as follows:

| Beneficiary | For | Amount |
|----------------------------|---------------------|-------------------------|
| 1. Penagos Roblero family | Non-material injury | \$ 342,098.00 MN |
| 2. Julieta Flores Castillo | Non-material injury | \$ 228,951.00 MN |
| 3. Enrique Flores González | Non-material injury | \$ 228,951.00 MN |
| | TOTAL 2 | \$ 800,000.00 MN |

[...]

NINTH. Considering the changes in the living conditions of the victims and their family members, the Office of the Attorney General of Chiapas undertakes to take whatever efforts necessary, before the competent authorities, so that scholarships be granted to the three youngest children of Mr. Reyes Penagos. While the Office of the Attorney General cannot guarantee that the result of those efforts will be positive, it nonetheless expresses its commitment to diligently pursue such requests, and to seek a favorable outcome for the children of Mr. Reyes Penagos.

TENTH. Along the same lines, the State undertakes to make efforts for the beneficiaries to obtain medical insurance.

782. In its Report No. 24/09, the Commission examined the measures taken by the Mexican State and acknowledged compliance with the obligations undertaken in regard to: i) recognition of the state's responsibility; ii) publication of the act of public recognition of state responsibility; iii) payment of pecuniary damages, and iv) access to medical insurance for Enrique Flores and Julieta Flores. In that report the Commission decided as follows:

"2. To urge the State to take the measures necessary to carry out the commitments pending, in particular the obligation to investigate, prosecute and punish the persons responsible for the unlawful detention, torture and extrajudicial execution of Mr. Reyes Penagos Martínez and the unlawful detention and torture of Mr. Enrique Flores and Ms. Julieta Flores."

783. On December 1, 2010, the IACHR asked the parties to supply updated information regarding the status of compliance with the pending items.

784. In a communication dated December 31, 2010, the petitioners reported that they had no information suggesting that the recommendations had been complied with, or that any significant progress had been made in that direction. Mexico, for its part, did not reply to the Commission's request.

785. The Commission therefore concludes that the friendly settlement agreement has been partially complied with. Accordingly, the Commission will continue to monitor the pending items.

Case 12.228, Report No. 117/09, Alfonso Martín del Campo Dodd (México)

786. In its Report No. 63/02 of October 22, 2002, the IACHR concluded that the Mexican State was responsible for violation of articles 5, 7, 8(1), 8(2), 8(3) and 25 of the American Convention, and articles 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture, all in violation of its duty to respect and ensure the Convention-protected rights, undertaken in Article 1(1) of the American Convention, to the detriment of Mr. Alfonso Martín del Campo Dodd. The Mexican State incurred responsibility for these violations by virtue of the fact that Mexico City's judicial police had arbitrarily detained the victim and then subjected him to torture and other forms of cruel, inhuman and degrading treatment, all in order to force him to confess to the double homicide of his sister and brother-in-law; the State also failed to observe the guarantees of due process in the trial prosecuted against Alfonso Martín del Campo Dodd, particularly in the case of his right to be presumed innocent, inasmuch as the various magistrates ignored his complaints of torture and gave credence to a confession made under torture.

787. The Commission made the following recommendations to the State:

1. Take the necessary measures to throw out the confession obtained by means of torture in facilities of the PGJDF on 30 May 1992 and all legal action deriving therefrom; review the entire judicial proceeding against the victim in this case; and order the immediate release of Alfonso Martín del Campo Dodd while such measures are in process.
2. Carry out a complete, impartial, and effective investigation to determine the culpability of all those who violated the human rights of Alfonso Martín del Campo Dodd.
3. Provide appropriate compensation to Alfonso Martín del Campo Dodd for the violations of [...] human rights established herein.

788. In view of the State's failure to comply with the recommendations and in application of Article 50 of the American Convention and Article 44 of its Rules of Procedure, the Commission decided to refer the matter to the Inter-American Court. The application was filed on January 30, 2003.

789. On September 3, 2004, the Inter-American Court issued its judgment on the Preliminary Objections in this case. There, it decided to admit the preliminary objection *ratione temporis* brought by the State and ordered the case closed.

790. Since that time the Commission undertook an analysis of the possible follow-up of the recommendations contained in its Report No. 63/02. After a careful examination of both sides' arguments, the Commission concluded that, under Article 51(2) of the Convention, the State was still bound by the obligation to comply with the Commission's recommendations.

791. The Commission reasoned that according to the principles of efficacy, utility and good faith that govern the obligations of states in human rights matters, should the Inter-American Commission's application not meet the formal requirements for submission to the Court, the Commission nonetheless retains its competence to exercise its authorities under Article 51 of the American Convention.⁵⁶ It also considered that "in the absence of a judgment on merit that considers "[i]f [the Court finds that] there has been a violation of a right or freedom protected by this Convention," pursuant to Article 63 of the American Convention, the State's treaty obligation to comply in good faith with issued recommendations, based on the responsibility established in Report No. 62/02, remains."⁵⁷

792. Therefore, on March 30, 2009, the IACHR adopted its Merits Report No. 33/09 (Article 51 Report), wherein it examined compliance with the recommendations made to Mexico and concluded that they had not been effectively implemented. Given this fact, it confirmed the conclusions it reached in Report 63/02 and reiterated its recommendations.

793. Finally, on November 12, 2009, the IACHR approved Merits Report No. 117/09 (Article 51 Report – Publication). There, the Commission again reiterated the conclusions adopted on the situation denounced by Mr. Alfonso Martín del Campo Dodd and its recommendations to the State.

794. In a communication dated November 22, 2010, the IACHR requested updated information from the parties concerning the status of compliance with the recommendations made in the present case.

795. In their December 31, 2010 reply, the petitioners stated that the Mexican State had still not complied with the Commission's recommendations. They also reported on the most recent juridical remedies attempted by the victim, and said that they had still not been decided. The petitioners indicated that the Commission's recommendations notwithstanding, Mr. del Campo Dodd was still in prison. The State, for its part, did not reply to the Commission's request.

796. The Commission therefore concludes that compliance with the recommendations cited above is still pending. Accordingly it will continue to monitor for their compliance.

Case 11.381, Report No. 100/01, Milton García Fajardo (Nicaragua)

797. In Report No. 100/01 of October 11 2001, the Commission concluded that the Nicaraguan State: (a) violated, to the detriment of Milton García Fajardo, Cristóbal Ruiz Lazo, Ramón Roa Parajón, Leonel Arguello Luna, César Chavarría Vargas, Francisco Obregón García, Aníbal Reyes Pérez, Mario Sánchez Paz, Frank Cortés, Arnoldo José Cardoza, Leonardo Solís, René Varela, and Orlando Vilchez Florez, the right to humane treatment, contained in Article 5 of the American Convention on Human Rights; and (b) violated, to the detriment of Milton García Fajardo and the 141 workers who are included in this complaint, the rights to judicial guarantees and judicial protection, and economic, social, and cultural rights, protected by Articles 8, 25, and 26 of that international instrument, in relation to the general obligation to respect and ensure the rights, provided for in Article 1(1) of the same Convention.

⁵⁶ IACHR, Report No. 117/09, Case 12.228, Merits (Publication), Alfonso Martín Del Campo Dodd, Mexico, November 12,2009, paragraph 110.

⁵⁷ IACHR, Report No. 117/09, Case 12.228, Merits (Publication), Alfonso Martín Del Campo Dodd, Mexico, November 12,2009, paragraph 112.

798. According to the complaint, on May 26, 1993, the customs workers went on strike after having sought unsuccessfully to negotiate, through the Ministry of Labor, a set of petitions that demanded, among other things, the nominal reclassification of the particular and common positions at the General Bureau of Customs, labor stability, and 20 percent indexing of salaries in keeping with the devaluation. The Ministry of Labor resolved, on May 27, 1993, to declare the strike illegal, arguing that Article 227 of the Labor Code did not permit the exercise of that right for public service workers or workers whose activity is in the collective interest. The petitioners also alleged that the Police made disproportionate use of force during the strike held by the workers on June 9 and 10, 1993.

799. The Commission made the following recommendations to the State:

1. To conduct a complete, impartial, and effective investigation to establish the criminal responsibility of the persons who inflicted the injuries caused to the detriment of Milton García Fajardo, Cristóbal Ruiz Lazo, Ramón Roa Parajón, Leonel Arguello Luna, César Chavarría Vargas, Francisco Obregón García, Aníbal Reyes Pérez, Mario Sánchez Paz, Frank Cortés, Arnoldo José Cardoza, Leonardo Solís, René Varela and Orlando Vilchez Florez, and to punish those responsible in accordance with Nicaraguan law.
2. To adopt the measures necessary to enable the 142 customs workers who lodged this petition to receive adequate and timely compensation for the violations of their human rights established herein.

800. On April 4, 2001, the Commission approved Report No. 56/01 (Article 51 Report), in which it reiterated for the Nicaraguan State the conclusions and recommendations contained in its report 80/00; on October 11, 2001, it adopted its Merits Report No. 100/01 (Article 51 Report – Publication), in which it ordered publication of the above-mentioned reports and reiterated yet again the conclusions and recommendations contained in Report 80/00.

801. Subsequent to these events, the State repeatedly told the Commission that the first recommendation could not be carried out, since criminal prosecution was time barred under Nicaragua's statute of limitations.

802. On the other hand, the Commission observes that in order to comply with the second recommendation, on June 7, 2007 the State and 113 victims signed an "Agreements and Commitments" (which another 20 workers later signed). In that agreement, Nicaragua pledged to pay the sum of 125 thousand *cordobas* to each of the 144 victims in this case, within a period of 5 years; to recognize contributions not drawn and contributed to the INSS for the 14 years not worked; and to make every effort possible to gradually rehire, somewhere in the public sector, those petitioners who were former Customs employees. On the other hand, the Commission understands that no agreement was reached with 6 of the petitioners.

803. On November 23, 2010, the Commission asked the State and the petitioners to send updated information on the status of compliance with the recommendations.

804. In their reply, the petitioners⁵⁸ expressed dissatisfaction with the amount of compensation established in the agreement (a figure that was reportedly negotiated by the State and certain "representatives" of the workers; the latter reportedly did not trust those "representatives" and had not been consulted on the matter). They also stated that Nicaragua had

⁵⁸ The co-petitioners, CEJIL and CENIDH, stated that they had "no observations regarding the information that will be included in Chapter III of the Commission's 2010 Annual Report in connection with [this] case." Communication dated December 22, 2010.

neither recognized nor indexed the social security payments and had not rehired the petitioners who were former Customs employees.

805. The IACHR values the agreement signed between the State and most of the victims in 2007. Nevertheless, it once again urges the State to present the parameters used to calculate the compensation figures stemming from this agreement. Regarding the investigation to determine the criminal liability of all the perpetrators of the injuries that were caused to the detriment of the victims, the IACHR reiterates to the State that it is its obligation to investigate and punish those responsible for the human rights violations.

806. The Commission concludes that the State has complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay)

807. In Report No. 77/02 of December 27, 2002, the Commission concluded that the Paraguayan State: (a) had violated, with respect to Waldemar Gerónimo Pinheiro and José Víctor Dos Santos, the rights to personal liberty and judicial guarantees, enshrined at Articles 7 and 8 of the American Convention, with respect to the facts subsequent to August 24, 1989; and (b) had violated, with respect to Waldemar Gerónimo Pinheiro and José Víctor Dos Santos, the rights of protection from arbitrary arrest and to due process established by Articles XXV and XXVI of the American Declaration on the Rights and Duties of Man for the events that occurred prior to August 24, 1989.

808. The IACHR made the following recommendations to the State:

1. Make full reparation to Mr. Waldemar Gerónimo Pinheiro, which includes appropriate compensation.
2. Make full reparation to Mr. José Víctor Dos Santos, which includes appropriate compensation.
3. Such reparation should be commensurate with the harm done, which implies that compensation should be greater for Mr. José Víctor Dos Santos, given that he spent eight years in prison, with no legal justification for his detention.
4. Order an investigation to determine who was responsible for the violations ascertained by the Commission and punish them.
5. Take the necessary steps to prevent such violations from recurring.

809. In 2010, the Commission requested updated information from the parties. In a note dated November 22, 2010, the State requested a two-month extension to answer the request for information concerning compliance with the recommendations, in part because it did not know where the petitioners were. By the completion of this Annual Report, the parties had not presented any information regarding compliance with the Commission's recommendations. Because of this, the Commission concludes that compliance with the recommendations continues to be pending. As a result, the Commission shall continue to monitor its compliance.

Case 11.607, Report No. 85/09, Víctor Hugo Maciel (Paraguay)

810. In Report No. 85/09 of August 6, 2009, the Commission concluded that the Paraguayan State had violated the right to personal liberty, the right to humane treatment, the right to life, children's right to special measures of protection, the right to judicial protection and the right to judicial guarantees, recognized, respectively in articles 7, 5, 4, 19, 25 and 8 of the American Convention. Summarizing, they alleged that Víctor Hugo Maciel, a child 15 years of age, was recruited on August 6, 1995, to perform Compulsory Military Service (SMO) in the Paraguayan Army, even though his parents expressly objected; he died on October 2, 1995, as a result of excessive physical exertion, known in Paraguay as "flaying", a punishment for a mistake made during the so-called "closed drill." The petitioners stated that Maciel, a minor, was suffering from Chagas disease in its chronic stage, the most evident symptoms of which are heart irregularities. The petitioners alleged that a summary inquiry was launched in the military courts, and the case was dismissed on December 4, 1995. Another inquiry was underway in the regular court system, because of the media attention that the case had received and the interest shown by members of the Senate Human Rights Commission. Even so, that inquiry did not move forward.

811. On March 8, 2005, the Inter-American Commission on Human Rights adopted Report No. 34/05, pursuant to Article 50 of the American Convention. The Paraguayan State was notified on April 20, 2005, and given two months to comply with the recommendations. In a communication dated June 17, 2005, the State requested that the time period established in Article 51(1) of the American Convention be suspended and formally requested the possibility of seeking a compliance agreement with the petitioners based on its acknowledgment of its international responsibility for the facts that gave rise to this case, which was accepted by the petitioners. On March 22, 2006, the petitioners and the State signed a friendly settlement agreement.

812. In Report No. 85/09, the Commission concluded that despite the substantial progress made to comply with the March 22, 2006 Compliance Agreement, the State had only partially complied with the recommendation made by the IACHR in Report No. 34/05 concerning the State's obligation to investigate the facts denounced. The Commission therefore recommended to the Paraguayan State the following:

1. That it complete a full, fair and effective investigation of the facts of this case for the purpose of trying and punishing the material and intellectual authors of the human rights violations committed to the detriment of Víctor Hugo Maciel Alcaraz.

813. In 2010, the Commission asked the parties to provide updated information on the status of compliance with this recommendation. In a note dated December 29, 2010, the State reported that the case titled "Complaint entered by the Attorney General of the State in connection with the Death of Conscript Víctor Hugo Maciel Alcaraz. Case No. 397/95" was with Examining and Sentencing Court No. 3, awaiting the testimony of four witnesses, as well other evidence.

814. For their part, in a communication dated December 21, 2010, the petitioners asserted that the State had not taken any steps to conduct a useful investigation to determine the identity of those responsible for the events that resulted in Víctor Hugo Maciel's death. It had thus failed to comply with the Commission's recommendation. The petitioners pointed out that four years had passed since the summary proceeding was reopened, yet the procedures and proceedings had been inadequate, barely functional and without any strategic direction encompassing every aspect of the case.

815. Based on the information supplied by the parties, the Commission observes that its recommendation regarding investigation, prosecution and punishment of the human rights violations committed against Víctor Hugo Maciel has not yet been complied with. The Commission therefore

concludes that the Compliance Agreement that the parties signed on March 22, 2006, has been only partially carried out.

Case 11.800, Report No. 110/00, César Cabrejos Bernuy (Peru)

816. In its Report No. 110/00 of December 4, 2000, the IACHR concluded that the Peruvian State had continuously breached the judgment of the Supreme Court of Peru of July 5, 1992, which ordered the reinstatement of Mr. Cesar Cabrejos Bernuy to his position as colonel in the National Police of Peru, and that thereby it had violated, to the detriment of Mr. Cabrejos Bernuy, the right to judicial protection enshrined in Article 25 of the American Convention and the generic duty of the State to respect and ensure the rights of persons under its jurisdiction enshrined in Article 1(1) of the Convention.

817. The Commission made the following recommendations to the State:

1. To offer adequate compensation to Mr. César Cabrejos Bernuy, pursuant to Article 63 of the American Convention, including the moral aspect as well as the material one, for the violation of his human rights, and in particular,
2. To carry out the Judicial Order issued by the Constitutional and Social Chamber of the Supreme Court of Justice on June 5, 1992, reinstating Mr. César Cabrejos Bernuy in his position as Colonel in the National Police, paying him his salary and other remuneration owing to him but not paid since the date of his enforced retirement, and granting him all other benefits to which he is entitled as a Colonel of the Police, including, as appropriate, those relating to his pension; or, as a second resort, to pay him the salary and other remuneration to which he would be entitled as a Colonel of the National Police, until he is of legal retirement age, paying also in this case his retroactive salary from the date of his forced retirement, and granting him all the other economic benefits to which, as a Colonel of the National Police, he is entitled, including, as appropriate, those relating to his pension.
3. To conduct a full, impartial, and effective investigation of the facts, in order to establish responsibilities for the failure to carry out the ruling of the Supreme Court of Justice of June 5, 1992, and to pursue such criminal, administrative, and other procedures as necessary to apply the appropriate punishment to those responsible, as befits the gravity of the violations in question.

818. First, in relation to implementation of the recommendations, it should be recalled that with the communication of December 3, 2003, the Peruvian State reported that by Supreme Resolutions Nos. 0716-2001-IN/PNP of July 10, 2001, and 1158-2001IN/PNP of November 13, 2001, it was ordered that Mr. César Cabrejos Bernuy be reinstated and given recognition for the time of service computed from the time he was retired, i.e. from March 26, 1997 until July 10, 2001.

819. On October 31, 2008, the Commission asked both parties to submit up-to-date information on the compliance with the above-mentioned recommendations. The Commission did not receive any response within the time period set. On November 10, 2009, it again requested up-to-date information. Only the Peruvian State presented observations.

820. On November 11, 2010, the Commission requested information on the progress made with implementation of the recommendations.

821. In a note received on December 10, 2010, the State asserted that on March 11, 2003, the Peruvian National Police acknowledged that Mr. Cabrejos Bernuy had 38 years, 10 months of interrupted service and paid him a renewable retirement pension which was the equivalent of the full amount of remunerations for the rank of Colonel. As for the other

recommendations, the State asserted that the Ministry of the Interior was making the necessary arrangements and would send additional information to the Commission.

822. The petitioner did not provide updated information on the status of compliance with the recommendations made in Report No. 110/00. The Commission observes that the most recent communication from the petitioners on this matter was received on December 21, 2004.

823. Therefore, and inasmuch as no observations have been received from the petitioners in recent years regarding the points whose compliance they believe is still pending, the Commission finds that the Peruvian State has fully complied with the recommendations made in report 110/00.

Case 11.031, Report No. 111/00, Pedro Pablo López González *et al.* (Peru)

824. In Report No. 111/00 of December 4, 2000, the IACHR concluded that the Peruvian State: (a) through members of the National Police and the Navy of Peru detained Messrs. Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez, and Carlos Martín and Jorge Luis Tarazona More on May 2, 1992, in the human settlements of "La Huaca," "Javier Heraud," and "San Carlos," located in the district and province of Santa, department of Ancash, and that subsequently it proceeded to disappear them; (b) that accordingly it was responsible for the forced disappearance of the victims identified above, thereby violating the right to liberty (Article 7), the right to humane treatment (Article 5), the right to life (Article 4), the right to juridical personality (Article 3), and the right to an effective judicial remedy (Article 25) enshrined in the American Convention on Human Rights; and (c) that it had breached the general obligation to respect and ensure these rights enshrined in the Convention, in the terms of Article 1(1) of that Convention.

825. The Commission made the following recommendations to the Peruvian State:

1. That it carry out an exhaustive, impartial, and effective investigation to determine the circumstances of the forced disappearance of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More, and that it punish the persons responsible, in keeping with Peruvian legislation.
2. That it void any domestic measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the detention and forced disappearance of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More. Accordingly, the State should nullify Laws 26.479 and 26.492.
3. That it adopt the measures required for the family members of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More to receive adequate and timely reparation for the violations established.

826. On November 11, 2010, the Commission requested up-to-date information from the parties regarding the progress made on implementation of the above-mentioned recommendations. The State did not submit a reply within the established time period.

827. In a communication received on December 10, 2010, the petitioners reported that on October 1, 2010, the First Special Criminal Chamber convicted former members of law enforcement and high-ranking government officials under the government of then President Alberto Fujimori, who were convicted of the aggravated homicide of Pedro Pablo López Gonzales, Jesús

Manfredo Noriega Ríos, Carlos Martín Tarazona More, Jorge Luis Tarazona More, Roberto Barrientos Velásquez, Carlos Alberto Barrientos Velásquez, Gilmar León Velásquez, Denis Atilio Castillo Chávez and Federico Coquis Vásquez. The petitioners added that the judges in that Criminal Chamber ordered the condemned persons and the State, as a third party that bore civil liability, to pay reparations and pay for medical-psychological treatment and other forms of compensation for the pecuniary and non-pecuniary damages sustained by the victims' next of kin. The petitioners indicated that the defense counsel filed an appeal to have the verdict vacated; the Supreme Court's decision on that appeal is still pending.

828. The petitioners asserted that the Peruvian State had not taken the measures necessary to determine the whereabouts and hand over the remains of the nine disappeared farm workers in the district of El Santa. As for the second recommendation in Report No. 111/00, the petitioners asserted that while Peru's Judicial Branch has repealed Laws Nos. 26479 and 26492, the Executive Branch has pressed for legislative measures which, if they took effect, would obstruct the investigation into serious human rights violations committed during the internal armed conflict.

829. As for the third recommendation, this case is listed among subparagraphs c) and d) of the joint press release that the Commission and the Peruvian State signed on February 22, 2001. At the time, Peru undertook a formal commitment to find comprehensive solutions to the recommendations issued by the Commission on the more than 100 final merits reports adopted pursuant to articles 50 and 51 of the American Convention on Human Rights.⁵⁹ The petitioners observed that despite the obligations undertaken in that joint press release and the provisions of Law No. 28592 "Law on the Comprehensive Reparations Plan," thus far no reparations had been paid. They observed that while Supreme Decree No. 005-2002-JUS of April 2003 regulated some forms of non-monetary reparations in the area of housing, education and health, the Peruvian State had not even identified the plot of land that could be given to the next of kin of the victims in the present case.

830. The Commission therefore concludes that the State has only partially complied with the recommendations contained in the report and will therefore continue to monitor the pending items.

Case 11.099, Report No. 112/00, Yone Cruz Ocalio (Peru)

831. In Report No. 112/00 of December 4, 2000, the IACHR concluded that the Peruvian State: (a) through members of the National Police detained Mr. Yone Cruz Ocalio on February 24, 1991, at the agricultural station of Tulumayo, Aucayacu, province of Leoncio Prado, department of Huánuco, Peru, from where they were taken to the Military Base of Tulumayo, and subsequently proceeded to disappear him; (b) that as a consequence it was responsible for the forced disappearance of Mr. Yone Cruz Ocalio; (c) that it therefore violated the right to liberty (Article 7), the right to humane treatment (Article 5), the right to life (Article 4), the right to juridical personality (Article 3), and the right to an effective judicial remedy (Article 25) enshrined in the American Convention on Human Rights; and (d) that it breached its general obligation to respect and ensure these rights enshrined in the Convention, in the terms of Article 1(1) of that instrument.

832. The Commission made the following recommendations to the State:

1. That it carry out an exhaustive, impartial, and effective investigation to determine the circumstances of the forced disappearance of Mr. Yone Cruz Ocalio, and that it punish the persons responsible, in keeping with Peruvian legislation.

⁵⁹ See <http://www.cidh.oas.org/Comunicados/English/2001/Peru.htm>.

2. That it void any domestic measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the detention and forced disappearance of Mr. Yone Cruz Ocalio. Accordingly, the State should nullify Laws 26.479 and 26.492.

3. That it adopt the measures required for the family members of Mr. Yone Cruz Ocalio to receive adequate and timely reparation for the violations established herein.

833. By communication of October 31, 2008, the IACHR asked both parties to provide up-to-date information on implementation of the above-noted recommendations. The IACHR did not receive any response from the petitioners within the time set.

834. The State, by communication of December 5, 2008, reported, regarding the investigation into the facts, that by resolution of October 25, 2002, the Specialized Prosecutor on Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Mass Graves ruled to remove to the Mixed Provincial Prosecutor's Office of Aucayacu the matters in the records that include, as persons injured, Yone Cruz Ocalio, among others. It indicated that by Resolution of the Mixed Provincial Prosecutor's Office of Leoncio Prado-Aucayacu of August 9, 2004, the Prosecutor considered that it was pertinent to gather more information regarding the alleged commission of the crime of kidnapping of Mr. Cruz Ocalio and ruled to "expand the prosecutorial investigation and that consequently the matter is forwarded to the local Police Station of the Peruvian National Police to perform the following investigative steps: first, that it take a statement from the injured party; second, that it take the statement from the person investigated ... with respect to his alleged participation in the facts investigated; and that other investigative steps be taken as deemed useful for clarifying the facts."

835. Concerning the second recommendation, the Peruvian State has repeatedly observed that its institutions have a practice, based on the judgment of the Inter-American Court of Human Rights in the *Barrios Altos Case*, which is that amnesties cannot be invoked as grounds for contesting investigations undertaken to identify and punish those responsible for human rights violations.

836. On November 10, 2009, and November 11, 2010, the Commission requested updated information from the parties concerning the progress made with implementation of the recommendations. The parties did not submit observations on the matter.

837. The Commission therefore concludes that the State has only partially complied with the recommendations contained in the report and will continue to monitor for compliance with the pending items.

Cases 10.247 *et al.*, Report No. 101/01, Luis Miguel Pasache Vidal *et al.* (Peru)

838. In Report No. 101/01 of October 11, 2001, the IACHR concluded that the Peruvian State was responsible for: (a) violation of the right to life and to judicial guarantees and judicial protection enshrined at Articles 4, 8, and 25 of the American Convention; (b) the violation of the right to personal liberty established in Article 7 of the American Convention; (c) the violation of the right to humane treatment enshrined in Article 5 of the American Convention, and of its duty to prevent and punish torture established in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; (d) the violation of the right to recognition of juridical personality enshrined in Article 3 of the Convention; and (e) the violation of the rights of the child established at Article 19 of the American Convention. All of these violations were found to the detriment of the persons indicated in the report.

839. The Commission made the following recommendations to the Peruvian State:

1. Void any judicial decision, internal measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the summary executions and forced disappearance of the victims indicated at paragraph 252. In this regard, the State should also repeal Laws No. 26,479 and 26,492.
2. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and forced disappearances of the victims and to punish the persons responsible pursuant to Peruvian legislation.
3. Adopt the measures necessary for the victim's families to receive adequate and timely compensation for the violations established herein.
4. Accede to the Inter-American Convention on Forced Disappearance of Persons.

840. On November 10, 2009, the Commission requested updated information from the parties concerning the implementation of the above-mentioned recommendations. The State did not reply to that request for information within the stipulated time period.

841. On November 11, 2010, the IACHR again requested information from the parties. The *Asociación Pro Derechos Humanos* (APRODEH) submitted observations on the criminal investigations in connection with the victims covered in cases 10,247, 11,501, 11,680 and 11,132. The other petitioners and the Peruvian State did not present observations.

842. Concerning case 10,247, APRODEH asserted that in May 2008 criminal proceedings were undertaken against Jesús Miguel Ríos Sáenz, Walter Elías Lauri Morales or Walter Elías Ruiz Miyasato and Máximo Augusto Agustín Mantilla Campos, for the kidnapping and aggravated homicide of Luis Miguel Pasache Vidal. According to what was reported, the examining phase has ended and the decision of the Superior Prosecutor is pending. As for case 11,501, APRODEH reported that on June 2, 2010, the National Criminal Chamber delivered a verdict of acquittal in favor of Santiago Enrique Martín Rivas and reserved judgment with respect to Eudes Najarro Gamboa until he is found. These individuals were tried for the aggravated homicide of Adrián Medina Puma. According to what was reported, the Public Prosecutor's Office filed an appeal to challenge the June 2, 2010 verdict of the National Criminal Chamber.

843. In case 11,680, APRODEH reported that on January 31, 2008, defendant José Alberto Delgado Bejarano was acquitted of the aggravated homicide of Moisés Carbajal Quispe, and that the verdict was upheld by the Transitory Criminal Chamber of the Supreme Court. As for case 11,132, it reported that the forced disappearance of Edith Galván Montero was still being investigated by the Fourth Supra-provincial Criminal Prosecutor's Office.

844. The IACHR has not received updated information on compliance with the second recommendation made in report 10/01 with respect to the following cases covered therein – 10.472, 10.805, 10.913, 10.947, 10.944, 11.035, 11.057, 11.065, 11.088, 11.161, 11.292, 10.564, 10.744, 11.040, 11.126, 11.179, 10.431, 10.523, 11.064 and 11.200.

845. Regarding the first recommendation of report 101/01, APRODEH expressed that even though the Judicial Branch of Peru has declared that Laws No. 26479 and 26492 have no effect, the Executive Branch has promoted legislative measures that would hinder the investigation of serious violations of human Rights perpetrated during the internal armed conflict.

846. As for the third recommendation, this case is among those covered in sections c) and d) of the joint press release that the Commission and the Peruvian State signed on February 22,

2001, in which Peru undertook a formal commitment to find comprehensive solutions to the recommendations issued by the Commission on the more than 100 final merits reports adopted pursuant to articles 50 and 51 of the American Convention on Human Rights.⁶⁰ The petitioners observed that despite the obligations undertaken in that joint press release and the provisions of Law No. 28592 "Law on the Comprehensive Reparations Plan," thus far no reparations had been paid. They observed that while Supreme Decree No. 005-2002-JUS of April 2003 regulated some forms of non-monetary reparations in the area of housing, education and health, the Peruvian State had not even identified the plot of land that could be given to the next of kin of the victims in cases 10.805, 10.913, 11.035, 11.605, 11.680, 10.564, 11.162, 11.179 and 10.523.

847. The petitioners indicated that back in 2003, the Ministry of Justice granted a plot of land in the Huachipa sector, in the district of Lurigancho, province and department of Lima, to be turned over to 200 victims or their next of kin, in some of the cases mentioned in the February 22, 2001 joint press release. They include cases 10.247, 10.472, 10.878, 10.994, 11.051, 11.088, 11.161, 11.292, 10.744, 11.040, 11.126, 11.132, 10.431, 11.064 and 11.200, all of which are included under Report 101/01. They emphasized, however, that the Peruvian State had not taken steps to legalize occupation and property title to the lots on the land in question. They went on to point out that because of this, some beneficiaries had set up crude dwelling places that had no access to basic sanitation services; they lived under the constant threat of looting and third-party property takeovers.

848. According to the petitioners, the Ministry of Justice has made final handover of the property conditional upon a risk evaluation, because an Army weapons factory adjacent to the property has resumed operations. However, they observed that in Memorandum No. 709-2010-MML/SGDC, the Office of the Deputy Manager of Civil Defense of the Lima Metropolitan Municipality reported that the Huachipa property is approved for housing construction, and there should be no impediment to giving the 200 beneficiaries title to the lots.

849. Finally, with regard to the fourth recommendation in Report 101/01, the Inter-American Convention on Forced Disappearance of Persons was ratified on February 8, 2002, and entered into force in Peru on February 13 of that same year.

850. The Commission therefore concludes that the State has partially complied with the recommendations contained in Report No. 101/01. Accordingly, the Commission will continue to monitor the pending items.

Case 12.191, Report No. 71/03, María Mamérita Mestanza (Peru)

851. On October 10, 2003, by Report No. 71/03, the Commission approved a friendly settlement agreement in the case of María Mamérita Mestanza.

852. According to the friendly settlement agreement, the State:

1. Recognized its international responsibility for the violation of Articles 1.1, 4, 5, and 24 of the American Convention on Human Rights, as well as Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women in the harm done to victim María Mamérita Mestanza Chávez.
2. Promised to undertake a thorough investigation of the facts and apply legal punishments to any person determined to have participated in them, as either planner,

⁶⁰ See <http://www.cidh.oas.org/Comunicados/English/2001/Peru.htm>.

perpetrator, accessory, or in other capacity, even if they be civilian or military officials or employees of the government. Report any ethical violations to the appropriate professional association so that it can apply sanctions to the medical personnel involved in these acts, as provided in its statutes.

3. Awarded one-time compensation to each of the beneficiaries of ten thousand U.S. dollars (\$10,000.00) for reparation of moral injury, which totals eighty thousand U.S. dollars (\$80,000.00); and pledge to compensate other damages as established in the agreement.

4. Awarded a one-time payment to the beneficiaries of seven thousand U.S. dollars (\$7,000.00) for psychological rehabilitation treatment they require as a result of the death of María Mamérita Mestanza Chávez, and to give the husband and children of María Mamérita Mestanza Chávez permanent health insurance with the Ministry of Health or other competent entity.

5. Pledged to give the victim's children free primary and secondary education in public schools. The victim's children will receive tuition-free university education for a single degree at state schools, provided they qualify for admission.

6. Awarded an additional payment of twenty thousand U.S. dollars (\$20,000.00) to Mr. Jacinto Salazar Suárez to buy land or a house in the name of the children he had with Ms. María Mamérita Mestanza.

7. Pledged to change laws and public policies on reproductive health and family planning, eliminating any discriminatory approach and respecting women's autonomy. The Peruvian State also promises to adopt and implement recommendations made by the Ombudsman concerning public policies on reproductive health and family planning, among which are those listed in the agreement.

853. By communication of November 3, 2008, the IACHR asked both parties to submit up-to-date information on the implementation of the above-noted recommendations.

854. The State reported that the Permanent Commission on disciplinary measures of the Regional Bureau of Cajamarca, on January 9, 2001, had established that two physicians were disqualified and that on January 18, 2001, one physician-obstetrician, two obstetricians, and one nurse were acquitted.

855. With respect to the compensations, the State reported that it paid US\$ 10,000 in moral damages to each of the eight beneficiaries – the husband of Ms. Mamérita Mestanza and their seven children; that it paid US\$ 2,000 as actual damages for each beneficiary, and that a trust fund had been set up for this purpose of the child beneficiaries. In addition, it is indicated that US\$ 20,000 was handed over to Ms. Mamérita Mestanza's husband to purchase a plot of land or house in his children's name. It is indicated that the purchase of a piece of land was shown.

856. As for the health benefits, first, as regards the psychological rehabilitation treatment, the State reported that it delivered US\$ 7,000 for that treatment, for the beneficiaries, and that by official note of March 5, 2008, sent by the Estudio para la Defensa de la Mujer (DEMUS), the final report of the psychological work was submitted on March 3, 2008. That report notes that as a result of the treatment, which consisted of 32 sessions from April 2006 to January 2008, greater confidence and relief had been attained for the beneficiaries, among other things. It also reported that all the beneficiaries had been incorporated into the Integral Health System with the appropriate plan that corresponds to the particular circumstances of each of them.

857. In addition, the State presented information on implementation of the eleventh clause of the friendly settlement agreement with regard to public policies on reproductive health and family planning. On this occasion, the State reported that in July 2004 the National Health Strategy

for Sexual and Reproductive Health was established; that the technical standard for family planning was updated that indicates that any complication attributable to and verified to result from the use of contraceptives provided by the establishments of the Ministry of Health should be reported as soon as it is detected, and that all deaths and grave medical problems attributable directly to the use of contraceptive methods will be investigated to determine their causes; that in the context of the Health Strategy for Sexual and Reproductive Health workshops were programmed for professionals involved in reproductive health care for updating on contraceptive methods; that a total of 565 obstetricians, 30 physician obstetricians, 46 general physicians, and five nurses were trained; that educational materials on sexual and reproductive health have been given to the health services of the regions, nationwide; that in 2006, a series of workshops was scheduled on managing gender-based violence, directed to physicians, psychologists, and obstetricians from different regions of the country; that meetings were held to raise awareness for 410 members of the National Police of Lima, and for 69 members of the police forces in Arequipa, La Libertad, and Ucayali; that a Diploma Program on Violence was carried out; that it was established that in cases of voluntary contraception the period of reflection will be 72 hours, and that state institutions and NGOs should exercise citizen oversight of the family planning services, among others. Training was provided for health professionals and education programs were conducted on violence and sexual and reproductive health.

858. The petitioner also reported that the State has been making payment of monetary reparations to the victim's family to pay the amount for purchasing a plot of land. As regards the health benefits, they reported that the State had made payment of the sum of US\$ 7,000 for the psychological rehabilitation treatment, which was administered and monitored by DEMUS until it was concluded in March 2008, when the National Council on Human Rights was given a final report on its results.

859. As for the educational benefits, the petitioners indicated that on February 28, 2007, at the request of the National Council on Human Rights, a report was submitted on the beneficiaries' educational requirements, which was reiterated and updated on March 5, 2008. The reports indicate that three of the beneficiaries have difficulties accessing secondary education due to the fact that there is no secondary school in their locality. In addition, they stated that the youngest daughter displayed great interest in continuing her higher education studies, and that therefore the State should guarantee her access to a scholarship for higher education. They indicated that the older daughters in the family receive literacy classes through the municipality of Encañada, which sends trainers to the zone, yet there are no centers for alternative education in the locality or the surrounding areas for them to be able to conclude their studies on the weekends.

860. With respect to legislative changes and changes in public policy, the petitioners make reference to the permanent training the State provided health personnel in reproductive rights, violence against women, and gender equity, indicating that they do not have information as to whether the State is actually carrying out those trainings. With respect to "the adoption of drastic measures against those responsible for unconsented forced sterilizations," the petitioners argue that the State must bring its domestic legislation into line with the Rome Statute, incorporating the crime of forced sterilization, yet they note that the State has not made any progress in that regards.

861. On November 4, 2009, in the framework of the Commission's 137th Regular Session, a working meeting was held, during which the petitioners reported that, on May 26, 2009, the District Attorney's Office decided to dismiss the investigation in the domestic jurisdiction on the basis of the statute of limitations for the crime of culpable homicide and the absence of a criminal category for the crime of coercion. The Attorney General's Office also considered that the case "did not constitute a severe violation of human rights that would justify the application of the principle of waiving the statute of limitations," as this principle is applicable only for crimes against humanity. Therefore, the crimes against the life, body and health of Ms. Mestanza are subject to the statute of

limitations. There, the State confirmed that on May 26, 2009, the Office of the Special Human Rights Prosecutor definitively closed the joined case of which Mrs. Mamérita Mestanza was part. That decision was based on the fact that the statute of limitations for criminal action in cases of manslaughter and negligent injury had expired.

862. After the working meeting, the Chair of the Commission and Rapporteur for the Rights of Women sent the State a communication requesting information from the Attorney General's Office about the unit of this institution in charge of the case of Ms. Mestanza; the measures adopted for allocating the human and financial resources needed to guarantee due investigation of the facts; as well as the measures available to fulfill the commitment to punish those responsible by means of the corresponding criminal, civil, administrative and disciplinary measures. It also requested the State to report on the real possibility of continuing the criminal investigation after the preliminary resolution to apply the statute of limitations for the crimes and on the status of the proceedings for the complaint filed, which is currently being processed against the resolution to dismiss the case on the basis of the statute of limitations and which is supported by the petitioners.

863. Over the course of 2010, both the State and the petitioners sent a series of communications on the subject of compliance with the commitments undertaken in the friendly settlement agreement that the Commission approved through report No. 71/03.

864. On October 27, 2010, the Commission held a working meeting on this case during the course of its 140th regular session. There, the petitioners stated that although Mrs. Mamérita Mestanza's next of kin were enrolled in the Comprehensive Health Insurance Program (SIS), they continued to encounter financial obstacles and problems in getting actual access to health services. As for the State's commitment to provide education to the victim's children free of charge, the petitioners asked the Peruvian State for details about the measures that the authorities of the Ministry of Education were taking to enable those children to pursue their elementary, secondary and higher education on a regular basis. They pointed out that young Napoleón Salazar Mestanza completed elementary school over five years ago but has been unable to enroll in secondary education because there is no secondary school where he lives.

865. As for the commitment to adopt measures to prevent a recurrence of similar events, the petitioners maintained that Peru's criminal laws had not yet been amended to specifically criminalize forced sterilization. They also alleged that Peru needed to adapt its Penal Code to the Statute of the International Criminal Court so that events such as those that claimed María Mamérita Mestanza and thousands of other Peruvians as victims could be classified as crimes against humanity.

866. The petitioners expressed great concern over the fact that the Peruvian Public Prosecutor's Office had declared that the criminal prosecution of the forced sterilization of María Mamérita Mestanza was now definitively time barred by the statute of limitations.

867. During the working meeting the State said that although Peruvian legislation had not been amended to make forced sterilization a criminal offense, the Public Prosecutor's Office declaration that criminal prosecution of the case was time barred, which meant that the investigations into the case could not be reopened.

868. Subsequent to the working meeting the Commissioner Rapporteur on the Rights of Women sent a letter to the Peruvian State in which she expressed "her deep concern over noncompliance with the third clause of the agreement, which establishes the State's commitment to conduct an exhaustive investigation of the facts and apply the penalties that the law requires to any person who had a hand in these events..." The Commission underscored the fact that "under the American Convention and other inter-American instruments like the Convention of Belém do Pará,

member states are obligated to investigate, prosecute and punish any and all violations of women's rights and ensure that they do not recur."

869. On November 11, 2010, the IACHR requested updated information on the progress made toward compliance with the friendly settlement agreement approved through Report No. 71/03. In response, the petitioners repeated the information they provided during the working meeting held on October 27, 2010. The Peruvian State did not submit observations within the stipulated time period.

870. Based on the information provided, the Commission concludes that Peru has partially complied with the friendly settlement agreement. Accordingly, the Commission will continue to monitor the pending points.

Case 12.078, Report No. 31/04, Ricardo Semoza Di Carlo (Peru)

871. On March 11, 2004, by Report No. 31/04, the Commission approved a friendly settlement agreement in the case of Ricardo Semoza Di Carlo.

872. According to the friendly settlement agreement, the State:

1. Acknowledged its responsibility for violation of Articles 1(1) and 25 of the American Convention on Human Rights, to the detriment of Ricardo Semoza di Carlo.
2. Granted the following benefits to the petitioner as compensation: a) recognition of the time that he was arbitrarily separated from the institution; b) immediate reinstatement in the Superior School of the National Police of Peru (ESUPOL); c) regularization of pension rights, as of the date of his reinstatement, taking into account the new calculation of his time in service; d) refund of the officers' retirement insurance (FOSEROF, AMOF etc.); and e) a public ceremony will be held.
3. Pledged to undertake an exhaustive investigation of the facts and will prosecute any person found to have participated in the deeds of this case, for which an Ad Hoc Commission will be established by the Office of International Affairs and the Legal Advisory Services of the Ministry of the Interior.

873. By communication received on December 13, 2007, the petitioner reported that even though the State recognized the time of service during which he was separated from active duty as "real, effective, and uninterrupted," a series of benefits that derive from that recognition have yet to be implemented. Specifically, Mr. Semoza Di Carlo indicated on that occasion that repayment for fuel has not been made; with the regularization of his pension payments; with the regularization of his contributions to the Officers Retirement Insurance Fund; with the holding of the ceremony of reparation; and with the investigation and punishment of the persons responsible for failure to carry out the judicial orders handed down to protect his rights that had been violated. Finally, the petitioner mentioned that the failure to carry out the agreement in those respects indicated have caused moral injury to him personally and to his family, as well as actual damages and lost profit.

874. On November 10, 2009, the Commission requested both parties to provide updated information on the progress in fulfilling the commitments made by the State as a result of the friendly settlement agreement. At the time of the drafting of the present chapter, the petitioner had not responded to the request for information. The petitioner did not submit observations at that time.

875. The State, by means of note 7-5-M/828 received on December 14, 2009, pointed out that, as a result of Directorate Resolution No. 735-2006-DIRREHUM-PNP of January 20, 2006, Major Semoza's real and effective time of service in the Police Force was recognized and, as a result, his renewable retirement pay equivalent to the rank immediately above his own was granted; as of October 2005 the victim was granted a nonpensionable fuel subsidy; and, on February 8, 2006, the Commissioner of Surquillo ordered that the petitioner be notified to schedule the ceremony of public apologies, which according to the State the petitioner refused.

876. On November 11, 2010, the IACHR again requested updated information from the parties concerning progress made toward compliance with the commitments undertaken by the State in the friendly settlement agreement.

877. In a note received on December 10, 2010, the State again reported that the Peruvian National Police has already regularized the pension rights and granted Mr. Semoza Di Carlo a renewable pension; he was also reinstated at the National Police School of Advanced Studies. It has been unable to comply with its commitment to stage a public ceremony to make apologies because the petitioner is not interested, despite the invitations sent by the appropriate office of Peru's National Police. As for the other commitments, the State observed that it will send additional information to the Commission as soon as possible.

878. The petitioner did not answer the Commission's November 11, 2010 request for updated information.

879. The Commission does not have sufficient information to conclude that the State has fully complied with the recommendations contained in the friendly settlement agreement and will continue to monitor the pending items.

Petition 185-02, Report No. 107-05, Roger Herminio Salas Gamboa (Peru)

880. On December 28, 2005, by Report No. 107/05, the Commission approved a friendly settlement agreement in the petition regarding Roger Herminio Salas Gamboa.

881. According to the friendly settlement agreement, the State:

1. Considers that it is lawful, and an obligation of the State, for the National Council of the Judiciary to reinstate the title of full member of the Supreme Court of Justice of the Republic for Mr. Róger Herminio Salas Gamboa, so that he may resume his duties.
2. Pledged to recognize the time not worked for the purposes of the calculating the labor benefits that he stopped receiving.
3. Recognized the petitioner's right to the payment of comprehensive compensation.
4. Pledges to hold a Ceremony to Restore Reputation for Mr. Róger Herminio Salas Gamboa within three months of the signing of this Agreement.

882. By communication of November 3, 2008, the IACHR asked both parties to submit up-to-date information on implementation of the above-noted friendly settlement agreement.

883. By communication of December 4, 2008, the State reported that on December 16, 2005, the then-minister of justice, Alejandro Tudela, signed, with Mr. Roger Herminio Salas Gamboa, a friendly settlement agreement, and that on that same occasion Mr. Salas Gamboa publicly apologized. With respect to regaining the title as member of the Supreme Court, it was indicated that on January 15, 2006, National Judicial Council resolution No. 021-2006-CNM, by

which the title of full member of the Supreme Court of Justice of the Republic was being restored to Mr. Gamboa, was published in the official gazette. In addition, it noted that on January 5, 2006, Dr. Salas Gamboa was paid the sum of S/68.440.00 (new soles, national currency) as economic reparation. Finally, the State reported that in April 2008 the petitioner had stepped down as a member of the Supreme Court and asked that this case be archived.

884. The petitioner, for his part, indicated that despite the time elapsed, the State still owned him a sum of money as a result of the friendly settlement agreement that was signed.

885. In 2009, on repeated occasions, the petitioner reported to the Commission that the Peruvian State had failed to comply with pending aspects of the friendly settlement agreement.

886. On November 11, 2010, the IACHR requested information from both parties concerning the progress made toward compliance with the commitments undertaken by the Peruvian State. In a note received on December 6, 2010, the petitioner asserted that the Peruvian Government had not fully complied with points 3 and 4 of the friendly settlement agreement. The State did not reply to the Commission's request for information.

887. The Commission therefore concludes that the friendly settlement agreement has been partially carried out. Accordingly, the Commission will continue to monitor the pending points.

**Petition 711-01 *et al.*, Report No. 50/06, Miguel Grimaldo Castañeda Sánchez *et al.* (Peru);
Petition 33-03 *et al.*, Report No. 109/06, Héctor Núñez Julia *et al.* (Peru); Petition 732-01 *et al.*,
Report No. 20/07 Eulogio Miguel Melgarejo *et al.*; Petition 758-01 *et al.*, Report No.
71/07 Hernán Atilio Aguirre Moreno *et al.*; Petition 494-04 (Peru)**

888. On March 15, 2006, by Report No. 50/06, the Commission approved the terms of the friendly settlement agreements of December 22, 2005, January 6, 2006, and February 8, 2006 signed by the Peruvian State and a group of unratified judges, who were petitioners in petition No. 711-01 and others. On October 21, 2006, by Report No. 109/06, the Commission approved the terms of the friendly settlement agreements of June 26 and July 24, 2006, signed by the Peruvian State and a group of unratified judges, petitioners in petition No. 33-03 and others. On March 9, 2007, by Report No. 20/07, the Commission approved the terms of the friendly settlement agreements of October 13 and November 23, 2006, signed by the Peruvian State and a group of unratified judges who were petitioners in petition No. 732-01 and others. On July 27, 2007, by Report No. 71/07, the Commission approved the terms of the friendly settlement agreement of January 7, 2007, signed by the Peruvian state and a group of unratified judges, petitioners in petition No. 758-01 and others. On March 13, 2008, by Report No. 71/07, the Commission approved the terms of the friendly settlement agreement of April 24, 2007, signed by the Peruvian State and one unratified judge, the petitioner in petition No. 494-04.

889. According to the text of the friendly settlement agreements included in the above-mentioned reports, the State:

1. Pledged to restore the corresponding title and facilitate the reinstatement of the judicial officials.
2. Pledged to recognize the period of service not worked in calculating duration of service, retirement, and other applicable employment benefits under Peruvian law.
3. Agreed to make compensation.

4. Will conduct a new evaluation and reconfirmation process under the purview of the National Council of the Magistracy for the judicial officials included in the instant agreement.
5. Pledged to hold a Public Reparations Ceremony for the reinstated judicial officials.

890. By communication of December 18, 2008, the State reported that on December 9, 2008, a ceremony was held as a form of public reparation in the auditorium of the Ministry of Justice in honor of the 79 judges included in Reports Nos. 50/06 and 109/06, for the purpose of carrying out its international obligations acquired in the context of the inter-American system for the protection of human rights. In addition, the State noted that the ceremony included the presence of high-level state officials, such as the President of the Council of Ministers – in representation of the Peruvian President – the Minister of Justice, the President of the National Judicial Council, and the Executive Secretary of the National Council on Human Rights, among others; and with the presence of civil society and the group of 79 judges included in the reports of the IACHR referred to above.

891. On November 10, 2009, the Commission requested the parties to provide updated information on the progress made in complying with the commitments made by the State by virtue of the friendly settlement agreements. At the time of the drafting of the present chapter, the State had not responded to this request for information.

892. Some of the petitioners included in the reports that are the subject of the present section submitted information in response to the request made by the IACHR by means of a communication referred to in the preceding paragraph and also submitted information at their own initiative regarding this on different occasions in 2009. As a rule, the unratified judges included in the friendly settlement agreements pointed out the failure to totally comply with these agreements and requested the IACHR to repeat their request to the State to comply fully with the agreements that were signed. The petitioners indicated that the State had not complied with the payment of the compensation in the amount of US\$5,000.00 (five thousand U.S. dollars), which includes expenses and costs stemming from national and international proceedings. As for the petitioners, some of them who had been reinstated pointed out that the new processes for ratification of judges would be taking place without abiding by the respective international standards, especially without observance of the procedural guarantee of the plurality of instances. Various petitioners indicated that the ceremony of public apologies had not been held. A petitioner reported that he had not been reinstated, that his rank had not been restored, and that the corresponding compensation had not been paid. Furthermore, another judge specified that he had been told that the agreement in his case could not be implemented because he could not be reinstated because of age limitations; in response to which he pointed out that, in view of these circumstances, his request was based on the recognition of his years of service so that they would proceed to recognize his retirement rights and the corresponding labor rights, which had not been complied with.

893. On October 27, 2010, the Commission held a working meeting during its 140th regular session, to examine compliance with the commitments undertaken by the Peruvian State in the friendly settlement agreements concerning unconfirmed magistrates. The party who requested the working meeting, Mr. Elmer Siclla Villafuerte, pointed out that while the Constitutional Tribunal had established certain requirements that the National Council of the Magistracy must observe, the mere existence of a confirmation system in Peru whose purpose was to neither discipline nor penalize, was incompatible with international and constitutional standards on the independence of the judicial branch. He also asserted that the confirmation proceeding was incompatible with the guarantees of due process, as the right to double review did not exist. Mr. Elmer Siclla emphasized the fact that the State had not paid the compensation for costs and expenses to all the magistrates who were reinstated and had not held a ceremony to make a public apology to all the victims.

894. The State, for its part, reported that it had assigned the Ministry of Justice an amount of money to pay a portion of the five thousand dollars in compensatory damages ordered for each magistrate covered under the friendly settlement agreements approved by the Commission. It maintained that the current case law of the Constitutional Court guaranteed magistrates their right to due process and their right to challenge the decision of the National Council of the Magistracy in the event they were not confirmed.

895. On November 11, 2010, the IACHR requested updated information on the progress toward compliance with the friendly settlement agreements approved through reports 50/06, 109/06, 20/07 and 71/07. As of the date of completion of this section, the parties had not submitted observations.

896. Based on the information submitted by the parties, the IACHR concludes that the friendly settlement agreements included in the reports listed above have been partially carried out. Accordingly, it will continue to monitor the pending points.

Petition 494-04, Report No. 20/08, Romeo Edgardo Vargas Romero (Peru)

897. On March 13, 2008, by means of Report No. 20/08, the Commission approved a friendly settlement agreement in the request of Romeo Edgardo Vargas Romero.

898. According to the friendly settlement agreement:

The National Judicial Council will restore his title within fifteen (15) days following the approval of the instant Friendly Settlement Agreement by the Inter-American Commission on Human Rights.

The Judiciary or the Office of the Attorney General, in the cases, respectively, of judges or prosecutors, will order the reinstatement of the judge to his original position within the fifteen days following restoration of his title. Should his original position not be available, at the judge's request, he shall be reinstated in a vacant position of the same level in the same Judicial District, or in another one. In this case, the judge will have the first option to return to his original position at the time a vacancy appears.

The Peruvian State undertakes the commitment to recognize as days of service the time spent removed from his position, counted from the date of the decision on non-confirmation, for purposes of calculating time served, retirement, and other work benefits granted by Peruvian law. Should it be necessary, in order to comply with this Friendly Settlement agreement, to relocate judges to another Judicial District, their years of work shall be recognized for all legal effects in their new seats.

The Peruvian State agrees to pay petitioners who abide by this Friendly Settlement a total indemnity of US\$5,000.00 (five thousand United States dollars), which includes expenses and costs related to national and international processing of his petition.

The representative of the Peruvian State undertakes the commitment to hold a ceremony of public apology in favor of the reinstated judges.

899. On November 10, 2009, the Commission requested both parties to provide updated information on progress in the process of complying with the commitments made by the State by virtue of the friendly settlement agreement. At the time none of the parties responded to the request for information.

900. On January 6, 2011, the Commission reiterated the request for updated information to the parties. The applicant did not submit observation.

901. On February 3, 2011, the State attached the copy of resolution No. 133-2008-CNM, whereby the National Judicial Council (*Consejo Nacional de la Magistratura*) reinstated Mr. Romeo Edgardo Vargas' title as public prosecutor. Additionally, this resolution recalled the Attorney General to report on the reincorporation of Mr. Edgardo Vargas in his former position or any other equivalent to the title reinstated. The State did not indicate whether the reincorporation has been fulfilled by the Attorney General.

902. The State pointed that on January 6, 2011, the Supranational Public Attorney (*Procuraduría Pública Especial Supranacional*) sent a request to the General Office of Administration at the Ministry of Justice in order to issue a check of US\$ 3,400 (three thousand and four hundred dollars) in favor of Mr. Edgardo Vargas. The State attached a copy of the receipt by the aforementioned general office.

903. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has been implemented in part. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.269, Report No. 28/09, Dexter Lendore (Trinidad and Tobago)

904. In Report No. 28/09 issued on March 20, 2009, the Inter-American Commission concluded that Trinidad and Tobago is responsible for violating Mr. Lendore's rights under Articles 8(1) and 8(2) of the American Convention, in conjunction with violations of Article 1(1) of that international instrument, due to its failure to provide him with the assistance of competent and effective counsel during his criminal proceedings; and that the State is also responsible for violating Mr. Lendore's rights under Articles 25 and 8 of the American Convention, in conjunction with violations of Article 1(1) of the American Convention, as well as violations of Articles XVIII and XXVI of the American Declaration, by failing to provide Mr. Lendore with effective access to a Constitutional Motion for the protection of his fundamental rights.

905. On the basis of these conclusions, the IACHR recommended to Trinidad and Tobago that it:

1. Grant Mr. Lendore an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the American Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Lendore's conditions of detention comply with applicable international standards of humane treatment as articulated in the present report, including the removal of Mr. Lendore from death row.
3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Articles XVIII and XXVI of the American Declaration is given effect in Trinidad and Tobago in relation to recourse to Constitutional Motions.

906. On January 18, 2011 the IACHR requested both parties to submit, within one month, updated information on compliance with the recommendations. Neither party responded.

907. The Commission concludes that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 9903, Report No. 51/01, Rafael Ferrer Mazorra *et al.* (United States)

908. In Report No. 51/01 dated April 4, 2001 Commission concluded that the State was responsible for violations of Articles I, II, XVII, XVIII and XXV of the Declaration with respect to the petitioner's deprivations of liberty.

909. The IACHR issued the following recommendations to the State:

1. Convene reviews as soon as is practicable in respect of all of the Petitioners who remained in the State's custody, to ascertain the legality of their detentions in accordance with the applicable norms of the American Declaration, in particular Articles I, II, XVII, XVIII and XXV of the Declaration as informed by the Commission's analysis in the report; and

2. Review its laws, procedures and practices to ensure that all aliens who are detained under the authority and control of the State, including aliens who are considered "excludable" under the State's immigration laws, are afforded full protection of all of the rights established in the American Declaration, including in particular Articles I, II, XVII, XVIII and XXV of the Declaration as informed by the Commission's analysis in its report.

910. In its 2006, 2007 and 2008 Annual Reports, the Commission indicated that compliance with its recommendations transcribed above was still pending. By letters dated March 6, 2007, and January 6, 2009, the State reiterated its arguments of December 15, 2005, in which it disagreed with and declined the Commission's recommendations and denied any violations of the American Declaration of the Rights and Duties of Man in this case.

911. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners have not provided the Commission with updated information.

912. The Commission concludes that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 12.243, Report No. 52/01, Juan Raul Garza (United States)

913. In Report No. 52/01 dated April 4, 2001, the Commission concluded that the State was responsible for violations of Articles I, XVIII and XXVI of the American Declaration in condemning Juan Raul Garza to the death penalty. The Commission also hereby ratified its conclusion that the United States will perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration, should it proceed with Mr. Garza's execution based upon the criminal proceedings under consideration.

914. The IACHR issued the following recommendations to the State:

1. Provide Mr. Garza with an effective remedy, which includes commutation of sentence; and

2. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.

915. In its 2006, 2007, 2008 and 2009 Annual Reports, the IACHR indicated that compliance with its recommendations transcribed above was still pending. By letters dated March 6, 2007, and January 6, 2009, the State reiterated its arguments of December 15, 2005, in which it disagreed with and declined the Commission's recommendations and denied any violations of the American Declaration of the Rights and Duties of Man in this case.

916. On November 18, 2010, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline.

917. The Commission concludes that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 11.753, Report No. 52/02, Ramón Martínez Villarreal, (United States)

918. In Report No. 52/02 dated October 10, 2002, the IACHR concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Ramón Martínez Villarreal; and, b) should the State execute Mr. Martínez Villarreal pursuant to the criminal proceedings at issue in this case, the State would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

919. The IACHR issued the following recommendations to the State:

1. Provide Mr. Martínez Villarreal with an effective remedy, which includes a re-trial in accordance with the due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Martínez Villarreal's release.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

920. In its 2006 and 2007 Annual Reports, the Commission declared that there had been partial compliance with its recommendations. In line with the foregoing, on March 6, 2007, the State informed the IACHR that Mr. Martínez Villarreal was considered incompetent to stand trial, and subsequently, the death sentence was vacated. According to the State, as of February 5, 2007, Mr. Martínez Villarreal was undergoing treatment at an Arizona State Hospital, and was still determined to be incompetent to be re-sentenced.

921. In relation to recommendation No. 2, the State declared that it is fully committed to meeting its obligations under the Vienna Convention on Consular Relations. In this regard, it is conducting on-going efforts to improve compliance with the obligation to respect the right to consular assistance of detained foreign nationals. For instance, the Department of State's Bureau of Consular Affairs has carried out an aggressive program of awareness. In addition to that, the State affirmed that since 1998, the State Department has distributed to federal, state and local law enforcement agents over one thousand training videos, booklets and pocket cards regarding arrests and detention of foreign nationals; as well as has conducted over 350 training seminars on the right to consular assistance throughout the United States and its territories, and has created an online training course on the topic.

922. The petitioners sent a communication dated May 1st, 2008 in which they submit that compliance by the United States in this case is still pending. They hold that there has been no compliance with the first recommendation, because “despite Mr. Martinez Villareal’s release from death row, the United States government has neither freed him nor taken steps to remedy the due process and fair trial violations outlined by the Commission’s Report No. 52/02”. They further hold that “the U.S. has made little progress in complying with the Commission’s second recommendation in Report No. 52/02, and has in fact weakened consular notification rights by withdrawing from the Vienna Convention’s optional protocol and failing to implement the ICJ’s *Avena* judgment”.

923. The petitioners’ letter was forwarded to the State with a request for information on August 20, 2008, and another letter requesting updated information was submitted to it on November 5, 2008. The State responded on January 6, 2009 that it reiterated the position set forth in letter of March 5, 2007, summarized above.

924. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

925. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline. However, a letter was sent by the State on June 23, 2010 in which it “provides measures taken around the nation in implementation of the obligations of the United States under the Vienna Convention on Consular Relations (VCCR)”. The State declares that it takes its VCCR obligations very seriously and then proceeds to describe several initiatives that include outreach, guidance and training on consular notification and access to law enforcement agents, prosecutors and judges at the federal, state and local levels. It further refers to the publication and massive distribution of a manual prepared by the State Department with instructions and complete and useful information for agents who detain or arrest foreign nationals. Other means used by the state to distribute this information include pocket cards for law enforcement agencies, prisons, and other entities throughout the country, as well as social media websites, training sessions, and briefings, all aimed at “rais[ing] awareness of and increas[ing] compliance with consular notification and access obligations, and how alleged violations are remedied or resolved”.

926. The June 2010 submission by the State makes no reference to the first recommendation.

927. Based on the available information, the Commission concludes that the State has partially complied with the recommendations set forth in Report N° 52/02. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States)

928. In Report No. 75/02 dated December 27, 2002, the IACHR concluded that the State failed to ensure the Dannels’ right to property under conditions of equality contrary to Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.

929. The IACHR issued the following recommendations to the State:

1. Provide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measures necessary to ensure respect for the Dannels' right to property in accordance with Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.
2. Review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration, including Articles II, XVIII and XXIII of the Declaration.

930. The State has not provided the Commission with updated information regarding compliance with the recommendations in this case. However, in a working meeting that took place during the Commission's 127th ordinary period of sessions in March of 2007, the State reiterated its long-standing position that the Western Shoshonian land claims were appropriately resolved by the Indian Claims Commission in 1962, thus it considers the present matter closed. The State added that this case is related to a dispute within the community, and that there are several Executive Orders regarding protection for indigenous peoples' rights. On the subject of recent mining projects on the land at issue, the State affirmed that it has taken mitigating measures.

931. In communications dated November 21, 2007, and December 12, 2007, the petitioners vehemently asserted that the United States has done nothing to comply with the Commission's recommendations in this case. Besides, the petitioners indicated that the United States has further violated the rights of the victims in this case, by implementing the following measures: continuing with plans to store nuclear waste on Western Shoshone ancestral lands; moving forward with a water pipeline that would drain water from aquifers beneath Western Shoshone lands; continuing approval processes of gold mining expansions and allowing grazing in spiritually and culturally significant areas; moving forward with the sale of Western Shoshone ancestral lands from mining expansion plans and oil and gas leasing; approving the construction of a coal fired electric power plant on Western Shoshone lands; and threatening controlled burning of almost 60,000 acres of Western Shoshone ancestral lands. In view of the aforementioned, the Petitioners requested the Commission to conduct a fact-finding on-site visit to Western Shoshone territory and to recommend a training workshop for public officials on the international human rights of indigenous peoples.

932. The IACHR requested updated information to both parties on November 5, 2008. The United States responded by letter dated January 6, 2009 reiterating its previous position on this matter. For their part, the petitioners sent a letter on December 5, 2008 where they described the "disturbing developments concerning the United States' lack of compliance" with the Commission's recommendations.

933. Among other matters, the petitioners mention that on November 12, 2008 the United States Bureau of Land Management officially approved the Cortez Hills Expansion Project, a plan by the company Barrick Gold to "construct and operate the open pit cyanide heap leach mine on the edge of Mount Tenabo" considered "of great cultural and spiritual significance to the Western Shoshone". Besides the lack of access to the site by the Shoshone, the petitioners hold that this would "result in a new 2,200 foot hole in the actual mountain itself, in addition to cyanide emissions, dewatering, mercury contamination and other harmful byproducts". They add that "the decision to expand mining operations on Mount Tenabo is directly significant to the Dannels given that it is in their traditional use area" and that they have "filed a complaint in the Reno Federal District Court seeking declaratory and injunctive relief to stop the mine".

934. The petitioners also consider that the United States is harassing Carrie Dann by sending her a debt collection notice in the amount of U.S.\$ 6,433,231.40 on behalf of the U.S.

Department of the Interior for “non-payment of cattle grazing fees, an activity that is a traditional and customary use of her ancestral lands”. They have refused to pay this debt for considering that they cannot be charged for “livestock trespass” on their own land.

935. Further, the petitioners mention that “in addition to the Cortez Hills Expansion Project at Mt. Tenabo, the U.S. continues to move forward on additional gold mining expansions throughout Western Shoshone territory” without their consent. In this regard they note that the State is “moving ahead with plans to store high-level nuclear waste at Yucca Mountains, Nevada” and that “plans are underway to conduct exploratory drilling for uranium on the foothills of Merritt Mountain in Western Shoshone territory” and that such exploration would “involve the drilling of 150 wells and creation of containment ponds near three Native American sites”. The petitioners also mention other projects that would affect the Western Shoshone’s ancestral lands, such as geothermal leases, the building of a 234-mile transmission line across Nevada and a plan to tap aquifers to pipe down water to Las Vegas.

936. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year.

937. For their part, on December 11 2009 the petitioners submitted a detailed communication, including several annexes, with “observations on non-compliance with the recommendations set forth in Report No. 75/02”. As part of the observations, the petitioners reiterate and update the information they submitted in December 2008. With regard to events that happened during the period covered by this Annual Report, the petitioners mention that over the past year the United States has continued to “move forward on additional massive open pit gold mining expansions throughout Western Shoshone territory without Western Shoshone consent”. They also indicate that “on August 1, 2009 a public news source reported that radioactive water has been discovered leaking out beyond the Nevada Test Site boundary where 928 nuclear tests were conducted between 1951 and 1992” and that despite the fact that the areas where the radioactive water is leaking lie within Western Shoshone territory, there was no record of any representative of these indigenous people being consulted on the actions to be taken to address the situation.

938. The petitioners also mention in their most recent communication that there is a “massive push for energy extraction” from Western Shoshone lands, without their consent. Reference is made to several projects of oil and gas extraction, energy leases, and transmission corridors that were underway during 2009. According to the petitioners, with the permission of the United States Government, during 2009 “Barrick Gold started explosive blasting and dewatering of Mt. Tenabo” and that full operations could begin as early as the first quarter of 2010 with serious consequences to this area, which is of great significance to the Western Shoshone as explained above. The petitioners add that the United States has threatened legal action against a member of the Dann family for interfering with “federally permitted” removal of traditional objects from this area. They also mention that a complaint was filed “seeking declaratory and injunctive relief to stop the mine pending a full hearing on the merits of the case”, and that on appeal the 9th Circuit Court granted the injunction on December 3, 2009. However, the petitioners point out that “the decision was limited to violations of federal environmental law – not out of concern for the protection of indigenous peoples’ rights” and that Barrick Gold has indicated that it would continue its operations until the lower court issues a formal order to implement the injunction.

939. Another issue raised by the petitioners is that the United States continues to issue debt collection notices to Carrie Dann, her extended family and other Western Shoshone. Specifically, they mention that “on June 23, 2009 five representatives of the U.S. BLM came to

Ms. Dann's home, provided oral reaffirmation of her outstanding 'debt' of almost 6.5 million dollars and stated that the same policies currently remain in effect that in the past have resulted in the confiscation of her livestock".

940. On November 18, 2010 the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. No response was received from the State within the deadline, but the petitioners submitted their "observations on non-compliance" on December 17, 2010.

941. In their submission, the petitioners express that "it has been eight years and still the United States has done nothing to comply with these recommendations but has escalated actions and additional threats against the Danns and other Western Shoshone and the lands they traditionally use and occupy". They also express their concern because they consider that "the current administration has recently taken the position that they will limit the application of international human rights norms to its existing domestic laws and policies with respect to indigenous peoples".

942. The petitioners submit that the State has not complied with the first recommendation, and they present in that regard information on the authorization of an open-pit gold mine in Mount Tenabo, which is described as having "great cultural and spiritual significance to the Dann family and Western Shoshone people overall". The petitioners indicate that "escalation of mining operations on and around Mount Tenabo is directly significant to the Danns, as it is within their traditional use area" and that the "operations have already closed access to a ceremonial and gathering site previously used by the Danns, threaten plant life essential to Western Shoshone customs, and may damage an adjacent sacred spring".

943. In their latest communication, the petitioners also indicate that "the U.S. continues resource extraction and other destructive activities", which includes gold and lithium mining on Western Shoshone traditional lands and spiritual sites. They also allude to the continued project of using Yucca Mountain as a nuclear waste site, and to the projected construction of a pipeline for a project in Western Shoshone lands to supply water to the Las Vegas Valley. The petitioners indicate that during July 2010 the state of Nevada approved the construction of a 235-mile electricity transmission line, and that seven other transmission projects are awaiting approval. They also refer to the construction of a 678-mile natural gas pipeline, which began on July 31, 2010, which will impact at least 4,854 acres in Nevada; the petitioners hold that this will "damage and restrict access to numerous Western Shoshone spiritual and cultural sites in addition to using over 210 million gallons of Nevada groundwater".

944. With respect to the second recommendation, the petitioners express:

It is unlikely that the US will "review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration...", considering its recent position on the United Nations Declaration on the Rights of Indigenous Peoples ("UN Declaration") which limits the inherent rights it recognizes to existing US policy towards indigenous peoples.

In its recent statement on the UN Declaration, the United States makes several references to implementation of rights in accordance with existing federal laws and policies including: [the Declaration] expresses aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies." The US position also reduces the right of free prior and informed consent to "consultation" as per existing US policy.

If this is any indication of the United States' position on bringing their laws into conformity with international human rights standards then there is little hope of compliance with the Commission's recommendation that the United States ensure their laws are consistent with indigenous property rights as defined by the American Declaration. The United States must raise its own laws and policies up to the minimum standard contained in the UN Declaration and American Declaration.

945. Based upon the information available, the Commission considers that compliance with its recommendations set forth in Report No. 75/02 remains pending. Therefore, it will continue to monitor compliance with its recommendations.

Case 11.193, Report No. 97/03, Shaka Sankofa (United States)

946. In Report No. 97/03 dated December 29, 2003, the Commission concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Shaka Sankofa; b) by executing Mr. Sankofa based upon these criminal proceedings, the State was responsible for a violation of Mr. Sankofa's fundamental right to life under Article I of the American Declaration; and c) the State acted contrary to an international norm of *jus cogens* as encompassed in the right to life under Article I of the American Declaration by executing Mr. Sankofa for a crime that he was found to have committed when he was 17 years of age.

947. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Shaka Sankofa with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that violations similar to those in Mr. Sankofa's case do not occur in future capital proceedings.
3. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

948. In its 2006 and 2007 Annual Reports, the Commission stated that based upon the information available, it considered that there had been partial compliance with its recommendations set forth in Report No. 97/03. In a communication dated March 6, 2007, the State reiterated that it disagreed with the first two recommendations of the IACHR. With respect to the third recommendation, the State reminded the Commission of the Supreme Court's ruling in *Roper v. Simmons* (125 S. Ct. 1183 [2005]), which held that imposing the death penalty on offenders who were under the age of 18 when the crime was committed was unconstitutional, since it violated the Eight and Fourteenth Amendments.

949. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year.

950. For their part, the International Human Rights Clinic at American University Washington College of Law (IHRLC) responded on December 7, 2009 indicating that they had ended their representation of the family because they were unable for many years to contact them. Accordingly, the IHRLC representatives mentioned that they were not in a position to inform on compliance with the first recommendation involving an effective remedy for the family that includes compensation. However, IHRLC representatives did express their view that compliance with the

second and third recommendations is mixed: notwithstanding the *Roper v. Simmons* precedent, they were unaware of any efforts by the United States to "review its procedures and practices to ensure that violations similar to those in Mr. Shankofa's case do not occur in future capital proceedings" as recommended by the IACHR in the report on this case.

951. On November 18, 2010 the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. No response was received from either party within the deadline established.

952. Therefore, the Commission concludes that compliance with the recommendations in Report No. 97/03 remains partial. The Commission takes special note of the aforementioned Supreme Court sentence in *Roper v. Simmons* which prohibited the imposition of the death penalty to minors under the age of 18 at the time their crime was committed, in line with the Commission's third recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)

953. In Report No. 98/03 dated December 29, 2003, the Commission concluded that the State was responsible for violations of the petitioners' rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature.

954. The IACHR issued the following recommendation to the State:

Provide the petitioners with an effective remedy, which includes adopting the legislative or other measures necessary to guarantee to the petitioners the effective right to participate, directly or through freely chosen representatives and in general conditions of equality, in their national legislature.

955. In its 2006, 2007 and 2008 Annual Reports, the IACHR stated that compliance with its recommendation in this case was pending. By notes dated March 6, 2007 and January 6, 2009, the State reiterated that it disagreed with and declined the Commission's recommendation and denied any violations of the American Declaration of the Rights and Duties of Man based upon its previous responses in this case. In letters dated December 5, 2007 and December 28, 2008, the petitioners stated that the United States had failed to comply with the Commission's recommendation, since to date the residents of the District of Columbia remain disenfranchised, without the right to equal representation in the United States Senate and House of Representatives.

956. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

957. On November 18, 2010 the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. No response was received from the State within that time period. For their part, the petitioners responded by a letter dated December 7, 2010, in which they indicate that "the United States had failed to grant the residents of Washington, D.C. representation in the U.S. Senate and House of Representatives in general conditions of equality as recommended by the Commission".

958. Based upon the information available, the Commission considers that compliance with its recommendation remains pending. Accordingly, it will continue to monitor compliance with its recommendation.

Case 11.331, Report No. 99/03, Cesar Fierro (United States)

959. In Report No. 99/03 dated December 29, 2003, the Commission concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Cesar Fierro; and, b) should the State execute Mr. Fierro pursuant to the criminal proceedings at issue in this case, the State would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

960. The IACHR issued the following recommendations to the State:

1. Provide Mr. Fierro with an effective remedy, which includes a re-trial in accordance with the due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Fierro's release.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

961. In its 2006 and 2007 Annual Reports, the Commission concluded that compliance with its recommendations in this case was still pending. In a note dated March 6, 2007, the State reiterated that it disagreed with and declined the first recommendation of the Commission based upon its previous responses in this case. With regard to the second recommendation, the State declared that it is fully committed to meeting its obligations under the Vienna Convention on Consular Relations. In this regard, it is conducting on-going efforts to improve compliance with the obligation to respect the right to consular assistance of detained foreign nationals. For instance, the Department of State's Bureau of Consular Affairs has carried out an aggressive program of awareness. In addition to that, the State affirmed that since 1998, the State Department had distributed to federal, state and local law enforcement agents over one thousand training videos, booklets and pocket cards regarding arrests and detention of foreign nationals; as well as had conducted over 350 training seminars on the right to consular assistance throughout the United States and its territories, and had created an online training course on the topic.

962. In a letter dated November 5, 2007, the petitioners informed the Commission that the State had not complied with the Commission's recommendations. In breach of the first recommendation, the Petitioners claim that Mr. Fierro has not been re-tried or released, and he remains on death row without an execution date currently scheduled. That is notwithstanding the fact that the petitioners have further attempted to have the courts review Mr. Fierro's conviction. In this regard, the Texas Court of Criminal Appeals rejected Mr. Fierro's subsequent application for post-conviction writ of Habeas Corpus, on March 7, 2007. A petition for a writ of certiorari was also filed on Mr. Fierro's behalf in the Supreme Court of the United States on June 4, 2007, but the tribunal has yet to rule on this petition. According to the Petitioners, the victim's prior conviction and the possibility of its judicial review, along with that of the other Mexican nationals named in the ICJ *Case of Avena and Other Mexican Nationals v. the United States* is also a matter of discussion in the context of a pending case in which the Supreme Court has already granted certiorari (*Medellin v. Texas*).

963. By letter dated December 1, 2008, the petitioners updated the information and mentioned that Mr. Fierro remains on death row in Texas; that he has not been re-tried or released; and that no date has been scheduled for his execution. The petitioners mention that in its decision of March 31, 2008 the Supreme Court of the United States denied relief to Mr. Fierro on the basis of the *Medellin v. Texas* case, where it was determined that U.S. courts are not bound by the *Avena* judgment of the ICJ; and that a petition for successive habeas corpus relief was denied by the U.S. Court of Appeals on June 2, 2008. The petitioners are concerned that despite the ICJ decision of July 16, 2008 not to execute Mr. Fierro and other Mexican nationals including Jose Medellin absent review and reconsideration, Mr. Medellin was executed on August 5, 2008. They hold that “in the wake of Mr. Medellin’s execution, federal authorities have apparently done nothing to prevent Mr. Fierro’s execution, even though legal remedies are available to them”.

964. As regards the second recommendation, the petitioners acknowledged that the United States made information available to local authorities about their obligation in regard to consular access. Nevertheless, the petitioners argued that the United States had not reviewed its laws, procedures and practices in this regard. On the contrary, according to the petitioners, the most recent formal advice issued by the Department of State on this matter remained that of 1999, in which it advised that the Vienna Convention on Consular Relations was not intended to create a right of private judicial enforcement. The petitioners claim that the State continues to argue that the Vienna Convention negates any right for a foreign national whose right to consular assistance is violated. The petitioners emphasized that courts of the United States continue to refer to the aforementioned communication as an authoritative interpretation of the Vienna Convention on Consular Relations.

965. In their December 2008 submission, the petitioners add that they do not know of any review of the laws, procedures or practices of the United States that would be in compliance with the IACHR report’s second recommendation. They add that “no noticeable improvement has occurred in compliance in the United States in notifying detained foreign nationals about consular access”.

966. For its part, the United States sent a letter on January 6, 2009 that reiterates the position held earlier on this case.

967. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

968. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. The State did not provide the Inter-American Commission with updated information within the deadline. However, it had previously sent a letter dated June 23, 2010 in which it “provides measures taken around the nation in implementation of the obligations of the United States under the Vienna Convention on Consular Relations (VCCR)”. The State declares that it takes its VCCR obligations very seriously and then proceeds to describe several initiatives that include outreach, guidance and training on consular notification and access to law enforcement agents, prosecutors and judges at the federal, state and local levels. It further refers to the publication and massive distribution of a manual prepared by the State Department with instructions and complete and useful information for agents who detain or arrest foreign nationals. Other means used by the state to distribute this information include pocket cards for law enforcement agencies, prisons, and other entities throughout the country, as well as social media websites, training sessions, and briefings, all aimed at “rais[ing]

awareness of and increas[ing] compliance with consular notification and access obligations, and how alleged violations are remedied or resolved”.

969. The June 2010 submission by the State makes no reference to the first recommendation.

970. The petitioners, for their part, responded on December 15, 2010 and provided information which leads them to conclude that the United States has not complied with either of the recommendations. Regarding the first recommendation, they inform that Mr. Fierro remains on death row in Texas; that no state or federal authorities have taken actions aimed at his retrial or release; that no date has been scheduled for his execution; and that no court decisions in regard to him have been issued during the past year.

971. With respect to the second recommendation, the petitioners hold that there has been no review of the laws, procedures or practices of the United States to ensure consular assistance in the circumstances highlighted in the IACHR report. Further, the petitioners submit that the courts of that country have refused to grant relief for violations of consular access, and that since November 2009 no new case has reached the Supreme Court of the United States on a consular access issue. The petitioners indicate that they have surveyed all reported cases that have been decided by the federal courts of appeal, federal district courts, and state courts, and that in every one of them the ruling was against consular access claims. They add that “neither at the state nor at the federal level have the executive branches of government stepped in to provide a remedy in the face of the failure of the courts to do so”.

972. In their submission, the petitioners further express:

The Government of the United States continued during the past year its policy of avoiding legal recourse when consular access is violated. It has taken no steps to accede to the Vienna Convention’s Optional Protocol Concerning Compulsory Settlement of Disputes, from which it purported to withdraw in 2005. The Optional protocol contains no denunciation clause, hence the purported withdrawal is questionable in its legality under the Vienna Convention on the Law of Treaties. Even apart from its legality, the withdrawal bespeaks a refusal by the United States to allow third-party scrutiny of its compliance with consular access obligations.

973. According to the petitioners, the United States “continues to refrain from bringing legal action against local authorities who fail to comply with consular access obligations”. They add that even though the Department of State expresses in its 2010 manual on this matter that it will seek consular access if the foreign national is still in detention, it makes no commitment to sue local authorities to secure redress for the foreign national, or other instances of such violation. The petitioners mention that there is also no legislation adopted by the Congress of the United States to require implementation of the *Avena* decision of the International Court of Justice, and that “the courts do not view themselves as under an obligation to review and reconsider the convictions or sentences of the Mexican nationals involved in the *Avena* case, which includes Mr. Fierro”.

974. Based upon the foregoing information provided by the parties, the Commission considers that there has been partial compliance with its second recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)

975. In Report No. 100/03 dated December 29, 2003, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the

American Declaration by sentencing Douglas Christopher Thomas to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

976. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Douglas Christopher Thomas with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

977. In its 2006, 2007 and 2008 Annual Reports, the Commission stated that there had been partial compliance with its recommendations. In a note dated March 6, 2007, the United States maintained its previously stressed position of disagreement with the Commission's first recommendation. With regard to the IACHR's second recommendation, the State reminded the Commission of the Supreme Court's ruling in *Roper v. Simmons* (125 S. Ct. 1183 [2005]), which held that imposing the death penalty on offenders who were under the age of 18 when the crime was committed was unconstitutional, since it violated the Eight and Fourteenth Amendments.

978. On November 19, 2007, the petitioner acknowledged the aforementioned decision of the Supreme Court in *Roper v. Simmons*. However, the petitioner reiterated that the victim in this case was executed prior to that decision. In addition to that, the petitioner stressed that the State has not complied with the Commission's first recommendation. For its part, the State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

979. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

980. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. The State did not provide the Inter-American Commission with updated information within the deadline. For its part, the petitioner responded by a letter dated November 26, 2010 in which he expressed that he was not aware of any action taken by the United States to "address or acknowledge the recommendations of the Commission" or of any "plan, intent, or potential for action of any kind" to do so.

981. In view of the above, the Commission declares that compliance with the recommendations in Report No. 100/03 remains partial. The Commission takes special note of the aforementioned Supreme Court sentence in *Roper v. Simmons* which prohibited the imposition of the death penalty to minors under the age of 18 at the time their crime was committed, in line with the Commission's second recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.412, Report No. 101/03, Napoleon Beazley (United States)

982. In Report No. 101/03 dated December 29, 2003, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Napoleon Beazley to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

983. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Napoleon Beazley with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age a

984. In its 2006, 2007 and 2008 Annual Reports, the Commission considered that the State had partially complied with the recommendations in this case. In a letter dated March 6, 2007, the United States reiterated its previously stressed position of disagreement with the Commission's first recommendation. With regard to the IACHR's second recommendation, the State reminded the Commission of the Supreme Court's ruling in *Roper v. Simmons* (125 S. Ct. 1183 [2005]), which held that imposing the death penalty on offenders who were under the age of 18 when the crime was committed was unconstitutional, since it violated the Eight and Fourteenth Amendments. The Petitioner has not presented updated information regarding compliance. For its part, the State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

985. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

986. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline. However, a letter was sent by the State on June 23, 2010 in which it "provides measures taken around the nation in implementation of the obligations of the United States under the Vienna Convention on Consular Relations (VCCR)". The State declares that it takes its VCCR obligations very seriously and then proceeds to describe several initiatives that include outreach, guidance and training on consular notification and access to law enforcement agents, prosecutors and judges at the federal, state and local levels. It further refers to the publication and massive distribution of a manual prepared by the State Department with instructions and complete and useful information for agents who detain or arrest foreign nationals. Other means used by the state to distribute this information include pocket cards for law enforcement agencies, prisons, and other entities throughout the country, as well as social media websites, training sessions, and briefings, all aimed at "rais[ing] awareness of and increas[ing] compliance with consular notification and access obligations, and how alleged violations are remedied or resolved".

987. The June 2010 submission by the State makes no reference to the first recommendation.

988. On the basis of the available information, the Commission states that compliance with the recommendations in Report N° 101/03 remains partial. The Commission takes special note of the aforementioned Supreme Court sentence in *Roper v. Simmons* which prohibited the imposition of the death penalty to minors under the age of 18 at the time their crime was committed, in line with the Commission's second recommendation. Accordingly, the IACHR will continue to monitor the item still pending compliance.

Case 12.430, Report No. 1/05 Roberto Moreno Ramos, (United States)

989. In Report No. 1/05 dated January 28, 2005, the IACHR concluded that: a) the State was responsible for violations of Articles II, XVIII and XXVI of the American Declaration in the criminal proceedings against Mr. Moreno Ramos; and, b) should the State execute Mr. Moreno Ramos pursuant to the criminal proceedings at issue in this case, the State would commit a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

990. The IACHR issued the following recommendations to the State:

1. Provide Mr. Moreno Ramos with an effective remedy, which includes a new sentencing hearing in accordance with the equality, due process and fair trial protections prescribed under Articles II, XVIII and XXVI of the American Declaration, including the right to competent legal representation.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
3. Review its laws, procedures and practices to ensure that defendants in capital proceedings are not denied the right to effective recourse to a competent court or tribunal to challenge the competency of their legal representation on the basis that the issue was not raised at an earlier stage of the process against them.

991. In its 2006, 2007 and 2008 Annual Reports, the Commission presumed that its recommendations in this case were pending compliance. In a letter dated March 6, 2007, the State reiterated that it disagreed with and declined the first and third recommendations of the Commission based upon its prior submissions in this case. As regards the second recommendation, the State declared that it is fully committed to meeting its obligations under the Vienna Convention on Consular Relations. In this regard, it is conducting on-going efforts to improve compliance with the obligation to respect the right to consular assistance of detained foreign nationals. For instance, the Department of State's Bureau of Consular Affairs has carried out an aggressive program of awareness. In addition to that, the State affirmed that since 1998, the State Department had distributed to federal, state and local law enforcement agents over one thousand training videos, booklets and pocket cards regarding arrests and detention of foreign nationals; as well as had conducted over 350 training seminars on the right to consular assistance throughout the United States and its territories, and had created an online training course on the topic. The petitioners have not provided the Commission with updated information regarding implementation of its recommendations. For its part, the State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

992. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

993. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline. However, a letter was sent by the State on June 23, 2010 in which it "provides measures taken around the nation in implementation of the obligations of the United States under the Vienna Convention on Consular

Relations (VCCR)". The State declares that it takes its VCCR obligations very seriously and then proceeds to describe several initiatives that include outreach, guidance and training on consular notification and access to law enforcement agents, prosecutors and judges at the federal, state and local levels. It further refers to the publication and massive distribution of a manual prepared by the State Department with instructions and complete and useful information for agents who detain or arrest foreign nationals. Other means used by the state to distribute this information include pocket cards for law enforcement agencies, prisons, and other entities throughout the country, as well as social media websites, training sessions, and briefings, all aimed at "rais[ing] awareness of and increas[ing] compliance with consular notification and access obligations, and how alleged violations are remedied or resolved".

994. The June 2010 submission by the State makes no reference to the first recommendation.

995. Based upon the abovementioned information, the Commission considers that there has been partial compliance with its second recommendation. Accordingly, the IACHR will continue to monitor the item still pending compliance.

Case 12.439, Report N° 25/05, Toronto Markkey Patterson (United States)

996. In Report N° 25/05 dated March 7, 2005, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Toronto Markkey Patterson to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

997. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Toronto Markkey Patterson with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

998. In its 2006, 2007 and 2008 Annual Reports, the Commission considered that there had been partial compliance with its recommendations in this case. In a letter dated March 6, 2007, the United States reiterated its previous position of disagreement with the Commission's first recommendation. With regard to the Commission's second recommendation, the State reminded the Commission of the Supreme Court's ruling in *Roper v. Simmons* (125 S. Ct. 1183 [2005]), which held that imposing the death penalty on offenders who were under the age of 18 when the crime was committed was unconstitutional, since it violated the Eight and Fourteenth Amendments.. The State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

999. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year.

1000. Mr. J. Gary Hart, petitioner in this case, responded on November 30, 2009 and indicated that he had not been in contact with Mr. Patterson's family since his execution, and that he did not know whether his next of kin had been compensated. He also mentioned that he did not know whether any other remedy was afforded in the case by the United States, and made reference to the 2005 *Roper v. Simmons* precedent cited above. Finally, Mr. Hart mentions that

“Texas has not executed any such offender since that time, nor to my knowledge has any other state in the United States”.

1001. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline.

1002. Consequently, the Commission asserts that compliance in this case remains partial. In particular, the Commission takes note of the aforementioned Supreme Court sentence in *Roper v. Simmons* which prohibited the imposition of the death penalty to minors under the age of 18 at the time their crime was committed, in line with the Commission’s second recommendation. Accordingly, the IACHR will continue to monitor the item still pending compliance.

Case 12.421, Report N° 91/05, Javier Suarez Medina (United States)

1003. In Report N° 91/05 issued on October 24, 2005, the Commission concluded that the State was responsible for: a) violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Javier Suarez Medina, by permitting the introduction of evidence of an unadjudicated crime during Mr. Suarez Medina’s capital sentencing hearing and by failing to inform Mr. Suarez Medina of his right to consular notification and assistance; and b) violations of Article I, XXIV and XXVI of the American Declaration, by scheduling Mr. Suarez Medina’s execution on fourteen occasions pursuant to a death sentence that was imposed in contravention of Mr. Suarez Medina’s rights to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration, and by executing Mr. Suarez Medina pursuant to that sentence on August 14, 2002 notwithstanding the existence of precautionary measures granted in his favor by this Commission.

1004. The IACHR issued the following recommendations to the State:

1. Provide the next-of-kin of Mr. Suarez Medina with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.
3. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national’s circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
4. Review its laws, procedures and practices to ensure that requests for precautionary measures granted by the Commission are implemented so as to preserve the Commission’s functions and mandate and to prevent irreparable harm to persons.

1005. In its 2006, 2007 and 2008 Annual Reports, the Commission presumed that the recommendations in Report N° 91/05 were pending compliance.

1006. In its letter of March 6, 2007, the State reiterated that it disagreed with the first and second recommendations of the Commission for the reasons articulated in its previous submissions in this case. With respect to the Commission’s third recommendation, the State declared that it is

fully committed to meeting its obligations under the Vienna Convention on Consular Relations. In this regard, it is conducting on-going efforts to improve compliance with the obligation to respect the right to consular assistance of detained foreign nationals. For instance, the Department of State's Bureau of Consular Affairs has carried out an aggressive program of awareness. In addition to that, the State affirmed that since 1998, the State Department had distributed to federal, state and local law enforcement agents over one thousand training videos, booklets and pocket cards regarding arrests and detention of foreign nationals; as well as had conducted over 350 training seminars on the right to consular assistance throughout the United States and its territories, and had created an online training course on the topic. The petitioners have not provided the Commission with updated information regarding implementation of its recommendations. As regards the fourth recommendation, the State informed the Commission that it had mechanisms in place to allow for the expeditious transmittal of precautionary measures to the appropriate governmental authorities. For its part, the State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

1007. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

1008. On November 22, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline.

1009. The Commission concludes that there is partial compliance with the aforementioned recommendations. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 12.534, Report N° 63/08, Andrea Mortlock (United States)

1010. In Report N° 63/08 issued on July 25, 2008, the Inter-American Commission concluded that the United States is responsible for the violation of Article XXVI of the American Declaration to the prejudice of Andrea Mortlock, a Jamaican national who was under threat of deportation from the United States to her country, the result of which would deny her medication critical to her treatment for AIDS/HIV.

1011. As a consequence of that conclusion, the Inter-American Commission recommended to the United States that it "refrain from removing Ms. Andrea Mortlock from its jurisdiction pursuant to the deportation order at issue in this case".

1012. By note dated March 3, 2008, the United States expressed that it "respectfully disagrees with and declines the recommendations of the Commission in the above-referenced case and denies any violation of the protections set forth in the American Declaration of the Rights and Duties of Man." That position was reiterated by the representative of the State during the working meeting that took place on March 11, 2008, during the Commission's 131st regular period of sessions.

1013. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. For their part, the petitioners responded on December 7, 2009 that they were "unaware of any efforts by the United States to remove [Andrea] Mortlock from its jurisdiction pursuant to the deportation order at issue in the case".

1014. On November 22, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. The State did not respond within the deadline. For their part, the petitioners responded on December 20, 2010 and indicated that they were not aware of any plans for the United States to remove Andrea Mortlock from its jurisdiction pursuant to the deportation order at issue in the case.

1015. The information available to the IACHR indicates that, apparently, there has been compliance with its recommendation. However, in light of the position previously adopted by the State with respect to the recommendations in the report, the Inter-American Commission cannot reach a determination on compliance until it receives conclusive information. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 12.644, Report N° 90/09, José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García (United States)

1016. In Report N° 90/09 issued on August 7, 2009, the IACHR concluded that the United States is responsible for the violations of the rights of José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García under Articles I, XVIII and XXVI of the American Declaration in respect of the criminal proceedings leading to the imposition of the death penalty against them. With respect to Mr. Medellín, who was executed on August 5, 2008 while he was the beneficiary of precautionary measures, the Inter-American Commission additionally concluded that “the United States failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States”. In Report N° 90/09, the IACHR also concluded that should the State execute Messrs. Medellín, Ramírez Cardenas and Leal García, it would commit an irreparable violation of their right to life as guaranteed in Article I of the American Declaration.

1017. Accordingly, the IACHR issued the following recommendations to the State:

1. Vacate the death sentences imposed on Messrs. Ramírez Cardenas and Leal García and provide the victims with an effective remedy, which includes a new trial in accordance with the equality, due process and fair trial protections, prescribed under Articles I, XVIII and XXVI of the American Declaration, including the right to competent legal representation.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
3. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.
4. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes can apply for amnesty, pardon or commutation of sentence with minimal fairness guarantees, including the right to an impartial hearing.
5. Provide reparations to the family of Mr. Medellín as a consequence of the violations established in this report.

1018. On January 18, 2011 the IACHR requested both parties to submit, within one month, updated information on compliance with the recommendations. Neither party submitted the information requested.

1019. For the aforesaid, the IACHR concludes that the State failed to comply with the recommendation of the Commission regarding Mr. Medellín and has not complied yet with the remaining recommendations. In consequence, the Commission will continue monitoring the matters pending compliance.

Case 11.500, Report No. 124/06, Tomás Eduardo Cirio (Uruguay)

1020. In Report No. 124/06 of October 27, 2006, the Inter-American Commission concluded that: (a) The Uruguayan State has breached its obligation to respect and ensure the right to be heard by a competent, independent, and impartial court, previously established by law (Article XXVI American Declaration) and judicial protection (Article 25 American Convention), the freedom of expression (Article IV American Declaration), his right to dignity and honor (Article 5 of the Declaration and Article 11 of the Convention), the right to equality before the law (Article 24 of the Convention), and the right to compensation (Article 10 of the American Convention); and (b) that by virtue of the violations mentioned, the Uruguayan State has breached its obligations to respect and ensure human rights, imposed by Article 1(1) of the American Convention, and to adopt provisions of domestic law, imposed by Article 2.

1021. The Commission made the following recommendations to the State:

1. Nullify forthwith and to rescind retroactively Executive Resolutions Nos. 46.202 and 46.204 of January 2, 1973, Ministry of Defense Resolution No. 6.540 of December 20, 1973, and the ruling of the Tribunal of Honor that harmed him. Restore all the rights, benefits, honors and other prerogatives pertaining to him as a retired member of the Armed Forces of Uruguay.
2. To adopt all necessary measures for reparation and compensation, so as to restore the honor and reputation of Mr. Tomás Eduardo Cirio.
3. To promote measures that lead to the adoption of domestic legislation in conformity with the norms of the American Convention with respect to freedom of expression and due process under military jurisdiction.

1022. In 2010, the IACHR requested updated information from the parties concerning compliance with the recommendations.

1023. In a note dated December 16, 2010, the State reported to the Commission that it had complied with the recommendations made in Report No. 124/06 of October 27, 2006. Regarding the first two recommendations, the State indicated that the reparations granted to Major Cirio involved promoting him to the rank of General as of February 1, 1996, increasing his retirement pay, and paying compensation equivalent to 24 times the corresponding retirement assets, paid at values for July 2005. Likewise, in the framework of comprehensive reparation, the State pointed out that enjoyment of the benefits of his rank and honors pertaining to his position was reinstated, military health services restored, and all references based on incidents of the past were deleted from his personal files. The details of the reparations that were granted were provided by the State in its note of December 6, 2007, as indicated in the IACHR Annual Report for 2007.

1024. Regarding the third recommendation, the State mentioned the draft Law for National Defense, which as reported in due time was submitted by the Executive Branch of Government to Parliament and was adopted by the Senate of Uruguay on December 29, 2008. Regarding this, the

State warned that, although the above-mentioned law was adopted by Parliament in August 2009, at the date of its report, it had not been enacted "because of a veto by the Executive Branch aimed at one of the articles that have nothing to do with the articles referring to military jurisdiction." The State provided the Commission with the text of the Law adopted by Parliament, except that it has not yet entered into force because of the reasons indicated above. The State explained that when the text was returned to the General Assembly, the latter lifted the veto imposed on February 9, 2010. The State sent the Commission the text of the National Defense Framework Act No. 18,650, approved by Parliament and enacted by the Executive Branch. The Law took effect on March 8, 2010.

1025. As for the petitioner, in December 2007, he informed the Commission about compliance with the first two recommendations as set forth in Report No. 124/06. In his note of December 4, 2007, the petitioner indicated that, by means of Resolution No. 83.329 issued by the Executive Branch on December 28, 2005, resolutions Nos. 46.202 and 46.204 of January 2, 1973 were repealed retroactively, all the rights, benefits, honors and other privileges that would have pertained to his rank as a retired officer were reinstated, and the legal repercussions of his censure for severe offense were annulled. In this same communication, the petitioner indicated that, as moral redress, he was awarded the highest rank in the Armed Forces as of February 1, 1986, by Executive Resolution No. 83.805 of September 4, 2006.

1026. Based on the information supplied by the parties, the Commission observes that the State has complied with the three recommendations made in its Report No. 124/06. In the case of the third recommendation, the Commission appreciates the efforts of the Uruguayan State to bring domestic law in line with the provisions of the American Convention on the matter of freedom of expression and due process in the military justice system. It also takes note of the National Defense Framework Act.

1027. The Commission therefore concludes that the State has fully complied with the recommendations made.

Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay)

1028. In Report No. 86/09 of August 6, 2009, the Inter-American Commission concluded that the State was responsible for violation of the rights that Jorge, José and Dante Peirano have under articles 7(2), (3), (5) and (6), 8(1) and (2), and 25(1) and (2), as a function of its obligations under articles 1(1) and 2 of the American Convention. It therefore made specific recommendations. Summarizing, the petitioners had alleged that the three Peirano Basso brothers were deprived of their liberty on August 8, 2002. As of the date on which the complaint was filed, i.e., October 18, 2004, they had not been formally charged and had not been tried. The petitioners alleged that by January 2005, the requirements for their release had been met, as they had already spent two and a half years in prison. The State accused them of violating Law 2230 (1893) which punishes the directors of companies in dissolution who commit tax evasion and other financial offenses. According to the complaint, persons charged with this crime need not be incarcerated during their trial; nevertheless, the Peirano Basso brothers were held in prison because of the "social alarm" brought on by the collapse of the Uruguayan banking system, which they were alleged to have caused.

1029. In its report the Commission decided the following:

1. Reiterate the recommendation that the State amends its legislation, to make it consistent with the rules of the American Convention, which guarantee the right to personal liberty.

1030. On November 19, 2010, the IACHR requested updated information from the parties concerning compliance with the recommendations.

1031. In a note dated December 20, 2010, the State reported that the Executive Branch had sent the bill to amend the Penal Code to the Parliament on November 9, 2010. The House of Representatives' Committee on the Constitution, Codes, General Legislation and Government took it under consideration on November 16, 2010. It explained that from December 15, 2010 to March 30, 2011, representatives will be able to propose amendments. The House will then move on to discussion of the bill. Finally, the State observed that while the Commission's recommendation is not fulfilled merely by sending the bill to the legislature, it does signify how seriously this commitment is taken.

1032. The Commission values the measures taken by the Uruguayan State to comply with its recommendation. At the same time it observes that the recommendations are in the process of being implemented. The Commission therefore concludes that the recommendation in question has been partially complied with. Accordingly, the Commission will continue to monitor this point.

Case 12.555 (Petition 562/03), Report No. 110/06, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola (Venezuela)

1033. On October 27, 2006, by means of Report No. 110/06⁶¹, the Commission approved a friendly settlement agreement in the case of Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola. The case deals with the deportation, from Venezuela to Spain, of Juan Víctor Galarza Mendiola on June 2, 2002, and of Sebastián Echaniz Alcorta on December 16, 2002, both of whom are Spanish nationals of Basque origin.

1034. In the friendly settlement agreement, the Venezuelan State accepted its responsibility for violating the human rights of Juan Víctor Galarza Mendiola and Sebastián Echaniz Alcorta, by illegally deporting them and illegally handing them over to the Spanish State. The Venezuelan State also acknowledged its violation of the following articles of the American Convention: Right to Humane Treatment, Right to Personal Liberty, Right to a Fair Trial, Right to Privacy, Rights of the Family, Freedom of Movement and Residence, Right to Equal Protection, and Right to Judicial Protection, in accordance with the general obligation to respect and guarantee rights. It also admitted the violation of Article 13 of the Inter-American Convention to Prevent and Punish Torture, it undertook to provide, *inter alia*, pecuniary damages and guarantees of non-repetition.

1035. On November 21, 2006, the Commission adopted Report No. 110/06, in which it applauded the efforts made by both parties in reaching the friendly settlement and, in addition, clarified that the agreement referred to a series of matters beyond the jurisdiction of the Commission and/or that were not addressed in the case before it. The Commission therefore deemed it was necessary to state that the adopted report in no way implied a ruling on the individuals not named as victims in the case before the Commission, on the citizenship of Messrs.

⁶¹ Report No. 110/06, Case 12.555, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola, October 27, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/VENEZUELA.12555eng.htm>.

Juan Víctor Galarza Mendiola and Sebastián Echaniz Alcorta, nor on the treatment they may have received in third countries not subject to the IACHR's jurisdiction.

1036. On November 19, 2010, the Commission asked the parties for up-to-date information on the state of compliance with the agreement. In response, the State informed that on June 30, 2007, it decided not to continue with the friendly settlement procedure in the case of reference. The petitioner did not submit any information.

1037. Based on the foregoing, the IACHR concludes that compliance with the friendly settlement agreement remains pending. Therefore, the Commission will continue to monitor the pending items.

E. Petitions and cases submitted to the Inter-American Court of Human Rights

1. Provisional measures

1038. Article 63(2) of the American Convention on Human Rights provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

1039. The following is a summary of the provisional measures requested during the period covered by this report, according to the country concerned. The number of measures required from the states does not tally with the number of persons those measures were intended to protect.

a. Argentina

Millacura Llaipén, *et al.*

1040. On June 20, 2006, the Commission submitted a request to the Inter-American Court seeking provisional measures to require the State protect the life and humane treatment of María Leontina Millacura Llaipén, her children Marcos and Valeria Torres, her son-in-law Juan Pablo Caba; Gerardo Colín; Patricio Oliva; Tamara Bolívar; Walter Mansilla; Silvia of the Santos; Verónica Heredia; Miguel Ángel Sánchez; and Viviana and Sonia Hayes. Mrs. Millacura Llaipén is a petitioner in a case submitted to the Commission and at the time of the acts alleged in her petition and in her quest for justice, she, her next of kin, and her attorneys have been the targets of intimidation and aggression.

1041. Over the year 2010, the Commission periodically submitted its observations on the State's reports regarding these measures. The Commission also presented its observations regarding various requests submitted by the beneficiaries.

Mendoza prisons

1042. In 2010, the Commission presented information and comments in connection with these provisional measures ordered by the Court on November 22, 2004. The main purpose of those measures is to protect the life and integrity of all persons held in custody in the Mendoza Provincial Prison and those in the Gustavo André Unit at Lavalle, as well as every person found within the walls of those facilities.

1043. Moreover, on November 17, 2010, the Commission attended the public hearing of the Inter-American Court during its forty-second special session, held in Quito, Ecuador. In its order issued November 26, 2010, the Inter-American Court lifted said provisional measures. The text of the order (in Spanish) is available at the following link: <http://www.corteidh.or.cr/docs/medidas/penitenciariamendoza se 08.doc>.

b. Brazil

Urso Branco Prison

1044. In 2010, the Commission presented writings and comments in connection with the provisional measures ordered on June 18, 2002, on behalf of the persons held in custody in the José Mario Alves Detention Center, known as the "Urso Branco Prison."

Children and adolescents deprived of liberty at the *Unidade de Internação Socioeducativa* (Socio-educational Detention Facility – UNIS)

1045. On December 30, 2010, the IACHR filed a request for protective measures with the Court to protect the children and adolescents deprived of liberty at the *Unidade de Internação Socioeducativa* (UNIS), located in Cariacica, a municipality of the state of Espírito Santo. Upon considering the matter, the Commission found that the State should adopt a series of immediate and specific measures to ensure that authorities regain effective control over the *Unidad de Internamiento Socioeducativo*. These measures should be designed to maintain an atmosphere of order within the facility, though mechanisms that ensure respect for the rights to life and personal integrity of children and young people deprived of liberty.

1046. To this end, the IACHR petitioned the Court to order the Brazilian State to implement a series of security measures to protect the life and personal integrity of inmates at the *Unidad de Internamiento Socioeducativo* (UNIS); provide UNIS with the sufficient security staff and training to prevent new acts of violence; take the necessary steps to separate children and young people by age, type of violation, personal history, and other criteria relevant to the best interests of the child; provide a current list of name, age, legal situation, and module of each child and adolescent interned at UNIS; and take such measures as may be necessary to ensure that the facility's conditions meet minimum standards for health and hygiene.

c. Colombia

19 Merchants

1047. Throughout 2010, the Commission submitted periodic comments on the reports that the State filed in connection with these provisional measures ordered by the Court on September 3, 2004.

1048. On August 26, 2010, the Court issued an order in which it confirmed the State's obligations with respect to these provisional measures; It ordered to lift such measures at the request of other beneficiaries, and also declared them to be henceforth inapplicable to some of the beneficiaries, who had left the country. The text of the order is available at the following link: http://www.corteidh.or.cr/docs/medidas/comerciantes_se_07_ing.pdf. See "Contentious Cases" above.

Álvarez, et al.

1049. In 2010 the Commission submitted to the Court its periodic comments on the reports presented by the Colombian State on the provisional measures ordered in this matter. The measures were ordered at the Commission's request, for the purpose of protecting the humane treatment of the members of the Association of Relatives of Detainees-Disappeared Persons of Colombia. The Court originally ordered these provisional measures on July 22, 1997.

Caballero Delgado and Santana

1050. Over the year 2010, the Commission submitted its observations on the reports made by the Colombian State regarding these measures. It is worth noting that it was December 7, 1994 when the Court first ordered provisional measures in this case at the Commission's request, to protect some of the witnesses who, in the case being litigated before the Court at the time (see below), were giving testimony concerning the responsibility of agents of the State.

1051. On February 3, 2010, the Inter-American Court issued a decision lifting and declaring fulfilled the provisional measures ordered by the Court in its rulings of April 16, 1997, June 3, 1999, July 4, 2006, and February 6, 2008, regarding Gonzalo Arias Alturo. In addition, the Court decided to order the State to continue the necessary measures to protect the life and personal integrity of María Nodelia Parra. The text of the order is available at <http://www.corteidh.or.cr/docs/medidas/caballero se 10 ing.pdf>.

San José de Apartadó Peace Community

1052. These measures were ordered by the President of the Court, at the Commission's request, on October 9, 2000, to protect the humane treatment of the members of the San José de Apartadó Peace Community and of persons providing it services.

1053. Over the year 2010, the Commission submitted its observations to the Court on the reports by the Colombian State and the representative of the beneficiaries regarding these measures. In addition, the Commission attended the public hearing held during the eighty-seventh regular session of the Inter-American Court. The Court issued an order on August 30, 2010, in which it upheld the provisional measures ordered. The text of the order is available at the following link: <http://www.corteidh.or.cr/docs/medidas/apartado se 09 ing.pdf>.

Community Council of Jiguamiandó and the Curbaradó families

1054. The Court ordered these measures on March 6, 2003, at the Commission's request, for the purpose of protecting the rights to life and to residence in the territory of the members of the Community Council of Jiguamiandó and the Curbaradó families. Over the year 2009, the Commission submitted its observations to the Court on the reports by the Colombian State and the representatives of the beneficiaries. Also, the Commission attended the public hearing held during the eighty-seventh regular session of the Inter-American Court. The Court issued an order on August 30, 2010, in which it granted the request for extension filed by the representatives of the beneficiaries, and provided for the continuance of the provisional measures ordered. The text of the order is available at the following link: <http://www.corteidh.or.cr/docs/medidas/jiguamiando se 09 ing.pdf>.

Giraldo Cardona

1055. At the Commission's request, the Court ordered measures in the matter of Giraldo Cardona on October 28, 1996, to protect the life and humane treatment of the members of the Meta Civic Committee of Human Rights and to enable them to continue their work. The beneficiaries were alleged to have been victims of threats, harassment and persecution.

1056. Over the year 2010, the Commission periodically submitted its observations on the State's reports regarding these measures. On February 2, 2010, the Court issued an order in which it confirmed the State's obligations vis-à-vis these provisional measures and lifted such measures with respect to beneficiary Noemy Palencia. The text of this order is available at the following link: <http://www.corteidh.or.cr/docs/medidas/giraldo se 11 ing.pdf>.

Gutiérrez Soler

1057. Over 2010, the Commission periodically submitted its observations on the State's reports regarding these measures, ordered by the Court on March 11, 2005 for the purposes of: a) protecting the life, humane treatment, and personal liberty of Mr. Ricardo Gutiérrez Soler and his next of kin, i.e., his mother, Ms. María Elena Soler de Gutiérrez; his children, Luisa Fernanda Gutiérrez Reyes, Paula Camila Gutiérrez Reyes, Leonardo Gutiérrez Rubiano, Leydi Caterin Gutiérrez

Peña, Sulma Tatiana Gutiérrez Rubiano, Ricardo Alberto Gutiérrez Rubiano and Carlos Andrés Gutiérrez Rubiano, and Ms. Yaqueline Reyes, and b) protecting the life, humane treatment and personal liberty of Mr. Wilson Gutiérrez Soler and his son Kevin Daniel Gutiérrez Niño, should they return to Colombia. See "Contentious Cases, *infra*."

La Rochela

1058. On October 24, 2009 the victims' representatives submitted to the Court a request for provisional measures, for Colombia to protect the life and humane treatment of Esperanza Uribe Mantilla, Luz Nelly Carvajal, and Paola Martínez Ortiz and their next of kin, who are victims in the Rochela Massacre (see *infra*). The request for measures was based on the following facts: (i) AUC pamphlets were delivered at the homes of Mmes. Paola Martínez Ortiz, Nely Carvajal Londoño and Esperanza Uribe Mantilla threatening them and declaring that they were a military objective, and (ii) that said mmes. had been subject to threats and harassment.

1059. Over the year 2010, the Commission periodically submitted its observations on the State's reports regarding the implementation of these provisional measures. See "Contentious Cases," *infra*.

Mapiripán Massacre

1060. Over the year 2010 the Commission periodically submitted its observations to the State's reports regarding the measures originally ordered by the President of the Court on February 4, 2005 to protect the life and humane treatment of Carmen Johana Jaramillo Giraldo, Esther Pinzón López, Sara Paola Pinzón López, María Teresa Pinzón López, Yur Mary Herrera Contreras, Zully Herrera Contreras, Maryuri Caicedo Contreras, Nadia Marina Valencia Sanmiguel, Yinda Adriana Valencia Sanmiguel, Johana Marina Valencia Sanmiguel, Gustavo Caicedo Contreras, Rusbel Asdrúbal Martínez Contreras, Roland Andrés Valencia Sanmiguel, Ronald Mayiber Valencia Sanmiguel, Luis Guillermo Pérez, Nory Giraldo de Jaramillo, Marina San Miguel Duarte, Viviana Barrera Cruz, Luz Mery Pinzón López, and Mariela Contreras Cruz. See contentious cases, *infra*.

1061. On September 2, 2010, the Inter-American Court issued an order extending these provisional measures an additional six months and requested information from the parties regarding the current situation of the beneficiaries. The text of the order (in Spanish) is available at the following link: http://www.corteidh.or.cr/docs/medidas/mapiripan_se_03.pdf.

Mery Naranjo, et al.

1062. In an order dated July 5, 2006, the Court required the State, *inter alia*, to adopt the measures necessary to protect the rights to life and to humane treatment of Mrs. Mery Naranjo Jiménez and her family and to investigate the acts perpetrated against her and Mrs. María del Socorro Mosquera Londoño. Mrs. Naranjo and Mrs. Mosquera are human rights defenders and community leaders in the city of Medellín. Because of the work they do, the two women have been threatened and attacked by agents of the State and civilians identified with paramilitary groups.

1063. Over the year 2010, pursuant to the Court's mandate, the Commission submitted information and observations regarding these provisional measures. On November 25, 2010, the Inter-American Court issued an order lifting the provisional measures pertaining to Sebastián Naranjo Jiménez. In addition, the Court ordered the provisional measures to remain in tact for the remaining beneficiaries. The text of the order (in Spanish) is available at the following link: http://www.corteidh.or.cr/docs/medidas/naranjo_se_04.pdf.

Kankuamo Indigenous People

1064. In 2010 the Commission regularly presented its comments on the State's reports concerning the measures ordered on July 5, 2004, for members of the Kankuamo indigenous people, to protect their lives, humane treatment, cultural identity and special relationship to their ancestral lands.

Colombian Commission of Jurists

1065. On November 9, 2009, the IACHR submitted a request for provisional measures to the Inter-American Court in order to protect the rights to life and personal integrity of the members of the nongovernmental organization known as the *Comisión Colombiana de Juristas* (Colombian Commission of Jurists). Following a series of filings, the Inter-American Court issued an order on November 25, 2010, dismissing the request submitted by the IACHR. The text of said order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/ccj se 01.pdf](http://www.corteidh.or.cr/docs/medidas/ccj_se_01.pdf).

Inter-ecclesial Commission for Justice and Peace

1066. On April 14, 2010, the Inter-American Commission submitted a request for provisional measures to the Inter-American Court in order to protect the rights to life and personal integrity of the members on the nongovernmental organization known as the *Comisión Intereclesial de Justicia y Paz* (Inter-ecclesial Commission for Justice and Peace). Following a series of filings, the Inter-American Court issued an order on November 22, 2010, dismissing the request submitted by the IACHR. The text of said order is available (in Spanish) at the following link: [http://www.corteidh.or.cr/docs/medidas/cijp se 01.pdf](http://www.corteidh.or.cr/docs/medidas/cijp_se_01.pdf).

d. Dominican Republic

Haitian and Dominican Nationals of Haitian origin in the Dominican Republic

1067. Over the year 2010, the Commission continued to submit its observations concerning the implementation of the provisional measures ordered by the Court on August 18, 2000. The provisional measures in this matter were originally requested by the IACHR on May 30, 2000.

Almonte Herrera, et al.

1068. On May 3, 2010, the Inter-American Commission requested provisional measures on behalf of Mr. Juan Almonte Herrera who disappeared in September 2009, presumably while he was in the custody of the State. In addition, the Commission requested the adoption of provisional measures on behalf of several members of Mr. Almonte Herrera's family and his representatives. On May 25, 2010, the Inter-American Court issued an order for the provisional measures and required the State to implement the necessary measures to determine the whereabouts of Mr. Almonte Herrera, and to protect the life and personal integrity of the other beneficiaries. Over the year 2010, the IACHR continued to submit its observations concerning the reports of the State. The order of the Inter-American Court is available at the following link: [http://www.corteidh.or.cr/docs/medidas/almonte se 011%20ing.pdf](http://www.corteidh.or.cr/docs/medidas/almonte_se_011%20ing.pdf).

e. Ecuador

Sarayaku Indigenous People

1069. In 2010, the Commission submitted its comments on the State's reports concerning the measures ordered by the Court on June 6, 2004, on behalf of the members of the Kichwa people of Sarayaku, intended to protect their lives, humane treatment, their right to freedom of movement and their special relationship to their ancestral lands. In its comments the Commission specifically observed that the situation that justified the adoption of provisional measures still exists, particularly the need to remove explosive materials from the indigenous people's lands.

1070. The Commission attended the public hearing held during the eighty-sixth regular session of the Inter-American Court. On February 4, 2010, the Inter-American Court issued an order upholding the provisional measures. The text of the order (in Spanish) is available at the following link: [http://www.corteidh.or.cr/docs/medidas/sarayaku se 04.pdf](http://www.corteidh.or.cr/docs/medidas/sarayaku_se_04.pdf).

e. El Salvador

Gloria Giralte de García Prieto, et al.

1071. In 2010, the Commission submitted periodic comments to the Court on the Salvadoran State's reports regarding the measures ordered by the Court on September 26, 2006 at the Commission's request. The provisional measures were ordered to protect the lives and humane treatment of some of Mr. Ramón Mauricio García Prieto Giralte's next of kin and some of his legal advisors and members of the Human Rights Institute of the Central American University. These measures are in connection with the case being litigated before the Court and decided by the Court in its judgment on preliminary objections, merits, reparations and costs, dated November 20, 2007 (see "Contentious Cases", below).

1072. The Commission participated in the public hearing held during the eighty-sixth regular session of the Inter-American Court. On February 3, 2010, the Court issued an order lifting the provisional measures pertaining to José Roberto Burgos Viale and Matilde Guadalupe Hernández de Espinoza, and ordered these measures to remain in force for the remaining beneficiaries. The text of this order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/giralte se 05.pdf](http://www.corteidh.or.cr/docs/medidas/giralte_se_05.pdf).

Major Meléndez Quijano, et al.

1073. In 2010, the Commission submitted to the Court periodic comments on the Salvadoran State's reports on the provisional measures the Court ordered on May 12, 2007 at the Commission's request. The text of the order of provisional measures is available at: [http://www.corteidh.or.cr/docs/medidas/melendez se 02 ing.doc](http://www.corteidh.or.cr/docs/medidas/melendez_se_02_ing.doc).

1074. The Commission participated in the public hearing held during the eighty-sixth regular session of the Inter-American Court. On February 2, 2010, the Court issued an order lifting the provisional measures pertaining to José Roberto Burgos Viale and Eurípides Manuel Meléndez Quijano, and ordered the measures to remain in force for the remaining beneficiaries. The text of this order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/melendez se 05 ing.pdf](http://www.corteidh.or.cr/docs/medidas/melendez_se_05_ing.pdf).

g. Guatemala

Bámaca Velásquez

1075. In 2010, the Commission submitted information and comments on the provisional measures originally ordered on June 30, 1998, and whose purpose today is to protect the life and humane treatment of the following persons: Santiago Cabrera López, Alfonso Cabrera Viagres, María Victoria López, Blanca Cabrera, Carmenlinda Cabrera, Teresa Aguilar Cabrera, Olga Maldonado, Carlos Alfonso Cabrera, José León Bámaca Hernández, Egidia Gebia Bámaca Velásquez, Josefina Bámaca Velásquez, Alberta Velásquez, Rudy López Velásquez and other members of the Bámaca Velásquez family who make their permanent home in Guatemala; Emerita Mendoza, Wendy Pérez Álvarez, Sulni Madeli Pérez Álvarez, José Oswaldo Pérez Álvarez, Jacobo Álvarez, José Pioquinto Álvarez, Alez Javier Álvarez, Germán Aníbal de la Roca Mendoza, Kevin Otoniel de la Roca Mendoza, Blanca Noelia Meléndez, Aron Álvarez Mendoza and his family and other members of the family of Mr. Otoniel de la Roca Mendoza who make their permanent home in Guatemala, pursuant to the terms of the Court's most recent order, issued on March 11, 2005, confirming that the measures are to remain in force. See "Contentious Cases," below.

Carpio Nicolle

1076. In 2010, the Commission supplied information and comments in connection with the provisional measures ordered in this case since July 4, 1995, which were upheld on July 6, 2009. The purpose of the measures was, *inter alia*, to protect the lives and humane treatment of Mrs. Martha Arrivillaga de Carpio and Mrs. Karen Fischer and of Messrs. Jorge and Rodrigo Carpio Arrivillaga, Abraham Méndez García and his wife and children, and of the adolescents Rodrigo and Daniela Carpio Fischer, should they return to Guatemala. See "Contentious Cases," below.

Guatemalan Forensic Anthropology Foundation

1077. At the Commission's request, on July 4, 2006 the Court ordered provisional measures to protect the life and humane treatment of the members of the Guatemalan Forensic Anthropology Foundation and the next of kin of its Executive Director, Mr. Fredy Armando Peccerelli Monterroso. Since then, the Commission has presented its comments on the information supplied, and has requested the Court to order the State to implement, immediately and effectively, all measures necessary to protect the life and humane treatment of the beneficiaries.

1078. Moreover, on September 2, 2010, the Commission participated in a public hearing on implementation of provisional measures, which was convened by the President of the Court on the basis of an order issued July 21, 2010.

Helen Mack, et al.

1079. In 2010, the Commission submitted periodic comments on the State's reports. The provisional measures were ordered on August 26, 2002, to protect the life and humane treatment of the family of Mrs. Myrna Mack Chang and the members of the Myrna Mack Foundation, Mrs. Iduvina Hernández and Mr. Jorge Guillermo Lemus Alvarado and their families. See "Contentious Cases," below.

Raxcacó, et al.

1080. Over the year 2010, the Commission continued to follow up on the provisional measures that the Court ordered in this matter on August 30, 2004, to stay the execution of the death penalty that the Guatemalan courts imposed on Bernardino Rodríguez Lara (the current

beneficiary). The provisional measures are intended to protect his life and humane treatment until such time as the proceedings on his case within the inter-American system are completed. On May 9, 2008, the Court issued an order in which it confirmed the State's obligations vis-à-vis these provisional measures. It also decided that the measures need not be expanded to include other persons sentenced to death in Guatemala. The text of the order (in Spanish) is available at the following link: [http://www.corteidh.or.cr/docs/medidas/Raxcaco se 07 ing.doc](http://www.corteidh.or.cr/docs/medidas/Raxcaco_se_07_ing.doc).

h. Haiti

A.J., et al.

1081. The Inter-American Commission submitted a request for provisional measures on August 14, 2009, for Haiti to protect the life and humane treatment of A. J., of her mother, J. L., and four persons, members of the organization *Action Citoyenne pour le Respect des Droits Humains* [Citizen Action for the Respect of Human Rights]. The request for these measures was based, *inter alia*, on the following facts: (i) A. J. had been raped by a police officer when she was visiting her father who was in custody; (ii) after the rape was reported, the aforementioned persons were the victims of several acts of harassment and persecution by police officers; and (iii) after precautionary measures were granted by the Commission, A. J., her family and ACREDH continued to be threatened and harassed. On September 21, 2009, the Court ratified the President's order and expanded the measures to include the next of kin of Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael and André Junior Laurore. The text of the order can be found (in French) at: [http://www.corteidh.or.cr/docs/medidas/aj se 02 fr.pdf](http://www.corteidh.or.cr/docs/medidas/aj_se_02_fr.pdf).

1082. Over the year 2010, the Commission submitted additional information to the Court regarding the situation of the beneficiaries.

i. Honduras

Kawas Fernández

1083. At the request of the representatives of the victim and her next of kin in the case of *Kawas Fernández*, which is now before the Inter-American Court, on November 29, 2008 the Court issued an order for provisional measures in which it called upon Honduras to adopt forthwith whatever measures are needed to effectively protect the life and humane treatment of Dencen Andino Alvarado and to guarantee that he will not be persecuted or threatened for testifying in the investigation conducted by the authorities into the murder of Blanca Jeannette Kawas Fernández. The order in question is available (in Spanish) at the following link: [http://www.corteidh.or.cr/docs/medidas/kawas se 01.doc](http://www.corteidh.or.cr/docs/medidas/kawas_se_01.doc).

1084. Over the year 2010 the Commission submitted its observations regarding these provisional measures.

Gladys Lanza

1085. On August 31, 2010, the Inter-American Commission submitted a request to the Court for provisional measures in this matter, with a view to requesting that it order the Republic of Honduras to adopt the necessary measures to protect the life and personal integrity of Ms. Gladys Lanza Ochoa, a human rights defender and the coordinator of the *Comité por la Paz Visitación Padilla* [Visitation Padilla Women's Pro-Peace Movement], as well as beneficiary of provisional measure 196/09 (Honduras).

1086. On September 2, 2010, the Court granted the requested measures and required the State to immediately adopt whatever measures were needed to protect the life and personal integrity of Ms. Gladys Lanza Ochoa. The text of the order is available at: http://www.corteidh.or.cr/docs/medidas/lanza_se_01_ing.pdf. Subsequently, the IACHR submitted its observations regarding the State's report on the implementation of protection measures.

Luis Galdámez, et al.

1087. On December 6, 2010, the Commission submitted a request to the Court for provisional measures in this matter, with a view to requesting that it order Honduras to adopt the necessary measures to protect the life, personal integrity, and freedom of expression of journalist José Luis Galdámez Álvarez, who is the director of the Radio Globo program known as *Tras la Verdad* [Behind the Truth] and beneficiary of provisional measure 196/09 (Honduras); along with his common-law spouse and children.

1088. On December 22, 2010, the Court granted the requested measures and ordered the State to implement, immediately and effectively, whatever measures are needed to effectively protect the life and personal integrity of Mr. José Luis Galdámez Álvarez, his common-law spouse, and children. The text of the order (in Spanish) of the President of the Court is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/medidas/galdamez_se_01.pdf.

j. Mexico

Inés Fernández Ortega, et al.

1089. On April 7, 2009, the Commission submitted a request to the Court for provisional measures in favor of Inés Fernández Ortega and her next of kin, Obitlia Eugenio Manuel and her next of kin, 41 members of the *Organización del Pueblo Indígena Tlapaneco* [Indigenous Organization of the Tlapanec People], 29 members of the *Organización de la Montaña Tlanichollan* [Organization of the Tlachinollan Mountain], as well as the next of kin of Mr. Raúl Lucas Lucía and Mr. Manuel Ponce Rosas. This request was based, *inter alia*, on the facts that (i) the Mexican State had not adequately implemented the necessary measures to protect the life and humane treatment of the beneficiaries of the precautionary measures, and had not been fully diligent regarding the duty to investigate the facts that motivated it, (ii) the beneficiaries and the next of kin of defenders who had been made to disappear and executed had received death threats and harassment, and (iii) state agents had made statements against human rights defenders.

1090. On April 9, 2009, the President of the Court handed down an order for urgent measures in favor of Inés Fernández Ortega *et al.* This order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/fernandez_se_01.pdf. On April 30, 2009, the Court confirmed the urgent measures. This order is available at the following link: http://www.corteidh.or.cr/docs/medidas/fernandez_se_02_ing.pdf. Subsequently the Commission submitted its observations on the provisional measures. See "Contentious Cases," *infra*.

1091. On November 23, 2010, the Court heard a request for an extension submitted by the representatives of the beneficiaries, which it decided to dismiss. The text of the order (in Spanish) is available at the following link: http://www.corteidh.or.cr/docs/medidas/fernandez_se_04.pdf.

Rosendo Cantú, et al.

1092. On December 18, 2009, the representatives of the beneficiaries of provisional measures in the matter of *Inés Fernández Ortega et al (supra)* submitted a request to the Court to

extend said measures in order to protect Ms. Rosendo Cantú and her daughter. On February 2, 2010, the Court issued an order requiring the State to immediately adopt the necessary measures to protect the life and personal integrity of these beneficiaries, upon considering the specific situation and circumstances of the case.

1093. Over the year 2010, the Commission continued to submit to the Court its observations regarding implementation of the provisional measures. See "Contentious Cases," *infra*.

Pérez Torres, *et al.* ("Cotton Camp")

1094. The aforementioned provisional measures are related to the contentious case of González *et al.* (see *infra*). On April 23, 2009 the representatives petitioned the Court to order provisional measures to guarantee the life and safety of the witness Pérez Torres and her next of kin, since there were "grounds for fear and grave imminent danger due to said testimony."

1095. On April 24, 2009 the President of the Court handed down an order for urgent measures in favor of Rosa Isela Pérez Torres and her immediate next of kin. This order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/algodonero_se_021.pdf. On July 6, 2009, the Court ratified the urgent measures. This order is available at the following link: http://www.corteidh.or.cr/docs/medidas/algodonero_se_01_ing.pdf. Subsequently the Commission submitted its observations regarding the provisional measures.

Alvarado Reyes, *et al.*

1096. On May 13, 2010, the Inter-American Commission requested provisional measures for Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, who disappeared in December 2009, presumably at the hands of military officials of the Mexican state of Chihuahua. In an order handed down on May 26, 2010, the Inter-American Court granted the requested provisional measures and ordered the Mexican State to implement such measures as may be necessary to conduct a search for and identify the whereabouts of the beneficiaries. The text of the order (in Spanish) is available at the following link: http://www.corteidh.or.cr/docs/medidas/alvarado_se_01.pdf.

1097. Subsequently, on September 3, 2010, the Inter-American Commission requested the Court to extend the provisional measures to a group of family members and representatives of the beneficiaries. Following a series of filings, the Inter-American Court issued an order on November 26, 2010, expanding the provisional measures to the family members and to one of its representatives. In this same order, the Court dismissed a request to expand the measures to the remaining representatives. The order in question is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/medidas/alvarado_se_02.pdf.

k. Panama

Ngöbe Indigenous Communities

1098. On December 3, 2009, the Commission requested that the Court order the Republic of Panama to suspend construction works and other activities in connection with a concession granted to AES-Changuinola along the Changuinola River in the province of Bocas del Toro, Panama, and to adopt such measures as may be necessary to ensure the rights to free circulation, life, and personal integrity of members of the Ngöbe indigenous communities. The request for provisional measures is based on the filing for protection measures submitted by the representatives of the beneficiaries, which alleges, *inter alia*, that in May 2007 Panama's environmental authority approved a 20-year concession for 6,215 hectares located within the "Palo Seco Protected Forest,"

granted to company AES-Changuinola, for the construction of a series of hydroelectric dams along the Teribe-Changuinola River. The “Chan-75 dam” would be one such dam, and has been under construction since January 2008. Said dam would require the flooding of four Ngöbe indigenous communities.

1099. On May 28, 2010, the Court dismissed the request submitted by the IACHR. The text of the order (in Spanish) is available at: [http://www.corteidh.or.cr/docs/medidas/ngobe se 01.doc](http://www.corteidh.or.cr/docs/medidas/ngobe_se_01.doc).

I. Peru

Ramírez Hinostroza, et al.

1100. In 2010, the Commission continued to submit its comments regarding the measures the Court ordered in this case back on September 21, 2004, to protect the life and humane treatment of Mr. Luis Alberto Ramírez Hinostroza, his family and his attorneys. On February 3, 2010, the Inter-American Court issued an order upholding the provisional measures. The text of the order is available at the following link: [http://www.corteidh.or.cr/docs/medidas/hinostroza se 05 ing.pdf](http://www.corteidh.or.cr/docs/medidas/hinostroza_se_05_ing.pdf).

Wong Ho Wing

1101. On February 24, 2010, the Inter-American Commission requested the Inter-American Court to order provisional measures in favor of Wong Ho Wing, to prevent the Peruvian State from moving forward with the extradition of the beneficiary to the People’s Republic of China until such time as the organs of the Inter-American system issue a definitive decision regarding the petition, which is currently being processed before the Inter-American Commission.

1102. On May 28, 2010, the Inter-American Court ordered the Peruvian State from extraditing the beneficiary until December 17, 2010. Subsequently, the Commission notified the Inter-American Court of the decision to adopt the admissibility report for the petition pending with the IACHR. In an order handed down on November 26, 2010, the Inter-American Court extended the provisional measures until March 31, 2011. The texts of the orders (in Spanish) are available at the following links: [http://www.corteidh.or.cr/docs/medidas/wong se 02.pdf](http://www.corteidh.or.cr/docs/medidas/wong_se_02.pdf) and [http://www.corteidh.or.cr/docs/medidas/wong se 03.doc](http://www.corteidh.or.cr/docs/medidas/wong_se_03.doc).

m. Trinidad and Tobago

Dottin, et al. (before James, et al.)

1103. On April 3, 2009, the Court decided to maintain the measures to protect the life and humane treatment of eight persons who were not part of the case of *Hilaire, Constantine and Benjamin, et al.*, for an additional period of at least six months, after which the Court would examine the possibility of lifting them. Over the year 2010, the Commission received no additional information from the State regarding the implementation of protection measures on behalf of persons condemned to death by hanging. See “Contentious Cases,” *infra*.

n. Venezuela

Eloisa Barrios, et al.

1104. In 2010 the Commission submitted to the Court information and comments concerning the provisional measures ordered in this matter. At the Commission’s request, the Court

ordered provisional measures on November 23, 2004, to protect the life and humane treatment of various members of the Barrios family who have been the subject of ongoing threats, presumably by police officials of the state of Aragua. In 2005, while the provisional measures were in force, Rigoberto Barrios was murdered upon receiving nine bullet wounds. Furthermore, Oscar Barrios was murdered on November 28, 2009, presumably at the hands of police officers of the state of Aragua. In September 2010, Wilmer José Flores Barrios, a third beneficiary of these provisional measures, was likewise violently murdered.

1105. The Commission participated in the public hearing on these provisional measures held during the eighty-sixth regular session of the Inter-American Court. On February 4 and November 25, 2010, the Inter-American Court issued orders declaring that the death of two of the beneficiaries—Oscar Barrios and Wilmer José Flores Barrios—is evidence of the State’s noncompliance with the provisional measures. In these same orders, the Court the obligations of the State to protect the life and personal integrity of the beneficiaries. The text of these orders is available (in Spanish) at the following links: http://www.corteidh.or.cr/docs/medidas/eloisa_se_06.pdf and http://www.corteidh.or.cr/docs/medidas/eloisa_se_05.doc.

Guerrero Gallucci and Martínez Barrios

1106. The Commission submitted, over the year 2010, information and observations regarding the provisional measures pertaining to this matter, adopted on July 4, 2006 at the Commission’s request for said measures on behalf of Ms. María del Rosario Guerrero Gallucci and Mr. Adolfo Segundo Martínez Barrios. In its order, the Court required the State to immediately adopt the necessary provisional measures to protect the rights to life and humane treatment of Ms. Guerrero Gallucci and Mr. Martínez Barrios; to investigate the facts that prompted the adoption of these measures of protection and to take the appropriate steps for these measures to be planned and implemented with the participation of the beneficiaries or their representatives. On November 29, 2007, the Court handed down an order in which it (i) lifted the provisional measures for Mr. Adolfo Segundo Martínez Barrios, (ii) ordered the State to continue to implement the measures it may have adopted and to immediately adopt those necessary to effectively protect the rights to life and to humane treatment of the beneficiary, and (iii) required the State to perform all relevant actions so that the measures of protection ordered be planned and implemented with the participation of the beneficiary or her representatives. This order is available at the following link: http://www.corteidh.or.cr/docs/medidas/guerrero_se_02_ing.pdf.

Luis Uzcátegui

1107. On January 27, 2009 the Court handed down an order deciding to maintain the provisional measures provided for in its November 27, 2002, the purpose of which was to ensure that the State would protect the life and personal integrity of Luis Uzcátegui, who has been threatened and harassed—presumably by police officers of the Venezuelan state of Falcón—since the death of his brother, Néstor José Uzcátegui. The text of this order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/medidas/uzcategui_se_04.pdf.

1108. Over the year 2010, the Commission continued to submit its observations regarding the provisional measures in question.

Luisiana Ríos, *et al.*

1109. In 2010, the Commission submitted information and comments in connection with the provisional measures the Court ordered for Luisiana Ríos, Armando Amaya, Antonio José

Monroy, Laura Castellanos and Argenis Uribe, all of whom work for *Radio Caracas Televisión* (RCTV) (see "Contentious Cases," below).

Marta Colomina

1110. Over the year 2010, the Commission continued to follow up on the provisional measures ordered for Marta Colomina. On July 4, 2006, the Inter-American Court issued an order in which it decided to lift the protective measures in the case of Mrs. Liliana Velásquez. In that order, it also found that the State had failed to comply with the duty to provide the Court with detailed, specific reports on the implementation of the Court-ordered measures; it reiterated to the State that it must, without delay, adopt any and all measures necessary to protect Mrs. Marta Colomina's life, physical integrity and freedom of expression; it also ordered the State to continue to involve the beneficiary in the planning and implementation of the protective measures and keep her informed of the progress made with the measures ordered.

Venezuelan prisons: *Internado Judicial de Monagas* a/k/a "La Pica" [Mongas Judicial Prison, a/k/a "La Pica"]; *Centro Penitenciario de la Región Centro Occidental* "Uribana Prison" [Central-West Regional Penitentiary "Uribana Prison"; Capital Region Penitentiaries "Yare I" and "Yare II"; and Capital Region Judicial Prisons "El Rodeo I" and "El Rodeo II"

1111. Over the year 2010, the Commission submitted additional information to the Court concerning the provisional measures in question, which were ordered at the request of the Commission to protect the life and personal integrity of persons deprived of liberty at the *Internado Judicial de Monagas "La Pica,"* the Central-West Regional Penitentiary "Uribana Prison," the Capital Region Penitentiaries "Yare I" and "Yare II," and the Capital Region Judicial Prisons "El Rodeo I" and "El Rodeo II."

1112. In an order issued on November 24, 2009, the Inter-American Court decided to follow up on the provisional measures it ordered in connection with these four penitentiaries. The Court, furthermore, ordered the State to protect the life and personal integrity of Mr. Humberto Prado. The text of this order is available at the following link: http://www.corteidh.or.cr/docs/medidas/lapica_se_05_ing.pdf.

Television Station "Globovisión"

1113. Over the year 2010, the Commission continued providing follow-up information on these provisional measures, which were adopted by the Court pursuant to the September 4, 2004 request of the Commission, in connection with the provisional measures the Commission requested and the Court ordered in this matter on September 4, 2004. The provisional measures ordered are intended to safeguard and protect the life, physical integrity and freedom of expression of the journalists, executives and other employees at *Globovisión*, and that of any other persons inside the facilities of that media outlet or who may be directly associated with its news operations.

Natera Balboa

1114. On November 28, 2009, the Inter-American Commission submitted a request for provisional measures so that Venezuela would protect the life and humane treatment of Eduardo José Natera Balboa. The Commission requested said measures because Mr. Natera Balboa was held at the *Centro Penitenciario Región Oriental "El Dorado"* ["El Dorado" Eastern Region Penitentiary] in the State of Bolívar, and his whereabouts have remained unknown since November 8, 2009. On this day several members of the National Guard violently conveyed him to a black car. On November 9, 2009 the *Tribunal Primero de Ejecución de Sentencias Penales* [First Court for Criminal Sentence Enforcement] came to the aforementioned penitentiary and could not verify his presence there. On

November 23, 2009 the State reported on some domestic investigations regarding an alleged flight or physical disappearance related to Mr. Natera's case.

1115. On December 1, 2009, the President handed down an order for urgent measures, calling on the State to immediately adopt any necessary measures to establish the situation and whereabouts of Eduardo José Natera Balboa and to protect his life and humane treatment. These urgent measures were upheld on February 1, 2010 by the Inter-American Court. The aforementioned order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/natera_se_01.pdf.

Francisco Dionel Guerrero Larez

1116. On November 13, 2009, the Inter-American Commission submitted a request for provisional measures to protect the life and personal integrity of Francisco Dionel Guerrero Larez, whose whereabouts have been unknown since September 7, 2009, the date he was incarcerated at the *Penitenciaría General de Venezuela* [General Penitentiary of Venezuela]. On November 17, 2009, the Inter-American Court ordered the provisional measures, the text of which is available at the following link: http://www.corteidh.or.cr/docs/medidas/larez_se_01_ing.pdf.

1117. Over the year 2010, the Commission continued to submit its observations regarding the provisional measures in question.

Belfort, et al.

1118. On February 26, 2010 the IACHR filed a request with the Court for provisional measures seeking the protection of the State of the right to freedom of expression of Raiza Elizabeth Istúriz de Belfort, Nelson Enrique Belfort Istúriz, Antonio José Belfort Istúriz, Zayra Adela Belfort Istúriz, and Luis Miguel Belfort, as well as that of William Echeverría, Beatriz Alicia Adrián García, Leopoldo Castillo Atencio, and María Isabel Párraga, and thus keep the radio stations of the "Belfort National Circuit" on the air, which had been closed by the State, until such time as the matter can be resolved by the inter-American system.

1119. On April 15, 2010, the Court dismissed the request for provisional measures submitted by the IACHR. The text of this order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/belford_se_01.pdf.

Aragua Penitentiary a/k/a "Tocorón Prison"

1120. On October 18, 2010, the Inter-American Commission filed a request with the Inter-American Court to order provisional measures to protect the life and personal integrity of inmates and other persons at the Aragua Penitentiary (a/k/a "Tocorón Prison"), in view of the numbers of deaths and serious injuries reported among its inmates in recent year, which have been increasing recently. On November 1, 2010, the President of the Inter-American Court recommended urgent measures which were subsequently approved by the Inter-American Court in its order of November 24, 2010. The text of this order (in Spanish) is available at the following link: http://www.corteidh.or.cr/docs/medidas/tocoron_se_02.pdf.

María Lourdes Afiuni

1121. On November 30, 2010, the Commission filed a request with the Inter-American Court to order provisional measures to protect the life and personal integrity of Judge María Lourdes Afiuni, who is currently being held by persons she would have ruled against in her capacity as a criminal court judge. This situation has given rise to a series of threats against the life and personal

integrity of Judge Afiuni, in addition to denying her the adequate and specialized medical care she needs. On December 10, 2010, the President of the Inter-American Court issued an order for urgent measures on judge Afiuni's behalf. The text of the order (in Spanish) is available at the following link: [http://www.corteidh.or.cr/docs/medidas/Afiuni se 01.pdf](http://www.corteidh.or.cr/docs/medidas/Afiuni_se_01.pdf).

2. Contentious Cases

a. Argentina

Case of Fontevecchia and D'Amico

1122. On December 10, 2010 the IACHR submitted to the Court Case No. 12.524, *Fontevecchia and D'Amico*, with respect to the Republic of Argentina. The Commission submitted the case to the jurisdiction of the Inter-American Court based on the need to obtain justice and just compensation. The facts of the case involve the violation of the right to freedom of expression of Jorge Fontevecchia and Hector D'Amico, who were then director and editor of the magazine *Noticias*. The violation was based on the civil conviction imposed on them in decisions handed down by Argentine courts for subsequent liability because they had published two articles in the magazine *Noticias* in November 1995.

1123. The Commission submitted to the Court's jurisdiction all the facts and human rights violations described in Report on the Merits 82/10 and asked the Court to find and declare the Argentine State internationally responsible for violating the right to freedom of thought and expression of Jorge Fontevecchia and Héctor D'Amico established in Article 13 of the American Convention, in connection with Article 1.1 thereof. As this report is being prepared, initiation of processing of the case by the Inter-American Court is pending.

Case of Milagros Fornerón and Leonardo Aníbal Fornerón

1124. On November 29, 2010 the IACHR submitted to the Court Case No. 12.584, *Milagros Fornerón and Leonardo Aníbal Fornerón*, with respect to the Republic of Argentina. It submitted the case to the Court's jurisdiction based on the need to obtain justice and provide effective protection for the rights to family protection and the best interests of the child as well as the State's need to change its laws on the sale of children and provide full reparations for the human rights violations in this case. The facts of the case involve the right to protection of the family of Mr. Fornerón and his biological daughter Milagros Fornerón. The child's mother placed her in the pre-adoption custody of a couple without the consent of her father, who has no access to the child, and the State has neither ordered nor implemented any visitation schedule despite numerous requests made by Mr. Fornerón over the course of more than ten years.

1125. The Commission submitted to the Court's jurisdiction all the facts and human rights violations described in Report on the Merits 83/10 and asked the Court to find and declare the Argentine State internationally responsible for violating the rights of Leonardo Fornerón and Milagros Fornerón to due process, a fair trial, and family protection as established in Articles 8.1, 25.1, and 17 of the American Convention in connection with Articles 19 and 1.1 of the same instrument and for failing to comply with Article 2 of the Convention in connection with Articles 1.1 and 19 thereof. As this report is being prepared, initiation of the processing of this case by the Inter-American Court is pending.

Case of Jorge Fernando Grande

1126. On May 4, 2010 the Inter-American Commission filed an application against the State for having submitted Jorge Fernando Grande to a criminal procedure marked by irregularities

and unwarranted delay and based on evidence that was later declared null and void, and for not having provided the victim with adequate compensation for damages and injuries caused during the aforementioned criminal procedure. The Inter-American Commission asked the Court to establish the Argentine State's international responsibility for violating Articles 8 and 25 of the American Convention (right to a Fair Trial and Judicial Protection), in connection with Article 1.1 thereof, to the detriment of Jorge Fernando Grande, because it did not give him access to his right to due process and an effective remedy.

1127. The case is currently being processed by the Inter-American Court. The IACHR's application can be found at: <http://www.cidh.oas.org/demandas/11.498ENG.pdf>.

Case of Torres *et al.*

1128. On April 18, 2010 the Inter-American Commission filed an application with the Inter-American Court asking that it declare Argentina internationally responsible for violating Articles 3 (Recognition of Juridical Personality), 4 (Life), 5 (Personal Integrity), 7 (Personal Liberty), 8.1, and 25 (Fair Trial and Judicial Protection), 1.1 (Obligation to Respect and Guarantee Rights), 2 (Obligation to Adapt Domestic Law) [of the American Convention on Human Rights], Articles I, III, and XI of the Inter-American Convention on Forced Disappearance of Persons, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. All this is the result of the arbitrary arrest, torture, and forced disappearance of Iván Eladio Torres, which occurred starting on October 3, 2003 in the city of Comodoro Rivadavia, in Chubut Province, and the subsequent lack of due diligence in investigating the facts as well as the denial of justice, to the detriment of the victim's relatives.

1129. The case is currently being processed by the Inter-American Court. The IACHR's application can be found at: <http://www.cidh.oas.org/demandas/12.533ENG.pdf>.

Case of Bayarri

1130. On July 16, 2007, the Inter-American Commission submitted the case to the Court. In its application, the IACHR asked the Court to determine that the State of Argentina had failed to comply with its international obligations by violating articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) in relation to Article 1.1 (the general obligation to respect human rights) of the American Convention, to the detriment of Juan Carlos Bayarri, because he was unlawfully and arbitrarily arrested, tortured by police officers, deprived of liberty for nearly 13 years, and subsequently denied justice.

1131. On October 30, 2008, the Court dismissed the State's preliminary objections and held that Argentina had violated, to the detriment of Mr. Bayarri, the rights recognized in articles 7.1, 7.2, and 7.5, 5.1 and 5.2, 8.1, 8.2, and 8.2.g, and 25, in relation to Article 1.1 of the American Convention on Human Rights, and articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. In the judgment it delivered, the Court set the reparations it deemed appropriate.

1132. During 2010 the IACHR submitted observations regarding the State's reports. On November 22, 2010 the Inter-American Court issued a resolution whereby it declared that there had been partial compliance with the reparations ordered in the judgment.

1133. The text of the application is available (in Spanish) at the following link: <http://www.cidh.oas.org/demandas/11.280%20Bayarri%20Argentina%2016%20julio%202007%20OESP.pdf> and the text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_187_ing.pdf.

Case of Bueno Alves

1134. On March 31, 2006, the IACHR filed an application with the Court in this case. The application alleged that the State was responsible for violation of articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to the duty to guarantee established in Article 1.1 of the same treaty, to the detriment of Juan Francisco Bueno Alves by virtue of the fact that he was tortured while in state custody and subsequently denied proper protection and a fair trial in the judicial system.

1135. On May 11, 2007, the Court delivered a judgment, in which it found that the State had violated articles 5.1, 5.2, 8.1, and 25 of the American Convention in connection with Article 1.1 thereof and set the reparations that it deemed appropriate.

1136. During 2010, the Commission submitted periodic observations on state compliance with the orders in the Court's judgment.

1137. The text of the application is available (in Spanish) at the following link: <http://www.cidh.oas.org/demandas/12.425%20Bueno%20Alves%20Argentina%2031%20marzo%202006%20ESP.pdf> and the text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_164_ing.pdf.

Case of Bulacio

1138. On January 24, 2001, the Commission filed its application with the Court and asked it to declare the violation, to the detriment of Walter David Bulacio, of articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 19 (Rights of the Child), as well as articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) to his detriment and that of his next of kin, all in connection with Article 1.1 (obligation to respect rights) of the American Convention, as a result of the detention, injuries, and death of Walter David Bulacio and the lack of punishment of the responsible parties.

1139. On September 18, 2003, the Court rendered its judgment, accepted the acknowledgement of international responsibility made by the State, and declared the violation of the rights established in articles 4, 5, 7, and 19 of the American Convention to the detriment of Walter David Bulacio, and the rights set forth in articles 8 and 25 of that convention to the detriment of Walter David Bulacio and his next of kin, all the above in connection with articles 1.1 and 2 of the American Convention. In that judgment the Court set the reparations that it deemed appropriate.

1140. During 2010 the Commission continued to monitor compliance with the Court's orders in the area of reparations.

1141. The text of the application is available (in Spanish) at the following link: <http://www.corteidh.or.cr/docs/casos/bulacio/demanda.pdf> and the text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_100_ing.pdf

Case of Cantos

1142. On March 10, 1999, the Commission submitted its application to the Court. In it the Commission alleged that the Argentine State violated and was continuing to violate articles 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 21 (Right to Property) of the American Convention in connection with Article 1.1 (obligation to respect rights) of that instrument to the

detriment of José María Cantos, because of the searches and seizure of documents related to his business, the consequences of these acts, and the subsequent denial of justice.

1143. On September 7, 2001, the Court delivered a judgment on preliminary exceptions and on November 28, 2002, its judgment on merits, reparations, and costs in the case. In the latter, the Court found the violation of articles 8.1 and 25 of the American Convention, in connection with Article 1.1 thereof, to the detriment of José María Cantos. The Court also set the reparations that it deemed appropriate.

1144. During 2010 the Commission continued to monitor compliance in this case. On August 26, 2010 the Inter-American Court issued a resolution whereby it declared that Argentina had failed to meet its obligation to report and ruled that the process to monitor compliance with the judgment should remain open. The text of the resolution can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/cantos_26_08_101.pdf.

1145. The text of the application is available (in Spanish) at the following link: <http://www.corteidh.or.cr/docs/casos/cantos/demanda.PDF> and the text of the judgment on merits, reparations, and costs is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_97_ing.pdf

Case of Garrido and Baigorria

1146. The Commission submitted this case to the Inter-American Court on May 29, 1995. In its application the IACHR alleged that the State was responsible for the disappearances of Raúl Baigorria and Adolfo Garrido, and therefore had violated articles 4 (Right to Life), 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty), all in relation to Article 1.1 of the Convention. In addition, the IACHR alleged the violation of articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) to the detriment of the victims and their next of kin.

1147. On February 2, 1996, the Court rendered its judgment on merits, in which it took note of the State's acknowledgement of responsibility and found the violation of the articles cited by the Commission. On August 27, 1998 the Court rendered its judgment on reparations and costs.

1148. During 2010 the IACHR submitted observations regarding the State's report on compliance with the judgment.

1149. The text of the application is available (in Spanish) at the following link: <http://www.corteidh.or.cr/docs/casos/Garrido/demanda.pdf> and the text of the Court's judgments is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_26_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_39_ing.pdf

Case of Kimel

1150. On April 10, 2007, the IACHR filed an application with the Court in which it alleged that the Argentine State failed to fulfill its international obligations as a result of the violation of articles 8 (Right to a Fair Trial) and 13 (Freedom of Thought and Expression) of the American Convention, in connection with the general obligation to respect and ensure human rights and the obligation to bring domestic law into conformity as established in articles 1.1 and 2 of the Convention to the detriment of Eduardo Kimel. The application deals with the one-year suspended prison sentence and payment of damages imposed on journalist and author Eduardo Kimel, in a libel action filed by a former judge criticized in one of the author's books for his action in the investigation of a massacre committed during the military dictatorship.

1151. On May 2, 2008 the Court rendered a judgment in which it found a violation of the rights established in articles 8.1, 13.1, and 13.2 and 9 of the American Convention, in connection with articles 1.1 and 2 of that treaty, to the detriment of Eduardo Kimel. The Court therefore ordered various reparation measures.

1152. In 2010 the Commission submitted observations regarding the information on compliance with the judgment submitted by the State. On November 15, 2010 the Inter-American Court issued a resolution whereby it noted compliance with various points in the judgment and ordered that supervision continue regarding the obligation to nullify the criminal conviction imposed on Mr. Kimel and all the effects thereof. The text of the resolution can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/kimel_15_11_10.pdf.

1153. The text of the application is available at the following link: <http://www.cidh.oas.org/demandas/12.450%20Eduardo%20Kimel%20Argentina%2010%20Abril%202007%20ENG.pdf> and the text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_177_ing.pdf

b. Barbados

Case of Boyce *et al.*

1154. On June 23, 2006, the Commission filed a petition with the Court, alleging the international responsibility of the State of Barbados for mandatory application of the death penalty and violation of articles 4 .1 and 4.2 (Right to Life), 5.1 and 5.2 (Right to Humane Treatment) , and 8 (Right to Judicial Protection), in connection with Article 1.1 (obligation to respect rights) and Article 2 (duty to adopt provisions in domestic law) of the American Convention, to the detriment of Lennox Boyce, Jeffrey Joseph, Fredrick Benjamin Atkins, and Michael Huggins.

1155. On November 20, 2007 the Court rendered its judgment, in which it found the violation of articles 4.1, 4.2, 5.1, 5.2, and 25.1, in connection with articles 1.1 and 2 of the American Convention. The Court set the reparations that it deemed appropriate.

1156. The text of the application is available at the following link: <http://www.cidh.oas.org/demandas/12.480%20Lennox%20Boyce%20et%20al%20Barbados%2014%20dec%202006%20ENG.pdf> and the text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_169_ing.pdf

Case of Tyrone DaCosta Cadogan

1157. On October 31, 2008 the Commission filed an application against the State of Barbados and sought provisional measures from the Court to protect the victim's life and physical integrity. The case concerns the mandatory application of the death penalty that the Supreme Court of Barbados ordered in 2005 against Tyrone DaCosta Cadogan. In its application, the IACHR argued the violation of articles 4.1 and 4.2 (Right to Life), 5.1 and 5.2 (Right to Humane Treatment), and 8.1 (Right to a Fair Trial) in connection with articles 1.1 and 2 of the Convention to the detriment of the victim.

1158. On September 24, 2009 the Court rendered its judgment. In it, the Court found violation of articles 4.1, 4.2, 5.1, 5.2, 25.1, 8.1, 8.2.c, and 8.2.f of the American Convention in connection with articles 1.1 and 2 thereof, and set the reparations that it deemed appropriate.

1159. The text of the application is available at the following link: <http://www.cidh.oas.org/demandas/12.645%20Cadogan%20Barbados%2031%20oct%202008%20ENG.pdf> and the text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_204_ing.pdf

c. Bolivia

Case of Ibsen

1160. On May 12, 2009, the IACHR filed an application in the case, which involves the forced disappearance of Rainer Ibsen in 1971 and his father José Luís Ibsen in 1973. The Bolivian State has not conducted a serious and diligent investigation, the facts have not yet been clarified, the responsible parties have not been punished, and no reparations have been ordered for the next of kin. In its application, the IACHR asked the Court to find that the State of Bolivia had failed to comply with its international obligations by violating articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) in connection with Article 1.1 (obligation to respect rights) of the American Convention, and articles I and XI of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Rainer Ibsen Cárdenas and José Luís Ibsen Peña. The Commission also alleged the violation of articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention in connection with article 1.1 thereof to the detriment of the next of kin of Rainer Ibsen Cárdenas and José Luís Ibsen Peña, and failure to comply with the obligation established in articles III and IV of the Inter-American Convention on Forced Disappearance of Persons.

1161. On September 1, 2010 the Inter-American Court issued a judgment declaring that the provisions alleged by the IACHR in its application had been violated and ordered the relevant reparation measures. As this report is being prepared, the deadline for the State to submit its first official report on compliance with the judgment is pending.

1162. The text of the application in this case can be found at: <http://www.cidh.oas.org/demandas/12.529%20Rainer%20Ibsen%20Cardenas%20y%20Jose%20Lu%20Ibsen%20Pe%20a%20Bolivia%2012%20mayo%2009%20ENG.pdf>. The judgment can be found (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_217_esp1.pdf

Case of Ticona Estrada

1163. On August 8, 2007, the IACHR filed an application with the Court in the case involving the forced disappearance of Renato Ticona Estrada starting on July 22, 1980, the impunity surrounding these facts, and the lack of appropriate reparations. The IACHR argued the violation of articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in connection with Article 1.1 (obligation to respect rights) of the American Convention, and articles I, III, and XI of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Renato Ticona Estrada. The IACHR also alleged violation of articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the Convention in connection with article 1.1 thereof to the detriment of the next of kin of Renato Ticona Estrada and failure to comply with the obligation contained in Article 2 (duty to adopt provisions of domestic law) of the American Convention and articles I and III of the Inter-American Convention on Forced Disappearance of Persons.

1164. On November 27, 2008, the Court rendered its judgment in the case, in which it accepted the partial acknowledgement of international responsibility made by the State and

determined that the State violated articles 4.1, 5.1, 5.2, 7, 8.1, and 25 of the American Convention and failed to comply with the obligations established in article I.a, I.b, I.d, and III of the Inter-American Convention on Forced Disappearance of Persons, in connection with articles 1.1 and 2 of the American Convention. The Court also set the reparations that it deemed appropriate. The State filed an application for interpretation of the judgment, the IACHR presented its comments thereon, and the Court ruled on it on July 1, 2009.

1165. During 2010 the Commission submitted observations regarding the State's report on compliance with the judgment.

1166. The text of the application is available (in Spanish) at the following link: <http://www.cidh.oas.org/demandas/12.527%20Renato%20Ticona%20Estrada%20Bolivia%208%20Oagosto%202007%20ESP.pdf> and the text of the Court's judgments is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_191_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_199_ing.pdf

Case Trujillo Oroza

1167. On June 9, 1999, the IACHR submitted its application in this case. The IACHR alleged violation of articles 1.1 (obligation to respect rights) in connection with articles 2 (duty to adopt provisions of domestic law), 4 (Right to Life), 5.1 and 5.2 (Right to Humane Treatment), 7 (Right to Personal Liberty), 13 (Freedom of Thought and Expression), 8.1 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention for the disappearance of José Carlos Trujillo Oroza and for failure to conduct an exhaustive investigation to locate the victim, identify, prosecute, and punish the responsible parties, and ensure that the next of kin have the truth and appropriate reparation.

1168. The Inter-American Court rendered its judgment on merits on January 26, 2000. In it, the Court accepted the State's acknowledgement of responsibility and declared that it violated the rights alleged by the Commission. Subsequently, on February 27, 2002, the Court issued its judgment on reparations and costs in the case.

1169. During 2010 the Commission submitted observations regarding the State's report on compliance with the judgment.

1170. The text of the application is available (in Spanish) at the following link: <http://www.corteidh.or.cr/docs/casos/trujillo/demanda.PDF>, and the text of the Court's judgments is available at: http://www.corteidh.or.cr/docs/casos/articulos/Seriec_64_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/Seriec_92_ing.pdf. The text of the order on compliance with the judgment is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/trujillo_16_11_09.pdf.

d. Brasil

Case of Arley *et al.* (tapping of social organizations' phone lines)

1171. On December 20, 2007 the Commission filed an application with the Court against the Federative Republic of Brazil, alleging the State's responsibility in the violation of articles 11 (Right to Privacy), 16 (Freedom of Association), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention in connection with the obligations set forth in articles 1.1 and 2 thereof. This case involves the wiretapping and illegal monitoring of the telephone lines of Arley José Escher, Dalton Luciano de Vargas, Delfino José Becker, Pedro Alves Cabral, Celso Aghinoni, and Eduardo Aghinoni, members of two social organizations – the Community Association

of Rural Workers (ADECON) and the Conciliação Avante Agricultural Cooperative (COANA), associated with the Landless Workers Movement, which promotes agrarian reform in Brazil. The wiretapping and phone monitoring were done between April and June 1999 by the Paraná State Military Police. The case also involves the illegal recording and broadcasting, in the public media, of several conversations between the victims and the sectors they represent, and the denial of justice and of adequate reparations to the victims.

1172. On July 6, 2009, the Court rendered its judgment on preliminary exceptions, merits, reparations, and costs, in which it found the violation of articles 11, 16, 8, and 25 of the Convention in connection with articles 1.1 and 2 thereof and set the reparations that it deemed appropriate. The State lodged an application for interpretation of the judgment, the IACHR submitted its comments, and the Court issued its ruling on November 20, 2009.

1173. During 2010 the Commission continued to monitor compliance in this case. On May 17, 2010 the Inter-American Court issued a resolution whereby it ordered the State to publish the Court's judgment as established therein. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/escher_17_05_10_ing.pdf

1174. The text of the application is available (in Spanish) at the following link: <http://www.cidh.org/demandas/12.353%20Arley%20Escher%20y%20otros%20Brasil%20%20diciembre%202007%20ESP.pdf> and the text of the Court's judgments is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_200_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_208_ing.pdf

Case of the Araguaia Guerrillas

1175. The Inter-American Commission filed an application on March 26, 2009, in the case of Julia Gomes Lund et al (Araguaia Guerrillas). This involves the arbitrary arrest, torture, and forced disappearance of 70 persons, including members of the Brazilian Communist Party and peasants of the region, as a result of operations carried out between 1972 and 1975 by the Brazilian Army to wipe out the Araguaia Guerrillas, in the context of Brazil's military dictatorship (1964-1985). The case also involves the Amnesty Law (Law No 6.683/79), enacted by the military government in Brazil, on the basis of which the State did not conduct a criminal investigation to prosecute and punish the persons responsible for the forced disappearance of 70 persons and the extrajudicial execution of Maria Lucia Petit da Silva, whose body was found and identified on May 14, 1996. In addition, the case deals with the permanent sealing of official files on specific subjects, which was introduced in Law 11.111 of May 5, 2005. In its application to the Court, the IACHR alleged violation of articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), and 25 (Right to Judicial Protection) in connection with article 1.1, all of the American Convention.

1176. On May 20 and 21, 2010 the IACHR participated in an open hearing on the case and on November 24, 2010 the Court issued its Judgment on Preliminary Objections, Merits, Reparations, and Costs. In its judgment, the Court established that the provisions of the Brazilian Amnesty Law that prevent the investigation and punishment of serious human rights violations are incompatible with the American Convention, are without legal effects, and may no longer be an obstacle to investigating the facts of the case, nor to identifying and punishing those responsible. The Court also determined that the Amnesty Law cannot have an equal or similar effect with respect to other cases of serious human rights violations in Brazil. In addition, it established that the State is responsible for the forced disappearance and thus for violating the rights to recognition of juridical personality, life, personal integrity, and personal liberty; that the State has failed to meet its obligation to adapt its domestic law to the provisions of the Convention as a result of the

interpretation and application that has been given to the Amnesty Law with respect to serious human rights violations; that the State is responsible for violating the rights to a fair trial and judicial protection based on its the failure to investigate the facts of the case and to prosecute and punish those responsible; that the State is responsible for violating the right to freedom of thought and expression based on the effect on the right to seek and receive information, as well as the right to know the truth about what happened; that the State is responsible for violating the right to a fair trial because it exceeded the reasonable deadline for an ordinary proceeding; and that the State is responsible for violating the right to personal integrity of some relatives of the victims. In its judgment, the Court also ordered the reparations measures it deemed relevant.

1177. The text of the application is available (in Spanish) at the following link: <http://www.cidh.oas.org/demandas/11.552%20Guerrilha%20de%20Araguaia%20Brasil%2026mar09%20ESP.pdf>. The text of the judgment can be found (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_219_esp.pdf

Case of Sétimo Garibaldi

1178. On December 24, 2007, the Commission filed an application with the Inter-American Court against the Federative Republic of Brazil in case No. 12,478, Sétimo Garibaldi. The Commission alleged the State's failure to fulfill its duty to investigate and punish the murder of Mr. Sétimo Garibaldi. The murder took place on November 27, 1998, when a group of some twenty gunmen carried out the extrajudicial eviction of landless workers' families living on the land of a hacienda located in Querência do Norte municipality, in the state of Paraná. The incident was reported to the police, and a police investigation was opened but then closed without the obstacles and mechanisms that maintained impunity in the case being removed, and without sufficient judicial guarantees having been afforded to prosecute the case or provide adequate reparations to Mr. Garibaldi's next of kin. In its application, the Commission asked the Court to rule on the State's international responsibility in failing to meet its international obligations by violating articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, and in failing to fulfill the general obligation it undertook to respect and ensure human rights (Article 1(1)) and its obligation to ensure domestic legal effects (Article 2), in consideration also of the federal clause contained in Article 28 of the Convention.

1179. On September 23, 2009, the court rendered its judgment on preliminary exceptions, merits, reparations, and costs. In it, the Court declared the violation of articles 8 and 25 in relation to articles 1.1 and 2 of the Convention and set the reparations it deemed appropriate.

1180. The text of the application is available (in Spanish) at the following link: <http://www.cidh.oas.org/demandas/12.478%20Setimo%20Garibaldi%20Brasil%2024%20diciembre%202007%20ESP.pdf> and the judgment (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_203_esp.pdf.

Case of Ximenes Lopes

1181. On October 1, 2004, the Commission filed an application with the Court in the case involving the inhumane and degrading conditions of hospitalization of Damião Ximenes Lopes—a person with mental illness—in a health care facility operated under Brazil's Uniform Health System, the beatings and attacks he sustained from employees of the rest home, his death while undergoing psychiatric treatment there, and the failure to investigate his case and provide judicial guarantees, as a result of which no one has ever been made to answer for the crimes committed. In its application, the IACHR asked the Court to find the Brazilian State's international responsibility for the violation of articles 4 (Right to Life), 5 (Right to Humane Treatment), 8 (Right to a Fair Trial),

and 25 (Right to Judicial Protection) of the American Convention, in connection with the general obligation to respect and ensure human rights established in Article 1.1 of that treaty.

1182. On July 4, 2006, the Court issued its judgment on merits and reparations in this case. It accepted the State's partial acknowledgement of international responsibility and held that Brazil violated articles 4.1, 5.1, 5.2, 8.1, and 25.1 of the Convention in connection with the provisions of articles 1.1 and 2 thereof. The Court also set the reparations that it deemed appropriate.

1183. In 2010 the IACHR submitted its comments on the reports by the State and the representatives on compliance with the judgment. On May 17, 2010 the Court issued a resolution on compliance with the judgment. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/ximenes_17_05_10_ing.pdf

1184. The text of the application is available (in Spanish) at the following link: <http://www.cidh.oas.org/demandas/12.237%20Ximenes%20Lopez%20Brasil%201oct04.pdf> and the text of the Court's judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_ing.pdf

e. Colombia

Case of the 19 Tradesmen (Álvaro Lobo Pacheco *et al.*)

1185. On January 24, 2001, the Inter-American Commission filed an application with the Inter-American Court against the Colombian State for the October 6, 1987 arrest, disappearance, and execution of the merchants Álvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Ángel Barrera, Antonio Florez Contreras, Carlos Arturo Riatiga, Víctor Ayala, Alirio Chaparro, Huber Pérez, Álvaro Camargo, Rubén Pineda, Gilberto Ortíz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez, and Luis Sauza; and of Juan Montero and Ferney Fernández on October 18, 1987. In its application, the Commission alleged the violation of articles 4 and 7 of the American Convention for the arrest, disappearance, and execution of the 19 merchants, and the violation of articles 5, 8.1, and 25 of the American Convention, to the detriment of the victims and their next of kin. Finally, it asked the Court to find that Colombia had failed to comply with the provisions of Article 1.1 of that treaty, in connection with the last two articles cited. On July 5, 2004, the Court delivered its judgment on the merits and reparations of the case.

1186. On July 5, 2004, the Court issued a judgment on the merits and reparations in the case and determined that the State violated the rights alleged by the Commission in its application.

1187. In 2010 the Commission submitted its periodic observations on the State's compliance with the Court's July 5, 2004 judgment on the merits, reparations and costs. In addition, on May 19, 2010 the IACHR participated in a private hearing on compliance with the judgment with respect to eight Colombian cases and compliance with the reparations measure on medical and psychological treatment.

1188. The text of the application is available (in Spanish) at the following link <http://www.corteidh.or.cr/docs/casos/comerciantes/demanda.pdf> and the text of the Court's judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_109_ing.pdf

Case of Caballero Delgado and Santana

1189. On December 24, 1992, the Commission filed an application with the Court in a case against Colombia that originated on April 4, 1989, with a request for urgent action sent on

that date to the Commission and a petition received by the Commission's Secretariat the following day. The Commission alleged the violation of articles 4, 5, 7, 8, and 25, in connection with Article 1.1, to the detriment of Isidro Caballero Delgado and María del Carmen Santana. It also alleged violation of Article 2 of the Convention.

1190. On December 8, 1995 the Court rendered its judgment on the merits, in which it declared that the State was responsible for the violation of articles 4, 5, and 7 of the Convention to the detriment of the victims. However, it found that the State was not responsible for the violation of articles 8, 25, and 2. The judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_22_ing.pdf and the text of its latest judgment on compliance with the judgment can be found at: http://www.corteidh.or.cr/docs/supervisiones/caballero_17_11_09_ing.pdf

1191. During 2010 the Commission presented periodic observations regarding compliance with the Court's orders in its judgment on the merits.

Case of Escué Zapata

1192. On May 16, 2006, the Commission filed an application with the Court against Colombia for the unlawful detention, torture, and extrajudicial execution of indigenous leader Germán Escué Zapata, which took place on February 1, 1988, on the Jambaló reservation in the Jambaló municipality, department of Cauca; the subsequent lack of due diligence in investigating the facts; and the denial of justice to the victim's next of kin. The Commission alleged that the State was responsible for the violation of articles 4, 5, and 7 of the Convention in connection with Article 1.1 thereof, to the detriment of Germán Escué Zapata; for the violation of Article 5 of the Convention, to the detriment of the victim's next of kin; and for the violation of the rights established in articles 8 and 25 of the Convention, in connection with Article 1.1, to the detriment of the victim and his next of kin.

1193. After considering the evidence introduced by the parties, their arguments and the Colombian State's acknowledgement of responsibility, the Inter-American Court delivered its judgment on the merits, reparations and costs on July 4, 2007. In its judgment, the Court found that the State had violated articles 4, 5, 7, 8 and 25 of the American Convention, in relation to Article 1(1) thereof. The Court also set the reparations it deemed appropriate.

1194. On November 1, 2007, the State filed an application with the Court seeking an interpretation of the judgment delivered on July 4, 2007, based on Article 67 of the Convention and Article 59 of the Rules of Procedure of the Court. In its application, the State requested clarification "of certain measures of reparation ordered by the Inter-American Court in its judgment, on the grounds of lack of clarity regarding execution." The reparation measures at issue are those related to publication of the findings reached in the criminal proceedings, the creation of a fund for the development of the community, the measures ordered to ensure a higher education for Myriam Zapata Escué and payment of legal costs and expenses.

1195. On May 5, 2008 the Court delivered its judgment in which it declared the application filed by the Colombian State seeking an interpretation of the Court's judgment in this case to be admissible and resolved to determine the scope of the measures whose clarification was requested. The full text of the judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_178_ing.doc.

1196. During 2010 the Commission submitted its observations regarding compliance with the Court's orders in its judgment. On May 18, 2010 the Inter-American Court issued a resolution whereby it declared that some reparations measures had been fully complied with and ordered that

the process to supervise compliance with the judgment remain open with respect to the obligations to: i) investigate the facts and punish those responsible, ii) provide a scholarship for one of the victims to pursue university studies; iii) provide specialized medical and psychological treatment; and iv) publish the relevant sections of the judgment in the Official Journal. In addition, on May 19, 2010 the IACHR participated in a private hearing on compliance with the judgment with respect to eight Colombian cases and compliance with the reparations measure regarding medical and psychological treatment.

Case of Las Palmeras

1197. On July 6, 1998 the Commission filed an application with the Court concerning the extrajudicial execution of six individuals on January 23, 1991, at Las Palmeras, municipality of Mocoa, in Colombia's Putumayo department, and the subsequent denial of justice for the next of kin. The Commission alleged, inter alia, the violation of articles 4, 8, 25, and 1.1 of the American Convention.

1198. In the Court's judgment, it declared the State responsible for the violation of articles 4, 8, and 25 and 1.1 of the Convention. The text of the Court's judgment of December 6, 2001 is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_90_ing.pdf .

1199. On January 29, 2010, during the LXXXVI regular session of the Inter-American Court, the Commission participated in a hearing on compliance with the judgment. On February 3, 2010 the Inter-American Court issued a resolution whereby it ordered that the process to monitor compliance with the judgment remain open with respect to points pending compliance. During the rest of 2010 the IACHR continued to submit written comments on the State's reports.

Case of La Granja and El Aro (Ituango Massacre)

1200. On July 30 2004, the Commission filed an application with the Court against Colombia in cases 12,050, La Granja, and 12,266, El Aro, alleging the State's responsibility in the events of June 1996 and the events that began in October 1997, respectively, in the municipality of Ituango, department of Antioquia, involving violation of the right to life of 16 persons; the rights to life and personal liberty of one person; the rights to life, humane treatment, and liberty of two persons; and the property rights of six persons; as well as the failure to ensure proper protection and a fair trial to all these persons and their families and to safeguard the applicable rights of the child, all in connection with Article 1(1) of the American Convention.

1201. On July 1, 2006, the Court accepted the State's acknowledgment of international responsibility for violation of the rights protected under articles 4 (the right to life), 7 (the right to personal liberty), 5 (the right to humane treatment), and 21 (the right to private property) of the American Convention, in conjunction with Article 1(1) (the obligation to respect rights) thereof. In its judgment, the Court set the measures of reparations it deemed appropriate. The full text of the judgment may be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_148_ing.doc.

1202. During 2010 the Commission submitted periodic observations regarding compliance with the Court's orders in its judgment on the merits and on May 19, 2010 the IACHR participated in a private hearing on compliance with the judgment with respect to eight Colombian cases and compliance with the reparations measure on medical and psychological treatment. In addition, on December 22, 2010 the Court convened a private hearing on compliance with the judgment, to be held at the Court's headquarters on February 26, 2011.

Case of Manuel Cepeda Vargas

1203. On November 14, 2008, the Inter-American Commission filed an application with the Court against the Republic of Colombia in case 12,531, *Manuel Cepeda Vargas*, for the State's responsibility in the extrajudicial execution of Senator Manuel Cepeda Vargas –head of the National Directorate of the Colombian Communist Party and a prominent figure in the Unión Patriótica political party. The event occurred in Bogotá, on August 9, 1994. The application also cites the lack of due diligence in investigating the victim's execution and punishing those responsible, and the lack of adequate reparations for the victim's next of kin. The text of the application can be found at: <http://www.cidh.oas.org/demandas/12.531%20Manuel%20Cepeda%20Vargas%20Colombia%2014%20nov%2008%20INGLES.pdf>

1204. On January 26 and 27, 2010 the IACHR participated in a public hearing on the case and on May 26, 2010 the Court issued its judgment. In the judgment, the Court accepted the State's partial recognition of responsibility and established that it had violated the rights to life and personal integrity to the detriment of Senator Manuel Cepeda Vargas; the rights to a fair trial and judicial protection of Senator Cepeda Vargas and his relatives; the rights to protection of honor and dignity, freedom of thought and expression, freedom of association and political rights of Senator Cepeda Vargas; and the rights to personal integrity, protection of honor and dignity, and movement and residence of Iván Cepeda Castro, María Cepeda Castro, Olga Navia Soto, Claudia Girón Ortiz, María Estella Cepeda Vargas, Ruth Cepeda Vargas, Gloria María Cepeda Vargas, Álvaro Cepeda Vargas, and Cecilia Cepeda Vargas. In its judgment, the Court also ordered the reparations measures it deemed relevant. The text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_213_ing.pdf

Case of the Mapiripán Massacre

1205. On September 5, 2003, the Commission filed an application with the Court in this case against Colombia, alleging the State's international responsibility in the massacre that took place in the period from July 15 through 20, 1997, when some 100 members of the paramilitary *Autodefensas Unidas* of Colombia, with the cooperation and acquiescence of government agents, seized, tortured and murdered at least 49 civilians, destroyed the bodies, and dumped the remains into the Guaviare River in the municipality of Mapiripán, department of Meta.. The Commission alleged that the State violated articles 4, 5, and 7 of the American Convention, to the detriment of the victims of the massacre. In addition, the Commission alleged the violation of articles 8.1 and 25 of the Convention, in connection with Article 1.1, to the detriment of the victims of the massacre and their next of kin.

1206. In its judgment of September 15, 2005, the Court declared that the State violated articles 4.1, 5.1, 5.2, 7.1, and 7.2 of the Convention, in connection with Article 1.1; 5.1 and 5.2 of the Convention, in connection with article 1.1; 19 of the Convention, in connection with articles 4.1, 5.1, and 1.1; 4.1, 22.1, and 1.1; 22.1 of the Convention, in connection with articles 4.1, 5.1, 19, and 1.1; 8.1 and 25 of the Convention, in connection with Article 1.1.

1207. During 2010, the Commission submitted periodic observations on state compliance with the orders in the Court's judgment. In addition, on May 19, 2010 the IACHR participated in a private hearing on compliance with the judgment with respect to eight Colombian cases and compliance with the reparations measure on medical and psychological treatment.

Case of the La Rochela Massacre

1208. On March 10, 2006, the Commission filed an application with the Court in case 11,995, La Rochela, alleging the Colombian State's responsibility in the events of January 18,

1989, when a paramilitary group, with the support and acquiescence of state agents, extra judicially executed 12 individuals and violated the physical integrity of another three, all of whom were members of a Colombian judicial commission on a fact-finding mission in the village of La Rochela, Colombia. The Commission alleged that the State was responsible for the violation of articles 4, 5, 8, and 25 in connection with Article 1.1. The text of the application is available (in Spanish) at the following link
<http://www.cidh.oas.org/demandas/11.995%20Masacre%20de%20La%20Rochela%20Colombia%2010%20marzo%202006%20ESP.pdf>

1209. The Court delivered its judgment on the merits, reparations, and costs on May 11, 2007. In that judgment, it decided to accept the State's partial acknowledgment of international responsibility and held that Colombia had violated all the victims' rights to life, to humane treatment and to personal liberty, protected under articles 4(1), 5(1), 5(2), and 7 of the American Convention; the next of kin's right to humane treatment, protected under Article 5 of the Convention; and the rights to a fair trial and to judicial protection, provided under articles 8(1) and 25 of the Convention, in the case of the surviving victims and the families of the deceased victims, all this in conjunction with Article 1(1) thereof. In its judgment, the Court also set the forms of reparation it deemed appropriate. The full text of the judgment can be found at:
http://www.corteidh.or.cr/docs/casos/articulos/seriec_163_ing.doc.

1210. On September 3, 2007 the State filed a request for interpretation of the Judgment and on January 28, 2008 the Court issued its judgment declaring the request admissible and, consequently, proceeded to clarify the meaning or the scope of the Judgment. The text of the judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_175_ing.pdf

1211. In 2010 the Commission submitted its comments on state compliance with the orders in the Court's judgment on merits, reparations, and costs. In addition, on May 19, 2010 the IACHR participated in a private hearing on compliance with the judgment with respect to eight Colombian cases and compliance with the reparations measure on medical and psychological treatment. Finally, on August 26, 2010 the Court issued a resolution on compliance with the judgment in which it decided to ask the State to adopt all measures necessary to give effect to and promptly comply with the points pending compliance that were ordered by the Court.

Case of the "Pueblo Bello" Massacre (José Álvarez Blanco *et al.*)

1212. This case concerns the torture and forced disappearance of 37 individuals and the torture and extrajudicial execution of another six. The events occurred in January 1990, and were the work of paramilitary groups, acting with the acquiescence of State agents, in the Colombian departments of Antioquia and Córdoba. The text of the application is available (in Spanish) at: <http://www.cidh.oas.org/demandas/11.748%20Pueblo%20Bello%20Colombia%2023mar04%20ESP.pdf> The Commission alleged that the State was responsible for articles 4, 5, 7, 8, 19, and 25 in connection with Article 1.1, for the forced disappearance, torture and extrajudicial execution of the victims in the case, and the denial of justice to the detriment of the victim's next of kin.

1213. On January 31, 2006, the Court rendered its judgment on the merits, reparations, and costs. In it, the Court accepted the State's partial acknowledgement of international responsibility and declared that Colombia violated, to the detriment of the victims, the rights to life, humane treatment, and personal liberty established in articles 4.1, 5.1, 5.2, 7.1, and 7.2 of the American Convention; the right to humane treatment set forth in article 5 of the Convention, to the detriment of their next of kin, and the rights to a fair trial and judicial protection established in articles 8.1 and 25 of the Convention to the detriment of the surviving victims and the next of kin of the deceased victims; in connection with the provision of Article 1.1 of the same treaty. In the

judgment, the Court set the reparations that it deemed appropriate. The text of the Court's judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_140_ing.pdf

1214. During 2010 the Commission continued to submit its periodic comments on the State's compliance with the reparations ordered by the Court in the judgment on the merits, reparations, and costs. In addition, on May 19, 2010 the IACHR participated in a private hearing on compliance with the judgment in eight Colombian cases and compliance with the reparations measure on medical and psychological treatment.

Case of Jesús María Valle Jaramillo *et al.*

1215. This case concerns the murder of human rights defender Jesús María Valle Jaramillo; the arrest and cruel, inhuman and degrading treatment of Mr. Valle Jaramillo, his sister Nelly Valle Jaramillo and Mr. Carlos Fernando Jaramillo Correa, which preceded the murder; the failure to investigate the facts in the case and to punish those responsible; the failure to provide the victims and their next of kin with adequate compensation; and the forced displacement that Mr. Jaramillo Correa suffered in the wake of these events.

1216. On November 27, 2008 the Court issued its judgment on the Merits, Reparations and Costs. There, it accepted the State's partial recognition of international responsibility and declared that the following articles had been violated: 7.1, 5.1, and 4.1 to the detriment of Jesús María Valle Jaramillo; 7.1 and 5.1 to the detriment of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa; 5.1 to the detriment of 23 relatives of the victim; 8.1 and 25.1 to the detriment of 25 relatives of the victim; and 5.1 to the detriment of Blanca Inés Valle Jaramillo, Gonzalo de Jesús Jaramillo Correa, Juan Guillermo Valle Noreña, John Jairo Valle Noreña, and Luz Adriana Valle Noreña. The Court also determined the reparations it deemed necessary. The text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_192_ing.pdf

1217. On July 7, 2009, the Court issued a judgment of interpretation in which declared the requests for interpretation submitted by the representatives and the State to be admissible. The text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_201_ing.pdf

1218. During 2010 the Commission submitted observations regarding the State's reports on compliance with the judgment. In addition, on May 19, 2010 the IACHR participated in a private hearing on compliance with the judgment with respect to eight Colombian cases and compliance with the reparations measure on medical and psychological treatment. On December 21, 2010 the President of the Court issued a resolution convening a private hearing on compliance with the judgment, to be held on February 26, 2011.

Case of Wilson Gutiérrez Soler

1219. This case concerns the detention and torture of Wilson Gutiérrez Soler, to force him to confess to the alleged commission of an offense of which the Colombian courts ultimately found him innocent.

1220. On June 30, 2009, the Court issued an order to continue monitoring compliance with the following obligations of the State: a) investigation of the facts denounced, and identification, prosecution, and punishment of the responsible parties; b) psychological and psychiatric treatment for the victims; and c) adoption of the necessary measures to strengthen existing control mechanisms in state detention centers. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/gutierrez_30_06_09_ing.pdf

1221. During 2010 the Commission continued to submit observations regarding the reports from the Colombian State on compliance with the judgment. In addition, on May 19, 2010 the IACHR participated in a private hearing on compliance with the judgment with respect to eight Colombian cases and compliance with the reparations measure on medical and psychological treatment.

f. Chile

Case of Almonacid Arellano

1222. On July 11, 2005 the IACHR filed an application with the Court in case No. 12.057, Luis Alfredo Almonacid Arellano, against the State of Chile, based on its responsibility for having failed to investigate and punish those responsible for the extrajudicial execution of Mr. Alfredo Almonacid Arellano, due to the application of Decree Law 2.191, the Chilean Amnesty Law, adopted in 1978; as well as the State's failure to make adequate reparations to his relatives. The text of the application can be found at: <http://www.cidh.oas.org/demandas/12.057%20Almonacid%20Arellano%20Chile%2011jul2005%20ESP.pdf>

1223. On September 26, 2006 the Court issued its judgment on preliminary objections, merits, reparations, and costs. In its judgment, the Court established that Decree Law 2.191 is incompatible with the Convention and without legal effects; that the State failed to meet its obligations under Articles 1.1 and 2 of the Convention; and that the State violated Articles 8.1 and 25 of the Convention. The text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_154_ing.pdf

1224. In 2010 the Commission continued to submit its periodic comments on the compliance with the Court's September 26, 2006 judgment on preliminary objections, merits, reparations and costs and on November 18, 2010 the Court issued a resolution on compliance with the judgment, the text of which can be found at: http://www.corteidh.or.cr/docs/supervisiones/almonacid_18_11_10.pdf

Case of Humberto Palamara Iribarne

1225. On May 13, 2004, the Commission filed an application with the Court against Chile in the case of Palamara Iribarne, on the grounds that the State had confiscated the copies and galleys of the book *Ética y Servicios de Inteligencia*, had erased the book from the hard disc of Mr. Palamara's personal computer, had banned its publication, and had found Mr. Palamara guilty of contempt. The text of the application can be found (in Spanish) at: <http://www.cidh.oas.org/demandas/11.571%20Palamara%20Iribarne%20Chile%2013abr04%20ESP.pdf>.

1226. On November 22, 2005, the Court delivered its judgment in the case, where it found that the State had violated the rights to freedom of thought and expression, private property, a fair trial, judicial protection, and personal liberty, protected under articles 13, 21, 8, 25, and 7 of the American Convention, in conjunction with articles 1(1) and 2 thereof. The full text of the judgment may be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_135_ing.doc.

1227. In 2010 the Commission submitted its comments on the information regarding the compliance with November 22, 2005 judgment.

Case of Karen Atala and daughters

1228. On September 17, 2010 the Inter-American Commission submitted its application in the case with respect to the discriminatory treatment of and arbitrary interference in the private and family life of Karen Atala due to her sexual orientation, in the judicial proceeding that resulted in the removal of her daughters from her care and custody. The case also involves the failure to observe the best interests of the daughters M., V., and R., the care and custody of whom were determined without recognizing their rights and based on discriminatory prejudices incompatible with Chile's obligations in the area of human rights. The case was referred to the Court because the Commission felt that the State had failed to comply with the recommendations contained in its report on the merits. This is the first case that the Inter-American Commission has sent to the Court on the subject of discrimination based on sexual orientation.

1229. The case is currently being processed by the Inter-American Court.

g. Costa Rica

Case of the "La Nación" Newspaper (Herrera Ulloa)

1230. On September 22, 2006, the Court issued an order on monitoring compliance with the judgment in question, in which it decided that it would keep open the proceeding for monitoring compliance of the State's pending obligations, namely: to nullify the November 12, 1999 judgment of the Criminal Court of the First Judicial Circuit of San José and all the measures ordered therein; to adjust its domestic legal system to the provisions of Article 8(2)(h) of the American Convention on Human Rights, in relation to Article 2 thereof; and to pay the interest accrued for delay in the payment of compensation for non-pecuniary damages and reimbursement of expenses. The text is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_107_ing.pdf

1231. On July 9, 2009, the Court issued an order to continue monitoring compliance with the following obligations of the State: a) to nullify the November 12, 1999, judgment of the Criminal Court of the First Judicial District of San José and all the measures it orders; and b) to adjust its domestic legal system to conform to the provisions of Article 8.2.h of the American Convention, in relation to Article 2 thereof. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/herrera_09_07_09_ing.pdf

1232. During 2010 the Commission continued to submit periodic observations regarding compliance with the Court's orders in its judgment on the merits, reparations, and costs of July 2, 2004. In its resolution of November 22, 2010 the Inter-American Court declared that the State of Costa Rica had fully complied with the judgment and thus decided archive this case. The resolution can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/herrera_22_11_10.pdf.

h. Ecuador

Case of Cornejo *et al.*

1233. On July 5, 2006 the Commission filed an application with the Court against Ecuador in case 12,406, Cornejo *et al.*, in which it alleged that the State had failed to comply with its international obligations, to the detriment of Mrs. Carmen Susana Cornejo de Albán and Mr. Bismarck Wagner Albán Sánchez. For almost two decades, the two had sought justice and punishment of those responsible for the death of their daughter, Laura Susana Albán Cornejo, by compiling evidence related to her death and bringing medical malpractice suits against the physicians who treated her. In these legal proceedings, they did not enjoy the necessary guarantees or judicial protection. The full text of the application can be found at:

<http://www.cidh.oas.org/demandas/12.406%20Laura%20Alban%20Cornejo%20Ecuador%205%20julio%2006%20ENG.pdf>

1234. On November 22, 2007, the Court delivered its judgment in the case, in which it accepted the State's partial acknowledgment of international responsibility for violation of the rights to a fair trial and to judicial protection. It also declared that Ecuador violated the right to humane treatment to the detriment of Carmen Cornejo de Albán and Bismarck Albán Sánchez and that State had violated the rights to a fair trial and to judicial protection, recognized in articles 8(1) and 25(1) of the American Convention, all in conjunction with articles 4, 5, 5(1) and 1(1) thereof, to the detriment of Carmen Cornejo de Albán and Bismarck Albán Sánchez. In its judgment, the Court ordered the reparations measures it deemed relevant. The full text of the judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_171_ing.doc

1235. During 2010 the Commission continued to submit periodic observations regarding compliance with the Court's orders in its judgment. In its resolution of August 27, 2010 the Court referred to the pending aspects of the case. The text of the resolution on compliance with the judgment can be found at: http://www.corteidh.or.cr/docs/supervisiones/cornejo_27_08_10_ing.pdf

Case of Benavides Cevallos

1236. On March 21, 1996, the Commission filed an application with the Court in this case, for the unlawful and arbitrary arrest, torture and murder of Consuelo Benavides Cevallos by agents of the State, who held her in secret, without a court order, court authorization or court supervision. The State agents involved and the government institutions with which they were associated then undertook a systematic campaign to deny these crimes and any responsibility on the State's part. .

1237. The most recent order issued by the Court on the matter of compliance is dated November 27, 2003. There the Court resolved to inform the General Assembly of the Organization about the State's failure to discharge its obligation of investigating and solving the victim's forced disappearance. The full text of the judgment can be found at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_38_ing.doc.

1238. In 2010, the State persisted in its pattern of not submitting the reports necessary to document compliance with its obligation of investigating, prosecuting and punishing those responsible for the human rights violations committed against Consuelo Benavides Cevallos, as required under operative paragraph four of the Court's judgment of June 19, 1998.

Case of Chaparro Álvarez and Lapo Iñiguez

1239. On June 23, 2006, the Commission filed an application with the Court in case 12,091, Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Iñiguez, for Ecuador's international responsibility in the arbitrary detention of the two men in Guayaquil on November 15, 1997, and subsequent violations of their rights in the proceedings instituted against them, in which both men sustained material and moral damages. In light of the facts in the case, the Commission asked the Court to hold the Ecuadorian State internationally responsible for violating the victims' rights under articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 21 (right to private property), and 25 (right to judicial protection) of the American Convention, in conjunction with Article 1(1) thereof (the obligation to respect rights). The Commission also asked for a finding that the State violated Article 2 of the Convention to the detriment of Mr. Lapo Iñiguez. The text of the application can be found at: <http://www.cidh.oas.org/demandas/12.091%20Juan%20Carlos%20Chaparro%20Alvarez%20Ecuador%2023%20junio%202006%20ENG.pdf>

1240. On November 21, 2007, the Court delivered its judgment in the case. There, it accepted the State's partial acknowledgement of international responsibility and held that Ecuador had violated the rights to personal liberty, a fair trial, humane treatment, and private property of Messrs. Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Iñiguez. The Court also ordered the reparations it deemed relevant and ordered the parties to submit to an arbitration process to set the amounts owed to him for pecuniary damages. . The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_170_ing.pdf

1241. During 2010 the IACHR continued to submit observations on the information provided by the parties regarding progress made in complying with the judgment in this case and on May 19, 2010 the Court issued a resolution on the points pending compliance. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/chaparro_19_05_101%20ing.pdf

Case of Mejía Idrovo

1242. On November 19, 2009, the Commission filed an application with the Inter-American Court against Ecuador, alleging failure to comply with the judgment of the Constitutional Court that declared the unconstitutionality of two executive decrees ordering the availability and separation of Mr. Mejía Idrovo from the Army, and ordered reparation for damages. In its application, the Commission asked the Court to find and declare that the State is responsible for the violation of articles 8.1 and 25 of the American Convention, in conjunction with Article 1.1 thereof, to the detriment of José Alfredo Mejía Idrovo.

1243. Following the respective regulatory procedures, in its resolution of December 2, 2010, the office of the President of the Inter-American Court called upon the Commission, the State of Ecuador, and the victim's representatives to attend a public hearing on the case. That hearing will be held on February 28, 2011.

Case of Vera Vera *et al.*

1244. On February 24, 2010 the Inter-American Commission filed an application with the Inter-American Court. The case involves a failure to provide adequate medical care, and the physical and mental suffering and subsequent death of Pedro Miguel Vera Vera while in the custody of the State. Pedro Miguel Vera Vera was arrested by the police on April 12, 1993, with a wound from a firearm of indeterminate origin. Mr. Vera Vera was taken to a public hospital, now in the custody of the State, was released on the following day, and transferred to a prison facility. He remained there for four days without receiving any medical attention despite his wound and even though the bullet was still in his body. On April 16, 1993, a court order was issued to transfer the victim to a hospital for surgical intervention. The victim was transferred the following day but had to wait until April 22, 1993 for the surgery and died some hours later. The facts have not been made clear as yet, nor have those responsible been identified and punished.

1245. The Inter-American Commission asked the Court to establish international responsibility on the part of the State of Ecuador, which has failed to meet its international obligations and has violated Articles 4.1 (Right to Life), 5.1 and 5.2 (Right to Personal Integrity), and 8.1 and 25.1 (Right to a Fair Trial and Judicial Protection), in connection with the obligations established in Article 1.1 of the American Convention. The text of the application can be found at: <http://www.cidh.oas.org/demandas/11.535%20Pedro%20Miguel%20Vera%20y%20otros%20Ecuador%2024%20febrero10%20Eng.pdf>

1246. The case is currently being processed by the Court. In a resolution dated December 23, 2010 the office of the President of the Court convened a public hearing on this matter to be held on March 2, 2011 during the Court's XC regular session.

Case of the Kichwa Indigenous People of Sarayaku

1247. On April 26, 2010 the Inter-American Commission filed an application with the Inter-American Court. The case involves actions and omissions on the part of the State to the detriment of the Kichwa people of the Sarayaku community and its members, in that it has allowed a private petroleum company to engage in activities in the ancestral territory of the Kichwa people of Sarayaku without consulting the community in advance and putting the population at risk. The result of this situation has been to make it impossible for the indigenous population to seek its means of subsistence in its territory and limit its right to move around its territory. In addition, the case involves a denial of judicial protection and due process for the Kichwa people of Sarayaku.

1248. The Inter-American Commission asked the Court to establish that the State of Ecuador is internationally responsible for the following human rights violations: i) Article 21 of the American Convention in connection with Articles 13, 23, and 1.1 of that instrument, to the detriment of the indigenous community of Sarayaku and its members; ii) Articles 4, 8, and 25 of the American Convention in connection with Article 1.1 thereof, to the detriment of the indigenous community of Sarayaku and its members; iii) Article 22 of the American Convention in connection with Article 1.1 thereof, to the detriment of the members of the indigenous people of Sarayaku; iv) Article 5 of the American Convention, in connection with Article 1.1 thereof, to the detriment of 20 members of the Kichwa people of Sarayaku; and v) failure to comply with the provisions of Article 2 of the American Convention.

1249. The text of the application can be found at: <http://www.cidh.oas.org/demandas/12.465%20Sarayaku%20Ecuador%2026abr2010%20ENG.pdf>

Case of Salvador Chiriboga

1250. On December 12, 2006, the Commission filed an application with the Court against the Republic of Ecuador, in case 12,054, Salvador Chiriboga, for the international responsibility the State incurred by its expropriation of a piece of property belonging to the Salvador Chiriboga brothers. The procedure used to expropriate the property stripped the brothers of the use and enjoyment of the property, without paying them the fair compensation to which they were entitled under Ecuadoran law and the American Convention. The Commission asked the Court to declare the State's international responsibility for violation of articles 8 (right to a fair trial), 21 (right to private property) and 25 (right to judicial protection) of the American Convention, all in relation to its articles 1(1) (obligation to respect rights) and 2 (domestic legal effects) thereof.

1251. On May 6, 2008, the Court delivered its judgment on the preliminary objection and merits of the present case. There, the Court held that the State had violated the right to property protected under Article 21(2) of the American Convention, in relation to the rights to a fair trial and judicial protection provided under articles 8(1) and 25(1) of the Convention, all this in conjunction with Article 1(1) thereof, to the detriment of María Salvador Chiriboga. It ordered that within six months from the date of notification of the judgment, the State and the representatives were to reach agreement on the amount and payment of the fair compensation owed for the expropriated property and any other measures to redress the violations established in the Judgment. That six-month time period has passed and the Commission does not know whether the parties were able to reach the agreement called for by the Court. The full text of the judgment in this case is at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_179_ing.doc

1252. Since the parties failed to agree on the amount and payment of just compensation for the expropriation of the assets, the Court decided to continue with the reparations stage. It therefore summoned the Commission, the representatives, and the State to a public hearing at the Court's headquarters on September 24, 2009, to hear their claims on the subject. As of the preparation of this report, the Court had not yet delivered a judgment.

Case of Suárez Rosero

1253. On December 22, 1995, the Commission filed an application with the Court against the Republic of Ecuador, for the arrest and detention of Rafael Iván Suárez Rosero in violation of a pre-existing law; the failure to bring Mr. Suárez before a judicial official promptly once he was in detention; the holding of Mr. Suárez in incommunicado detention for 36 days; the failure to respond adequately and effectively to his attempt to invoke the domestic judicial guarantees, and the State's failure to release him or show any intention of so doing, within a reasonable time, or to guarantee that he would be tried within an equally reasonable time to substantiate the charges brought against him. On November 12, 1997 the Court issued its judgment on the merits in the case and on January 20, 1999 it ordered the relevant reparations and costs. The texts of the judgments can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_35_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_44_ing.pdf

1254. During 2010 the Commission made written submissions regarding compliance with the Court's orders in its judgments.

Case of Tibi

1255. On June 25, 2003, the Commission filed an application with the Court against the Republic of Ecuador for the unlawful and arbitrary detention of Mr. Daniel David Tibi on September 27, 1995, the torture he suffered, and his inability to file a remedy against that torture or his excessively prolonged preventive custody.

1256. The Inter-American Court delivered its judgment on the preliminary objections, merits, and reparations in this case on September 7, 2004. In that judgment, the Court determined that the State violated the rights to Personal Liberty, Judicial Protection, and a Fair Trial to the detriment of Mr. Daniel Tibi. It also established that the State failed to meet its obligations under Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Tibi, and that Ecuador violated the right to personal integrity to the detriment of his relatives. The text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_114_ing.pdf

1257. During 2010 the Commission made written submissions regarding compliance with the Court's orders in its judgment of September 7, 2004.

Case of Zambrano Vélez *et al.*

1258. On July 24, 2006, the Commission filed an application with the Court against the Republic of Ecuador in case 11,579, Zambrano Vélez *et al.*, for its responsibility in the extrajudicial execution of Wilmer Zambrano Vélez, Segundo Olmedo Caicedo and José Miguel Caicedo in Guayaquil, during a joint operation of the Ecuadoran Marines, Air Force and Army on March 6, 1993, at a time when guarantees had been suspended in a manner that did not fit the exigencies of the situation and the subsequent lack of due diligence in investigating the facts. The facts were never investigated thereafter. The text of the application can be found at: <http://www.cidh.oas.org/demandas/11.579%20Wilmer%20Zambrano%20Velez%20y%20otros%20Ecuador%2024%20julio%202006%20ENG.pdf>

1259. The Court delivered its judgment on the merits, reparations and costs on July 4, 2007. In it, it accepted the State's partial acknowledgement of responsibility and ruled that Ecuador had failed to comply with its obligations regarding the suspension of guarantees set out in Articles 27(1), 27(2), and 27(3) of the Convention, in conjunction with the obligation to respect rights and to adopt domestic legal effects with respect to the right to life, to a fair trial, and to judicial protection, established in articles 1(1), 2, 4, 8(1), and 25 of the Convention. It also ruled that the State had violated the victims' right to life and their families' right to a fair trial and to judicial protection. In its judgment, the Court set out the forms of reparation it deemed appropriate. The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/Seriec_166_ing.doc.

1260. During 2010 the Commission made written submissions regarding compliance with the Court's orders and on November 23, 2010 the Court issued a resolution on compliance with its judgment, the text of which can be found at: http://www.corteidh.or.cr/docs/supervisiones/zambrano_23_11_10.pdf

j. El Salvador

Case of García Prieto Giralt

1261. This case concerns El Salvador's international responsibility for actions and omissions in the investigation into the murder of Ramón Mauricio García Prieto Giralt on June 10, 1994, in San Salvador, for the threats subsequently made against his family in connection with their role in the investigation, and for the failure to provide them with proper reparations. El Salvador accepted the Court's contentious jurisdiction on June 6, 1995. Thus, the violations that the Commission asked the Court to adjudge and declare are those that occurred subsequent to that date.

1262. The Court delivered its judgment on November 20, 2007. The full text is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_168_ing.doc. There, it found that the State violated the rights to a fair trial, judicial protection, and humane treatment, protected under articles 8(1), 25(1), and 5(1) of the American Convention on Human Rights, all in conjunction with Article 1(1) of the Convention and to the detriment of Mr. José Mauricio García Prieto Hirlemann and Ms. Gloria Giralt de García Prieto. It also found that the State had violated the rights to a fair trial and judicial protection recognized in articles 8(1) and 25(1) of the American Convention on Human Rights, in conjunction with Article 1(1) of the Convention, and the right to humane treatment recognized in Article 5(1) of the American Convention, due to the failure to investigate the threats and harassment suffered by Mr. José Mauricio García Prieto Hirlemann and Ms. Gloria Giralt de García Prieto. The Court ordered the measures of reparation it deemed appropriate, including an obligation to complete the pending investigation into the homicide of Ramón Mauricio García Prieto and the threats and harassment, all within a reasonable period of time.

1263. On March 14, 2008, the State filed an application to request an interpretation of that judgment. On November 24, 2008, the Court delivered its judgment of interpretation in which it dismissed the State's application as inadmissible.

1264. Durante 2010 the IACHR continued to submit observations regarding the information provided by the parties regarding progress made in complying with the judgment in this case. On January 28, 2010 the IACHR participated in the hearing on compliance with the judgment that was held during the LXXXVI regular session of the Inter-American Court. On February 3, 2010 the Inter-American Court issued a resolution whereby it declared that the State of El Salvador had complied

with various reparations measures and that it would continue to supervise compliance with the judgment with respect to the obligations to i) investigate and punish those responsible; ii) publish the relevant sections of the judgment in a widely distributed national newspaper; and iii) provide medical and psychological treatment. Through a resolution of August 27, 2010 the Inter-American Court declared that the obligation to publish the judgment had been met and ordered continued supervision regarding the remaining aspects.

Case of Gregoria Herminia Contreras *et al.*

1265. On June 28, 2010 the IACHR filed an application with the Court. The case involves the forced disappearance of the children Gregoria Herminia, Serapio Cristian, and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera between 1981 and 1983 carried out by different military bodies conducting “counterinsurgency operations” in the context of the armed conflict in the country in those years. To this day, the whereabouts of Serapio Cristian and Julia Inés Contreras, Ana Julia and Carmelina Mejía Ramírez, and José Rubén Rivera remain unknown. The whereabouts of Gregoria Herminia Contreras were established in 2006 and she is now in the process of rebuilding her identity and her relationship with her biological family. The circumstances that surrounded the six disappearances have not been made clear, those responsible have not been identified or punished, and in sum, after nearly 30 years, the acts continue to go unpunished.

1266. The Inter-American Commission asked the Court to establish the international responsibility of the Salvadoran State, which has failed to meet its international obligations and has violated Articles 3 (Right to Recognition of Juridical Personality), 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 17 (Family Protection), 18 (Right to Identity), 19 (Protection of Children), and 8 and 25 (Rights to a Fair Trial and Judicial Protection), in connection with the obligations established in Article 1.1 of the American Convention.

1267. The case is currently being processed by the Inter-American Court.

Case of the Serrano Cruz Sisters

1268. On June 14, 2003, the Inter-American Commission filed an application with the Court against El Salvador in connection with the detention, abduction, and forced disappearance of Ernestina and Erlinda Serrano Cruz, then minor children of 7 and 3 years of age, respectively, who were captured by members of the Atlacatl Battalion of the Salvadoran Army during a military operation known as “Operation Clean-up” or “la Guinda de Mayo”, which took place in various locations including the municipality of San Antonio de la Cruz, department of Chalatenango, from May 27 to June 9, 1982. On November 23, 2004, the Court issued a judgment on preliminary objections and, on March 1, 2005, decided the merits, reparations, and costs.

1269. On July 3, 2007, the Court adopted an order monitoring compliance with the judgment in the case. There, it instructed the State to report the steps taken to carry out the following obligations: conduct an effective investigation of the facts of the case; identify and punish the guilty, and conduct a serious search for the victims; eliminate all obstacles and mechanisms that prevent compliance with the State’s obligations; ensure the independence and impartiality of the members of the national commission charged with searching for people who disappeared as children during the internal conflict, with the participation of society; create a genetic information system to obtain and store genetic data to assist in determining the identity and establishing the identification of disappeared children and their relatives; provide, free of charge, the medical and psychological treatment needed by the victims’ relatives; create a web page to assist searches for the disappeared; publish those parts of the judgment on the merits, reparations, and costs ordered by

the Court; and pay costs and expenses. The full text of the order can be found at: http://www.corteidh.or.cr/docs/supervisiones/serrano_03_07_07_ing.doc.

1270. On January 28, 2010 the IACHR participated in a private hearing on compliance with the judgment. On February 3, 2010 the Inter-American Court issued a resolution whereby it declared that supervision of the judgment would remain open with respect to the points that were pending compliance. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/serrano_03_02_10_ing.pdf. During the remaining months of 2010 the IACHR continued to present observations regarding the information provided by the parties on compliance with the judgment in this case.

k. Guatemala

Case of Bámaca Velásquez

1271. In 2010, the Commission presented its periodic comments concerning compliance with the Court's February 22, 2002 judgment on merits, reparations and costs, underscoring the importance of an investigation into the whereabouts of the victim in a case of forced disappearance, not just for the sake of their loved ones but for society as a whole as well. This obligation has not yet been fulfilled. The IACHR submitted the case to the Court on August 30, 1996.

1272. On November 18, 2010 the Court issued a resolution whereby it asked the State to immediately adopt all the measures necessary to comply with the Court's orders. The text of that resolution can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/bamaca_18_11_10.pdf.

Case of Blake

1273. On August 3, 1995 the IACHR submitted its application in this case to the Court. It asked the Court to determine that the following articles of the Convention had been violated: 7 (Right to Personal Liberty), 4 (Right to Life), 25 (Judicial Protection), 8 (Fair Trial), 13 (Freedom of Thought and Expression), 22 (Freedom of Movement and Residence), based on violation of the right to personal liberty, life, and freedom of expression as well as denial of justice, to the detriment of Nicholas Chapman Blake.

1274. The Court issued a judgment on the merits on January 24, 1998 and on reparations and costs on January 22, 1999. The text of those judgments can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_27_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_36_ing.pdf

1275. During 2010 the Commission continued to submit its observations regarding the obligation to investigate the facts of the case, [and] the reparations measure that is pending compliance.

Case of Carpio Nicolle *et al.*

1276. During 2010 the Commission continued to submit periodic observations regarding compliance with the Court's orders on the subject of reparations in its judgment of November 22, 2004, through the resolution issued by the Inter-American Court on July 1, 2009, the date on which it issued an order declaring that the State had fully complied with payment for pecuniary and non-pecuniary damages, and reimbursement for costs and expenses. It also declared that the monitoring would continue on compliance with the following obligations of the State: a) to investigate, identify, and as applicable punish those who perpetrated and masterminded the

extrajudicial execution of Messrs. Carpio Nicolle, Villacorta Fajardo, Ávila Guzmán, the serious injuries to Sydney Shaw Díaz; b) to remove all obstacles and de facto and de jure mechanisms that maintain impunity in this case, grant the witnesses, judicial authorities, prosecutors, other judicial agents, and victims' next of kin sufficient guarantees of security, and use all possible measures available to the State to advance the proceeding; c) to adopt specific measures to improve its investigatory capacity; and d) to hold a public act acknowledging its responsibility. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/carpio_01-07-09_ing.pdf

Case of Fermín Ramírez

1277. This case concerns the death sentence ordered in the case of Mr. Fermín Ramírez, who was denied the opportunity to exercise his right of defense with respect to changes in the offenses with which he was charged and their legal classification. Those changes occurred at the time the Guatemalan judicial authorities handed down his conviction on March 6, 1998.

1278. On March 28, 2008 the Court summoned the parties to a hearing to be held in private. The Order is available at http://www.corteidh.or.cr/docs/supervisiones/Fermin_%2028_03_08_ing.pdf. On May 9, 2008, the Inter-American Court issued an order monitoring compliance with the judgment in which it ordered the State of Guatemala to adopt all the measures necessary to effectively and promptly comply with the pending aspects of the judgments delivered in the cases of *Fermín Ramírez* and *Raxcacó Reyes*. The text of the order is available at http://www.corteidh.or.cr/docs/supervisiones/Fermin_%2009_05_08_ing.doc.

1279. During 2010 the Commission continued to monitor compliance with the Court's orders in its judgment on the merits, reparations, and costs of July 20, 2005.

Case of Florencio Chitay Nech

1280. On April 17, 2009, the Commission filed an application with the Inter-American Court against Guatemala concerning the forced disappearance of the Maya indigenous political leader *kaqchikel* Florencio Chitay, on April 1, 1981, in Guatemala City, the subsequent lack of due diligence in the investigation of the facts, and the denial of justice to the detriment of the victim's next of kin. In its application the Commission asked the Court to conclude and declare that the State is responsible for the violation of the following articles: a) 3, 4, 5, 7, and 23 of the American Convention, in conjunction with Article 1.1 thereof; and articles I and II of the Convention on Forced Disappearance, to the detriment of Florencio Chitay Nech; b) 8 and 25 of the American Convention, in relation to articles 1.1 and 2 thereof, to the detriment of Florencio Chitay Nech and his sons and daughter, i.e., Encarnación, Pedro, Eliseo, Estermerio, and María Rosaura, all with the surname Chitay Rodríguez. c) 5 and 17 of the American Convention, in connection with Article 1.1 thereof, to the detriment of Encarnación, Pedro, Eliseo, Estermerio, and María Rosaura, all with the surname Chitay Rodríguez; and d) 19 of the American Convention, in conjunction with Article 1.1 thereof, to the detriment of the child at the time Estermerio Chitay Rodríguez.

1281. On May 25, 2010 the Inter-American Court issued a judgment whereby it declared: i) partial admission of the preliminary objection filed by the State based on the failure to exhaust domestic remedies; ii) inadmissible the alleged preliminary objection to "convening a friendly settlement"; iii) accepted the partial recognition of responsibility; iv) violation of the rights to personal liberty, personal integrity, life, recognition of juridical personality, and political rights established in Articles 7.1, 5.1, 5.2, 4.1, 3, and 23.1 of the American Convention on Human rights, in connection with the obligation to respect and guarantee rights established in Article 1.1 of the Convention, as well as Article I.a) of the Inter-American Convention on Forced Disappearance of

Persons, to the detriment of Florencio Chitay Nech; v) violaton of the right of movement and residence and family protection recognized in Articles 22 and 17 of the American Convention on Human Rights, in connection with Article 1.1 of the Convention, to the detriment of Encarnación and Pedro, with surnames Chitay Rodríguez; vi) violation of the right of movement and residence and family protection and the rights of the child established in Articles 22, 17, and 19 of the American Convention on Human Rights, in connection with Article 1.1 of that instrument, to the detriment of Eliseo, Estermerio, and María Rosaura, all of whom have the surname Chitay Rodríguez; vii) violation of the right to a fair trial and judicial protection recognized in Articles 8.1 and 25.1 of the American Convention on Human Rights, in connection with Article 1.1 thereof, to the detriment of Encarnación, Pedro, Eliseo, Estermerio, and María Rosaura, all of whom have the surname Chitay Rodríguez; as well as failure to fulfill the obligation established in Article I. b) of the Inter-American Convention on Forced Disappearance of Persons; viii) violation of the right personal integrity recognized in Article 5.1 of the American Convention on Human Rights, in connection with Article 1.1 of the Convention, to the detriment of Encarnación, Pedro, Eliseo, Estermerio, and María Rosaura, all of whom have the surname Chitay Rodríguez; and ix) no violation of the duty to adopt domestic legal provisions as established in Article 2 of the American Convention on Human Rights, and no failure to comply with Articles II and III of the Inter-American Convention on Forced Disappearance of Persons.

1282. As this report is being prepared, the deadline for the State to submit its first report on compliance with the judgment has not expired.

Case of Maritza Urrutia

1283. The case concerns the illegal and arbitrary detention of Mrs. Maritza Urrutia on July 23, 1992, and her subsequent torture in a clandestine detention center, where she spent eight days and was forced to make a public statement prepared by her captors.

1284. On January 22, 2009, the Court issued an order to continue monitoring compliance with the obligation to “investigate effectively the facts of this case, which resulted in the violations of the American Convention and non-compliance with the obligations of the Inter-American Convention to Prevent and Punish Torture; identify, prosecute, and punish those responsible, and also publish the results of the respective investigations.” The text of that order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/urrutia_22_01_09_ing.pdf

1285. During 2010 the Commission continued to submit periodic observations regarding compliance with the Court’s orders on the subject of reparations in its judgment of November 27, 2003.

Las Dos Erres Massacre

1286. On July 30, 2008, the Inter-American Commission filed an application against the Republic of Guatemala in case number 11,681, *Las Dos Erres Massacre*, in which it asserted the State’s lack of due diligence in the investigation, prosecution and punishment of those responsible for the massacre of 251 inhabitants of the community (*parcelamiento*) of Las Dos Erres, municipality of La Libertad, department of Petén. The massacre was the work of members of the Guatemalan Army and occurred between December 6 and 8, 1982. In its application, the Commission was of the view that the impunity in relation to the facts of the Las Dos Erres massacre serves to prolong the suffering caused by the gross violations of fundamental rights that occurred; and that it is a duty of the Guatemalan State to fashion an adequate judicial response, establish the identity of the persons responsible, prosecute them, and impose the respective sanctions on them. The application is available at the following link:

<http://www.cidh.org/demandas/11.681%20Masacre%20de%20las%20Dos%20Erres%20Guatemala%2030%20Julio%202008%20ENG.pdf>.

1287. On November 24, 2009, the Court delivered its judgment on preliminary objections, merits, reparations, and costs, in which it decided: to accept the State's partial acknowledgement of responsibility; that the State violated articles 8.1 and 25.1 of the American Convention, in conjunction with Article 1.1 thereof, and violated the obligations established in articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7.b of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, to the detriment of the 155 victims of the case, in their respective circumstances; that the State failed to comply with the obligations set forth in articles 1.1 and 2 of the American Convention; that the State violated articles 17 and 18 of the Convention, in connection with articles 1.1 and 19 thereof, to the detriment of Ramiro Antonio Osorio Cristales; and that the State violated Article 5.1 of the American Convention, in conjunction with Article 1.1 thereof. The Court also declared that the State violated Article 5.1 of the American Convention, in relation to articles 1.1 and 19 thereof, to the detriment of Ramiro Antonio Osorio Cristales and Salomé Armando Gómez Hernández. It decided it would not be in order to rule on the alleged violation of Article 21 of the Convention. Finally, the Court set the reparations that it deemed appropriate. The text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_211_ing.pdf

1288. During 2010 the Commission submitted observations regarding the information provided by Guatemala on compliance with the judgment.

Case of the "Plan de Sánchez" Massacre

1289. The Inter-American Commission submitted an application to the Court in this case on July 31, 2002. The Commission asserted that the survivors and families of the victims of a massacre of 268 people –most of them indigenous Mayans- had been denied justice and suffered other acts of discrimination and intimidation. The July 18, 1982 massacre was in the village of Plan de Sánchez, Rabinal municipality, in the department of Baja Verapaz, and was the work of members of the Guatemalan Army and their civilian collaborators, who were acting under the protection and guidance of the Army. The Court delivered its judgment on the merits on April 29, 2004 and its judgment on reparations on November 19, 2004. The text of those judgments can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_105_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_116_ing.pdf

1290. In 2010 the Commission submitted its comments on the State's compliance reports and went on to underscore how important it was for the State to comply with the obligation to investigate the causes of the massacre and the human rights violations that resulted from it, and to identify, prosecute and punish those responsible.

Case of the Río Negro Massacre

1291. On November 30, 2010 the Commission submitted the case to the Court's jurisdiction by filing its report on the merits in which it concluded that a series of massacres had been perpetrated against the community of Río Negro that were planned by agents of the State of Guatemala for the purpose of exterminating the community, and that these massacres constituted genocide. The massacres were committed as part of a "scorched earth" policy led by the Guatemalan State against the Mayan community, who were characterized as an "internal enemy" in a context of discrimination and racism, in violation of fundamental human rights, the rights of indigenous peoples, and the values shared by the inter-American community. It also concluded that the State of Guatemala has not effectively investigated the facts of the massacres committed against the Río Negro community, nor has it examined the numerous violations that occurred during

and after those massacres. In this regard, the Commission concludes that the courts of justice have not acted diligently to advance criminal proceedings to clarify all the facts of the massacres and punish those responsible, including both perpetrators and masterminds. It also concluded that the State has not taken the measures necessary to fully identify the remains of those who were executed or determine the whereabouts of the disappeared.

1292. Thus, the IACHR concluded that the State of Guatemala is internationally responsible for violating: a) Articles 4, 5, and 7 of the American Convention, in connection with Article 1.1 thereof, to the detriment of the members of the Río Negro community who were extrajudicially executed; b) Article 19 of the American Convention, in connection with Article 1.1 thereof, to the detriment of the children of the community of Río Negro who were extrajudicially executed; c) Articles 3, 4, 5, and 7 of the American Convention, in connection with Article 1.1 thereof, as well as Article I of the American Convention on Forced Disappearance of Persons, to the detriment of Ramona Lajuj and Manuel Chen Sánchez, and Article 19 of the American Convention, to the detriment of Manuel Chen Sánchez; d) Articles 5 and 11 of the American Convention, in connection with Article 1.1 thereof, to the detriment of J.O.S., V.C., M.T., and María Eustaquia Uscap Ivoy, and in connection with Article 19 of the Convention, with respect to J.O.S. and María Eustaquia Uscap Ivoy; e) Article 5 of the American Convention, in connection with Article 1.1 thereof, to the detriment of the members of the community of Río Negro who survived the massacres, as well as to the detriment of the relatives of the members of the community of Río Negro; f) Articles 6, 17, and 19 of the American Convention, in connection with Article 1.1 thereof, to the detriment of Agustín Chen Osorio, Celestina Uscap Ivoy, Cruz Pérez Osorio, Froilan Uscap Ivoy, Jesús Tecú Osorio, José Osorio Osorio, Juan Chen Chen, Juan Chen Osorio, Juan Pérez Osorio, Juan Uscap Ivoy, Juana Chen Osorio, María Eustaquia Uscap Ivoy, Pedro Sic Sánchez, Silveria Lajuj Tum, Tomasa Osorio Chen, Florinda Uscap Ivoy, and Juan Burrero; g) Articles 11.1, 12, 16, 21, and 24 of the American Convention, in connection with Article 1.1 thereof, to the detriment of the members of the community of Río Negro; h) Article 22 of the American Convention, in connection with Article 1.1 thereof, to the detriment of the survivors of the community of Río Negro; i) Articles 8 and 25 of the American Convention, in connection with Article 1.1 thereof, and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture and Article 7.b of the Convention of Belém do Pará, to the detriment of the survivors and relatives of those who were tortured and extrajudicially executed in the different massacres; j) Articles 8 and 25 of the American Convention, in connection with Article 1.1 thereof, and Article 1 of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of those who were disappeared and their relatives; and k) Articles 8.1 and 25 of the Convention, in connection with the provisions of Articles 1.1 and 2 of the same instrument.

1293. Based on the date on which the Convention was ratified by the State, the submission of the case refers to ongoing conduct subsequent to March 9, 1987 and actions that constituted independent events and represented specific and autonomous violations occurring after the competence of the Court was recognized.

Case of Molina Theissen

1294. On July 4, 2003 the Inter-American Commission submitted an application in the case to the Court asking that it decide whether the State violated Articles 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Fair Trial), 19 (Rights of the Child), and 25 (Judicial Protection), all in connection with Article 1.1 (Obligation to Respect Rights) of the American Convention, and failed to fulfill the obligation established in Article I of the Inter-American Convention on Forced Disappearance of Persons. That application involves the “forced disappearance” of Marco Antonio Molina Theissen, a 14 year old child, who was abducted from his parents’ home by members of the Army of Guatemala on October 6, 1981. The Court issued its judgments on the merits and reparations, respectively, on May 4 and July 3, 2004. The texts

thereof can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_106_ing1.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_108_ing.pdf

1295. In 2010, the Commission continued to submit its periodic comments concerning compliance with the Court's judgment on the merits, dated May 4, 2004, and its judgment on reparations, dated July 3, 2004. The State has yet to fulfill the following obligations: locating the mortal remains of Marco Antonio Molina Theissen and delivering them to his next-of-kin; investigating the facts of the case so as to identify, prosecute, and punish the masterminds and perpetrators of the victim's disappearance; establishing a prompt procedure to obtain a declaration of absence and presumption of death by forced disappearance, and adopting such legislative, administrative, and other measures as may be necessary to create a genetic information system.

Case of Myrna Mack

1296. On June 19, 2001 the Commission submitted an application to the Court asking that it decide whether the State violated Articles 4 (Right to Life), 8 (Fair Trial), 25 (Judicial Protection), in conjunction with Article 1.1 (Obligation to Respect Rights) of the Convention, to the detriment of Myrna Elizabeth Mack Chang and her relatives, based on the extrajudicial execution of Myrna Mack Chang on September 11, 1990 in Guatemala City.

1297. On November 25, 2003 the Court issued its judgment on the merits, reparations, and costs whereby it determined that the articles alleged by the Commission had been violated and determined the relevant reparations. The text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_101_ing.pdf

1298. During 2010 the Commission continue to submit periodic observations regarding the point pending compliance with the Court's orders in its judgment on the merits, reparations, and costs, regarding the State's duty to enforce the decision handed down in the domestic legal system, for which it must take the relevant steps to effectively capture Mr. Juan Valencia Osorio so that he can serve his sentence.

Case of Paniagua Morales *et al.*

1299. The case was submitted to the Court on January 18, 1995, asking it to determine the responsibility of Guatemala for acts of abduction, arbitrary arrest, inhumane treatment, torture, and murder committed against 11 victims by agents of the State of Guatemala during 1987 and 1988 (known as the "White Van" case because this type of vehicle was part of the modus operandi) and to declare that Guatemala violated the rights to life, personal integrity, personal liberty, fair trial, and judicial protection.

1300. On January 25, 1996 the Court issued its judgment on the preliminary objections, on March 8, 1998 it issued its judgment on the merits, and on May 25, 2001 it issued its judgment on reparations and costs. The texts of these judgments can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_23_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_37_ing.pdf and http://www.corteidh.or.cr/docs/casos/articulos/seriec_76_ing.pdf .

1301. In 2010, the Commission continued to submit its periodic comments concerning compliance with the Court's May 25, 2001 judgment.

Case of Raxcacó Reyes

1302. This case concerns the death sentence handed down against Mr. Raxcacó Reyes for committing a crime which, under Guatemalan law, was not a capital offense at the time the country ratified the American Convention.

1303. On March 28, 2008, the Court issued an Order where it summoned the parties to a private hearing to be held in the venue of the Court on May 8, 2008. The text of the Order is available at: http://www.corteidh.or.cr/docs/medidas/Raxcaco_se_06_ing.pdf. On May 9, 2008, the Court issued an order on compliance with the judgment in which it instructed the State of Guatemala to adopt all measures necessary to effectively and promptly comply with the issues pending compliance from the judgments delivered in the cases of *Fermín Ramírez* and *Raxcacó Reyes*. The text of the order is available at [http://www.corteidh.or.cr/docs/supervisiones/Fermin %2009_05_08_ing.doc](http://www.corteidh.or.cr/docs/supervisiones/Fermin_%2009_05_08_ing.doc).

1304. In 2010, the Commission continued to submit its periodic comments regarding compliance with the Court's September 15, 2005 judgment on merits, reparations and costs.

Case of Tiu Tojín

1305. This case concerns the unlawful arrest and forced disappearance of María Tiu Tojín and her one-month-old daughter, Josefa Tiu Tojín, on August 29, 1990, in Nebaj, Quiché department, the subsequent lack of due diligence in investigating the facts of the case, and the denial of justice to the family of the victims.

1306. On March 14, 2008, the President of the Court ordered a public hearing on the merits, reparations and costs in this case. The hearing was held on April 30, 2008, during the Court's XXXIII special session, held in Tegucigalpa, Honduras. In attendance were the Commission, the representatives of the victims and their next of kin, and the Guatemalan State. On June 6, 2008, the parties filed their final briefs of pleadings, motions and evidence.

1307. Based on the evidence offered by the parties, their arguments, and the Guatemalan State's acknowledgement of responsibility, on November 26, 2008 the Court delivered its judgment on merits, reparations and costs. It found that the State had violated articles 4(1); 5(1) and 5(2); 7(1), 7(2), 7(4), 7(5) and 7(6); 8(1), 19 and 25(1) of the American Convention, in relation to Article 1(1) thereof and Article I of the Inter-American Convention on Forced Disappearance of Persons. In that judgment, the Court set the reparations that it deemed appropriate. The text of the judgment is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_190_ing1.pdf

1308. During 2010, the IACHR submitted observations regarding the information provided by the State on compliance with the judgment.

Case of the "Street Children" (Villagrán Morales *et al.*)

1309. In 2010 the Commission submitted its periodic comments regarding compliance with the reparations and costs the Court ordered in its judgment of May 26, 2001. Supervision of compliance remains open with respect to the identification and, as applicable, punishment of those responsible and the adoption in domestic Guatemalan law of the provisions necessary to ensure compliance with this obligation.

I. Haiti

Case of Lysias Fleury

1310. On August 5, 2009, the Commission filed an application with the Court against Haiti for its responsibility for unlawful detention and cruel, inhumane, and degrading treatment of Lysias Fleury on June 24, 2002, in the city of Port-au-Prince, the subsequent lack of due diligence in the investigation of the facts and denial of justice to the detriment of him and his next of kin, and the inhumane treatment of his next of kin. The Commission asked the Court to find that Haiti had international responsibility for the violation of the following articles of the American Convention: 5.1, 5.2, 7.3, 7.4, and 7.5 in conjunction with Article 1.1, to the detriment of Lysias Fleury; 5 of the Convention, in relation to Article 1.1, to the detriment of Mr. Fleury's immediate family; 8 and 25 of the American Convention, in connection with Article 1.1, to the detriment of Mr. Fleury and his next of kin. The text of that order is available at the following link: <http://www.cidh.oas.org/demandas/12.459%20Lysias%20Fleury%20Haiti%205ago09%20ENG.pdf>

1311. By order of the Inter-American Court, the processing of this case remained suspended during 2010.

Case of Yvon Neptune

1312. This case concerns the failure to advise the victim of the charges against him in a timely and adequate fashion; to bring him without delay before a judge or other judicial official empowered by law to exercise judicial authority; to afford him an appeal to a competent court to examine the legality of his detention; to ensure his physical, mental, and moral integrity, and his right to be separated from inmates already convicted; to provide him with detention and treatment conditions consistent with international standards while he was in custody at the National Penitentiary; to give him adequate time and means to prepare his defense; and to refrain from accusing him of an act that was not a crime under Haitian law.

1313. The Inter-American Court delivered its judgment on merits, reparations and costs on May 6, 2008, based on the evidence offered by the parties and their arguments during the proceedings. In that judgment, the Court held that the State had violated articles 5(1), 5(2), 5(4), 7(1), 7(2), 7(3), 7(4), 7(5), 8(1), 9 and 25 of the American Convention, in relation to Article 1(1) thereof. The Court also set the reparations that it deemed appropriate. The text of the decision is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_180_ing.doc.

1314. As of the submission date of this report, the State has not sent information on compliance with the judgment.

m. Honduras

Case of Alfredo López Álvarez

1315. On July 7, 2003, the Commission filed an application with the Court against the Republic of Honduras for violations of the rights of Mr. Alfredo López Álvarez, a member of a Honduran Garifuna community. Mr. López Álvarez was arrested on April 27, 1997, and tried in criminal court, where he was acquitted on January 13, 2003. He was imprisoned for six and a half years before being released on August 26, 2003.

1316. On February 1, 2006, the Court issued its judgment in this case. It held that Honduras had violated Mr. Alfredo López Álvarez's rights to personal liberty, humane treatment, a fair trial, judicial protection, freedom of thought and expression, and equality before the law and the

next of kin's right to humane treatment, all in conjunction with Article 1(1) of the Convention. The full text of the judgment can be found http://www.corteidh.or.cr/docs/casos/articulos/seriec_141_ing.doc

1317. In 2010, the Commission submitted its comments on the information reported by the State and by the representatives of the victim and his next of kin.

Case of Blanca Jeannette Kawas Fernández

1318. On February 4, 2008, the Inter-American Commission filed an application against the Republic of Honduras in case 12,507, Blanca Jeannette Kawas Fernández, in which it asked the Court to find the State internationally responsible for violation of articles 4, 8 and 25 of the American Convention, in relation to the general obligations established in articles 1(1) and 2 thereof. This case concerns the extrajudicial execution of environmentalist Blanca Jeannette Kawas Fernández on the night of February 6, 1995, in the "El Centro" section of the city of Tela; the subsequent lack of due diligence in investigating, prosecuting and punishing those responsible for her death, obstruction of justice, and failure to make adequate reparations to her next of kin. The application is available at the following link: <http://www.cidh.org/demandas/12.507%20B%20J%20Kawas%20Honduras%204%20febrero%202008%20ENG.pdf>.

1319. On April 3, 2009, the Court delivered its judgment on merits, reparations, and costs, in which it decided, inter alia: a) to accept the State's partial acknowledgement of international responsibility, and to find that there was a violation of articles 8.1 and 25.1 of the Convention, in relation to Article 1.1, to the detriment of Jacobo Roberto Kawas Cury, Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández, and Carmen Marilena Kawas Fernández; b) that the State violated Article 4.1 of the Convention, in conjunction with Article 1.1, to the detriment of Blanca Jeannette Kawas Fernández; the State violated Article 5.1 of the Convention, in conjunction with Article 1.1, to the detriment of Jacobo Roberto Kawas Cury, Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández, and Carmen Marilena Kawas Fernández; the State violated Article 16.1 of the Convention, in relation to Article 1.1, to the detriment of Blanca Jeannette Kawas Fernández. The Court also found that it had not been demonstrated that the State failed to comply with Article 2 of the Convention. In addition, it concluded that the State did not violate Article 5.2 to the detriment of Jacobo Roberto Kawas Cury, Blanca Fernández, Selsa Damaris Watt Kawas, Jaime Alejandro Watt Kawas, Jacobo Roberto Kawas Fernández, Jorge Jesús Kawas Fernández, and Carmen Marilena Kawas Fernández. Finally, the Court set the reparations that it deemed appropriate. The full text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_196_ing.pdf

1320. During 2009 the Commission submitted observations regarding the State's first report on compliance with the judgment. The Commission did not receive any additional reports on the subject in 2010.

Case of Juan Humberto Sánchez

1321. On September 8, 2001, the Inter-American Commission filed an application with the Court in this case, which concerns the July 11, 1992 abduction of Juan Humberto Sánchez, his torture and execution, the ineffectiveness of the *habeas corpus* remedy filed to determine his whereabouts (until his body was found some days later), and the impunity enjoyed by the perpetrators of those crimes. The Court delivered its judgment and established the violations alleged by the IACHR on June 7, 2003. The text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_99_ing.pdf

1322. In 2010, the Commission submitted its periodic comments regarding compliance with the Court's judgment. The Commission observed that the State had complied with the majority of its obligations under the judgment and underscored the importance of monitoring for implementation and effective compliance with all aspects of the judgment, particularly those whose compliance is pending, such as the investigation, identification, prosecution and punishment of the material and intellectual authors of the crimes in this case, and creation of the detainee log to control the lawfulness of detentions in Honduras.

Case of Servellón García *et al.*

1323. In 2009 the Commission continued to submit its periodic comments regarding compliance with the Court's September 21, 2006 judgment on the violations committed against Marco Antonio Servellón García, Rony Alexis Betancourt Vásquez, Orlando Álvarez Ríos and Diomedes Obed García Sánchez, who were detained between September 15 and 16, 1995, during an operation conducted by the Public Security Force of Honduras. The four young men were extra judicially executed by agents of the State. Their unburied bodies were found in various places in the city of Tegucigalpa, Honduras, on September 17, 1995. The full text of the judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_152_ing.doc.

1324. During 2010 the Commission continued to submit observations regarding the State's reports on points pending compliance.

n. Mexico

Case of Cabrera García and Montiel Flores

1325. On June 24, 2009, the Commission filed an application against Mexico for its responsibility in subjecting Messrs. Teodoro Cabrera García and Rodolfo Montiel Flores to cruel, inhumane, and degrading treatment while detained and in custody of members of the Mexican army; for the failure to bring them promptly before a judge or other officer authorized by law to exercise judicial power to determine the legality of the detention; and for irregularities in the course of the criminal proceeding against them. The application also refers to the lack of due diligence in investigation and punishment of those responsible for the facts, particularly the lack of appropriate investigation of the allegations of torture; the lack of adequate reparation for the victims; and the use of military courts for investigation and trial of human rights violations. The text of the application is available at the following link <http://www.cidh.oas.org/demandas/12.449%20Teodoro%20Cabrera%20Garcia%20y%20Rodolfo%20Montiel%20Flores%20Mexico%2024jun09%20ENG.pdf>

1326. The Inter-American Commission participated in the hearing held on August 26-27, 2010 during the Court's LXXXVIII regular session.

1327. On November 26, 2010 the Inter-American Court issued a judgment in which it decided: i) to dismiss the State's preliminary objection alleging an effort to establish a "fourth instance;" ii) that the right to personal liberty, recognized in Articles 7.3, 7.4, and 7.5, in connection with Article 1.1 of the American Convention on Human Rights had been violated, to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores; iii) that the right to personal integrity established in Articles 5.1 and 5.2, in connection with Article 1.1 of the American Convention on Human Rights had been violated, due to the cruel, inhuman, and degrading treatment inflicted on Teodoro Cabrera García and Rodolfo Montiel Flores; iv) that there was an obligation to investigate the alleged acts of torture, under the terms of Articles 5.1 and 5.2, in connection with Article 1.1 of the American Convention on Human Rights, as well as Articles 1, 6, and 8 of the Inter-American

Convention to Prevent and Punish Torture, to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores; v) that the judicial guarantee recognized in Article 8.3, in connection with Article 1.1 of the American Convention on Human Rights, had been violated, to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores; vi) that the rights to a fair trial and judicial protection recognized in Articles 8.1 and 25.1, respectively, in connection with Articles 1.1 and 2 of the American Convention on Human Rights, had been violated, because the alleged acts of torture were submitted to the military criminal jurisdiction, to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores; and vii) the obligation contained in Article 2, in connection with Articles 8 and 25 of the American Convention on Human Rights, had been violated, because the competence of the military jurisdiction was extended to crimes not strictly related to military discipline or legal assets proper to the military. In addition, the Court declared that: i) the State is not responsible for violating the right to a defense recognized in Article 8.2.d) of the American Convention on Human Rights, to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores; and ii) the State is not responsible for violating the principle of the presumption of innocence, recognized in Article 8.2 of the American Convention on Human rights, to the detriment of Teodoro Cabrera García and Rodolfo Montiel Flores. Finally, the State ordered the respective reparations measures.

1328. The text of the judgment can be consulted (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_220_esp.pdf

Case of Castañeda Gutman

1329. This case concerns the lack of a simple and effective domestic remedy to challenge the constitutionality of decisions that affect political rights and that, in practice, had the effect of preventing Mr. Jorge Castañeda Gutman from registering as an independent candidate for the office of President of Mexico.

1330. Based on the evidence offered by the parties during the proceedings and their arguments, the Court delivered a judgment in the case on August 6, 2008 in which it dismissed the State's preliminary objections and declared that the State had violated Article 25(1) of the American Convention, in relation to articles 1(1) and 2 thereof. In that judgment the Court set the reparations it deemed appropriate. The text of the judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_184_ing.pdf

1331. During 2010 the Commission continued to submit observations regarding the State's reports and the written submissions filed by the victim's representatives on compliance with the judgment.

Case of Campo Algodonero (González *et al.*)

1332. This case concerns the denial of justice in the disappearance and murder of Claudia Ivette González, Esmeralda Herrera Monreal, and Laura Berenice Ramos Monárrez (two of whom were minors), in Ciudad Juárez, Chihuahua; the absence of policies to prevent cases of this kind, despite the fact that the authorities are aware of a pattern of violence against women and girls in the state of Chihuahua; the authorities' failure to respond to the disappearances; the lack of due diligence in the murder investigations; and the failure to provide adequate compensation to the victims' next of kin. The text of the application is available at the following link: <http://www.cidh.oas.org/demandas/12.496-7-8%20Campo%20Algodonero%20Mexico%204%20noviembre%202007%20ENG.pdf>

1333. On November 16, 2009, the Court rendered its judgment on merits, reparations, and costs, in which it decided: a) to accept in part the preliminary exception filed by the State, and therefore to declare that: i) it has *ratione materiae* competence to consider the alleged violations of

Article 7 of the Convention of Belém do Pará, and ii) it does not have *ratione materiae* competence to consider the alleged violations of articles 8 and 9 of that international instrument; b) to accept the State's partial acknowledgement of international responsibility; c) to not hold the State internationally responsible for violations of the substantive rights set forth in articles 4, 5, and 7 of the American Convention, from failure to comply with Article 1.1; d) that the State violated articles 4.1, 5.1, 5.2, and 7.1 of the American Convention, in connection with articles 1.1 and 2 thereof, and the obligations established in Article 7.b and 7.c of the Convention of Belém do Pará, to the detriment of Claudia Ivette González, Laura Berenice Ramos Monárrez, and Esmeralda Herrera Monreal; e) that the State failed to comply with its obligation to investigate, and its obligation to guarantee, the rights stipulated in articles 4.1, 5.1, 5.2, and 7.1 of the American Convention, in conjunction with articles 1.1 and 2 thereof and with Article 7.b and 7.c of the Convention of Belém do Pará, to the detriment of Claudia Ivette González, Laura Berenice Ramos Monárrez, and Esmeralda Herrera Monreal. For the reasons, the State violated Articles 8.1 and 25.1 of the American Convention, in conjunction with articles 1.1 and 2, and 7.b and 7.c of the Convention of Belém do Pará, to the detriment of: Irma Monreal Jaime, Benigno Herrera Monreal, Adrián Herrera Monreal, Juan Antonio Herrera Monreal, Cecilia Herrera Monreal, Zulema Montijo Monreal, Erick Montijo Monreal, Juana Ballín Castro, Irma Josefina González Rodríguez, Mayela Banda González, Gema Iris González, Karla Arizbeth Hernández Banda, Jacqueline Hernández, Carlos Hernández Llamas, Benita Monárrez Salgado, Claudia Ivonne Ramos Monárrez, Daniel Ramos Monárrez, Ramón Antonio Aragón Monárrez, Claudia Dayana Bermúdez Ramos, Itzel Arely Bermúdez Ramos, Paola Alexandra Bermúdez Ramos, and Atziri Geraldine Bermúdez Ramos; f) that the State violated the nondiscrimination provision of Article 1.1 of the American Convention, in relation to the duty to guarantee the rights set forth in articles 4.1, 5.1, 5.2, and 7.1 of that treaty, to the detriment of Laura Berenice Ramos Monárrez, Esmeralda Herrera Monreal, and Claudia Ivette González; and in relation to the access to justice established in articles 8.1 and 25.1 of said Convention, to the detriment their next of kin; g) that the State violated Article 19 of the Convention, in connection with articles 1.1 and 2, to the detriment of Esmeralda Herrera Monreal and Laura Berenice Ramos Monárrez; h) that the State violated Article 5.1 and 5.2 of the Convention, in conjunction with Article 1.1 thereof, to the detriment of the next of kin, for the damages caused; i) that the State violated Article 5.1 and 5.2 of the Convention, in relation to Article 1.1 thereof, to the detriment of some next of kin, for the acts of harassment; and j) that the State did not violate Article 11 of the Convention. The Court also set the reparations it deemed appropriate. The text of the Court's judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf

Case of Inés Fernández Ortega

1334. On May 7, 2009, the Commission filed an application with the Court against Mexico for its responsibility in the rape and torture of Me'phaa Inés Fernández Ortega, an indigenous woman, on March 22, 2002 in the Barranca Tecuani community, municipality of Ayutla de Los Libres, Guerrero state. The application also concerns the lack of due diligence in the investigation and punishment of the parties responsible for the facts; the lack of appropriate reparation to the victim and her next of kin; the use of military courts to investigate and try human rights violations; and the problems of indigenous persons, particularly women, in gaining access to justice. The Commission alleged the violation of articles 5, 8, 11, and 25, in connection with 1.1 of the American Convention, and the violation of Article 7 of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women, to the detriment of the victim; and articles 5, 8, and 25 of the American Convention, in relation to Article 1.1 thereof, to the detriment of her next of kin. Finally, the Commission considered that the State failed to comply with its obligations under articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The text of the application is available at the following link: <http://www.cidh.oas.org/demandas/12.580%20Ines%20Fernandez%20Ortega%20Mexico%20Mayo09%20ENGLISH.pdf>

1335. On April 15, 2010 the Commission participated in a hearing on preliminary objections, merits, reparations, and costs in this case and on August 30, 2010 the Court issued its judgement, determining that the State is responsible for violating the rights to personal integrity, dignity, and private life; a fair trial, judicial protection, and access to justice without discrimination, to the detriment of the victim. The Court also found violations of the right to personal integrity to the detriment of the husband, sons, and daughters of Mrs. Fernández Ortega. As in the case of González *et al.*, the Court indicated that under circumstances of structural discrimination reparations should seek to be transformative and thus have a corrective as well as restorative effect. This means adopting institutional measures with a gender perspective in order to change discriminatory practices and adapt the administration of justice so that it can respond effectively to charges of sexual violence made by indigenous women, for example. The text of the judgment can be found (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_esp.pdf

Case of Rosendo Radilla Pacheco

1336. El On March 15, 2008, the Commission filed an application against the United Mexican States in the case of Mr. Rosendo Radilla Pacheco, who was unlawfully detained at an Army military post in the state of Guerrero, Mexico, on August 25, 1974. The case concerns his forced disappearance since that time, the State's failure to establish his whereabouts, the fact that the crimes committed have never been punished, and the fact that his next of kin have never been compensated for the harm that the loss of their loved one and the prolonged denial of justice caused. The application is available (in Spanish) at the following link: <http://www.cidh.oas.org/demandas/12.511%20Rosendo%20Radilla%20Pacheco%20Mexico%2015%20marzo%2008%20ESP.pdf>

1337. On November 23, 2009, the Court rendered a judgment on preliminary exceptions, merits, reparations, and costs, in which it decided: a) to reject the preliminary exceptions raised by Mexico; b) to accept the State's partial acknowledgement of international responsibility; c) that the State is responsible for the violation of articles 7.1, 5.1, 5.2, 3, and 4.1 of the American Convention, in connection with Article 1.1 thereof, and of articles I and XI of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Rosendo Radilla Pacheco; d) that the State is responsible for the violation of articles 5.1 and 5.2 of the Convention, in conjunction with Article 1.1, to the detriment of Tita and Andrea, and Mr. Rosendo, all with the surname Radilla Martínez; e) that the State is responsible for the violation of articles 8.1 and 25.1 of the American Convention, in relation to articles 1.1 and 2 thereof, and of articles I paragraphs a), b) y d), IX, and XIX of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Tita and Andrea, and Mr. Rosendo, all with the surname Radilla Martínez; f) that the State failed to comply with Article 2 of the American Convention, in conjunction with articles I and III of the Inter-American Convention on Forced Disappearance of Persons, concerning making forced disappearance of persons a statutory offense. The Court also set the reparations it deemed appropriate. The text of the Court's judgment is available (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_209_ing.pdf

Case of Valentina Rosendo Cantú *et al.*

1338. On August 2, 2009, the Commission filed an application with the Court against Mexico for its responsibility in the rape and torture of Me'phaa Valentina Rosendo Cantú, an indigenous woman, on February 16, 2002, in the State of Guerrero, Mexico. The application also concerns the lack of due diligence in the investigation and punishment of the parties responsible for the facts; the effects of the facts of the case on the victim's daughter and the lack of appropriate reparation to the victim and her next of kin; the use of military courts to investigate and try human rights violations; and the problems of indigenous persons, particularly women, in gaining access to justice and health services. The Commission considers that the State is responsible for the violation

of articles 8.1 and 25, 5.1, 11 and 19, in conjunction with 1.1 of the American Convention, and Article 7 of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women to the detriment of Valentina Rosendo Cantú. The Commission also considers that the State failed to fulfill its obligations under articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of the victim. Finally, the Commission considers that the State is responsible for the violation of Article 5.1 in relation to Article 1.1, both of the American Convention, to the detriment of Valentina Rosendo Cantú's daughter. The text of the application is available at the following link: <http://www.cidh.oas.org/demandas/12.579%20Valentina%20Rosendo%20Cantu%20Mexico%202ago09%20ENGLISH.pdf>

1339. On May 17 and 28, 2010 the Commission participated in a hearing on preliminary objections, merits, reparations, and costs in this case and on August 31, 2010 the Court issued its judgment. In its judgment, the Court determined that the State is responsible for violating the rights to personal integrity, dignity, and private life; to a fair trial, judicial protection, and access to justice without discrimination, to the detriment of the victim. The Court also found violations of the right to personal integrity to the detriment of her daughter. As in the *González et al.* and *Fernández Ortega et al.* cases, the Court indicated that under circumstances of structural discrimination, reparations should seek to be transformative so as to have a corrective as well as restorative effect. This means adopting institutional measures with a gender perspective and adapting the administration of justice so that it can effectively respond to charges of sexual violence made by indigenous women, for example. The text of the judgment can be found (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_216_esp.pdf

o. Nicaragua

Case of Yatama

1340. On June 17, 2003, the Commission filed an application with the Court in which it asserted that candidates for mayors, deputy mayors and councilors nominated by the indigenous regional political party, Yapti Tasba Masraka Nanih Asla Takanka (hereinafter "YATAMA"), were excluded from participating in the municipal elections held on November 5, 2000, in the North Atlantic and the South Atlantic Autonomous Regions (hereinafter "RAAN" and "RAAS"), as a result of a decision issued on August 15, 2000, by the Supreme Electoral Council. The State did not provide a recourse that would have protected the right of these candidates to participate and to be elected in the municipal elections of November 5, 2000, and it had not adopted the legislative or other measures necessary to make these rights effective; above all, the State did not include provisions in the electoral law that would have facilitated indigenous organizations' political participation in electoral processes of the Atlantic Coast Autonomous Region of Nicaragua, in accordance with the customary law, values, practices and customs of the indigenous people who reside there.

1341. On June 23, 2005, the Court issued its judgment in which it held that the right to a fair trial, the right to judicial protection, political rights and the right to equality before the law had been violated. On November 29, 2006, the Court issued an order instructing the State to take all the steps necessary for effective and prompt fulfillment of the Court's orders that were still awaiting compliance. Later, on August 4, 2008, the Court issued an Order where it decided that it will keep open the proceeding for monitoring compliance with the following obligations pending fulfillment in the instant case: a) The adoption, within a reasonable time, of such legislative measures as may be necessary to provide for a simple, prompt, and effective judicial remedy to review the decisions adopted by the Supreme Electoral Council which may affect human rights, such as the right to participate in government, in compliance with the relevant legal and treaty guarantees, and to repeal any provisions preventing said remedy from being sought; b) The amendment to Electoral Act No.

331 of 2000; c) The reform of the regulation of those requirements established in Electoral Act No. 331 of 2000 that were found to be in violation of the American Convention and the adoption of such measures as may be required for the members of indigenous and ethnic communities to be able to effectively take part in election processes in accordance with their values, customs, and traditions; d) Payment of the compensation set for pecuniary and non-pecuniary damage; e) Payment of the amount due on account of costs and expenses; f) The duty to publicize via broadcast by a radio station with widespread coverage on the Atlantic Coast the pertinent parts of the Judgment. The text of the Order is available: http://www.corteidh.or.cr/docs/supervisiones/yatama_04_08_08_ing.pdf

1342. On May 26, 2010 the IACHR participated in a private hearing to supervise compliance with the judgment. The hearing was held during the Inter-American Court's LXXXVII regular session. On May 28, 2010 the Court issued a resolution on compliance with the judgment, whereby it declared that the State of Nicaragua had partially complied with the operative paragraphs relating to payments, while it had not complied with the remaining reparations ordered in the judgment. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/yatama_28_05_10_ing.pdf

p. Panamá

Case of Baena Ricardo *et al.*

1343. On January 16, 1998, the Inter-American Commission filed an application with the Court for the events occurring as of December 6, 1990, and especially as of December 14 of that year, the date on which Law No. 25 was enacted. Under that law, 270 public employees who had participated in a labor demonstration were arbitrarily dismissed from their positions and accused of complicity in an attempted military *coup*. Following the workers' arbitrary dismissal, a series of violations of their rights to due process and to judicial protection were committed in the efforts to get their complaints and lawsuits filed. The Inter-American Court established the alleged violations and issued its judgment on merits and reparations on February 2, 2001, the text thereof can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_72_ing.pdf

1344. During 2010 the Commission continued to receive observations from the victims in the case and to submit its observations regarding the State's reports on payments agreed to between some victims and the State, which were endorsed by the Inter-American Court.

Case of Heliodoro Portugal

1345. This case concerns the forced disappearance and extrajudicial execution of Mr. Heliodoro Portugal, the failure to investigate and punish those responsible for these events, and the failure to make adequate reparations to his next of kin.

1346. The Inter-American Court delivered its judgment in this case on August 12, 2008, based on the evidence offered by the parties during the proceedings and the arguments they made. There, it dismissed the State's preliminary objections claiming a failure to exhaust local remedies and the Court's lack of jurisdiction *ratione materiae*; it also declared that the State's preliminary objection asserting the Court's lack of jurisdiction *ratione temporis* was partially admissible and partially inadmissible. The Court also held that the State had violated Article 7 of the American Convention, in relation to articles I and II of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Heliodoro Portugal; articles 5(1), 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the victim's next of kin; a failure to comply with the obligation to criminalize forced disappearance, as provided in articles II and III of the Inter-American Convention on Forced Disappearance of Persons; and a failure to comply with

the obligation to criminalize the crime of torture, as required under articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. In the judgment, the Court set the reparations that it deemed appropriate. The text of the judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_186_ing.pdf.

1347. On May 26, 2010 the IACHR participated in a private hearing to supervise compliance with the judgment. The hearing was held during the Inter-American Court's LXXXVII regular session. On May 28, 2010 the Court issued a resolution on compliance with the judgment, declaring that the State of Panama had complied with various operative paragraphs in the judgment. It also declared that the process to supervise compliance with the judgment will remain open with respect to the obligations to: i) investigate and punish those responsible; ii) provide medical and psychological treatment to various members of the Portugal family; and iii) adequately define the crimes of torture and forced disappearance. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/portugal_28_05_10_ing.pdf. Subsequently, the Commission continued to submit written observations regarding the State's reports.

Case of Tristán Donoso

1348. On August 28, 2007, the Inter-American Commission filed an application with the Court in the case of Santander Tristán Donoso, alleging Panama's responsibility for making public a telephone conversation made by the lawyer Santander Tristán Donoso; for putting Mr. Tristán Donoso on trials for crimes against honor, as a reprisal for the complaints he had filed regarding the airing of his phone conversation; the failure to investigate and punish the perpetrators; and the failure to provide adequate reparations. In its application, the Commission asked the Court to rule that the Panamanian State had failed to comply with its international obligations by violating articles 8 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), and 25 (right to judicial protection) of the American Convention, in conjunction with the general obligation to respect and ensure human rights, undertaken in Article 1(1) of the Convention, and the obligation of domestic legal effects, undertaken in Article 2.

1349. On August 12, 2008, the Commission appeared before the Court at a public hearing on the merits and possible reparations in this case. The hearing was part of the special session that the Court held in Montevideo, Uruguay. There, it presented the victim's statement and two expert reports.

1350. On January 27, 2009, the Court delivered its judgment on preliminary objections, merits, reparations and costs, in which it decided: a) to dismiss the preliminary objection raised by the State; b) the State violated, to the detriment of Mr. Santander Tristán Donoso, Article 11(2) of the American Convention, in relation to Article 1(1) thereof, for the disclosure of the telephone conversation; c) the State did not violate Article 11(2) of the American Convention, in relation to Articles 1(1) and 2 thereof, for the wiretapping and recording of the telephone conversation; d) the State did not fail to comply with the duty of guaranteeing the right to a private life enshrined in Article 11(2) of the Convention, in relation to Article 1(1) thereof, for the investigation conducted against the former *Procurador General de la Nación* [National Attorney General]; the State violated, to the detriment of Santander Tristán Donoso, Article 13 of the Convention, in relation to Article 1(1) thereof; e) the State did not fail to comply with the Article 2 of the Convention; f) the State did not violate Article 9 of the Convention; the State did not violate Articles 8 and 25 of the Convention regarding the investigation of the criminal complaints; g) the State violated, to the detriment of Mr. Santander Tristán Donoso, Article 8(1) of the Convention, in relation to Article 1(1) thereof, for the lack of sufficient grounds in the Court decision on the disclosure of the telephone conversation; h) the State did not violate, to the detriment of Mr. Santander Tristán Donoso, the right to a fair trial enshrined in Article 8(1) of the Convention, in relation to Article 1(1) thereof, in the framework of the investigation conducted against him for crimes against honor. The Court also deemed it

unnecessary to effect any considerations besides those made on Article 13 of the American Convention regarding the alleged violation of the right to be presumed innocent. Finally, it ordered the pertinent reparations. The text of the decision is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_193_ing.pdf

1351. During 2010 the IACHR submitted its observations regarding the State's reports on compliance with the judgment. On September 1, 2010 the Inter-American Court issued a resolution declaring that the State of Panama had fully complied with the judgment and as a result decided to archive the case. The resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/tristan_01_09_10_ing.pdf

Case of Vélez-Loor

1352. On October 8, 2009, the Commission submitted an application to the Court against Panama for the arrest and subsequent prosecution of the victim – an Ecuadorian national – for crimes relating to his immigration status, in the absence of due guarantees and without affording him the possibility of being heard or of exercising his right of defense. The case also deals with the failure to investigate the allegations of torture Mr. Vélez Loor filed with the Panamanian authorities, as well as with the inhumane detention conditions in which he was held at various Panamanian prisons between his arrest on November 11, 2002, and his deportation to the Republic of Ecuador on September 10, 2003. The Commission asks the Court to establish the international responsibility of the State of Panama, which has failed to meet its international obligations and has consequently violated Articles 5, 7, 8, and 25 of the American Convention on Human Rights, in conjunction with the obligations set by Articles 1(1) and 2 thereof, together with Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, all with respect to Jesús Tranquilino Vélez Loor. The text of the application is available at <http://www.cidh.oas.org/demandas/12.581%20Jesus%20Tranquilino%20Velez%20Loor%20Pana%20ma%20oct09%20ENG.pdf>

1353. The Commission attended the public hearing held on August 25-26, 2010 during the Court's LXXXVIII regular session.

1354. On November 23, 2010 the Inter-American Court issued a judgment whereby it decided: i) to dismiss the preliminary objections filed by the State; ii) to accept the partial recognition of international responsibility; iii) that the right to personal liberty, recognized in Articles 7.1, 7.3, 7.4, 7.5, and 7.6, in connection with Articles 1.1 and 2 of the American Convention on Human Rights was violated, to the detriment of Jesús Tranquilino Vélez Loor; iv) that the right to a fair trial, recognized in Articles 8.1, 8.2.b, 8.2.c, 8.2.d, 8.2.e, 8.2.f, and 8.2.h, in connection with Articles 1.1 and 2 of the American Convention on Human Rights, was violated, to the detriment of Jesús Tranquilino Vélez Loor; v) that the principle of legality, recognized in Article 9, in connection with Article 1.1 of the American Convention on Human Rights was violated, to the detriment of Mr. Jesús Tranquilino Vélez Loor; vi) that the right to personal integrity recognized in Article 5.1 and 5.2, in connection with Article 1.1 of the American Convention on Human Rights was violated with respect to the conditions of arrest, to the detriment of Mr. Jesús Tranquilino Vélez Loor; vii) that there was a failure to guarantee the right to personal integrity recognized in Article 5.1 and 5.2, in connection with Article 1.1 of the American Convention on Human Rights, and a failure to comply with Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the obligation to investigate the alleged acts of torture, to the detriment of Mr. Jesús Tranquilino Vélez Loor; and viii) that there was a failure to comply with the obligation to guarantee, without discrimination, the right of access to justice, established in Articles 8.1 and 25, in connection with Article 1.1 of the American Convention on Human Rights, to the detriment of Mr. Jesús Tranquilino Vélez Loor. The Court also ordered a series of reparation measures. The judgment can be found (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_218_esp2.pdf.

q. Paraguay

Case of the “Panchito López” Juvenile Reeducation Center

1355. On December 14, 2007, the President of the Inter-American Court decided to convene a private hearing with the Inter-American Commission, the representatives of the victims, and the Paraguayan State, to receive up-to-date information on progress with implementing the reparations judgment. That hearing took place at the seat of the Court on February 4, 2008. There, the State and the representatives of the victims and their next of kin signed an agreement of understanding to facilitate fulfillment of the State’s pending obligations.

1356. On February 6, 2008, the Inter-American issued an order requiring the State to take the necessary measures to comply, promptly and effectively, with the pending obligations ordered in the Court’s September 2, 2004 judgment on merits, reparations and costs, pursuant to Article 68(1) of the American Convention on Human Rights. The order in question is available at: http://www.corteidh.or.cr/docs/supervisiones/instituto_06_02_08_ing.doc

1357. On August 5, 2009, the President of the Court issued an order in which she convened the parties to a private hearing to be held at the seat of the Inter-American Court on September 30, 2009. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/instituto_05_08_09.pdf. The hearing was held on the appointed day.

1358. On November 19, 2009, the Court issued an order on compliance in which it declared that it shall continue to monitor compliance with the following obligations of the states: a) to carry out in consultation with civil society a public act of acknowledgement of international responsibility and issue a declaration setting forth a short-, medium- and long-term State policy on the matter of children in conflict with the law; provide psychological treatment to all persons who were inmates at the center; b) medical and psychological treatment to the former inmates injured in the fires, and psychological treatment to the next of kin of the injured and deceased inmates; c) provide vocational guidance and a special education program geared to former inmates at the center; d) provide the mother of Mario del Pilar Álvarez Pérez with a place in a mausoleum, near her home, where she can lay her son’s remains to rest; e) ensure the life, humane treatment and safety of the persons who gave affidavits and their next of kin; d) pay the outstanding pecuniary and non-pecuniary damages awarded to the victims and next of kin; and, e) reimburse the representatives of the victims for their costs and expenses. The order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/instituto_19_11_09.pdf

1359. During 2010 the Commission submitted periodic observations regarding compliance with the Court’s orders in its judgment on the merits, reparations, and costs of September 2, 2004.

Case of Goiburú *et al.*

1360. On June 8, 2005 the Commission filed an application with the Court based on the unlawful and arbitrary arrest, torture and forced disappearance of Messrs. Agustín Goiburú Giménez, Carlos José Mancuello Bareiro and the brothers Rodolfo Feliciano and Benjamín de Jesús Ramírez Villalba, perpetrated by agents of the State in Paraguay as of 1974 and 1977, and the fact that none of those responsible for these deeds has ever been punished. The text of the application can be found (in Spanish) at: <http://www.cidh.oas.org/demandas/11.560%20Paraguay%208jun05%20ESP.pdf>

1361. On September 22, 2006 the Court decided to accept the partial recognition of responsibility made by the State and to determine the violation of the relevant rights. The text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_153_ing.pdf

1362. During 2010 the Commission continued to submit periodic observations regarding compliance with the Court's orders in its judgment of September 22, 2006.

Case of Sawhoyamaya

1363. On December 14, 2007, the President of the Inter-American Court decided to convene a private hearing with the Inter-American Commission, the representatives of the victims, and the Paraguayan State, to receive up-to-date information on the status of compliance with the reparations judgment. That hearing took place at the Court's seat on February 4, 2008.

1364. On February 8, 2008, the Inter-American Court issued an order instructing the State of Paraguay to adopt all measures necessary to promptly and effectively comply with the pending items, in keeping with Article 68(1) of the American Convention. The order in question is available at: http://www.corteidh.or.cr/docs/supervisiones/sawhoyamaya_08_02_08%20_ing.pdf

1365. On May 20, 2009, the President of the Court issued an order in which she convened the parties to a private hearing to be held at the seat of the Inter-American Court on July 15, 2009, in the course of the Court's XL Special Session in Bolivia. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/sawhoyamaya_20_05_09.pdf. The hearing was held on the appointed day.

1366. During 2010 the Commission submitted periodic observations regarding compliance with the Court's orders in its judgment on the merits, reparations, and costs of March 29, 2006.

Case of Vargas Areco

1367. The case concerns the failure to investigate, prosecute and punish those responsible for the violations committed against Gerardo Vargas Areco, a child who was recruited into service with the Paraguayan armed forces when he was 15 years old. He died on December 30, 1989, when he was shot in the back attempting to escape the military post. The full text of the judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_155_ing.pdf

1368. During 2010 the Commission continued to submit periodic observations regarding compliance with the Court's orders in its judgment of September 26, 2006. On November 24, 2010 the Inter-American Court issued a resolution whereby it declared that the State of Paraguay had complied with various reparations ordered by the Court. It also decided to keep supervision of compliance with the judgment open with respect to the obligations to: i) investigate the facts and punish those responsible; ii) provide medical, psychological, and psychiatric treatment to the victim's relatives; iii) conduct training programs for the members of the Armed Forces; and iv) to pay late payment interest. The text of the resolution can be consulted (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/vargas_24_11_10.pdf.

Case of Yakye Axa Indigenous Community

1369. On March 17, 2003, the Commission filed an application with the Court in this case because of the State's failure to guarantee the ancestral property rights of the Yakye Axa indigenous community and its members, whose land claim had been pending processing since 1993 without a satisfactory resolution. This has kept the community and its members from securing ownership and possession of their lands and has kept them in state of vulnerability in terms of their

nutritional, medical, and sanitation needs, which poses a continuous threat to the survival of its members and the integrity of the community itself.

1370. On June 17, 2005, the Court handed down its judgment in the case, ruling that the community's right to a fair trial and to judicial protection, to private property, and to life had been violated, and establishing the applicable reparations. The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf.

1371. In 2010, the Commission submitted its periodic comments regarding compliance with the reparations the Court ordered in its judgment of June 17, 2005.

Case of the Xákmok Kásek Indigenous Community

1372. On July 3, 2009, the Commission submitted an application to the Court against Paraguay for the State's failure to ensure the right of ancestral ownership of the Indigenous Community Xákmok Kásek of the Enxet-Lengua People and its members. The application notes that the processing of the community's land claim has been underway since 1990 without, as yet, a satisfactory resolution. The foregoing has made it impossible for the community to obtain title to and possession of its territory, the effect of which has been to place them in a situation of extreme vulnerability as regards food, medical care and health, which represents a permanent threat to the survival of the community's members and to the integrity of the Community itself. In its application, the Commission asked the Court to find and declare that Paraguay has violated: a) Articles 21, 4, 8(1) and 25 of the American Convention, all in connection with Articles 1(1) and 2 thereof, to the detriment of the Indigenous Community Xákmok Kásek of the Enxet-Lengua People and its members; and, b) Articles 3 and 19 of the American Convention, in conjunction with Articles 1(1) and 2 thereof, to the detriment of the members of the Indigenous Community Xákmok Kásek of the Enxet-Lengua People. The text of the application is available (in Spanish only) at <http://www.cidh.oas.org/demandas/12.420%20Xakmok%20Kasek%20Paraguay%203jul09%20ENG.pdf>

1373. The IACHR attended the public hearing held in Lima, Peru on April 14, 2010 during the Court's XLI regular session.

1374. On August 24, 2010 the Inter-American Court issued a judgment declaring that: i) the State violated the right to community property, a fair trial, and judicial protection, established, respectively, in Articles 21.1, 8.1, and 25.1 of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of the members of the Xákmok Kásek Community; ii) the State violated the right to life established in Article 4.1 of the American Convention, in connection with Article 1.1 thereof, to the detriment of the members of the Xákmok Kásek Community; iii) the State violated the right to life established in Article 4.1 of the American Convention, in connection with Article 1.1 thereof, to the detriment of Sara González López, Yelsi Karina López Cabañas, Remigia Ruiz, Aida Carolina González, NN Ávalos or Ríos Torres, Abundio Inter Dermott, NN Dermott Martínez, NN García Dermott, Adalberto González López, Roberto Roa González, NN Ávalos or Ríos Torres, NN Dermontt Ruiz, and NN Wilfrida Ojeda; iv) the State violated the right to personal integrity established in Article 5.1 of the American Convention, in connection with Article 1.1 thereof, to the detriment of all the members of the Xákmok Kásek Community; v) the State violated the right to recognition of juridical personality recognized in Article 3 of the American Convention, in connection with Article 1.1 thereof, to the detriment of NN Jonás Ávalos or Jonás Ríos Torres, Rosa Dermott, Yelsi Karina López Cabañas, Tito García, Aída Carolina González, Abundio Inter. Dermot, NN Dermott Larrosa, NN Ávalos or Ríos Torres, NN Dermott Martínez, NN Dermott Larrosa, NN García Dermott, Adalberto González López, Roberto Roa González, NN Ávalos or Ríos Torres, NN Ávalos or Ríos Torres; NN Dermott Ruiz, Mercedes Dermott Larrosa, Sargento Giménez, and Rosana Corrientes Domínguez; vi) the State did not violate the right

to recognition of juridical personality established in Article 3 of the American Convention, to the detriment of the Xákmok Kásek Community; vii) the State violated the rights of the child established in Article 19 of the American Convention, in connection with Article 1.1 thereof, to the detriment of all the children of the Xákmok Kásek Community; and viii) the State failed to meet its duty not to discriminate contained in Article 1.1 of the American Convention, as it relates to the rights recognized in Articles 21.1, 8.1, 25.1, 4.1, 3, and 19 of the same instrument. The Court also ordered a series of reparations measures.

1375. The text of the judgment can be found (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_214_esp.doc.

q. Perú

Case of *Abrill Alosilla et al.* (Trade Union of SEDAPAL Officials, Professionals, and Technicians)

1376. On January 16, 2010 the IACHR filed an application with the Inter-American Court. The case involves the denial of justice endured by a group of 233 employees of the SEDAPAL Company, due to the retroactive application of a decree ordering the cessation of automatic salary adjustment systems. The Commission asked the Court to establish the international responsibility of the State of Peru for violating the right to judicial protection established in Article 25 of the American Convention. The text of the application can be found (in Spanish) at: <http://www.cidh.oas.org/demandas/12.384%20SEDAPAL%20Peru%2016ene10%20ESP.pdf>.

1377. Through a resolution of September 8, 2010, the acting President of the Inter-American Court for this case convened a public hearing. The text of the resolution can be found (in Spanish) at: <http://www.corteidh.or.cr/docs/asuntos/abrill.pdf>. The Inter-American Commission participated in a public hearing held in Quito, Ecuador on November 16, 2010 during the Court's XLII special session.

Case of *Acevedo Jaramillo et al.* (SITRAMUN)

1378. In 2009, the Commission continued to submit its periodic comments concerning compliance with the Court's February 7, 2006 judgment. The case concerns the failure to comply with a series of judgments delivered between 1996 and 2000 on behalf of workers of the Lima municipal government who had been illegally laid off or fired. The judgments ordered that they be reinstated and paid their wages, bonuses, allowances, and other benefits. The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_144_ing.doc.

1379. On December 18, 2009, the President of the Court issued an order in which she convened the parties to a private hearing to be held at the seat of the Inter-American Court on February 1, 2010. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/acevedo_18_12_09.pdf. On February 1, 2010 the Commission participated in the private hearing. Subsequently, the IACHR continued to submit written observations regarding the State's reports.

Case of *Baldeón García*

1380. This case concerns the unlawful and arbitrary detention, torture and extrajudicial execution of Mr. Bernabé Baldeón García, by Peruvian Army troops on September 25, 1990.

1381. In 2009, the Commission continued to wait for the Peruvian State to submit a report on its compliance with the judgment of April 6, 2006; to date, no such report has been submitted.

1382. On February 7, 2008, the Inter-American Court issued an order instructing the Peruvian State to take all measures necessary to promptly and effectively carry out the items whose compliance is pending, pursuant to Article 68(1) of the American Convention. The order in question is available at http://www.corteidh.or.cr/docs/supervisiones/baldeon_07_02_08_ing.doc.

1383. On April 3, 2009, the Court issued an order on compliance in which it declared that the State had met its obligations to: a) publish the pertinent parts of the judgment, and, b) name a street in the memory of Mr. Bernabé Baldeón-García. It also determined that it would keep open the procedure for monitoring compliance with respect to the following points: a) adopt, in full compliance with the right to fair trial and within reasonable time, all measures necessary to identify, prosecute and punish the physical perpetrators and instigators of the violations committed against Mr. Bernabé Baldeón-García; b) make a public apology and acknowledgment of its international responsibility; c) pay to Guadalupe Yllaconza-Ramírez de Baldeón; Crispín, Roberto, Segundina, Miguelita, Perseveranda, Vicente, Sabina and Fidela, all members of the Baldeón-Yllaconza family, the amounts set in compensation for pecuniary and non-pecuniary damages; and, d) pay Crispín Baldeón Yllaconza the amount set as reimbursement for the costs and expenses incurred. The text of the order is available at http://www.corteidh.or.cr/docs/supervisiones/baldeon%20_03_04_09_ing.pdf

1384. During 2010 the IACHR continued to submit written observations regarding the State of Peru's reports on compliance with the judgment, as well as observations made by the victims' representatives.

Case of Barrios Altos

1385. On June 8, 2000, the Inter-American Commission filed an application with the Court in this case, which concerns the extrajudicial execution of 15 individuals on November 3, 1999, in the neighborhood known as "Barrios Altos" in Lima, Peru, and the justice thereafter denied to their next of kin and the survivors by virtue of application of Law No. 26479, which granted a general amnesty to military, police, and civilian personnel in various cases, and Law No. 26492 which "clarifies the interpretation and scope of the amnesty granted by Law No. 26479." .

1386. The Court delivered its judgment on merits and reparations on March 14, 2001, in which it held that the Peruvian State had violated articles 4, 5, 8, and 25 of the Convention, and that it had failed to comply with its obligations under articles 1 and 2 thereof by its passage and enactment of the amnesty laws. The Court ruled that those laws were incompatible with the American Convention and, consequently, did not have the force of law. The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_75_ing.doc. Subsequently, in a judgment on interpretation, the Court ruled that given "the kind of violation that the amnesty laws (Nos. 26479 and 26492) represented, the resolutions in the judgment on the merits of the Barrios Altos case would be of general applicability." The full text of the judgment of interpretation can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_83_ing.doc.

1387. In 2010, the Commission filed its comments on the compliance with the reparations ordered by the Court in its Judgments of March 14 and November 30, 2001. In addition, on February 1, 2010 the IACHR participated in a private hearing on compliance with the judgment in the case, at which it expressed its concern regarding the failure to comply with some of the reparations pending in the case.

Case of Cantoral Benavides

1388. This case concerns the unlawful arrest of Mr. Luis Alberto Cantoral Benavides on February 6, 1993, followed by his arbitrary detention and imprisonment and cruel, inhuman, and degrading treatment, and the violation of due process and freedom from *ex post facto* laws.

1389. During 2010 the Commission submitted periodic observations regarding compliance with the Court's orders in its judgment on the merits, reparations, and costs of December 3, 2001. On November 14, 2010 the Inter-American Court issued a resolution in which it determined to keep supervision of compliance with the judgment open with respect to: i) the payment of some amounts related to academic scholarships; ii) the obligation to provide medical and psychological treatment; and iii) the obligation to investigate and punish those responsible. The text of the resolution can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/cantoral_14_11_10.pdf.

Case of Cantoral Huamaní and García Santa Cruz

1390. In 2008, the Commission continued to submit its periodic comments concerning compliance with the Court's July 10, 2007 judgment in this case. The latter concerns the torture and extrajudicial execution of Saúl Cantoral Huamaní and Consuelo García Santa Cruz in Lima, Peru, on February 13, 1989, and the failure to investigate the crimes and punish those responsible. The full text of the judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_167_ing.pdf.

1391. On January 28, 2008, the Court delivered a judgment interpreting its judgment on the merits. In it, it determined the meaning and scope of paragraph 187 of that judgment. That paragraph concerned a measure of reparation it had ordered. The text of the judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_176_ing.doc.

1392. On September 21, 2009, the Court issued an order on compliance in which it declared that it would keep open the procedure for monitoring compliance with respect to the following points: a) immediately investigate the facts that generated the violations in the present case, and identify, prosecute, and sanction those responsible; b) publish the pertinent parts of the judgment; c) publicly acknowledge its international responsibility; d) provide a study grant to a Peruvian public institution for Ulises Cantoral-Huamaní, Pelagia Mélida Contreras-Montoya de Cantoral, and the children of Saúl Cantoral-Huamaní, that covers all their educational expenses, from the moment the beneficiaries request this of the State until the conclusion of their advanced technical or university studies; e) provide for the continuation of the psychological treatment currently being received by Vanessa and Brenda Cantoral-Contreras for the necessary period, and provide immediate psychological treatment to the other next of kin who have been declared victims free of charge and for the necessary period; f) pay the outstanding amounts established for pecuniary damages, non pecuniary damages, and reimbursement of costs and expenses; and, g) reimburse Pelagia Mélida Contreras Montoya de Cantoral the amount of US\$ 7,500.00. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/cantoral_21_09_09.pdf

1393. During 2010 the Commission continued to submit observations regarding the State's reports on compliance with the judgment.

Case of Castillo Páez

1394. The case concerns the Peruvian National Police's abduction and subsequent disappearance of Ernesto Rafael Castillo Páez as of October 20, 1990, and the State's failure to investigate the case and punish those responsible.

1395. On April 3, 2009, the Court issued an order on compliance in which it declared that the State had discharged its duty to investigate, identify, and punish those responsible for the forced disappearance of Ernesto Rafael Castillo Páez, and that it would keep open the procedure for monitoring compliance with respect to the obligation to take all available steps to determine his whereabouts. The text of the order is available at http://www.corteidh.or.cr/docs/supervisiones/castillo_03_04_09_ing.pdf

Case of Castillo Petruzzi

1396. The Court delivered its judgment on reparations in this case on May 30, 1999. There, the Court declared the proceedings conducted against the victims in this case to be invalid and ordered the State to guarantee them a new trial. It also ordered the State to take the appropriate measures to amend Decrees Laws 25475 and 25659 and to ensure full enjoyment of the rights recognized in the American Convention to all persons subject to its jurisdiction, without exception. The text of the judgment on the merits is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_52_ing.doc .

1397. The State did not report any information in 2010 concerning its compliance with the Court's judgment in this case.

Case of Cesti Hurtado

1398. On January 9, 1998, the Commission filed an application with the Court in this case for prosecution of Mr. Cesti Hurtado in proceedings conducted in the military courts. He was arrested, detained, and sentenced, despite the fact that a writ of *habeas corpus* had been issued ordering that the victim be removed from military jurisdiction and that his personal liberty not be violated. The Court issued its judgment on the merits on September 29, 1999 and its judgment on reparations on May 31, 2001.

1399. On December 7, 2009 the President issued a resolution convening the parties to a private hearing to be held at the headquarters of the Inter-American Court on February 1, 2010. The resolution can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/cesti_7_12_09.pdf. The private hearing on compliance with the judgment was held on the scheduled date, with the participation of the IACHR. On February 4, 2010 the Inter-American Court issued a resolution ordering that supervision of compliance with the judgment remain open with respect to: i) invalidation of the military proceeding and all effects deriving there from; ii) investigation of the facts and, as applicable, punishment of those responsible; iii) payment of material damages; and iv) payment of interest on compensation for moral damages. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/cesti_04_02_10_ing.pdf

Case of the Five Pensioners

1400. In 2008, the Commission continued to submit its periodic comments concerning compliance with the Court's judgment of February 28, 2003. This case concerns the violation of the rights to private property and judicial protection of Messrs. Carlos Torres Benvenuto, Javier Mujica Ruiz-Huidobro, Guillermo Álvarez Hernández, Reymert Bartra Vásquez, and Maximiliano Gamarra Ferreyra (the "Five Pensioners") when the pension system they had been living under until 1992 was changed and when the State failed to comply with the judgments handed down by the Supreme Court and the Constitutional Court of Peru, which upheld their claims.

1401. On November 24, 2009, the Court issued an order on compliance in which it declared that the State had complied in full with its obligation to pay non-pecuniary damages and costs. It also determined that it would keep open the procedure for monitoring compliance with respect to the following points: a) conduct the corresponding investigations and apply the pertinent punishments to those responsible for failing to abide by the judicial decisions during the applications for protective measures filed by the victims; and, b) establish the possible patrimonial consequences of the violation of the right to property. The order in question is available at http://www.corteidh.or.cr/docs/supervisiones/pensionistas_24_11_09_ing.pdf

1402. During 2010 the IACHR continued to submit observations regarding the State's reports on compliance with the judgment.

Case of De la Cruz Flores

1403. In 2008, the Commission continued to submit its periodic comments concerning compliance with what the Court ordered in its November 18, 2004 judgment in this case. The latter concerns violation of the principle of legality and freedom from *ex post facto* laws, the right to personal liberty, the right to a fair trial in the case of Dr. María Teresa de la Cruz, and her right and her family's right to humane treatment. The full text of the judgment of November 18, 2004, can be seen at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_115_ing.pdf.

1404. On December 21, 2009 the President issued a resolution convening the parties to a private hearing to be held at the headquarters of the Inter-American Court on February 1, 2010. The resolution can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/cruz_21_12_09.pdf. The IACHR participated in the hearing held on the indicated date. At that time, the Commission maintained that the new proceeding against the victim that resulted in a new conviction constituted a repeat occurrence of the violations declared by the Court in its judgment. In particular, the IACHR emphasized that the new conviction penalized medical action once again, the principal of non-retroactivity was violated, and due process guarantees were ignored. On September 1, 2010 the Inter-American Court issued a resolution declaring that the State of Peru did not demonstrate that the second proceeding observed the principles of non-retroactivity and due process guarantees. Thus, it ordered that the process to supervise compliance with the judgment remain open with respect to the following obligations: i) to observe the principles of legality and non-retroactivity and the requirements of legal due process in the new proceeding against Mrs. de la Cruz Flores; ii) to provide medical and psychological care to the victim through the government's health services, including medications provided free of charge; iii) to provide Mrs. de la Cruz Flores with a scholarship so that she can pursue training and professional refresher courses; and iv) reenter Mrs. de la Cruz Flores in the corresponding retirement registry. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/cruz_01_09_10_ing.pdf

Case of Durand and Ugarte

1405. This case concerns the crushing of a riot in the prison known as "El Frontón" on June 19, 1986, and the failure to identify the dead bodies of Mr. Norberto Durand Ugarte and Mr. Gabriel Pablo Ugarte Rivera, two of the inmates. The text of the judgment on the merits can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_68_ing.doc.

1406. On August 5, 2008, the Court issued an order in which it found that the State had complied with parts of its judgment, but that the State had yet to comply with the following aspects of the Court's judgment: a) Publication of the judgment on merits delivered by the Court on August 16, 2000 in other media considered appropriate for this purpose; b) Provision of health care and interpersonal development services and psychological support to the beneficiaries, as well

as support for the construction of a residence (operative paragraph three of the judgment); c) Investigation and, if applicable, punishment of those responsible for the facts, in accordance with the seventh operative paragraph of the judgment on merits delivered by the Court on August 16, 2000, and continuing to advance the investigation instituted through the 41st Criminal Prosecutor's Office of Lima for the murder of 30 persons, including Norberto Durand Ugarte and Gabriel Pablo Ugarte Rivera; and d) Continuation of concrete measures to find and identify the remains of Gabriel Pablo Ugarte Rivera, so as to deliver them to his next of kin, in accordance with the seventh operative paragraph of the judgment on merits delivered by the Court on August 16, 2000. The text of the order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/durand_05_08_08_ing.doc The Court asked the State to send a report by January 12, 2009.

1407. In 2010 the Commission submitted its comments on compliance in this case.

Case of García Asto and Ramírez Rojas

1408. The case concerns the violation of the rights to personal liberty, a fair trial, judicial protection, the principle of legality and freedom from *ex post facto* laws, and humane treatment with respect to Messrs. Wilson García Asto and Urcesino Ramírez Rojas. The full text of the judgment of November 25, 2005, can be seen at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_137_ing.doc.

1409. According to the Court's latest order monitoring compliance, which is dated July 12, 2007, compliance with the following obligations is still pending: a) the obligation to provide medical and psychological care to Mr. Wilson García Asto through State health care services, including free medications; b) the obligation to provide grants to Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas to afford them the opportunity to receive professional training and refresher courses; c) the obligation to pay Mr. Urcesino Ramírez Rojas the sum set for pecuniary damages, non-pecuniary damages and expenses and costs, and the obligation to pay Marcos Ramírez Álvarez the amount set for non-pecuniary damages; since they have now reached adulthood, they no longer require trust funds; d) the obligation to publish in another newspaper with nationwide circulation and just one time, the chapter on the facts established in the Court's judgment, without the corresponding footnotes, and the operative part of the judgment. The full text of the order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/garcia_12_07_07_ing.pdf.

Case of Gómez Palomino

1410. This case concerns the forced disappearance of Santiago Fortunato Gómez Palomino as of July 9, 1992, in Lima Peru, and the failure to investigate the crime and punish those responsible for the violations committed against him. The full text of the November 22, 2005 judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_136_ing.doc.

1411. On July 1, 2009, the Court issued an order on compliance in which it declared that it would keep open the procedure on compliance with respect to the following points: a) effectively investigate the facts in the case, and identify, prosecute and, as appropriate, punish those responsible for the violations declared; b) within a reasonable time, take the necessary steps to find the mortal remains of Mr. Santiago Gómez-Palomino and deliver them to his next of kin, and provide the necessary means and conditions to convey and bury said mortal remains in the place the next of kin may elect; c) publish the pertinent parts of the judgment; d) provide, free of charge medical and psychological treatment to the next of kin; e) implement the education programs; e) adopt the measures necessary to amend the criminal laws so as to adapt them to the international standards on forced disappearance of persons; and, f) pay all the other amounts established in the judgment.

The order in question is available at http://www.corteidh.or.cr/docs/supervisiones/gomez_01_07_09_ing.pdf

1412. During 2010 the IACHR submitted observations regarding the State's reports on compliance with the judgment. In the resolution of December 21, 2010, the acting President of the Inter-American Court for this case convened a private hearing on compliance with the judgment, to be held on February 26, 2011 during the Court's XC regular session.

Case of the Gómez Paquiyauri Brothers

1413. On February 5, 2002, the Commission filed an application with the Court in this case, for events that transpired in June 1991 when, during the course of two police operations, the brothers Emilio Moisés and Rafael Samuel Gómez Paquiyauri, aged 14 and 17, respectively, were arrested by the National Police and placed in the trunk of a patrol car; one hour after their arrest, their bodies, showing signs of torture, were admitted to the morgue. Their family was given no adequate redress. On July 8, 2004, the Court issued a judgment on merits and reparations in this case.

1414. On May 3, 2008 the Court issued an Order where it decided that it will keep open the procedure to monitor compliance with the following pending aspects: (a) The effective investigation of the facts of this case in order to identify, prosecute and, if applicable, punish all the authors of the violations committed to the detriment of Rafael Samuel and Emilio Moisés Gómez Paquiyauri, and (b) The granting of a scholarship up to university level for Nora Emely Gómez Peralta. The text of the Order is available at the following link:

http://www.corteidh.or.cr/docs/supervisiones/gomez_%2003_05_08_ing.pdf

1415. During 2010 the Commission submitted its observations regarding the information provided by the State on compliance with the reparations ordered by the Court in its judgment of July 8, 2004. The IACHR reiterated its concern regarding the failure to make concrete progress and the delay in complying with the three obligations pending under the resolution of September 22, 2006.

Case of Huilca Tecse

1416. In 2010, the Commission continued to submit its periodic comments concerning compliance with the Court's orders in its judgment of March 3, 2005. The case concerns the extrajudicial execution of organized labor leader Pedro Huilca Tecse in Lima, Peru, on December 18, 1992, and the subsequent failure to investigate the crime and punish those responsible. The full text of the judgment is available at the following link:

http://www.corteidh.or.cr/docs/casos/articulos/seriec_121_ing.doc.

1417. According to the Court's most recent order, dated February 7, 2008, the measures of reparation still pending include: the obligation to investigate, identify and punish the material and intellectual authors of Pedro Huilca Tecse's execution; the obligation to establish a course or subject on human rights and labor law, called the "Pedro Huilca Chair"; the obligation to remember and applaud the work of Pedro Huilca Tecse for the trade union movement in Peru during the official celebrations of May 1 (Labor Day); the obligation to erect a bust in memory of Pedro Huilca Tecse, and the obligation to provide psychological care and treatment to the victim's next of kin. The text of the order is available at the following link:

http://www.corteidh.or.cr/docs/supervisiones/huilca_%2007_02_08_ing.doc

Case of the Members of the Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic

1418. On April 1, 2008, the Commission filed an application with the Court against the Peruvian State in the case of the members of the Association of Discharged and Retired Staff of the Office of the Comptroller General of the Republic of Peru (CGR). The case concerns the failure to comply with judgments delivered by Peru's Constitutional Court on October 21, 1997 and January 26, 2001, which ordered "that the Office of the Comptroller General of the Republic shall pay the members of the plaintiff Association the wages, salaries, benefits and bonuses received by active employees of that institution who have posts that are the same as or similar or equivalent to the posts held by the discharged or retired staff members." The case involved 273 members of the Association of Discharged and Retired Staff of the Office of the Comptroller General. In November 2002, the State ceased to readjust and renew their severance and retirement pension to keep pace with the salaries and wages, benefits and bonuses received by that institution's active employees. In the wake of the Constitutional Court judgments, the State did not repay the pension adjustments withheld from April 1993 to October 2002.

1419. On July 1, 2009, the Court delivered its judgment on preliminary objections, merits, reparations and costs in which it dismissed the preliminary objection raised by the State and declared that the State had violated Article 25(1) and 25(2)(c) of the Convention and the right to property enshrined in Article 21(1) and 21(2) of said treaty, all of them in conjunction with Article 1(1) therein, to the detriment of the two hundred and seventy three victims. It also found that it had not been proven that the State had breached its obligation under Article 26 of the American Convention. Finally it ordered the reparations that it deemed appropriate. The judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf

1420. On November 3, 2009, the State presented a request for interpretation of judgment in which it asked the Court to clarify if the reimbursement of costs and expenses ordered "should be delivered to the legal person known as the [']Association of Discharged and Retired Employees['] or [to] the individuals that have been described as victims [in] the judgment, indicating the appropriate manner of payment in the latter case." On November 24, 2009, the Court issued its judgment of interpretation, in which it found the request admissible and declared that "a reading of the judgment as a whole shows that the Association of Discharged and Retired Employees, composed in its entirety of the [273] victims [...] is the direct beneficiary of the reimbursement of costs and expenses." Said decision is available (in Spanish) at http://www.corteidh.or.cr/docs/casos/articulos/seriec_210_esp1.pdf

1421. During 2010 the IACHR submitted observations regarding the State's reports on compliance with the judgment, as well as the observations made by the victims' representatives.

Case of Ivcher Bronstein

1422. On February 27, 2009, the President of the Court issued an order in which she convened the parties to a private hearing to be held on March 31, 2009, during the Court's XXXVIII Special Session in the Dominican Republic. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/ivcher_27_02_09.pdf. The meeting was held at the appointed place.

1423. On November 24, 2009, the Court issued an order on compliance in which it declared that the State had complied with the following obligations: a) recovery of the dividends and other amounts that Mr. Ivcher Bronstein would have received as majority shareholder and officer of Compañía Latinoamericana de Radiodifusión S.A. in accordance with domestic law and subject to the decision of the competent national authorities; and, b) pay the victim compensation for moral damages and reimbursement of costs and expenses. The Court also declared that it would keep open the procedure for monitoring compliance with respect to the following points: a)

investigate the facts that gave rise to the violations in order to identify and punish those responsible, and, b) facilitate the conditions to enable Baruch Ivcher Bronstein to take the necessary steps to recover the use and enjoyment of his rights as majority shareholder of Compañía Latinoamericana de Radiodifusión S.A., as he was until August 1, 1997, under the terms of domestic legislation and subject to the decision of the competent national authorities. The text of this order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/ivcher_24_11_09.pdf

1424. On August 27, 2010 the Court issued a new resolution declaring that the only point pending compliance involves the obligation to investigate the facts that led to the violations established in the judgment. The text of the resolution can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/ivcher_27_08_101.pdf. During 2010 the Commission submitted its observations regarding compliance with the Court's orders on the subject of reparations in its judgment of February 6, 2001.

Case of Juárez Cruzatt *et al.*" Miguel Castro Castro Prison"

1425. This case concerns events at the Miguel Castro Castro Prison in the city of Lima, May 6 to 9, 1992, during which at least 42 inmates lost their lives, 175 were injured, and another 322 were subjected to cruel, inhuman, and degrading treatment for various periods of time; the treatment subsequently given to the surviving victims at the various hospitals and detention centers to which they were taken; the failure to conduct a timely and thorough investigation; the destruction of evidence that was essential to shed light on the incident; and the denial of justice suffered by the victims and their next-of-kin.

1426. The members of the Court adopted the judgment in this case on November 25, 2006, by a unanimous vote of its members. In the judgment the Court declared Peru's international responsibility for violation of the rights protected in articles 4, 5, 8 and 25 of the American Convention, in relation to Article 1(1) thereof; Article 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the deceased and surviving victims of the "Mudanza 1" operation and of the next of kin described in paragraphs 336, 337, 340, 341 and 433(d) of the judgment and named in Annex 2 thereof.

1427. On May 11, 2007, the Inter-American Court notified the Inter-American Commission that the State and a group of victims had filed applications seeking an interpretation of the judgment. The Commission was given a deadline of August 1, 2007, to make whatever comments it deemed necessary.

1428. On August 2, 2008, the Inter-American Court issued a judgment in which it declared both applications admissible and, therefore, proceeded to clarify the meaning of the questioned points of the judgment. The judgment on interpretation is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_181_ing.pdf

1429. During 2010 the State provided information on compliance with the judgment. The Commission submitted observations regarding that information, indicating its concern over the lack of substantive progress. In a resolution of December 21, 2010, the acting President of the Inter-American Court for this case convened a private hearing on compliance with the judgment. The hearing is scheduled for February 26, 2011 during the Court's XC regular session.

Case of Kenneth Ney Anzualdo Castro

1430. On July 11, 2008, the IACHR filed an application with the Court against Peru in case No. 11,385, Kenneth Ney Anzualdo Castro. The case concerns the December 16, 1993 forced disappearance of 25-year-old student Kenneth Ney Anzualdo Castro in Callao, at the hands of agents of the State; the subsequent lack of due diligence in the investigation, prosecution and punishment of those responsible; and the lack of adequate reparation for the victim's next of kin. In its report on the merits, the Commission concluded that the Peruvian State is responsible for violation of the rights to life, to humane treatment, to personal liberty, to recognition of juridical personality, to a fair trial and to judicial protection, all to the detriment of Mr. Anzualdo; it also found that the State had violated the rights to humane treatment, a fair trial and judicial protection to the detriment of the victim's next of kin. The text of the application is available at: <http://www.cidh.oas.org/demandas/11.385%20Kenneth%20Ney%20Anzualdo%20Castro%20Peru%2011%20julio%202008%20ENG.pdf>

1431. On September 22, 2009, the Court delivered a judgment on preliminary objections, merits, reparations and costs, in which it concluded that: a) the State was responsible for the forced disappearance of Mr. Kenneth Ney Anzualdo Castro and, consequently, violated Articles 7(1), 7(6), 5(1), 5(2), 4(1) and 3 of the American Convention, in conjunction with Article 1(1) of that treaty and with Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Kenneth Ney Anzualdo Castro; b) the State violated Articles 5(1), 5(2), 8(1) and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of that treaty and Articles I(b) and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Félix Vicente Anzualdo Vicuña, Iris Isabel Castro Cachay de Anzualdo, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro; and, c) the State did not violate Article 13 of the Convention. Finally, the Court ordered the appropriate reparations. The text of the judgment is available (in Spanish only) at http://www.corteidh.or.cr/docs/casos/articulos/seriec_202_esp.pdf

Case of La Cantuta

1432. On February 14, 2006, the Commission filed an application with the Court in the case of the human rights violations committed against Professor Hugo Muñoz Sánchez and the students Bertila Lozano Torres, Dora Oyague Fierro, Luis Enrique Ortiz Perea, Armando Richard Amaro Córdor, Robert Edgar Teodoro Espinoza, Heráclides Pablo Meza, Felipe Flores Chipana, Marcelino Rosales Cárdenas, and Juan Gabriel Mariños Figueroa, and their families, as a result of the victims' abduction from the Enrique Guzmán y Valle National University of Education in La Cantuta, Lima, in the early morning hours of July 18, 1992. Members of the Peruvian Army were involved: they abducted the victims, then caused them to disappear and summarily executed a number of them. No one has ever been made to answer for the facts in the case. The text of the application can be found (in Spanish) at: <http://www.cidh.oas.org/demandas/11.045%20La%20Cantuta%20Peru%2014%20de%20febrero%20de%202006.pdf>

1433. On November 29, 2006, the Court delivered its judgment on merits and reparations in this case. It accepted the State's partial acknowledgment of international responsibility and held that Peru had violated the rights to life, to humane treatment, to judicial protection and a fair trial, protected under the American Convention, in conjunction with the general obligation to respect and ensure the Convention-protected rights and the obligation to ensure domestic legal effects. In its judgment the Court set the measures of reparation it deemed appropriate. The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_162_ing.doc.

1434. On November 30, 2007, the Court delivered a judgment interpreting its judgment on the merits, reparations, and costs. In that interpretation it determined the scope of various issues

that the representatives of the victims and their next of kin had raised on March 20, 2007. On that occasion, the representatives had requested clarification of several points related to the identification and/or individualization of the victims' next of kin in the case in question, regarding their consideration as beneficiaries of the measures of reparation established in the judgment. In 2008, the Commission submitted its comments on the information reported by the State regarding compliance with the judgment

1435. During 2010 the IACHR continued to submit observations regarding the State's reports.

Case of Loayza Tamayo

1436. In 2010, the Commission continued to submit its periodic comments concerning compliance with the Court's judgments of September 17, 1997, and November 27, 1998. The case concerns the violation of María Elena Loayza Tamayo's rights to personal liberty, human treatment, a fair trial and judicial protection starting on February 3, 1993, in Lima, Peru. The judgments on merits and reparations issued by the Court in this case are available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_33_ing.doc and http://www.corteidh.or.cr/docs/casos/articulos/seriec_42_ing.doc.

1437. According to the Court's most recent order monitoring compliance with the judgments delivered in this case, dated February 6, 2008, the procedure remains open with respect to the State's following pending obligations: reinstatement of María Elena Loayza-Tamayo in the teaching sector in public institutions, on the understanding that the amount of her salary and other benefits is to be equal to the remuneration she was receiving for these activities in the public and private sector at the time of her detention; guaranteeing her full retirement benefits, including those owed for the period transpired since the time of her detention; adoption of all domestic legal measures necessary to ensure that no adverse decision delivered in proceedings against Loayza-Tamayo in the civil courts has any effect whatsoever; adoption of the internal legal measures necessary to adapt Decree-Laws 25,475 (Crime of Terrorism) and 25,659 (Crime of Treason) to conform to the American Convention; and investigation of the facts of the instant case, identifying and punishing those responsible for those acts, and the adoption of all necessary domestic legal measures to ensure that this obligation is discharged. The full text of the order is available at: http://www.corteidh.or.cr/docs/supervisiones/loayza_06_02_08_ing.doc.

Case of Lori Berenson

1438. The case concerns violation of the rights to humane treatment, a fair trial, judicial protection and freedom from *ex post facto* laws, all to the detriment of Lori Berenson. The full text of the judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_119_ing.doc.

1439. The Court's most recent order in this case is dated September 22, 2006. The measures of reparation still pending include: having domestic legislation amended to conform to the standards of the American Convention; providing Mrs. Lori Berenson with adequate and specialized medical and psychological care; adapting detention conditions in the Yanamayo penal facility to conform to international standards, transferring those who cannot tolerate the altitude of the prison to other facilities, and reporting to the Court every six months. The text of the order monitoring compliance is available at: http://www.corteidh.or.cr/docs/supervisiones/lori_22_09_06_ing.doc.

Case of Neira Alegría

1440. This case concerns the crushing of the July 19, 1986 riot at the prison known as "El Frontón" and the failure to identify the bodies of Messrs. Víctor Neira Alegría, Edgar Edison Zenteno

Escobar and William Jans Zenteno Escobar who were inmates at that prison. The text of the January 19, 1995 judgment on the merits is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_20_ing.doc.

1441. On January 19, 2009, the Court issued an order on compliance in which it declared that the State had failed to meet its obligation to report to the Court on the measures adopted to comply with the provisions of the judgment on reparations and costs delivered on September 19, 1996. The Court also declared that it would keep open the procedure to monitor compliance with the judgment as regards the State's obligation to "locate and identify the remains of the victims and deliver them to their next of kin". The text of the order is available at http://www.corteidh.or.cr/docs/supervisiones/neira_19_01_09_ing.pdf.

1442. During 2010 the IACHR continued to submit observations regarding the information provided by the State on compliance with the judgment.

Case of the Constitutional Court

1443. The application the Commission filed with the Court in this case on July 2, 1999, concerns the removal of three justices of the Constitutional Court, by a majority vote of the Peruvian Congress. The justices were removed when the Court exercised its function of ensuring constitutionality and ruled that Law No. 26657 was unconstitutional because it allowed the President of Peru to seek a third term, in violation of Article 112 of the Constitution, which limits the presidential mandate to two consecutive five-year terms of office. The removal of the three justices left the Constitutional Court in pieces, with only four justices, thus legally unable to perform one of the Court's key functions, which is to check the question of constitutionality when constitutionality challenges are filed. The people of Peru were thus left vulnerable and with no means of protection.

1444. On January 31, 2001 the Court issued its judgment on the merits, reparations, and costs whereby it established the violation of the rights to a fair trial and judicial protection to the detriment of the victims, as well as the reparations it deemed appropriate. The text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_71_ing.pdf

Case of the Dismissed Congressional Employees

1445. The Commission filed an application with the Court in this case on February 4, 2005. The case concerns the dismissal of 257 employees of the Peruvian National Congress, part of a group of 1117 workers dismissed by congressional resolutions on December 31, 1992. The complete text of the application can be found at: <http://www.cidh.oas.org/demandas/11.830%20Trabajadores%20Cesados%20del%20Congreso%20Peru%204feb05%20ENGLISH.pdf>

1446. On November 24, 2006, the Inter-American Court delivered its judgment on preliminary objections, merits and reparations and declared that the State had violated the rights to a fair trial and to judicial protection in the case of the dismissed congressional employees, all in relation to the general obligation to respect and ensure rights and the duty to adopt domestic legal measures, set forth in the Convention. In the judgment, the Court set the measures of reparation it deemed appropriate. The full text of the judgment can be seen at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_158_ing.doc.

1447. During 2010 the Commission submitted its observations regarding compliance with the judgment and on November 24, 2010 the Court issued a resolution whereby it decided to ask the State of Peru to adopt all the measures necessary to effectively and promptly address the points

pending compliance with the judgment on preliminary objections, merits, reparations, and costs in this case. The text of the judgment can be found (in Spanish) at: http://www.corteidh.or.cr/docs/supervisiones/trabajadores_24_11_10.pdf

r. Dominican Republic

Case of Dilcia Yean and Violeta Bosico

1448. On July 11, 2003, the Commission filed its application in the case, which concerns the refusal of the State, through its Registry Office authorities, to issue birth certificates for the Yean and Bosico children, even though they were born within the State's territory and despite the fact that the Constitution of the Dominican Republic establishes the principle of *jus soli* to determine those who have a right to Dominican citizenship. The State thus obliged the alleged victims to endure a situation of continued illegality and social vulnerability, violations that are even more serious in the case of children, since the Dominican Republic denied the Yean and Bosico children their right to Dominican nationality and let them remain stateless persons for a long period of time.

1449. The Court delivered its judgment in this case on September 8, 2005, where it held that there had been violations of the right of nationality, the right to equality before the law, the right to a name, the right to juridical personality, and the right to humane treatment protected under Article 5 of the Convention. The Court also specified the remedies it deemed pertinent. The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.doc

1450. In 2010, the Commission submitted its comments regarding compliance with the reparations ordered in the Court's judgment of September 8, 2005.

Case of Narciso González Medina *et al.*

1451. On May 2, 2010 the Commission filed an application with the Court. The case involves the forced disappearance of the university profesor, columnist, and opposition leader, Narciso González Medina, as a result of criticisms made against the military and then President of the Republic Joaquín Balaguer, as well as his participation in making public charges of electoral fraud during the presidential elections of 1994. Narciso González Medina was deprived of his freedom by agents of the State on May 26, 1994. During the following days, he was seen alive and in poor condition at various security units in the custody of officers of the State. To date his whereabouts are unknown and no serious, diligent, and effective investigations have been conducted to clarify the facts, identify those responsible, and impose the appropriate punishment. Sixteen years have passed and Narciso González Medina continues among the disappeared while the actions against him continue to go unpunished.

1452. The Inter-American Commission asked the Court to establish the international responsibility of the Dominican State, which has failed to meet its international obligations and has violated Articles 3 (Right to Recognition of Juridical Personality), 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 13 (Right to Freedom of Expression) and 8 and 25 (Rights to a Fair Trial and Judicial Protection), in connection with the obligations established in Article 1.1 of the American Convention. The text of the application can be found at: <http://www.cidh.oas.org/demandas/11.324%20Narciso%20Gonzalez%20Medina%20Rep%20Dominicana%202mayo10ENG.pdf>

1453. The case is currently being processed by the Inter-American Court.

s. Suriname

Case of the Moiwana Community

1454. This case concerns the State's inadequate investigation into the attack on the village of Moiwana on November 29, 1986, its violent obstruction of justice, and the lengthy period of time that passed without the incident being cleared up or the guilty punished. The full text of the judgment of June 15, 2005, may be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_124_ing1.doc.

1455. On December 18, 2009, the President of the Court issued an order on compliance in which she convened the parties to a private hearing to be held at the seat of the Court on February 1, 2010. That order is available at http://www.corteidh.or.cr/docs/supervisiones/moiwana_18_12_09.pdf. The IACHR participated in that hearing and during the year continued to submit written observations regarding compliance with the judgment.

1456. On November 22, 2010 the Inter-American Court issued a resolution on compliance, in which it declared that i) the State had complied with the obligation to build a monument in an appropriate public place; and ii) the State had partially complied with the obligation to establish a community development fund. In addition, it ordered that the supervision process should remain open with respect to this latter obligation as well as the obligations to: i) investigate the facts and, if applicable, punish those responsible; ii) recover the remains of the members of the Moiwana community who were murdered; iii) adopt the legal, administrative, and other measures to ensure the right to ownership of the traditional territories from which they were expelled; and iv) guarantee security for those members of the Moiwana community who decided to return. The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/moiwana_22_11_10_ing.pdf.

Case of the Twelve Saramaka Clans

1457. This case concerns the failure to recognize the legal personality of the Saramaka people, the failure to recognize the communal property right of the members of the Saramaka people to the territory they have traditionally occupied and used, and the failure to provide the members of the Saramaka people with effective access to justice, as a community, for the protection of their fundamental rights

1458. Based on the evidence offered by the parties during the proceedings in this case and the arguments they made, on November 28, 2007 the Inter-American Court delivered a judgment in which it dismissed the seven preliminary objections entered by the State and declared that Suriname had violated articles 3, 21 and 25 of the American Convention, in relation to articles 1(1) and 2 thereof. In that judgment, the Court established the reparations it deemed appropriate.

1459. On March 17, 2008, the State filed an application seeking an interpretation of the judgment on preliminary objections, merits, reparations and costs, delivered on November 28, 2007. On August 12, 2008, the Inter-American Court delivered its judgment, declaring the State's application for an interpretation admissible and, therefore, proceeding to clarify the meaning and scope of those aspects of the judgment. The judgment on interpretation can be found at http://www.corteidh.or.cr/docs/casos/articulos/seriec_185_ing.doc.

1460. On April 20, 2010 the President of the Court convened a private hearing on compliance with the judgment. The resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/saramaka_20_04_10_ing.pdf. Due to a request from the State of Suriname, the Court postponed the hearing, which was ultimately held during the Court's LXXXVIII regular session. The IACHR participated in that hearing and subsequently continued to submit written observations regarding compliance with the judgment.

t. Trinidad and Tobago

Case of Hilaire, Constantine and Benjamin *et al.*

1461. This case is the result of the joinder of the cases of Hilaire, Constantine *et al.*, and Benjamin *et al.*, which the Commission lodged with the Court as separate cases on May 25, 1999, February 22, 2000, and October 5, 2000, respectively, all against the government of Trinidad and Tobago. The case concerns the mandatory death penalty; the process for granting amnesties, pardons, and commutations of sentence in Trinidad and Tobago; the delays in the criminal prosecutions of some of the victims; the deficiencies in the treatment and detention conditions of some of the victims; the violations of due process prior to and during the trial and during the appeals phase; and, finally, the non availability of legal counsel to assist some of the victims in securing access to domestic remedies for claiming violation of their rights.

1462. The Court delivered its judgment on merits and reparations in the case on June 21, 2002. The Court's most recent order monitoring compliance is dated November 27, 2003. In that order, the Court noted the State's duty to report, every six months, the measures adopted and the fact that it had not complied with that requirement. It consequently resolved that "if the current situation persists, to report it to the General Assembly of the Organization of American States, pursuant to Article 65 of the American Convention [...] and Article 30 of the Statute of the Inter-American Court." The judgment and the order can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_94_ing.doc and http://www.corteidh.or.cr/docs/supervisiones/hilaire_27_11_03_ing.doc

1463. Again in 2010, no information was forthcoming from the State regarding compliance with its obligations under the judgment in this case.

Case of Winston Caesar

1464. This case concerns violations of Mr. Winston Caesar's rights to humane treatment and judicial protection. He had been convicted by a court in Trinidad and Tobago and sentenced to imprisonment at forced labor, and to 15 lashes with a cat o' nine tails. The Court's March 11, 2005 judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_123_ing.doc.

1465. On November 21, 2007, the Court issued an order in which it found that the State had not complied with its obligation to report to the Court on the measures taken to comply with the judgment. The Court underscored that even though the State had renounced the American Convention, it nonetheless had an obligation to comply with the Court's judgment. It requested a report by March 8, 2008. That report has not been received. The text of the order is available at: http://www.corteidh.or.cr/docs/supervisiones/Caesar_21_11_07_ing.doc

u. Uruguay

Case of Barbani et al. (Group of Depositors of the Banco de Montevideo)

1466. On March 16, 2010, the IACHR filed an application in case No. 12.587, Alicia Barbani Duarte, María del Huerto Breccia *et al.* (Group of Depositors of the Banco de Montevideo). The case involves the fact that a group of depositors of the Banco de Montevideo was not given an impartial hearing of its claims before an Advisory Commission created by the Financial System Reform Law or before the Tribunal for Contentious-Administrative Disputes in relation to the transfer of their funds from the Banco de Montevideo to another bank, which was done without consulting them in advance. The application also refers to the fact that the victims were not given a simple and rapid remedy for examining all the factual and legal issues relating to the dispute, and the need for the State to establish a suitable and effective mechanism that can be used by persons identified as victims in the case, as well as other members of the group of more than 1,400 people in a similar situation so they can determine whether they meet the criteria of applicable legislation for receiving the compensation provided in accordance with the Financial System Reform Law.

1467. The case is currently being processed by the Inter-American Court. The IACHR's application can be found at: <http://www.cidh.oas.org/demandas/12.587%20Alicia%20Barbani%20y%20otros%20Uruguay%2016marzo10%20Eng.pdf>

Gelman Case

1468. On January 21, 2010 the Inter-American Commission filed an application with the Court in case No. 12.607, Juan Gelman, María Claudia García Iruretagoyena de Gelman, and María Macarena Gelman García Iruretagoyena against the Republic of Uruguay, based on Uruguay's international responsibility for the forced disappearance of María Claudia García Iruretagoyena de Gelman, committed by agents of the Uruguayan State starting in late 1976, without any determination to date regarding her whereabouts or the circumstances of her disappearance; for suppression of the identity and nationality of María Macarena Gelman García Iruretagoyena, daughter of María Claudia García de Gelman and Marcelo Gelman; and for the denial of justice, impunity, and generally the suffering caused to Juan Gelman, his family, María Macarena Gelman García Iruretagoyena, and the relatives of María Claudia García de Gelman, as a result of the failure to investigate the facts and prosecute and sanction those responsible due to Law No. 15.848 or the Amnesty Law (*Ley de Caducidad*) enacted in 1986 by the democratic government of Uruguay. The text of the application can be found at: <http://www.cidh.oas.org/demandas/12.607%20Gelman%20Uruguay%2021ene10%20ENG.pdf>

1469. On November 15-16, 2010 the Commission participated in the public hearing in the case and, as of the preparation of this report, the matter is now pending issuance of a judgment in the case by the Court.

u. Venezuela

Case of Chocrón

1470. On November 25, 2009, the Commission submitted an application with the Court against Venezuela for the arbitrary dismissal of the victim from her position as Judge of a First Instance for Criminal Matters of the Judicial Circuit of the Metropolitan Area of Caracas without observance of basic fair trial guarantees, without due cause, without the possibility to be heard and exercise her right of defense and without an effective judicial remedy against said violations, all as a consequence of the absence of guarantees in the transitional process in the judiciary. The Inter-

American Commission asks the Court to find that the State of Venezuela has engaged its international responsibility for breach of its international obligations as a result of its violation of Articles 8 and 25 of the American Convention in conjunction with the obligations under Articles 1(1) and 2 of that treaty.

1471. After completing the regulatory procedures, in a resolution of December 16, 2010, the President of the Court convened a public hearing in the case to be attended by the Commission, the State, and the victim's representatives, which is scheduled for February 24, 2011, during the Court's XC regular session. The resolution convening the hearing can be found (in Spanish) at: <http://www.corteidh.or.cr/docs/asuntos/chocron1.pdf>.

Case of Díaz Peña

1472. On November 12, 2010 the IACHR submitted the case to the Inter-American Court by filing the report on the merits. In that report, the IACHR demonstrated that the State illegally and arbitrarily arrested Raúl José Díaz Peña and subjected him to a system of preventive detention that exceeded the limits established by criminal law, based on a presumed flight risk. During the time the victim remained in preventive detention, there was no effective judicial review of his situation. In addition, Raúl José Díaz Peña was subjected to a process that had a series of irregularities that resulted in a criminal process that lasted approximately five years and two months from his arrest until his conviction. While he remained in the custody of the State, Raúl José Díaz Peña was subjected to conditions of arrest that had a serious impact on his health, and he did not receive the timely medical attention he needed.

1473. The Commission asked the Court to declare the State of Venezuela internationally responsible for: i) violating the right not to be illegally deprived of liberty and the right to know the reasons for one's detention established in Articles 7.1, 7.2, and 7.4 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Raúl José Díaz Peña; ii) violating the right not to be arbitrarily deprived of liberty established in Articles 7.1 and 7.3 of the American Convention, in connection with Articles 1.1 and 2 of the same instrument, to the detriment of Raúl José Díaz Peña; iii) violating the right to be tried within a reasonable period of time or be released and the presumption of innocence established in Articles 7.1, 7.5, and 8.2 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Raúl José Díaz Peña; iv) violating the right to appear before a judge or competent court for a decision regarding the lawfulness of the arrest and the right to judicial protection established in Articles 7.1, 7.6, and 25.1 of the American Convention, in connection with Article 1.1 thereof, to the detriment of Raúl José Díaz Peña; v) violating the right to be tried within a reasonable period of time by an independent and impartial judge or court established in Article 8.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Raúl José Díaz Peña; and vi) violating the right to personal integrity established in Article 5.1 and 5.2 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Raúl José Díaz Peña

1474. The note referring the case to the Court, as well as the IACHR's report on the merits can be found (in Spanish) at: <http://www.cidh.oas.org/demandas/12.703esp.pdf>.

Case of El Amparo

1475. This case concerns the extrajudicial killing of 14 fishermen by police and military personnel on October 29, 1988, at Canal La Colorada in Venezuela, the subsequent failure to conduct an investigation and punish the guilty, and the violations committed with respect to two survivors. The complete text of the January 18, 2005 judgment on the merits is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_19_ing.pdf.

1476. On December 18, 2009, the President of the Court issued an order on compliance in which she convened the parties to a private hearing to be held at the seat of the Court on January 29, 2010. The order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/amparo_18_12_09.pdf. The IACHR participated in that hearing. On February 4, 2010 the Inter-American Court issued a new resolution ordering that the process of supervision remain open with respect to the obligation pending compliance, namely the obligation "to continue investigating the facts in this case and punish those who are found to be responsible". The text of the resolution can be found at: http://www.corteidh.or.cr/docs/supervisiones/amparo_04_02_10_ing.pdf. In addition, during 2010 the IACHR continued to submit written observations regarding the State's reports.

Case of the Caracazo

1477. On July 6, 2009, the Court issued an order in which it declared that the State had complied with its obligation to pay costs and expenses. The Court also declared that it would keep open the procedure for monitoring compliance with the following obligations: a) conduct an effective investigation into the facts of the instant case, identify those responsible for them, both perpetrators and instigators, as well as any possible accessories after the fact, and, [if applicable], punish them as appropriate; b) to allow the victims' next of kin and the surviving victims to have full access and power to act at all stages and in all proceedings of the investigations, in accordance with the domestic legislation and the provisions of the American Convention; c) make the results of the investigations known to the public; d) locate, exhume, and identify by means of suitable techniques and instruments the mortal remains of the victims, and deliver them to the victims' next of kin; e) that the costs of the burial of the mortal remains of the victims in the place chosen by their next of kin shall be born by the State; and, f) adopt all necessary steps to avoid repetition of the facts and circumstances of the instant case. The text of the order is available at http://www.corteidh.or.cr/docs/supervisiones/caracazo_06_07_09_ing.pdf.

1478. On September 23, 2009, the Court ratified the previous orders on compliance and called on the State to adopt all such measures as might be necessary to enforce and effectively comply with the pending aspects of the measures ordered in its Judgment. The text of that order may be found at: http://www.corteidh.or.cr/docs/supervisiones/caracazo_23_09_09_ing.pdf

1479. During 2010 the Inter-American Commission continued to submit observations regarding compliance with the Court's orders on the subject of reparations.

Case of the Disappeared of Vargas (Blanco Romero, Hernández Paz and Rivas Fernández)

1480. On June 30, 2004, the Commission filed its application in this case with the Court because of events that took place in Vargas State, Venezuela, between December 21 and 23, 1999, when Oscar José Blanco Romero, Roberto Javier Hernández Paz, and José Francisco Rivas Fernández were arrested by and subsequently forcibly disappeared at the hands of state agents.

1481. On June 28, 2005, after the State admitted responsibility at a public hearing, the Court issued an order in which it accepted the State's acknowledgement of international responsibility, which put an end to the dispute in the case. On November 28 of that year, the Court handed down its judgment, ruling that the victims' rights to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, and Articles 1(1) and 2 of the Convention, had been violated and that the State had failed to comply with the obligations established in Articles 1, 5, 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture and in Articles I.a and I.b., X, and XI of the Inter-American Convention on Forced Disappearance of Persons. The Court also ruled that there had been violations of the rights to humane treatment, a fair trial, and judicial

protection, and of the obligation set out in Article 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to the victims' families. In its judgment, the Court set the forms of reparation it deemed appropriate. The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_138_ing.pdf.

1482. In 2010, the Commission submitted comments concerning the information supplied by the parties.

Case of the Barrios Family

1483. On July 26, 2010 the Inter-American Commission submitted the case to the jurisdiction of the Inter-American Court by presenting the report on the merits, in which it concluded that the Barrios family had been subjected to serious persecution by the police of Aragua State. As part of this persecution, five members of the Barrios family have lost their lives, various people have been arrested and subjected to illegal and arbitrary search and seizure, have endured threats against their lives and personal integrity, and have been forced to move from their residence. Many of the facts that the Commission has deemed established in its reports affected children. All the human rights violations committed against the Barrios family remain unpunished.

1484. In addition, the Commission emphasized that most of the actions that violated the life and personal integrity of the victims occurred when the organs of the inter-American system had already sought protection for the Barrios family through the mechanisms of precautionary or provisional measures. The State did not provide effective measures to protect the family and so far the Barrios family continues to be subject to the situation of risk and lack of protection that fostered the occurrence of the human rights violations against it.

1485. The Commission asked the Court to find and declare the State of Venezuela internationally responsible for: i) violating the rights to life, personal integrity, and personal liberty established in Articles 4.1, 5.1, and 5.2, 7.1, 7.2, 7.3, 7.4, and 7.5 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Benito Antonio Barrios; ii) violating the rights to protection of the private and family life and to private property, established in Articles 11 and 21 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Justina Barrios, Brígida Oneida Barrios, Elbira Barrios, Luís Alberto Barrios, and Orismar Carolina Alzul; iii) violating the right to life established in Article 4.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Narciso Barrios; iv) violating the rights to personal integrity, personal liberty, and special protection for children, established in Articles 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5, and 19, in connection with Article 1.1 of the same instrument, to the detriment of Jorge Antonio Barrios and Rigoberto Barrios; v) violating the rights to personal integrity and personal liberty established in Articles 5, 7.1, 7.2, and 7.3 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Elbira Barrios, Luisa del Carmen Barrios, Gustavo Ravelo, and Jesús Ravelo; and the rights to personal integrity, personal liberty, and special protection for children established in Articles 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5, and 19 of the American Convention, to the detriment of Jorge Antonio Barrios and Oscar José Barrios; vi) violating the rights to personal integrity and special protection for children, established in Articles 5.1 and 19 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Néstor Caudi Barrios and Oscar José Barrios; vii) violating the right to life established in Article 4.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Luis Alberto Barrios; viii) violating the rights to life, personal integrity, and special protection for children established in Articles 4.1, 5.1, 5.2, and 19 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Rigoberto Barrios; ix) violating the right to life established in Article 4.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Oscar José Barrios; x) violating the right to freedom of movement

and residence established in Article 22.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Justina Barrios, Eloisa Barrios, Beatriz Adriana Cabrera Barrios, Víctor Daniel Cabrera Barrios, Luilmari Carolina Guzmán Barrios, Luiseidys Yulianny Guzmán Barrios, Elbira Barrios, Darelbis Carolina Barrios, Oscar José Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Maritza Barrios, Wilmer José Flores Barrios, Génesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilin Alexandra Navarro Barrios, Néstor Caudi Barrios, Brígida Oneida Barrios, Marcos Antonio Díaz Barrios, Sandra Marivi Betancurt Barrios, Junior José Betancurt Barrios, Wilneidys Betania Pimentel Barrios, Wilkar Felipe Pimentel Barrios, Inés Barrios, Daniela Yotselín Ortiz Barrios, Edinson Alexander Ortiz Barrios, Johjan Ramón Perozo Barrios, Luisa del Carmen Barrios, Gustavo Ravelo, Luisiani Nazareth Ravelo Barrios, Carolina Orismar Alzul, Ronis David Barrios Alzul, Roniel Alberto Barrios Alzul, Luís Alberto Alzul, Dalila Ordalys Ortuño, Jorge Antonio Barrios, Carlos Alberto Ortuño, Junclis Esmil Rangel Teran, Annarys Alexandra Barrios Rangel, Annarys Alexandra Barrios Rangel, Juan Barrios, Orianny Nazareth Pelae and Oriana Nazareth Pelae, Pablo Solórzano, Beneraiz de la Rosa, and Danilo David Solórzano de la Rosa. Regarding the children, the Commission concludes that the State violated Article 19 of the American Convention; xi) violating the right to personal integrity established in Article 5.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Justina Barrios, Pablo Solórzano, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneida Barrios, Inés Barrios, Luís Alberto Barrios, Lilia Isabel Solórzano, Narciso Barrios, Luisa del Carmen Barrios, Juan Barrios, Jorge Antonio Barrios, Carlos Alberto Ortuño, Dalila Ordalys Ortuño, Annarys Alexandra Barrios Rangel, Annarys Alexandra Barrios Rangel, Junclis Esmil Rangel Teran, Ronis David Barrios, Roniel Alberto Barrios, Luís Alberto Alzul, Orismar Carolina Alzul, Wilmer José Flores Barrios, Genesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilín Alejandra Navarro Barrios, Néstor Caudi Barrios, Darelbis Carolina Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Michael José Barrios Espinosa, and Dinosca Alexandra Barrios Espinosa; xii) violating the right to personal integrity established in Article 5.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of all the members of the Barrios family named in the family tree attached to the report on the merits; xiii) violating the rights to a fair trial and judicial protection established in Articles 8.1 and 25.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Justina Barrios, Pablo Solórzano, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneida Barrios, Inés Barrios, Luís Alberto Barrios, Lilia Isabel Solórzano, Narciso Barrios, Luisa del Carmen Barrios, Juan Barrios, Jorge Antonio Barrios, Carlos Alberto Ortuño, Dalila Ordalys Ortuño, Annarys Alexandra Barrios Rangel, Annarys Alexandra Barrios Rangel, Junclis Esmil Rangel Teran, Ronis David Barrios, Roniel Alberto Barrios y Luís Alberto Alzul, Orismar Carolina Alzul, Wilmer José Flores Barrios, Genesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilín Alejandra Navarro Barrios, Néstor Caudi Barrios, Darelbis Carolina Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Michael José Barrios Espinosa, and Dinosca Alexandra Barrios Espinosa; and xiv) violating the rights to a fair trial and judicial protection established in Articles 8.1 and 25.1 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Justina Barrios, Brígida Oneida Barrios, Elbira Barrios, Luís Alberto Barrios, Orismar Carolina Alzul, Jorge Antonio Barrios, Rigoberto Barrios, Oscar José Barrios, Néstor Caudi Barrios, Luisa del Carmen Barrios, Gustavo Ravelo, and Jesús Ravelo.

1486. The note sending the case to the Inter-American Court as well as the report on the merits can be found (in Spanish) at: <http://www.cidh.oas.org/demandas/12488esp.pdf>.

Case of Francisco Usón Ramírez

1487. On July 25, 2008, the IACHR filed an application with the Court against Venezuela in case No. 12,554, Francisco Usón Ramírez. The facts concern a criminal case the State brought in the military court against retired General Francisco Usón Ramírez on charges of “slandering the

National Armed Forces.” He was subsequently convicted and sentenced to five years and six months in prison, all for statements he had made on a television program on a controversy in the news at the time. In its report on the merits the Commission concluded that the Venezuelan State violated Mr. Francisco Usón Ramírez’ rights to free speech, personal liberty, a fair trial and judicial protection. The text of the IACHR’s application can be found at: <http://www.cidh.oas.org/demandas/12.554%20Francisco%20Uson%20Ramirez%20Venezuela%2025%20julio%202008%20ENG.pdf>

1488. On November 20, 2009, the Court delivered its judgment on preliminary objections, merits, reparations and costs in which it dismissed the preliminary objection and declared that the State violated, to the detriment of Francisco Usón Ramírez: a) Articles 9, 13(1), and 13(2) of the American Convention in connection with Articles 1(1) and 2 of that treaty; b) Articles 8 and 25 of the American Convention in conjunction with Articles 1(1) and 2 thereof; and, c) Article 7 of the American Convention in connection with Article 1(1) thereof. The Court also ruled that the State infringed Article 2 of the Convention. Finally the Court ordered the reparations it deemed appropriate. The text of the judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_207_ing.pdf

Case of López Mendoza

1489. On December 14, 2009, the Commission filed an application with the Court against Venezuela for disqualification of the victim from holding public office via administrative proceedings in violation of standards contained in the Convention, as well as prohibition from participation in the regional elections in 2008. In the application, the IACHR holds that the State did not afford the appropriate fair trial guarantees and judicial protection nor provided adequate reparation. In its application the Commission asks the Court to find and declare the State responsible for violation of Articles 23, 8(1) and 25 of the American Convention, in connection with Articles 1(1) and 2 of said instrument, to the detriment of Leopoldo López Mendoza.

1490. After completing the regulatory procedures, in a resolution dated December 23, 2010, the President of the Court convened a public hearing in the case to be attended by the Commission, the State, and the victim’s representatives; the hearing is scheduled for March 1-2, 2011 during the Court’s XC regular session.

Case of Luisiana Ríos *et al.* (RCTV)

1491. The Commission filed an application with the Court in this case on April 20, 2007. The case concerns multiple restrictions on freedom of expression in the case of journalists, personnel associated with news teams, employees and executives at RCTV television channel and the State’s failure to provide an adequate and effective response to the complaints filed by the victims in domestic venues. The restrictions on the exercise of freedom of expression in this case can be summarized as follows: i) violence –occasionally resulting in physical injury- and acts of intimidation against members of the news teams investigating and reporting news in their journalism work outside the channel’s headquarters; ii) blocking access to official sources of information; iii) acts of violence targeted at RCTV property; and iv) threats from high-ranking government officials – even the President of the Republic- to close the channel, to revoke its operating license or not renew its designated air space, all because of its editorial position.

1492. On August 7, 2008, the Commission was present for the public hearing that the Court convened for this case. Three witnesses offered by the Commission, the victims’ representatives and the State were heard. The Court heard also final oral arguments on a preliminary objection and on the eventual merits, reparations and costs in the case.

1493. On January 28, 2009, the Court delivered its judgment on preliminary objections, merits, reparations and costs, in which it dismissed the preliminary objections and declared that the State was responsible for failing to comply with its obligation included in Article 1(1) of the American Convention to guarantee the exercise of the freedom to seek, receive, and impart information and the right to humane treatment, acknowledged in Articles 13(1) and 5(1) of the same treaty, in detriment of Antonio José Monroy, Armando Amaya, Carlos Colmenares, David José Pérez Hansen, Erika Paz, Isabel Cristina Mavarez, Isnardo José Bravo, Javier García Flores, Luisiana Ríos Paiva, and Pedro Antonio Nikken García. The Court also determined that the State was responsible for failing to comply with its obligation include in Article 1(1) of the Convention to guarantee the exercise of the freedom to seek, receive, and impart information, acknowledged in Article 13(1) of the American Convention, in detriment of Anahís del Carmen Cruz Finol, Argenis Uribe, Herbigio Antonio Henríquez Guevara, Laura Cecilia Castellanos Amarista, Luis Augusto Contreras Alvarado, Noé Pernía, Samuel Sotomayor, Wilmer Marcano, and Winston Francisco Gutiérrez Bastardo. The Court also found that it had not been established that the State violated Articles 24 and 13(3) of the American Convention. It also ruled that it was not appropriate to analyze the facts of the case under Articles 1, 2, and 7(b) of the Convention of Belem do Pará. Finally the Court ordered the reparations it deemed pertinent. The text of the judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_194_ing.pdf.

Case of Montero Aranguren *et al.* (Retén de Catia)

1494. This case concerns the events that transpired in the period from November 27 to 29, 1992, inside and near the Los Flores de Catia Judicial Detention Center, a prison facility located in the city of Caracas, specifically: the failure to take preventive measures to avert acts of violence and deal with emergencies inside that facility; the use of excessive force; the extrajudicial execution of a number of inmates; the subhuman prison conditions that were a root cause of the violence and danger at the prison at the time of the events in this case; the failure to conduct a swift and thorough investigation; the denial of justice to victims and their next of kin, and the lack of prison policies that meet international standards.

1495. In 2009 the Commission submitted its comments on compliance with the Court's July 5, 2006 judgment on the merits, reparations and costs, which has not been fully carried out.

1496. On August 4, 2009, the President of the Court issued an order on compliance in which she convened the parties to a private hearing which was held at the seat of the Court on September 30, 2009. The order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/montero_04_08_09.pdf

1497. On November 17, 2009, the Court issued an order on compliance in which it declared that it would continue to monitor compliance with the State's obligations set forth in the judgment. The order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/montero_17_11_09.pdf.

Case of Gabriela Perozo *et al.* (Globovisión)

1498. This case concerns a series of incidents, starting in 2001, involving harassment, persecution and aggression targeted at 44 individuals associated with the Globovisión television channel –including reporters, their technical teams, staff and executives- and the subsequent lack of due diligence in investigating these incidents.

1499. On March 18, 2008, the President of the Court decided to convene a public hearing on a preliminary objection, and the merits, reparations and costs. The hearing was held during the Court's LXXIX regular session, at the seat of the Court on May 7 and 8, 2008, and was attended

by the Commission, the representatives of the victims and their next of kin, and the Venezuelan State. On June 9, 2008, the parties filed their final briefs of pleadings, motions and evidence.

1500. The Commission is currently awaiting the judgment that the Court is to deliver in this case.

1501. The application is available at the following link: <http://www.cidh.org/demandas/12.442%20Globovision%20Venezuela%2012%20Abril%202007%20ENG.pdf>

1502. On January 28, 2009, the Court delivered its judgment on preliminary objections, merits, reparations and costs, in which it dismissed the preliminary objections and declared that the State was responsible for the non-compliance with the obligation contained in Article 1(1) of the Convention to ensure the right to freely seek, receive and impart information and the right to humane treatment, enshrined in Articles 13(1) and 5(1) of the American Convention, to the detriment of Alfredo José Peña Isaya, Aloys Emmanuel Marín Díaz, Ana Karina Villalba, Ángel Mauricio Millán España, Aymara Anahí Lorenzo Ferrigni, Beatriz Alicia Adrián García, Carla María Angola Rodríguez, Carlos Arroyo, Carlos Quintero, Ramón Darío Pacheco Villegas, Edgar Hernández, Efraín Antonio Henríquez Contreras, Felipe Antonio Lugo Durán, Gabriela Margarita Perozo Cabrices, Janeth del Rosario Carrasquilla Villasmil, Jhonny Donato Ficarella Martín, John Power, Jorge Manuel Paz Paz, José Vicente Antonetti Moreno, Joshua Oscar Torres Ramos, Martha Isabel Herminia Palma Troconis, Mayela León Rodríguez, Miguel Ángel Calzadilla, Oscar José Núñez Fuentes, Richard Alexis López Valle, and Yesenia Thais Balza Bolívar. The Court also found that the State was responsible for the non-compliance with the obligation contained in Article 1(1) of the Convention to ensure the right to freely seek, receive and impart information enshrined in Article 13(1) of the American Convention, to the detriment of Ademar David Dona López, Carlos José Tovar Pallén, Félix José Padilla Geromes, Jesús Rivero Bertorelli, José Gregorio Umbría Marín, Wilmer Jesús Escalona Arnal and Zullivan René Peña Hernández. The Court also concluded that it had not been established that the State had violated Articles 24, 21 and 13(3) of the American Convention. It also ruled that it was not appropriate to analyze the facts of the case under Articles 1, 2, and 7(b) of the Convention of Belem do Pará. Finally the Court ordered the reparations it deemed pertinent. The text of the judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_195_ing.pdf.

Case of Néstor José and Luís Uzcátegui *et al.*

1503. On October 22, 2010 the IACHR submitted the case to the Inter-American Court by filing the report on the merits, in which it established that the State has not diligently investigated the death of Néstor Uzcátegui, who was executed by the police. For his part, Luis Uzcátegui has been subjected to serious persecution by the policía of Falcón State in response to his search for justice regarding the death of his brother Néstor Uzcátegui. As part of this persecution, relatives of Néstor José Uzcátegui have been arrested and subjected to illegal and arbitrary searches and seizures. In addition, Luis Uzcátegui has endured threats against his life and personal integrity, a libel case has been filed against him, and he has had to move from his residence. The human rights violations committed against the members of the Uzcátegui family continue to go unpunished. The Commission emphasized that most of the actions that violated the personal integrity of the victims occurred when the organs of the inter-American system had already sought protection for Luis Uzcátegui through precautionary or provisional measures.

1504. The IACHR asked the Court to declare the State of Venezuela internationally responsible for: i) violating the right to life established in Article 4.1 of the American Convention, in connection with Article 1.1 thereof, to the detriment of Néstor José Uzcátegui; ii) violating the rights to a fair trial and judicial protection established in Articles 8.1 and 25 of the American

Convention, in connection with Article 1.1 thereof, to the detriment of the relatives of Néstor José Uzcátegui; iii) violating the rights to personal integrity, personal liberty, honor, and reputation, and a fair trial and judicial protection established in Articles 5, 7, 11, 8, and 25 of the American Convention, in connection with Article 1.1 thereof, to the detriment of Luís Enrique Uzcátegui; iv) violating the rights to personal integrity, personal liberty, due process guarantees, and judicial protection, established in Articles 5, 7, 8, and 25 of the American Convention, in connection with Articles 1.1 and 19 thereof, to the detriment of Carlos Eduardo Uzcátegui; v) violating the rights to freedom of expression and the principle of legality established in Articles 13 and 9 of the American Convention, in connection with Articles 1.1 and 2 thereof, to the detriment of Luís Enrique Uzcátegui; and vi) violating the right to personal integrity established in Article 5 of the American Convention, in connection with Article 1.1 thereof, to the detriment of the relatives of Néstor José Uzcátegui.

Case of Oscar Barreto Leiva

1505. On October 31, 2008, the Inter-American Commission filed an application against the Bolivarian Republic of Venezuela in case number 11,663, *Oscar Barreto Leiva*, for the State's responsibility in the violation of the rights to a fair trial in the criminal proceedings in which Mr. Oscar Barreto Leiva was convicted of crimes against the public patrimony as a result of his tenure as Sectoral Director General of Administration and Services of the Ministry of the Secretariat of the Office of the Presidency of the Republic, and the consequent violations of the victim's rights to personal liberty and judicial protection.

1506. The Commission argued that the above-mentioned facts constitute violations of rights protected in articles 7, 8 and 25 of the American Convention, and a failure to comply with the general obligation to respect and ensure human rights, undertaken with Article 1(1) of the Convention, and the obligation of domestic legal effects, set forth in Article 2 of that instrument. The text of the application is available at <http://www.cidh.oas.org/demandas/11.663%20Barreto%20Leiva%2031%20oct%2008%20Venezuela%20ENGLISH.pdf>.

1507. On July 2, 2009, a public hearing was held at the seat of the Court.

1508. On November 17, 2009, the Court issued its judgment on merits, reparations, and costs in which it declared that the State was responsible for violation of Articles 8(2)(b), 8(2)(d), 7(1), 7(5), and 8(2) of the American Convention in connection with Article 1(1) thereof; and of Articles 8(2)(c), 8(2)(h), 7(1), and 7(3), in connection with Articles 1(1) and 2, to the detriment of the victim. The Court also ruled that the State had not violated Articles 8(2)(f), 8(1), and 25(1) of the Convention. Finally the Court awarded the appropriate reparations and costs. The text of the judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_206_ing.pdf

Case of Reverón Trujillo

1509. On November 9, 2007, the Commission filed an application with the Court against the Bolivarian Republic of Venezuela in case No. 12,565, María Cristina Reverón Trujillo. The case concerns Mrs. María Cristina Reverón Trujillo's arbitrary dismissal from her post as 14th Provisional First-Instance Criminal Judge of the Caracas Metropolitan Area Criminal Circuit on February 6, 2002, by the Judicial System's Operations and Restructuring Commission, and the lack of an effective judicial recourse to provide adequate redress. Although she won her case in the Political-Administrative Chamber of the Supreme Court of Justice of Venezuela on October 13, 2004, which declared her arbitrary dismissal null and void, that Court did not order her reinstatement in her position in the judiciary or in another post of a similar level and salary scale, or payment of her lost earnings and benefits. That decision was based on the fact that Venezuela's judiciary was at the

time undergoing a restructuring process in which it was agreed that all judicial positions –including those held by provisional judges like Mrs. Reverón Trujillo- were to be filled on the basis of competitive examinations. However, on the date that decision was made, no competitive examinations had been held or even announced. Consequently, in spite of having obtained a judicial ruling acknowledging that her dismissal was arbitrary, the nullification remedy was ineffective in providing Mrs. Reverón Trujillo with full redress for the violations the court confirmed. In its application the Commission argued that the State had violated Article 25 of the American Convention, in connection with Articles 1(1) and 2 of that treaty, to the detriment of Ms. María Cristina Reverón Trujillo, who did not have access to effective judicial recourse to remedy her arbitrary dismissal. The text of the application is available (in Spanish only) at <http://www.cidh.oas.org/demandas/12.565%20Reveron%20Trujillo%20Venezuela%209%20noviembre%202007%20ESP.pdf>

1510. On September 24, 2008, the Court convened a public hearing in the case. Later, the date of the hearing was changed and it was held at the Court’s seat on January 23, 2009. On June 30, 2009, the Court issued its judgment on preliminary objections, merits, reparations and costs, in which it dismissed the preliminary objection and declared that the State had violated Article 25(1) in relation with Articles 1(1) and 2; and Article 23(1)(c), in relation with Article 1(1), in detriment of the victim. It also ruled that the State did not violate Articles 8(1) and 5(1) of the Convention. As part of the reparation measures, the Court ordered that she be reinstated in her position.

1511. The complete text of the judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_197_ing.pdf.

Case of Apitz Barbera *et al.* (First Court of Administrative Disputes)

1512. On November 29, 2006, the Commission filed an application with the Court against the State of Venezuela, in Case 12,489, Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz Barbera, for its removal of judges on the First Court of Administrative Disputes on October 30, 2003, without observing the necessary guarantees of independence and impartiality and in a decision that failed to explain the “inexcusable judicial error” cited as the supposed grounds for their removal. The judges removed from the bench also never received an effective judicial response to the remedy they filed to challenge their removal. In its application the Commission argued that the State had engaged its international responsibility by its failure to discharge its international obligations, and therefore had violated Articles 8 and 25 of the American Convention, in connection with Articles 1(1) and 2 of that treaty, to the detriment of the victims. The text of the application is available (in Spanish only) at <http://www.cidh.oas.org/demandas/12.489%20Corte%20Primera%20de%20lo%20Contencioso%20Administrativo%20Venezuela%2029%20nov%202006.pdf>

1513. On August 5, 2008, the Court delivered its judgment, in which it found that the State had violated the victims’ rights under articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention. The Court ordered the reparations it deemed appropriate. The text of the judgment is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_123_ing.pdf

1514. On December 18, 2009, the Court convened a private hearing on this case to be held on January 29, 2010 at the seat of the Court. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/apitz_18_12_09.pdf. The IACHR participated in that hearing on January 29, 2010, expressing its concern over the lack of progress made in complying with the judgment.

COLOMBIA * 1

9. As in previous years, the situation examined in the Republic of Colombia during 2010 falls within the framework of the criteria set out in the introduction to Chapter IV of the Annual Report of the Inter-American Commission of Human Rights ("IACHR", "Commission"). In the case of Colombia, these criteria are particularly relevant with respect to the continued existence of circumstantial or structural situations 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 conclusions on the matter, in accordance with the procedure set out in Article 59(1)(h) of its Rules of Procedure², for their inclusion in its Annual Report. The preliminary version of the present report was sent to the Republic of Colombia on January 25, 2011, for its observations. On February 25, 2011, the State presented its observations, which have been incorporated, in the relevant parts of this report.³

10. The IACHR is keenly aware of the complex situation facing Colombia, after five decades of violence and its impact on the civilian population. It is also aware of the effect of drug trafficking on the use of violence and the State's endeavors to combat the problem. The Commission observes that despite the attempts aimed at dismantling the armed structures of the United Self-Defense Forces of Colombia (hereinafter "AUC"), illegal armed groups continue to be involved in the commission of acts of harassment and violence against indigenous peoples, Afro-descendent communities, social leaders and human rights defenders. Five years after the enactment of the Justice and Peace Law, prosecutions of members of such groups have resulted in only two convictions, which have not been finalized. In addition, there have been few indictments of members of the security forces for committing extrajudicial executions and it is necessary that the investigations be conducted quickly and that action be taken to prevent harassments and attempts against the lives of the victims' families who denounce these matters.

11. The Commission stresses that in spite of these challenges, the Colombian State has made commendable efforts to move forward with the peace process through the demobilization of armed actors and the protection of its citizens. Among these efforts, it should be pointed out that on November 22, 2010, the Vice President of the Republic, the Procurator General of the Nation, the Ombudsman and representatives of the international community and civil society signed the

* I consider that in the case of Colombia and the other the countries included in Chapter 4; there has not been an adequate analysis of the rest of the countries in the continent that are in similar or worst circumstances. To this effect, I consider that the methodology used up to today does not give for certain, elements to measure the situation of each one of the countries in the region and more specifically an unbiased and fragmented vision of the compliance of the States of the region with their human rights obligations. Commissioner Luz Patricia Mejía Guerrero.

¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not take part in either the deliberations or the decision in the current chapter.

² Article 59 of the IACHR's Rules of Procedure establishes: "1. The Annual Report presented by the Commission to the General Assembly of the OAS shall include the following: [...] h. any general or special report the Commission considers necessary with regard to the situation of human rights in Members 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 the said report to the respective 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 extraordinary period of sessions, held between December 4 and 8, 2000, amended at its 116th regular period of sessions, held between October 7 and 25, 2002, at its 118th regular period of sessions, held between October 6 and 24, 2003, and at its 137th regular period of sessions, held from October 28 to November 13, 2009).

³ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, of February 25, 2011.

Joint Statement Towards a Human Rights and International Humanitarian Law Policy which convenes a National Human Rights Conference for December 2011, aimed at developing a common agenda for joint action between the State, civil society and the international community centered around a permanent policy of promoting and respecting Human Rights and International Humanitarian Law.⁴

12. However, the Commission observes that together with the initiatives for the promotion and protection of human rights - such as the one cited above - the violence persists and continues to afflict the most vulnerable sectors of the civilian population. There are also new challenges in the administration of justice and to ensure comprehensive reparation of the damage caused to the victims of the conflict.

13. As a result, based on the information received from the State and from civil society, the IACHR has prepared a number of observations about the situation of human rights in Colombia during 2010. Specific reference is made to the advances and challenges in the investigation of crimes committed during the conflict, including the participation of the paramilitary leaders who have applied for the benefits granted by the Justice and Peace Law and who are present in Colombia, and those who have been extradited to the United States, in proceedings under the said Law; the persistent patterns of violations of the rights to life and to personal integrity; the situation of ethnic groups; and the activities of the intelligence services against human rights defenders, social leaders and judicial officers.

I. THE CONTINUING VIOLENCE IN COLOMBIA

14. The IACHR continues to receive complaints about the commission of crimes by State agents and illegal armed groups.⁵ In addition to the emerging armed groups mentioned in the following section, the FARC and ELN continue to commit acts of violence with the aim of frightening and punishing civilians and communities, and are using anti-personnel mines in violation of the rules of international humanitarian law. These violations of human rights and breaches of international humanitarian law against the civilian population continue to feed the phenomenon of internal displacement.

15. The IACHR notes that the recruitment and use of children by illegal armed groups like the FARC and ELN still constitutes a practice⁶. Similarly, the Commission expresses special concern for the use of children for intelligence gathering by members of the security forces.⁷ In its observations, the State pointed out that "it is not the policy of the Armed Forces to use children for intelligence-gathering aims" and stated that the Colombian Institute of Family Welfare and the National Army have signed Inter-Administrative Accord No. 059 of 2009, which is mainly aimed at training Security Force personnel in the protection and assistance that should be given to children⁸.

⁴ Presidential Human Rights and International Humanitarian Law Program. Signed Joint Statement on Human Rights. Document available at: <http://www.derechoshumanos.gov.co/Prensa/Communications/2010/Paginas/101122a.aspx>.

⁵ IACHR. Press Release 117/10, IACHR condemns the murder of Oscar Maussa in Colombia, <http://www.cidh.org/Communications/Spanish/2010/117-10sp.htm>.

⁶ Human Rights Council. Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 69.

⁷ Human Rights Council. Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 74.

⁸ The State pointed out that approximately 2,500 members of the Security Forces have been trained under the Accord. In addition, it pointed out that one of the main themes in the training workshops is related to the judicial route applicable to children and young persons who break away from illegal groups, the fulfillment of the handover within the 36 hours subsequent to their disassociation and the prohibition on interviewing and use of under-aged persons in intelligence

Also, the Commission takes note of the CONPES document on the "Policy for the prevention of the recruitment and use of boys, girls and adolescents by illegal organized armed groups and organized criminal gangs" of July 19, 2010, among other initiatives adopted by the State⁹; however, it observes that the legal prohibition of the use of children by the Armed Forces is not accompanied by a policy designed to avoid the practice. In this respect, the Commission will follow-up on the adoption of policies in this area and on their effective implementation.

A. Extrajudicial Executions

16. With regard to the figures available on the deaths in the context of the conflict, the "Human Rights and International Humanitarian Law Observatory" of the Vice-presidency of the Republic - in conformity with its own approach¹⁰ - stresses that between January and October 2010, 12,811 killings have occurred.¹¹ Similarly, it indicates that during the same period there have been 32 massacres, with 153 victims.¹² For its part the CINEP - following its own methods of compiling and presenting the figures¹³ - indicates that between January and June 2010, there have

...continuation

activities. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 4.

⁹ The State pointed out in its observations that "the High Council for Reintegration is developing measures from the early prevention perspective and focused on preventing recruitment by organized illegal armed groups and organized crime. In this sense, it is implementing the regional spread of the Strategy for the Prevention of Recruitment of Children, Adolescents and Young People in 30 target municipalities. It is working with three population groups: institutions, communities and children, adolescents and young people. Measures are thereby being implemented for the evaluation, education and strengthening of local initiatives and collective visibility measures on recruitment and/or on the rights of children, adolescents and young people." It also pointed out that Community Reintegration is implementing a childhood and adolescence perspective, as well as a perspective of prevention of recruitment and use of children and adolescents in 22 municipalities. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 3 and 4.

¹⁰ The methodology used by the statistical studies of the Observatory of Human Rights and International Humanitarian Law of the Vice-presidency of the Republic consists of compiling information reported by the National Police, in fact by the Center for Criminal Investigation, and as a second source of contrast, in order to validate information, the Observatory has developed its "Weekly Press Log", a product of a daily review of national and regional newspapers and the radial sources consulted on the Internet; from which they derive information registered on the following themes: the judicial activity referring to the area of human rights and IHL, the arrest of combatants, members of illegal groups, the military actions of the Colombian Armed Forces; actions of 'subversive groups' and self-defense groups; breaches of International Humanitarian Law; follow-up categories, whose violations have no known perpetrator; and which are classified generally as "peace events and anti-war demonstrations". This source does not publish a list of the victims of these actions. See <http://www.derechoshumanos.gov.co/modules.php?name=informacion&file=article&sid=223>.

¹¹ The Observatory of the National Vice-presidency defines killings exclusively from the perspective of international humanitarian law, in the following way: "that which, on the occasion of, and during, the armed conflict, causes the death of a protected person, members of the civilian population, individuals not participating in hostilities and civilians under the control of the other party; the wounded, sick or shipwrecked placed *hors de combat*, religious or health personnel, working journalists or accredited war correspondents, combatants who have laid down their weapons upon capture, rendition or for other analogous reasons, who, before the outbreak of hostilities were considered as stateless or refugees". See http://www.derechoshumanos.gov.co/observatorio_de_DDHH/default.asp. The figures of the Observatory of the Vice-presidency show 13,116 murders in the same period in 2009.

¹² The figures of the Observatory of the Vice-presidency show 24 massacres in the same period in 2009. See <http://www.derechoshumanos.gov.co/Observatorio/Paginas/Observatorio.aspx>.

¹³ Although the CINEP has based its statistics on press sources, recently it has stated in its Reports that it has had to "largely abandon press sources and listen more to live and direct voices of the victims, their families, their organizations, attorneys and social milieus. Each time we are more convinced that it is impossible to claim to offer statistics on the grave violations of human rights and breaches of IHL in Colombia. Many are the reasons why a significant or, at times, enormous quantity of these violations remain voiceless and knowledge of them is not brought before the instances, which can denounce them. There are frequent reasons of fear. There are reasons of resources and limitations on communication, in a country of such physical size, and with great poverty. There are reasons of a lack of information and a lack of mediating instances to process and record the complaints. Many events are known or denounced months or even years after they occurred. See CINEP database, *Noche y Niebla* No. 34/35, p. 15. For more details see "Synthesis of the conceptual

Continued...

been 192 extrajudicial executions;¹⁴ 19 deliberate killings of protected persons¹⁵ and 11 forced disappearances.¹⁶ It indicates that to June 2010, six episodes of "false positives" have been reported which show 11 victims of extrajudicial execution and 21 episodes in previous years with 29 victims who had not been recorded before.¹⁷ The IACHR deems it relevant to cite in its report both sources despite the frequent methodological discrepancies between them, in order to gain a picture presented by official sources as well as from civil society,¹⁸ as is its consistent practice.

17. The United Nations Rapporteur on Arbitrary Executions, Professor Philip Alston, defined the false positives as "illegal executions of civilians manipulated by the security forces in order that they appear as legitimate guerrillas or delinquents that were killed in combat."¹⁹ In this sense, the Commission understands that the cases of false positives constitute cases of extrajudicial executions.

18. The complaints about extrajudicial executions committed by members of the security forces have been a matter of concern for the IACHR in its annual reports for the years, 2006, 2007, 2008 and 2009.²⁰ The clarification of these complaints and the follow-up to the measures adopted by the State in order to try the perpetrators and prevent future incidents continues to be a matter of special interest for the IACHR and the International Community. The State pointed out that it has begun the first phase of the agreement in order to follow-up on the implementation of the 15 measures in the area of human rights²¹ signed with the OHCHR in December 2009.²²

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framework adopted by the data base" at <http://www.nocheyniebla.org>. It is worth noting that this source does publish a list of victims of the events built up in its statistics.

¹⁴ This source refers both to "the victims of extrajudicial executions due to abuse of authority and social intolerance by direct or indirect State agents (violations of human rights)" as well as to "victims registered simultaneously as extrajudicial executions committed by direct or indirect State agents due to political persecution drives (violations of human rights) and as intentional murders of protected persons (breaches of international humanitarian law)". See CINEP database, *Noche y Niebla* No. 41, p. 52, <http://www.nocheyniebla.org/files/u1/41/Niebla41.pdf>.

¹⁵ This source refers to "victims of intentional killing of protected persons or civilians killed by use of illegal methods and means in war or civilians killed in events in war or in attacks on civilian property (breaches of international humanitarian law on the part of the insurgency." See CINEP database, *Noche y Niebla*, No. 41, p. 52, <http://www.nocheyniebla.org/files/u1/41/Niebla41.pdf>.

¹⁶ See CINEP database, *Noche y Niebla*, No. 41, p. 52, <http://www.nocheyniebla.org/files/u1/41/Niebla41.pdf>.

¹⁷ See CINEP database, *Noche y Niebla*, No. 41, p. 52, <http://www.nocheyniebla.org/files/u1/41/Niebla41.pdf>.

¹⁸ CINEP is one of the few non-official entities collecting data all over the country from different sources of civil society and reporting statistical information relating to the armed conflict. The information underpinning the CINEP Report originates from 78 entities of civil society, including human rights, religious, educational, ethnic and trade union organizations. See CINEP database, *Noche y Niebla*, No. 34/35.

¹⁹ Human Rights Council. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, March 31, 2010, A/HRC/14/24/Add.2, para. 10.

²⁰ See IACHR, Chapter IV - Colombia in the IACHR *Annual Report 2006*; Chapter IV - Colombia in the IACHR *Annual Report 2007*; Chapter IV - Colombia in the IACHR *Annual Report 2008*; and Chapter IV - Colombia in the IACHR *Annual Report 2009*.

²¹ "Fifteen new measures on the matter of human rights". The measures are the following 1. With the aim that military doctrine is completely complied with, a review process will be carried out over the following three months, down to the tactical level, to verify that it is being fully implemented. At the end of the review process the adjustments will be put into operation in accordance with this objective. 2. The work in this area will focus on identifying failures in intelligence procedures, operational procedures and logistical procedures (controls over the use and storage of weapons and munitions); and reviewing the implementation of the intelligence doctrine. 3. Review the training in human rights in accordance with the Comprehensive Policy and the Single Teaching Model. 4. Establishing in the next three months a human rights learning evaluation system. 5. Organizing workshops in all the Divisions about the responsibility of the Commanders and strengthening that material in the training and teaching schools. 6. For the purpose of ensuring a rapid and efficient process for guaranteeing the investigation, an Immediate Inspection Commission (CII) has been created with the same composition as the Temporary Commission, which will immediately travel to places where complaints or accusations concerning serious

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19. As the IACHR has already reported in 2008, complaints as to the high number of extrajudicial executions has led to the identification of a number of patterns, among which the following stand out: extrajudicial executions appear in the context of anti-insurgent military operations, even though witnesses state that there was no combat; in a high number of cases, the victim is unlawfully seized at home or place of work and taken to the place of execution; the persons executed or disappeared are in general peasants, indigenous people, workers, young people, marginalized persons or community leaders; the victims are reported by the security forces as insurgents killed in combat; the victims often appear in uniform with different types of weapons and military equipment, while, according to witnesses, they had disappeared unarmed and in their everyday clothes; sometimes the victims are identified beforehand by anonymous, masked, or former members of illegal armed groups, and on other occasions they are selected at random; the removal of the body is undertaken by the same members of the security forces who previously have "killed them in combat"; both the crime scene and existing evidence are not preserved; frequently the bodies show signs of torture; the bodies are cleaned of personal effects and their identity documents disappear; the bodies are taken to municipalities far from the place where they were originally detained, constituting serious impediments both for access for the immediate family to the bodies as well as for identifying them; the bodies are buried as 'not known' despite being identified by family members or third parties; members of the security forces receive economic and professional incentives, and bonuses for the presentation of 'positives'; the jurisdiction for investigating the events is assigned from the outset to criminal military judges; the victims' family members, witnesses, and human rights defenders dedicated to clarifying the events are the target of threats and acts of intimidation; the percentage of indictments of the perpetrators is minimal.²³

20. During 2009, the United Nations Rapporteur on Arbitrary Executions, Professor Philip Alston, conducted a visit to Colombia where he recognized the efforts made by the Government,

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human rights abuses or IHL breaches have been made. This Commission will analyze the case from the operational point of view and will recommend to the Inspector to take immediate corresponding administrative and disciplinary actions and the necessary revisions of the operational procedures. 7. Examine the changes necessary to revise and strengthen the position of Delegated Inspector that from now on will report to the Inspector General of the General Command of the Armed Forces exclusively on issues concerning human rights and IHL. 8. With the aim of guaranteeing the unity of criteria and a greater independence in the planning, execution and evaluation of military operations, the measures adopted in relation to the Operational Legal Advisers (AJOs) will be concentrated on organizing a hierarchical structure for this body of advisers; and b. Ensuring that in the future these report to Headquarters in Bogotá in each of the Armed Forces. 9. From now on, the use of force against illegal armed groups will be preceded by the necessary approval by the General Command of the Armed Forces and a periodic evaluation mechanism of the authorized use of force in order to counteract the different threats will be implemented. 10. The National Police will have primacy in respect to the fight against criminal gangs (BACRIM). 11. With a view to improving the evolution of the performance of military units, the action to be carried out over the next three months will focus on perfecting the evaluation system of military units to ensure that they are evaluated according to the fulfillment of the objectives laid down for the different types of operations, according to the level of the threat in the area. 12. The work over the next three months will be concentrated on putting into operation a system for implementing rules of engagement that take into account the different threat levels in the territory. 13. A certification in human rights will be established for all officers aspiring to participate in the course for promotion to the rank of Lieutenant Colonel or General, according to a detailed examination of their C.V. 14. Strengthen the judicial involvement in operations by the Prosecutor General's Office and the CTI (Technical Investigation Unit), and fulfilling completely Directives 10 and 19. 15. Establish as far down as the tactical level a system for receiving complaints on human rights issues and ensuring a smooth dialogue with civil society will be established as far down as the tactical level. Annual Report 2008, Chapter IV Colombia: <http://www.cidh.oas.org/annualrep/2008eng/Chap4.a.eng.htm>, footnote 97.

²² Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 4.

²³ See the Preliminary Report of the "International Observation Mission on Extrajudicial Executions and Impunity in Colombia", published in Bogotá, on October 10, 2007. See also the Observatory of Human Rights and International Humanitarian Law of the Colombia-Europe-US Coordination "False Positives: extrajudicial executions directly attributable to the security forces in Colombia", July 2002 to June 2006. Annual Report 2008, Chapter IV Colombia: <http://www.cidh.oas.org/annualrep/2008sp/cap4.Colombia.sp.htm>.

whilst expressing concern at the gulf existing between its policies and their application.²⁴ The Commission notes that after the December 2009 issue of the Manual of Operational Law²⁵ and Directive 017 on the Rules of Engagement - which contain rules on human rights and international humanitarian law applicable to the planning and conduct of military operations²⁶ - complaints continue to be received about the commission of extrajudicial executions, allegedly by members of the security forces. In its observations the State pointed out that throughout 2010 it received news on five cases attributable to State agents.²⁷

21. The Commission notes with concern the situation encountered at the La Macarena Municipal Cemetery²⁸ in the Meta Department where, according to OHCHR, 446 individuals reported by the security forces as having died in combat between March 2002 and June 2010 were buried unidentified.²⁹ In its report on these events, OHCHR reported that the removal of bodies for burial at the La Macarena cemetery or other nearby municipal cemeteries, was linked to the presence or lack of presence of authorities who could undertake the legal procedure of the inspection of the bodies, as well as to logistical or weather circumstances which helicopter flights depend on to transport the bodies.³⁰

22. Similarly, it reported that according to Ministry of Defense information, between 2004 and 2010, the Omega Joint Task Force operating in La Macarena, reported 1,417 individuals killed in combat of which it appears 613 are buried at La Macarena (according to the number of autopsies recorded in the Medical Clinic Center of La Macarena³¹) and it remains to be determined where the other 804 were buried.³² The Commission observes that after the complaints were received, the National Unit for Justice and Peace of the National Public Prosecutor's Office created

²⁴ Human Rights Council. Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 38.

²⁵ Note of the Foreign Relations Ministry of the Republic of Colombia DIDHD/ No. 21398/0386 of April 15, 2010.

²⁶ Foreign Relations Ministry of the Republic of Colombia, Human Rights in Colombia, available at: <http://www.cancilleria.gov.co/wps/wcm/connect/01c6f700415d2418b950fba7da5ab940/Documento+Derechos+Espa%C3%B1ol+Humanos+en+Colombia+tres+columnas+enero+2010.pdf?MOD=AJPERES&CACHEID=01c6f700415d2418b950fba7da5ab940>.

²⁷ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 5.

²⁸ The La Macarena Municipal Cemetery is located on the southern border of the municipal capital of the La Macarena Municipality in the Meta Department, between the military base established there during 2003-2004 and the landing strip. OHCHR stresses that "the cemetery has officially operated since 1959 and has a single entrance independent from access to the military base. Between November 1998 and February 2002, during the period of the *Zona de Distensión*, it was controlled by the guerrillas." OHCHR also points out that "since the sixties, the Colombian Air Force has used the La Macarena landing strip for resupplying tasks. At the end of the *Zona de Distensión*, which was in force between 1998 and February 2002, the Rapid Deployment Force (FUDRA), an army unit created in 1999, set out to recapture control of the area. In 2003, the Omega Joint Task Force was created, into which FUDRA was incorporated. The Task Force has operated up until now in the La Macarena Municipality, the other municipalities of the former *Zona de Distensión*, including San Vicente del Caguán (Department of Caquetá) and other neighboring ones such as San José del Guaviare and Calamar (Guaviare Department) and Puerto Rico (Meta Department)". Report of Office of the United Nations High Commissioner for Human Rights in Colombia. Macarena Cemetery, Department of el Meta, September 7, 2010.

²⁹ Report of Office of the United Nations High Commissioner for Human Rights in Colombia. Macarena Cemetery, Department of Meta, September 7, 2010.

³⁰ Report of Office of the United Nations High Commissioner for Human Rights in Colombia. Macarena Cemetery, Department of Meta, September 7, 2010.

³¹ Of the 613 autopsies of persons recorded as having died in combat, 167 were identified and 446 are unidentified, among whom 51 women are recorded. Report of Office of the United Nations High Commissioner for Human Rights in Colombia. Macarena Cemetery, Department of Meta, September 7, 2010.

³² Report of Office of the United Nations High Commissioner for Human Rights in Colombia. Macarena Cemetery, Department of Meta, September 7, 2010.

as special group to deal with the case, which undertook procedural steps for inspection at the La Macarena cemetery with the aim of locating the communal graves. To date the verification process is underway to establish the identity of the persons buried as unidentified, and there has been special support available for the family members of the disappeared persons.³³ According to OHCHR, the La Macarena case shows the inconsistencies in the registers, or their absence, and insufficient oversight on the activities of the security forces.³⁴ In this regard, the State indicated in its observations that the Ministry of Defense is currently preparing a Directive to issue instructions to collect and preserve the documents from operational files in order to have a historical operational record and make available in the shortest possible time information required by the judicial and disciplinary authorities, and pointed out that there is an institutional agreement that the clarification of events will be undertaken by independent civil organs, suitable for appropriate investigation, prosecution and punishments.³⁵

23. The State pointed out that the National Unit of Public Prosecutors for Justice and Peace has undertaken various procedural steps at La Macarena Cemetery, where it has exhumed a considerable number of corpses to carry out the necessary testing, and to identify them. In addition, the State indicated that the said Public Prosecutors Unit has for approximately three years been working in different cemeteries in the country to establish the number of N.N. in each one of them, and subsequently carrying out a strategy to identify and hand them back to their immediate families. It indicated that of the 464 unidentified bodies buried in La Macarena Cemetery since 2002, 101 have been identified and the remains of 22 others have been exhumed. It indicated that one of the aims of the investigation being conducted by the said Prosecutor's Unit is to establish within a fixed framework, *inter alia*, the history which preceded each of the burials, the authorities or individuals which ordered and carried them out, the existence of autopsy protocols, acts of raising and inspecting the bodies, post-mortem fingerprinting, photographing, and the criminal investigations related to the unnamed bodies buried, as well as the date of burial, the circumstances surrounding their death and the perpetrators.³⁶

24. The Commission emphasizes that on August 20, 2010, the Congress enacted Law 1408 of 2010, which aims to pay tribute to the victims of the crime of forced disappearance, to adopt measures to find and fully identify them, and lend aid to their family members during the process of handing over the bodies or the exhumed remains. Similarly, the Commission is pleased to observe the unanimous approval in Congress of the International Convention for the Protection of All Persons against Forced Disappearances, which represents a further step towards ratification of the said Treaty. Up to November 2010, the National Commission for the Search of Disappeared Persons reported 14,118 forced disappearances.³⁷

25. As regards the clarification of judicial complaints, the State has announced that the National Human Rights and International Humanitarian Law Unit of the National Attorney General's Office has 1,244 active cases of killings allegedly attributed to State agents, implicating 3,676 members of the security forces. 708 individuals are being tried, and 361 of them are about to be judged or are awaiting judgment. 281 persons have benefitted from 94 decisions enjoining the

³³ Report of Office of the United Nations High Commissioner for Human Rights in Colombia. Macarena Cemetery, Department of Meta, September 7, 2010.

³⁴ Report of Office of the United Nations High Commissioner for Human Rights in Colombia. Macarena Cemetery, Department of Meta, September 7, 2010.

³⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 5.

³⁶ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 6 and 7.

³⁷ Information available at: <http://www.comisiondebusqueda.com/mapaDeBusqueda.php>.

issuing of security measures, and 41 decisions have been issued precluding an investigation, which benefits 194 defendants.³⁸ For its part, the National Procurator General's Office is conducting disciplinary investigations.

26. As to what occurred at Soacha, Cundinamarca Department in 2008, the State pointed out that five investigations are underway in which 54³⁹ members of the security forces are being charged. In January 2010, hearings clearing the accused were held in five cases, and the Guarantee Control Judges acquitted 32 accused based on Article 317.5 of the Code of Criminal Procedure which provides for a cut-off deadline if the trial stage has not begun 90 days after the presentation of the written indictment.⁴⁰ The Commission notes that the Attorney General in charge, Guillermo Mendoza Diago, expressed his concern for the acquittal orders and pointed out that "these acquittal orders due to the cut-off deadline, when some procedural steps submitted by the defense were pending and then became not fair cause, this is what concerns us, because we feel that the judges are not paying heed to the words of Article 317 of Law 906, which clearly sets out that there is to be no acquittal when the deadline elapses due to dilatory tactics or when there is fair or reasonable cause preventing the start of the oral trial."⁴¹ The State pointed out that "only one member of the Security Forces is currently detained"; the others are free by order of the 2nd and 4th Soacha Guarantee Control Judges, based on Article 317 of Law 906.⁴² In this regard, the Commission points out the incidence of delaying tactics by defense lawyers in these trials⁴³ so that the attention of the authorities is brought to the fact in order that these practices may be punished. For its part, the National Procurator General's Office is currently conducting 20 disciplinary investigations into the events at Soacha.⁴⁴

27. The Commission points out that the number of convictions for committing extrajudicial executions has been minimal. To date, there are 1.244 active cases of extrajudicial executions before the National Human Rights and Humanitarian Law Unit of the Office of the Prosecutor and 40 guilty verdicts have been rendered against 194 individuals, twelve of which were by guilty plea through early sentencing. Similarly, 10 acquittal judgments have been rendered to the benefit of 30 individuals.⁴⁵ The Commission considers it necessary to repeat the importance of pursuing the investigations rapidly, and that actions be taken to prevent harassment and attempts against the victims' immediate family who complained of these events.

28. It should be pointed out that as to March 2010, 299 cases have been voluntarily transferred by the Military Criminal Courts to the ordinary courts; however, there are more than 200 conflicts of competence over cases of alleged extrajudicial executions.⁴⁶ The Commission has

³⁸ Note of the Foreign Relations Ministry of the Republic of Colombia DIDHD/ No. 21398/0386 of April 15, 2010.

³⁹ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 8.

⁴⁰ Note of the Foreign Relations Ministry of the Republic of Colombia DIDHD/ No. 21398/0386 of April 15, 2010.

⁴¹ Communiqué of the National Public Prosecutors Office, January 8, 2010, (underlining added): <http://fqn.fiscalia.gov.co:8080/Fiscalia/contenido/controlador/controlador> in Note of the Foreign Relations Ministry of the Republic of Colombia DIDHD/ No. 21398/0386 of April 15, 2010.

⁴² Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 8.

⁴³ Human Rights Council. Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, March 31, 2010, A/HRC/14/24/Add.2, para. 10.

⁴⁴ Note of the Foreign Relations Ministry of the Republic of Colombia DIDHD/ No. 21398/0386 of April 15, 2010.

⁴⁵ Note of the Foreign Relations Ministry of the Republic of Colombia DIDHD/ No. 21398/0386 of April 15, 2010.

⁴⁶ Human Rights Council. Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 41.

received information that the criminal military courts are still seized of cases of human rights violations and that in these cases the Superior Council of Judicature continues to resolve conflicts of competence in favor of the criminal military courts.⁴⁷ Similarly, it has received information about extrajudicial execution cases in which the first procedural steps are controlled by the criminal military courts, or in which evidence has been affected by their involvement.⁴⁸ For its part, the report of the United Nations Committee on Human Rights has remarked with concern that military courts continue to assume jurisdiction over extrajudicial execution cases when the alleged perpetrators are from the security forces.⁴⁹ In this regard, the State pointed out that the Executive Committee of the Military Criminal Courts set in motion an Action Plan in order that the authorities of the said jurisdiction review their power to hear each one of the cases underway alleging the homicide of a protected individual.⁵⁰

29. The Commission notes with satisfaction that in December 2010 the Council of State decided to lift the temporary suspension imposed since 2009 on the agreement between the National Public Prosecutor's Office and the Ministry of Defense (Administrative Order of June 14, 2006) in which it was agreed that investigations against members of the security forces who participated in military operations with reported deaths in combat had to be undertaken by the ordinary courts, headed by the Public Prosecutor, before being seized by the Criminal Military Courts⁵¹. The provisional suspension was issued pending an application for annulment for the alleged unconstitutionality of the Administrative Act.⁵² The Commission repeats that the failure of the criminal military courts, in some areas of the country, to transfer investigations to the ordinary criminal courts, constitutes an impediment to the clarification of these crimes.⁵³

30. The State reported that between 2008 and 2010, 912 murder investigations were referred to the ordinary courts, of which 231 were sent in 2010⁵⁴, however it does not establish how many cases still remain subject to its jurisdiction. The Commission has received information on acts of persecution against officials who comply with their duty to transfer cases on human rights violations to the ordinary courts.⁵⁵

⁴⁷ Information received during the IACHR's 140th period of sessions. Hearing on the use of military courts in cases of human rights violations in Colombia held on October 28, 2010. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

⁴⁸ Information received during the IACHR's 140th period of sessions. Hearing on the use of military courts in cases of human rights violations in Colombia held on October 28, 2010. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

⁴⁹ Human Rights Committee Examination of the Reports presented by the State Parties by virtue of Article 40 of the Covenant, Final Observations of the Human Rights Committee, CCPR/C/COL/CO/6, August 4, 2010, para. 14.

⁵⁰ In addition, the State pointed out that the Executive Committee of the Military Criminal Courts requested the designation of special agents from the Public Ministry to act in the investigations containing complaints which involve the military criminal courts. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 8 and 9.

⁵¹ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 9.

⁵² Information received during the IACHR's 140th period of sessions. Hearing on the Application of military courts in cases of human rights violations in Colombia held on October 28, 2010. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

⁵³ IACHR Annual Report 2009, Chapter IV Colombia, para. 69 <http://www.cidh.oas.org/annualrep/2009sp/Ch.4Colo.09.sp.htm>.

⁵⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 8.

⁵⁵ Information received during the IACHR's 140th period of sessions. Hearing on the Application of military courts in cases of human rights violations in Colombia held on October 28, 2010. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

31. The Commission notes that military judges issue archiving and *nolli prosequi* decisions in cases of human rights violations, and that they extend the military jurisdiction to the detention regime for members of the security forces charged, accused and sentenced for human rights violations.⁵⁶ In this regard in the *Case of Manuel Cepeda Vargas v. Colombia*,⁵⁷ among others, the Inter-American Court established that the inadequacy of the criminal military courts extends to all stages of the proceedings, including the sentencing stage. Similarly, in the cases of *Cabrera and Montiel Flores v. Mexico*⁵⁸ and *Rosendo Cantú v. Mexico*⁵⁹, the Court repeated its consistent jurisprudence that the military courts are not a competent forum to investigate, and in this case, try and punish the perpetrators of alleged human rights violations, and that the prosecution of the perpetrators always belongs to the ordinary courts.

32. On August 17, 2010, Law 1407 of 2010 was enacted - the new Criminal Military Code - which establishes an indictment system in the proceedings before the criminal military courts and establishes new figures such as the Criminal Military Prosecutor General, due process judges and Technical Body for Military Investigations. In this regard, the Commission registers its concern about certain provisions of the new Code like the chapter on crimes against the civilian population, *inter alia*, the restrictions on the liability of the security forces in cases when they are in a position of guarantor, the difference between the sentences imposed by the ordinary courts and those established by the criminal military courts, which may affect the right of victims of human rights violations to rely on an independent and impartial tribunal.⁶⁰ In this respect, the Commission and the Inter-American Court of Human Rights have repeatedly stated that criminal military courts do not provide an adequate forum to investigate, try and punish cases involving violations of human rights.⁶¹

33. Regarding the information on the consolidation of other types of violence, the IACHR reiterates that the active protection of the right to life and of the other rights enshrined in the

⁵⁶ Information received during the IACHR's 140th period of sessions. Hearing on the Application of military courts in cases of human rights violations in Colombia held on October 28, 2010. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

⁵⁷ See, *inter alia*, I.A. Court H/R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213.

⁵⁸ See, *inter alia*, I.A. Court H/R. *Case of Cabrera and Montiel Flores v. Mexico*. Preliminary Objections, Merits and Reparations. Judgment of November 26, 2010. Series C No. 220.

⁵⁹ See, *inter alia*, I.A. Court H/R. *Case of Rosendo-Cantú and another v. Mexico*. Preliminary Objections, Merits and Reparations. Judgment of August 31, 2010. Series C No. 216.

⁶⁰ Information received during the IACHR's 140th period of sessions. Hearing on the Application of military courts in cases of human rights violations in Colombia held on October 28, 2010. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>. For its part, the State reported that in Judgment C-533 of 2010, which examined the constitutionality of the draft Military Criminal Code bill, the Constitutional Court stressed that "conduct referred to in Articles 155, 156, 157, 158, 159 and 160 of the draft Military Criminal Code contains constituent elements which differ from those contemplated in the Ordinary Criminal code in Title II on offenses against persons protected by International Humanitarian Law, with the understanding that the missions provided for in the Constitution, the law and the regulations of the military forces and the Police must be carried out permanently in all required circumstances and not only in the context of the armed conflict. Therefore the Court concludes that when they do not take place in the context of armed conflict the military justice can examine these types of conduct solely and exclusively whenever there is a proven direct and original link with the mission of the military or police service; should that not be the case, the perpetrators should be prosecuted pursuant to the applicable criminal law by the ordinary criminal jurisdiction". Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 10.

⁶¹ See, *inter alia*, I.A. Court H/R. *Case of the Mapiripán Massacre v. Colombia*, Judgment of September 15, 2005; I.A. Court H/R. *Case of the 19 Tradesmen v. Colombia*, Judgment of July 5, 2004 and I.A. Court H/R. *Case of Las Palmeras v. Colombia*, Judgment of December 6, 2001 and IACHR. Report 43/08, Case 12.009, *Leydi Dayan Sánchez v. Colombia*, Merits July 23, 2008.

American Convention, is within the framework of the State's duty to guarantee the free and full exercise of the rights of everyone under the jurisdiction of the State, and requires that it adopt the necessary measures to try and punish the arbitrary deprivation of life, personal integrity and freedom. It especially demands that these rights are not violated by the security forces of the State itself.⁶²

B. Internal Displacement

34. The phenomenon of internal displacement continues to affect the civilian population in Colombia. The Single Registry of Displaced Persons records a total figure of 3,486,305 internally displaced persons up to July 31, 2010. For its part, the Consultant for Human Rights and Displacement (CODHES) refers to a total 4, 915,579 internally displaced persons up to the end of 2009.⁶³

35. The Commission has observed that displacement mainly affect persons and communities located in areas with the greatest number of armed confrontations, and that it is mainly caused by the plundering of the land by illegal armed actors. The Commission observes that, on the whole, the plundered lands continue to be under the control of the illegal owners, than in some cases are companies that execute large-scale investment projects, and their fronts. In this regard, OHCHR has shown its concern at the numerous threats and killings of persons who lead or participate in proceedings to recover possession of these lands,⁶⁴ and has requested that the State "adopt a comprehensive protection program to supplement the necessary measures for public security, including a risk analysis at the local level; together with political, technical and financial aid for individuals, community organizations and the victims who are reclaiming possession of their lands."⁶⁵ The State has pointed out in its observations that, with international support, it is currently protecting social leaders working for land restoration and to that effect it has arranged various meetings between authorities and the persons affected. It stated that in Apartadó on January 23, 2011, the Chief of Police of Urabá, Colonel Jaime Ávila Ramírez and the President of the Victims' Association for the Restitution of Lands and Property, Carmen Palencia, agreed to design a plan to protect the life of the peasants.⁶⁶ However, the Commission is especially concerned with the displaced persons' humanitarian and security situation, as well as the viability of their return.

36. The MAPP/OEA has reported that the north of el Valle, the coast of the Córdoba Department, and the Gulf of Morrosquillo are three regions which have suffered considerable harm

⁶² I.A. Court H/R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 153. *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100., para. 111. *Case of Juan Humberto Sánchez v. Honduras. Request for Interpretation of the Judgment on Preliminary Objections, Merits and Reparations*. (Article 67 of the Inter-American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, para. 110.

⁶³ CODHES, Bulletin 76 of January 27, 2010. http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=62&Itemid=50.

⁶⁴ Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia, March 4, 2010, A/HRC/13/72, para. 79.

⁶⁵ Press Release, Colombian Office of the United Nations High Commissioner for Human Rights, November 26, 2010. On repudiation of the violent death of the leader Óscar Maussa, the UN Office for Human Rights requests a protection policy for individuals claiming restitution of their land. <http://www.hchr.org.co/publico/comunicados/2010/comunicados2010.php3?cod=37&cat=81>.

⁶⁶ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 11.

due to high crime rates committed by armed actors. For this reason, the communities in these areas continued to be at risk of displacement and/or confinement.⁶⁷

37. In 2010, the Commission granted precautionary measures in favor of communities and individuals in a state of displacement, i.e., 29 displaced families in the Argelia Municipality, Cauca Department, who had been displaced to Popayán after being the victims of alleged threats, acts of violence, tracking and disappearances; 170 families of the Veredas El Vergel and El Pedregal, Cauca Department, who had been the victims of gunshot injuries, forced displacements and other alleged acts of violence in the context of the danger due to the armed conflict; and Álvaro Javier Martínez Torres and his family who were in state of imminent danger, allegedly because of his efforts to defend his family's rights and those of other displaced persons at the "La Alemania" farm, San Onofre field, Sucre Department, as well as due to his actions to clarify the events leading up to Rogelio Martínez's death. He was allegedly murdered on May 18, 2010, by illegal armed groups.⁶⁸

38. The Colombian Constitutional Court periodically examines the situation of the displaced population in the context of the armed conflict. In judgment T-025 of 2004, it declared an unconstitutional state of affairs⁶⁹ due to the effects of forced displacement and ordered that the public policies effectively protect the rights of the displaced persons and bring the unconstitutional state of affairs to an end. These directives have been progressively developed, step-by-step, by the Constitutional Court in successive follow-up orders.⁷⁰

39. It is necessary to emphasize that in Order 008, the Constitutional Court stressed that "despite the efforts supposedly made by the government, as well as progress in various areas

⁶⁷ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

⁶⁸ Information available at: <http://www.cidh.oas.org/medidas/2010.sp.htm>.

⁶⁹ The Constitutional Court has defined the unconstitutional state of affairs like

[w]hen one verifies the constant and continuous violation of the fundamental rights of multiple personas and which solution requires the intervention of different entities in order to respond for problems of an structural order, this Corporation has declared the existence of an unconstitutional state of affairs and has ordered remedies that cover not only those who exercise a *tutela* (writ of protection) to achieve the protection of their rights, but also other people that are in the same situation but that have not exercised the *tutela*.

The concept of the unconstitutional state of affairs has evolved in the jurisprudence since 1997 when it was declared for the first time. In the most recent rulings regarding this phenomenon, in accordance with the doctrine of this Corporation, there is an unconstitutional state of affairs when '(1) there is a repeated violation of fundamental rights of several people – that can therefore exercise the *tutela* to obtain the defense of their rights and in consequence overload the courts - and (2) when the cause of that violation is not the responsibility of the respondent authority, but it lies in structural factors'.

Among the factors that have been taken into account by the Court to define the existence of an unconstitutional state of affairs, the following can be pointed out: (i) the massive and generalized violation of several constitutional rights that affect a significant number of people; (ii) the prolonged omission of the authorities in complying with its obligations to guarantee the rights; (iii) the adoption of unconstitutional practices, like the incorporation of the *tutela* as part of proceedings to guarantee the violated right; (iv) the lack of adoption of legislative, administrative or budgetary measures to avoid the violation of the rights; (v) the existence of a social problem whose solution requires the intervention of several entities, requires the adoption of complex and coordinated set of actions and requires a level of resources that demand an additional and important budgetary effort; and (vi) if all the people affected by the same problem exercise the *tutela* to obtain protection for their rights, there would be a higher backlog in the courts.

Constitutional Court. Judgment T-025 of 2004, Magistrate Manuel José Cepeda Espinosa, January 22, 2004.

⁷⁰ The orders of the Colombian Constitutional Court are available at: <http://www.corteconstitucional.gov.co/relatoria/radicador/RADICADOR%20AUTOS%202009.php>.

of assistance of the displaced population, there is agreement between the national Government as well as by the control entities, the international organizations and the Follow-up Commission that the conditions are not present to conclude that the unconstitutional state of affairs has been overcome." It stressed that even when "the Government states that the budgeted resources are sufficient to protect the effective enjoyment of the rights of the displaced population, the level of cover available for almost all of the elements continues to be far below the acceptable level."⁷¹

40. On July 1, 2010, the Government presented a report to the Constitutional Court on overcoming the unconstitutional state of affairs declared in Judgment T-025 of 2004, in which it requested the Court to declare that the said state had been overcome.⁷² In effect, the State stressed that among the measures implemented and those that would overcome the unconstitutional state of affairs are: improvements to inter-institutional coordination through the setting up of the Executive Committee of the National Council for Integral Action for the Displaced Population; strengthening of the Interior and Justice Ministry through special experts in the field and the territorializing of information permitting improved nation to territory coordination, and sensitization of local authorities; maturing the security and information systems which will permit monitoring of how the policies, institutions, territorial entities and administrative registry fulfill the provision of services and effective enjoyment of rights; and the effective participation of the organizations.⁷³

41. Similarly, the State emphasized substantial increases in the proposal and reorganization of the public policy in order to pay for the proposed efforts. It stated that three quarters of the proposal is already included in the Medium Term Budgetary Framework (i.e. which means that they have financing) and that financing will be sought for the other quarter. The State concluded that given that the impediments hindering the State from confronting the problem have been overcome, that there has been notable progress towards full and effective enjoyment of the rights of the forcibly displaced population by violence, and that it is possible to continue the oversight and control of the measures necessary to consolidate this progress without the necessity of using the figure of the unconstitutional state of affairs.⁷⁴

42. For its part, the Follow-Up Commission on the Public Policy of Forced Displacement stated in comments on the Government's Report that in Judgment T-025, the Court repeatedly refers to budgetary and institutional capacity problems which are at the root of the massive violation of the rights of the displaced population. It concluded that

the Government's Report permits the conclusion that there is still a blatant lack of financial resources to attend to the needs of the [population in a state of forced displacement], that the indicator levees of effective enjoyment for the majority of the rights of this sector of the

⁷¹ Constitutional Court, Order 008 of 2009, Judge Rapporteur Manuel José Cepeda, January 26, 2009, paras. 134-137.

⁷² National Attention System for the Displaced Population (SNAIPD). Report of the National Government to the Constitutional Court on the State's Overcoming the Status of Unconstitutional Matters declared via Judgment T-025 of 2004, July 1, 2010. Document available at http://www.vertice.gov.co/LinkClick.aspx?fileticket=Dy3R_Am2-8%3D&tabid=71&mid=454.

⁷³ National Attention System for the Displaced Population (SNAIPD). Report of the National Government to the Constitutional Court on the State's overcoming Unconstitutional Matters declared via Judgment T-025 of 2004, July 1, 2010. Document available at http://www.vertice.gov.co/LinkClick.aspx?fileticket=Dy3R_Am2-8%3D&tabid=71&mid=454.

⁷⁴ National Attention System for the Displaced Population (SNAIPD). Report of the National Government to the Constitutional Court on the State's overcoming Unconstitutional Matters declared via Judgment T-025 of 2004, July 1, 2010. Document available at http://www.vertice.gov.co/LinkClick.aspx?fileticket=Dy3R_Am2-8%3D&tabid=71&mid=454.

population - even if in some cases there have been slight improvements - prevent the conclusion that effective enjoyment has been achieved for the same as Judgment T-025 demands, and that there is still a lack of policies required to guarantee overcoming forced displacement in Colombia.⁷⁵

43. In addition, the Follow-up Round Table to Order 092 of 2008⁷⁶ on protecting the fundamental rights of women victims of forced displacement in the context of overcoming the unconstitutional state of affairs of Judgment T-025 of 2004, verified, in its Third Report, that the entities involved have not complied with their obligations derived from the said Order and the cross-checking carried out by the Constitutional Court is still valid. In effect, the Round Table stressed that (i) the National Public Prosecutor's Office has not designed and implemented a public policy permitting the recognizing, confronting and overcoming of impediments on the access to justice facing women victims of sexual violence in the context of the armed conflict; nor has significant or consistent progress been shown in the proceedings being taken for the commission of these crimes; (ii) the State has not implemented an effective policy in terms of prevention and protection allowing a reduction in the dangers these women are exposed to; (iii) the protection programs have not been successful, barriers to access still persist, as do deficiencies in the implementation of protective measures, and the procedure for linking the women to the programs has been discriminatory and revictimizing; and (iv) the National Public Prosecutor's Office has not adopted the measures necessary to guarantee that the women victims of sexual violence in events associated with the armed conflict may count on comprehensive care as to physical and mental health, permitting their access to justice.⁷⁷

44. In its observations the State pointed out that implementation of the programs derived from Decision 092 is ongoing and its populational and geographical coverage is limited. It stated that the process of linking women to the programs has started with a group of the 600 women referred to directly in Decision 092, even though there are women who could not be linked or attended to for budgetary reasons. In regard to sexual violence, the State has reported that strategies have been implemented and guidelines issued to Prosecutors and other officials so that the victims of gender violence obtain differential treatment. It stressed that these strategies were oriented towards establishing of the scale of the damage caused by illegal armed groups against women - which has also been one of the aims of the National Unit for Justice and Peace since its installation. It indicated that up to January 31, 2011, the National Unit of Prosecutors for Justice and Peace registered 661 victims of sexual violence, who were specially assisted by expert personnel.⁷⁸

45. In July 2010, the Follow-Up Round Table to Constitutional Court Order 006 of 2009 on Displacement and Disability released a report on the fulfillment of some of the orders issued by the Court in this decision and stressed that the overall view is not encouraging.⁷⁹ The Round Table

⁷⁵ Follow-Up Commission on Public Policy of Forced Displacement, Comments on Report of July 1, 2010, of the National Government to the Constitutional Court on the State's overcoming Unconstitutional Matters declared via Judgment T-025 of 2004, July of 2010. Document available at: <http://derechoydesplazamiento.ilsa.org.co:81/sites/derechoydesplazamiento.ilsa.org.co/files/doc/Comseg/comen-inf-gobnal.pdf>.

⁷⁶ The Follow-Up Round Table was formed by *Corporacion Casa de la Mujer*, the Council for Human Rights and Displacement (CODHES), *SISMA Mujer*, *Alianza Iniciativa de Mujeres Colombianas por la Paz* (IMP), *Ruta Pacifica de Mujeres*, the Center for Studies in Law, Justice and Society (Dajusticia), the Working Round Table for Women and Armed Conflict, the Colombian Commission of Jurists, the José Alvear Restrepo Attorney's Association and the Displaced Women's League.

⁷⁷ Third Follow-Up Report on Order 092 of 2008, June of 2010.

⁷⁸ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 11-15.

⁷⁹ Follow-Up Round Table to Order 006 of 2009. Displacement and Disability, July of 2010.

emphasized, among other things, that the Ministry for Social Protection, as head of the Public Policy for Disability and the organ involved in the instructions of Order 006 of 2009, and Social Action as head of the Public Policy on Displacement have failed to organize truly efficient coordination and implementation mechanisms, and that this lack of inter-institutional coordination causes delays and prevents progress towards fulfilling Order 006 of 2009.⁸⁰ The State pointed out that in the second half of 2010, in response to Order 006 of 2009, the Inter-Institutional Board of the National Government established three phases to respond to the orders in the Decision which has contributed to the timing of the Inter-Institutional Strategy, its action plan and its harmonization with the Public Policy for Basic Comprehensive Attention for the victims of forced displacement.⁸¹

46. Finally, the Commission observes that the inclusion of the elderly constitutes a pending challenge regarding the differential approach used in the evaluation of whether the unconstitutional state of affairs has been overcome⁸². The Commission will continue to follow up on the measures adopted to attend to the situation of the displaced population and to implement the orders issued by the Constitutional Court, within the established time limits.

II. THE PROCESS OF DEMOBILIZATION OF ARMED GROUPS AND THE JUDICIAL INVESTIGATION AND REPARATION OF CRIMES COMMITTED IN THE CONTEXT OF THE CONFLICT

47. After the agreements reached between President Álvaro Uribe Vélez's Government and some United Self-Defense Forces of Colombia (hereinafter "the AUC") leaders, more than thirty one thousand persons⁸³ identifying themselves as members of the AUC went through a collective demobilization with the international verification of the OAS Mission to Support the Peace Process in Colombia (hereinafter the "MAPP/OAS"). The Government has also kept up a dialogue with armed guerilla groups, some of whom have joined the collective demobilization process.⁸⁴ The legal framework of the process, established, *inter alia*, by Law 975 of 2005 or "Law of Justice and Peace"⁸⁵, sets out a series of procedural benefits and reduced penalties for those who, having been involved in the commission of crimes, participate in the demobilization process.

⁸⁰ Follow-Up Round Table to Order 006 of 2009. Displacement and Disability, July of 2010.

⁸¹ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 17.

⁸² In its observations, the State pointed out that in the Single Declaration Formula (FUD), the elderly adult variable has been included, with their different characterizations. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 17.

⁸³ Office of the High Commissioner for Peace. Achievements: Report 2002-2010. Document available at: <http://www.altocomisionadopalapaz.gov.co/web/noticias/2010/julio/documentos/10%20logros%20Oficina%20del%20Alto%20Comisionado%20para%20la%20Paz.pdf>

⁸⁴ Official figures indicate that between August of 2002 and October of 2010 more than 54,000 members of illegal armed groups (AUC, FARC, ELN) went through the demobilization process. The figure includes collective demobilizations and the approximately 22,000 individuals linked to paramilitary or guerrilla groups that handed in their weapons individually. Figures provided by the Program for Humanitarian Assistance to Demobilized Persons (PADH) – Office of the High Commissioner for Reintegration, August 2002 – October 2010 Statistics. Document available at: http://www.reintegracion.gov.co/Es/proceso_ddr/Documents/presentaciones/Presentacion_oct_2010.ppt#304,5,Slide 5.

⁸⁵ For more than a year and a half, the demobilization, surrender of weapons and re-assimilation into civilian life proceeded under the system for individual and collective demobilization instituted by Decree 128 of 2003, which contained regulations for implementing Law 418 of 1997, extended and amended by Law 584 of 1999 and Law 782 of 2002 on reinsertion into civil society. On June 22, 2005, the Congress of the Republic passed Law 975 (2005), which entered into force once the president signed it on July 22, 2005. On December 30, 2005, Decree No. 4760 of the Ministry of the Interior and Justice was issued, which regulates certain aspects of Law 975 related to the deadlines for investigating those seeking to avail themselves of the benefits of the law –Article 4- and introducing 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 –Article 13. On September 29, 2006, Decree No. 3391 was published, which partially regulated Law 975 (2005), Ministry of the Interior and Justice, Decree No. 3391 (2006), September 29, 2006, "Partially regulating Law 975 (2005)."

48. The compatibility of Law 975 with the Constitution of Colombia was challenged before the Constitutional Court. In its response, the Constitutional Court declared Law 975 to be constitutional in general terms and also outlined a number of conditions by which some of its provisions could be considered compatible with constitutional law. Among the interpretative parameters established by the Constitutional Court are those designed to protect the participation of victims in the process and their access to comprehensive reparations. The decision also clarifies the obligation to effectively impose the reduced sentence of prison set out therein and introduces legal consequences, such as the loss of benefits, in cases where the demobilized seeking to benefit from the Law's application conceal information from the judicial authorities. In addition, the judgment qualifies paramilitarism as a common crime. All in all, the demobilized involved in the commission of crimes relating to the armed conflict and wishing to obtain the benefits set out in Law 975, must assist the courts in order that the victims are able to effectively enjoy the rights to truth, justice, reparations and non-recurrence.⁸⁶

49. Since 2004, the IACHR has followed-up on the process for the dismantling of illegal armed structures, and mainly on the application of the legal framework designed to establish the truth, justice and reparations for the victims of the conflict, as part of its primary role as consultant to the Member States of the OAS, the General Secretariat of the Organization and the MAPP/OAS.⁸⁷ The Commission will describe below the pending challenges regarding the dismantling of armed structures, the administration of justice and the reparation of the damage caused to the victims of the conflict. The Commission observes, *inter alia*, that the so called "emerging structures or criminal gangs" continue to perpetrate massacres, kidnappings, disappearances, killings, threats and acts of extortion against the civilian population, by operating in a similar manner to the former paramilitary organizations; the lack of final sentencing in the context of the application of the Justice and Peace Law; and the impact in these proceedings and on the right to truth, justice and reparation, of the extradition of demobilized paramilitary leaders.

A. Dismantling of Armed Structures and Reintegration

50. The Presidential High Council for Reintegration (hereafter "the ACR") has indicated that the demobilization reintegration program has assisted 31,699 participants between January and June 2010: 27,405 women and 4,294 men.⁸⁸

51. Among the efforts oriented towards reintegration of members of demobilized armed groups, MAPP/OAS has highlighted the undertaking of some private firms with the reintegration process and the launching of the Education for Peace Fund (EDUPAZ) in October of 2009, which -- with the support of the ACR, the United States Agency for International Development (USAID), the International Organization for Migrations (OIM) and the private sector-- supports access to higher education for persons undergoing the reintegration, victims of violence, vulnerable populations,

⁸⁶ Constitutional Court, File D-6032 - Judgment C-370/06, grounds for the decision made public on July 13, 2006.

⁸⁷ OAS Permanent Council, Resolution CP/859 (1397/04) "Support to the Peace Process in Colombia", operative paragraph 3. OEA/Ser. G CP/RES. 859 (1397/04) of February 6, 2004. See IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, of February 26, 1999; *Report on the Demobilization Process in Colombia* OEA/Ser.L/V/II.120 Doc. 60, of December 13, 2004; *Statement of the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia, 2006*. OEA/Ser.L/V/II. 125 Doc. 15, August 1, 2006. IACHR, "Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings. OEA/Ser.L/V/II.129 Doc. 6, October 2, 2007. See also Chapter IV of the IACHR annual reports for the years 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009.

⁸⁸ Figures provided by the Program for Humanitarian Assistance to Demobilized Persons (PADH) – Office of the High Commissioner for Reintegration, August 2002 – October 2010 Statistics. Document available at: http://www.reintegracion.gov.co/Es/proceso_ddr/Documents/presentaciones/Presentacion_oct_2010.ppt#304,5,Slide 5.

receiving communities and tobacco producing communities in nine Departments. MAPP/OAS highlights the implementation of a new model of psychosocial assistance, and the presence in the area of the ACR and its personnel in a number of regions in the country, which has strengthened their service to the participants. However, MAPP/OAS has verified that in the Mojana region in the Sucre Department, in the Montes de María region in the Departments of Sucre and Bolívar, the Arauca Department and the municipalities of Tumaco in the department of Nariño and La Dorada in the Department of Caldas, there is a low degree of satisfaction due to the low presence of the ACR and the decrease in its activities.⁸⁹

52. In its report, MAPP/OAS expresses concern for the safety of the demobilized that continue to be the target of threats, acts of intimidation, killings, and forced displacement and recruitment. It also indicates that although this situation extends to most of the national territory, it is more intense in places afflicted by new or persisting conflicts between the so-called “emerging structures”, such as Antioquia (Medellin, especially) and Cordoba.⁹⁰

53. The IACHR observes that the Office on Demobilization and Reinsertion of the National Police, based on figures of the ACR, has reported the death (mainly by homicide) of 2,290 demobilized between 2001 and the month of March of 2010.⁹¹ The IACHR observes that in the month of March of 2010 alone, there were reports on the killing of 80 demobilized.⁹² The State stressed that during the period 2008-2010, 942 killings were reported of which 57 came to a service center to make their situation of risk known.⁹³ According to a recent report of the National Commission on Reparation and Reconciliation (hereinafter the “CNRR”) “the protection mechanisms for the personal safety of the demobilized have not been satisfactory, and reveal the inability of the State to respond thoroughly, with adequate and opportune measures, to the acute problem of violence faced by the demobilized.”⁹⁴ The report also indicates that several demobilized, among

⁸⁹ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

⁹⁰ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission in Support of the Peace Process in Colombia (MAPP/OAS), April 26, 2010.

⁹¹ National Police of Colombia. Anti-terrorist Investigations Division. Liaison Office for Persons Demobilized and Reinserted Collectively and Individually. Control and Monitoring Report - March 2010.

⁹² National Police of Colombia. Anti-terrorist Investigations Division. Liaison Office for Persons Demobilized and Reinserted Collectively and Individually. Control and Monitoring Report - March 2010. The statistics of that Office report that up to March of 2010, 66 homicides of demobilized persons were reported in the metropolitan area of Bogota, 66 in the Department of Meta, 67 in the metropolitan area of Cucuta, 67 in the Department of Magdalena, 73 in the region of Uraba, 79 in the region of Magdalena Medio, 110 in the Department of Cesar, 114 in the Department of Antioquia, 138 in the Department of Cordoba and 314 in the metropolitan area of Medellin.

⁹³ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 19.

⁹⁴ Second Report of the National Commission of Reparation and Reconciliation. Reintegration: achievements in the midst of re-arming and unresolved difficulties, August 2010, available at: <http://www.cnrr.org.co/new/publicaciones/DDR.pdf>, p. 177. In its observations, the State stressed that to confront the situation and to ensure that the participants remain in the program, the ACR - through the Attention and Risk Prevention Unit - has developed various steps to safeguard the life, integrity and security of the demobilized. Among the most important are: 1. the development of an orientation and risk support protocol for the demobilized population, whose aim is to prepare the contractors to deal with these types of situation in an diligent and agile way; 2. a service of support and orientation for participants facing a situation of risk; 3. the establishment of a smooth communication channel with the National Police through a liaison office with the purpose of speeding the evaluations of risk level and coordinate protection measures for families and participants facing extraordinary risk; and 4. the design of a communications campaign and a number of workshops in the area of prevention of recidivism and victimization in several regions of the country. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 19.

them Manuel Santiago Angarita Sánchez as a prominent case, were murdered by the Security Forces, and later reported as dead in combat.⁹⁵

54. For its part, MAPP/OAS indicates that the threats and killings suffered by the demobilized population are the result of failed recruitment attempts by illegal armed groups. In this regard MAPP/OAS has identified areas such as Southern Cesar, Casanare, Villavicencio (Department of Meta), La Dorada (Department of Caldas), Barrancabermeja (Department of Santander), Tumaco (Department of Nariño) and San José de Guaviare (Department of Guaviare), where constant offers of recruitment are made to the demobilized.⁹⁶

55. MAPP/OAS indicates that the demobilized abstain from bringing the threats and acts of violence against them to the attention of the authorities due to three possible reasons: (i) the demobilized are immersed in illegal activities and do not wish to alert the authorities; (ii) a lack of trust in institutions and security forces; and (iii) that any possible safety measures might make evident their status as demobilized.⁹⁷

56. As indicated in previous Commission reports, the demobilized are being used in military and intelligence operations characterized as activities of cooperation with the security forces, in exchange for payment. In this regard, the Procurator General of the Nation (*Procuraduría General de la Nación*) has indicated that cooperation with the security forces has increased the personal insecurity of demobilized persons and their families, and contradicts the purposes of reinsertion in civilian life. In 2009, the Procurator General of the Nation reiterated that this practice violates the rules of international humanitarian law, and specifically the principle of distinction that protects persons who do not participate directly in hostilities and, of course, persons who have laid down their arms. The Procurator General of the Nation has pointed out that demobilized persons who participate in military operations become de facto military targets of illegal armed groups. In his opinion, such participation creates criminal, administrative, or international liability, as applicable.⁹⁸

⁹⁵ Second Report of the National Commission of Reparation and Reconciliation. Reintegration: achievements in the midst of re-arming and unresolved difficulties, August 2010, available at: <http://www.cnrr.org.co/new/publicaciones/DDR.pdf>, p. 210. Also the CINEP in its Report "*Noche y Niebla No. 37: Terror and Insecurity 2008*" highlights that "[o]n March 25, 2006, troops from the 6th Brigade extra judicially executed Manuel Santiago Angarita Sánchez in the Chucuní lane of Ibagué, Tolima, and displayed him as a member of an illegal armed group killed in combat. The victim had been a paramilitary in the Martín Llanos front and later a DAS informant. The forensic report established that his body had been dressed with new boots, an oversized camouflaged uniform on top of civilian clothes and that he had been shot at close range, less than two meters, and some shots even less than 20 centimeters. As a result, the Prosecutor's Office ordered the arrest of Lieutenant Johan Paul Castillo, Sergeant Jesús Paredes Rodríguez and Privates Fidel Arango Castro, Campo Elías Hernández, Albeiro Carmona Triana, Francisco Angulo Robayo and Janer Arley Córdoba Alape".

⁹⁶ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission in Support of the Peace Process in Colombia (MAPP/OAS), April 26, 2010.

⁹⁷ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission in Support of the Peace Process in Colombia (MAPP/OAS), April 26, 2010.

⁹⁸ Speech of the Procurator General of the Nation, Alejandro Ordóñez Maldonado, presenting the results of the second stage of the project entitled "Follow-up and Preventive Oversight of Public Policies for Demobilization and Reinsertion, September 21, 2009. In this regard, the Procurator General of the Nation has indicated that cooperation with the security forces has increased the personal insecurity of demobilized persons and their families and contradicts the purposes of reinsertion in civilian life. Consequently, the Procurator General of the Nation has urged the Defense Ministry to ensure that all proceedings related to economic benefits in return for cooperation with the security forces exclude payments for the direct, active participation of demobilized persons in military and intelligence operations. Procurator General of the Nation, Directive No. 0013 of June 16, 2008, pp. 5 and 6. http://www.procuraduria.gov.co/descargas/documentoshome/home2008/directiva_0013.pdf in Annual Report of the IACHR 2009, Chapter IV, Colombia, paragraph 19 <http://www.cidh.oas.org/annualrep/2009sp/cap.4Colo.09.sp.htm>.

57. The Commission observes that despite efforts to dismantle the armed structure of the AUC, illegal armed groups continue their involvement in acts of harassment and violence against vulnerable groups, social leaders, and human rights defenders. In his reports to the Permanent Council, the Secretary General of the Organization of American States to the OAS has identified problems of violence subsequent to demobilization, according to information obtained in the field by MAPP/OAS. According to these reports, the situation involves a variety of processes: regrouping of demobilized combatants into criminal gangs that exert control over specific communities and illegal economic activities; (2) hold-outs who have not demobilized; and (3) the emergence of new armed players and/or the strengthening of those that already existed in areas abandoned by demobilized groups.⁹⁹

58. MAPP/OAS has reported that in several areas of the country the so called "emerging structures and criminal gangs continue to attack the civilian population and to perpetrate massacres, kidnappings, disappearances, murders, threats and extortion."¹⁰⁰ It has also found that "these structures directly affect community and social leaders, civil servants, and indigenous and afro-Colombian populations whenever they represent an obstacle to the development of their illegal activities, which is a cause for uncertainty and fear within the communities."¹⁰¹

59. During 2010, the IACHR received, as in previous years, complaints on groups known as "Águilas Negras", "Rastrojos", "Los Paisas", "Los Urabeños", "Renacer", "ERPAC" and "Autodefensas Gaitanistas", among others. In that regard, the Colombia Office of the UN High Commissioner for Human Rights (hereafter "OHCHR") has indicated that "some of these groups operate in a similar way to that of the former paramilitary organizations and partake in criminal activities such as drug trafficking, extortion, land dispossession, prostitution and human trafficking, as well as legal activities that are sometimes irregular, such as gambling and private security."¹⁰² It also highlights that these groups include demobilized and non-demobilized persons from former paramilitary organizations, both voluntarily and forcibly recruited. Also, several former paramilitary middle-ranking fighters and former military personnel now hold senior positions in these groups.¹⁰³ The State reported that in the last four years 87% of the captured (10,356) or killed members of so-called criminal gangs, were not demobilized¹⁰⁴. It also indicated that to date, the Armed Forces had captured 62 leaders of the so-called criminal gangs, 29 of which were demobilized that had failed to participate actively in the reintegration process.¹⁰⁵

⁹⁹ See Sixth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS). See OEA/Ser.G/CP/doc. 4148/06, August 30, 2006; Eighth 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. 4176/07, February 14, 2007; Ninth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS). July 3, 2007; Tenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), October 31, 2007; Eleventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), June 25, 2008; Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), February 9, 2009.

¹⁰⁰ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission in Support of the Peace Process in Colombia (MAPP/OAS), April 26, 2010.

¹⁰¹ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission in Support of the Peace Process in Colombia (MAPP/OAS), April 26, 2010.

¹⁰² Human Rights Council, Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia, March 4, 2010, A/HRC/13/72, para. 61.

¹⁰³ Human Rights Council, Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia, March 4, 2010, A/HRC/13/72, para. 61.

¹⁰⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 20 and 21.

¹⁰⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 20 and 21. The State indicated that it was implementing the following supplementary measures in the area of victimization and recidivism: "a. a constant monitoring of the Reintegration Process

60. In this regard, the IACHR has received reports indicating that well-known paramilitary leaders are, or have been, behind the so-called “criminal gangs” or “BACRIM”. For instance, the available information indicates that paramilitary leader Daniel Rendón Herrera aka “Don Mario”, who was captured in 2009, commanded the paramilitary groups created by his brother Freddy Rendón Herrera aka “el Alemán” known as “Héroes de Castaño” and “Autodefensas Gaitanistas”. Also, Pedro Oliveira Guerrero aka “Cuchillo” –who joined the demobilization in 2006 and who, pursuant to information provided by the State was killed¹⁰⁶ – commanded the front “Héroes del Guaviare” which used to be part of the AUC’s “Bloque Centauros”; and Héctor Germán Buitrago aka “Martín Llanos” – who according to information provided by the State abandoned the demobilization process at an early stage in 2003 and was captured in April, 2010¹⁰⁷ – commanded the peasant self-defense groups of Casanare.¹⁰⁸

61. In its report, the OHCHR indicates that it verified cases of collusion, tolerance and acquiescence between members of the security forces and these armed groups, principally motivated by corruption.¹⁰⁹ For its part, the State reported on the implementation of several measures within the framework of the zero tolerance policy with these armed groups and that as a result of these efforts there were notable successes such as the detention of 387 of their members which were placed at the disposal of the competent authorities.¹¹⁰ The OHCHR also highlighted that these groups evolve rapidly and constantly. In this regard, it pointed out that while the “ERPAC”, which operated in Los Llanos region, is very much organized in the manner of the former AUC, other groups use cell structures and they seize and hire illegal structures in order to carry out their activities.¹¹¹ In this sense the OHCHR reports that it increasingly receives “information about

...continuation

context, through a Map of Risks and Vulnerabilities identifying the areas with a string presence of criminal gangs and constant kiosk for the participants; b. the establishment of a direct communications channel with the Directorate of Guards and Rural Security in order to gain first hand information of the demobilized population involved with criminal gangs and produce reports that contribute to evaluate the problem and make the pertinent recommendations; and c. the periodical assistance to the CI2 BACRIM (Comprehensive Intelligence Center Against Criminal Gangs) as a permanent participant, in order to understand the current situation of these groups and to support the efforts tending to the detention and prosecution of BACRIM members.”

¹⁰⁶ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 21.

¹⁰⁷ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 22.

¹⁰⁸ Colombian Commission of Jurists. Colombia: The metaphor of the dismantling of paramilitary groups. Second Report on the Assessment of the Application of Law 975 of 2005, pp. 96 to 101. See also: <http://www.verdadabierta.com/victimarios/los-jefes>.

¹⁰⁹ Human Rights Council, Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia, March 4, 2010, A/HRC/13/72, para. 62.

¹¹⁰ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp.21-23. The State highlighted that pursuant to Communication No. 007617/MDN-CGFM-CE-GCONI-DIVO7- CJM-DH-13.1 of May 29, 2010, relating to the instructions on Zero Tolerance with Illegal Armed Groups, the following orders were issued for the organic units of the Seventh Division: 1. to strengthen personnel training with emphasis on compliance with its mission and the criminal and disciplinary consequences of any conduct contrary to that mandate as well as the damage to the institutional legitimacy; 2. to advance campaigns to prevent the association of personnel under their command with illegal armed groups; 3. to increase internal safeguards in Military Units in order to detect links between Armed Forces personnel and illegal armed organizations; 4. to adopt immediate measures to ensure the criminal prosecution and disciplinary processing of those responsible for conduct against the Constitution and the law. To that effect it is imperative that any involved personnel are placed at the disposal of the corresponding judicial authorities; and 5. to report to the Seventh Division Command those cases involving links between Armed Forces personnel and illegal armed organizations.

¹¹¹ Human Rights Council, Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia, March 4, 2010, A/HRC/13/72, para. 63.

some groups, such as ERPAC or the Rastrojos which, in some regions of the country, would exhibit the operational and organizational capacity typical of armed actors, as defined by international humanitarian law."¹¹²

62. In a recent report, the CNRR indicates that 15.5% of the demobilized (approximately 8,100 persons) have committed new illegal acts.¹¹³ The statistics of the National Police's Office of Demobilization and Reinsertion indicate that 5,552 demobilized persons were arrested between 2006 and March 31, 2010. The report fails to clarify how many of them belonged to "criminal gangs."¹¹⁴

63. For its part, the State created the Interinstitutional Commission against Criminal Gangs and Networks through Decree 2374 of July 1, 2010, with the objective of articulating efforts towards the arrest and prosecution of those organizing or integrating "criminal gangs and networks". The decree indicates that the security forces have identified several gangs, among which are "Los Rastrojos", "Los Paisas", "Urabá (o Urabeños)", "Ejército Revolucionario Popular Antiterrorista Colombiano (ERPAC)", "Renacer" and "Los Machos". The figures provided by the Human Rights Observatory of the Presidency indicate that during 2010 there was a 21% increase in the capture of members of criminal gangs.¹¹⁵ Despite the Government's efforts to dismantle these armed structures, the OHCHR has indicated that the scope of organized violence, "their substantial economic power, capacity to corrupt authorities and State institutions, their links with local authorities and local networks of influence, their impact on social actors and the alarming levels of violence against civilians, make them a daunting challenge to the rule of law."¹¹⁶

B. The Enforcement of the Legal Framework: the Situation of those Demobilized under the Justice and Peace Law

64. Of the more than 30,000 persons who demobilized between November 2003 and mid-2006, 4,346 expressed an interest in receiving the benefits of the Justice and Peace Law.¹¹⁷ However, 1,514 candidates decided not to ratify their intention to benefit from the law.¹¹⁸ As already indicated in last year's report, the Commission has no concrete information of any lawsuits instituted in connection with these demobilized individuals, who in their first application for the benefits offered by the Justice and Peace Law reputedly acknowledged the commission of crimes of "atrocious acts of ferocity or barbarism, terrorism, kidnapping, genocide, and murder committed outside combat or placing the victim

¹¹² Human Rights Council, Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia, March 4, 2010, A/HRC/13/72, para. 63.

¹¹³ Second Report of the National Commission of Reparation and Reconciliation. Reintegration: achievements in the midst of re-arming and unresolved difficulties, August 2010, available at: <http://www.cnrr.org.co/new/publicaciones/DDR.pdf>, p. 156. The ACR considers as recidivists "those persons deprived of their liberty and convicted for crimes committed after the demobilization and those who have died in operations carried out by the security forces." Taking into account those elements, the State considers that the rate of recidivism amounts to 1.8%. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 23.

¹¹⁴ National Police of Colombia. Anti-terrorist Investigations Division. Liaison Office for Persons Demobilized and Reinserted Collectively and Individually. Control and Monitoring Report - March 2010.

¹¹⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 20.

¹¹⁶ Human Rights Council, Annual Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Colombia, March 4, 2010, A/HRC/13/72, para. 64.

¹¹⁷ National Unit of Justice and Peace Prosecutors, information under consolidation and verification proceedings updated to June 30, 2010.

¹¹⁸ National Unit of Justice and Peace Prosecutors, information updated to May 31, 2010. Available at: <http://www.verdadabierta.com/reconstruyendo/1856-estadisticas>.

in a condition of defenselessness,¹¹⁹ despite the fact that they subsequently chose not to continue to participate in the Justice and Peace Law process.¹²⁰ With regard to the more than 2,500 applicants who are still part of the process, a total of 2,431¹²¹ voluntary statements have been initiated, of which 1,514 have been formally completed, but only 228 ended in a full confession.¹²²

65. The information gathered in the voluntary statements up to June of 2010 has led to the exhumation of 2,719 graves and the remains of 3,299 persons, of which 1,100 were fully identified and 973 have already been delivered to their families.¹²³ The National Unit of Justice and Peace Prosecutors reports that up to June 2010, the voluntary statements resulted in the confession of 25,177 acts, among them 18,948 killings involving 30,167 victims.¹²⁴ Also, on the basis of the information provided in the voluntary statements, steps have been taken to initiate investigations against 404 politicians, 344 members of the security forces and 113 civil servants.¹²⁵

1. Status of the Proceedings under the Justice and Peace Law

66. The Commission observes with concern that after five years since the adoption of the Justice and Peace Law, two convictions --without final sentencing-- have been issued and soon, progressively, a number of those demobilized would have served the minimum five-year sentence established in that Law. Therefore many requests for liberty will soon be filed.

67. On June 29, 2010, the Justice and Peace Chamber of the Superior Court of Bogota convicted Edwar Cobos Téllez aka "Diego Vecino" and Uber Ebrique Banquez Martínez aka "Juancho Dique" to 468 and 462 months imprisonment, respectively, and the interdiction of rights and the exercise of public function for 20 years, for co-authorship of the crime of aggravated homicide, aggravated conspiracy, deportation, expulsion, transfer or forced displacement of civilian population, kidnapping, aggravated theft, illegal use of uniforms and insignia, and the production, trafficking and carrying weapons and ammunition reserved to the armed forces, perpetrated for a succession of homogeneous and heterogeneous criminal conduct. For his part, Edwar Cobos Telléz was also found responsible of the crime of aggravated conspiracy for a succession of homogeneous and heterogeneous criminal conduct. Also, the Court granted the benefit of an alternative penalty for a period of eight years imprisonment.¹²⁶

¹¹⁹ Law 782 of December 23, 2002, which amends a number of provisions and extends the period in force of Law 418 of 1997, which had been extended and modified by Law 548 of 1999.

¹²⁰ In most cases, the information had already been collected in the demobilization circuits. IACHR. Follow-up on the Demobilization Process of the AUC in Colombia, Digest of Published Documents (2004-2007). III. The First Judicial Proceedings under the Justice and Peace Law, paras. 20-24. Available at www.cidh.oas.org/pdf%20files/Colombia-Demobilization-AUC%202008.pdf.

¹²¹ National Unit of Justice and Peace Prosecutors, information under consolidation and verification proceedings updated to June 30, 2010.

¹²² National Commission for Reparation and Reconciliation, Justice and Peace Bulletin: Caminos, Issue No. 2, April of 2010, figures updated to March 18 of 2010. Available at: <http://www.cnrr.org.co/new/boletin-justiciapaz/EDI-2/justicia%20y%20paz-EDI2.pdf>. The figures do not clarify whether there was a total or a partial confession.

¹²³ National Unit of Justice and Peace Prosecutors, information under consolidation and verification proceedings updated to June 30, 2010.

¹²⁴ National Unit of Justice and Peace Prosecutors, information under consolidation and verification proceedings updated to June 30, 2010.

¹²⁵ National Unit of Justice and Peace Prosecutors, information under consolidation and verification proceedings updated to June 30, 2010. The figure for politicians include 225 mayors, 55 Municipal Councilors, 47 Representatives, 42 Senators, 24 Governors and 11 Deputies. The figure for members of the security forces include 138 National Army officers, 76 members of the National Police, 74 officers of the National Police, 39 privates of the National Army and one Navy officer.

¹²⁶ Justice and Peace Chamber of the Superior Court of Bogota. Judgment of June 29, 2010, case No: 110016000253200680077, Magistrate Uldi Teresa Jiménez López.

68. The Court has indicated that the convicted paramilitary had committed

[...] serious breaches of International Humanitarian Law because as parties in the armed conflict they had displaced the civilian population from their lands, they had attacked non-combatants and had looted their property after the attacks, clarifying that in order to respect the express provisions of the principle of legality, their conduct was defined by reference to common crimes in light of the date in which the facts took place. But also as authors of crimes against humanity, because they were not isolated illegal actions; the generality, the systematic conduct, the commission of inhuman acts and the targets of the attacks –the civilian population- show that belonging to the self-defense group (conspiracy to commit crimes), the forced displacement of the San Cayetano and Mampujan populations and the extrajudicial executions must be treated as crimes against humanity.¹²⁷

69. Also, the Court sentenced the demobilized paramilitaries to reparations including measures of restitution, monetary compensation, satisfaction, non-repetition and collective reparation, compliance with which will be verified in a public hearing to be held quarterly.

70. Regarding monetary compensation, the Court established a reparations system based on the concept of equity, following the practice of the Inter-American Court of Human Rights in the cases of the massacres of Pueblo Bello and Ituango, as well as that of the Contentious Administrative Jurisdiction. On this basis it established fixed individual indemnification tables by crime and kinship for material and moral damages, starting with the value attributed to the damage caused by the most serious crime, homicide, with a top reference value of \$240 million Colombian pesos per family.¹²⁸

71. The Commission highlights that the sentence ordered (i) that the General Prosecutor of the Nation create a sub-unit dependant on the National Justice and Peace Unit, with experts on national and international financial operations, title deeds verification and money laundering, to pursue the un-identified assets of the applicants seeking to benefit from the Law, (ii) that the National Justice and Peace Unit of the Prosecutor's Office recover the applicants' assets that have been transferred to the Unit of Ownership Extinction, (iii) that the National Justice and Peace Unit of the Prosecutor's Office identify the assets belonging to former parliamentarians that have been convicted and are being investigated by the Supreme Court for the so called "parapolitics" and request the pertinent precautionary measures before the Due Process Control Magistrate in order to make possible their transfer to the National Reparations Fund, (iv) that the National Justice and Peace Unit of the Prosecutor's Office identify the assets belonging to AUC commanders and members who have applied for benefits under Law 975 of 2005, who have died and that are

¹²⁷ Justice and Peace Chamber of the Superior Court of Bogota. Judgment of June 29, 2010, case No: 110016000253200680077, Magistrate Uldi Teresa Jiménez López (footnotes omitted), para. 144.

¹²⁸ Justice and Peace Chamber of the Superior Court of Bogota. Judgment of June 29, 2010, case No: 110016000253200680077, Magistrate Uldi Teresa Jiménez López (footnotes omitted), paras. 343 - 352. For cases of murder, the Court would grant indirect victims with the status of spouse, father, mother or offspring, the amount of 40 million pesos, while those having the status of brothers, would be granted the amount of 4 million pesos, with a maximum limit of 240 million pesos per family unit. In the cases of displacement the Court relied on the practice of the Contentious Administrative Jurisdiction which grants to each displaced person for moral damages half the salaries (50 salaries) of those granted to a spouse, parents and offspring in case of homicide (100 salaries) and thus each displaced person belonging to a family would receive 17 million pesos, with a maximum limit of 120 million pesos per family unit. In the case of kidnapping, the Chamber established an average between the amounts granted in the contentious administrative jurisdiction and by the Inter-American Court of Human Rights for homicide and determined that direct victims are entitled to 30 million pesos, in which case the total amount per family should not exceed 180 million, and 4 million for siblings. Finally, the chamber established that whenever one person has been the victim of several crimes the indemnification due to the victim and his or her family shall be calculated taking into account the amounts corresponding to the most serious crimes with a maximum limit for the whole family unit of 240 million pesos.

currently under the control of their heirs, in order to adopt the measures required to ensure their transfer to the National Reparations Fund, (v) that the National Commission of Reparations and Reconciliation carry out the necessary steps to obtain reparations funds from national and international entities, and (vi) the sentence suggests that Congress consider the possibility of creating a special tax for legal entities and companies that --according to the accounting records produced by the demobilized applicants-- have contributed to financing the armed groups referred to in Law 975.¹²⁹

72. The first instance decision was appealed by the Public Defender, the Prosecutor's Office, the paramilitaries and the victims' representatives. According to information in the public domain, the victims were unhappy with the amounts of reparation fixed by the Court.¹³⁰ The appeal is currently pending before the Supreme Court, and therefore there are still no final convictions under the Justice and Peace Law.

2. Partial Charges

73. The Criminal Cassation Chamber of the Supreme Court modified its position regarding the charging of the crime of conspiracy. On December 14, 2009 it revoked a Medellín Due Process Control Magistrate's decision and ordered the continuation of the hearing to bring partial charges against applicant Edilberto de Jesús Cañas Chavarriaga.¹³¹ In that regard the Court indicated that in the decision issued against applicant Wilson Salazar Carrascal and later in the case of Gian Carlo Gutiérrez Suárez, it had been argued that partial charges should be consolidated "specifically at the time of bringing charges, in order for that act to be performed as a unity", however, the Court considered that such consolidation of charges makes sense as far as it is linked to the conduct of conspiracy to commit crimes.¹³²

74. In this regard, the Criminal Cassation Chamber indicated that in the decision against Wilson Salazar Carrascal the Supreme Court clearly expressed on the one hand that if the benevolent punitive treatment of Law 975 of 2005 is based upon the link between the applicant and an illegal armed organization, it is essential that he is charged with conspiracy to commit crimes¹³³ and indicated that

[i]deally, it would be essential that each applicant be charged, accused and convicted for the totality of illegal conduct, however, this is not practical in all cases since the peculiarities of each one of these acts, sometimes perpetrated in a large scale, other times in the jungles, in the lanes, in the municipality, during the night, in unpopulated areas, in opprobrious circumstances for the victims, frequently terrifying for the surviving witnesses, make the reconstruction of procedural truth, difficult.¹³⁴

¹²⁹Justice and Peace Chamber of the Superior Court of Bogotá. Judgment of June 29, 2010, case No: 110016000253200680077, Magistrate Uldi Teresa Jiménez López (footnotes omitted), paras. 343 - 352.

¹³⁰ Verdad Abierta. "The Victims of Mampujan Appeal the First Justice and Peace Conviction", June 30, 2010. Available at <http://www.verdadabierta.com/justicia-y-paz/2530-ipor-que-las-victimas-apelaron-la-primera-sentencia-de-justicia-y-paz>.

¹³¹ Supreme Court of Justice, Criminal Casation Chamber, Magistrate María del Rosario González de Lemos, File No. 32575, December 15, 2009.

¹³² Supreme Court of Justice, Criminal Casation Chamber, Magistrate María del Rosario González de Lemos, File No. 32575, December 15, 2009.

¹³³ Supreme Court of Justice, Criminal Casation Chamber, Magistrate María del Rosario González de Lemos, File No. 32575, December 15, 2009.

¹³⁴ Supreme Court of Justice, Criminal Casation Chamber, Magistrate María del Rosario González de Lemos, File No. 32575, December 15, 2009.

75. Also the Criminal Cassation Chamber indicated that its decision involves the need to move forward in each one of the proceedings of Justice and Peace, because should the full evidence on all the conduct be demanded at the same time, the essential purpose of the Justice and Peace Law would be defeated; only to the extent that partial charging is accepted it will be possible to move forward in a process considered to be historic. It also considered that partial charging does not exclude the later inclusion of new conduct and the consolidation of sentences to the extent that conspiracy to commit crimes is considered as the foundation crime.¹³⁵

3. Legal Status of the Demobilized Prior to the Approval of the Justice and Peace Law

76. The Commission deems it pertinent to recall, as it did in last year's report, that under Law 782 of 2002 - implementing regulations for which are contained in Decree 128 of 2003 - a number of demobilized individuals would appear to have been favored by the application of legal benefits, such as pardons or equivalent measures¹³⁶ for the crime of conspiracy as a result of having being members of armed groups operating outside the law.¹³⁷ The Commission reiterates that the demobilization circuits presented a suitable opportunity for the judicial authorities to gather elements for establishing whether demobilized members of illegal armed groups were involved in crimes that might be punishable under the Justice and Peace Law. However, in the course of these voluntary statements, the prosecutors received no instructions for delving into the crimes perpetrated and the possible applicability of the Justice and Peace Law. In this context, the Commission observed that the voluntary statements gathered during demobilization circuits represented a lost opportunity for compiling information on the units, their members, and the socioeconomic dynamics that kept them in existence and operating.¹³⁸

77. A decision of the Supreme Court of Justice of July 11, 2007,¹³⁹ precluded any further pardons to members of paramilitary groups. As a result, the legal status of approximately 19,000

¹³⁵ Supreme Court of Justice, Criminal Cassation Chamber, Magistrate María del Rosario González de Lemos, File No. 32575, December 15, 2009.

¹³⁶ Article 13 of Decree 128 of 2003. "Legal benefits. In keeping with the law, the demobilized who had been part of illegal armed organizations with respect to whom the Operational Committee on Laying Down Arms (CODA) issues the certification that is the subject of Article 12(4) of the present Decree, shall have the right to: a pardon, conditional suspension of enforcement of the penalty, cessation of proceedings, preclusion of the investigation, or the resolution of dismissal, depending on the status of the proceedings."

¹³⁷ IACHR. Follow-up on the Demobilization Process of the AUC in Colombia, Digest of Published Documents (2004-2007). Available at www.cidh.oas.org/pdf%20files/Colombia-Demobilization-AUC%202008.pdf.

¹³⁸ IACHR. Follow-up on the Demobilization Process of the AUC in Colombia, Digest of Published Documents (2004-2007). Report on the Implementation of the Justice and Peace Law: Initial Stages in the Demobilization of the AUC and First Judicial Proceedings (October 2, 2007) paras. 36 and 37. Available at www.cidh.oas.org/pdf%20files/Colombia-Demobilization-AUC%202008.pdf.

¹³⁹ On July 11, 2007, the Supreme Court of Justice ruled that participation in paramilitary groups does not constitute the political crime of sedition. The decision removed any further possibility for members of paramilitary groups to continue to receive pardons under law 782 of 2002 and Decree 128 of 2003. The Supreme Court found, "6. The offences committed by persons connected with paramilitary groups, as is the case with the members of the autodefensa groups who have demobilized based on agreements with the National Government, can in no circumstances be considered sedition, since such conduct cannot be subsumed under the definition of a political offence. [...] In accordance with the imperative mandates that emanate from the principle of *nullum crimen nulla poena sine lege praevia* interpreted in the light of the rule of proportionality, it is an error of democracy to permit illegitimate aims to gather strength through erroneous jurisprudence, given that the conspiracy to commit crimes is the appropriate standard for responding to the threats and injuries to legal rights that originate from the power structures constituted by the paramilitary or autodefensa groups." Supreme Court of Justice, Criminal Cassation Chamber, Case No. 26945, Opinion of the Court delivered by Judges Yesid Ramírez Bastidas and Julio Enrique Socha Salamanca, July 11, 2007.

demobilized combatants who failed to obtain pardons or equivalent measures,¹⁴⁰ or who did not apply for the benefits available under the Justice and Peace Law, remains unclear. In this context, on July 9, 2009, the Colombian Government promulgated law 1312 of 2009, which ordered application of the principle of opportunity, *inter alia*, to

[...] anyone demobilized from an armed group operating outside the law, who under the terms of the standards in force has demonstrated through unequivocal acts their purpose to be reintegrated into society, provided that they have not been proposed by the national government for the procedure and benefits contained in Law 975 of 2005 and are not under investigation for offences committed before or after their demobilization, other than that of belonging to the criminal organization, which for the purposes of this law include unlawful use of uniforms and insignia and illegal possession of firearms and ammunition.

78. The Commission observes with satisfaction that - according to information released to the public, on November 23, 2010 - the Constitutional Court declared unconstitutional the principle of opportunity established in Law 1312 of 2009 on the basis that it failed to respect the rights of the victims.¹⁴¹ Later, the Commission learned that on November 29, 2010, the Ministry of the Interior and Justice presented before the Congressional Chamber of Representatives a bill seeking to ensure the reinsertion into civilian life of the demobilized paramilitaries in a situation of undefined legal status and on December 29, 2010 Law No. 1424 was enacted and made public.¹⁴²

79. Article 1 of the Law provides that it is designed to benefit

individuals demobilized from illegal armed organizations responsible only for the commission of simple or aggravated conspiracy to commit crimes, illegal use of uniforms and insignias, illegal use of transmission or reception equipment, and illegally carrying military firearms or ammunition for personal self-defense, because of belonging to such groups; and it is also designed to promote their reintegration into society.¹⁴³

In this framework the Law establishes that the demobilized who “during the year following the enactment of this law express in writing their commitment towards the reintegration into society process and the clarification of how illegal armed groups were created, [...] the general context of their participation and all the facts and conduct that they know of because of their participation in the group”¹⁴⁴ shall sign a Agreement of Contribution to Historical Truth and Reparations with the President of the Republic.

80. The Law also creates a non-judicial mechanism of contribution to truth and memory with the purpose of collecting, organizing and preserving the information gathered from the Agreements and of producing the corresponding reports. However, it provides that the information gathered within the framework of the Agreements cannot, without exception, be presented as

¹⁴⁰ Fundación Social. “Principle of opportunity for those demobilized that cannot be pardoned”. Available at http://www.observatorio.derechoshumanosypaz.org/descargar_agenda.php?id=134

¹⁴¹ Verdad Abierta. “Without the principle of opportunity. Now what?”, November 24, 2010, available at <http://www.verdadabierta.com/justicia-y-paz/2875-sin-el-principio-de-oportunidad-iahora-que>.

¹⁴² Law 1424 of 2010 by which provisions of transitional justice ensuring truth, justice and reparations for the victims of those demobilized from illegal armed groups are adopted, legal benefits are granted and other provisions are established.

¹⁴³ Article 1 of Law 1424 of 2010 by which provisions of transitional justice ensuring truth, justice and reparations for the victims of those demobilized from illegal armed groups are adopted, legal benefits are granted and other provisions are established.

¹⁴⁴ Article 3 of Law 1424 of 2010 by which provisions of transitional justice ensuring truth, justice and reparations for the victims of those demobilized from illegal armed groups are adopted, legal benefits are granted and other provisions are established.

evidence in a judicial proceeding against those who have signed the Agreement or against third parties.¹⁴⁵

81. The Law also establishes that the demobilized shall be investigated and/or tried pursuant to the applicable legislation at the moment of commission of the illegal conduct; it suspends the arrest warrants issued against the demobilized whenever they are linked to the process of Social and Economic Reintegration established by the Government, they are fulfilling or have successfully completed the steps in the reintegration path, and have not been convicted for intentional crimes committed after the date in which their demobilization was certified. It also suspends the execution of sentences for a time equivalent to half of that sentence whenever the demobilized is linked to the process of Social and Economic Reintegration established by the Government, they are fulfilling or have successfully completed the steps in the reintegration path, they provide reparations for the damage caused to the victims of the crimes for which they were convicted, have not been convicted for intentional crimes committed after the date in which their demobilization was certified, and they exhibit good conduct.¹⁴⁶

82. The Commission observes with concern, as it did regarding Law 1312 of 2009, that the adoption of this piece of legislation raises questions of fulfillment by the State of its duty to prosecute and punish the crimes perpetrated by the demobilized and could become a tool to favor impunity.¹⁴⁷

4. The Extradition of Paramilitary Leaders and its Impact on the Proceedings under the Justice and Peace Law

83. Another considerable obstacle in the advancement of the prosecution of the applicants to benefits under the Justice and Peace Law is the extradition of various paramilitary leaders to the United States and the virtual paralysis of the process of clarification of the serious crimes perpetrated by the AUC, in many cases with the acquiescence or collaboration of state agents. The Commission has consistently expressed its concern at the fact that failure to clarify these crimes undermines the rights of the victims to the truth, justice, and reparation. Additionally, the Commission observes that the cooperation mechanisms between the Governments of the United States and Colombia have not yet produced results.

¹⁴⁵ Article 4 of the Law 1424 of 2010 by which provisions of transitional justice ensuring truth, justice and reparations for the victims of those demobilized from illegal armed groups are adopted, legal benefits are granted and other provisions are established.

¹⁴⁶ Articles 6 and 7 of Law 1424 of 2010 by which provisions of transitional justice ensuring truth, justice and reparations for the victims of those demobilized from illegal armed groups are adopted, legal benefits are granted and other provisions are established.

¹⁴⁷ As indicated by the Inter-American Court

[t]he obligation that arises pursuant to international law to try, and, if found guilty, to punish the perpetrators of certain international crimes, among which are crimes against humanity, is derived from the duty of protection embodied in Article 1(1) of the American Convention. This obligation implies the duty of the States Parties to organize the entire government system, and in general, all agencies through which the public power is exercised, in such manner as to legally protect the free and full exercise of human rights. As a consequence of this obligation, the States must prevent, investigate, and punish all violations of the rights recognized by the Convention and, at the same time, guarantee the reinstatement, if possible, of the violated rights, and as the case may be, the reparation of the damage caused due to the violation of human rights. If the State agencies act in a manner that such violation goes unpunished, and prevents the reinstatement, as soon as possible, of such rights to the victim of such violation, it can be concluded that such State has not complied with its duty to guarantee the free and full exercise of those rights to the individuals who are subject to its jurisdiction.

I.A. Court H/R. *Case of Almonacid Arellano et al. v. Chile*. Judgment of 26 September 2006. Series C No. 154, para. 110 (footnotes omitted).

84. In 2008, the IACHR expressed its concern over the potential impact that extradition of 16 paramilitary leaders to the U.S.¹⁴⁸ would have on efforts to clarify thousands of crimes.¹⁴⁹ More specifically, it noted that extradition affects the Colombian Government's obligation to guarantee the rights of victims to the truth, justice, and reparation for crimes committed by paramilitary groups. Further, it prevents the investigation and prosecution of serious crimes by the avenues established in the Justice and Peace Law in Colombia and by ordinary criminal proceedings in Colombian courts. And, it eliminates the possibility that victims participate directly in the search for the truth with regard to the crimes committed during the conflict, in addition to limiting access to reparations for the damage caused. Finally, the Commission underlined that extradition interferes with efforts to determine the links between government agents and paramilitary leaders in committing human rights violations.

85. In its report for 2009, the IACHR reiterated its concern at the absence of cooperation agreements to ensure the holding and effective participation of extradited individuals in the proceedings that must be carried out in the framework of the Justice and Peace processes. The Commission recalls that on October 22, 2009, it requested the Government of the United States, pursuant to Article 18 of the IACHR Statute, for information on judicial cooperation and clarification of the serious human rights violations committed during the armed conflict in the Republic of Colombia. Specifically, the Commission expressed its concern over the obstacles faced by the legal representatives of the extradited in the Justice and Peace processes in their efforts to gain access to their clients due to restrictions imposed by the Federal Bureau of Prisons, as well as the denial of at least one visa for a Justice and Peace prosecutor scheduled to preside over the voluntary statements in the United States.

86. In a communication dated July 19, 2010, the Assistant Attorney General of the United States, Gary G. Grindler, announced to the then Minister of the Interior and Justice, Fabio Valencia Cossio, a new plan to increase considerably the "frequency of access of Colombian officials" to the extradited leaders, specifically those already convicted in the United States and some who have been charged and are awaiting a decision. The plan will be implemented by the Bureau of International Affairs of the Justice Department of the United States in cooperation with the office of the Department of Justice in the US Embassy in Colombia.¹⁵⁰

87. In a adjunct communication of the same date US Assistant Attorney General, Lanny A. Breuer, explained the plan in detail and indicated that the paramilitary leaders already convicted and sentenced in the United States (Guillermo Pérez Alzate, Diego Ruiz Arroyave, Ramiro Vanoy Murillo, Diego Fernando Murillo Bejarano, and Francisco Javier Zuluaga Lindo) expressed their willingness to participate in the proceedings under the Justice and Peace Law, and other

¹⁴⁸ On May 7, 2008, Carlos Mario Jiménez aka "Macaco" was extradited to the United States, and in May 2008, the following AUC leaders were also extradited: Diego Fernando Murillo Bejarano aka "Don Berna", Francisco Javier Zuluaga Lindo aka "Gordo Lindo", Manuel Enrique Torregrosa Castro, Salvatore Mancuso Gómez aka "El Mono" or "Triple Cero", Diego Alberto Ruiz Arroyave, Guillermo Pérez Alzate aka "Pablo Sevillano", Ramiro Vanoy Murillo aka "Cuco Vanoy", Juan Carlos Sierra Ramírez aka "El Tuso", Martín Peñaranda Osorio aka "El Burro", Edwin Mauricio Gómez Luna, Rodrigo Tovar Pupo aka "Jorge 40", Hernán Giraldo Serna aka "El Patrón", Nodier Giraldo Giraldo, and Eduardo Enrique Vengoechea Mola.

¹⁴⁹ The IACHR issued a press release, held public hearings to receive information on the subject, and issued a decision on the matter in Chapter IV of its Annual Report for that year. See IACHR, Press Release No. 21/08, "IACHR expressed concern over the extradition of Colombian paramilitaries," Washington, D.C., May 14, 2008; Hearing on extraditions of paramilitaries to the United States and the rights of victims in Colombia, held on October 23, 2008 as part of the 133rd Regular Session of the Inter-American Commission on Human Rights. <http://cidh.org:81/Audiencias/seleccionar.aspx>. ; 2008 Annual Report of the IACHR, Chapter IV – Colombia, paras. 30-38. <http://www.cidh.oas.org/annualrep/2008sp/cap4.Colombia.sp.htm>

¹⁵⁰ Communication of the US Assistant Attorney General Gary G. Grindler to the Minister of the Interior and Justice of the Republic of Colombia, Fabio Valencia Cossio, of July 19, 2010. Available at <http://www.verdadabierta.com/justicia-y-paz/2603-justicia-de-eeuu-dara-acceso-a-paras-extraditados>.

proceedings in Colombia, and will be transferred to the detention facility of the Justice Department Bureau of Prisons in Miami, Florida. The Communication indicates that Colombian authorities will have 21 weekly hours of access to these defendants for the purpose of conducting interviews and video depositions, and that in view of the agreement reached between officials of the US Justice Department and representatives of the Ministry of the Interior and Justice, the Supreme Court and the Prosecutor's Office, Colombian authorities must provide specific deadlines by which the interviews and depositions must take place. It also indicates that this access must have a specific time limit.¹⁵¹

88. Regarding the paramilitary leaders who have not yet been convicted (Salvatore Mancuso Gómez, Hernán Giraldo Serna, Juan Carlos Sierra Ramírez, Miguel Mejía Múnera, José Gregorio Teran Vásquez and Norberto Quiroga Poveda), the communication indicates that Northern Neck Detention Center in Virginia will provide Colombian judicial authorities, for a limited time, eight hours of daily access for five days a week to interview and receive depositions from the paramilitary leaders expressing their willingness to participate. To that effect, they should communicate the specific deadlines for the completion of all required proceedings. As far as concerns the paramilitary leaders held at other detention centers, the communication indicates that there will be efforts made to incorporate them into this plan. Finally the US Government requested from the Government of Colombia the appointment of a liaison official to coordinate the efficient implementation of the plan and indicated that its initiation depended upon the presentation of a detailed schedule with time limits for all the necessary steps.¹⁵²

89. In its observations the State reported that thanks to judicial cooperation between the United States and Colombia up to December 2010, Salvatore Mancuso Gómez, Ramiro Vanoy Murillo, Guillermo Pérez Alzate, Miguel Ángel Melchor Mejía Múnera, Juan Carlos Sierra Ramírez, José Gregorio Terán Vásquez, Diego Ruiz Arroyave and Francisco Javier Zuluaga Lindo continued with their respective voluntary statements and some of them appeared via video-link conference before judicial authorities in indictment and other hearings.¹⁵³ The Commission will continue to follow up on the effective implementation of the cooperation initiatives described above.

90. Also, the Commission is concerned by the information, already known to the public, that some US judges allegedly sealed public access to the cases of some paramilitary leaders, which prevents the victims from their crimes in Colombia from gathering information on whether these leaders have bargained for lower penalties or even been released.¹⁵⁴

91. During 2010, the Supreme Court of Justice issued an unfavorable opinion on the US extradition requests for Edwar Cobo Tellez aka "Diego Vecino"¹⁵⁵, Daniel Rendón Herrera aka "Don

¹⁵¹ Communication from the US Assistant Attorney General Lanny A. Breuer to the Ministry of the Interior and Justice of the Republic of Colombia Fabio Valencia Cossio, July 19, 2010. Available at <http://www.verdadabierta.com/justicia-y-paz/2603-justicia-de-eeuu-dara-acceso-a-paras-extraditados>.

¹⁵² Communication from the US Assistant Attorney General Lanny A. Breuer to the Ministry of the Interior and Justice of the Republic of Colombia Fabio Valencia Cossio, July 19, 2010. Available at <http://www.verdadabierta.com/justicia-y-paz/2603-justicia-de-eeuu-dara-acceso-a-paras-extraditados>.

¹⁵³ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 28.

¹⁵⁴ Cf. *The Washington Post*, Sealed Colombian cases trigger debate, September 11, 2010, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/10/AR2010091007127.html>. See also Truth Behind Bars Colombian Paramilitary Leaders in U.S. Custody, International Human Rights Law Clinic, University of California, Berkeley School of Law, February, 2010.

¹⁵⁵ The request for an arrest warrant for extradition purposes against "Diego Vecino" was issued in Note No. 0779 of the US Embassy in Colombia dated April 23, 2009, addressed to the Ministry of Foreign Affairs of the Republic of

Mario¹⁵⁶ and Fredy Rendón Herrera aka "El Alemán."¹⁵⁷ Following the reason employed in the denial of Luis Edgar Medina Flórez's extradition request, the Court established that extradition undermines the spirit of Law 975, fails to acknowledge the victims' right to truth, justice and reparations, and "traumatizes" the functioning of the Colombian administration of justice. It specifically indicated that "[t]he extradition of the paramilitaries subject to the justice and peace process constitutes a *coup de grace* to the inspirational purpose of a law intended to make peace grow among Colombians, as well as faithful evidence of the misfortune run by the Government's strategy against violence and illegal armed groups."¹⁵⁸

92. Finally, the Court concluded that to authorize extradition of the said paramilitaries

(i) would breach the State of Colombia's international obligations directed towards the fight against impunity for crimes against humanity for which the target for extradition in Colombia is accused and, (ii) the rights of the victims and Colombian society would be seriously damaged, leaving them without the possibility of discovering the truth and obtaining reparation for the crimes committed by the illegal armed group whose involvement is attributed [to those demobilized in question]; all this, without prejudice to the State of Colombia's obligation to investigate and punish the crimes that the target for extradition may have committed on foreign soil, and for which extradition is requested.¹⁵⁹

93. On July 28, 2009, the Supreme Court of Justice issued a favorable ruling for the extradition of Eder Pedraza Peña, aka "Ramón Mojana", since, despite his demobilization in 2005, he only applied for the Justice and Peace Law proceedings on April 6, 2010, which "does not imply or guarantee, in itself, his effective participation therein"¹⁶⁰ and maintained that it would appear more likely to be a maneuver to elude the charges of drug-trafficking for which he stands accused in the United States. In this respect, the Court stressed that it is difficult to accept that "Ramón Mojana" "is effectively participating in transitional justice proceedings or that he is aiding the State of Colombia to fulfill its international obligations in the fight against impunity towards crimes against humanity; neither that he is contributing to crystallizing the rights of the victims and Colombian society to find out the truth and obtain reparation for the crimes committed by him and his illegal armed group."¹⁶¹

...continuation

Colombia. Through Note No. 2098 of August 28, 2009, the US Embassy filed a formal request for extradition before the Ministry of Foreign Affairs.

¹⁵⁶ The request for an arrest warrant for extradition purposes against "Don Mario" was issued in Note No. 1679 of the US Embassy in Colombia dated July 21, 2009 addressed to the Ministry of Foreign Affairs of the Republic of Colombia. Through Note No. 2478 of October 1, 2009, the US Embassy filed a formal request for extradition before the Ministry of Foreign Affairs.

¹⁵⁷ The request for an arrest warrant for extradition purposes against "El Aleman" was issued in Note No. 1680 of the US Embassy in Colombia dated July 21, 2009 addressed to the Ministry of Foreign Affairs of the Republic of Colombia. Through Note No. 2479 October 1, 2009 the US Embassy filed a formal request for extradition before the Ministry of Foreign Affairs.

¹⁵⁸ Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Luis Edgar Medina Flórez, August 19, 2009; Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Edwar Cobos Tellez, Extradition No. 32568, February 17, 2010; Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Daniel Rendón Herrera, Extradition No. 32786, March 17, 2010; and Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Fredy Rendón Herrera, Extradition No. 32794, May 4, 2010.

¹⁵⁹ Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Edwar Cobos Tellez, Extradition No. 32568, February 17, 2010, Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Daniel Rendón Herrera, Extradition No. 32786, March 17, 2010 and Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Fredy Rendón Herrera, Extradition No. 32794, May 4, 2010.

¹⁶⁰ Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Eder Pedraza Peña, Extradition No. 33306, July 28, 2010.

¹⁶¹ Supreme Court of Justice, Criminal Cassation Chamber, Opinion on the Extradition of Eder Pedraza Peña, Extradition No. 33306, July 28, 2010.

94. The Commission notes that on June 25, 2010, the Interior and Justice Ministry, via delegated presidential powers, enacted Decree 2288, through which it resolved to defer for an extendible term of one year, "the extradition of persons linked to illegal organized armed groups, charged or convicted as perpetrators or accessories to criminal acts committed on Colombian soil during, and when, belonging to these groups, who have decided to demobilize and contribute resolutely to national reconciliation, in terms of the Justice and Peace Law, who are being tried within this legal framework and victims exist."

95. Similarly, the decree has established that the Government may not delay the rendition when it establishes, in its estimation, that the extradition target is not effectively contributing to clarifying the truth, is not providing comprehensive reparation to the victims of his or her conduct, is incurring grounds for being excluded from the proceedings and benefits deriving from the Justice and Peace Law 975 of 2005, is not complying with the obligations and agreements derived from the alternative sentencing, or has become involved in the commission of criminal conduct subsequent to demobilization, or is not assisting effectively in the progress of criminal proceedings.

96. The Commission observes that extradition of these paramilitary leaders also interferes with the State's obligation to try civilians and State agents involved in cases in which both the Commission and Inter-American Court have established its responsibility for grave violations of the rights protected by the American Convention on Human Rights.¹⁶²

97. The IACHR reiterates its concern for the impact that these extraditions have on the rights of the victims to truth, justice and reparation; on their direct participation in the search for the truth on the crimes committed during the conflict, and access to reparations for the damaged caused; and for the impediments to determining the links between State agents and AUC leaders in the commission of human rights violations for which the State has - in some cases - already been held internationally responsible.

98. The Commission notes that some claimants and their families have been the victims of threats and attempts against their lives.¹⁶³ Similarly, the attacks and killings against family members of extradited paramilitary leaders have endangered their cooperation with the Justice and Peace proceedings.¹⁶⁴ The Commission observes that the State must ensure protection for the demobilized in order to secure their effective and unconditional cooperation.

¹⁶² In this respect, the Inter-American Court of Human Rights has emphasized that in decisions on the application of certain procedural institutions to an individual, the considerations on the attribution of serious violations of human rights should prevail. The application of figures such as extradition must not serve as a means to encourage, bring about or ensure impunity. In such a way, by reason of the lack of a judicial cooperation agreement between the States who have settled the extradition, it is for Colombia to declare the applicable mechanisms, instruments and judicial measures to ensure that the person extradited helps with the investigation of the facts in the present case, as well as to ensure any due trials. I.A. Court H/R., *Case of the Mapiripán Massacre v. Colombia*. Follow-up on Compliance. Resolution of the Inter-American Court of Human Rights, July 8, 2009, para. 41.

¹⁶³ MAPP/OAS has reported that various attempts against the lives of the applicants, their families and relatives have taken place when exiting the facilities of the Bellavista and Itagüí prisons, or inside the prison Modelo de Barranquilla. Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁶⁴ In December 2009, the brother of Rodrigo Tovar Pupo aka "Jorge 40" was killed in the city of Valledupar, department of Cesar.

C. Witness and Victim Participation in Judicial Proceedings Under the Justice and Peace Law

99. Until December 31, 2010, 323.765 victims¹⁶⁵ had registered in the Justice and Peace process and 59.050 had participated in voluntary depositions¹⁶⁶ after the publication of more than three thousand five hundred summonses.¹⁶⁷

100. The Commission observes that between 2006 and 2010, there have been 561 workshops on victim assistance in which 113.695 victims were assisted, and that in 2010, there were more than 105 workshops with more than 17,369 victims in attendance.¹⁶⁸ The activities in these workshops included, *inter alia*, assistance in the processing of claim forms to participate in the Justice and Peace Law proceedings; enquiries over the status of individual cases; requests for a public defense attorney for cases with a filed registry of facts; psychological support, and legal advice and assistance to claim their rights. Similarly, 165 special workshops for family members of disappeared victims were held, with 35.632 individuals attending, where 14.978 DNA samples were taken to family members.¹⁶⁹ The Commission was pleased to learn that the Mayor of Medellin and the Prosecutor's Office signed an agreement to establish a search group for the disappeared.¹⁷⁰

101. MAPP/OAS has highlighted the improvement undergone by the National Unit of Justice and Peace Prosecutors in terms of human resources. In this respect, it reported that from six prosecutors in 2006, it now boasts 59 prosecutors, more than 100 deputy prosecutors and more than one thousand investigators.¹⁷¹ The Commission observes that although this represents considerable progress, the workload of each investigator requires a higher number in terms of human resources.

102. However, it is necessary to reiterate that there are still obstacles to the victims' participation in the proceedings. MAPP/OAS has reported that in some regions such as Magdalena Medio, Sur de Bolívar, Putumayo, Antioquia and Arauca, the absence of liaison between the different institutions participating in the workshops for the assistance of victims has descended into

¹⁶⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 30.

¹⁶⁶ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 30. Decree 315 of 2007 provides that the victims have the right to participate personally and directly, or through their legal advisors, in the voluntary deposition proceedings, the charging, the indictment and other procedural stages, which take place within the framework of Law 975, related to the events which caused the damage. Interior and Justice Ministry, Decree No. 315 of February 7, 2007 "Through which the intervention of the victims is governed during the investigation stage of the Justice and Peace trials in accordance with the provisions of Law 974 of 2005."

¹⁶⁷ National Unit of Justice and Peace Prosecutors, information under consolidation and verification proceedings updated to June 30, 2010.

¹⁶⁸ National Unit of Justice and Peace Prosecutors, information under consolidation and verification proceedings updated to June 30, 2010. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 30.

¹⁶⁹ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 30.

¹⁷⁰ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁷¹ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

an excess of paperwork and form-filling, which causes confusion and a feeling of institutional fatigue on the part of the victims.¹⁷²

103. The Commission reiterates that the impossibility to interrogate directly or through representatives whoever intends to benefit from Law 975 on the events concerning them, in the different phases of the voluntary deposition, constitutes an obstacle to the victims' participation. The victims' opportunity to interrogate is reserved for the second phase of the voluntary deposition, but proceeds by way of an indirect method, since the proposed questions are incorporated into a questionnaire which is handed over to members of the Technical Investigatory Body (CTI), who in turn, submit them to the Public Prosecutor. This mechanism severely restricts the possibility of using the victims' questionnaire as an adequate means to uncover the truth. The Public Prosecutor also loses a valuable strategy to confront the voluntary statements and advance towards verification of compliance with the legal requirements of access to the benefits.¹⁷³ In fact, of the more than three hundred thousand registered victims, only 59.050 -equivalent to around 20%- have participated in the voluntary depositions. Out of these, 24.426 victims have posed 30.544 questions to the applicants in the voluntary depositions.¹⁷⁴ MAPP/OAS has stressed that the broadcasting both of voluntary depositions and judicial hearings still suffer from technical problems, which have hindered the full implementation of the said mechanism.¹⁷⁵ The State indicated in its observations that the Unit of Justice and Peace of the Prosecutor's Office has extended the video signal of the voluntary statements to 401 municipalities where the victims currently reside with a total of 1,370 broadcasting days.¹⁷⁶

104. Similarly, MAPP/OAS has reported that due to the large quantity of voluntary depositions, the psychologists are simply overwhelmed in their ability to assist the victims in these procedural steps so that it has recommended that both the CNNR and the Public Prosecutor reinforce the capacity for psycho-social support.¹⁷⁷ The Commission recalls that the Supreme Court of Justice emphasized the collective nature of the right to the truth and the State's obligation to promote a "serious, clear, robust and transparent investigation which involves the victims' right to be heard in the proceedings, and assisting them to participate actively in the uncovering of the truth."¹⁷⁸

105. Similarly, the Commission observes that the victims face difficulties of access to counsel and representation during the judicial proceedings. The Commission notes that the Ombudsman has developed initiatives designed to overcome the lack of legal representation, such

¹⁷² MAPP/OAS reported that in August, 2009 took place in Arauca the first workshop, which had to be cancelled for total lack of participation of the victims. MAPP/OAS identified as possible causes the recent nature of the victims' organizations in that Department, the lack of trust of the population in the institutions and the presence of illegal armed groups. Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), April 26, 2010.

¹⁷³ IACHR Annual Report 2009, Chapter IV Colombia, para. 19 <http://www.cidh.oas.org/annualrep/2009sp/Ch.4Colo.09.sp.htm>.

¹⁷⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 30.

¹⁷⁵ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁷⁶ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 30.

¹⁷⁷ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁷⁸ Supreme Court of Justice, Criminal Cassation Chamber, Judge Rapporteur Sigifredo Espinosa Pérez, Appeal Application, September 21, 2009.

as meetings to gather documents, engaging trial attorneys, as well as actions aimed at improving the channels of communication between victims and the officials in charge of their defense, such as in the north of the Tolima Department and in the Caldas Department.¹⁷⁹ MAPP/OAS has reported that thanks to the aid of international cooperation, the Ombudsman's Office has increased to 60 the number of public defenders engaged in the Justice and Peace proceedings.¹⁸⁰

106. In the case of the victims actively involved in the process, their representatives and the judicial officials involved, their safety has been seriously compromised or directly affected by illegal armed groups. MAPP/OAS has indentified various regions -such as in the south of Córdoba, Urabá, Chocó, Bajo Cauca, Huila, and in the south of Bolívar and Sucre- where threats and killings occur more regularly.¹⁸¹ MAPP/OAS has also pointed out that in Barrancabermeja, Santander Department, the majority of the victims benefitting from the two direct restitutions completed so far, have been forcibly displaced once more. Similarly, in some areas, the victims' participation in workshops for receiving assistance has been deterred by the presence of armed groups such as in Purificación in the Tolima Department, in Puerto Santander in the Norte de Santander Department and in Nechí, in the Department of Antioquia.

107. The State indicated in its observations that on May 19, 2010, Decree 1737 amended Decree 3570 of 2007 creating the Program for the Protection of Victims and Witnesses of Law 975 of 2005. The State indicates that Decree 1737 of 2010 develops three main strategies: firstly, it guarantees that the structure, proceedings and institutional roles taken, assimilated and administered in a speedy manner by all entities at different levels and that they are fully functional within a relatively short period; secondly, it guarantees the incorporation of values, principles, criteria and rules ensuring dignified treatment from the perspective of human rights and the differential approach regarding women and ethnic groups; and thirdly it advances the budgetary management and the necessary institutional adaptations to ensure that the Program is viable and capable of responding to the challenges before it. The Protection Program also counts on a Risk Map identifying the areas of greater risk for the victims and witnesses of the Justice and Peace Law and the measures for collective protection in those areas.¹⁸²

¹⁷⁹ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁸⁰ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁸¹ MAPP/OAS stressed that in this area there have been serious acts of violence against victims' leaders participating in the restitution of land, such as the killings of the leaders Guillermo Ramos, John Jairo Vides and Argenito Díaz. Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010. Similarly, there were reports of the murders of victims' leaders Alexander Quintero, Rogelio Martínez, Albeiro Valde, Jair Murillo, Beto Ufo Pineda Muñoz, Hernando Pérez, Edgar Bohorquez and Óscar Maussa. CODHES. *Murder of Leaders and Persons in Displaced Situations*, <http://www.codhes.org/images/stories/pdf/CLD%20asesinados%20Sept%202010.pdf>. IACHR. Press Release 117/10, *IACHR condemns murder of Óscar Maussa in Colombia*, <http://www.cidh.org/Communications/Spanish/2010/117-10sp.htm>.

¹⁸² Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 29. The State also indicates that Decree 1737 of 2010 contemplates the creation of Departmental Groups of Supplementary Measures managed by the Governors, in order to establish a dialogue with communities and victims' and Women's organizations in order to identify vulnerability factors and potential threats. This group must also ensure the rights of the victims and their family members so that they can access the institutional offer on education, health, housing, social assistance and emotional stability, among other areas, through the departmental levels under their responsibility.

D. Establishing Mechanisms for the Reparation of the Harm Caused to Victims of the Armed Conflict

108. In its document on *Principal Guidelines for a Comprehensive Reparations Policy*, published in February 2008,¹⁸³ the IACHR stresses, *inter alia*, that the policy of reparations should ensure the victims' right to comprehensive reparations for the damage caused both by illegal armed groups, and by the action or omission of State agents, based on measures of restitution, compensation, rehabilitation and satisfaction. It also points out that this policy must be guided by the principle of integrity, and be adjusted to the parameters established in the Inter-American System in relation to reparations for similar events, which have been taken up in part in the recent case law of the contentious administrative courts in Colombia.

109. In actual fact, the victims of the conflict may rely on the following ways to access their right to reparations: the reparations proceedings set out in the Justice and Peace Law, established in 2005; and Decree 1290/08, adopted on April 22, 2008, which sets out an administrative reparations program in order to award individual reparation in favor of persons whose fundamental rights have been violated by illegal armed groups, demobilized in the framework of the Justice and Peace Law.¹⁸⁴ The Decree 1290/08's administrative reparations program only covers victims of demobilized armed groups, and is primarily based on a compensation scheme with fixed parameters, measurable in minimum wages.

110. As from June 2010, the Committee for Administrative Reparations - the body applying Decree 1290 - had received more than 330,000 applications with requests for accreditation as a victim.¹⁸⁵ In 2010, the Presidential Agency for Social Action and International Cooperation (hereinafter "Social Action") paid out 496 billion pesos to 27,200 families¹⁸⁶ corresponding to a class indemnification (*indemnización solidaria*), one of the measures of comprehensive reparations envisaged in the Administrative Reparations Decree 1290, and one that is also part of the restitution, rehabilitation, and measures of compensation and guarantee of non-repetition. In its response to the report for 2009, the State pointed out that in March 2010, CONPES was due to submit a document including non-compensatory measures of assistance and reparation for the victims, as well as the Land Restitution Program and the Institutional Collective Reparations Program;¹⁸⁷ however, to date, the Commission has not received information on the publication of this document.

111. In the procedure set out under the Justice and Peace Law, only three applicants have reached the motion for reparations stage:¹⁸⁸ Edwar Cobos Téllez aka "Diego Vecino", Uber

¹⁸³ IACHR *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/v/II.131 Doc. 1, February 19, 2008, <http://cidh.org:81/pdf%20files/Lineamientos%20principales%20para%20una%20política%20integral%20de%20reparaciones.pdf>.

¹⁸⁴ Article 1 of Decree 1290/08 "by which a program of individual administrative reparations for victims of illegal armed groups is created."

¹⁸⁵ National Commission for Reparation and Conciliation, *Guide to Justice and Peace: Caminos*, 6th ed., to August of 2010, figures to June 30, 2010. Available at: <http://www.cnrr.org.co/new/boletin-justiciaypaz/EDI-6/CAMINOS-WEB-6.pdf>.

¹⁸⁶ National Commission for Reparation and Conciliation, *Guide to Justice and Peace: Caminos*, 6th ed., to August of 2010, figures to June 30, 2010. Available at: <http://www.cnrr.org.co/new/boletin-justiciaypaz/EDI-6/CAMINOS-WEB-6.pdf>.

¹⁸⁷ Colombia's observations on the Inter-American Commission on Human Rights Draft Chapter IV Report, corresponding to 2009, December 13, 2009, p.17.

¹⁸⁸ The reparations motion is the phase prior to judgment within the trial proceedings set out in Justice and Peace Law 975, in which the victims demonstrate their wish before the Justice and Peace Court to be awarded reparations, and the

Enrique Bánquez aka "Juancho Dique" and Jorge Iván Laverde Zapata aka "El Iguano". The reparations motion of "Diego Vecino" and "Juancho Dique" took place from April 26, 2010, and lasted eleven days. This procedure culminated in a judgment issued on June 29, 2010, which condemned the demobilized and ordered reparations for the victims. To date, the judgment is under appeal before the Supreme Court of Justice. For its part, the reparations motion of "El Iguano" began on July 7, 2010, and has not yet been completed.¹⁸⁹

112. On September 27, 2010, after the failure of the victims' law Bill presented in the Senate in 2009,¹⁹⁰ the new Government led by the President of the Republic, Juan Manuel Santos, filed a new victims' law Bill in Congress. The Commission is pleased to note that on November 25, 2010, in first discussion, the First Commission of the Chamber of Representatives approved Bill 107/10, which enacts measures of care and comprehensive reparation to the victims of human rights violations and breaches of international humanitarian law together with Bill 85/10, which establishes transitional rules for the restitution of lands. The Bill states that indigenous peoples and Afro-Colombian communities will be part of specific laws, which will be subject to prior consultation.

113. The Bill defines victims as "those persons who, individually or collectively, have suffered an impairment to their fundamental rights, as a consequence of breaches of International Humanitarian Law or of grave and manifest violations of the rules of International Human Rights Law, which took place in the course, and on the occasion of, either the armed conflict or terrorist acts."¹⁹¹ Similarly, the Bill includes as a victim "spouse, permanent life partner, and family member of the first blood, or *primero civil* of the direct victim, when the latter was murdered or disappeared"¹⁹² and "persons suffering impairment to their fundamental rights by intervening to assist the victim in danger or to prevent victimization."¹⁹³ The IACHR points out that the Bill establishes that the "status of victim is acquired independently of however the perpetrator of the criminal acts is identified, arrested, tried or sentenced."¹⁹⁴

114. The Commission stresses that the Bill recognizes the victims of State agents who have suffered a violation of the human rights and/or of international humanitarian law. Similarly, it includes a definition regarding those who may be title holders to the restitution of lands, and a reversal of the burden of proof so that the current owners of the lands illegally seized must show

...continuation

manner in which they pretend to obtain such reparation. Available at: http://www.cnrr.org.co/contenido/09e/spip.php?article2824&var_mode=calcul.

¹⁸⁹ Information available at http://www.cnrr.org.co/contenido/09e/spip.php?article3069&var_mode=calcul.

¹⁹⁰ In June 2009, after debates in the Senate and Chamber of Representatives, a new version of the Bill, which offered access to reparations for victims of crimes committed by State agents, was defeated in the Congressional Conciliation Commission by 48 votes against the Bill, and 24 in favor. The Office of the President of the Republic issued a press release rejecting any act of conciliation of the law Bill which would generate high costs or would equate the crimes committed by illegal groups with those acts committed by State agents. In fact, he stressed that a cost greater than 80 billion pesos "would create an irreparable crisis in the State's finances, would make reparation of the victims impossible, and the final text would not pass from being dead letter to serve fleeting electoral excitement." In addition, the Government stressed that a compromise text "represents a serious threat to Democratic Security, since it compares agents in the employment of the State to terrorists, since the former may have a judicial trial and an executory decision declaring damages to the victim and liability may be attributed to them." Office of the President of the Republic of Colombia, Communication No. 35, June 18, 2009, available at: <http://web.presidencia.gov.co/comunicados/2009/junio/305.html>, in the IACHR's Annual Report 2009, Chapter IV, Colombia, para. 62 <http://www.cidh.oas.org/annualrep/2009sp/Ch.4Colo.09.sp.htm>.

¹⁹¹ Article 3 of Bill 107 of 2010.

¹⁹² Article 3 of Bill 107 of 2010.

¹⁹³ Article 3 of Bill 107 of 2010.

¹⁹⁴ Article 3 of Bill 107 of 2010.

their status as owners.¹⁹⁵ It also establishes the obligation of legally recognized companies that voluntarily lent support to illegal organizations to contribute to the reparation of victims of this support in the same proportion to the aid given.¹⁹⁶ The Bill also contemplates that victims who rely on compensation by the administrative route may also resort to the judicial route and the compensation received via the administrative route will be deducted from the compensation awarded in the judicial route.¹⁹⁷ The Bill also establishes that the humanitarian aid granted by the State does not constitute reparations and consequently is not to be deducted from the administrative or judicial compensation legally due to the victims.¹⁹⁸

115. Finally, the Commission emphasizes that the Bill creates a Truth Commission, with an initial mandate of three years with the aim, *inter alia*, of "contributing to the clarification of those crimes and human rights violations committed since 1991 to the date of the presentation of the final report, seeking to determine the whereabouts and situation of the victims, and indentifying, wherever possible, the alleged perpetrators."¹⁹⁹

116. The Commission is pleased to note that the Bill incorporates a series of recommendations established by the Commission in its *Principal Guidelines for a Comprehensive Reparations Policy*²⁰⁰, and reiterates the importance of ensuring the victims' right to reparations for the damages caused both by illegal armed groups as well as the actions or omissions of State agents, based on measures of restitution, compensation, rehabilitation and satisfaction in the light of the principle of integrity. Similarly, the implementation of a lawful reparations program must be accompanied by a commitment to social solidarity on the part of Colombian society with the victims of the conflict. This will be aided by mechanisms for consultation, follow-up and evaluation that, over time, will lend it stability and sustained validity. The Commission will continue with its follow-up of the progress in the adoption of effective measures, which guarantee comprehensive reparation for the damage to the victims of the armed conflict.

III. THE SITUATION OF ETHNIC GROUPS IN COLOMBIA

117. Colombia is a multi-ethnic and pluri-cultural country and its own Political Constitution protects its cultural and ethnic diversity by recognizing the right to equality and by establishing the obligation to promote conditions so this equality may be real and effective in terms of the situation of discriminated or marginalized groups.²⁰¹

¹⁹⁵ Articles 60 and 61 of Bill 107 of 2010: Those legally entitled to restitution. "Individuals who were owners, possessors, holders or occupiers of land, and were dispossessed there from, or who were obliged to abandon them as a direct or indirect result of events occurring from January 1, 1990, and which constitute violations dealt with in Article 3 of the present [Bill] may request restitution of the land or country living space in the terms established in this chapter, without prejudice to other reparations taking place in conformity with the provisions of the present law." Presumption of Dispossession. "Transfers of ownership, the suspension or termination of possession, the holding, or the occupation and forced abandonment of lands shall be presumed to be absolutely null and void. As a result, the burden of proof shall be reversed and the resistor shall prove good faith liability free."

¹⁹⁶ Article 9 of Bill 107 of 2010.

¹⁹⁷ Article 19 of Bill 107 of 2010.

¹⁹⁸ Article 24 of Bill 107 of 2010.

¹⁹⁹ Article 131 of Bill 107 of 2010.

²⁰⁰ IACHR *Principal Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/v/II.131 Doc. 1, February 19, 2008, <http://cidh.org:81/pdf%20files/Lineamientos%20principales%20para%20una%20política%20integral%20de%20reparaciones.pdf>.

²⁰¹ Article 7 of the Political Constitution of Colombia states that "[t]he State recognizes and protects the cultural and ethnic diversity of the Colombian Nation."

118. Despite this legal recognition, ethnic groups are targets of the violence derived from the armed conflict, in an individual and collective form, which endangers their autonomy and their territorial and cultural rights. During 2010, the IAHCR continued to receive information on the situation of violence, which in particular besets indigenous peoples, community councils and Afro-descendent communities, in certain regions of the country.

A. Indigenous Peoples

1. Ethnic Overview of the Country

119. Colombia is a highly ethnically and culturally diverse country. The 2005 census shows that there are 1,392,623 indigenous inhabitants in Colombia, belonging to 87 different peoples.²⁰² The country's indigenous organizations, for their part, speak of 102 distinct indigenous peoples, spread over the greater part of the national territory, but principally in rural areas - according to DANE statistics, 78% of the indigenous population of Colombia live in rural areas.²⁰³ Each one of these peoples is distinguished by its own culture, history, social and political organization, economic and productive structure, cosmology, spirituality and ways of relating to their surroundings; throughout the country, 64 native languages are currently spoken, grouped into 13 distinct linguistic families.

120. In the context of the conflict, violence and forced displacement, the human rights situation of Colombia's indigenous population is of concern, about which the Commission has issued warnings in its previous annual reports. During 2010, the IACHR continued to receive information about serious situations of violations or threats to the individual and collective fundamental rights of indigenous peoples and their members.

121. The State of Colombia has undertaken certain precise initiatives, and has initiated processes of agreement and adopted legal measures designed to confront certain indicators of the situation. However, these initiatives, procedures and measures have not yet to date been converted into significant changes in the conditions of effective enjoyment of human rights.

2. Indigenous Peoples in Current Danger of Extinction

122. Various indigenous organizations in Colombia have issued warnings on the risk of the physical and cultural extinction facing many of the country's indigenous peoples, due to the impact of the armed conflict, the decreasing number of members, poverty and its consequences. The National Indigenous Organization of Colombia, ONIC, launched an international campaign in 2010 for the survival of indigenous Colombian peoples in danger of extinction.²⁰⁴ In its August 2009 report on Colombia, the UN Committee for the Elimination of Racial Discrimination, also expressed concern for the danger of extinction facing different indigenous peoples, especially in the Amazon region of the country, and urged the State to find solutions to protect them and ensure the exercise

²⁰² See: National Administrative Department of Statistics (DANE); a Multicultural Nation. Its Ethnic diversity." Department of Census and Demographics, May of 2007. Available at: www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf

²⁰³ National Administrative Department of Statistics (DANE); a Multicultural Nation. Its Ethnic diversity." Department of Census and Demographics, May of 2007. Available at: www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf.

²⁰⁴ The campaign is entitled "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co. It expresses, in general terms, "the concerns of indigenous organizations, on the adverse effects on indigenous peoples caused by the internal armed conflict, poverty, discrimination, institutional neglect, and the imposition of a foreign and devastating model of development on the indigenous territories, which threatens the physical and cultural extinction of the 102 peoples in the country."

of their human rights.²⁰⁵ At the special hearing held before the IACHR in October 2010, on the situation of human rights of indigenous peoples in Colombia, the Government openly recognized that certain indigenous peoples in the country are at risk of extinction. The United Nations System in Colombia has also issued a warning on the danger that numerous indigenous Colombian peoples may disappear.²⁰⁶

123. In the Order 004 of 2009, the Constitutional Court of Colombia has already ruled that, in general terms, the armed conflict and forced displacement threaten the very existence of numerous Colombian indigenous peoples, among which 34 were described as being in a high risk situation.²⁰⁷ Resuming this statement, in 2010, the ONIC presented through its international campaign, an additional group of 32 indigenous peoples at risk of disappearing, not only due to the armed conflict but also due to the small number of members.²⁰⁸ For the ONIC, "the factors creating a danger of physical and cultural extinction for the Colombian indigenous peoples are: (i) the devastating effects of the internal armed conflict and its numerous consequences, (ii) the imposition of development projects on indigenous territory without due prior, free and informed consultation and (iii) the State's neglect, represented by poverty, lack of access to basic services and institutional discrimination."²⁰⁹

124. ONIC has reported 32 peoples with a population of fewer than 500 members, leaving them in a dangerous state of disappearing due to demographic fragility. Of these 32 peoples, 18 have fewer than 200 members, and 10 have fewer than 100 members. These 32 peoples also face the risk factors caused by the armed conflict, discrimination, poverty and institutional neglect.²¹⁰ Only one of these peoples, the Nukak-Makú, was included in the Constitutional Court's Order 004 of 2009 as a beneficiary of the protection order given to the Government, in the sense of designing and implementing for this people a specific Ethnic Safeguard Plan against the Armed Conflict and Forced Displacement.

125. Some representative examples of indigenous peoples in particularly severe danger of physical and cultural disappearance are: the Nukak-Makú, the Wachina or Pizamira, the Wipiwi or the Makaguaje, whose situation will be briefly outlined below to illustrate the types of dangers threatening at least 65 Colombian indigenous peoples.

²⁰⁵ UN - International Convention on the Elimination of all forms of Racial Discrimination - Final Observations of the Committee for the Elimination of Racial Discrimination, Colombia, August 28, 2009.

²⁰⁶ United Nations System in Colombia - Press Release: "International Indigenous Peoples Day: Strategies for the protection of their lives and integrity." 2010-08-09. Available at: <http://www.hchr.org.co/publico/comunicados/2010/comunicados2010.php3?cod=26&cat=81>.

²⁰⁷ These 34 indigenous peoples are: (1) Wiwa, (2) Kankuamo, (3) Arhuaco, (4) Kogui, (5) Wayúu, (6) Embera-Katío, (7) Embera-Dobidá, (8) Embera-Chamí, (9) Wounaan, (10) Awá, (11) Nasa, (12) Pijao, (13) Koreguaje, (14) Kofán, (15) Siona, (16) Betoy, (17) Sikuani, (18) Nukak-Makú, (19) Guayabero, (20) U'wa, (21) Chimila, (22) Yukpa, (23) Kuna, (24) Eperara-Siapidaara, (25) Guambiano, (26) Zenú, (27) Yanacona, (28) Kokonuko, (29) Totoró, (30) Huitoto, (31) Inga, (32) Kamentzá, (33) Kichwa, and (34) Kuiva.

²⁰⁸ These indigenous peoples are: (1) Yamalero, (2) Makaguaje, (3) Pisamira, (4) Tsiripu, (5) Eduria (Taiwano), (6) Piaroa, (7) Wipijiwi o Wipiwi, (8) Muinane, (9) Yaruro, (10) Dujo, (11) Judpa, (12) Yauna, (13) Bara, (14) Ocaina, (15) Yohop (Hupdu), (16) Amorua, (17) Chiricoa, (18) Nonuya, (19) Kawiyari, (20) Yuri, (21) Matapi, (22) Kakua, (23) Achagua, (24) Carijona, (25) Tatuyo, (26) Tariano, (27) Yagua, (28) Masiguare, (29) Nukak Makú, (30) Guayabero, (31) Carapana, and (32) Bora.

²⁰⁹ "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²¹⁰ "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

126. The Nukak Makú people, which inhabits the confluence of the Guaviare and Inírida rivers in the Department of Guaviare, in the Colombian Amazon, is a traditionally nomadic, hunter gatherer people, and is in great danger of disappearing due to the armed conflict, its small number of members and cultural and community disintegration. In the last 20 years, the population of the Nukak Makú has been decimated by different epidemics derived from contact with non-indigenous societies, including colds and influenza, respiratory infections, measles and meningitis, which claimed the lives of between 30% and 50% of its members, including the majority of its elderly adults - currently only for or five old people are still alive. Additionally, of the surviving population, estimated at some 450 individuals, approximately 40% are in a state of forced displacement due to the armed violence on their lands, in conditions of need and loss of cultural integrity,²¹¹ without any real possibility of returning to their life in the jungle due to the presence of FARC guerillas, the laying of anti-personnel mines, recruitment and the violence on their territory. The Constitutional Court described their position of being affected by the conflict and displacement in Order 004 of 2009, and ordered the National Government to design and implement an Ethnic Safeguard Plan for the Nukak-Makú people, which does not exist to date. Faced with the case of the Nukak-Makú, the ONIC has recognized that the State has undertaken some precise actions aimed at the provision of food and initial assistance of the displaced population, but at the same time has stressed the lack of public policies designed to provide basic solutions for their situation.²¹² In particular, it has denounced the State's neglect in the area of medical attention since 2006.²¹³

127. In its observations the State highlights the initiatives of the Colombian Institute for Family Welfare (ICBF), with the support of the International Organization for Migrations (OIM) and the community (Asoprocaucho) in order to face the complex circumstances threatening the survival of the Nukak-Makú people. These initiatives emphasize food sovereignty and territorial autonomy as rights of the Nukak Makú people; they are developed in the field by State agents and members of the community itself; they include activities in different areas and specialties; they nurture, thanks to previous experience, by a rights based and a differential (ethnic, age and gender) approach; they intend to protect and preserve tradition; they are provisional and seek to avoid welfare cycles.²¹⁴

²¹¹ In the words of the ONIC, "the Nukak Makú are in a state of displacement in the municipal capitals, are living overcrowded and in a different environment to the jungle, which has contributed to the proliferation and spread of illnesses uncommon in their milieu, also a consequence of a change of diet, which has brought other problems or illnesses such as with their teeth, by the introduction of non-traditional foodstuffs such as rice, beans, lentils, milk and salt which come in the kits or emergency aid packs given to them. Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²¹² As expressed by the ONIC, "in relation to the Nukak, there have been advances in the institutional liaising between entities, and a whole institutional supply has been generated, but there is no concrete and robust response, directed to provide real solutions to the complex problem of this indigenous people. The activities are being directed at the nutritional security, and forced displacement, but there is no directive inclined towards the social and cultural strengthening of this people. The interventions of public institutions, NGOs and sectors of civil society, far from supporting the socio-cultural strengthening of the Nukak-Makú, have done more damage to this indigenous people, since they are occasional interventions which follow a pronounced assistance model that ignores age-old practices; there are profound indications of fractures in their socio-cultural structure, and the process of autonomy and self-sufficiency of the indigenous Nukak-Makú have been weakened." Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²¹³ The ONIC has reported that "since 2006, faced with a total lack of State attention in health services for the Nukak Makú People, the ONIC is financing the services of a western doctor to treat their illnesses, while they remain displaced. However, it must be stressed that this attention is an obligation of the State, thus, the ONIC continue to demand that the State complies with its duties towards this people in danger of extinction." Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²¹⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 32.

128. The Wachina o Pizamira people is native to the Vaupés Department, in the Colombian Amazon. This currently comprises fifty individuals, grouped into twelve families, of which six are in the Yacayacá community and five live in Mitú, the Department's capital. According to information provided by the ONIC, in the framework of the armed conflict, the members of this people have been the victims of threats, targeting, harassment, murders, forced displacement, and, in particular, forced recruitment of the children and young people. In 2009 specifically, three Wachina children were forcibly recruited by illegal armed groups. There is no information on the State action designed to protect the individual or collective rights of the Wachina people and its members.²¹⁵

129. The Wipiwi people, located in the Casanare Department in the Orinoquía, is comprised of 87 individuals, of whom 39 are younger than 15, 13 are older than 45, and 4 are older than 60. This people shares its lands in the Caño Mochuelo Reserve with eight other indigenous peoples, and they are currently in the process of demographic reduction, since in 1981 they had 100 individuals. According to ONIC reports, the Wipiwi people suffers from a condition of hunger, caused by the dwindling animal prey species in the reserve, and the lack of space where they are able to develop agricultural activities due to the poor fertility of the land. As a result, for long periods, the members of the Wipiwi people live off a daily diet of mangos. As a result, the nutritional and health conditions of the Wipiwi people are critical,²¹⁶ as is equally their situation of poverty²¹⁷ and loss of their cultural tradition.²¹⁸

130. For its part, the Makaguaje people in Amazonia, which is in great danger of extinction, appears to have disappeared. As the ONIC reports, in 2000, this people had 50 members, which in 2009 only amounted to four individuals in the Caquetá and Putumayo Departments.²¹⁹

²¹⁵ "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²¹⁶ According to the ONIC, "the major priority for this people is to start planting and growing to have food for daily consumption. They have always grown sweet and sour yucca, rice and maize, but skill and care are needed for the best yield, and care, through the use of organic fertilizers and sustainable programs. Equally they need to acquire the tools for work in the fields, and to possess some livestock for the consumption of milk and meat, as well as pigs and chickens for their daily intake of protein." Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²¹⁷ The ONIC reports that members of the Wipiwi community "have no homes, clothing or artifacts for the development of their day-to-day activities. There are serious illnesses among its members such as tuberculosis and Malaria, as well as skin diseases in the women and children." Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²¹⁸ In the ONIC's words, "Although they have kept their language, their traditional authorities have become weakened, they have lost their ancestral wisdom about medicines, environmental management and cultural development. The lack of traditional shamans of a high level, shows the weakening in the cultural survival of the Wipiwi people, provides evidence of the few community resources to confront the various discomforts afflicting them and has impacted upon their organizational capacity, on the exercise of authority and government within the people. These people have reduced the processes for the handing on wisdom and knowledge, due in part to the reduction in effective dominion over the land, the forced fragmentation of the people, the obligatory domesticity, confinement to the territory on the Reserve, the difficulty in ranging over traditional lands in their walkabouts and the deaths of traditional shamans, caused in large part by the lack of food. Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²¹⁹ As the ONIC states, "Going back years, the Makaguaje people have lived in the Peñas Blancas area, in the Caquetá Department, and their language is tucano. By the year 2000, this people had 50 members and tragically by 2009, in the same area, the Chorographical Commission only found three individuals identified as Makaguaje, and were informed that in the area known as El Tablero, in the Putumayo Department, there is possible another indigenous Makaguaje whom they might contact. The few remaining members live in dispersed areas between the Caquetá and Putumayo Departments, so there is no fixed reservation as such." Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

131. The prospect that each one of the 65 indigenous Colombian peoples declared at risk could disappear as a consequence of, or due in large degree to, the armed conflict, discrimination and lack of protection, implies a series of comprehensive, profound and historic violations of individual and collective human rights protected by the American Convention on Human Rights. The IACHR urges the State of Colombia to immediately adopt, in conformity with its international obligations, positive, robust and effective measures to guarantee, respect and promote the physical and cultural existence and the human rights of the indigenous peoples that have inhabited their territory since time immemorial.

3. The Differential Impact of the Internal Armed Conflict

132. The indigenous peoples of Colombia have been victimized to an acute and disproportionate extent by the internal armed conflict, as the IACHR, as well as different national authorities, international institutions, indigenous organizations and civil society have repeatedly observed.²²⁰

133. The armed conflict affects the indigenous peoples of Colombia in complex ways, through different amalgamations of violent events described by the Constitutional Court in its Order 004 of 2009 as *bellicose processes*, thus: (1) the bellicose processes that unfold on indigenous territories between armed actors, without actively involving indigenous communities and their members, but which affect them in a direct and manifest way;²²¹ (2) the bellicose processes actively involving indigenous people, communities and individual members, in the armed conflict;²²² (3) the territorial and socio-economic processes connected with the internal armed conflict which affect their traditional lands and cultures, or are exacerbated or intensified due to the war;²²³ and (4)

²²⁰ In its Annual Report for 2009, the IACHR had already mentioned that "the ethnic groups are targets of the violence deriving from the armed conflict, in an individual and collective way, which endangers their autonomy and their territorial and cultural rights", and had received information on multiple acts of violence committed against individuals, families and Colombian indigenous communities.

²²¹ These processes include (i) raids and the presence of illegal armed groups on indigenous lands, on the occasions following a strong military presence on the land by the security forces; (ii) armed confrontations between illegal armed groups, or between these and the security forces, on indigenous lands, or nearby; (iii) occupation of sacred sites by illegal armed groups and by units of the security forces; and (iv) laying of anti-personnel mines and dumping live munitions (MAP/MUSE) on their lands.

²²² These processes include (i) being individually and collectively identified as collaborators with some of the actors participating in the armed conflict, frequently resulting in murders, threats, disappearances or, in some cases, extrajudicial executions known as "false positives"; (ii) targeted assassinations of leaders, traditional authorities and prominent members of the indigenous communities; (iii) threats, harassment and persecution of individuals, families and communities by illegal armed actors and by some individual members of the security forces; (iv) confinement of families and entire communities by the guerillas, paramilitary groups, or by virtue of the presence of anti-personnel mines; (v) controls on the movement of individuals, food, medicines, fuels, basic goods and services and emergency humanitarian aid, by illegal armed actors and, on occasion, by members of the security forces, which hinder the traditional use of their lands and cause serious shortages resulting, in turn, in nutritional insecurity, health crises, and a lack of attention to the basic needs of entire communities; (vi) a repeated lack of respect for the traditional indigenous authorities by the illegal armed actors and occasionally by members of the security forces; (vii) behavioral restrictions and controls on their own cultural rules by illegal armed groups; (viii) forced recruitment of minors, young people and community members by irregular armed actors; (ix) seizing of the communities' means of subsistence by armed actors; (x) forced prostitution, sexual violence and seduction of women and young indigenous girls as a war strategy by illegal armed actors; (xi) murders and threats against teachers, health workers and defenders of indigenous people's rights by irregular armed actors; (xii) the temporary occupation of schools, homes and community buildings by illegal armed actors and occasionally by members of the security forces; and (xiii) the use of communities as human shields during confrontations, by illegal armed actors.

²²³ These processes include, in particular, (i) simply despoiling land by actors with an economic interest in the land and natural resources belonging to the indigenous communities, as well as by settlers invading their lands and with links to armed actors; (ii) the development of legal or illegal economic activities on indigenous lands, especially illegal cultivations, in the main coca and poppies, or even irregular economic exploitation developed by groups with links to armed actors; and (iii) fumigations by the State, sometimes indiscriminate, of illegal crops.

preexisting socio-economic situations and processes which are exacerbated by the armed conflict and its outward signs.²²⁴

134. During 2010, the IACHR continued to receive information on the recurrence of numerous crimes and violent events included under various of the categories outlined by the Constitutional Court, and therefore there is a continuing risk for the indigenous peoples of Colombia of physical and cultural extinction due to the armed conflict. In particular, as will be set out in detail below, the IACHR has received information on selective murders, especially of leaders of traditional indigenous authorities; threats and harassment by illegal armed actors; trespassing of armed actors into ethnic communities and territories, accompanied by the laying of anti-personnel mines; harassment of communities and families by combatants and confrontations between armed actors and the security forces in their territories; and forced displacements. The armed conflict affects the entire national territory of Colombia, but certain areas of the country with high concentrations of indigenous peoples have been especially hard hit by the violence, as happens in the Departments of Cauca, in the Andean region and, Arauca, in Orinoquía.

135. So great is the impact that the armed conflict in Colombia has had on the indigenous population, that the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, James Anaya, called for the intervention of the UN Special Advisor on the Prevention of Genocide, in his report on his visit made to the country in 2009.

136. The indigenous Colombians are frequently the victims of killings committed by armed actors, or groups allied to them. These crimes hit leaders, traditional chiefs and defenders of their human rights, particularly harshly. As ONIC points out, between January and August 2010, more than 70 killings of indigenous people were recorded. Among the different peoples of the country, the Nasa, Awá and Wayúu, were the most severely affected by the murders of their members during the year; there are also reports of victims among the Zenú, Guayabero, Pasto, Sikuani, Tukano, Embera, Guambiano, Pijao and U'wa peoples.²²⁵ The murders occurring in 2010 add to the high number of indigenous individuals who have lost their lives in the context of the armed conflict during the last decade. According to ONIC figures, between 2002 and 2009, more than 1,400 killings of members of Colombian indigenous peoples have occurred.²²⁶

137. The Commission's attention was brought to various murders of leaders and traditional chiefs during 2010. Thus, on February 23, Andrés Fernando Muelas, leader and educator of the Nasa people was murdered. He was coordinating an educational program for young people and adults of the North Cauca Association of Indigenous Councils. On July 27, the Wayúu leader and human rights defender, Luis Alfredo Socarrás Pimienta, was murdered by a hit man. On August 13, the U'wa leader, Carmen Elisa Mora, who was in forced displacement, was murdered by unknown individuals. She was the coordinator of the office for indigenous affairs of the municipal council of Saravena (Arauca). On August 14, the leader of the Sikuani people, Jaime Reyes, who was in forced displacement, was murdered. On August 26 following, the leader and councilor of the Pasto people, Ramiro Inampues and his wife, were kidnapped and murdered by unknown individuals. On October 14 the indigenous leader, journalist and secretary of the Indigenous Town

²²⁴ These situations include (i) poverty, (ii) dietary insecurity, (iii) bad health conditions, (iv) invisibility and (v) ethnic and cultural weakening, and adopting another culture.

²²⁵ ONIC – Report to the Inter-American Commission on Human Rights on the human rights situation of the indigenous peoples of Colombia, in the context of the Thematic Hearing requested by the National Indigenous Organization of Colombia in the Commission's 140th period of sessions.

²²⁶ "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

Council of the López Adentro reserve, Department of Cauca, Rodolfo Maya Aricape, was murdered by hit men. On December 5, Ariel Antonio Taba Morales of the Embera-Chamí people and president of the Fruit Growers Association of the Nuestra Señora Candelaria de la Montaña reserve in Ríosucio (Caldas), was murdered by masked men. These murders were committed for political motives connected with the armed conflict.

138. The IACHR, when expressing its shock at these heinous crimes through different press releases,²²⁷ emphasized that the attacks against leaders and indigenous chiefs sever the cohesion of the peoples, and affects not only the direct individual victims of the violence, but the indigenous societies as a whole, given the vital function which the leaders and traditional chiefs play and their central role in the defense, preservation and handing down of their ancestral culture; thus, considering these murders to be grave individual and collective human rights violations protected by the International Law of Human Rights and International Humanitarian Law, the IACHR urged the State of Colombia to strive to investigate the crimes, bring to justice and punish the perpetrators and the masterminds, and provide protection and security for the country's indigenous leaders and chiefs.

139. Throughout 2010, there were continuous reports of threats against leaders, ancestral chiefs, human rights defenders and individual members of Colombian indigenous peoples, made by illegal armed groups who accuse these leaders of collaborating with one of the parties in the armed conflict. For example, numerous organizations complained that in April 2010, various chiefs, leaders and members of the Guambiano (Misak) people, in the Department of Cauca, were declared to be military targets in leaflets and threatening emails originating from a paramilitary group, and signed by the AUC.²²⁸ Then in May 2010, the Caldas Indigenous Regional Council, the leaders and organizations belonging to the Embera-Chamí people complained of having been the victims of a threat issued by the paramilitary group *Aguilas Negras*, declaring them to be a military target.²²⁹ There was also a report made public that a leader of the Embera-Katío people of the Alto Sinú, and daughter of the disappeared leader Kimy Pernía, received threatening telephone calls in July 2010 from an unknown individual calling himself the leader of "the Red Faces".²³⁰ There is no information as to the protective actions undertaken by the State of Colombia to safeguard these individuals from the clear danger raised by these threats.

140. Equally, the IACHR was informed about the continuing identification of indigenous leaders, chiefs and individuals as collaborators with some of the parties in the armed conflict - a situation that causes an immediate risk for the individuals, their families and entire communities, and - as the Constitution Court pointed out - are the direct cause of the multiple crimes such as killings, disappearances or forced displacements. Thus, for example, on July 7, 2010, the High Councils of the Embera Katío people in Alto Sinú complained that at a session of the Mixed Commission taking place in June 2010, a high-ranking military commander publically stated that community members, including its chiefs, were guerilla collaborators - an indication that generates a clear danger for the life and personal integrity of those concerned.²³¹

²²⁷ Press Releases Nos. 73/10, 89/10 and 106/10, available at: www.cidh.oas.org.

²²⁸ Threats denounced, among others, in: "Indigenous Guambiano leaders threatened by paramilitaries", El Pais newspaper, April 29, 2010: : <http://www.elpais.com.co/paisonline/notas/Abril282010/guambianosamenazados.html>; and <http://www.colectivodeabogados.org/Las-autoridades-del-pueblo-MISAK>.

²²⁹ Urgent Action of the Caldas Indigenous Regional Council (CRIDEC), May 24, 2010. Available at: <http://www.onic.org.co/comunicados.shtml?x=36629>.

²³⁰ Public Communiqué of the High Town Councils of the Sinú and Verde Rivers, and of the Karagabí Town Council, July 7, 2010.

²³¹ Public Communiqué of the High Town Councils of the Sinú and Verde Rivers, and of the Karagabí Town Council, July 7, 2010.

141. Some indigenous communities in Colombia have been the victims of confrontations between armed groups and the security forces, as occurred on January 30, 2010, with the Alto Guayabal-Coredocito community of the Embera people in the Uradá Jiguamiandó reserve, Department of Chocó. There the National Army undertook a machine gun attack and bombardment, which hit a family house, wounding three indigenous adults and two children; one of the adults affected was left a paraplegic as a result of the injuries suffered. On February 25, the IACHR adopted precautionary measures to protect the life and personal integrity of the 87 families belonging to the community.²³² Afterwards, the IACHR was told of confrontations, skirmishes and bombardments on the October 14 and 26, and November 3 and 5, between the Army and irregular armed groups on the territory of the Chinguirito Mira reserve and of the La Hondita community, Awá people in the Department of Nariño. It was also told of the death on November 14, of a member of the people and the serious injuries suffered by another three, including a pregnant woman.²³³

142. Numerous indigenous communities in the country have been affected by the presence of anti-personnel mines on their lands. On December 2, 2010, the Association of Indigenous Councils of Wounaan, Embera Dobida, Katío, Chamí and Tule in the Department of Chocó - OREWA pointed out in a public communiqué,²³⁴ that numerous indigenous communities in Chocó were currently at risk because of the high number of anti-personnel mines on their territory, planted by illegal armed groups - guerillas or paramilitaries, in both cases with links to drug-trafficking. The mining of ancestral lands has led to situations of confinement, has placed limits on the basis activities for sustenance, such as hunting, fishing and food gathering; the main result being the critical situation of malnutrition among its members.²³⁵ The most recent case was when a

²³² Measure No. MC-12/09, available at: www.cidh.oas.org.

²³³ According to information in the public communiqué of the Indigenous Unit of the Awá People (UNIPA), "On October 10, the Army entered and camped between the Brisas de la Hondita community council and the indigenous Awá Chinguirito Mira reserve. The soldiers would enter the Awá family houses when these were alone and would take away the families' goods, the reason why the reserve's authorities in company with the guards spoke with the army to respect the Awá population's property. / Various acts of harassment and bombardment occurred; on October 14, there was a confrontation on the outskirts between the community council of Brisas de la Honda and the Chinguirito Mira reserve at 8:30pm. Then another confrontation occurred on October 26 in the Hondita community (the Awá community which is not within the title of the reserve, but is part of the zone request for expansion). On November 3, there was a bombardment in the Hondita; afterwards on November 5, a bomb fell one hundred meters for the Chinguirito school, a place where there are several houses and where Awá families had sought shelter when the bombing and fighting between the FARC and the Army began. These confrontations have left live shells in the reserve, representing a serious danger for the Awá families living there. After the army were present in the area, the inhabitants of the reserve were unable to pursue their daily activities, such as planting, hunting and fishing. Due to these confrontations and bombardments, the people are frightened. On November 14, in the lower district of Buenavista, Barbacoas Municipality - Nariño at 8:00pm a fierce confrontation took place between the FARC, ELN and the National Army. As a result of this confrontation, Mr. Melqui Nastacuás, 25 years old, died, Mr. Ignacio Nastacuás and Mrs. Claudia García (who was five months pregnant and Melqui's wife) were injured. It seems that this confrontation left more dead and wounded. Indigenous Unit of the Awá People's (UNIPA) Communiqué to national and international public opinion, November 15, 2010. Available at: <http://www.onic.org.co/nuevo/comunicados.shtml?x=36918>.

²³⁴ "34 indigenous communities are in imminent danger because of the laying of anti-personnel mines in the Department of Chocó". Communiqué of the Association of Wounaan, Embera Dobida, Katío, Chamí and Tule Town Councils of the Department of Chocó - OREWA - Information Bulletin, December 2, 2010: "Chocó Indigenous Communities a people resisting extermination". Available at: www.orewa.org.

²³⁵ The communities at risk are the following: of the Embera peoples, the communities of (1) El Dieciocho (Municipality of Carmen de Atrato), (2) Yagual (Municipality of Carmen del Darién), (3) Mamey Dipurdu (Municipality of Carmen del Darién), (4) Chuscalito (Municipality of Quibdó), (5) Chagado (Municipality of Beté), (6) Chanu (Municipality of Bojayá), (7) Punto Alegre (Municipality of Bojayá) (8) Eyakera (Municipality of Unguía), (9) Unión Baquiaza (Municipality of Bojayá), (10) Peña Negra (Municipality of Bojayá), (11) Piñita (Municipality of Bojayá), (12) Amparradó (Municipality of Bojayá), (13) Chidima (Municipality of Acandí), (14) Churipa (Municipality of Bagadó), (17) Cevede (Municipality of Alto Andágueda), (18) El Consuelo (Municipality of Carmen de Atrato), (19) Alto Río Catrú (Municipality of Alto Baudó), (20) Catrú (Municipality of Alto Baudó), (21) Cocalito (Municipality of Alto Baudó), (22) Bocana Río Catrú (Municipality of Alto Baudó), (23) El Veintiuno (Municipality of Quibdó), (24) Parruquera (Municipality of Lloró), (25) El Consuelo Parte Baja (Municipality of

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contingent of FARC guerillas conducted a raid into the indigenous community of Arquía, of the Tule people, on November 20, 2010. They spent the night in the school, remained there all the next day, and afterwards laid anti-personnel mines on the path linking the community with the Unguía municipality. Thus the community was intimidated and through fear of the mines have seen free movement on their lands blocked. There were reports that after the public complaints issued by the community, the National Government sent a commission of the security forces to undertake mine clearance, which, however has only been partial.²³⁶

143. Throughout the course of 2010, other indigenous communities have remained trapped in situations of confinement and terror, caused by different and complex manifestations of the armed conflict. Thus a Risk Report of the Ombudsman's - Early Warning System, informed of the situation of the Eyákera indigenous community of the Embera people, in the Unguía Municipality, Department of Chocó. They were affected by a FARC guerilla raid on October 26, 2010, who inspected the community and sought refuge from pursuit by the National Army; as the Ombudsman points out, "after this episode and as a response to the army offensive in the area, the guerillas increased the laying of anti-personnel mines and improvised explosive devices to contain the Army's advance and to monitor the temporary and illegal encampments set up in the border region with the Republic of Panama." At the same time, this community has been affected by the criminal acts of certified illegal armed groups after the demobilization of the AUC, calling themselves "The Urabeños", who - according to the Ombudsman - "exert pressure on the traditional chiefs, leaders and members of the Embera people of the Eyákera community, to drop their land restitution claims to demand title deeds to their reservation, to allow them to sow illegal crops on ancestral lands, and to permit the transit of members of the illegal group through the area. Similarly, there have been illegal recruitment and deployment campaigns of children, adolescents and young people from different Embera communities in the Unguía Municipality."²³⁷ The community has been affected by the presence of illicit crops in the area, and by the controls exercised by the armed actors on the movement of persons, foodstuffs and basic subsistence materials. As a result of this complex situation, the Eyákera community is intimidated, confined and lacks effective protection by the State authorities. As such, they are in great danger of forced displacement.²³⁸

144. In a communiqué published in August 2010, the Colombian Office of the United Nations High Commissioner for Human Rights expressed concern, *inter alia*, for the indigenous communities exposed to restrictions on mobility and in conditions of confinement, and explained that "the laying of mines by illegal armed groups, the expansion of armed confrontations on their land as well as the arbitrary blockades on the free circulation of persons and goods by the armed actors, are among the main causes generating the isolation of indigenous communities. In this sense, the controls on movement in order to reach subsistence crops, for consumption and barter, cause a stoppage in the supply of foodstuffs for up to two weeks, endangering the secure supply of

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Carmen de Atrato), (26) Mambual (Municipality of Carmen de Atrato); and the Tule peoples, (27) the Arquía community (Municipality of Unguía).

²³⁶ "34 indigenous communities are in imminent danger because of the laying of anti-personnel mines in the Department of Chocó". Communiqué of the Association of Wounaan, Embera Dobida, Katío, Chamí and Tule Town Councils of the Department of Chocó - OREWA - Information Bulletin, December 2, 2010: " Chocó Indigenous Communities a people resisting extermination". Available at: www.orewa.org.

²³⁷ Ombudsman's Office - Early Warning System. Risk Report No. No. 010-09; Imminent risk for the Arquía and Eyákera Reserves in the Municipality of Unguía – Chocó. Release of November 23, 2010. www.defensoria.org.co.

²³⁸ Ombudsman's Office - Early Warning System. Risk Report No. No. 010-09; Imminent risk for the Arquía and Eyákera Reserves in the Municipality of Unguía – Chocó. Release of November 23, 2010 www.defensoria.org.co.

food and the nutritional condition of the indigenous population, especially small children, pregnant and breast-feeding mothers."²³⁹

145. The members of the indigenous peoples have also been innocent victims caught up in the cross-fire between armed actors and the security forces, especially in the Cauca Department. On May 11, 2010, a five-year old boy, Juan Pablo Chicangana, died and his mother, Councilwoman Luz Marina Patiño, was seriously injured by a grenade thrown by a FARC guerilla member at the Police station in the lower district of Siberia, Caldono Municipality, Cauca Department, and which landed in an Internet cafe.²⁴⁰ On November 17, 2010, during an armed confrontation between the security forces and FARC guerillas in the middle of the civilian population in Toribío, Cauca Department, an indigenous Nasa woman, Rosa María Escue Inseca, was killed and five other individuals were injured, including a five-year old girl; a police officer was also killed and two others suffered serious injuries.²⁴¹ Other incidents took place in the department on February 25, when a police patrol was attacked by FARC guerillas on the al Huila highway, which crosses the indigenous Kokonuko's land, in the Puracé Municipality. Two officers were killed and five remained wounded; and on February 20, where fierce confrontations took place between the security forces and the FARC in the town centers and outskirts in the Caldono, Jambaló and Cajibío townships, all with high indigenous populations;²⁴² these confrontations caused, *inter alia*, the temporary forced displacement of 520 members of the indigenous Nasa people to the El Gualo area, where they encamped in the "Gualo Mixed Rural Center" and complained to the Ombudsman - among other things - about the "killing of livestock by the fighters, damage to their homes, and the presence in their area of live 'homemade mortar bombs' which must be defused so that they are able to return home."²⁴³

146. The confrontations in 2010 between the security forces and the illegal armed groups have also caused the confinement of entire communities within their territory, with the ensuing danger of forced displacement. This occurred in the indigenous Jiw or Guayabero Community of the Mocuare Reserve, located along the Guaviare river in the Meta and Guaviare Departments, comprising 150 individuals - among them 75 boys and girls - who up to the end of August had been confined and in great danger of displacement, due to the presence on their lands of a FARC brigade that had been conducting confrontations with the Army. This danger was the reason for the visit of a Humanitarian Commission including the Ombudsman and the Office of the United Nations High Commissioner for Refugees (UNHCR) on August 30, 2010, in order to provide them with food, medical attention and an escort, and to prepare a contingency plan. On many occasions, the Ombudsman has complained of the danger of forced displacement of the Guayabero village, as a

²³⁹ United Nations System in Colombia - Press Release: "International Indigenous People's Day: Strategies for the protection of their lives and integrity." 2010-08-09. Available at: <http://www.hchr.org.co/publico/comunicados/2010/comunicados2010.php3?cod=26&cat=81>.

²⁴⁰ "Five year old boy and his mother (Councilor of Caldono) new victims of the FARC". Cauca Indigenous Regional Council - Public communiqué of May 13, 2010.

²⁴¹ "Once again the war costs the lives of two and injures seven in the indigenous communities on our land Cxhab Wala Kiwe, Toribío Indigenous Reserve – Cauda." Indigenous Councils of Toribío, San Francisco and Tacueyó - Nasa project Association - Association of Indigenous Town Councils of Norte del Cauca (ACIN): Public Communiqué, November 23, 2010. Available at: <http://www.onic.org.co/nuevo/comunicados.shtml?x=36927>.

²⁴² Ombudsman's Office. Communiqué No.1502, February 22, 2010: "Ombudsman condemned attacks on the Caldono, Jambaló and Cajibío Municipalities (Cauca)". See also: "Social and cultural emergency in the Cauca indigenous territories due to the war." Cauca's Indigenous Regional Council's Communiqué - CRIC, March 3, 2010. . Available at: <http://www.onic.org.co/comunicados.shtml?x=36550>.

²⁴³ Ombudsman's Office. Press Release No. 1503, February 23, 2010: "520 people of the Nasa ethnic group displaced in Cauca".

result of the confinement, forced recruitment, the mining of land and the selective murders of leaders and community members.²⁴⁴

147. During 2010, there were also signs of the consequences for the indigenous communities of the indiscriminate effects of the aerial fumigation of illegal crops by the National Government. According to the complaints of the indigenous chiefs of the Eperara-Siapidaara people, on March 16, 2010, between 11:00 am and 1:00 pm, various Anti-Narcotics Police aircraft fumigated the communal orchards and fields of the women of the Eperara-Siapidaara de Joaquinquito reserve, in the Río Naya, of the lower district of Puerto Merizalde, Buenaventura Municipality (Valle Department). These same fumigations also affected fields belonging to neighboring Afro-descendant communities, including the joint agro-ecological project of both women's groups, causing damage to their subsistence crops and to the area's particularly rich and delicate ecosystem.²⁴⁵ To date there is no available information with regards to initiatives or proceedings destined to redress the damage.

148. The main consequence of the severe impact of the armed conflict on the indigenous peoples, is the forced displacement of families and entire communities, the scale of which has already been described by the IACHR in previous annual reports. According to ONIC's information, between 2002 and 2009, the forced displacement of approximately 74,000 indigenous people was recorded.²⁴⁶ Forced displacement directly affects the very existence of the indigenous peoples, since it severs the fundamental relationship these maintain with their lands, both in terms of their physical survival - since they derive material subsistence from this land - as well as their cultural survival - to the extent that their culture is inextricably linked to their ancestral land.²⁴⁷ During 2010, forced displacements of the indigenous population continued to occur. Thus, as a consequence of a confrontation between the Marine Infantry and the FARC on January 31, there were reports that 300 members of the Eperara-Siapidaara indigenous people were displaced to the Boca de Víbora community, near to Bocas de Satinga in the municipal capital of Olaya Herrera, Nariño Department, originating in the La Tórtula, Casa Grande and Robles farmsteads, and equally driven on by multiple targeted killings committed by illegal armed groups in the area.²⁴⁸ After this, on November 2, in the Department of Chocó, the indigenous Chigorodó Membá community, comprising 54 individuals - among them 18 children - were forcibly displaced to Puerto Meluk by threats to their leaders and educators by illegal armed groups (paramilitaries). These persons were in dire conditions, since the receiving community lacks adequate infrastructure to house the victims

²⁴⁴ Ombudsman's Office, Press Release No. 1580, August 30, 2010: "Humanitarian Commission formed to verify the risk of displacement of the Guayabero indigenous population of the Mocuare Reserve between the Meta and Guaviare Departments."

²⁴⁵ "Fumigation in the River Naya - the indigenous Eperara Siapidaara people complain of the destruction of their community plots." Communiqué of the Eperara-Siapidaara de Joaquinquito Town Council, Río Naya; the Indigenous Town Councils of the valley - Pacific region; *Proceso de Comunidades Negras* Committee of Black Communities, el Palenque El Congal de Buenaventura and Colectivo de Trabajo Jenzera, 16 March 2010. Available at: <http://www.onic.org.co/comunicados.shtml?x=36562>

²⁴⁶ "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²⁴⁷ As the ACNUR explains, "in the case of the indigenous population, whose economic, social and cultural systems are so fundamentally based on their relationship to the land, forced displacement represents a serious threat. It destroys their ancestral way of life, their social structures, their languages and identity. Ultimately, it may prove to represent the loss of entire groups. 'Losing our land is to lose ourselves', confirmed an indigenous Siona woman after she was forced to flee her land. 'To leave is one step closer to dying'. For this reason, the indigenous peoples are one of the principal priorities for ACNUR attention in Colombia." Taken from "'Losing our land is to lose ourselves' - Indigenous peoples and forced displacement in Colombia". ACNUR Information Leaflet.

²⁴⁸ Ombudsman's Office. Press Release of February 17, 2010: "Ombudsman's Office concern for massive displacement of indigenous communities in Olaya Herrera (Nariño)."

of displacement. As a result, the new families in the community are currently living in overcrowded conditions in a mill, without news of any State actions designed to protect their rights.²⁴⁹

149. The IACHR has become aware of the current situation of certain indigenous communities that were displaced from their ancestral lands almost three years ago, and at present continue to be displaced due to the impossibility of returning, without any State assistance that they are entitled to. Thus, for example, information has been received on the communities of the reserves in Caño Claro, La Esperanza, Pueblo Makaguán, Iguanito, and Pueblo Sikuaní, that were driven off their territories by FARC and ELN guerillas on January and April 2008, and who are currently settled in the Parreros reserve, in the lower district of Betoyes, in the Tame municipality, Arauca Department. These three communities currently experience extreme living conditions, since forced displacement has prevented them from performing their traditional hunting, planting and gathering practices on their lands, from which they derive their livelihood. As a consequence, they have no access to food and must bear hunger every day, which, in turn, causes serious anemic conditions, malnutrition and other health problems, particularly among the children. They also live in extreme conditions of health and cleanliness, since they do not have access to safe drinking water or basic sanitation, which in conjunction with bad handling of solid waste, has produced high levels of childhood illnesses, parasites and other digestive diseases. As ASCADITAR reported, in October 2010, a group of community delegates moved back to their ancestral lands to examine the possibility of returning. They were met there by the FARC, and were warned that the land had been mined, and their lives would be endangered if they returned.²⁵⁰ The human rights violations perpetrated against these communities and their members is comprehensive, profound and concerning; the IACHR urges the State of Colombia to immediately arrange for the resettlement of these communities in freely chosen, secure, dignified conditions, pursuant to its international obligations in this area.

150. The armed conflict has also affected those defending the human rights of the indigenous peoples in Colombia. On August 18, two advisors, aged 23 and 30, of the Association of Eperara-Siapidaara Indigenous Councils of Nariño (ACIESNA) were kidnapped by armed men apparently belonging to an emerging paramilitary group, as they were travelling in a passenger boat from Tumaco to El Charco, in the sector known as Salahonda, in the Francisco Pizarro Municipality, Nariño Department. Both were involved in training program work with members of the Eperara-Siapidaara community in the Department. To date there is no news as to measures to secure the release of these two human rights defenders.²⁵¹

4. The Situation of Indigenous Women

151. Colombian indigenous women are subject to a situation of multiple discrimination due to their gender and ethnicity, making them highly vulnerable to the impact of the armed conflict, forced displacement, poverty and structural marginalization. The Colombian Constitutional Court recognized several signs of this situation in its Order 092 of 2008, where it instructed the National Government, *inter alia*, to create and implement a Protection Program for Displaced

²⁴⁹ "They want to take us, indigenous peoples, dead or alive from our land - Forced displacement of the indigenous community of Chigorodó Membá'. Communiqué of the Association of Indigenous Councils of Wounaan, Embera Dobida, Katio, Chamí and Tule, Department of Chocó - OREWA - ; Information Bulletin, December 2, 2010: " Indigenous Communities of Chocó a people resisting extermination." Available at: www.orewa.org.

²⁵⁰ Association of Town Councils and Traditional Indigenous Authorities of the Arauca Department (ASCATIDAR) - Public Communiqué of November 23, 2010. Available at: <http://www.onic.org.co/nuevo/comunicados.shtml?x=36924>.

²⁵¹ Ombudsman's Office. Press Release of August 27, 2010: "Condemnation of the kidnapping of two indigenous leaders in the Pacific coast of Nariño and demands for their immediate release."

Indigenous Women. To date, more than two years after the Order was issued, this program has not been created.

152. One of the most disturbing signs of the impact of the armed conflict on indigenous women is sexual violence, described in detail in the Constitutional Court's Order 092, and employed by all the parties in the conflict as a weapon of war.²⁵² Rape, sexual assaults, forced prostitution, sexual slavery and seductions as a war tactic severely impact indigenous women, who are particularly exposed to the crimes perpetrated by armed groups in a context of multiple discrimination. During 2010, the IACHR continued to receive information on acts of sexual violence committed against indigenous women in various parts of the country: for example, there was a report that in November 2009, a girl of the Wiwa people had been raped by a soldier of the National Army in San Juan del Cesar (La Guajira)²⁵³. In the specific hearing held on this matter in October 2010 on the situation of indigenous peoples' human rights in Colombia, the ONIC reported three cases of sexual violence against indigenous women in the context of the armed conflict during 2010. In August 2010, the United Nations System in Colombia stated its concern in a public statement for the ongoing sexual crimes perpetrated against indigenous women in the context of the internal armed conflict.²⁵⁴ The State informed that the Directorate of Indigenous, Minority and Roma Affairs of the Ministry of the Interior and Justice has carried out a number of activities to facilitate the design of a protection program for displaced indigenous women.²⁵⁵

5. Precarious Compliance with Protective Orders Issued by the Constitutional Court

153. In its Order 004 of 2009, the Constitutional Court described the State's response to the impact of the armed conflict in terms of forced displacement as a purely formal reaction, consisting in the adoption of legislation and policy documents with uncertain practical effects. Therefore, it ordered the Government to create the necessary public policy instruments to protect the indigenous peoples faced by these dangers, specifically, a Program Guaranteeing the Rights of Indigenous Peoples Affected by the Armed Conflict and Forced Displacement, applicable to all the indigenous peoples in the country, and 34 Ethnic Safeguard Plans for the same number of specified peoples that the Court considered to be in particular danger.

154. At the special hearing held in October 2010 on the situation of the indigenous people's human rights in Colombia, the Government stated that in order to comply with the Constitutional Court's order to create a Program Guaranteeing the Rights of Indigenous Peoples Affected by the Armed Conflict and Forced Displacement, it had started a process of coordination with indigenous organizations, through two permanent coordination tables, consisting of a series of

²⁵² Cf. IACHR. Women faced with violence and discrimination derived from the armed conflict in Colombia. OEA/Ser.L/V/II, Doc. 67, October 18, 2006, paras. 102 to 147.

²⁵³ Public Complaint at <http://www.vanguardiaalvalledupar.com/2009/11/12/jud2.htm>, and reproduced in: "Indigenous women in the context of the internal armed conflict living in Colombia", ONIC, 2010.

²⁵⁴ In the terms of the communiqué, "the United Nations System wishes to stress the methodologies and the patterns of the occurrence of sexual violence used by members of illegal armed groups, and occasionally by members of the security forces, as part of war and military action. Many times this sexual violence is a cause and a result of forced displacement and has an element of discrimination and racism in the context of the conflict. The lack of statistics and specific data by gender and ethnicity make the problems even more invisible. Faced with this lack of protection, the response of the judiciary and the indigenous justice system represents a large challenge." United Nations System in Colombia - Press Release: "International Indigenous People's Day: Strategies for the protection of their lives and integrity." 2010-08-09. Available at: <http://www.hchr.org.co/publico/comunicados/2010/comunicados2010.php3?cod=26&cat=81>.

²⁵⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 34.

regional and national meetings arranged with the indigenous peoples²⁵⁶. As regards the Ethnic Safeguard Plans, it explained that the coordination table had agreed that they would be created once the design and implementation of the Program of Guarantees²⁵⁷ was completed. Notwithstanding this, the Government informed that it had started liaising²⁵⁸ with the Awá, Totoró, Yanacona, Cofán, Nasa, Betoyes, Siona, Eperara-Siapidaara, Chimila, Yukpa, Coreguaje, Embera Chamí Guambiano, Zenú and Kichwa peoples.

155. The IACHR recognizes the value of this process of coordination, but at the same time expresses concern at the fact that almost two years after issuing the 004 Order of 2009, there is still no Program Guaranteeing the Rights of Indigenous Peoples Affected by the Armed Conflict and Forced Displacement, nor an Ethnic Safeguard Plan, whilst serious violations of the human rights of the indigenous peoples of Colombia continue to be committed. The IACHR encourages the Colombian Government to redouble its efforts to create and implement, in a prompt and effective manner, these public policy instruments that, once implemented, may provide adequate tools to safeguard the indigenous population from violence and its link to human rights violations that continued afflicting indigenous populations during 2010.

6. Situation of the Territories: Mega-projects and Prior Consultation

156. The legally recognized indigenous lands encompass almost one third of the territory of Colombia. This generally recognized fact reflects the irrefutable advance in the protection of the rights of the indigenous populations of the country by the State, since access to ancestral territories is key for the exercise of their other individual and collective human rights.²⁵⁹ At the same time,

²⁵⁶ In its observations the State reported that "based upon the agreements signed in the Permanent Negotiation Table of May 22, 2009, it was established that the first socialization meeting for the Safeguard Plan with each people would take place after the preparatory meetings, the 29 departmental meetings, the macro-regional and national meetings defined for the formulation of the Guarantee Program. To date the preparatory meetings all around the country, the departmental meetings and the five macro-regional meetings have already taken place" with the participation of members, authorities, leaders and organizations of all of the existing indigenous peoples in the country. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 35.

²⁵⁷ In its observations the State reported that "[a]lso, the timing for the development of the proceedings for the safeguard plans would be subject to the agreements reached in the negotiating tables; provided that consensus was duly reached by the indigenous authorities of the 4,075 communities individualized in the Court Decision, belonging to the 34 indigenous peoples. Therefore, it is important to state that the implementation of the safeguard programs depends on the proper formulation of the Guarantee Program". Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 35.

²⁵⁸ In its observations the State indicated that "[t]aking into account the particular characteristics of each indigenous people and their right to autonomy, the National Government has received a number of requests by various indigenous peoples to initiate the process of prior consultation for the preparation of their respective plans of ethnic safeguarding. Therefore, the Government has acknowledged the specific needs of some indigenous peoples and has initiated the consultation process with their respective legitimate authorities, with a procedural proposal". Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 36.

²⁵⁹ "The right to property under Article 21 of the American Convention therefore has particular importance for the indigenous and tribal peoples, since guaranteeing the right to territorial property is a fundamental platform for the development of the indigenous communities' culture, spiritual life, integrity and their economic survival. [IACHR, allegations before the Inter-American Court of Human Rights in the case of *Sawhoyamaxa v. Paraguay*. Referred to in I.A. Court H/R. *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 113(a). It is a right to territory which includes the use and enjoyment of their natural rights. It is directly related, including as a pre-requisite, with the right to live in dignified conditions, to nourishment, to water, to health, and to life, [IACHR, Democracy and Human Rights in Venezuela, 2009. Doc. OEA/Ser.L/v/II, Doc. 54, December 30, 2009, paras. 1076-1080], to honor, dignity, to the freedom of thought and religion, the freedom of association, to the rights of the family, to free movement and residence. " [IACHR, allegations before the Inter-American Court of Human Rights in the case of *Awás Tingni v. Nicaragua*. Referred to in: I.A. Court H/R. *Case of the Mayagna (Sumo) Awás Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 140(f)]" Taken from:

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territory has been one of the factors causing indigenous peoples to be disproportionately victimized by the country's armed conflict.²⁶⁰

157. Equally, there are numerous requests for title, territorial and boundary requests that at present remain unresolved by the government authorities - according to ONIC reports there are more than 500 claims pending resolution,²⁶¹ a figure confirmed by the State in a special hearing which took place at the IACHR in October 2010.

158. On the other hand, the indigenous organizations have shown concern at the statements of the Colombian Institute for Rural Development (INCODER) and of the Agustín Codazzi Geographical Institute (IGAC) in 2009, to the effect that they would not henceforth recognize the territorial property titles of colonial and republican origin that, for numerous communities and peoples, constitute the only legal instrument proving ownership over their land- a retrograde measure contrary to the previous course of action of the Colombian State itself to the effect of recognizing property titles over the reservations.²⁶² In its observations the State highlighted Decree 441 of 2010, implementing Article 85 of Law 160 of 1994. This Decree orders INCODER "to restructure the colonial reservations after the clarification on the validity of the deeds and on the lands occupied individually or collectively and the lands acquired for, and donated to, the community by the Colombian Institute for Agrarian Reform -INCORA- or other entities", by December 31, 2012, at the latest.²⁶³

159. In the special hearing held in October 2010 on the situation of human rights of indigenous peoples in Colombia, the State explained that it was not a question of ignoring the colonial era reservations, but that there are some doubts as to the titles and the scope of the corresponding rights. It explained that for a long time there have been settled non-indigenous populations on some lands, given that they are ancient reservations; and indicated that in 2010 it had adopted a directive to clarify the situation of titles and the corresponding lands, in order to leave them unencumbered and totally clear. In this respect the Government stated that this

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IACHR, "The Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources - Rules and Jurisprudence of the Inter-American System of Human Rights", 2010, p. 2.

²⁶⁰ In the words of the Constitutional Court in its Order 004/09: "Indigenous peoples are especially exposed, in a state of helplessness, to the armed conflict and to displacement. [...] As well, the armed conflict has aggravated pre-existing territorial disputes, in which non-indigenous parties have acquiesced in, or allied themselves with, the activities of illegal armed groups, to the detriment of ethnic groups. [...] The interest of non-indigenous actors in the land derives from various factors: from the natural resources, for its strategic military value, for its economic value, and from its distance from urban centers. The interested parties may be armed or unarmed actors, legal or otherwise, and scarcely intermingle. Territorial disputes are settled by violence, to the detriment of the indigenous peoples, with grave violations of human rights and of IHL, for their involvement in a conflict that does not belong to them. This variety of signs comes from the annex to the present order. [...] At the same time, the importance for the indigenous peoples of their land for their cultures, food and ethnic integrity, exacerbates the damages from the factors of displacement as well as from the displacement itself." In the same sense, the ACNUR explains that "[t]he forced occupation and exploitation of land are among the key factors of displacement in Colombia. Indigenous communities are especially vulnerable, considering that they inhabit large collective territories rich in natural resources (biofuels, oil, wood), and located in areas close to frontiers, or suitable for coca cultivation." Taken from: "In losing our land we lose ourselves - Indigenous peoples and Forced Displacement in Colombia". ACNUR Information Leaflet.

²⁶¹ ONIC – Report for the Inter-American Commission on Human Rights on the Situation of Human Rights of the Indigenous Peoples of Colombia, in the context of the Special Hearing requested by the National Indigenous Organization of Colombia at the Commission's 140th period of sessions.

²⁶² ONIC – Report for the Inter-American Commission on Human Rights on the Situation of Human Rights of the Indigenous Peoples of Colombia, in the context of the Special Hearing requested by the National Indigenous Organization of Colombia at the Commission's 140th period of sessions.

²⁶³ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 37.

directive must be interpreted in accordance with ILO Convention 169 and Law 21 of 1991, in the sense that given that these activities directly affect indigenous peoples the measures adopted must be consulted with them.²⁶⁴ The IACHR reminds the State of Colombia that in conformity with its international obligations under the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man, any process for the clarification of land titles should be carried out with the full participation and agreement of the peoples and communities affected as a whole when taking any decision which might affect their rights,²⁶⁵ without adopting regressive measures, or which might reduce the current scope of the territorial rights of the indigenous peoples.²⁶⁶

160. The indigenous peoples of Colombia have complained before various international instances that among the risk factors that currently threaten their physical and cultural existence are the infrastructural and economic exploitation projects that are being planned and implemented within their territories, without due respect for their individual and collective rights, and in certain cases accompanied by violence by armed groups.

161. As the Constitutional Court has explained, the development of infrastructure megaprojects or large-scale exploitation of the natural resources has been linked, in various cases, to the violence committed against the indigenous communities by armed groups participating in the conflict.²⁶⁷ In this sense, the Court has described the development of economic activities on indigenous territories as one of the socio-economic and territorial processes connected with the armed conflict that have a disproportionate impact on the indigenous population; and explained in this respect that in various cases, the armed actors interested in the development of economic exploitation or infrastructural megaprojects on indigenous lands have employed violence strategically against the indigenous peoples, in order to silence their opposition and seize their lands.²⁶⁸ In August 2010, the United Nations System in Colombia requested the State "to adopt special

²⁶⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 37.

²⁶⁵ Cf. IACHR, Report No. 75/02, Case 11.140, *Mary and Carrie Dann v. United States*, December 27, 2002.

²⁶⁶ For the IACHR, "the States are obliged to abstain from adopting regressive legislative or administrative measures that may affect the enjoyment of the right to land of indigenous peoples. [If States adopt regressive measures, they have the obligation to leave them without effect or to abstain from applying them". IACHR, Third Report on the Situation of Human Rights in Paraguay. OEA/Ser./L/VII.110, Doc. 52, March 9, 2001, paras. 49, 50 – Recommendation 4]". Quoted from IACHR "The Rights of Indigenous and Tribal Peoples over their Ancestral Lands and Natural Resources – Rules and Jurisprudence of the Inter/American System", 2010.

²⁶⁷ In this sense, the ONIC has confirmed: "in our country, the development of large-scale projects on indigenous territories has benefitted from the context of the war and the internal armed conflict: many of these without conducting prior consultation or via inadequate consultation. Very frequently, before undertaking a project, legal and illegal armed groups are deployed to spread terror, fear and panic [...]" Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²⁶⁸ In the words of the Court, "there are reports of [...] the development of lawful activities for exploiting the natural resources, in an improper way, by private sector economic actors or by illegal armed groups - such as indiscriminate logging, the planting and exploitation of agro industrial cash crops, improper mining, and other associated activities. Often these activities affect the sacred sites of ethnic groups, with the consequent destructive impact on the cultural structures. In this sense, it must be stressed that many indigenous groups have denounced the violent strategies used by interested armed actors, even in the direct implementation of agricultural megaprojects and the exploitation of natural resources, or in the aid from certain companies and economic actors who develop these projects, and with whom they have joined to share in the benefits of such activities. According to the complaint - and depicted below in the annex - some economic actors have apparently linked up with irregular armed actors to commit, within the indigenous communities, acts of violence which eliminate or displace the indigenous peoples from their ancestral lands, thus clearing the way for the implementation of these production projects. This derives, in essence, from the presence of extensive commercial interest in the natural resources on their lands. In some places in the country it is clear that actors in the armed conflict have joined with economic interests, an association that is one of the main causes for forced displacement." Constitutional Court, Order 004 of 2009, paragraph 2.3.

precautionary measures to protect the integrity and right to life of the indigenous leaders participating in consultations on economic projects and defending the indigenous territory in consultation processes held in municipalities identified by the Ombudsman's Early Warning System (SAT) as facing an elevated risk of violence."²⁶⁹ The State informed the IACHR that regarding previous consultations on projects with communities in municipalities with early warning systems, "the previous consultation group of the Ministry of the Interior and Justice has identified the projects with a view to fulfilling the role of guarantor of the fundamental right of prior consultation and through the same channel coordinate the inter-institutional guarantee and protection of the rights to life, liberty, security, and integrity of the ethnic groups that inhabit those areas."²⁷⁰

162. As concerns the infrastructure projects, it is known that Colombia plans to construct or has started the construction work on a number of large-scale ventures, such as hydroelectric dams, ports or irrigation zones. In addition, it has become involved in infrastructural integration processes in Latin America, such as the Integration Initiative of the South American Regional Infrastructure (IIRSA). Multiple far-reaching infrastructure projects will be built on indigenous territories, or will impact on them directly; such is the case, for example, of the Los Bezotes Dam, the Río Ranchería Reservoir and the Brisa Multipurpose Port, which will profoundly affect the lands of the indigenous Arhuaco, Kogui, Wiwa and Kankuamo peoples of the Sierra Nevada of Santa Marta, and the Wayúu, of la Guajira.

163. The exploration initiatives and mineral²⁷¹ and hydrocarbon²⁷² mining operations adopted by the National Government have also caused great concern among the indigenous peoples, since they will affect many ancestral lands. Among the foreseeable effects of these projects are profound ecological degradation, damage to or destruction of sacred sites, the influx of non-indigenous actors onto the territories, and the impact on the social organization structures of the respective peoples²⁷³.

²⁶⁹ United Nations System in Colombia - Press Release: "International Indigenous People's Day: Strategies for the protection of their lives and integrity." 2010-08-09. Available at: <http://www.hchr.org.co/publico/comunicados/2010/comunicados2010.php3?cod=26&cat=81>.

²⁷⁰ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 37 and 38.

²⁷¹ In the words of the ONIC, the Colombian Institute of Geology and Mineralogy (INGEOMINAS) states that there are 304 reservations located within mining areas in which mining rights are being granted for the exploration and exploitation of different minerals. The same source points out that in 2008, 65% of mining concessions being granted within mining areas, and being developed through the Free Commerce Treaty (TLC) signed with Canada, are located on ancestral lands belonging to indigenous communities (...). Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co [footnotes omitted].

²⁷² As the ONIC explains, "between 2000 and 2007, ECOPETROL signed 208 investigation and exploration contracts, 100 of which affected indigenous peoples, i.e., a total of 207 indigenous reservations and around 30 peoples, which were included on the petroleum map, affecting 5,884,244.2 hectares of territory overlapping with petroleum blocks. Similarly, in agreement No.08 of 2004, the management group of the National Hydrocarbons Agency (ANH) defined five special areas for intervention, four of which directly affect indigenous territories, that is, 134 reserves. To the above should be added four (4) areas of interest in relation to heavy crude oil and three additional marine zones, in which the anticipated mining of light crude oil will affect indigenous people's territory." Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co [footnotes omitted].

²⁷³ In the words of the Government "[a]s the Commission knows, the Colombian State signed ILO Convention 169 and issued Law 99 of 1993, Decrees 1320 of 1998 and 1220 of 2005 and Presidential Directive 01 of 2010; these instruments govern the prior consultation proceedings that --pursuant their provisions- consist of a number of phases guaranteeing different community contexts and their right to participation through the study of the possible impact of the proposed projects, works or activities. The prior consultation proceedings also guarantee the right to land and in particular the right to sacred lands. The influence of the project, work or activity is studied together with the companies; this does not mean granting veto power to the communities. Therefore if it is not possible to avoid influence over sacred territories, the impacts are identified and there is a space to reach agreements for the mitigation of damage." Observations of Colombia on

164. One of the areas of greatest concern for the indigenous peoples of the country has been the prior consultation procedures. Even though Colombia has a relatively sophisticated regulatory framework in this area²⁷⁴, according to the ONIC, "consultation has been turned into a constant political and cultural struggle for some peoples, and the main cause of conflict and divisions within the organizations." Indigenous peoples have often reiterated and made public their complaints that the Government merely views prior consultations as formal procedures to be exhausted in order to push through investment and development projects or mining concessions within ancestral lands, without giving substantive consideration to the positions of the peoples and communities affected, even when the latter demonstrate their opposition to the project under consultation. In addition, Colombian indigenous peoples have complained that during the prior consultation processes, the concessionaries or the companies hoping to obtain a concession exert themselves in order to gain the goodwill of community members by offering small handouts or material inducements, therefore taking advantage of their basic needs and the neglect by the State.²⁷⁵

165. In 2010, the Constitutional Court decided to suspend operations on the Mandé Norte mining project that would have affected an area of great spiritual significance for the Embera people, affecting more than eleven communities of the Río Murindó and Uradá Jiguamiandó reserves, since there had been no prior consultation processes in accordance with the State of Colombia's international and constitutional obligations.²⁷⁶ The IACHR was informed that the Government contested the validity of this decision before the full Court, and a decision on this appeal is pending²⁷⁷. The IACHR recalls that under the Inter-American Human Rights instruments, investment or development plans or projects or concessions for mining natural resources on indigenous land that (i) are large-scale and (ii) might cause a profound impact on the living conditions of the communities or peoples affected, not only require prior consultation in good faith, in an informed and culturally adequate way, but also require the consent of the respective indigenous peoples.²⁷⁸

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the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 38.

²⁷⁴ Presidential Directive No. 01 of 2010 proposes a number of phases in the development of the process of prior consultation in order to organize and indicate minimum proceedings for the management of the process. These phases are: a) pre consultation, b) opening of the process, c) workshops for the identification of impacts and definition of measures of management, d) pre-agreements, e) formalization meeting, f) systematization and follow up on compliance with agreements and, g) closure of the Prior consultation process. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 38.

²⁷⁵ Rico Piñeres, Laura (2009), "Prior Consultation: a multicultural farce," available at <http://www.lasillavacia.com/historia/3201>]. Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²⁷⁶ Judgment T-769/09, made public through press release of March 24, 2010.

²⁷⁷ The State reported that regarding the Mandé Norte project in 2009, in compliance with the third order of Judgment T-679-09 of the Constitutional Court, all activities related to the project were suspended in the area. It also indicated that the Ministry of the Environment, Housing and Territorial Development is evaluating the environmental impact so that the competent authority can carry out the corresponding studies. In parallel, the Prior consultation Group of the Ministry of the Interior and Justice is preparing a working plan to start the process and become the guarantor of the fundamental right to prior consultation of the communities that inhabit that area. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 39.

²⁷⁸ I.A. Court H/R. *Case of the Saramaka People v. Surinam*. Preliminary Objections, Merits, Reparations and Costs, Judgment of November 28, 2007 Series C No. 172, para. 134. As explained by the IACHR, "[w]ithout prejudice to the fact that every consultation process should pursue the objective of obtaining consent, in some specifically defined cases, the decisions of the Inter-American Court and international standards legally demand that States procure the informed consent of indigenous peoples prior to the execution of plans or projects that may affect their property rights over the lands, territories and natural resources. The Inter-American Court has highlighted 'the difference between 'consultation' and 'consent' in this

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166. In terms of the right to land, continued and worsening territorial disputes have also been reported between indigenous peoples and communities and settlers or other non-indigenous individuals interested in seizing their ancestral lands. The State has failed to respond actively and to protect the indigenous peoples from acts of violence aimed at driving them off their lands. Thus, for example, there was a complaint about a skirmish occurring between various settlers and indigenous people on October 9, 2010, on the Yukpa people's Iroka Reserve, in the Serranía del Perijá, Cesar Department. As a consequence of this, the Yukpa leader, Isaías Montes, was killed with a machete and the indigenous Omar Franco and Juan García, among others, were seriously injured.²⁷⁹ The IACHR emphasizes that indigenous peoples have the right to be protected by the State from attack by third parties, especially when these attacks occur in the context of conflicts for ancestral lands.²⁸⁰ In cases such as this, the State authorities have the duty to (i) prevent these conflicts from occurring, (ii) protect the indigenous communities from violent attack, and (iii) effectively investigate and punish the perpetrators.²⁸¹

167. The protection of the right to property over land under Article 21 of the American Convention, has particular importance for indigenous peoples, since the guarantee of the right to territorial property is a fundamental platform for the development of the indigenous communities' culture, spiritual life, integrity and economic survival.²⁸² It constitutes a prerequisite for the rights to live in conditions of dignity, to food, to water, to health,²⁸³ to honor and dignity, and to free movement and residence.²⁸⁴ For the IACHR "the protection of the right to property of indigenous peoples over their ancestral lands is a matter of special importance, since its effective enjoyment involves not only protecting an economic entity but the protection of the human rights of a

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context', and has defined the duty to obtain consent in the following terms: 'the Court considers that, regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent, according to their customs and traditions.' [I.A. Court H/R. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 134]. Later, in its Interpretation of the Judgment in the Saramaka Case, the Court added: "the State has a duty, from the onset of the proposed activity, to actively consult with the Saramaka people in good faith and with the objective of reaching an agreement, which in turn requires the State to both accept and disseminate information in an understandable and publicly accessible format. Furthermore, depending upon the level of impact of the proposed activity, the State may additionally be required to obtain consent from the Saramaka people. The Tribunal has emphasized that when large-scale development or investment projects could affect the integrity of the Saramaka people's lands and natural resources, the State has a duty not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent in accordance with their customs and traditions" [I.A. Court H/R. *Case of the Saramaka People v. Suriname*. Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 185, para. 17]. See: IACHR, "The rights of indigenous and tribal peoples over their ancestral lands and natural resources – Rules and jurisprudence of the Inter-American system of human rights", 2010, pp. 115-116.

²⁷⁹ Public communiqué of the authorities of the six indigenous reserves of the Yukpa people, October 13, 2010, Available at: <http://www.onic.org.co/nuevo/comunicados.shtml?x=36832>.

²⁸⁰ IACHR, Third Report on the Situation of Human Rights in Colombia. Doc. OEA/Ser.L/v/II.102, Doc. 9 rev. 1, February 26, 1999, Chapter X, Recommendation 3.

²⁸¹ IACHR, Democracy and Human Rights in Venezuela, 2009. Doc. OEA/Ser.L/v/II, Doc. 54, December 30, 2009, paras. 1062-1066; 1071 and 1137 – Recommendations 1-4.

²⁸² IACHR, Allegations before the Inter-American Court of Human Rights in *Case of Sawhoyamaya v. Paraguay*. Referred to in: I.A. Court H/R. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, para. 113(a).

²⁸³ IACHR, Democracy and Human Rights in Venezuela, 2009. Doc. OEA/Ser.L/v/II, Doc. 54, December 30, 2009, paras. 1076-1080.

²⁸⁴ IACHR, Allegations before the Inter-American Court of Human Rights in the *Case of Awas Tingni v. Nicaragua*. Referred to in: I.A. Court H/R. *Case of the Comunidad Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Merits, Reparations and Costs. Judgment of August 31, 2001. Series C No. 79, para. 140(f).

collective who bases its economic, social and cultural development in relation to its land."²⁸⁵ The Inter-American Court, in turn, has underlined the fact that territorial rights of indigenous peoples are related to "the collective right to survival as an organized people, controlling their environment as a necessary condition for their cultural growth, for their own development and for realizing their life goals."²⁸⁶ The IACHR calls upon the State of Colombia to redouble its efforts to protect the effective enjoyment of indigenous peoples of their right to land, as a first step to ensure their fundamental rights in the context of the internal armed conflict.

7. The Socio-Economic Situation

168. The socio-economic situation of indigenous peoples in Colombia is extremely serious. According to figures published by ONIC, based on information of the DANE and the University of Los Andes, 63% of the indigenous population live below the poverty line, and 47.6% below the extreme poverty line.²⁸⁷

169. One of the most serious consequences of poverty is the high incidence of infant malnutrition among the indigenous communities, condemned by the IACHR in its recent annual reports. The ONIC has reported, for example, that among the children of the Guayabero (Jiw) people, the level of long-term malnutrition is at 83.5%;²⁸⁸ it has also reported that during 2009, "the cases of the deaths due to malnutrition of indigenous children in the peoples of Emberá Katío (Chocó), Wiwa (Guajira), Yukpa (Cesar), Wayúu (Guajira) were made public, as well as cases of severe malnutrition in the Awá and Eperara Siapidaara peoples in Nariño";²⁸⁹ it has also complained that during the current year in the Kankuamo people, 12.% of the reserve's infant population aged between 0 and 6 years are suffering from chronic grade II malnutrition, 6.22% from chronic grade III malnutrition, and 19% are at serious risk of malnutrition.²⁹⁰ Chief among the factors threatening the nutritional security of the indigenous peoples is the armed conflict - in particular by the restrictions imposed by the armed participants on traditional subsistence activities, on the movement of foodstuffs to and from the communities, by stealing the means of subsistence

²⁸⁵ IACHR, Allegations before the Inter-American Court of Human Rights in *Case of Yakye Axa v. Paraguay*. Referred to in: I.A. Court H/R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005. Series C No. 125, para. 120(c).

²⁸⁶ I.A. Court H/R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005. Series C No. 125, para. 146. For the Inter-American Court, "Property of the land ensures that the members of the indigenous communities preserve their cultural heritage." I.A. Court H/R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005. Series C No. 125, para. 146]. The indigenous and tribal peoples have the collective right to survival as an organized people; to affect the ancestral right of the indigenous communities' members over their lands may also affect other basic rights, such as the right to cultural identity, or the survival of the indigenous communities and their members. I.A. Court H/R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005. Series C No. 125, para. 146, 147]. The IACHR has explained in this sense that ancestral lands reclaimed by indigenous communities are the only places "where they will be completely free because it is the land that belongs to them" [IACHR, Allegations before the Inter-American Court of Human Rights in *Case of the Yakye Axa Indigenous Community v. Paraguay*. Referred to in I.A. Court H/R. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment June 17, 2005. Series C No. 125, para. 120(g)].

²⁸⁷ Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²⁸⁸ ONIC, Report on the Health and Nutrition of the Nukak Maku and Jiw (Guayabero) indigenous peoples, 2009. Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co.

²⁸⁹ Taken from: "A sweet word, air for life: forging paths for the survival of indigenous peoples at risk of extinction in Colombia". ONIC, 2010. Available at: www.onic.org.co. [footnotes omitted].

²⁹⁰ Information provided by Kankuama IPS, 2009, and published in: "Indigenous women in the context of the internal armed conflict living in Colombia", ONIC, 2010.

belonging to the indigenous peoples, or by the effects of the State's indiscriminate spraying of their subsistence crops.

170. The health conditions of the indigenous peoples of Colombia are also of concern. Figures from the Ministry for Social Protection indicate that in 2009, 67.5% of the indigenous population was linked into the social health system, that is, 32.4% were lacking coverage; this figure is much higher than the non-indigenous population outside the system. On the other hand, there are serious geographical barriers to the efficient provision of health services, since in various regions of the country indigenous peoples have to move huge distances, travelling for hours or days, in order to reach clinics; consequently, in reality they do not have access to the system, much less for emergency cases. Although the State has initiated promotional health campaigns among the communities, these have been specific and intermittent initiatives. The United Nations Special Rapporteur, James Anaya, in his report on his visit to the country published in 2010 emphasized the seriousness of the health situation.²⁹¹

171. The precarious conditions of access to the health system, combined with the circumstances of poverty and malnutrition, constitute an alarming picture of levels of sickness and infant mortality among the indigenous communities of the country. In June 2010, the Association of Indigenous Councils of Embera, Wounaan, Katío, Chamí and Tule in the Department of Chocó complained in a public communiqué, that the number of infant deaths in their communities had increased, and specifically that an undiagnosed epidemic had cost the lives of more than ten children in a single month.²⁹²

172. The IACHR emphasizes that the international law of human rights obliges the OAS Member States to respect, guarantee and promote the effective enjoyment of the right to life in conditions of dignity, laid down in Article 4 of the American Convention on Human Rights, and in Article I of the American Declaration of the Rights and Duties of Man. This basic right, which belongs to all the members of the indigenous peoples, means that the State of Colombia has, *inter alia*, the three-fold duty to (i) adopt special measures to ensure dignified living conditions for these people, (ii) abstain from creating conditions which impede access to basic conditions of food, water, health, and shelter, and (iii) in the case of at-risk peoples already exposed to vulnerable conditions due to their poverty, adopt positive measures as a priority to satisfy the minimum requirements for a dignified existence. In the case of indigenous peoples, communities, and individuals compliance with this three-fold duty must take place giving due consideration to their ancestral cultures and taking into account the special relationship linking indigenous peoples with their land and its natural resources.

²⁹¹ In the words of the Rapporteur, "the indigenous groups do not appear to enjoy the same standards of accessibility and quality in the right to health as the majority of the Colombian population, a situation that seems to be exacerbated by the armed conflict". UN - Human Rights Council - Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, A/HRC/15/34, January 9, 2010.

²⁹² As the ONIC explains, this communiqué informed the public of the "increase in indigenous children's deaths and the lack of care of the entities of the state departments and of the health authorities, which, to date and despite the seriousness of the events, have not implemented a model of differentiated, timely and effective treatment to prevent and attend to the systematic and constant deaths of indigenous children; these deaths have been caused by the severe problems of malnutrition; this favors and is a determining factor in the appearance and spread of epidemics in the childhood population. The most recent occurrence was in the Bajo Baudó Municipality, affecting communities such as Buenavista, Puerto Piña, Pitalito, Chichiliano, Bajo Grande, Playa Linda, Guachal and Villa Nueva, among others, where a mystery epidemic (to date the health authorities have not established a medical diagnosis) has claimed the lives of more than ten indigenous children in the last month, and 150 persons have been reported sick, who were unable to reach basic health care." In "Indigenous women in the context of the internal armed conflict living in Colombia", ONIC, 2010.

B. Afro-descendent and Raizal Communities and Councils

173. On March 29, 2009, the IACHR approved the "Preliminary Observations on the Rights of Afro-descendants and against Racial Discrimination after the Special Rapporteur's visit to the Republic of Colombia." In this document, the IACHR pointed out "ongoing acts of violence against [mainly afro-descendent] civilians through massacres, selective executions, forced disappearances, injuries to their physical integrity, sexual abuse, acts of harassment and forced displacement."²⁹³

1. Socio-Economic Situación and the Differential Impact of the Internal Armed Conflict

174. Ten years ago, when the IACHR addressed the situation of the Afro-Colombian population in its "Third Report on the Human Rights Situation in Colombia", it concluded that "the general view is correct that the fear and violence generated by the warring factions in Colombia has particularly impacted upon those Colombians who live in conditions of extreme poverty, of whom a disproportionate number are black."²⁹⁴

175. On May 10, 2010, the Government issued a CONPES document creating a policy to promote equal opportunities for the black, Afro-Colombian, Palenquero and Raizal populations, with recommendations made to each one of the entities making up CONPES. In accordance with this document, it is important to launch affirmative actions permitting the exercise and enjoyment of the individual and collective rights of these populations. In this sense, the document emphasizes that the established policy seeks to implement solutions to generate access to opportunities for sustainable human development, and reduce the gap in living conditions of the Afro-Colombian population compared with the rest of the country's inhabitants.²⁹⁵

176. Notwithstanding the above, the Commission observes that in the last ten years the situation has not improved and the Afro-Colombians continue to be victims of "massacres, selective executions, disappearances, torture, cruel and inhuman treatment, sexual abuse, acts of harassment and threats by armed actors in the conflict."²⁹⁶ In addition, community council leaders who have filed claims requesting the title deeds certifying the collective ownership of the lands of these communities, and who have opposed the armed groups, have been the targets of selective assassinations, acts of violence and harassment.²⁹⁷ As a result the IACHR has referred year after year to the serious situation affecting Afro-Colombians, especially with regards to their rights to life and personal integrity, particularly the leaders of the Afro-descendent community in Colombia.²⁹⁸

²⁹³ IACHR. Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteur on the Rights of Afro-descendants and against racial discrimination in the Republic of Colombia, March 27, 2009, para. 47.

²⁹⁴ IACHR. Third Report on the Situation of Human Rights in Colombia. February 26, 1999, Ch. IX, para. 26.

²⁹⁵ National Planning Department, National Council of Economic and Social Policy, Document CONPES 3660, policy to promote equal opportunities for the black, Afro-Colombian, Palenquero and Raizal populations, May 10, 2010. Document available at: <http://www.dnp.gov.co/PortalWeb/LinkClick.aspx?fileticket=oBFtC3Gwr%2fc%3d&tabid=1063>.

²⁹⁶ IACHR. Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteur on the Rights of Afro-descendants and against racial discrimination in the Republic of Colombia. March 27, 2009, para. 55.

²⁹⁷ IACHR. Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteur on the Rights of Afro-descendants and against racial discrimination in the Republic of Colombia. March 27, 2009, para. 59.

²⁹⁸ See, *inter alia*, IACHR. Annual Report 2009, Ch. IV, paras. 111 and 117; Annual Report 2008, Ch. IV, paras. 104 and 106; Annual Report 2007, Ch. IV, para. 67; and Annual Report 2006, Ch. IV, para. 42.

177. Similarly, other international human rights organizations have recently confirmed the same problems and expressed their concern about them. For example, the Committee for the Elimination of Racial Discrimination (CERD), during its 75th period of sessions held between August 3 to 28, 2009, when examining the periodic reports Nos. 10 to 14 on Colombia, indicated that one of the factors besetting and/or hampering the application of the International Convention for the Elimination of All Forms of Racial Discrimination in Colombia, is the situation of violence generated by the armed groups, in the context of the armed conflict. Its principal victim is the civilian population, in particular Afro-Colombians.²⁹⁹ In addition, the CERD expressed special concern "for the ongoing grave violations of human rights committed against Afro-Colombians [...], such as killings, extrajudicial executions, recruitments and forced displacements";³⁰⁰ as well as "the large number of ongoing mass and individual displacements and of the disproportionately high and ever greater number of Afro-Colombians [...] among the displaced."³⁰¹

178. In addition, in February 2010, the United Nations Independent Expert on Questions of Minorities, Gay McDougal, undertook an official *in loco* visit to Colombia, focusing on communities identified as Afro-Colombian, Black, Raizal and Palenquero. In the Preliminary Conclusions,³⁰² the Independent Expert indicated as an emerging challenge confronting the Afro-Colombian communities "the violence at the hands of various types of armed actors, the ongoing struggle for their lands and territory, forced displacement, the impact of agro-industry, the interests of loggers and miners and the "mega-projects" aimed at economic development and the exploitation of human resources."³⁰³ In addition, the Independent Expert stressed that the displacement of Afro-Colombian communities is a pressing problem, since "despite the concession of collective title to 90% of the ancestral land of Afro-Colombians, many communities are being displaced."³⁰⁴

179. In effect, the Independent Expert observed that the Afro-descendent communities "remain today in the middle of the danger,"³⁰⁵ since the Afro-Colombians' lands have strategic value for the guerrillas, former paramilitaries and other armed groups.³⁰⁶ Hence the foregoing has been the cause of killings, and threats against Afro-descendent community leaders, and has caused the ongoing violence "in the form of selective murders [of Afro-descendent leaders], disappearances, intimidation, continuous displacement and banishment."³⁰⁷ Lastly, as indicated by the IACHR in its 2006 Report on "Women Facing Violence and Discrimination From the Armed Conflict in

²⁹⁹ See CERD. Final Observations of the Committee for the Elimination of Racial Discrimination (Colombia). August 28, 2009. CERD/C/COL/CO/14, para. 12.

³⁰⁰ CERD. Final Observations of the Committee for the Elimination of Racial Discrimination (Colombia). August 28, 2009. CERD/C/COL/CO/14, para. 14.

³⁰¹ CERD. Final Observations of the Committee for the Elimination of Racial Discrimination (Colombia). August 28, 2009. CERD/C/COL/CO/14, para. 16.

³⁰² At the date of preparing this document, the Expert's Report has not yet been published.

³⁰³ Independent Expert on Questions of Minorities. Preliminary Conclusions on official visit to Colombia. February 12, 2010. A/HRC/13/23/Add.3, para. 6 (available in Spanish at <http://www.hchr.org.co/documentoseReports/documentos/relatoresespeciales/2010/Declaracion%20Experta%20sobre%20Cuestiones%20de%20las%20Minorias%20Gay%20McDougall.pdf>).

³⁰⁴ Independent Expert on Questions of Minorities. Preliminary Conclusions on official visit to Colombia. February 12, 2010. A/HRC/13/23/Add.3, para. 11.

³⁰⁵ Independent Expert on Questions of Minorities. Preliminary Conclusions on official visit to Colombia. February 12, 2010. A/HRC/13/23/Add.3, para. 12.

³⁰⁶ Independent Expert on Questions of Minorities. Preliminary Conclusions on official visit to Colombia. February 12, 2010. A/HRC/13/23/Add.3, para. 13.

³⁰⁷ Independent Expert on Questions of Minorities. Preliminary Conclusions on official visit to Colombia. February 12, 2010. A/HRC/13/23/Add.3, para. 15.

Colombia",³⁰⁸ the Independent Expert has also called for "urgent answers that recognize the impact of violence and displacement on women, and to encourage conditions of security, dignity and justice for them",³⁰⁹ in view of the fact that the impact of murders, disappearances and the displacement of Afro-descendent men has required the women to assume "leadership roles in their communities [showing] a remarkable capacity for fortitude and resistance."³¹⁰

180. In line with the foregoing considerations, during 2010, the IACHR continued to receive information from different sources on the grave humanitarian crisis afflicting the Afro-Colombian population, in particular its leaders and members of community councils who exercise leadership in the claims, defense and protection of the Afro-Colombians' human rights, especially their rights relating to their territory, local natural resources and their right to autonomy and cultural identity.

181. In effect, in the Risk Report No. 031 of December 31, 2009, the Early Warning System of the Ombudsman referred to the risk to life, liberty and integrity of the civilian population of Riosucio, Carmen del Darién and Belén de Bajirá, as a consequence of the acts of violence perpetrated by illegal armed groups in the collective lands, especially by the inhabitants of Nueva Esperanza and Pueblo Nuevo in Jiguamiandó; in Caño Manso, Caracolí, Camelias, Cetino, Andalucía and Caño Claro in Curvaradó; as well as the chiefs of the La Larga Tumaradó Afro-Descendent Community Council, and the members of the board of the Curvaradó and Jiguamiandó Community Councils.³¹¹

182. However, it is important to point out that in 2010, a worrying number of leaders of the Afro-Colombian population have been murdered, which points to "a strategy of persecution and dismantling against the Afro-Colombian ethnic-territorial movement."³¹² In this sense, the IACHR has also previously concluded that the actions of the armed actors and the economic actors (in many cases allied with the former), who are interested in the collective lands of the Afro-Colombians, frequently cause human rights and international humanitarian law violations with the aim of "causing fear, displacement and unlawful seizure of [Afro-Colombians'] lands."³¹³

183. The IACHR has received information on the murders of the Major Community Council leader of Curvaradó, Argénito Díaz Tapias, from bullet wounds fired by a hit man, on January 18, 2010,³¹⁴ and of members of the Micay and COCOCAUCA Community Council, José

³⁰⁸ See IACHR. Women exposed to Violence and Discrimination derived from the Armed Conflict in Colombia, October 18, 2006.

³⁰⁹ Independent Expert on Questions of Minorities. Preliminary Conclusions on official visit to Colombia. February 12, 2010. A/HRC/13/23/Add.3, para. 24.

³¹⁰ Independent Expert on Questions of Minorities. Preliminary Conclusions on official visit to Colombia. February 12, 2010. A/HRC/13/23/Add.3, para. 25.

³¹¹ See Ombudsman's Office. Risk Report No.031 of December 31, 2009.

³¹² National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, para. 98.

³¹³ IACHR. Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteur on the Rights of Afro-descendants and against racial discrimination in the Republic of Colombia, March 27, 2009, para. 102. See also, in this sense, footnote 116 in the paragraph previously mentioned.

³¹⁴ Argénito Díaz was also president of the Local Council of Llano Rico, spokesman for the Group of Major Council of Curvaradó and had been elected to the Directive Group of ASCOBA (Association of Community Councils and Organizations of Bajo Atrato). See Ombudsman's Office. Press Release No. 1490. The Ombudsman requests the adoption of preventative and protective measures for members of the board of the Community Councils in Chocó. January 18, 2010.

Félix Orejuela and Milton Torres, on January 21 and 22, 2010, respectively.³¹⁵ In this respect the State reported that the Ministry of the Interior and Justice adopted protective measures for López de Micay, a member of the Community Council of Manglares, through the Directorate for Afrodescendant, Raizal and Palenque Community Affairs and the Human Rights Directorate. The State also informed that in March 2010, the Human Rights Directorate of the Ministry of the Interior granted security measures for COCOCAUCA and the Manglares Community Council consisting of 25 communication devices, eight instances of assistance for temporary relocation and one instance of assistance for river transportation.³¹⁶

184. In addition, according to information received by the Commission in June 2010, between the months of April and May 2010, the persecution against Afro-Colombian leaders intensified through various threats allegedly made by the paramilitary groups "Aguilas Negras" and "Rastrojos (Red Faces)". According to the information received, the Inner Council of the Aguilas Negras had sent messages stating that 80 Colombian organizations - including AFRODES, among other Afro-Colombian organizations - were considered military targets based on the argument that they had allegedly collaborated with the guerilla groups (FARC and ELN) and were opposed to government policies.³¹⁷ On May 21, 2010, AFRODES sent a petition to the National Government seeking support in confronting the grave security situation against their lives.³¹⁸

185. In this respect, during 2010, the Commission has received information on the murders of members of Afro-Colombian organizations and their families such as Ricaurte Angulo Valencia's son (AFRODES) on April 17,³¹⁹ Rogelio Martínez (MOVICE) on May 18³²⁰, Estrella Hinestrosa Robayo (ASODES) on May 20³²¹, Alexander Quintero (Association of the Community Action Board of Alto Naya) on May 23³²², Horacio Riascos Suárez's son (AFRODES) on June 22³²³,

³¹⁵ National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 63.

³¹⁶ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 30.

³¹⁷ AFRODES letter to the Inter-American Commission on Human Rights, June 3, 2010. On the recent "Aguilas Negras" threats against the Afro-Colombians and their organizations, see also Independent Expert on Questions of Minorities. Preliminary Conclusions on official visit to Colombia. February 12, 2010. A/HRC/13/23/Add.3, para. 15. The IACHR also mentioned the threats of this paramilitary group in its Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteur on the Rights of Afro-descendants and against racial discrimination in the Republic of Colombia, para. 54.

³¹⁸ National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, para. 101.

³¹⁹ Ricaurte Angulo Valencia had received numerous death threats against himself and his family allegedly from the Águilas Negras. National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 62.

³²⁰ Rogelio Martínez was a member of the Movement for victims of Crimes of the State (MOVICE) and was murdered by a group of masked men in San Onofre, Sucre. He was a leader of the internally displaced who was heading the efforts to ensure the handing back of lands to 53 families in an area known as "Finca Alemania", and was in the death threat issued against displaced persons organizations and leaders issued by the Rastrojos in April of 2010. National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 64. See also Public Defender's Office, Press Release No. 1543. Public Defender, Volmar Pérez, condemns the violent murder of leader of the displaced in San Onofre, Sucre. May 19, 2010.

³²¹ Estrella Hinestrosa Robayo was President of the Association of Displaced Persons with Dignity and Social Security (ASODES) and was murdered by two unidentified men who shot her four times. National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 64.

³²² Alexander Quintero was President of the Association of Joint Communal Action Committees of Alto Naya and was murdered in Santander de Quilichao, Cauca. Alexander Quintero was actively supporting the process of social reconstruction, truth and reparation for victims of the massacre of at least 110 individuals at the River Naya, which occurred

Jaider Julio (ASHUDEBOL) on June 6³²⁴, Rodolfo Flórez (The Better Life Foundation) in July³²⁵, Andrés Medina (Colectivo Afrocolombiano Son Bata) on July 3³²⁶ and Jair Murillo (AFRODES) on July 17.³²⁷

186. The IACHR was also informed of the massacre of five people at the Yanzal farmstead in the El Charco Municipality, Nariño Department, in the morning of Friday October 1, 2010, and the mass displacement occurring on October 2 in the rural area of the Santa Bárbara de Iscuandé Municipality after threats, murders and extortion committed by an illegal armed group. The Defender of the People said of these events "they constitute a grave violation of the fundamental rights to life and the integrity of the civilian population of Afro-descendent communities [...], which, in addition, affects their rights to territorial and cultural autonomy, and to their social organization."³²⁸

2. Displacement and situation of the territories

187. The Commission continues to be concerned for the situation of the Jiguamiandó and el Curvaradó Community Councils that are protected by provisional measures issued by the Inter-American Court. In this respect, the Commission has stressed that the Afro-descendent communities' lands have been the target of illegal occupation in order to be of use in the lucrative business of agro fuels, thereby affecting the area's biodiversity and the means these communities rely on to feed themselves and survive.

188. The said territories are in proceedings for judicial recovery and material restitution of the lands occupied. With regard to this process, on July 17, 2009, the Constitutional Court issued Order 222 of 2009,³²⁹ with the aim of adopting an urgent protective measure to safeguard the fundamental rights of the Caracolí Afro-Colombian community belonging to the Curvaradó community affected by forced displacement in the context of the unconstitutional state of affairs

...continuation

in 2001. National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 65.

³²³ Horacio Riascos Suárez was a member of AFRODES. National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 65.

³²⁴ Jaider Julio was a member of the Humanitarian Association of Bolívar (ASHUDEBOL). National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 65.

³²⁵ Rodolfo Flórez was a photographer and cinematographer and one of the founders of the Foundation for a Better Life, which supported artistic projects for young people in the port of Buenaventura. National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 65.

³²⁶ Andrés Medina was a member of the Afro-Colombian Collective of Son Bata. National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 66.

³²⁷ Jair Murillo was a member of AFRODES. According to information received by the Commission, Jair was coordinating the mobilization of organizations of internally displaced persons and communities of Buenaventura to participate in a march for dignity and human rights, which was scheduled to take place on July 18, 2010 in Bogotá. Jair was also on the death list issued by the Black Eagles in May 2010. National Association of Displaced Afro-Colombians (AFRODES) and Global Rights – Partners for Justice. Bicentenary: Nothing to Celebrate! July 2010, Annex 4, p. 66.

³²⁸ Ombudsman's Office. Press Release No. 1596. Condemnation of the massacre taking place in the El Charco Municipality and the Displacement in Iscuandé, in the Department of Nariño. October 2, 2010. See, in the same sense, IACHR Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteur on the Rights of Afro-descendants and against racial discrimination in the Republic of Colombia, March 27, 2009, paras. 60 and 72.

³²⁹ Constitutional Court, Order 222-09, Judge Rapporteur Luis Ernesto Vargas Silva, June 17, 2009.

declared in Judgment T-025 of 2004 and in the Order 005 of 2009.³³⁰ The precautionary measures consisted of the immediate and indefinite suspension of the judicial eviction notice against members of the said community, issued by the Mixed Circuit Judge of Riosucio, Department of Chocó, as well as the adoption of protective measures for the Caracolí community, to be adopted in coordination with the community in the framework of the provisional measures adopted by the Inter-American Court. The Constitutional Court recognized these communities as the subject of special constitutional protection by mandate of the Constitution of Colombia and the State of Colombia's international obligations in the area of human rights and International Humanitarian Law. In this regard, the Commission has received information indicating that the State has failed to comply with the instructions issued by the Constitutional Court in the said Order.

189. In addition, on October 5, 2009, the Contentious Administrative Court of Chocó issued Judgment 0073, ordering the handing back to the Curvaradó Basin Community Council of lands illegally occupied and afterwards reclaimed by the State, a decision that was upheld by the Council of State by a decision issued on April 8, 2010. This decision ordered the restitution of collective lands to the Jiguamiandó and Curvaradó communities within thirty (30) days. In this regard, on May 18, 2010, the Constitutional Court issued a mandate in which it reviewed compliance with the instructions in Order 005 of 2009 and concluded that there are breaches and/or delays in compliance. In addition, it stressed that there is a systematic and permanent violation of the fundamental rights of the Afro-descendent population and that

[w]hile the current state of uncertainty persists as to the presence of the community chiefs, the territorial boundaries and the population census, as well as to the lack of transparency and effectiveness of the material restitution process of the collective lands, and while the division, the campaigns of mutual smearing and the threats continue, any judicial or administrative intervention may only contribute to heightening the tensions and extraordinary risks for the life and personal safety of the population in the Jiguamiandó and Curvaradó communities.³³¹

190. From the above, it indicated that compliance with the Council of State's April 8, 2010 Judgment is impossible until such time as the procedures defined in Order 005 are fulfilled and the legal representation of the communities is clarified. Finally, it stressed that are proven risks for the life and physical integrity of the Jiguamiandó and Curvaradó communities and, in particular, for the community leaders Enrique Petro and Marta Ligia Chaverra, and others who are threatened and require protection. Finally, the Court issued a series of orders for different public institutions that, according to information received by the Commission, have not yet been implemented to date.³³² In this respect, the Commission will continue to observe the fulfillment of the Constitutional Court's orders and of the provisional measures issued by the Inter-American Court in favor of these communities.

191. In its observations the State reported that with the purpose of compliance with the Decision of May 18, 2010, an Inter-institutional Group composed of the Ministry of the Interior and Justice, Social Services, the Ministry of Agriculture and Rural Development, the Ministry of Foreign Affairs, the Presidential Program of Human Rights and the Colombian Institute of Rural Development (INCODER) was established. This Group moved forward in the design and preparation of a plan of action to comply with judicial decisions in favor of the Jiguamiandó and Curvaradó communities, which "adopt precautionary measures to protect immediately the fundamental rights of the

³³⁰ Constitutional Court, Order 005-09, Judge Rapporteur Manuel José Cepeda, January 26, 2009.

³³¹ Information available at Pacific and Territorial Observatory: <http://www.pacificocolombia.org/novedades/curbarado-jiguamiando-otro-acierto-corte-constitucional/75>

³³² Information available at Pacific and Territorial Observatory: <http://www.pacificocolombia.org/novedades/curbarado-jiguamiando-otro-acierto-corte-constitucional/75>

afrocolombian communities of Curvaradó and Jiguamiandó" within the framework of Judgment T-025 of 2004.³³³

192. The State also indicated that this inter-institutional exercise seeks to produce a common strategic plan with the communities and a space for dialogue and trust where the Government presents the communities and its leaders (23 communities of Curvaradó and 11 of Jiguamiandó selected at the suggestion of the Ombudsman's Office) with a time table of action, responsibilities, time limits, specific plans and undertakings established by each one of the participants.³³⁴

193. Finally the State indicated that the Directorate for Afrodescendant, Raizal and Palenque Community Affairs of the Ministry of the Interior and Justice currently leads the efforts to perform a census of the Communities of the Jiguamiandó and Curvaradó rivers, with the purpose of identifying and determining the legitimate possession of the collective territory, acknowledged by the Colombian State by Law 70 of 1993 and granted to them in INCODER Resolutions No. 02801 and 02809 of November, 2000.³³⁵

194. The Commission has repeatedly expressed its concern for the lack of judicial clarification of the majority of the acts of violence affecting the Afro-descendent communities and causing their displacement in the context of the armed conflict.³³⁶ In this sense, the IACHR has stressed that "establishing the truth about what happened during the conflict, searching seriously for justice through the determination of the responsibility of the perpetrators vis-à-vis the victims, and the reparation of the damage caused -- far from generating obstacles for the agreements that can lead to peace building -- constitute basic pillars of its strength."³³⁷ The Commission repeats its concern and will continue with the follow-up to the situation of the Afro-descendent communities.

IV. THE SITUATION OF HUMAN RIGHTS DEFENDERS, SOCIAL AND TRADE UNION LEADERS

195. During 2010, the Commission received information on the killings, threats and acts of harassment and violence against human rights defenders, both men and women, as well as criminalizing them in order to obstruct their activities as members of organizations dedicated to the defense of human rights.

³³³ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 40.

³³⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 40.

³³⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 41.

³³⁶ See Chapter IV of the IACHR's Annual Reports for the years 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and 2009.

³³⁷ IACHR. *Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteur on the Rights of Afro-descendants and against racial discrimination in the Republic of Colombia*, March 27, 2009, para. 101. See also IACHR. *Report on the Demobilization Process in Colombia*, December 13, 2004, pp. 10-20.

196. In short, the Commission has received information³³⁸ indicating that between March and October approximately 22 individuals³³⁹ dedicated to the defense of human rights were killed. According to figures of the Human Rights and Humanitarian Law Observatory of the US-Europe-Colombia Coordination Unit, in little over a month - August 17, to September 19, 2010 - four human rights defenders were killed.³⁴⁰ Similarly, it has received information showing that between January 1, and August 30, 2010, the killing of 35 trade unionists were recorded.³⁴¹

197. Similarly, the Commission has received information on acts of harassment, threats and violence suffered by members of various civil society organizations that, in some cases, have been marked as targets by paramilitary groups.³⁴² In this regard, the Commission expresses its

³³⁸ Hearing on the Situation of Human Rights Defenders in Colombia and the Implementation of Precautionary Measures, which took place on October 28, 2010, in the context of the Commission's 140th period of sessions. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

³³⁹ 1. Rodolfo Maya Aricape (indigenous leader-Community of Nasa); 2. Ana María Moreno (legal representative of the local Community Council of Asti and member of the Directive Committee of Mayor Community Council); 3. Isaías Montes (Yukpa Indigenous Leader of the Indigenous Iroka reserve); 4. Edgar Bohorquez Palma (Association of United Displaced Persons of Sarare); 5. Hernando Pérez Hoyos (land claimant); 6. Rivera Robinson (teacher of the lower district of Vegas); 7. Alexander Martínez Richard (leader of the Cauca Indigenous Guard); 8. Luis Germán Restrepo Maldonado (Vice-president of the Directive Committee of Sintratextil); 9. Jaime Reyes Sampier (indigenous leader of the Sikuaní Reserve of the La Esperanza Town Council); 10. Carmen Elisa Mora Uncacia (Office for Indigenous Affairs of the Permanent Committee for the Defense of the Human Rights of the Municipal Mayor's Office of Saravena and indigenous leader); 11. Norma Irene Pérez (Member of the Regional Human Rights Committee for the Guayabero Region, and President of the local Committee of Human Rights); 12. Álvaro Montoya (President of the Joint Community Action Committee of San José); 13. Luz Emilia Carreño Barrera (community mother); 14. Pineda Muñoz Beto Ufo (Representative of the Association of "New Florida", displaced persons of Popayán, Cauca); 15. Mancilla Arbey and 16. Obando Efrén (peasant leaders); 17. Jair Murillo (legal representative of the Fundación Integral Pacífico Nariñense, Buenaventura); 18. Andrés Felipe Medina (youth leader of Commune 13); 19. Walter Zúñiga (communal leader, Commission of Human Rights of Bajío Ariari); 20. Alex Quintero (process leader of Alto Naya, Cauca); 21. Rogelio Martínez Mercado (peasant leader and member of MOVICE, Sucre); and, 22. Albeiro Valdés Martínez (Leader of the Association of Victims for the Restitution of Lands and Property). Hearing on the Situation of Human Rights Defenders in Colombia and the Implementation of Precautionary Measures, which took place on October 28, 2010, in the context of the Commission's 140th period of sessions. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

³⁴⁰ The Observatory refers to the killings of the following human rights defenders: Álvaro Montoya (President of the Communal Action Committee of San José); Norma Irene Pérez (President of the local human rights committee of Vereda La Unión); Carmen Elisa Mora Uncacia (indigenous leader, member of the Office for Indigenous Affairs of the Municipal Town Council of Saravena) and Jaime Reyes Sampier (Indigenous leader and member of the La Esperanza Town Hall).

³⁴¹ Colombian Commission of Jurists - National Union School, Report on the human rights violations against unionists and the situation of impunity 2009-2010 and 2002-2010, ENS-Colombian Commission of Jurists with the support of the European Union, Colombia, October of 2010. Available at: <http://www.cut.org.co/images/stories/file/REPORT%20DDHH%20IMPUNIDAD%20SOBRE%20VIOLENCIA%20TRABAJDORS%20ENS%20-%20CCJ.PDF>.

³⁴² The Commission has received information from different sources about the threats signed by the Central Block of the *Aguilas Negras*, labeling as military targets the following organizations: LIGA DE MUJERES DESPLAZADAS; ANDESCOL; FUNDACIÓN VIVE; FENSUAGRO; CORPOCAM; SUTEQ; ACEU; FEU; ASPU; ORIQUN; Mujeres en Pie de Lucha por una Colombia Productiva; UTP; SINALTRAINAL; ASODUNIR; SINTRAUNICOL; JUCO; CRIDEC; ASOCIACIÓN NACIONAL DE AFROCOLOMBIANOS DESPLAZADOS (AFRODES), AFRODES BOGOTÁ-CUNDINAMARCA ABCUN, ASOCIACIÓN DE AFROCOLOMBIANOS DESPLAZADOS-REGIONAL BUENAVENTURA (AFRODES BUENAVENTURA); ASOCIACIÓN DE CABILDOS INDÍGENAS DEL NORTE DEL CAUCA (ACIN), ASOCIACIÓN DE DESPLAZADOS DE CONDOTO (ASODESCON); ASOCIACIÓN DE DESPLAZADOS DEL BAUDÓ (ASODESBA); ASOCIACIÓN DE DESPLAZADOS DE NOVITA (ASODESNOV); ASOCIACIÓN DE INGENIEROS AFROCOLOMBIANOS; INGEDSA LTDA; ASDEP; ASODEFENSA; ASOSISALUD; ASOCIACIÓN UNIDOS DE TUMACO CONSEJOS COMUNITARIOS Y ORGANIZACIONES DEL BAJO ATRATO (ASCOBA); ASOCIACIÓN DE DESPLAZADOS DOS DE MAYO (ADOM); ASOCIACIÓN DE FAMILIARES DE LA VIOLENCIA POLÍTICA DE RIOSUCIO, CHOCO; ASOCIACIÓN DE FAMILIAS DESPLAZADAS BUSCANDO FUTURO (ASGADEBUF), ANTIOQUÍA; ASOCIACIÓN DE MUJERES AFRODESCENDIENTES DE YOLOMBO (ASOMUAFROYO); ASOCIACIÓN DE MUJERES DESPLAZADAS (ASOMUESPA); ASPCOACIÓN DE MUJERES INERAS DE PALOBLANCO, BUENOS AIRES, CAUCA; ASOCIACIÓN DE ORGANIZACIONES POPULARES DE MICAY (ASOPOMY); ASOCIACIÓN JUNTOS POR EL PROGRESO (JUNPRO); ASOCIACIÓN MINGA; ASOCIACIÓN MUNICIPAL DE MUJERES (ASOM); CAMPAÑA PERMANENTE; TIERRA, VIDA Y DIGNIDAD; COLECTIVO DE ABOGADOS JOSE ALVEAR RETREPO (CCAJAR); CONSEJO COMUNITARIO GENERAL DEL SAN JUAN (ACADESCAN), CONSEJO COMUNITARIO MAYOR DE LA ORGANIZACIÓN POPULAR CAMPESINA DEL ALTO

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concern for members of the Corporation for Peace and Social Development (CORPADES) who have become the alleged targets for paramilitary groups. On January 14, 2010, the IACHR decided to broaden the precautionary measure granted to the members of CORPADES in order to include other beneficiaries who are also members of the said organization.³⁴³

198. Similarly, the Commission expresses its grave concern for the situation of human rights defenders working on behalf of displaced women, as well as the women in this condition. In fact, the Commission has observed that during 2010 there were reports of a series of acts harassment, violence, threats and intimidation, which put their work in jeopardy. On April 8, 2010, the IACHR granted precautionary measures in favor of the SISMA Women's organization and two women participating in a program coordinated by this organization, Tránsito Jurado and María Eugenia González and her young children, who have been the target of threats, harassment and an act of violence, presumably due to their occupation.³⁴⁴ In addition, on March 25, 2010, the IACHR granted precautionary measures in favor of another 14 women leaders of the displaced community in Bogotá, who have been the victims of sexual violence, physical attacks, threats and harassment. The said measure was amplified on May 6, 2010, in favor of Ana María Perea Incel, member of the Afro Women's Peace Association and participant in round table discussions with the Government of Colombia on the topic of the displaced populations' rights. She had been threatened on account of her work.³⁴⁵

199. The Commission notes that the threats, acts of intimidation and harassment against the human rights defenders originate in the main from an illegal armed group calling themselves *Aguilas Negras*.³⁴⁶ In this regard, the Commission has received information showing that once the authorities receive complaints about the acts presumably committed by this group, they simply deny their existence and do not take action on the investigations; on the contrary, they proceed to initiate criminal proceedings against the complainants for "making false accusations".³⁴⁷ The State has stressed that it

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ATRATO (COCOMOPOCA); CONSULTORÍA PARA LOS DERECHOS HUMANOS Y EL DESPLAZAMIENTO (CODHES); CORPORACIÓN JURÍDICA YIRA CASTRO; CORPORACIÓN SISMA MUJER; (FEDFAFRO); FUNDACIÓN INTEGRAL PACÍFICO NARIÑENSE (FIPAN); FUNDADESPLAZADOS; FUNDACIÓN CAMINANDO (FCSP); FUNDACIÓN DOS MUNDOS; FUNDACIÓN HUELLAS DEL PACÍFICO (FUNHUPAC); FUNDACIÓN INFANCIA FELIZ, BARRANQUILLA; FUNDACIÓN MUJER Y VIDA; FUNDACIÓN NUEVO MILENIO; META; FUNDACIÓN ROSTROS Y HUELLAS DEL SENTIR; HUMANO "GARÍFUNA", FUNDACIÓN SIEMPRE UNIDOS; FUNDACIÓN SOCIAL AFROCOLOMBIANOS DEL PACÍFICO COLOMBIANO (FUSAFROPAC); GRUPO DE MUJERES FLOR DEL CAMPO DE LA Balsa-BUENOS AIRES CAUCA; GRUPO DE MUJERES LAS ORQUÍDEAS DE CASCAJERO-BUENOS AIRES CAUCA; GRUPO DE MUJERES NUEVO AMANECER DE AGUA BLANCA-BUENOS AIRES CAUCA, GRUPO DE MUJERES PRODUCTORAS EN ACCIÓN-BUENOS AIRES CAUCA, GRUPO DE MUJERES RENACER DE HONDURAS-BUENOS AIRES CAUCA; INSTITUTO DE ESTUDIOS PARA EL DESARROLLO Y LA PAZ (INDEPAZ); ORGANIZACIÓN DE POBLACIÓN DESPLAZADA DE TUMACO-NARIÑO.

³⁴³ In this respect see MC 113/07 - Extension - Corporation of Peace and Social Development (CORPADES), Colombia. Available at <http://www.cidh.oas.org/medidas/2010.sp.htm>.

³⁴⁴ MC 99/10 Tránsito Jurado, María Eugenia González and members of the Sisma Women's Corporation, Colombia. Available at: <http://www.cidh.org/medidas/2010.sp.htm>.

³⁴⁵ MC 1/10 - 14 women in a situation of displacement, Colombian Available at: <http://www.cidh.org/medidas/2010.sp.htm>.

³⁴⁶ Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held on October 28, 2010, in the context of the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

³⁴⁷ The Colombian Criminal Code states in Article 435 that the crime of false accusation is committed by "whosoever under oath accuses before the authority a certain conduct which has not occurred, shall be sentenced to prison for between one (1) and two (2) years and multiples of between two (2) and ten (10) current monthly minimum legal wages". On the other hand, the Commission has also received information with regard to the use of criminal slander contained in Article 221 of the Colombian Criminal Code to impede the work of human rights defenders. The Code indicates that a person is guilty of the crime of slander when "he falsely attributes criminal conduct to someone"; in its 2009 Report *Human Rights First* indicated that in Colombia "while the criminalization of slander and defamation itself is problematic, prosecutorial practice is also to blame" because "criminal slander investigations are usually initiated by prosecutors at the behest of public officials." Cf. Human Right First, *Baseless Prosecutions of Human Rights Defenders in Colombia*. In the

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is for the Public Prosecutor to take action against a possible offense, which in practice has taken place whenever there is news of an allegedly false accusation, and when there is no evidence of an illegal activity the Prosecutor can exercise discretion to archive the investigation.³⁴⁸

200. The Commission observes that subjecting human rights defenders to criminal investigations lasting several months and which are finally dismissed due to a lack of evidence of involvement, as well as the constant attempts to reopen these procedures, may constitute an obstacle for the defense of human rights when the accusations are aimed at restricting, limiting or hindering the course of action used by human rights defenders to carry out their activities. The Commission recalls that "the punitive power of the State and its justice apparatus must not be manipulated in order to harass those who dedicate themselves to legitimate activities such as the defense of human rights."³⁴⁹

201. The Commission is pleased with the compromise made by the representatives of the State during the 140^o Periodo of Sessions of the Commission not to disqualify the work of human rights defenders. Also, the Commission notes the efforts of the State through its July 15, 2010 Directive No. 012 "*Directions to guarantee the right of human rights defenders to exercise their calling*", issued by the National Procurator General's Office. The Commission stresses that the directive recognizes it as "the legal and constitutional duty of all the authorities to respect, encourage and protect the work of human rights defenders"; similarly, it insists that the authorities "refrain from behavior that undermines, disqualifies, harasses or incites harassment or stigma of the work itself of a human rights defender and their organizations."³⁵⁰

202. The Commission observes that the Directive also contains a series of provisions designed to facilitate the work of the human rights defenders;³⁵¹ to investigate the acts committed against them;³⁵² and to urge the authorities to adopt timely, appropriate and effective protective measures in favor of the defenders.³⁵³ The Commission considers that these guidelines contribute to the advancement in the compliance with the recommendations in its *Report on the Situation of Human Rights Defenders in the Americas*.³⁵⁴ The Commission notes that the said Directive may effectively

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Dock and Under the Gun, February 2009. Available in English at: <http://www.humanrightsfirst.org/wp-content/uploads/pdf/090211-HRD-colombia-eng.pdf>.

³⁴⁸ Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held on October 28, 2010, in the context of the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

³⁴⁹ Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas* OEA/Ser.L/v/II.124. Doc. 5 rev.1, March 7, 2006, para. 114.

³⁵⁰ In this respect, the Commission has recommended to "publicly recognize that the exercise of the protection and promotion of human rights is a legitimate action" and that "all state authorities and officials at the local level should be aware of the principles regarding the activities of human rights defenders and their protection, as well as the guidelines applicable to the observance of those principles." Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas* OEA/Ser.L/v/II.124. Doc. 5 rev.1, March 7, 2006, recommendation 2.

³⁵¹ The mentioned Directive, *inter alia*, "urges that all public services attend promptly and respond in an opportune way to all complaints, requests for information, queries and petitions drafted by organizations and defenders of human rights in conformity with the provision in the Political Constitution and laws." See disposition 2.a. Available at: http://www.procuraduria.gov.co/descargas/Directiva_012_Defensores_julio_15_2010.pdf.

³⁵² The directive "urges that the competent authorities promptly investigate denouncements and complaints due to threats against human rights defenders." See disposition 5.a. Available at: http://www.procuraduria.gov.co/descargas/Directiva_012_Defensores_julio_15_2010.pdf.

³⁵³ The Directive "urges the Interior and Justice Ministry's protective measures adopted in favor of human rights defenders be timely, suitable and effective". See disposition 12. Available at: http://www.procuraduria.gov.co/descargas/Directiva_012_Defensores_julio_15_2010.pdf.

³⁵⁴ Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas* OEA/Ser.L/v/II.124. Doc. 5 rev.1, March 7, 2006.

support the work of human rights defenders provided that it is generally known and adequately implemented in the rural, indigenous and afrodescendant territories. In this regard, the Commission will continue its follow-up on its effectiveness in order that it translates into a real benefit for the work of the defense of human rights.

203. As for the judicial clarification of crimes committed against human rights defenders, the Commission has received information showing that the Prosecutor General's Office has designated a group of prosecutors to follow-up on the issue of human rights defenders, and that to date it is pursuing 69 proceedings related to this theme.³⁵⁵ The Superior Council of the Judiciary has appointed a number of Decongestion Judges, exclusively for the issue of human rights defenders, and the Prosecutor's Office has managed to assign 34 cases, 23 of which have been adjudicated with convictions against 35 persons.³⁵⁶ The State informed that it has trained more than 5,000 officials in their duty to facilitate the work of human rights defenders.³⁵⁷ The State also informed regarding the investigations of crimes committed against members of trade unions, that the Prosecutor's Office currently has 1386 investigations being carried out by 19 Prosecutors belonging to the National Human Rights Unit. It indicated that these investigations refer to events mainly related to case No. 1787 pending before the ILO³⁵⁸ and that important results have been achieved such as 326 convictions of 429 persons.³⁵⁹

204. The Commission welcomes the measures assembled by the State and trusts that they will contribute to eliminating the impunity for crimes against human rights defenders. In this respect, the Commission recalls "that the most effective means to protect human rights defenders [...] is to investigate in an effective way the acts of violence against them and punish the perpetrators"³⁶⁰ and calls upon the State to undertake exhaustive and independent investigations into the attacks suffered by human rights defenders.

205. The Commission highlights the continuity of the "Protection Program for Human Rights Defenders, Trade Unionists, Journalists and Social Leaders",³⁶¹ which now covers 10,421

³⁵⁵ Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held on October 28, 2010, in the context of the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

³⁵⁶ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 42.

³⁵⁷ Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held on October 28, 2010, in the context of the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

³⁵⁸ Case 1787 was initiated in 1994 on the basis of a complaint filed before the ILO by the International Confederation of Free Trade Unions (CIOSL), alleging killings and other violence perpetrated against trade union leaders. Information available at <http://www.derechoshumanos.gov.co/Sindicalismo/Paginas/fortalecimiento-institucional.aspx>.

³⁵⁹ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 41.

³⁶⁰ IACHR, *Report on the Situation of Human Rights Defenders in the Americas* OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 202.

³⁶¹ The Protection Program was created in 1997 as a result of the joint efforts between the Government and civil society, to protect certain especially vulnerable groups of the population, due to the activities of illegal armed organizations, in their rights to life, integrity, freedom and personal security. The objectives of the Program are: (1) to strengthen the competent State authorities at the national, regional and local level so they take joint, concerted, integrated and permanent action tending towards the prevention and protection of the human rights of inhabitants of communities at specific risk; (2) to strengthen the traditional organized forms, traditional authorities, and the social organizations of the communities at specific risk, so that they can develop initiatives, present proposals, liaise with public authorities and become involved in the implementation, follow-up and control of preventative and protective measures for human rights and International Humanitarian Law; (3) to reestablish or improve relations between the State and the community for the coordination, development, follow-up and evaluation of the preventative and protective measures in plans of action.

individuals,³⁶² and whose importance has been stressed by the IACHR in its previous reports. However, the Commission is concerned to note that on many occasions the beneficiaries of the Commission's precautionary measures must repeatedly undergo a "risk demonstration" process in order to receive State protection, even when the IACHR has already determined that they are subject to risk, at the moment of granting precautionary measures. The State, in its reply of February 25, 2011, noted that studies of risk level do not intend to contest the existence of a risk but establish its degree³⁶³. The State indicated that the above mentioned studies allow following up risk evolution after the implementation of protective measures. It indicated that completion of the Technical Study of Risk level does not imply the absence of measures of preventive protection, which allow the protection of beneficiaries at the time the study was conducted. The State noted that once the Technical Study of Risk level is conducted, this is evaluated within the Regulatory Committee and Risk Assessment (CRER), to determine appropriate protective measures to be implemented, according to the level of risk thrown by the previous study³⁶⁴. The IACHR will continue to follow-up on this situation and reiterates the necessity for continuing to strengthen the protections mechanisms established through these programs, which should be evaluated periodically to determine appropriate protection schemes and should also be made in consultation with the beneficiaries thereof.

206. On May 19, 2010, Decree 1740 established guidelines for the protection policy of persons at extraordinary or extreme risk as a direct consequence, and by reason of their political, public, social and humanitarian activities or functions.³⁶⁵ In this regard, the Commission is concerned with certain provisions of the Decree. Specifically, what calls the Commission's attention, *inter alia*, is Article 7.2 of the Decree which establishes that the representatives of the populations targeted by the protection program³⁶⁶ have a special invitee status and may not vote on the decisions to be adopted on their situation in the Regulation and Risk Assessment Committee (CRER), the body having authority to recommend the protection measures considered relevant, and to determine their duration.³⁶⁷ According

³⁶² Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held on October 28, 2010, in the context of the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>. The State reported that between July and December 2010 there were 44 follow up meetings of precautionary measures granted by the IACHR, with the participation of state entities and with the petitioners and/or beneficiaries of the measures. It also indicated that in the case of the beneficiaries of the Protection Program without precautionary measures there were 37 CRER sessions. It also indicated that during 2010, apart from cases of territorial order, there were 119 cases requesting protection for journalists - 871 cases involving requests for protection of union leaders - 676 cases with protection requests for social leaders and leaders of human rights organizations. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 43.

³⁶³ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 42.

³⁶⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 42.

³⁶⁵ Article 1 of Decree 1740 of May 2010.

³⁶⁶ According to Article 4 of Decree 1740 of May 19, 2010, among these individuals are: 1. Social, civic and community leaders or activists, labor and trade union, peasant and ethnic group leaders or activists. 2. Leaders or activists of human rights organizations and members of the medical mission; 3. Witnesses of human rights violations and breaches of International Humanitarian Law, independently of whether the respective disciplinary, criminal or administrative trials have been undertaken, in accordance with the laws in force. 4. Journalists and social communicators. 5. Spokespersons, leaders and representatives of organizations for displaced persons or displaced persons in a situation of extraordinary and extreme risk. 6. Workers responsible for the design, coordination and carrying out of Human Rights or Peace of the National Government. 7. Former workers who were responsible for the design, coordination and carrying out of Human Rights or Peace of the National Government. 8. Leaders of the April 19 Movement M-19, the Current of Social Renovation - CRS, the People's Liberation Army - EPL, the Workers' Revolutionary Party - PRT, the Quintín Lame Armed Movement - MAQL, the Francisco Garriga Front for Guerrilla Coordination, the Independent Revolutionary Armed Commando Movement, - MIR - COAR and the People's Popular Militia, the Independent Militia of the valle de Aburra and the Metropolitan Militia of Medellín who signed peace agreements with the National Government in the years 1994 and 1998, rejoined civil life and due to their political, social, journalistic, humanitarian or professional activities run an extraordinary or extreme level of risk.

³⁶⁷ Article 6.2 of Decree 1740 of May 19, 2010.

to information received by the Commission, the above mentioned provision has produced adverse consequences on the implementation of protection measures. The State, in its reply of February 25, 2011, indicates that according to Decree 2788 of 2003, representatives of the Attorney General's Office, the Ombudsman and the Comptroller General of the Republic participated in the CRER with voice but no vote. It notes that they also participated as special guests: the United Nations High Commissioner for Human Rights and four representatives of the populations targeted by the protection program dependant of the Department of Rights Human Interior and of Justice. The State notes that this situation has not been modified in any way by Decree 1740 of 2010³⁶⁸.

207. In this respect, the Commission recalls that in conformity with the standard established in its *Report on the Situation of Human Rights Defenders in the Americas*, the protection measures "must be agreed upon in consultation with the defenders to guarantee their relevance and to permit them to carry on developing their activities."³⁶⁹ The Commission will continue with its follow-up on the situation of human rights defenders and social leaders, and urges the State to formalize the relevant measures to overcome the continuing challenges to guaranteeing an effective protective mechanism.

208. Also it is noteworthy to mention that the Commission is following up on the current situation of ex Senator Piedad Córdoba who is a beneficiary of precautionary measures of the Commission since 2003. The measures were issued in order to protect her life and physical integrity.

V. USE OF INTELLIGENCE TECHNIQUES AGAINST HUMAN RIGHTS DEFENDERS, SOCIAL LEADERS, AND JOURNALISTS

209. In February 2009, it came to light through press information, that the Administrative Department of Security (DAS) had tapped telephone communications of a large number of public figures, among whom were members of the Executive, Legislative and Judicial Branches, members of political parties, human rights defenders and journalists, among others.³⁷⁰ In addition, in July 2009, the Commission received information on the creation within the DAS of a Special Strategic Intelligence Group, known as "G3", whose work was to consist, *inter alia*, of undertaking intelligence operations on activities linked to cases at the international level and on the international contacts of organizations dedicated to the defense of human rights.³⁷¹

210. Subsequently, the State informed the Commission that "the alleged unlawful intelligence activities pursued by persons linked to the Administrative Department of Security are the subject of judicial proceedings, both criminal and disciplinary, and are being lead by organs independent of the Executive power, with the full support of the national Government."³⁷²

³⁶⁸Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 42 and 43.

³⁶⁹ Cf. IACHR, *Report on the Situation of Human Rights Defenders in the Americas* OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, recommendation 8.

³⁷⁰ IACHR, *IACHR's Concern With Intelligence Activities in Colombia* Press Release No. 09/09, February 26, 2009, <http://www.cidh.oas.org/Communications/Spanish/2009/09-09sp.htm>.

³⁷¹ In addition, it was made public that in that context the G3 undertook an intelligence operation motivated by an on site visit of a IACHR delegation, headed by the then Commissioner Susana Villarán, to the city of Valledupar in 2005 in order to "determine the cases being studied by the Rapporteur and the witnesses who would be put forward by NGOs, as well as the lobbying under way to pressure in favor of a decision against the State." IACHR Annual Report 2009, Chapter IV Colombia, para. 125 <http://www.cidh.oas.org/annualrep/2009sp/Ch.4Colo.09.sp.htm>.

³⁷² Note VAM/DDH/OEA No. 41362/2052 of the Foreign Relations Ministry of the Republic of Colombia dated July 31, 2009.

211. As regards the progress of the investigations, according to information in the public domain, on October 1, 2010, the National Procurator General disciplined nine public officials and former public officials, that is Bernardo Moreno, former general secretary of the President's Office; Mario Aranguren, former director of the Financial Analysis and Intelligence Unit (UIAF)³⁷³; Jorge Noguera³⁷⁴ and María del Pilar Hurtado³⁷⁵, both former DAS directors; José Miguel Narváez³⁷⁶, former DAS deputy director; Carlos Arzayús³⁷⁷, former deputy director of Operations; Fernando Alonso Tabares³⁷⁸, former General director of intelligence; and Jorge Alberto Lagos³⁷⁹, former General director of Counter-Intelligence who were dismissed and disqualified generally from exercising public office. The sentences of disqualification ranged between 15 and 20 years.³⁸⁰ Andrés Peñate was punished with suspension from exercising public responsibilities for eight

³⁷³ The sanctions against Bernardo Moreno and Mario Aranguren do not bear a direct relationship to the intimidation and tracking of journalists. National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. *Procurator issues disciplinary decision in the case of unlawful tappings*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

³⁷⁴ In the case of Jorge Noguera, the Procurator's cases states that "[...] he permitted the Special Intelligence Group 3 (G-3), to undertake warrantless wiretapping of telephone and email communications of various human rights NGOs, journalists and political activists. In this way the right to privacy of those subject to such operations was violated, and apparently he constantly followed up on the information illegally acquired." And, it adds, "it seems that between February 24, 2004, up until October 28, 2005 he permitted DAS operatives to undertake surveillance work on some citizens, thereby violating the right to privacy." National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. . *Procurator issues disciplinary decision in the case of unlawful tappings*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

³⁷⁵ In regard to former director Hurtado, the Procurator's Office established that he incurred "[...] in dereliction of his duty because he presumably ordered DAS officials to undertake surveillance work on several nationally prominent citizens, abusing his office, clearly breaching the lawful functions assigned to the Administrative Security Department, thereby violating the right to privacy [...]". National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. *Procurator issues disciplinary decision in the case of unlawful interceptions*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

³⁷⁶ Regarding José Miguel Narváez, the decision states that, "in his role as deputy director of the Administrative Department of Security, he has incurred dereliction of duty, specifically, between June 1, 2005, until October 25, 2005, he allegedly ordered DAS operatives to undertake surveillance work on certain citizens, thereby violating the right to privacy." National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. *Procurator issues disciplinary decision in the case of unlawful tappings*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

³⁷⁷ Carlos Arzayús received a sanction "[...] for having participated in warrantless wiretapping of telephone and email communications of various human rights NGOs, journalists and political activists." Equally "[...] for having participated in surveillance of several citizens, thereby violating the right to privacy, clearly breaching the lawful functions assigned to the Administrative Security Department." National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. *Procurator issues disciplinary decision in the case of unlawful tappings*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

³⁷⁸ According to the Procurator's Office, Fernando Alonso Tabares "[...] allowed operatives attached to the General Intelligence Office to undertake surveillance work in the development of operations known as Ladder and Walk [as certain surveillance operations were called] [...]" National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. *Procurator issues disciplinary decision in the case of unlawful tappings*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

³⁷⁹ As to Jorge Alberto Lagos, for having carried out the unlawful order of Hurtado to "[...] undertake surveillance work on several nationally prominent citizens, abusing his office, clearly breaching the lawful functions assigned to the Administrative Security Department, thereby violating the right to privacy." National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. *Procurator issues disciplinary decision in the case of unlawful tappings*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

³⁸⁰ National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. *Procurator issues disciplinary decision in the case of unlawful tappings*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

months³⁸¹ for not having complained earlier about the unlawful activities occurring within the DAS, which he was aware of on becoming director of the entity.

212. On the other hand, in a public hearing that took place on September 24, 2010, the Third Assistant Procurator before the Council of State disciplined DAS intelligence officer Blanca Cecilia Rubio on confirming that she was the detective responsible for coordinating the unlawful tracking of Hollman Morris. According to information in the public domain, Blanca Cecilia Rubio was disciplined by a six-month suspension, and her criminal proceedings with the Public Prosecutor's office are still ongoing.³⁸²

213. With regards to the criminal investigations, according to information in the public domain, 52 DAS operatives and former DAS operatives are currently under investigation, and 18 indictment decisions have been issued and seven former operatives have confessed to their participation in the unlawful intelligence activities. In fact, in May 2009, an indictment decision was issued against Jorge Noguera Cotes for the crimes of conspiracy, illegal breaches of communications, unlawful use of transmitting and receiving equipment, abuse of authority, misrepresentation of a public document, destroying, suppressing or concealing of public documents, and procedural fraud. His case is currently at the trial stage. In addition, on May 25, 2010, an indictment was issued against Mario Alejandro Aranguren who is in custody. His case is currently at the trial stage.

214. In addition, according to information in the public domain, the former deputy director of Intelligence Operations Martha Inés Leal³⁸³ and detectives Germán Ospina³⁸⁴ and Alba Luz Flórez³⁸⁵ have taken advantage of the Principle of Opportunity, permitting an individual to avoid being tried for all the indicted crimes in return for confessing and becoming a witness against other perpetrators. William Romero, former deputy director of Human Resources,³⁸⁶ and Gustavo Sierra, former deputy director of the Analysis Office,³⁸⁷ are hoping that their petition to benefit from the Principle of Opportunity is granted.

215. On the other hand, the Commission is aware that Jorge Alberto Lagos, former director General of Counter-Intelligence³⁸⁸ and Fernando Tabares, former director General of

³⁸¹ As to Peñate, the case states that he was in dereliction of duty "for having failed in his duty to inform the competent authorities of the alleged irregularities committed by operatives assigned to the Administrative Department of Security, DAS." Taking into account that Peñate was not a public official when the decision was issued, the punishment was altered to a fine. National Procurator General's Office, first instance case October 1, 2010. See National Procurator General's Office, October 4, 2010. *Procurator issues disciplinary decision in the case of unlawful tappings*. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm.

³⁸² National Procurator General's Office. Communication dated October 4, 2010. Available at: http://www.procuraduria.gov.co/html/noticias_2010/noticias_708.htm. Foundation for Press Freedom. December of 2010. *Spying on journalists: the courts speak out*.

³⁸³ W Radio, September 7, 2010. *Judge backs up the principle of opportunity for Martha Leal and the Court's Mata Hari*. <http://www.wradio.com.co/nota.aspx?id=1354341>.

³⁸⁴ *El Tiempo* Newspaper, August 10, 2010. *Former DAS employee Germán Ospina benefitted from the opportunity to collaborate with courts*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7855292>.

³⁸⁵ W Radio, September 7, 2010. *Judge backs up the principle of opportunity for Martha Leal and the Court's Mata Hari* Available at: <http://www.wradio.com.co/nota.aspx?id=1354341>.

³⁸⁶ Newspaper *El Espectador*, October 23, 2010. The No.1 knew what we did. Available at: <http://bit.ly/dhiE1m>.

³⁸⁷ *Revista Semana*, November 19, 2010. *Wire-tapping: Gustavo Sierra's evidence*. Available at: <http://bit.ly/c8LSyO>.

³⁸⁸ *Revista Semana*, August 27, 2010. *Judge accepted Lagos' agreement with Public Prosecutor in the wire-tapping case*. Available at: <http://bit.ly/g6E5Lt>.

Intelligence,³⁸⁹ signed agreements with the Public Prosecutor, in order to obtain a reduction in their sentence in exchange for accepting liability and apologizing to the victims of the unlawful activities. The agreements were supported by the Due Process Judges and thus the former officials await a public sentencing hearing. On August 27, 2010, the 14th Criminal Judge of Bogotá accepted Jorge Alberto Lagos' agreement and indicted him with the crimes of aggravated conspiracy, failure to act, abuse of public office and unlawful breach of communications. According to information in the public domain, the decision was appealed by the Delegate Procurator, who considered that "the scale of the punishment was unclear" and the Bogotá Superior Court upheld the first instance decision.³⁹⁰ In addition, the 14th Judge of Bogotá accepted Fernando Tabares' agreement with the Public Prosecutor.³⁹¹

216. The Commission observes with concern that those under investigation turned to figures such as political asylum in the face of imminent indictment of charges. In this respect, according to information in the public domain, the indictment of charges against the former DAS director María del Pilar del Hurtado for the crimes of conspiracy, unlawful violation of communications, abuse of authority and falsifying public documents was confirmed on November 26, 2010. María del Pilar del Hurtado has been in Panama under political asylum since November 19, 2010.³⁹² The Commission will continue the follow-up on the progress of the investigations.

217. On the other hand, on March 5, 2009, Law 1288 of 2009 entered into force, "by means of which rules for strengthening the legal framework permitting organs which carry out intelligence and counterintelligence activities to fulfill their constitutional and legal tasks, and other provisions are adopted." In its 2009 analysis the Commission showed concern for the lack of mechanisms by which individuals have access to intelligence information kept on them and thereby are able to request its correction or updating or, if necessary, purging of the intelligence archives.³⁹³ According to information in the public domain, the Constitutional Court declared the intelligence law unconstitutional because of formal defects, since that piece of legislation ought to have been enacted as a statutory law -in view of the fact that it modified the Constitution and affected fundamental rights such as privacy and *habeas data* - but, on the contrary, was enacted as an ordinary law. The Commission will follow-up on the adoption of legislation that takes into account the concerns of various sectors of society regarding, *inter alia*, the mechanisms for the access, purging and correction of intelligence archives.

218. In its observations the State reported that after a realistic evaluation of the DAS the results of which revealed structural problems, this Department is defining the structure and functioning of a new intelligence agency. Specifically, draft legislation No. 166 of 2010 (Senate) and 053 of 2010 (Chamber) "by which some ministries are separated, specific extraordinary powers are granted to the President in order to modify the structure of the National Administration, and other provisions are adopted", was presented by the Minister of the Interior on September 17, 2010. Article 17 of the bill empowers the President of the Republic to create, suppress, separate and amalgamate administrative departments. The State alleges that on the

³⁸⁹ Newspaper *El Tiempo*, September 20, 2010. *Captain Fernando Tabares reached a preliminary agreement with the Public Prosecutor in the wire-tapping case*. Available at: <http://bit.ly/eRYcSj>.

³⁹⁰ Newspaper *El Tiempo*, October 20, 2010. *First sentence remains firm of 'wire-tapping' by Jorge Alberto Lagos*. Available at: <http://bit.ly/dX9LJp>.

³⁹¹ Newspaper *El Tiempo*, 13 October, 2010. *Guaranteed preliminary agreement of Fernando Tabares with the Public Prosecutor over wire-tapping*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-8129041>.

³⁹² Communication of the National Government of the Republic of Panama. Available at: <http://www.presidencia.gob.pa/noticia-presidente-numero-2038.html>.

³⁹³ IACHR Annual Report 2009, Chapter IV Colombia, para. 137. <http://www.cidh.oas.org/annualrep/2009sp/Ch.4Colo.09.sp.htm>.

basis of this project the current structure of the DAS would be suppressed and a new Administrative Department created with the purpose of operating as a civilian intelligence agency focused on intelligence and strategic and prospective counter-intelligence, and the control of migrations. The bill is pending approval before the plenary of the Senate.³⁹⁴

219. The Commission will follow up on the creation of a new civil intelligence agency, as the State had announced in 2009³⁹⁵; however it expresses its concern in view of the fact that from the information provided by the State, it follows that this agency would replicate the functions of the current DAS. The IACHR repeats its grave concern regarding the intelligence activities undertaken by State entities and will continue its follow-up on the measures aimed at a judicial clarification of the events, to the establishment of the new intelligence agency and its mandate and to the termination of unlawful activities carried on by State agencies.

VI. PRESSURES ON THE EXERCISE OF JUDICIAL FUNCTIONS

220. A series of incidents came to light during the last months of 2007 and the years 2008, 2009 and 2010, affecting the work of the higher instance courts, in particular the Criminal Cassation chamber of the Supreme Court of Justice. These incidents were accompanied by events implying the existence of a risk for assistant justices of the Supreme Court who were involved in the clarification of cases connected with the so-called parapolitics.³⁹⁶

221. In March 2010, the IACHR received information that the National Public Prosecutor had discovered a plan to attack the Justices of the Supreme Court of Justice, therefore - within in the framework of the provisions set out in Article 41 of the American Convention - it requested information from the State on the measures adopted to increase the security measures for the Justices.

222. In response, the State informed the Commission that it assigned police officers in the protection schemes for the Justices of the Supreme Court of Justice. In addition, it indicated that various logistical measures, such as, *inter alia*, armored cars, motorcycles, and means of communication were in service for the Justices and assistant justices of the Supreme Court, and after the information relating to an alleged criminal plot to attack the Justices was published in the media, it ordered the strengthening of the Justices' protection schemes.³⁹⁷

223. In addition, the Commission has received information about threats and intimidation against judges. In this regard, in her report after the visit to Colombia in December 2009, the

³⁹⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 44 and 45.

³⁹⁵ In the hearings held during the IACHR's 137th period of sessions, current director of the DAS Felipe Muñoz provided information on these measures. IACHR Annual Report 2009, Chapter IV Colombia, para. 134. <http://www.cidh.oas.org/annualrep/2009sp/Ch.4Colo.09.sp.htm>.

³⁹⁶ The New Arco Iris Corporation (CNAI) reported that on June 20, 2009, 83 congressional members were involved in criminal trials for parapolitics. The New Arco Iris Corporation, List of congressional members were involved in parapolitical trials. June 20, 2009. http://www.nuevoarcoiris.org.co/sac/files/oca/analisis/parapolitica_legislativa_JUNIO_2009.pdf. According to the Electoral Observatory Mission of Civil Society, 29 senators elected in 2010 have investigations for links with parapolitics. <http://www.moe.org.co/webmoe/>.

³⁹⁷ Note DDH/OEA No. 0738 of the Foreign Relations Ministry of the Republic of Colombia, dated April 5, 2010. The State reports in its observations that Decree 1740 of 2010 establishes a Protection Program dependant on the National Police which provides protection to the Magistrates of the Constitutional Court, the Supreme Court of Justice, the Council of State and the Superior Council of the Judiciary, by virtue of the position of responsibility; it also provides protection to judges and officials and former officials of the National Government by virtue of risk. Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 45.

Special Rapporteur for the Independence of judges and attorneys, Gabriela Carina Knaul de Albuquerque e Silva, pointed out that more than 300 judges had been murdered during the last 15 years. She stressed the seriousness of the fact that the majority of these crimes have not been adequately investigated, and few have yet to be criminally punished, thus contributing to maintaining an atmosphere of impunity. She also pointed out that the Attorney General's office has not properly investigated even those victims among its own prosecutors and members of the Technical Investigation Body who have been murdered and attacked.³⁹⁸

224. The Commission is concerned by the murder of José Fernando Patiño Leaño, Single Sentencing Judge of Fusagasugá, on March 22, 2010. Judge Patiño was in charge of important trials of drug smuggling, guerrillas and paramilitaries. The Special Rapporteur stated that she had private interviews with various judges, prosecutors and attorneys who had received death threats.³⁹⁹ In addition, during 2010, the Commission granted three precautionary measures in favor of the officials linked to the administration of justice, Justices of the Supreme Court Yesid Ramírez Bastidas and Sigifredo Espinosa Pérez, and criminal judge María Stella Jara Gutiérrez, alleging they were targets of threats or intelligence activities related to criminal trials under their jurisdiction.⁴⁰⁰

225. In addition, the Commission has received information on the continuing threats and acts of harassment against the Judges Iván Velásquez, María del Rosario González and César Julio Valencia Copete, beneficiaries of the Commission's precautionary measures. The Commission also notes that after the intelligence activities, targeting the judges, were made public, it has not received information on the actions taken to revise and purge the intelligence archives and thus ensure the security conditions for the beneficiaries. The Commission is undertaking constant monitoring of the security situation.

226. The Commission expresses its profound concern over the intelligence activities in the personal and family sphere of the judges of the Higher Courts of Justice in Colombia, as well as threats and harassment against officials linked to the administration of justice, which seriously compromises the independence of the country's justice system. The Commission will continue with its follow-up of this situation and of the safeguard of the judicial independence of the High Courts in the development of their important labor.

VII. FREEDOM OF EXPRESSION⁴⁰¹

A. Killings, Violence, Harassment and Illegal Imprisonment of Journalists

227. The IACHR is gravely concerned by the murders of three journalists that have taken place since December 2009. According to the information received, on December 15, 2009, Harold Humberto Rivas Quevedo was shot in Buga, in Valle del Cauca. At the time of the murder, the journalist was leaving work at the local television channel *Bugavisión*, where he was the presenter of the political program *Comuna Libre*. According to the information, the journalist interviewed

³⁹⁸ Human Rights Council. Special Rapporteur's Report on the Independence of Judges and Lawyers, Sra. Gabriela Carina Knaul de Albuquerque e Silva, Visit to Colombia, A/HRC/14/26/Add.2, April 16, 2010. para. 53.

³⁹⁹ Human Rights Council. Special Rapporteur's Report on the Independence of Judges and Lawyers, Sra. Gabriela Carina Knaul de Albuquerque e Silva, Visit to Colombia, A/HRC/14/26/Add.2, April 16, 2010. para. 54.

⁴⁰⁰ See MC 221/09 - María Stella Jara Gutiérrez and her son, MC 157/09 - Yesid Ramírez Bastidas and MC 243/10 - Sigifredo Espinosa Pérez and his family at: <http://www.cidh.oas.org/medidas/2010.sp.htm>.

⁴⁰¹ Preparation of this section of the report was assigned by the Commission to the Special Rapporteur for Freedom of Expression.

community leaders and politicians, and had a reputation for insightful commentary and for highlighting the responsibility of local authorities towards their citizens.⁴⁰²

228. According to the information received, on March 19, 2010, journalist Clodomiro Castilla Ospino, of the newspaper *El Pulso del Tiempo* and *La Voz de Montería* radio station, was murdered in the city of Montería, Department of Córdoba, by a hit man who shot him several times at the door of his home. According to the information received, Castilla Ospino had built a reputation for the investigation and denunciation of the paramilitary phenomenon and political corruption in the Department of Córdoba. The information adds that the State had authorized a protection regime, which was suspended at the journalist's own request in February 2009, given the mistrust for the entity in charge of providing the protection, the DAS. Due to an increase in risk, the journalist and non-governmental organizations in November 2009 again requested protection. However, at the time of the events, the journalist did not have State protection.⁴⁰³ The Office of the Special Rapporteur for the Freedom of Expression acknowledges the swift repudiation of the crime by the highest authorities in Colombia but expresses grave concern regarding the absence of protection given to the journalist, despite his having requested the activation of the State of Colombia's Journalist Protection Program in good time. In its observations the State reported that Castilla Ospino was admitted to the Protection Program of the Ministry of the Interior and Justice on January 23 2007, but in 2009 the CRER recommended the suspension of some of the measures granted, including the DAS and National Police escort units "because the Ministry received constant complaints about the mistreatment of escorts by Mr. Castilla Ospino - a situation brought to his attention on various occasions."⁴⁰⁴ The State also reported that the last two risk level reports of the journalist in August and September 2008 revealed "ordinary risk" level. These are the reasons provided by the State to explain why "Mr. Clodomiro Castilla did not have a mobile protective scheme at the moment of the attack that resulted in his death."⁴⁰⁵

229. The IACHR was informed that on October 14, the indigenous leader and journalist, Rodolfo Maya Aricape, was murdered in the López Adentro reservation, in the Department of Cauca, in Colombia. According to the information received, Aricape was at home when two armed men shot him. The leader was secretary of López Adentro's Indigenous Town Council and correspondent for Pa'yumat community radio, of the Tejido de Comunicación project. In discharging these functions, Rodolfo Maya had made a reputation for taking a firm stance against all armed groups operating in indigenous areas. Weeks before his death, a sign appeared in the community threatening the journalist.⁴⁰⁶

⁴⁰² Committee for the Protection of Journalists. December 17, 2009. *Tv Presenter shot dead in the east of Colombia*. Available at: <http://cpj.org/es/2009/12/presentador-de-television-muerto-a-tiros-en-el-occ.php>. *El Tiempo*. December 17, 2009. *Journalist murdered in Buga minutes after finishing his show*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-6801632> (in Spanish). *El Espectador*. December 17, 2009. *Journalist Bugueño murdered after his show*. Available at: <http://www.elespectador.com/noticias/judicial/articulo177907-asesinado-periodista-bugueno-al-finalizar-su-programa> (in Spanish).

⁴⁰³ Special Rapporteur for the Freedom of Expression. *Press Release R34-10*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=788&IID=2>.

⁴⁰⁴ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

⁴⁰⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

⁴⁰⁶ Special Rapporteur for the Freedom of Expression. *Press Release R106/10*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=823&IID=2>. *El Tiempo*. October 15, 2010. *Native leader expert in communications, murdered in Cauca*. Available at: http://www.eltiempo.com/colombia/calif/ARTICULO-WEB-NEW_NOTA_INTERIOR-8133331.html.

230. The IACHR expresses concern over the situations described and encourages the State of Colombia to maintain the protection programs and move forward in the fight against the situation of impunity that still surrounds these crimes. As such, the work of judges and prosecutors should be supported, and effective and strengthened preventative and protective measures for the freedom of thought and expression should be promoted.

231. The IACHR was also informed about physical violence, death threats and incidents obstructing journalists' work during the first half of 2010, which seriously hampers the exercise of freedom of expression. As concerns alleged acts of violence committed by State agents, the IACHR received information to the effect that on April 23, the journalist Wilfer Moreno Villamizar had been beaten by a police officer in Arauca.⁴⁰⁷ The IACHR was also informed that the journalists Leonardo Sierra, of *Radio Caracol*, and Juan Pablo Murcia, of *FM Radio*, had been attacked on April 26 by officers of the Bogotá Police while they were covering a demonstration by college students.⁴⁰⁸ On July 21, the journalist Juan David Betancur, a correspondent for *Teleantioquia Noticias*, was struck with a blunt object by an employee of the municipal city hall in Dabeiba Park, Antioquia.⁴⁰⁹ On the other hand, the IACHR is aware of the acts of violence suffered by Luis Enrique Cárdenas, correspondent of *Noticias Uno* and independent reporter Dagoberto Ferés Molina, on August 22 in Aguachica, in the El Cesar Department, at the hands of officers of the National Police while covering a protest by taxi-drivers.⁴¹⁰

232. In addition, during the International Labor Day demonstrations on May 1, the security forces of Bogotá and Cali attacked at least seven journalists who were covering demonstrations and unrest. The Spanish journalist Oriol Segón Torra was beaten by police while he was photographing confrontations between the security forces and demonstrators in the Plaza Bolívar in Bogotá. In Cali, another six journalists from the national media and international agencies were attacked by the police. According to the information, the Cali Police have announced an investigation into the events and have explained that there had been a misunderstanding due to the fact that the journalists remained trapped in the confrontations. In addition, the IACHR was informed that the Headquarters of the National Police offered its apologies to the journalists and have issued a directive to request greater efforts in the investigation of abuses against journalists.⁴¹¹

⁴⁰⁷ According to the information received, the incident occurred when Milfer Moreno was taking pictures in a Highway Police operation. The information shows that the Arauca Police press office recounted the event as an "unfortunate situation" and revealed that they would be investigating the events and would be fostering a joint journalist/police training program. Foundation for Press Freedom. April 27, 2010. *Journalists attacked by officers of the National Police in two cities*. Available at: http://www.flip.org.co/alert_display/0/777.html.

⁴⁰⁸ The journalists had requested an explanation from the police while witnessing the violence against the students, as a result of which the Police beat the reporters. Murcia, in addition, was detained for some minutes in an armored vehicle. According to the information, the Metropolitan Police of Bogotá explained that the incident had occurred because the journalists were not carrying visible identification in the midst of a confused situation. Foundation for Press Freedom, April 27, 2010. *Journalists attacked by officers of the National Police in two cities*. Available at: http://www.flip.org.co/alert_display/0/777.html.

⁴⁰⁹ According to the information received, the attacker had warned the journalist that he would run the risk of being murdered if he referred again to the Mayor. As a result of the attack, the journalist decided to flee the city. Colombian Federation of Journalists. August 9, 2010. *Journalist beaten and threatened in Dabeiba, Antioquia*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=5133>.

⁴¹⁰ According to the information received, a police officer had tried to snatch the camera from Luis Enrique Cárdenas, who was injured in the scuffle; whilst Dagoberto Ferés had to be admitted to hospital because a police officer fired a tear gas grenade very close to him. As the Special Rapporteur has reported, an Aguachica Police spokesman explained that the incident had occurred during "confusing events". Foundation for Press Freedom. August 24, 2010. *Journalists attacked by officers of the National Police in two cities*. Available at: http://www.ifex.org/colombia/2010/08/27/periodistas_agredidos/es/.

⁴¹¹ Foundation for Press Freedom. May 3, 2010. *Journalists attacked during International Labor Day Demonstrations*. Available at: http://www.flip.org.co/alert_display/2/871.html.

233. As regards the threats, assaults and violence committed by other actors, the IACHR has received information surrounding the assault suffered by the director of the *El Norte* newspaper and of the local MTV television channel Marco Tulio Valencia Hoyos, on August 30 in Mariquita, Tolima. According to the information received, an individual riding a motorcycle shot him five times as he was entering his house. The perpetrator of the attack had turned off the motorcycle as he approached his victim and this gave the journalist time to enter the house. The IACHR has been aware that since June, Marco Tulio Valencia has received death threats and harassment, after publishing information surrounding the sale of drugs in the community. The IACHR was informed that the authorities had assigned a protection regime for the journalist.⁴¹²

234. In addition, the IACHR was informed that on May 18 and 20 unknown persons assaulted the journalist Leiderman Ortiz Berrío, director of the web site *La verdad del pueblo* and correspondent for various regional media in Cauca, Department of Antioquia.⁴¹³ On August 20, the IACHR granted precautionary measures in favor of Leiderman Ortiz.⁴¹⁴ According to information supplied, there have been difficulties in implementing the protection regime.⁴¹⁵ In addition, in the early hours of August 12, a vehicle packed with explosives exploded in Bogotá opposite the building housing the offices of *Radio Caracol* and Spanish news agency *EFE*.⁴¹⁶ In addition, the IACHR was informed that on August 28, the police authorities located and defused a bomb near the *Linda Stereo* community radio station in El Doncello, Department of Caquetá.⁴¹⁷

235. On May 9, a group of unknown men attacked journalist Jorge Tolosa, of *Telepetróleo*, in front of his house in Barrancabermeja.⁴¹⁸ On September 7, two individuals set fire to the motorcycle belonging to journalist Alberto Caballero Parejo, owner and reporter of the *Innovación Estéreo* community radio, in Ciénaga, Magdalena.⁴¹⁹ The IACHR also received

⁴¹² Communication of the Colombian Federation of Journalists sent to the Special Rapporteur for the Freedom of Expression on October 21, 2010.

⁴¹³ According to the information received, the perpetrators launched a grenade, first onto the patio of the house and then against the front facade of the building. As far as the IACHR knows, the journalist had complained through the media of paramilitary group's activities operating in the community. Colombian Federation of Journalists. May 21, 2010. *Attack on a journalist in Cauca and police beat a colleague in Bogotá*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4896>.

⁴¹⁴ IACHR. *Precautionary Measures granted by the IACHR during 2010*. Available at: <http://www.cidh.org/medidas/2010.sp.htm>.

⁴¹⁵ Communication of the Colombian Federation of Journalists sent to the Special Rapporteur for the Freedom of Expression on October 21, 2010.

⁴¹⁶ According to the information received, the blast left at least eight people injured, and caused damage to the station's entrance. The President of the Republic, Juan Manuel Santos, made assurances that the authorities would investigate the source of the attack and would pursue those responsible. UN Special Rapporteur for the Freedom of Expression and the Special Rapporteur for the Freedom of Expression of the IACHR. August 13, 2010. *Press Release R81/10. UN and OAS Special Rapporteurs for the Freedom of Expression condemn the attack on Radio Caracol in Colombia*. Available at: <https://www.cidh.oas.org/relatoria/showarticle.asp?artID=810&IID=2>.

⁴¹⁷ French Press Agency. August 28, 2010. *Bomb attributed to the FARC opposite a radio station in Colombia defused*. Available at: <http://www.terra.com.mx/noticias/articulo/948598/Desactivan+bomba+atribuida+a+las+FARC+frente+a+una+radioemisora+en+Colombia.htm>.

⁴¹⁸ Jorge Tolosa is the host of the program "Other people's money" where he had denounced the behavior of common criminal gangs. International News Safety Institute. May 11, 2010. *Disabled Barrancabermeja journalist beaten by a gang*. Available at: http://www.newssafety.org/index.php?option=com_content&view=article&id=18858:incapacitado-periodista-de-barrancabermeja-que-fue-golpeado-por-banda&catid=53:colombia-media-safety&Itemid=100273.

⁴¹⁹ According to the information received, days prior to the attack, the journalist had made a series of complaints about the alleged acts of corruption in the community. *El Heraldo*. September 9, 2010. *Attacks on Journalist after complaints about corruption by privileged*. Available at: <http://www.elheraldo.com.co/ELHERALDO/BancoConocimiento/1/1atentan+contra+periodista+que+denuncio/1atentan+contra>

information surrounding the violence suffered by special envoys of *Caracol Noticias* in the Ipiales Municipality, Nariño, at the hands of a group of persons who were guarding a cargo of contraband⁴²⁰. In addition, on August 29, several unknown individuals broke into the building of the *Puerto Wilches Estéreo* community radio station, in the Puerto Wilches municipality in Santander and destroyed and stole equipment essential for operating the radio station. This had been the fourth occasion in less than three years in which *Puerto Wilches Estéreo* had suffered an attack aimed at preventing its transmissions.⁴²¹

236. In addition, the IACHR has become aware of new cases of threats against journalists. The Special Rapporteur has received information according to which a leaflet was circulated on February 21, 2010, in the city of Cartago, in Valle del Cauca, signed by an alleged organization called "los doce del patíbulo" (*the gallow's dozen*) containing death threats against five local journalists who had criticized the administration of the local mayor.⁴²² On March 23, according to information received, journalist Alex Pájaro Mosquera of the *El Propio* newspaper of Montería, Córdoba, was informed by the police that an intercepted telephone call from a prison inmate revealed a plan to murder him, in retaliation for information concerning this individual that the reporter had published.⁴²³ In addition, during March and April, journalist Edgar Astudillo Vásquez, director of the radio station *Panzenú* in Montería, received various death threats, which coincided with his publications concerning the upsurge of armed groups in the area. Astudillo had to flee the area.⁴²⁴ On April 7, cameraman Alexis Tordecilla, of *Canal Montería*, was threatened by unknown persons riding a motorcycle. They made him stop at gunpoint and show them the images he had recorded on his camera.⁴²⁵ In addition, the IACHR has received information of a threat made against journalist Deyanira Castro, editor-in-chief of the *Q'Hubo* newspaper in Cali, after she published information about gangs of hit men operating in the community where she lives.⁴²⁶

237. The IACHR was also informed that on May 30, a group of journalists from *Canal Caracol*, *Noticiero 90 Minutos*, and several foreign journalists were illegally detained for approximately one hour by men identified as guerillas of the Revolutionary Armed Forces of Colombia (FARC), in a rural area in the Caloto municipality, Cauca Department.⁴²⁷ In addition, on

...continuation

[periodista que denunció.asp?CodSeccion=48](http://www.el-informador.com/index.php?option=com_content&view=article&id=3814:sujetos-en-motocicleta-intentaron-quemar-moto-de-periodista&catid=82:cienaga&Itemid=459). El Informador. September 9, 2010. Motorcycle riders attempted to burn journalist's bike. Available at: http://www.el-informador.com/index.php?option=com_content&view=article&id=3814:sujetos-en-motocicleta-intentaron-quemar-moto-de-periodista&catid=82:cienaga&Itemid=459.

⁴²⁰ Semana. 14 de septiembre de 2010. *Contrabandistas agredieron a un equipo periodístico en Nariño*. Disponible en: <http://www.semana.com/noticias-nacion/contrabandistas-agredieron-equipo-periodistico-narino/144583.aspx>

⁴²¹ Foundation for Press Freedom. September 2, 2010. *Community radio station remains off air due to sabotage of equipment*. Available at: http://www.flip.org.co/alert_display/0/1240.html.

⁴²² Foundation for Press Freedom (FLIP)/IFEX. February 25, 2010. *Leaflet threatening journalists in Cartago, Valle del Cauca*. Available at: http://ifex.org/colombia/2010/02/25/five_death_threats/es/.

⁴²³ Foundation for Press Freedom. March 27, 2010. *Plan to attack journalist in Montería, Córdoba defused*. Available at: http://www.flip.org.co/alert_display/2/466.html.

⁴²⁴ Colombian Federation of Journalists. April 8, 2010. *Wave of threats against journalists in Córdoba*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4788>. Colombia Federation of Journalists. July 29, 2010. *Threats against show "Zona Franca" in Montería, Córdoba*. Available at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=5105>.

⁴²⁵ Foundation for Press Freedom. April 10, 2010. *New threats against journalists in Montería*. Available at: http://www.flip.org.co/alert_display/0/549.html. El Tiempo. April 8, 2010. *Journalist from Montería receives death threats*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7558767>.

⁴²⁶ Foundation for Press Freedom. August 10, 2010. *Threats against the chief editor of the newspaper Q'Hubo in Cali, Valle del Cauca*. Available at: http://www.flip.org.co/alert_display/2/1233.html.

⁴²⁷ Latin-American Observatory for the Freedom of Expression. June 1, 2010. *The FARC keep a group of journalists hostage*. Available at: http://www.felatracs.net/portal/index.php?option=com_content&view=article&id=285:reporte-1056&catid=15:ola&Itemid=46.

October 23, the president of Colombia, Juan Manuel Santos, announced that information obtained from computers seized at the camp of the guerilla leader known as "Mono Jojoy" had revealed a FARC plan to murder journalist Olga Cecilia Vega. The journalist has publically requested that the FARC revoke the order, explaining that her coverage of this guerilla group has been performed exclusively in fulfillment of her functions as a journalist.⁴²⁸

238. Finally, the IACHR is particularly concerned by the new threats made by the FARC against journalist Jineth Bedoya on November 9, 2010, after the publication of her book "The Life and Death of Mono Jojoy".⁴²⁹ Jineth Bedoya has been a beneficiary of the IACHR's precautionary measures since June 2000. The IACHR is concerned by the meager judicial advances in the case of the violence against journalist Jineth Bedoya, which occurred on May 25, 2000, when she was kidnapped, beaten and raped by her abductors as she was undertaking an investigation into paramilitary groups. Ten years after the events occurred, the proceedings are still at the investigation stage with the 6th Public Prosecutor of the Human Rights Unit, without any suspects having been identified.

239. In its observations the State indicated that since 2002 violence and attacks against journalists diminished "noticeably". It also reported that the Human Rights and IHL Unit of the General Prosecutor's Office has 49 pending cases related to persons linked to journalistic activities with 16 convictions affecting 24 persons.⁴³⁰

B. Judicial Proceedings against Journalists

240. Throughout 2010, the IACHR has become aware of several cases of media journalists being criminally indicted for broadcasting information or opinions on matters of public interest. As an example, the IACHR was informed of a libel action lodged by the Governor of Casanare against eight journalists of the programs "Contacto Noticias" at the *Violeta Estéreo* community radio and "The Voice of Casanare" of *Voz de Yopal* community radio.⁴³¹ On the other hand, the IACHR was informed of the indictment for defamation offenses initiated on August 23 by the Office of the Attorney General against the columnist Claudia López, originating from a complaint lodged by former President Ernesto Samper.⁴³² In addition, information has been received about the complaints filed against Salud Hernández Mora by the President of the Supreme Court of Justice.⁴³³ On the other hand, journalists of the *Verdad Abierta* web page, which is dedicated to news about paramilitaries, have been accused by Lieutenant Jalyl Rosember Torres Vega, director of the Gaula

⁴²⁸ Foundation for Press Freedom. November 3, 2010. *President Santos announces that the FARC were planning attack on journalist*. Available at: http://www.flip.org.co/alert_display/0/1729.html.

⁴²⁹ Foundation for Press Freedom, November 10, 2010. *The FACR threaten journalist and seemingly ordered assassination of the director of points-of-view program*. Available at: http://flip.org.co/alert_display/0/1741.html.

⁴³⁰ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

⁴³¹ In accordance with information received, the complaint is based on three broadcasts made between February and April of 2010, in which the journalists pointed out to the governor the failure to implement the Development Plan, questioned his competence for the task and complained of various inconsistencies in the job's performance. *Reporters sans frontières*. August 3, 2010. *Eight journalists face charges for "libel"*. Available at: http://www.ifex.org/colombia/2010/08/03/journalists_sued/es/.

⁴³² The case originated in an editorial column that Claudia López published in the *El Tiempo* magazine, on July 11, 2006, in which she criticized the possible nomination of Samper as ambassador to France. The complaint alleged that the journalist had made disreputable statements against the former president and had linked him to the possible commission of offences. Foundation for Press Freedom. August 24, 2010. *Public Prosecutor formally indicts journalist Claudia López for the crime of libel and slander*. Available at: http://www.flip.org.co/alert_display/0/1266.html.

⁴³³ *El Espectador*. August 30, 2010. *Salud Hernández is sued by the President of the Supreme Court*. Available at: <http://www.elespectador.com/noticias/judicial/articulo-221694-salud-hernandez-denunciada-el-presidente-e-de-corte-suprema>.

Army Unit of the Department of Santander, for having published paramilitaries' statements, which mention the agent of the security forces.⁴³⁴ Regarding these facts, the State indicated in its observations that "Colombian domestic legislation contemplates defamation offenses as an effort by the legislator to protect the right to honor and dignity as an essential part of the law. These criminal offenses have not been established as a tool to harass journalists. On the contrary, it constitutes a mechanism to protect the inhabitants from false and dishonorable accusations."⁴³⁵

241. The IACHR reiterates principle 10 of its Declaration of Principles, according to which "[p]rivacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social commentator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news." In turn, principle 11 states that "[p]ublic officials are subject to greater scrutiny by society. Laws that penalize offensive expressions directed at public officials, generally known as 'desacato laws', restrict freedom of expression and the right to information."

242. Finally, on September 6, 2010, the Colombian judiciary issued an arrest warrant against a Colombian journalist residing in Venezuela and former correspondent of the Telesur enterprise, William Parra, for his alleged affiliation with guerilla organizations. According to the information received, the journalist denied the charges. The IACHR hopes that the present case is processed in accordance with the most rigorous due process guarantees.⁴³⁶

C. Restrictions on the Freedom of Expression in the Electoral Process

243. The IACHR has received information concerning the enactment of Decree 1800 of May 24, 2010, which set out laws for the preservation of public order during the first and second rounds of the presidential elections, on May 30 and June 20. Journalist organizations questioned the fact that the decree restricted the right to freedom of expression, freedom of the press and freedom of information in a disproportionate way. Article 3 of the decree prohibited "all types of propaganda, demonstration, communications and interviews with political electoral aims" by any communications media whatsoever during the day of the elections. Article 7 established that on election day, "whilst the voting process is taking place", the communications media could only supply information concerning the number of persons who had cast their vote. Article 9 stipulated that "in matters of public order, on election day, the media communications shall only transmit information confirmed by official sources."⁴³⁷

⁴³⁴ *Verdad abierta*. May 18, 2010. *Paramilitaries smear at least ten members of the DAS, Army and Police*. Available at: www.verdadabierta.com/.../2464-paras-salpican-a-decenas-de-miembros-del-das-ejercito-y-policia-en-meta-y-guaviare.

⁴³⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 46.

⁴³⁶ *Reporters sans frontieres*. September 10, 2010. *Delayed due process against the former journalist of Telesur, William Parra*. Available at: <http://es.rsf.org/colombia-tardio-y-dudoso-procedimiento-09-09-2010,38331.html>.

⁴³⁷ Interior and Justice Ministry. May 24, 2010. *Decree No.1800 of 2010*. Available at: <http://web.presidencia.gov.co/decretoslinea/2010/mayo/24/dec180024052010.pdf>.

244. The Office of the Special Rapporteur the Freedom of Expression sent a communication to the State of Colombia expressing concern about this issue.⁴³⁸ In response, the Interior and Justice Minister rejected that there had been attempted censorship of media communications and denied that the decree represented a restriction on the freedom of expression, since "it did not mean that only statements from official sources could be published, but that information on public order be confirmed with the official source. The decree did not establish a prohibition but a procedure."⁴³⁹

245. During election periods special restrictions on freedom of expression may exist. However, they must strictly respect constitutional and international protections, particularly those enshrined in article 13.2 of the Convention. According to this provision, the exercise of freedom of expression "shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a) respect for the rights or reputations of others; or b) the protection of national security, public order, or public health or morals." In applying this provision, the IACHR and the Court have indicated that all restrictions must be established by law in both the formal and material sense, and that the scope of restrictions should be clear and precise. In this regard, the IACHR notes that in this case restrictions were established through administrative provisions that do not appear compatible with the aforementioned conditions.

D. Changes to the mechanism for the protection of journalists⁴⁴⁰

246. The Interior and Justice Ministry issued Decree 1740 of May 19, 2010, which introduces important changes to the Interior and Justice Ministry's Human Rights Protection Program, which lends protection to, *inter alia*, journalists and social communicators who find themselves at risk.⁴⁴¹ The IACHR observes that Article 17 of Decree 1740 establishes changes to some of the protection measures offered to the beneficiaries; it removes, for instance, transportation aid, and substantially reduces the amount of relocation subsidies. Second, the IACHR observes that Article 29.1 of Decree 1740 of 2010 introduces grounds for suspending protective measures which could include conduct related to the work of a journalist, such as the necessity to meet in private with sources of information, in the absence of guards.

247. The Office of the Special Rapporteur for the Freedom of Expression expressed its concern to the State of Colombia with regard to the changes introduced by Decree 1740 of 2010.⁴⁴² In a communication received on July 30, 2010, regarding the adjustments to the measures of protection relating to land transportation aid and support for temporary relocation, the State replied that these alterations applied to all persons subject to the Protection Program and not only to journalists and social communicators. The State stresses that these changes are due to the interest in strengthening the "hard measures" approved and implemented for persons at an extraordinary and extreme level of risk. The State, with regard to the reduction in the amount of relocations subsidies, stated that this is due to the attempt to "reduce the negative effect generated

⁴³⁸ Special Rapporteur for the Freedom of Expression. IACHR. *Request for information from the State of Colombia*. REF: Decrees 1740 of 2010 and 1800 of 2010. Republic of Colombia. May 27, 2010.

⁴³⁹ Interior and Justice Ministry. May 27, 2010. *Communication No. 492*. Available at: <http://web.presidencia.gov.co/comunicados/2010/mayo/492.html>; Communication handed over on July 30, 2010 by the State to the Special Rapporteur for the Freedom of Expression *Note DIDH.GAPID No. 32010/1273*.

⁴⁴⁰ See *supra* IV. The Situation of Human Rights Defenders, Social and Trade Union Leaders.

⁴⁴¹ Interior and Justice Ministry of the Republic of Colombia. May 19, 2010. *Decree 1740 of 2010*. Available at: <http://www.dmsjuridica.com/CODIGOS/LEGISLACION/decretos/2010/1740.htm>.

⁴⁴² Special Rapporteur for the Freedom of Expression. IACHR. *Request for information from the State of Colombia*. REF: Decrees 1740 of 2010 and 1800 of 2010. Republic of Colombia. May 27, 2010.

by temporary relocation aid" which was highlighted by a National Procurator General's Office Evaluation and according to which relocations did not answer the needs of the beneficiaries as a measure of protection and even encouraged forced displacement. With respect to the changes in the security regime at the beneficiary's request, the State maintains that the beneficiary must notify the decision to make changes, without that implying a suspension of the measure.⁴⁴³ At a public hearing held on October 28, 2010, at the IACHR, the State also expressed its willingness to receive suggestions and revise the alterations to the Interior and Justice Ministry's Human Rights Protection Program jointly with human rights organizations.⁴⁴⁴ In its observations on the present report, the State reported that "[t]he Ministry of the Interior and Justice is currently advancing a process to modify Decree 1740 with the participation of the populations that are the object of the Protection Program. To date there are several proposals from different population groups, among them, the journalists and before the end of the first quarter of 2011, the National Government will establish the new content of the Decree."⁴⁴⁵

E. Wiretapping and Unlawful Surveillance of Journalists

1. Background

248. As indicated in the 2009 Annual Report, throughout the year allegations of illegal wiretappings and unlawful surveillance were released which the State Intelligence Agency, known as the Administrative Department for Security (DAS), carried out on journalists, justices of the higher courts, opposition politicians, activists and human rights organizations.

249. During 2010, the Commission received additional information concerning unlawful activities of espionage, harassment, smear campaigns and even death threats against journalists, undertaken by the DAS between 2002 and 2008. The investigations initiated by the National Procurator General and the National Attorney General's Office, as well as the important revelations of the media indicate a sustained and systematic policy of persecution on the part of the principal intelligence agency of the State of Colombia, directed at spying on, smearing and intimidating some of the journalists criticizing the Government of President Álvaro Uribe Vélez. In some cases, the unlawful spying by the DAS was undertaken by the same agents charged with protecting those journalists within the framework of the Interior and Justice Ministry's Human Rights Protection Program.⁴⁴⁶

250. These events represent an especially serious attack on the freedom of expression in Colombia, and have had profound consequences for the personal and professional lives of the persecuted journalists and their families. As described below, despite the advances in the

⁴⁴³ Communication handed over on July 30, 2010, by the State to the Special Rapporteur for the Freedom of Expression *Note DIDH.GAPID No. 32010/1273*.

⁴⁴⁴ Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held on October 28, 2010, in the context of the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

⁴⁴⁵ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 47.

⁴⁴⁶ See Constitutional Court of Colombia. Judgment T-1037 of 2008. Judge Rapporteur, Jaime Córdoba Triviño. Foundation for Press Freedom. December 3, 2010. *Spying on Journalists: the courts now speak*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*, p. 4. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. Hollman Morris. March of 2010. *The DAS, a criminal hunt*. Available at: http://www.facebook.com/note.php?note_id=388797002244.

investigation there is no clarity on who issued the orders and performed most of the illegal activities against journalists criticizing the Government.

2. Spying and Harassment by the DAS against Journalists

251. Although the IACHR has received information about unlawful activities directed against at least a group of ten journalists,⁴⁴⁷ the current report highlights those cases in which the investigations made to date allow more and better information to be shown to explain the phenomenon. The cases selected refer to independent journalists with respect to whom the spying and harassment activities were especially serious.

252. One of the most serious cases is that of the journalist Daniel Coronell. Journalist Coronell has a prestigious career, writes one of the most widely read editorial columns in the country and at the moment of the facts he directed *Noticias Uno*, a news program presenting an informative and editorial line pointedly independent from that of the government's. Thanks to his investigations, the journalist was able to denounce serious cases of alleged corruption.⁴⁴⁸ In response to some of these investigations, former President Álvaro Uribe and high-ranking officials of his Government publically discredited him on various occasions.⁴⁴⁹

253. According to the information received, on May 25, 2010, at a public hearing before the National Public Prosecutor, former deputy director of DAS Intelligence Operations, Martha Inés Leal, stated that DAS directors ordered that Daniel Coronell be followed. According to her, there were attempts to establish who was passing him information since, according to the information received by her, President Uribe "was very annoyed" by the investigations made against him and his family. Leal added that DAS agents went beyond this and "checked up on the movements of Coronell and his wife [María Cristina Uribe, a presenter with *Noticias Uno*]. In addition, information was requested from the UIAF [Financial Analysis and Information Unit] as to his bank transactions. His address was located, and since he lived in a military zone, a car was hired to follow him."⁴⁵⁰

254. The Commission also received information about the statement of Fernando Alonso Tabares, former Director General of Intelligence at the DAS, as to the surveillance of journalist Coronell. According to press reports, at a hearing which took place on July 9, 2010, Tabares stated that in September 2007, then DAS Director María del Pilar Hurtado asked him to accompany her to a working meeting she had with Bernardo Moreno, Secretary General of the Office of the President of the Republic. According to Tabares' evidence, "Dr. Bernardo Moreno pointed out to Dr. María del Pilar Hurtado that the President of the Republic was interested in being kept informed by the DAS about four principal points or aspects: the Supreme Court of Justice, Senators Piedad Córdoba and Gustavo Petro and the journalist Daniel Coronell." Tabares added, finally, that Hurtado

⁴⁴⁷ See IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter 2, para. 139. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>.

⁴⁴⁸ See, for example, *Revista Semana*. April 18, 2009. "That's more than enough" (*Sobrados del lote*). Available at: <http://www.semana.com/noticias-opinion/sobrados-lote/122986.aspx>. *Revista Semana*. October 16, 2010. *One day flower*. Available at: <http://www.semana.com/noticias-opinion/flor-dia/146010.aspx>.

⁴⁴⁹ See IACHR. Annual Report 2009. Report of the Special Rapporteur for Freedom of Expression. Chapter 2, para. 139. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>. See *Revista Semana*. October 9, 2007. *President Álvaro Uribe and journalist Daniel Coronell wage the bitterest verbal battle on the radio*. Available at: http://www.semana.com/wf_InfoArticulo.aspx?idArt=106790.

⁴⁵⁰ *El Espectador* newspaper. September 4, 2010. Martha Leal's confession to a delegated prosecutor. Available at: <http://www.elespectador.com/impreso/judicial/articuloimpreso-222598-confesion-de-martha-leal-un-fiscal-delegado>. *Revista Semana*. September 6, 2010. DAS Wire-tapping: Martha Leal's chapter. Available at: <http://www.semana.com/noticias-nacion/chuzadas-del-das-capitulo-martha-leal/144144.aspx>

"left instructions for us to start to focus our best efforts on this requirement communicated by Dr. Bernado Moreno."⁴⁵¹

255. According to the information received, Bernado Moreno, in a deposition before the Public Prosecutor in July 2010, remembered having met with Tabares and Hurtado in September 2007 and acknowledged having made requests for information - in his view, lawfully - from the DAS regarding members of Congress and judges, but denied requesting unlawful DAS actions against Daniel Coronell.⁴⁵² Hurtado also denied receiving orders from the President's Office to wiretap and track the persons mentioned by Tabares.⁴⁵³

256. Daniel Coronell has been the victim of numerous threats since April 2002. In August 2005, he left the country for exile due to this continuing harassment. He returned to Colombia in 2007, and despite the threats and acts of intimidation suffered, he has continued during all these years with a distinguished career in journalism.

257. Claudia Julieta Duque is an independent correspondent in Colombia with the Internet human rights broadcaster *Radio Nizkor*. The information received indicates that the harassment against the journalist was related to investigations she conducted into the murder of the journalist and broadcaster Jaime Garzón, which had shown that the DAS misled the investigation of the crime.⁴⁵⁴

258. According to the information received, a document was discovered in the investigation undertaken by the Public Prosecutor marked "For DAS use only" and headed with the journalist's telephone numbers and email addresses. This document contained detailed instructions on how to threaten the journalist, establishing the conditions as to how, when and where the threats could be made so as not to be identified as DAS agents. According to the instructions, whoever was to make the threat should say "Madam, are you María Alejandra's mother? [wait for an answer] then I tell you that you've left us no other option, you have been told and paid no attention; now neither armored cars nor little letters will be of use - we have to deal with what you love best, and this happens for meddling in things that don't concern you, you scabby old bitch."⁴⁵⁵

⁴⁵¹ *Revista Semana*, July 24, 2010, Article entitled: "Everything ordered by the Nariño house." Available at: <http://www.semana.com/noticias-nacion/todo-orden-casa-narino/142149.aspx>. W Radio, July 23, 2010. Fragments of Fernando Tabares' Testimony, key witness in the DAS wire-tapping. Available at: <http://www.wradio.com.co/oir.aspx?id=1331096>. Caracol Radio, July 24, 2010. 'Fernando Tabares' revelations implicate Bernardo Moreno." Available at: <http://www.caracol.com.co/nota.aspx?id=1331537>. *La Silla vacía*, July 23, 2010. *Tabares' statement will be the crowning evidence against Uribe in the DAS scandal*. Available at: <http://www.lasillavacia.com/historia/16849>.

⁴⁵² *Vanguardia*. July 27, 2010. Bernardo Moreno's Lawyer says yes he asked for information from the DAS. Available at: <http://www.vanguardia.com/historico/70161-abogado-de-bernardo-moreno-dice-este-si-le-pidio-informacion-al-das>. *El Tiempo*. July 28, 2010. Bernardo Moreno's defense says that the former head of DAS intelligence is lying. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7830392>.

⁴⁵³ Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

⁴⁵⁴ *Revista Semana*. December 12, 2009. Manual for Threats. *Manual para amenazar*. Available at: <http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx>. International Women's Media Foundation. *Claudia Julieta Duque has the courage to speak*. Available at: <http://www.iwmf.org/archive/articletype/articleview/articleid/1272/claudia-julieta-duque-has-the-courage-to-speak.aspx>. This fact was revealed in December 2009, after the date of closing the 2009 Annual Report.

⁴⁵⁵ *Revista Semana*. December 12, 2009. Manual for Threats. Available at: <http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx>. *Noticias Uno*. DAS instructions to threaten Claudia Julieta Duque. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para>

In addition to the text included in the instructions, the person who telephoned on November 17, 2004, threatened to burn journalist Duque's ten-year old daughter alive. The threat caused her temporary exile from Colombia.⁴⁵⁶

259. According to the information available to the IACHR, the Public Prosecutor's investigation also revealed the existence of dozens of DAS intelligence reports regarding journalist Duque. These reports, which were mainly compiled during the years 2003 to 2005, include resumes, photos, telephone call transcripts and intercepted emails (including between Duque and her lawyer), and an analysis of her activities (including the journalistic investigations she was then undertaking) and family information.

260. In the last few years, Claudia Julieta Duque has received constant death threats through various channels. However, she has never abandoned her work as a reporter and investigative journalist. At present she is considered to face an extraordinary level of risk, and she is the beneficiary of protective measures in Colombia and she and her daughter have been beneficiaries of precautionary measures granted by the IACHR since November 2009.

261. Carlos Lozano is the director of the *Voz* weekly magazine and has been called upon by the Government at different times to undertake humanitarian work or to liaise with guerilla groups. According to information published in the press, in statements made before the Public Prosecutor on October 25, 2010, Gustavo Sierra Prieto, former deputy director of the DAS Analysis Office, stated that former director María del Pilar Hurtado constantly requested information on Carlos Lozano, director of the *Voz* weekly periodical, which in turn had been requested by the Secretary General of the President's Office. Sierra added that Hurtado also ordered smear campaigns against the social commentator, by leaking compromising information to the media. According to press reports, Sierra stated in his testimony that the former DAS director ordered that reports should be circulated through media outlets suggesting some relationship of the journalist to the FARC, to publically smear him.⁴⁵⁷

262. Lozano was in effect investigated by the National Attorney General's Office for alleged links with the FARC, but the proceedings were archived when it was determined that his contacts with the guerilla were limited to his role as a peace facilitator.⁴⁵⁸

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[amenazar-a-claudia-julieta-duque.html](#). See also a copy of the above DAS manual for threatening Claudia Julieta Duque, in the IACHR's possession, available at: <http://www.youtube.com/watch?v=vfnkGgy4-tE>.

⁴⁵⁶ *Revista Semana*. December 12, 2009. Manual for Threats. Available at: <http://www.semana.com/noticias-nacion/manual-para-amenazar/132562.aspx>. *Noticias Uno*. DAS instructions to threaten Claudia Julieta Duque. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. US Office on Colombia, Center for International Policy, Washington Office on Latin America. June of 2010. *Far Worse than Watergate: Widening scandal regarding Colombia's Intelligence Agency*. Available at: <http://www.noticiasuno.com/noticias/instructivo-del-das-para-amenazar-a-claudia-julieta-duque.html>. See also a copy of the above DAS manual for threatening Claudia Julieta Duque, in the IACHR's possession, available at: <http://www.youtube.com/watch?v=vfnkGgy4-tE>.

⁴⁵⁷ Newspaper *El Espectador*, November 9, 2010. Article entitled: 'The DAS suitcase for Palacio'. Available at: <http://www.elespectador.com/impresso/judicial/articuloimpresso-234123-valija-del-das-palacio>. Newspaper *El Espectador*. November 11, 2010. The reports of Gustavo Sierra Prieto. Available at: <http://www.elespectador.com/impresso/articuloimpresso-234488-los-Reports-de-gustavo-sierra-prieto>.

⁴⁵⁸ Caracol Radio, July 24, 2009. 'They archive the investigation against Álvaro Leyva and Carlos Lozano'. Available at: <http://www.caracol.com.co/nota.aspx?id=850402>. Newspaper *El Espectador*. July 24, 2009. Investigation for FARC politics against Álvaro Leyva and Carlos Lozano, terminated. Available at: <http://www.elespectador.com/noticias/judicial/articulo152397-precluyen-favor-de-alvaro-leyva-y-carlos-lozano-investigacion-farcp>.

263. Hollman Morris, director of the news program *Contravía*, is a distinguished independent journalist well-known for his reporting directed at denouncing human rights violations and as a voice for the victims of these violations.

264. According to the information received, in February 2010, Hollman Morris disclosed a document allegedly discovered by the Public Prosecutor in the course of investigations with respect to unlawful DAS activities.⁴⁵⁹ In this official document - a PowerPoint presentation - they explain the actions that had to be taken against Morris. The instructions included "beginning a smear campaign at the international level through the following activities: communications; Including a video (on the) FARC / Arranging suspension of his visa / Sabotage actions (stealing his passport and national identity card, etc.), as well as "locating his home in [...] of Bogotá / Constant surveillance of his movements".⁴⁶⁰

265. One of the smear measures mentioned in the PowerPoint was the "Arranging for suspension of his Visa". In July 2010, journalist Morris was notified that his US visa had been denied, despite having been admitted and granted a scholarship for a journalism study program at Harvard University. After a strong international backlash, the decision was revoked.⁴⁶¹ In its observations, the State denied that the refusal to grant a visa for Mr. Morris was part of a State persecution policy given that "it has no influence in the proceedings before the US embassy in the country."⁴⁶²

266. Journalist Morris, after having had access to some of the DAS documents about him that were seized by the Public Prosecutor, also denounced that the DAS archives contained information about several aspects of his personal life (identification information, studies completed, professional activities, and his movements) as well as information on his immediate family, such as photographs of his parents' house, notes on his sisters, and the class times of his small children.⁴⁶³

267. In addition, according to information received, the former deputy director of DAS Intelligence Operations, Martha Inés Leal, related in her deposition of October 28, 2010, that the DAS compiled a video with the aim of linking various journalists to illegal armed groups such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). According to press reports, this video may correspond to a release of information in 2006, which attempted to link journalist Hollman Morris with the FARC and thereby smear him.⁴⁶⁴ According to press reports,

⁴⁵⁹ Documents of the trial confiscated by the Public Prosecutor from the DAS, presented by the journalist in press circles. Available at: <http://www.cipcol.org/?p=1467>. See also Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

⁴⁶⁰ Documents of the trial confiscated by the Public Prosecutor from the DAS, presented by the journalist in press circles. Available at: <http://www.cipcol.org/?p=1467>. See also Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

⁴⁶¹ Inter-American Press Society (SIP) July 13, 2010. SIP asks US consulate to reconsider Visa denial to Colombian journalist Available at: http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&idioma=us&id=4404. Newspaper El Nuevo Herald. July 13, 2010. Disagreement over US's Visa denial for Colombian journalist. Available at: <http://www.elnuevoherald.com/2010/07/12/764703/polemica-por-negacion-de-visado.html>. Foundation for Press Freedom (FLIP). July 14, 2010. About the travel situation of Hollman Morris. Available at: http://www.flip.org.co/alert_display/0/1057.html. IFEX. July 27, 2010. *Journalist Hollman Morris granted visa to join Harvard Program*. Available at: http://www.ifex.org/united_states/2010/07/27/morris_granted_visa/.

⁴⁶² Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 47.

⁴⁶³ Hollman Morris. March of 2010. *The DAS, a criminal hunt*. Available at: http://www.facebook.com/note.php?note_id=388797002244.

⁴⁶⁴ *La Silla vacía*. November 2, 2010. *The questions that Peñate must answer before the Public Prosecutor*. Available at: <http://www.lasillavacia.com/historia/19296>. RCN. October 28, 2010. *Martha Leal revealed tactics to implicate*

Leal stated in the same deposition that from the direction of DAS he ordered to have Morris followed.⁴⁶⁵

268. Hollman Morris and his family have been the target of multiple death threats and acts of harassment and smearing. He has been categorized as being in a situation of extreme risk that merit domestic protective measures for himself and his family who have also been beneficiaries of precautionary measures granted by the IACHR since June 2000. During all these years and despite undergoing periods of forced exile, the journalist has not ceased reporting on human rights and, especially, on the victims of the armed conflict in Colombia.

269. There are other very serious cases in which, however, there has been no progress in the investigations. This is the case, for example, of journalist Gonzalo Guillen, Colombia correspondent for Miami's *El Nuevo Herald*, who has had to leave the country several times due to threats on his life. In November 2009 he received notification from the Public Prosecutor that he was identified as having been the victim of surveillance tracking by the DAS. In June 2010, the journalist was the target of serious death threats. He brought this to the Public Prosecutor's attention but states that no measures have been adopted in this regard.⁴⁶⁶

270. With regard to the investigations (See *supra* V), the Commission does not have precise information with respect to which of the acts committed against the journalists Daniel Coronell, Claudia Julieta Duque, Carlos Lozano and Hollman Morris —among other journalists that have been subject to illegal actions by the DAS⁴⁶⁷— are being investigated in criminal proceedings underway in relation to the unlawful intelligence activities (See *supra* V). Nevertheless, a December 2010 report of the Foundation for Freedom of the Press indicates that Claudia Julieta Duque's case remains to date at the investigation stage.⁴⁶⁸ In its observations the State reiterated that "the wire tapings carried out by the DAS are not a state policy", and indicated that the "State has not tolerated this conduct nor it has allowed for them to remain with impunity. The facts were investigated and arrest warrants were issued against the officials."⁴⁶⁹ However the State fails to provide specific information on the criminal proceedings relating to illegal intelligence activities against journalists.

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journalist with the FARC. Available at: http://www.canalrcnmsn.com/noticias/martha_leal_revel%C3%B3_manobra_para_inculpar_periodista_con_las_farc. CNN. October 28, 2010. *International pressure on Uribe mounts due to the 'wire-tapping'*. Available at: <http://mexico.cnn.com/mundo/2010/10/28/presion-internacional-contra-uribe-por-las-chuzadas>.

⁴⁶⁵ CNN. October 28, 2010. *International pressure on Uribe mounts due to the 'wire-tapping'*. Available at: <http://mexico.cnn.com/mundo/2010/10/28/presion-internacional-contra-uribe-por-las-chuzadas>. Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

⁴⁶⁶ Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

⁴⁶⁷ See IACHR Annual Report 2009. Report of the Special Rapporteurship on Freedom of Expression. Chapter 2, para. 139. Available at: <http://www.cidh.oas.org/pdf%20files/RELEAnual%202009.pdf>.

⁴⁶⁸ Foundation for Press Freedom. December of 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

⁴⁶⁹ Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, page 48.

3. Access to Information

271. Several problems have been reported in relation to access to public information and the right to information about oneself or *habeas data*, in relation to the unlawful DAS activities and subsequent investigations.

272. At first, when evidence came to light that the DAS were spying on journalists and other public figures, some people requested that they be provided with the reports existing about them with this entity. With respect to the journalist Claudia Julieta Duque, even the Constitutional Court itself in a Judgment dated October 23, 2008, ordered that the DAS "allow the plaintiff access to information being kept about her in the entity, with the sole exception of information under reserve within the framework of the judicial investigation, access to which the plaintiff does not have a legal right."⁴⁷⁰ However, the DAS failed to hand over all the information which, due to the investigations previously mentioned, was subsequently known to exist in its archives; the entity argued that the said information did not exist.⁴⁷¹ In its observations the State reported that the legal representative of journalist Duque had filed two motions regarding these facts. The first incident was resolved by the Fourth Contentious Administrative Chamber of the Council of State on August 13, and the second was resolved by the Third Section of the Contentious Administrative Court of Cundinamarca – Subsection A on November 25, 2010. Both decisions found that the DAS Director had complied with the orders issued by the Constitutional Court.⁴⁷²

273. In addition, some journalists who have indications that they were being targeted for surveillance by the DAS have asked the Public Prosecutor for precise information on whether this entity was in fact listening in on their telephone conversations. For this purpose, they have provided their home, office and cell phone numbers. However, the information received shows that the Public Prosecutor has declined the request, indicating that the events are currently under investigation and are, therefore, confidential.

274. In addition, the available information shows that the DAS destroyed part of the evidence related to the events under investigation. In October 2010, William Romero, former head of the sub-department of DAS Human Resources, provided the Public Prosecutor with ample electronic and hard copy information, which he stated he had been ordered to destroy. According to information published in the press, the general prosecutor in charge acknowledged that certain evidence had been destroyed by the DAS.⁴⁷³

275. Finally, the judicial information gathered during the public hearings which took place before the Supreme Court of Justice is also classed as confidential without there appearing to be

⁴⁷⁰ Constitutional Court of Colombia. Judgment T-1037 de 2008. Judge Rapporteur, Jaime Córdoba Triviño.

⁴⁷¹ In accordance with information received dated May 20, 2009, for example, the DAS informed the journalist that "there were no documents linked to institutional actions such as work orders, requests, requirements, recordings, nor court proceedings having a link to the journalist CLAUDIA JULIETA DUQUE."

⁴⁷² Observations of Colombia on the Draft Country Report of the Inter-American Commission on Human Rights for the year 2010, February 25, 2011, pp. 48-50.

⁴⁷³ *Revista Semana*. October 28, 2010. *Former DAS detective hands over three boxes of evidence about 'wire-tapping' that he did not destroy*. Available at: <http://www.semana.com/noticias-nacion/ex-detective-das-entrega-tres-cajas-pruebas-sobre-chuzadas-no-destruyo/146504.aspx>. Terra.com. October 28, 2010. *Prosecutor recognizes there was destruction of evidence in 'wire-tapping'*. Available at: <http://www.terra.com.co/noticias/articulo/html/acu35808-fiscal-reconoce-que-hubo-destruccion-de-pruebas-en-chuzadas.htm>. *El Espectador*. October 28, 2010. *Prosecutor confirmed destruction of evidence of the 'wire-tapping'*. Available at: <http://www.elespectador.com/articulo-232016-fiscal-confirmando-destruccion-de-pruebas-de-chuzadas>.

any law which establishes this exception to the right to access in a clear, precise and proportionate way.⁴⁷⁴

276. The IACHR acknowledges the utmost importance that these investigations may be effective; while also of protecting the life and integrity of those witnesses who have contributed to the advancement of the investigation. However, there are other means less restrictive on the right of access to information and surely much more effective in guaranteeing the outcome of the investigations and the security of witnesses. In this sense, any restriction on access to public hearings by the press must be established by law, pursue a legitimate aim and be necessary and proportionate in relation to the aims in a democratic society. The rules of access must be concrete, objective and reasonable, and their application transparent.⁴⁷⁵

VIII. CONCLUSIONS

277. The IACHR has stressed that maintaining the peace is linked to the non-recurrence of crimes of international law, of violations of human rights and serious breaches of international humanitarian law, and, hence to the clarification and reparation of the consequences of the violence via suitable methods of establishing the truth of what has occurred, of administering justice and making reparation to the victims of the conflict. Colombia still faces challenges in the areas of dismantling the illegal armed structures and in the implementation of the legal framework adopted with the aim of judging those crimes committed during the conflict.

278. The IACHR is still concerned with respect to the non demobilized strongholds of paramilitary structures, to the phenomenon of rearmament and to the consolidation of new armed groups, and reiterates that it is necessary for the Colombian Government to implement effective mechanisms designed to guarantee the dismantling of the AUC structures. The IACHR understands that it is a matter for the State to take a central role and principal responsibility to guarantee to the victims of crimes against international law effective access in conditions of equality to measures of comprehensive reparation, in accordance with the standards of the international law of human rights. The IACHR will continue to monitor the legislative discussion and implementation of measures designed to achieve comprehensive reparations, which includes the effective restitution of the victims' land.

279. The Commission continues to be concerned with respect to the commission of extrajudicial executions allegedly by members of the security forces and the meager number of indictments for these events. In addition, the Commission is gravely concerned by the acts of harassment and attempts against the lives of the immediate families of victims denouncing these events. The Commission expresses concern with regard to the use of military criminal courts to judge cases of human rights violations and more specifically of extrajudicial executions allegedly committed by members of the security forces. This contravenes the jurisprudence of the Commission and the Inter-American Court for Human Rights, as well as of the Colombian Constitutional Court.

280. The Commission is alarmed by the increase in the number of internally displaced persons due to the violence and the dispossession of land by other armed actors. In addition, the Commission is concerned by the humanitarian situation and for the security of those displaced persons as well as the viability of procedures to return them. In this regard, the IACHR believes it essential that the State adopt a program of integral protection for this displaced population and repeats the importance of fulfilling orders of ruling T-025/2004 of the Constitutional Court, as well as its follow-up orders.

⁴⁷⁴ Foundation for Press Freedom. December 3, 2010. *Spying on journalists: the courts speak out*. Available at: <http://www.ifex.org/colombia/2010/12/03/das-Report.pdf>.

⁴⁷⁵ IACHR, Special Rapporteur for the Freedom of Expression. *The Right of Access to Information in the Inter-American judicial context*. OEA/Ser.L/V/II IACHR/RELE/INF. 1/09. December 30, 2009, para. 65.

281. In addition, the Commission continues to be concerned with the impact of the violence on the civilian population, and, in particular, on the most vulnerable groups, such as indigenous peoples, the Afro-descendant communities, who require differentiated measures of protection and humanitarian assistance.

282. The Commission expresses concern for the situation of human rights of the Colombian indigenous peoples, who have been affected in a constant and profound way in the last few years, and especially in 2010, by the armed conflict, forced displacement, poverty, their demographic fragility, and the State's neglect, to the point of seeing their physical and cultural existence in peril. The events referred to in this report involve a cross-section of breaches of individual and collective rights of indigenous peoples and their members, protected by Inter-American instruments. As such, the IACHR encourages the State of Colombia to fulfill with special care its international obligations to respect, protect and promote human rights, and to adopt positive and special protective measures for the indigenous peoples, to prevent their continuing victimization.

283. The Commission continues to be concerned by the grave humanitarian crisis afflicting the Afro-Colombian population, including its leaders, both men and women, and members of its community councils, who exercise leadership in the vindication, defense and protection of the Afro-Colombians' human rights - in particular their rights relating to their lands, the natural resources present there and their right to autonomy and cultural identity. In this regard, the Commission considers it necessary to implement public policies and specialized measures to guarantee that the Afro-Colombians are able to fully exercise their rights and fundamental freedoms.

284. The Commission is gravely concerned by the attacks reported against human rights defenders and social leaders by illegal armed groups and hopes that the measures necessary to ensure the freedom of expression in conditions of security are adopted.

285. The IACHR repeats its particular concern over the use of intelligence measures against human rights defenders, social leaders, journalists, officials linked to the administration of justice, international cooperation organs and international organizations. In addition, the Commission continues to be concerned by the threats and harassment against officials linked to the administration of justice, which inhibits them from carrying out their work, as well as the absence of judicial clarification of the events related to unlawful intelligence activities. The IACHR will continue with its follow-up into the initiatives designed to purge the intelligence archives, and into the clarification of those responsible.

286. In view of these considerations, the IACHR recommends that the State of Colombia:

1. Strengthen the work of the institutions called upon to play a role in implementing the Justice and Peace Law, especially the units of the National Public Prosecutor who exercise an essential investigatory role, in terms of logistic support and security in order to guarantee the judicial clarification of the crimes committed against the victims in the conflict and to appoint Justice and Peace prosecutors with training to deal with sexual offences or those involving children.
2. Strengthen the mechanisms designed to protect and guarantee the security of the victims of the conflict, of witnesses and of human rights defenders who come to participate in the process of investigating and trying those who seek to benefit from the Justice and Peace Law.

3. Adapt the extradition of those demobilized under the Justice and Peace Law to the standards established by the Supreme Court of Justice of Colombia, by the Commission and Inter-American Court of Human Rights.
4. Guarantee the fulfillment and effective participation of those already extradited in the steps necessary for the continuation of the Justice and Peace proceedings, and the realization of the rights of the victims to the truth, justice and to reparations.
5. Adopt and implement effective measures designed for the disbanding and dismantling of illegal armed groups.
6. Adopt and implement effective measures for the comprehensive reparation of the victims of human rights violations and breaches of international humanitarian law, including measures for the effective restitution of land.
7. Strengthen mechanisms guaranteeing the prevention of extrajudicial executions by members of the security forces.
8. Strengthen investigative mechanisms for possible extrajudicial executions and transfer all cases, which might involve extrajudicial executions of civilians from the criminal military courts to the ordinary criminal courts.
9. Design, adopt and implement effective policies, which take into account the special needs of indigenous peoples and Afro-Colombian communities affected by the armed conflict in terms of territory, health, education and access to justice.
10. Adopt the measures necessary to protect the work of human rights defenders, social leaders, trade unions leaders and journalists; prevent their stigmatization and the unwarranted use of intelligence mechanisms against them; and remove the risk factors affecting them during the judicial clarification of acts of violence, harassment and threats.
11. Adopt the measures necessary to ensure that judges and officials linked to the administration of justice may carry on their work in conditions of security, independence, free from pressure from private persons and State authorities.

CUBA

I. HUMAN RIGHTS SITUATION IN CUBA

287. Based on the criteria set forth by the IACHR in 1997 to identify the states whose human rights practices merit special attention, the human rights situation in Cuba fits under the first and fifth criteria, which are the failure to observe the political rights set forth in the American Declaration and the persistence of structural situations that have a serious and grave impact on the enjoyment and observance of the fundamental rights enshrined in the American Declaration.

288. The IACHR has observed and evaluated the human rights situation of the Cuban State in the course of 2010, and decided to include, in this chapter of its annual report, considerations regarding the situation of political rights; guarantees of due process and independence of the judicial branch; restrictions on the right of residence and movement; deprivation of liberty of political dissidents; restrictions on the freedom of expression; and the situation of human rights defenders. Consideration is also given to the economic and trade sanctions imposed on the Government of Cuba. In this respect, the IACHR reiterates its position in terms of the impact of such economic sanctions on the human rights of the Cuban population, which is why it insists that the embargo should be ended.

289. Special mention should be made this year of the release of dissidents, opposition figures, human rights activists, and independent journalists who were arrested in March 2003 for exercising their right to freedom of expression, most of them victims in case 12,476 approved by the IACHR in October 2006. The IACHR expressed its positive view of this decision in press release 69/10 of July 13, 2010, and encouraged the Cuban State to continue and release all political prisoners. Similarly, the IACHR values that, according to the United Nations Children's Fund (UNICEF), in Cuba there are no problems of severe child malnutrition and reiterates its recognition of the gains in Cuba in relation to the millennium development goals set by the United Nations.

290. In order to draw up this report, the Commission has obtained information from international organizations, civil society, and the Government of Cuba through its official websites. In addition, it received information in the public hearing held during its 140th regular period of sessions.

291. On February 2, 2011, the Commission sent this report to the State of Cuba and asked for its observations. The State did not respond.

292. The Commission considers it important to take into account, in this report, Resolution AG/RES. 2438 (XXXIX-O/09)⁴⁷⁶ of the OAS General Assembly of June 3, 2009, which set aside the decision adopted in 1962 to exclude the Government of Cuba from active participation in the OAS. This decision opened up new possibilities for developing, at the request of Cuba's Government, a dialogue aimed at its renewed full participation in the OAS.

293. The Commission observes that the information available on the human rights situation in Cuba is scant as a result of a state policy restricting the flow of information. For example, the IACHR has received information on more than one occasion on allegations of torture in Cuba, but the restrictions on access to information imposed by the Cuban Government made it impossible for the Commission impossible to verify the truth of those allegations. This constitutes an obstacle to the work of the Commission and is not consistent with the international obligations taken on by the Cuban State.

⁴⁷⁶ Resolution AG/RES. 2438 (XXXIX-O/09) of the OAS General Assembly, of June 3, 2009.

II COMPETENCE OF THE IACHR TO OBSERVE AND EVALUATE THE HUMAN RIGHTS SITUATION IN CUBA

294. The competence of the Inter-American Commission on Human Rights to observe the human rights situation of the member states derives from the Charter of the OAS, the Commission's Statute, and the Commission's Rules of Procedure. According to the Charter, all member states undertake to respect the fundamental rights of individuals, which, in the case of those states that are not parties to the Convention, are the rights established in the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"), which constitutes a source of international obligations.⁴⁷⁷ The Statute entrusts the Commission with paying special attention to the task of observing the human rights recognized in Articles I (right to life, liberty, and personal security), II (right to equality before the law), III (right to religious freedom and worship), IV (right of freedom of investigation, opinion, expression, and dissemination), XVIII (right to justice), XXV (right to protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration on exercising its jurisdiction with respect to those countries that are not parties to the American Convention on Human Rights (hereinafter "American Convention").⁴⁷⁸

295. For decades, the Inter-American Commission on Human Rights has paid special attention to the human rights situation in Cuba. On January 31, 1962, the Government of Cuba was excluded from participation in the inter-American system by means of Resolution VI, adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held in Punta del Este (Uruguay) from January 22 to 31, 1962.⁴⁷⁹ From that moment, the position of the Commission was to recognize the Cuban State as "juridically answerable to the Inter-American Commission in matters that concern human rights" considering that it "is a party to the international instruments initially adopted in the Western hemisphere to protect human rights" and because Resolution VI of the Eighth Meeting of Consultation "excluded the present Government of Cuba, not the State, from participation in the inter-American system."⁴⁸⁰

296. On June 3, 2009, during the Eighth Meeting of Consultation of Ministers of Foreign Affairs, which was held in Honduras, the General Assembly of the Organization of American States terminated the resolution that excluded the Government of Cuba from its participation in the OAS.

⁴⁷⁷ I/A Court H.R., Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, paras. 43-46.

⁴⁷⁸ Statute of the IACHR, Article 20(a).

⁴⁷⁹ The complete text of Resolution VI can be found in the "Eighth Meeting of Consultation of the Ministers of Foreign Affairs to serve as an Organ of Consultation in Application of the Inter-American Reciprocal Assistance Treaty, Punta del Este, Uruguay, January 22 to 31, 1962, Meeting Documents," Organization of American States, OEA/Ser.F/II.8, doc. 68, pages 17-19. The above mentioned Resolution VI, established:

1. That adherence by any member of the Organization of American States to Marxism-Leninism is incompatible with the inter-American system and the alignment of such a government with the communist block breaks the unity and solidarity of the hemisphere.
2. That the present Government of Cuba, which has officially identified itself as a Marxist-Leninist government, is incompatible with the principles and objectives of the inter-American system.
3. That this incompatibility excludes the present Government of Cuba from participation in the inter-American system.
4. That the Council of the Organization of American States and the other organs and organizations of the inter-American system adopt without delay the measures necessary to comply with its resolution.

⁴⁸⁰ IACHR, *Annual Report 2002*, Chapter IV, Cuba, paras. 3-7. See also IACHR, *Annual Report 2001*, Chapter IV, Cuba, paras. 3-7. IACHR, *Seventh Report on the Situation of Human Rights in Cuba*, 1983, paras. 16-46.

In addition, it established that “the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.”

297. Exercising its competence, the IACHR has observed and evaluated the human rights situation in Cuba in special reports⁴⁸¹; in Chapter IV of the Annual Report⁴⁸², and through the case system.⁴⁸³ In addition, the IACHR on several occasions has asked the Cuban State to implement precautionary measures in order to protect the life and personal integrity of Cuban citizens.⁴⁸⁴

298. In this context, the Commission reiterates its commitment to work with the Cuban State and appeals for a dialogue with a view to contributing to the development and strengthening of human rights in that country. In particular, it urges the Cuban State to respond to the requests of the IACHR to follow up on the matters that refer to the human rights situation of all persons in Cuba.⁴⁸⁵

III. ECONOMIC SANCTIONS

299. In prior reports the IACHR has reported on the economic and trade embargo ordered by the United States of America against Cuba as of 1961, and the impact of those economic sanctions on the human rights of the Cuban population. Especially important is the negative impact that the embargo on Cuba has had on improving the economic conditions of Cubans.

300. In this respect, the application of economic sanctions against Cuba continues. On October 26, 2010, the United Nations General Assembly approved, by a large majority, a resolution that once again calls for lifting the economic and trade embargo that the United States has imposed on Cuba for more than half a century. The document secured the almost unanimous support of the 192 countries that make up the United Nations, with 187 members in favor, two against (the United States and Israel), and three abstentions (Marshall Islands, Palau, and Micronesia). This is the 19th consecutive occasion on which the United Nations General Assembly has approved such a resolution calling for an end to the economic and trade sanctions.⁴⁸⁶

⁴⁸¹ See IACHR, Special Reports of the following years: 1962; 1963; 1967; 1970; 1976; 1979; 1983.

⁴⁸² See IACHR, Chapter IV of the Annual Report for the following years: 1990-1991; 1991; 1992-1993; 1993; 1994; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007, 2008.

⁴⁸³ See: IACHR, Report on the Merits No. 47/96, Case 11,436, Victims of the Tugboat “13 de marzo,” October 16, 1996; IACHR, Report on the Merits No. 86/99, Case 11,589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, September 29, 1999; IACHR, Admissibility Report No. 56/04, Petition 12,127, Vladimiro Roca Antúnez *et al.*, October 14, 2004; IACHR, Report on Admissibility No. 57/04, Petitions 771/03 and 841/03, Oscar Elías Biscet *et al.*, October 14, 2004; IACHR, Report on Admissibility No. 58/04, Petition 844/03, Lorenzo Enrique Copello Castillo *et al.*, October 14, 2004; IACHR, Report on the Merits No. 67/06, Case 12,476, Oscar Elías Biscet *et al.*, October 21, 2006; IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

⁴⁸⁴ The Cuban State, when notified of a decision of the IACHR, does not respond, or sends a note indicating that the Inter-American Commission on Human Rights does not have the jurisdiction and that the Organization of American States does not have the moral authority to analyze matters in Cuba.

⁴⁸⁵ Cuba has not responded to the communications directed to it by the Commission in relation to its annual reports, processing of cases, or precautionary measures, which are the instruments available to the IACHR to perform its functions aimed at protecting human rights.

On May 8, 2009, Fidel Castro criticized the section on Cuba of Chapter IV of the IACHR’s Annual Report for 2008. In http://www.eluniversal.com/2009/05/08/int_ava_fidel-castro-calific_08A2322563.shtml

⁴⁸⁶ See articles at the following links: http://www.lostiempos.com/diario/actualidad/internacional/20101027/la-onu-condena-embargo-a-cuba_96190_186010.html; <http://www.europapress.es/internacional/noticia-asamblea-onu-condena-decimonovena-vez-bloqueo-eeuu-cuba-20101026194518.html>.

301. In this respect, the IACHR reiterates its position in terms of the impact of such economic sanctions on the human rights of the Cuban population; accordingly, it reiterates and insists that the embargo should end.⁴⁸⁷ Without prejudice to the foregoing, the economic embargo imposed on Cuba does not exempt the State from carrying out its international obligations, nor does it excuse it for violations of human rights described in this report.

IV. STRUCTURAL SITUATIONS THAT HAVE A GRAVE IMPACT ON THE FULL ENJOYMENT AND OBSERVANCE OF HUMAN RIGHTS IN CUBA

302. The restrictions on political rights, freedom of expression and of dissemination of thought have over the decades come to constitute permanent and systematic violations of the human rights of the inhabitants of Cuba. This situation has been particularly aggravated by the lack of judicial independence, which is required for impartial adjudication of the claims of persons affected.

1. Political Rights

303. Political rights are of fundamental importance and are closely related to all other rights that make democracy possible. According to the Inter-American Democratic Charter, signed in Lima, Peru, on September 11, 2001, representative democracy is the system recognized and required by the OAS for stability, peace, and development in the region. The existence of free elections, independent and effective public institutions, and full respect for freedom of expression, are among the foundational characteristics of democracy that cannot be evaluated in isolation. From this perspective, the full guarantee of human rights is not possible without the effective and unrestricted right of persons to build and participate in political groups.

304. In that sense, “the right to political participation makes possible the right to organize parties and political associations, which through open discussion and ideological struggle, can improve the social level and economic circumstances of the masses and prevent a monopoly on power by any one group or individual”⁴⁸⁸. Furthermore, the Commission considered that “governments have, in the face of political rights and the right to political participation, the obligation to permit and guarantee: the organization of all political parties and other associations, unless they are constituted to violate human rights; open debate of the principal themes of socioeconomic development; the celebration of general and free elections with all the necessary guarantees so that the results represent the popular will.”⁴⁸⁹

305. For its part, “the right to vote is one of the essential elements for the existence of democracy and one of the ways in which citizens exercise their right to political participation. This right implies that citizens may freely and equally elect who will represent them.”⁴⁹⁰ At the same time, political participation by exercise of the right to be elected presupposes that citizens can run as candidates in conditions of equality and can hold elective public office if they obtain the number

⁴⁸⁷ On October 30, 2007, the United Nations General Assembly adopted resolution A/RES/62/3 on the “Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba.” See at www.un.org

⁴⁸⁸ IACHR, *Ten years of activities 1971-1981*, General Secretariat of the Organization of American States, Washington D.C., 1982, p. 334.

⁴⁸⁹ IACHR, *Ten years of activities 1971-1981*, General Secretariat of the Organization of American States, Washington D.C., 1982, p. 335.

⁴⁹⁰ IACHR, *Annual Report 1990-1991*, p. 557; IACHR, *Second Report on the Situation of Human Rights in Peru*, 2000, Chapter IV, Political Rights, A.1. See also in I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184.

of votes needed; notably the American Convention prohibits the suspension of this right even in states of emergency.⁴⁹¹ In this regard, the Commission has repeatedly observed that the lack of free elections in Cuba, according to the internationally accepted standards, violates the right to political participation enshrined in Article XX of the American Declaration of the Rights and Duties of Man.

306. The Commission has established that the right to freedom of expression and information is one of the main mechanisms of society for exercising democratic control over the persons entrusted with matters of public interest.⁴⁹² The link between freedom of expression and democracy is so important that, as the Inter-American Commission has explained, the very objective of Article 13 of the American Convention is to strengthen the functioning of pluralist and deliberative democratic systems by protecting and fostering the free circulation of information, ideas, and expressions of all sorts.⁴⁹³ Full recognition of freedom of expression is a fundamental guarantee to ensure the rule of law and democratic institutions.⁴⁹⁴ The link between democracy and freedom of expression at this point in history is evident: it is not possible to uphold democratic government without genuine and broad respect for the right to freedom of expression.⁴⁹⁵

307. The State has argued that “Cuba’s democratic system is based on the principle of ‘government of the people, by the people and for the people.’” It adds: “The Cuban people participate in the exercise and active control of Government through its political and civil institutions and in the framework of its laws.”⁴⁹⁶ In addition, it has indicated that the restrictions imposed by law on the enjoyment of some political rights in Cuba have been the minimal ones essential to guarantee the right to self-determination, peace, and life of the whole people, as a response to the growing anti-Cuban aggressiveness of “the Empire”.⁴⁹⁷

308. With respect to freedom of opinion, expression and the press, the Government of Cuba has indicated that Article 53 of the Constitution recognizes this right for all citizens. It adds that the material conditions for its exercise are determined by the high educational and cultural level and by the fact that the press, radio, television, film, and other mass means of communication are socially owned. The State affirms that a wide-ranging debate exists in Cuba as to a broad array of

⁴⁹¹ Article 27: Suspension of Guarantees, of the American Convention on Human Rights, establishes at section 2: “The foregoing provision does not authorize any suspension of the following articles: ... and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.” See also, I/A Court H.R., *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184 and I/A Court H.R. *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34; and *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 191.

⁴⁹² IACHR, Report No. 111/06, Case 12,450, Merits, Eduardo Kimel, Argentina, of October 26, 2006; IACHR, *Third Report on the Situation of Human Rights in Paraguay*, para. 35.

⁴⁹³ IACHR, *Annual Report 2008*, Volume III, Chapter III, para. 8. IACHR, in reference to the arguments before the Inter-American Court of Human Rights in the *Ivcher Bronstein v. Peru*. Transcribed in the judgment of the I/A Court H.R. of February 6, 2001, Series C No. 74. IACHR, para. 143(d); and the arguments before the Inter-American Court of Human Rights in the case of “The Last Temptation of Christ” (*Olmedo Bustos et al. v. Chile*). Transcribed in the judgment of February 5, 2001, Series C No. 73, para. 61(b).

⁴⁹⁴ IACHR, Third Report on the Situation of Human Rights in Paraguay, 2001, Chapter VI, B.3.

⁴⁹⁵ IACHR, Application to the I/A Court H.R. against the Republic of Paraguay – Case 12,032, Ricardo Canese, para. 31.

⁴⁹⁶ National report presented by the State of Cuba; UN, Human Rights Council, Working Group on Universal Periodic Review, Fourth session. Geneva, February 2 to 13, 2009, A/HRC/WG.6/4/CUB/1; November 4, 2008, para. 8.

⁴⁹⁷ In Chapter 9, “White Book 2007,” published at the official website of the Ministry of Foreign Affairs of Cuba.

issues that go to the political, economic, social, and cultural life of both Cuba and the world.⁴⁹⁸ With respect to restrictions on freedom of opinion and expression, it has indicated that these rights are limited in respect of few persons, justifying the restrictions in the following terms:

The Cuban people only restrict the “freedom” of opinion and expression of those few who would sell their services as mercenaries to the policy of hostility, aggression and genocidal blockade of the United States government against Cuba. By applying such restrictions, Cuba is acting by virtue of not just its national legislation, but also the numerous international human rights instruments and successive resolutions passed by the United Nations General Assembly which have demanded respect for the free determination of peoples and the cease of the economic, commercial and financial blockade being applied by the government of the United States against Cuba.⁴⁹⁹

309. The Commission considers that one of the main criteria for drawing up this report is the lack of free elections in Cuba in keeping with internationally accepted standards, which -as stated- violates the right to political participation enshrined 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.

310. Article 3 of the Inter-American Democratic Charter defines the elements of democratic government as follows:

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.

311. The American Declaration and the Inter-American Democratic Charter reflect a broad conception of representative democracy which, as such, rests on the sovereignty of the people and in which the functions by which power is exercised are performed by persons chosen in free elections representative of the popular will. In the view of the Commission, such aspects are not present in Cuban elections, which are characterized precisely by the lack of plurality and independence and the absence of a framework of free access to various sources of information. In light of the international standards indicated, the Commission reiterates that the lack of free and fair elections, based on universal suffrage and secret ballot as the expression of popular sovereignty⁵⁰⁰, violates the right of the Cuban people to political participation.

⁴⁹⁸ National report submitted by the State of Cuba, UN, Human Rights Council, Working Group on the Universal Periodic Review, Fourth session, Geneva, February 2 to 13, 2009, A/HRC/WG.6/4/CUB/1; November 4, 2008, paras. 44 and 45.

⁴⁹⁹ See in Chapter 9, “White Book 2007,” published on the official website of the Ministry of Foreign Affairs of Cuba, *op. cit.*

⁵⁰⁰ Article 3 of the Inter-American Democratic Charter establishes as one of the essential elements of representative democracy holding periodic, free, and fair elections based on universal suffrage and secret ballot as an expression of the sovereignty of the people; and the plural regime of political parties and political organizations.

- **Political Repression**

312. In the course of 2010, the Commission continued to receive information about the adoption by the Government of a tactic of political repression based on systematic arrests for several hours or a few days, threats, acts of repudiation, and other forms of harassment of opposition activists.

313. According to the nongovernmental organization Comisión Cubana de Derechos Humanos y Reconciliación Nacional, for the first time in several years the government locked up a significant number of new political prisoners in just one month: in August eight persons were incarcerated (five from Baracoa, Guantánamo, and three from the city of Havana). In addition, among the documented cases of persons temporarily detained for political motives, so far this year the Comisión Cubana de Derechos Humanos y Reconciliación Nacional has the following on record: January: 117, February: 235, March: 83, April: 162, May: 120, June: 104, July: 125, August: 184, September: 90 and October: 310. According to that organization, political repression in the month of October increased notably in comparison with all previous months of 2010.

314. In addition, on July 20, 2010, the IACHR granted precautionary measures on behalf of Reina Luisa Tamayo Danger⁵⁰¹, the mother of Orlando Zapata Tamayo, one of the victims in Case 12,476, adopted by the IACHR on October 21, 2006⁵⁰², who died of starvation after 85 days on a hunger strike.⁵⁰³ The request for precautionary measures alleged that she was suffering constant threats and harassment for her involvement in various public protests since her son's death. In addition, the request indicated that she had been the victim of acts of violence, in which she was alleged to have been beaten and one of her arms fractured. According to the testimony of Reina Luisa Tamayo Danger, received at the Secretariat, on March 17, 2010, she was the victim of blows, along with her daughter and other members of the Damas de Blanco (Ladies in White), as they were leaving the church in Santa Bárbara (district of Parra). She alleges that that the authorities beat her and kicked her while shouting "*negra mierda*" ("black bitch").⁵⁰⁴

315. Notwithstanding the precautionary measures granted, the IACHR received information that indicates that on October 31, 2010, 39 persons of a group of 46 activists and relatives of Orlando Zapata Tamayo, including Reina Luisa Tamayo Danger, were said to have been detained when headed to the grave of Orlando Zapata Tamayo, located in the Banes Cemetery. This group of persons was said to have participated in the Sunday mass at the church known as Iglesia de la Caridad in Banes and were staging a march through the streets of that city towards the cemetery when 29 of them were allegedly stoned by covert agents of the State Security agency (Seguridad del Estado) and then arrested.⁵⁰⁵

⁵⁰¹ The Inter-American Commission asked the Cuban State to adopt the measures necessary to guarantee the life and physical integrity of Reina Luisa Tamayo Danger, to coordinate the measures to be adopted with her, and to report on the actions adopted to investigate the facts that gave rise to the adoption of precautionary measures.

⁵⁰² In this case, the IACHR recommended to the State of Cuba that it order the immediate and unconditional release of all the victims, setting aside their convictions for having been based on laws that impose illegitimate restrictions on their human rights. The report also recommended adopting the measures necessary to bring its laws, procedures, and practices into line with international human rights provisions, to make reparation to the victims and their next-of-kin for the material and non-material injury suffered because of the violations of the American Declaration established in the report, and to adopt the measures necessary to prevent the repetition of similar acts.

⁵⁰³ IACHR, Press Release 22/10, February 26, 2010 – IACHR condemns death of Orlando Zapata in Cuba.

⁵⁰⁴ Audio presented by the Directorio Democrático Cubano, July 1, 2010, recorded by Diario La Habana.

⁵⁰⁵ <http://lacomunidad.elpais.com/nicolasaguila/2010/11/1/represion-brutal-contra-reina-luisa-tamayo-y-activistas>

316. According to the testimony of Martha Díaz Rondón⁵⁰⁶:

A lieutenant colonel and three others brought us in a small white bus. They let us out here, and each one to their home, Naoky, Gertrudis, Daniel Mesa Cantillo, Ramón Reyes Oramas, Juan Oriol Verdecia (my husband) and myself, Martha Díaz Rondón. We were brutally beaten, they beat all of us brutally, they put us on the busses beating us, that was the case of each of us who was there, even Reina. That is, if they beat Reina, what can we expect?

They humiliated us, they stripped me, they forced me to remove my panties and do squats in front of the guards. The guards saw us, for they had the doors open, they did that here in Banes to Gertrudis Ojeda Suárez, Dulce María, Bárbara Portal Prado, another girl, and Maritza Cardoso Romero de Moa, that was humiliation. They stripped us and the guards themselves were seeing us. We said: "Hey close the doors, they're looking at us," but there they were, agents of the Police and State Security, who were looking on purpose, when they were searching us and then doing squats. They were women who take care of prisons, large mulatto women, who were administering the blows.

They hit Gertrudis on the chin, and it's swollen; they grabbed us and they subdued us, the men and the women came at us, that was a big deal, what they did to us, and they humiliated us. Nonetheless, at the facility called *Instrucción* they did the same thing, they stripped me, they made me take off my blouse and everything and do squats, and lower my pants, they treated us poorly, poorly.

They gave us a letter of warning that we could be subject to the crime of dangerousness or the Gag Law 88 if we continued supporting Reina Luisa Tamayo Dánger. We answered that we were going to continue, then they told us that we were warned, that we had a warning letter that we could go to jail.

They put a cushion on our abdomen to capture our odor, they took our fingerprints, all ten fingers, they measured us, they weighed us, and they took photographs of us.

From Banes they took us to Pedernales, in the municipality of Holguín.

317. According to the information received, Martha Díaz Rondón was allegedly detained at the Banes Cemetery on October 31 at approximately 10 a.m. and released on November 1, 2010, at 9 p.m. In addition, Reina Luisa Tamayo Danger was said to have been released on October 31 after having been harshly beaten about the mouth, neck, and arms. Marlon Martorell, an activist who was allegedly in the group, indicated to the media that at the moment when Reina Luisa Tamayo was arrested, they gagged her inside the police car with a handkerchief doused in gasoline to keep her from shouting.⁵⁰⁷

318. In addition, as reported in the media, three young Cuban human rights activists were allegedly detained on August 16 and incarcerated for 20 days accused by the authorities of the offense of "public disorder" after leading a protest on the steps at the Universidad de La Habana that consisted of unfurling a sheet with slogans emblazoned on it such as "Abajo la dictadura" ("Down with the dictatorship"), "Abajo el hambre" ("Down with hunger"), and "Viva los derechos humanos" ("Long live human rights").⁵⁰⁸

⁵⁰⁶ Testimony obtained from the website of the Ladies in White, http://www.damasdeblanco.org/index.php?option=com_content&view=article&id=538%3Atestimonio-de-martha-diaz-rondon-detenido-el-31-de-octubre-de-2010-en-banes-holguin-junto-con-reina-tamayo&catid=13%3Aarchivo-derechos-humanos&Itemid=5.

⁵⁰⁷ See statements by Reina Luisa Tamayo Danger, available on the Internet: <http://www.youtube.com/watch?v=SDw-Hm-73TQ>

⁵⁰⁸ EFE news agency, Consejo de Relatores de Derechos Humanos en Cuba, September 6, 2010.

319. In addition, Néstor Rodríguez Lobaina, his brother Rolando, Enyor Díaz Allen, Roberto González Pelegrín, and Francisco Manzanet were allegedly detained on August 12, 2010, at the home of Néstor Rodríguez, where they had met and hung signs and placards protesting the detention of two other members of the group who were released without charges on August 16. They were told that they were going to be accused of "public disorder."⁵⁰⁹ Nonetheless, no charges were brought against any of the five, and they were said to have been released on September 3. According to Amnesty International, the state authorities had warned them that the police would continue investigating their case. The articles that were confiscated from them when they were detained – including books, portable computers, and cell phones – reportedly had not been returned to them.

320. The Executive Secretariat received information this year regarding an alleged rape perpetrated in a prison. José Ángel Luque Álvarez was said to have been the victim of rape in 2008, at the Ariza 1 prison in the province of Cienfuegos.⁵¹⁰ Luque Álvarez was said to have been convicted of the crime of contempt (*desacato*) to more than three years in prison for having said "Abajo Fidel" ("Down with Fidel"). In the prison he was allegedly forced to strip, handcuffed to a cross, and then raped by an official. Afterwards, according to his statement, he was left naked for three days, bleeding, even though he is asthmatic. Despite having served his sentence, the authorities denied his release on several occasions, without explanation. On August 9, 2010, in the prison, he wrote a plea on a sign calling for his conditional release, for which he has qualified for more than a year. According to the information provided, for that reason the prison warden sent him to a punishment cell, and threatened to increase his confinement an additional year-and-a-half for becoming involved in counterrevolutionary activities. From that time on, he reportedly declared a hunger strike. According to the information received, after 47 days on hunger strike and accepting negotiations with the State Security agency, he was transferred to the Ariza 2 camp under a less severe prison regime, but without providing him the needed medications.

321. The IACHR received information that indicates that William Rodríguez Paredes, delegate of the Movimiento 24 de febrero, was detained on September 10 in the municipality of San José de Las Lejas, province of La Habana, by agents of the political police.⁵¹¹ He was allegedly transferred, in handcuffs, to the San José police station, where he was stripped for a body search, according to the authorities, to look for enemy propaganda. Rodríguez said that he was questioned for seven hours and was threatened that he would be subjected to the Law on Social Dangerousness if he continued engaging in opposition activities⁵¹².

⁵⁰⁹ Amnesty International, AU: 186/10 Index: AMR 25/014/2010 Cuba Date: September 8, 2010.

⁵¹⁰ Blog of Diana Virgen García, http://www.daniavirgengarcia.com/2010_09_01_archive.html. Article in Diario El Mundo, <http://www.elmundo.es/america/2010/09/27/cuba/1285540195.html>.

⁵¹¹ Diario Cubanet, "Detienen a opositor," September 17, 2010.

⁵¹² The Cuban State justifies the detention of opponents to the regime, human rights activists, trade unionists, and independent journalists through Article 72 of the Criminal Code, which defines "dangerousness" as "the special proclivity of a person to commit crimes, shown by the conduct observed in manifest contradiction to the norms of socialist morality." Article 74 of the same Code complements this provision by indicating that "the dangerous state is noted when the subject displays one of the following indicia of dangerousness: (a) habitual drunkenness and alcoholism; (b) drug addiction; (c) antisocial conduct." Similarly, that article notes that "one who habitually breaks the rules of social co-existence through acts of violence or other provocative acts violates the rights of all others, or who by his or her conduct in general breaks the rules of coexistence or disturbs the order of the community or lives, as a social parasite, from the work of others, or exploits or practices socially reprehensible vices to be dangerous due to antisocial conduct." Article 75 of the Criminal Code also indicates that "one who, without being encompassed in any of the dangerous states referred to in Article 73, by his or her links or relationships with persons potentially dangerous to society, all other persons, and the social, economic, and political order of the Communist State, may have a proclivity to criminal conduct, shall be subject to a warning by the competent police authority, as a preventive measures to keep him or her from engaging in socially dangerous or criminal activities."

322. The information received allows one to conclude that the Cuban Government continues using the concept of “dangerousness” (“*peligrosidad*”) as well as the “special proclivity of a person to commit crimes” contained in the Criminal Code as a tool of political persecution and repression.⁵¹³ The ambiguity of those terms is a very grave matter insofar as it criminalizes any political ideology that constitutes lack of support for the regime.

2. Guarantees of Due Process and Judicial Independence

323. In the course of 2010 the Commission continued receiving worrisome information related to the structural lack of independence and impartiality of the courts; and the absence of judicial guarantees and due process in the prosecution of persons sentenced to death, and of persons considered to be political-ideological dissidents, an especially serious situation due to the use of summary procedures.

324. The case-law of the inter-American system has consistently held that all organs that exercise materially judicial functions have the duty to reach fair decisions based on full respect for due process guarantees. The American Declaration establishes that every person has the right to turn to the courts⁵¹⁴, to protection from arbitrary arrest⁵¹⁵, and to due process.⁵¹⁶ These rights are part of what has been called the body of due process guarantees, and constitute the minimum guarantees recognized for all human beings in respect of any type of judicial proceeding.

325. In addition, the American Declaration indicates that every human being has the right to liberty⁵¹⁷, and no one may be deprived of it except in those cases and in keeping with those procedures established by pre-existing laws.⁵¹⁸ According to the American Declaration, every individual who has been deprived of his or her liberty has the right for a judge to verify, without delay, the legality of the measure, and to be tried without unwarranted delay, or otherwise to be released.⁵¹⁹ In addition, every person accused of a crime has the right to be heard impartially and in public, to be tried by courts previously established in accordance with pre-existing laws, and not to be subject to cruel, infamous, or unusual punishment.⁵²⁰

326. The right to trial by a court with jurisdiction that is independent, impartial, and previously established by law has been interpreted by the Inter-American Commission and the Inter-American Court so as to entail certain conditions and standards that must be satisfied by the courts in charge of judging any criminal accusation or determining the civil, fiscal, labor, or other rights or obligations of persons.⁵²¹

327. This right to a fair trial, based on the fundamental concepts of independence and impartiality of justice, and the principles of criminal law recognized by international law –

⁵¹³ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

⁵¹⁴ American Declaration, Article XVIII.

⁵¹⁵ American Declaration, Article XXV.

⁵¹⁶ American Declaration, Article XXVI.

⁵¹⁷ American Declaration, Article I.

⁵¹⁸ American Declaration, Article XXV.

⁵¹⁹ American Declaration, Article XXV.

⁵²⁰ American Declaration, Article XXVI.

⁵²¹ IACHR, Report on Terrorism and Human Rights, 2002, para. 228.

presumption of innocence, the principle of *non bis in idem*, and the principles of *nullum crimen sine lege* and *nulla poena sine lege*, as well as the precept that no one may be convicted for a crime other than on the basis of individual criminal liability, are widely considered as general principles of international law essential for the proper administration of justice and the protection of fundamental human rights.⁵²² The requirement of independence, in turn, requires that the courts be autonomous from other branches of government, be free of influences, threats, or interference of any origin or for any reason, and have other characteristics necessary for ensuring the appropriate and independent performance⁵²³ of judicial functions, including the stability of a position and adequate professional training.⁵²⁴ The impartiality of the courts⁵²⁵ should be evaluated from a subjective and objective perspective to ensure that there is no real prejudice on the part of the judge or the court, as well as sufficient guarantees to avoid any legitimate doubt in this regard. These requirements, in turn, demand that the judge or court not harbor any real bias in a particular case and that the judge or court not be reasonably perceived as inclined by such a bias.⁵²⁶

328. With respect to the guarantees of independence and impartiality, one should note that Article 121 of the Constitution of Cuba establishes:

The courts constitute a system of state bodies which are set up with functional independence from all other systems and they are subordinated only to the National Assembly of People's Power and the Council of State.

⁵²² Report of the Special Rapporteur on the Independence of Judges and Lawyers, submitted in keeping with Resolution 1994/41 of the Commission on Human Rights. Commission on Human Rights, 51st Session, February 6, 1995, E/CN.4/1995/39, para. 34. IACHR, Report on Terrorism and Human Rights, 2002, para. 229.

⁵²³ Similarly, the Court indicated that the impartiality of the court implies that its members not have any direct interest, a position taken, a preference for any of the parties, and that they are not involved in the dispute. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 146.

⁵²⁴ IACHR, *Report on the Situation of Human Rights in Chile*, 1985, Chapter VIII, para. 139; *Report on the Situation of Human Rights in Haiti*, 1995, Chapter V, paras. 276-280; *Report on the Situation of Human Rights in Ecuador*, 1997, April 24, 1997, Chapter III; *Report on the Situation of Human Rights in Mexico*, 1998, Chapter V, paras. 393-398. *Report on Terrorism and Human Rights*, 2002, para. 229.

⁵²⁵ The Inter-American Court has indicated that the right to be judged by an impartial and independent judge or court is a fundamental guarantee of due process. In other words, one must guarantee that the judge or court, in the performance of its function as trier, has the utmost objectivity to confront the trial. In addition, the independence of the judicial branch vis-à-vis the other branches of government is essential for the exercise of the judicial function. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 145; *Case of Herrera Ulloa*, para. 171.

"one of the principal purposes of the separation of public powers is to guarantee the independence of judges. Such autonomous exercise must be guaranteed by the State both in its institutional aspect, that is, regarding the Judiciary as a system, as well as in connection with its individual aspect, that is to say, concerning the person of the specific judge. The purpose of such protection lies in preventing the Judicial System in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary or even by those judges with review or appellate functions." I/A Court H.R., *Case of Apitz Barbera et al.* ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 55.

Likewise, public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge's freedom of action. I/A Court H.R., *Case of Apitz Barbera et al.* ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

⁵²⁶ IACHR, Case 11,139, Report No. 57/96, William Andrews (United States), *Annual Report of the IACHR 1997*, paras. 159-161. See, by way of analogy, European Court of Human Rights, *Findlay v. United Kingdom*, February 25, 1997, *Reports 1997-I*, p. 281, para. 73. IACHR, Report on Terrorism and Human Rights, 2002, para. 229.

329. Accordingly, the Commission observes that the subordination of the courts to the Council of State, presided over by the head of state, represents direct dependence of the judicial branch on the directives of the executive branch. In the view of the Commission, this dependency on the executive branch does not offer an independent judicial branch capable of providing guarantees for the enjoyment of human rights.

330. According to the information received in 2010, the Cuban courts had persisted in using summary procedures without proper guarantees, such as, for example, the trial and conviction in 2010 of Diana Virgen García, an independent journalist who was allegedly arrested by the police at her home on April 20, 2010. According to the information, the police alleged that she was arrested due to a brawl with her 23-year-old daughter that had occurred two weeks earlier.⁵²⁷ After holding her incommunicado for 48 hours, she was allegedly subjected to a summary procedure and in less than 72 hours convicted and sentenced to one year and three months of deprivation of liberty for the crime of “arbitrary exercise of the right and threats,” without defense counsel or the minimal legal guarantees. According to the information, generally the police avoid cases of family brawls motivated by housing problems, and when they intervene, the sanctions consist of fines. In the weeks prior to her arrest, she had allegedly been threatened for marching on several occasions through the streets of Havana in support of the Ladies in White. On appeal, and with an attorney, the Provincial Court of Havana, on May 14, 2010, ordered her release with a fine of 300 pesos.

331. The Commission considers the repeated use of summary trials in Cuba, without observing due process guarantees, including the minimum guarantees necessary for the accused to exercise his or her right to an adequate legal defense, to be an extremely serious matter. On this last point, the IACHR has previously received information regarding the ineffectiveness of public defenders, particularly when the State keeps them from communicating freely and previously with their clients.⁵²⁸

332. The Commission has repeatedly recommended that the State of Cuba adopt the necessary measures for bringing its laws, procedures, and practices into line with international human rights provisions. In particular, the Commission has recommended that it reform its criminal legislation so as to ensure the right of justice and the right to due process, and to initiate a process of reforming its Constitution with a view to ensuring the independence of the judicial branch.

333. In Report on the Merits 67/06⁵²⁹, in Case 12,476 (Oscar Elías Biscet *et al.*) – regarding the political dissidents who were detained and prosecuted using very summary procedures in the so-called “Black Spring” of 2003, based on the application of Article 91⁵³⁰ of the Cuban Criminal Code, as well as Law 88 on Protection of the National Independence and Economy of Cuba – the IACHR recommended that the Cuban State:

2. Adopt the measures necessary to adapt its laws, procedures and practices to international human rights law. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend

⁵²⁷ Blog of Diana Virgen García, http://www.daniavirgengarcia.com/2010_05_01_archive.html.

⁵²⁸ See Report on the Merits No. 67/06, approved October 21, 2006.

⁵²⁹ The Cuban State and the petitioners’ representatives were given notice of Report on the Merits No. 67/06, approved October 21, 2006, on November 1, 2006. See in IACHR, Press Release 40/06, “IACHR announces two reports on human rights violations in Cuba,” of November 1, 2006.

⁵³⁰ Article 91 of the Criminal Code of Cuba: One who, in the interest of a foreign state, performs an act for the purpose of causing detriment to the independence of the Cuban State or the integrity of its territory shall be subject to a sanction of deprivation of liberty of 10 to 20 years or death.

its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.

334. In addition, in Report on the Merits 68/06 on Case 12,477⁵³¹ (Lorenzo Enrique Copello Castillo *et al.*), regarding three persons who were executed by firing squad after a very summary procedure, in violation of the right to defense, impartiality, and judicial independence, the IACHR recommended to the Cuban State:

1. Take the necessary steps to adapt its laws, procedures and practices to international human rights legislation. In particular, the Commission has recommended that Cuba's criminal legislation be amended in order to ensure the right to justice and the right to a fair trial, and to initiate a process to reform its Constitution to ensure the independence of the judiciary.

335. Articles 479 and 480 of the Law on Criminal Procedure provide for the possibility of applying a summary procedure. The same law also establishes that in the event of prosecution by a summary procedure, the court may, insofar as it considers it necessary, reduce the terms for the preliminary proceedings, the oral trial, and the appeals.

Summary Procedure

Article 479: If called for by exceptional circumstances, the Prosecutor General of the Republic may call upon the President of the People's Supreme Court to decide if crimes that come under the jurisdiction of any of the courts of justice may be tried through a summary proceeding, except for those that come under the jurisdiction of the People's Municipal Courts.

Article 480: In the summary procedure, if deemed necessary by the competent court, the periods for processing prior proceedings, the oral hearings and appeals may be reduced.

336. In this respect, the Commission observes that the decision to apply an exceptional procedure is up to those who impart justice in the specific case; in addition, the decision to set the terms for all the steps in the trial, including the preliminary ones, those that correspond to the oral trial, and the terms of the appeals, is up to the trier.⁵³²

337. The Commission has observed that in Cuba political dissidents and those who have attempted to flee the island have been prosecuted through summary trials. Indeed, the death penalty has been applied as a result of such trials, which violate the minimum standards of due process.⁵³³

338. In this context of lack of independence, arbitrariness, and summary procedures, another special concern of the IACHR is that the death penalty is a sanction for a significant number of crimes. In effect, the Criminal Code of Cuba establishes the death penalty in crimes against state security; peace and international law; public health; life and bodily integrity; the normal development of sexual relations; the normal development of childhood and youth; and against property rights. Under the title on crimes against state security, the crimes for which the death penalty applies as the maximum punishment are the following: acts against the independence or territorial integrity of

⁵³¹ IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

⁵³² IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, para. 87-92.

⁵³³ IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, paras. 87-92.

the state; promotion of armed action against Cuba; armed service against the state; helping the enemy; espionage; rebellion⁵³⁴; sedition; usurpation of political or military command; sabotage; terrorism; hostile acts against a foreign state; genocide; piracy; mercenary activity; crime of apartheid⁵³⁵; and, other acts against the state. In addition, the death penalty is a possible punishment for following forms of criminal conduct: unlawful production, sale,, demand, trafficking, distribution, and possession of drugs, narcotics, psychotropic substances, and other substances with similar effects⁵³⁶; murder⁵³⁷; rape⁵³⁸; pederasty with violence⁵³⁹; corruption of minors⁵⁴⁰; robbery with violence or intimidation of persons.⁵⁴¹

339. The Commission considers that the application of the death penalty requires the existence of an independent judicial branch in which the judges exercise a high level of scrutiny and in which the guarantees of due process are observed. In this respect, the Inter-American Court has held that

capital punishment is not per se incompatible with or prohibited by the American Convention. However, the Convention has set a number of strict limitations to the imposition of capital punishment.⁵⁴² First, imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.⁵⁴³ Second, the sentence must be individualized in conformity with the characteristics of the crime, as well as the participation

⁵³⁴ Article 98: 1. Anyone who takes up arms to obtain any of the following objectives by force, shall be deprived of his/her freedom for ten to twenty years or sentenced to death: (a) wholly or partially, even if temporarily, prevent the higher organs of State and Government from exercising their functions; (b) change the economic, political and social regime of the socialist State; (c) wholly or partially change the Constitution or the form of government established thereby.

2. The same punishment shall be applied to anyone who takes any action aimed at promoting an armed uprising, if it materializes; otherwise the punishment is deprivation of freedom for four to ten years.

⁵³⁵ Article 120: 1. Anyone who, in order to set up and maintain domination by one racial group over another, and in accordance with extermination, segregation or racial discrimination policies, does any of the following, shall be deprived of his/her freedom for between ten and twenty years or sentenced to **death**: (a) denies the members of this group the right to life and freedom by murder; serious attempts against the physical or psychic integrity, freedom or dignity; torture or penalties or cruel, inhumane or denigrating treatment; arbitrary detention and illegal imprisonment; (b) imposes legislative or other measures on the group, aimed at preventing them from taking part in the political, social, economic and cultural life of the country and deliberately creating conditions to hamper its proper development, denying its members the rights and fundamental freedoms; (c) divides the population according to racial criteria, creating reserves and ghettos, forbidding marriages between different racial groups and expropriating their property; (ch) exploits the work of the members of the group, especially subjecting them to forced labor.

1. 2. If the deed consists of persecuting or in any way harassing the organizations and people who oppose apartheid, or fight against it, the sanction is deprivation of freedom for between ten and twenty years.

2. 3. Anyone committing any of the acts envisaged in the former sub-paragraphs, is responsible therefor, regardless of the country in which the guilty parties act or reside, and such responsibility extends, whatever the motive, to all individuals, members of the organizations and institutions and representatives of the State.

⁵³⁶ Cuban Criminal Code, Article 190.

⁵³⁷ Cuban Criminal Code, Article 263.

⁵³⁸ Cuban Criminal Code, Article 298.

⁵³⁹ Cuban Criminal Code, Article 299.

⁵⁴⁰ Cuban Criminal Code, Article 310.

⁵⁴¹ Cuban Criminal Code, Article 327.

⁵⁴² *Restrictions to the Death Penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*. Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, paras. 60-66.

⁵⁴³ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, para. 106; *Case of Raxcacó Reyes, supra* note 37, para. 68. See also *Restrictions on the Death Penalty (Articles 4(2) and 4(4) American Convention on Human Rights)*, para. 55.

and degree of culpability of the accused.⁵⁴⁴ Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must be strictly observed and reviewed.⁵⁴⁵

340. According to the information that the IACHR has, the last time that the death penalty was applied in Cuba was in 2003, when Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac were executed.⁵⁴⁶ Nonetheless, that judgment continues to be imposed as a result of summary proceedings. As indicated in Chapter IV of its 2008 Annual Report, the IACHR values the decision of the Council of State adopted on April 28, 2008 to commute the death sentence of those who had been sentenced to such a grave and irreparable sanction to life imprisonment or 30 years incarceration. The IACHR hopes that the commutation is extended to all those who have been sentenced to capital punishment, including those convicted of the committing terrorist offenses.

341. The IACHR reiterates its observation that maintaining the death penalty as a sanction for a significant number of forms of criminal conduct described by broad or vague language⁵⁴⁷, together with criminal procedures that lack sufficient due process guarantees, as they are carried out in summary form, without trustworthy defense counsel, and with juries of dubious independence and impartiality, are violative of the international human rights instruments and case law. This may lead to the application of disproportionate sanctions and to enormous discretion that may eliminate any possibility of effective defense of the individual vis-à-vis the authorities.⁵⁴⁸ For example, Article 91 of the Criminal Code provides for sentences of 10 to 20 years in prison, or the death penalty, for “whoever, in the interest of a foreign State, commits an act intended to cause damage to the independence of the Cuban State or the integrity of its territory.”

342. In addition, Article 72 of the Criminal Code provides that “special inclination on the part of a person to commit crimes, as demonstrated by behavior that is clearly contrary to the standards of socialist morality is considered dangerous.” The definition of “dangerous state” is established at Article 73(1), which provides that a “dangerous state is present when an individual displays some of the following signs of dangerousness: (a) habitual drunkenness and dipsomania; (b)

⁵⁴⁴ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 42, paras. 103, 106, and 108; and *Case of Raxcacó Reyes*, *supra* note 37, para. 81. See also *Restrictions on the Death Penalty (Articles 4(2) and 4(4) Americana Convention on Human Rights)*, para. 55.

⁵⁴⁵ I/A Court H.R., *Case of Boyce et al. v. Barbados*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 169. See also I/A Court H.R., *Case of Fermín Ramírez*, *supra* note 37, para. 79. See also *Restrictions on the Death Penalty (Articles 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 7, para. 55, and *El The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 135.

⁵⁴⁶ IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

⁵⁴⁷ As the Inter-American Court has observed, “Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.” See, for example, I/A Court H.R., *Case of Castillo Petruzzi et al.*, Judgment of May 30, 1999, Series C. No. 52, para. 121.

⁵⁴⁸ According to the State of Cuba, the application of the death penalty is exceptional and only for committing the most serious crimes. The Cuban Criminal Code establishes as follows:

Article 29.1. The death penalty is an exceptional punishment and shall only be applied by the court to persons who have committed the most serious of crimes for which it was established.

2. The death penalty is not applicable to minors under the age of 20, or to women who were pregnant when they committed the crime or are pregnant when sentenced to death.

3. Execution by shooting is the method used for capital punishment.

drug addiction; (c) antisocial behavior.” Article 73(2) provides: “an individual who habitually breaks the rules of social coexistence by acts of violence, or by other provocative acts, violates the rights of others or by his general behavior breaks the rules of coexistence or disrupts the order of the community or lives, as a social parasite, off the work of others or exploits or practices socially reprehensible vices, is considered to be in a dangerous state on account of his or her antisocial behavior.”

343. For its part, Article 75(1) of the Criminal Code provides that “an individual who, without being in any of the dangerous states listed in Article 73, by his links or relationships with persons potentially dangerous to society, other persons and the social, economic and political order of the socialist State, could become prone to crime, will be warned by the competent police authority with a view to preventing him from carrying out socially dangerous or criminal activities.” The IACHR has noted in previous reports that the Cuban Government uses the concepts of “dangerousness” as well as “special proclivity of a person to commit crimes” to detain opponents of the regime.⁵⁴⁹

344. If a person engages in one of the types of dangerousness cited above, so-called *security measures* can be applied to him or her, which may be post-delinquency or pre-delinquency (*post o predelictivas*). In the case of pre-delinquency security measures, Article 78 provides that the National Revolutionary Police can impose therapeutic, re-educational, or surveillance measures on a person declared to be in a dangerous state. One of the therapeutic measures entails, according to Article 79, admission to an assistance, psychiatric, or detoxification center.⁵⁵⁰ Re-educational measures are applied to antisocial individuals and consist of admission to a specialized work or study center and turning the person over to a work collective to keep tabs on and orient the person’s conduct. Such measures are for one to four years.

345. These provisions of the Cuban Criminal Code are supplemented by Decree No. 128, issued in 1991. That decree establishes that the declaration of pre-delinquency dangerous state should be decided summarily. In effect, according to that decree, the Revolutionary National Police opens a case that shows the conduct of the “dangerous person” and presents it to the local prosecutor, who decides in two days whether to present the case to the Municipal Court. If the Municipal Court considers the file complete, it shall set a date for the hearing in which the parties will appear. Twenty-four hours after the hearing is held, the Municipal Court must hand down its judgment.

346. The Inter-American Commission on Human Rights considers that the criminal law should sanction criminal acts or possibly their frustrated attempt, but never attitudes or presumptions of such acts.⁵⁵¹ *Dangerousness (peligrosidad)* is a subjective concept on the part of the person who makes the assessment, and its vagueness is a factor of juridical insecurity for the population, since it creates the conditions for the authorities to commit arbitrary acts. The Commission considers it extremely serious that these provisions – in themselves incompatible with the principles established in the American Declaration – are applied by means of a summary procedure to persons who have not committed any criminal offense but who as per the discretion of the Cuban authorities are considered *dangerous* to society, and therefore deserving of severe security measures in which they are deprived of liberty.⁵⁵² In these cases, the State intervenes in the lives of citizens without limitations to maintain *social peace* and violates, without hesitation, the right to individual liberty.

⁵⁴⁹ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

⁵⁵⁰ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

⁵⁵¹ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

⁵⁵² IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

347. The Commission reiterates that the lack of an independent administration of justice in Cuba, together with the lack of guarantees of due process, as well as the use of summary trials and the ambiguity and/or breadth of some criminal law provisions in the legislation affect the fundamental rights of persons.

348. In summary, the Commission calls on the Government of Cuba to bring its procedural rules into line with the international standards on due process so that those persons who come before or are brought before the courts for the determination of their rights and responsibilities may have minimal legal guarantees to mount their defense. The Commission considers that the existing legal framework does not comply with Cuba's international obligations in this respect. The full observance of the judicial guarantees enshrined in the American Declaration is based on an independent and autonomous judicial branch and on the enforcement of provisions that are clear and specific and do not allow for the discretionary abuse of authority.

3. Deprivation of Liberty of Political Dissidents⁵⁵³

349. In 2006, the Commission notified the parties and published, in its Annual Report, Report on the Merits 67/06⁵⁵⁴, in Case 12,476 (Oscar Elías Biscet *et al.*) regarding the political dissidents who were detained and prosecuted by highly summary procedures in the so-called "Black Spring" of 2003, based on the application of Article 91⁵⁵⁵ of the Cuban Criminal Code, as well as Law 88 on Protection of the National Independence and Economy of Cuba, for acts related to the exercise of fundamental freedoms such as the freedom of thought, conscience, opinion, and expression, as well as the right to peaceful assembly and free association. The sentences ranged from six months to 28 years in prison.

350. In Report 67/06, the IACHR concluded that the Cuban State violated several articles of the American Declaration, including Articles I, II, IV, VI, XX, XXI, XXII, XXV, and XXVI, to the detriment of the victims in the case; Article V in relation to eight of the victims; the violation of Article X to the detriment of 14 victims, and the violation of Article XVIII to the detriment of 73 victims. In addition, the Commission concluded that the State had not violated Articles IX, XI, or XVII of the American Declaration to the detriment of the victims.⁵⁵⁶

⁵⁵³ The Government of Cuba denies that the victims of Case 12,476 are dissidents. In the report entitled "White Book 2007," published at the official website of the Ministry of Foreign Affairs of Cuba, it states: "This slanderous campaign — still going on today with the cynical, complicit and active help of several client governments of the Empire — has resorted to sophisticated disinformation techniques developed by the Nazi-Fascists services, unjustifiably and repeatedly depicting the justly convicted mercenaries by giving the false epithets of 'dissidents,' 'peaceful political opponents,' 'human rights defenders,' 'independent journalists, librarians or unionists.' The idea is to make people believe that the mercenaries were 'arbitrarily and unjustly' convicted simply for 'peacefully exercising the right to freedom of speech, opinion and association.'" In "White Book 2007," *op. cit.*

⁵⁵⁴ Notice of Report on the Merits No. 67/06 was given to the Cuban State and the petitioners' representatives on November 1, 2006. See in IACHR, Press Release No. 40/06, "IACHR announces two reports on human rights violations in Cuba," of November 1, 2006.

⁵⁵⁵ Article 91 of the Criminal Code of Cuba: "Whoever, in the interest of a foreign State, commits an act with the intent to cause damage to the independence of the Cuban State or the integrity of its territory, shall receive a sentence of between ten and twenty years or a death sentence."

⁵⁵⁶ See complete report at: <http://www.cidh.org>

351. Moreover, the IACHR recommended to the State of Cuba:

1. Order the immediate and unconditional release of the victims in this case, overturning their convictions inasmuch as they were based on laws that impose unlawful restrictions on their human rights.

2. Adopt any measures necessary to adapt its laws, procedures and practices to international human rights law. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.

3. Redress the victims and their next of kin for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration herein established.

4. Adopt the measures necessary to prevent a recurrence of similar acts, in keeping with the State's duty to respect and ensure human rights.⁵⁵⁷

352. Regarding the second, third and fourth recommendation of the Commission, the Cuban State, to date, has failed to comply. Regarding the first recommendation, this year Orlando Zapata Tamayo, one of the victims of Case 12,476 who had been sentenced to three years of prison, died of starvation after 85 days on hunger strike to protest what he described as continued beatings by the guards and other abuses in prison. Information received by the IACHR indicates that Mr. Zapata Tamayo had been subjected to torture and inhuman treatment at the Kilo 8 prison. Mr. Zapata Tamayo was sentenced in Cuba to other penalties entailing imprisonment because of his dissident opinions. According to press reports, he was sentenced to 36 years in prison. In a press release of February 26, 2010, the IACHR lamented and condemned the death of this Cuban dissident.⁵⁵⁸

353. The day after Orlando Zapata's death, on February 24, 2010, Guillermo Fariñas, a journalist and human rights defender, began a hunger strike in Cuba to protest Zapata's death and to demand the release of 25 political prisoners who were ill. The situation of Guillermo Fariñas was also the subject of a pronouncement by the IACHR, in press release 33/10 of March 19, 2010. Fariñas maintained his protest for 135 days until the Cuban Government announced, in the first week of July 2010, the release of 52 political prisoners.

354. In effect, according to the information received, thanks to the mediation of the Catholic Church in Havana, on July 7, 2010, the Government of Cuba, through its president, Raúl Castro, informed the representative of the Catholic Church in Cuba, Cardinal Jaime Ortega, and the then-foreign minister of Spain, Miguel Ángel Moratinos, that it would release 52 political prisoners to their families within three to four months. These persons were said to belong to the group of 75 opponents and independent journalists arrested in 2003, in the so-called "Black Spring," which was the subject of Case 12,476. By press release 69/10 of July 13, 2010, the IACHR expressed its positive view of the decision by the Government of Cuba.

355. While the initial commitment of the Cuban Government was to release those prisoners of the group of 75 who remained in the prisons, it subsequently announced its decision to remove other political prisoners from prison to be transferred to Spain. The IACHR received information on Ciro Pérez Santana, sentenced to 20 years and in prison since 1994; Arturo Suárez

⁵⁵⁷ See complete report at: <http://www.cidh.org>

⁵⁵⁸ Press Release 22/10, of February 26, 2010. Available on the Internet: <http://www.cidh.oas.org/Comunicados/Spanish/2010/22-10sp.htm>.

Ramos, serving a 30-year sentence, of which he has served 22 years; and Rolando Jiménez Posada, sentenced to 12 years in prison on April 25, 2003.⁵⁵⁹ Also released were Ramón Fidel Basulto and Joel Torres, who were serving sentences of 30 years and 10 years respectively, in both cases accused of “piracy” for the crime of stealing a launch for the purpose of illegally leaving the country. Also released was Adrián Álvarez, the political prisoner who has spent the most time in a Cuban prison; he entered prison in 1985, accused of acts against state security and espionage, and was sentenced to 30 years.⁵⁶⁰

356. It should be noted that as of the date of the preparation of this report, 51 dissidents had been released, 40 of them victims in Case 12.476 (“Group of 75”).

357. The Cuban Government also stated that it would grant “out-of-prison leave” (*“licencia extrapenal”*) to those prisoners of conscience who refuse to leave their country after their release.⁵⁶¹ This allows them to stay in Cuba free, though they will continue to be subject to the case brought against them. This would be the case of Arnaldo Ramos Lauzerique, who was said to have been released recently after being granted such out-of-prison leave.

358. According to the group “Ladies in White,” the Government of Cuba is bringing psychological pressure to bear on those political dissidents who do not accept release and immediate transfer to Spain.⁵⁶² Two political dissidents, Ángel Juan Moya Acosta and Héctor Maseda Gutiérrez, victims in Case 12,476, have told the Cuban press that being released with a possible out-of-prison leave for them is “one more hoax by the Cuban regime, which I do not accept. That was not what Fariñas demanded in his hunger strike. Nor have the Ladies in White struggled for more than seven years for out-of-prison leave; that is nothing more than lack of respect.”⁵⁶³

359. In this respect, in the recommendations put to the Government of Cuba in its Report on the Merits No. 67/06, the IACHR refer to the immediate and unconditional release of the victims and nullify their convictions. Accordingly, the granting of out-of-prison leave to the victims of Case 12,476 who do not wish to leave Cuba does not constitute full implementation of the IACHR’s recommendations, because it keeps the convictions established in trials that did not meet the minimum standards of due process.

360. In keeping with the American Declaration of the Rights and Duties of Man, every individual has the right to humane treatment when deprived of liberty.⁵⁶⁴ The Commission has referred in several of its reports to the issue of conditions of detention in Cuba.⁵⁶⁵ The Commission considers that the responsibility of the state as regards the integrity of the persons under its

⁵⁵⁹ Article in *Diario Europea Press*, of October 21, 2010. Available on Internet: <http://www.europapress.es/latam/cuba/noticia-cuba-llegaran-manana-espana-primeros-presos-liberados-no-forman-parte-grupo-75-20101021182044.html>.

⁵⁶⁰ *Diario El País*, article of November 19, 2010. Available on Internet: http://www.elpais.com/articulo/internacional/Llega/Espana/preso/politico/tiempo/ha/pasado/carcel/cubana/elpepuint/20101119elpepuint_12/Tes.

⁵⁶¹ Article in *Diario El País*, “Cuba deja quedarse a los ex presos que no quieren exiliarse,” September 23, 2010.

⁵⁶² Article in *Diario De Cuba*, September 20, 2010, “Damas de Blanco denuncian presión psicológica.”

⁵⁶³ *Cubanet*, September 29, 2010.

⁵⁶⁴ American Declaration, Article XXV.

⁵⁶⁵ IACHR, *Annual Report 1995*, Chapter V, para. 71; IACHR, *Annual Report 1994*, Chapter IV, p. 168; *Annual Report 2004*, Chapter IV, para. 59-66; *Annual Report 2005*, Chapter IV, paras. 76-81. *Annual Report 2006*, Chapter IV, paras. 65-70.

custody is not limited to the negative obligation to refrain from torturing or mistreating such persons. As prison is a place where the state has total control over the prisoners' lives, its obligations to them include, among others, the measures of security and control necessary for preserving the life and personal integrity of persons deprived of liberty.

361. Nonetheless, the Commission continued receiving information on conditions of deprivation of liberty of political dissidents in Cuba and particularly on the denigrating treatment used by the prison authorities against persons considered political opponents. The Commission has previously expressed its concern over the large number of political prisoners – particularly the victims in Case 12,476 who have now been released – who are said to be suffering from chronic diseases including visual, renal, cardiac, and pulmonary ailments, many of which are said to have arisen from or to have been aggravated by their detention, without appropriate medical care, including elderly persons.

362. In statements to the Spanish press after his release, José Luis García Paneque stated: "They imprisoned us with the objective of destroying us morally, but they have not accomplished it. It was distressing and very harsh, but I have not lost my spirit."⁵⁶⁶ According to the interview, for the seven years and four months he was incarcerated, he went through nine prisons. During the first two years he was in solitary confinement, which in his view entails "the most cruel and subhuman treatment that can be inflicted on a person." He was only allowed to make one phone call a month, while family visits were limited to just two hours every three months. Conjugal visits took place once every five months.

363. On October 28, 2010, during the 140th regular period of sessions of the IACHR, a public hearing was held on the "Situation of the human rights of independent trade union leaders in Cuba," requested by the Grupo Internacional para la Responsabilidad Social Corporativa en Cuba (GIRSCC: International Group for Corporate Social Responsibility in Cuba). At the hearing, the IACHR received information on the subhuman conditions suffered by persons deprived of liberty in Cuba, through the testimony of six unionists, Nelson Molinet Espino, Héctor Valle Fernández, Miguel Galván Gutiérrez, Víctor Rolando Arroyo, Horacio Piña Borrego, and Alfredo Felipe Fuentes, all victims in Case 12,476, who were detained during the so-called "Black Spring" in 2003, and released this year by the Government of Cuba, to be transferred to Spain. Following is a transcription of part of their testimony to the IACHR:

Nelson Molinet Espino

"We lived in a cell that was three meters by two meters, I had to relieve myself in a latrine, wash myself, I had to sleep on the floor for seven months, due to the heat there was no ventilation."

"Sometimes they were moved to cells that could accommodate 40 persons, and there were 120."

Héctor Raúl Valle

"Being there [in prison], in Villa Marita, I was tortured psychologically, the water I drank, I drank from a toilet, where I relieved myself. There we lived in that little room, four persons, we practically didn't fit; the heat was unbearable.... They pressured me to condemn the U.S. government, to show the world that I served the U.S. government, but that wasn't the case.... I didn't sign any document, and that's why in the trial they alleged that I didn't cooperate."

⁵⁶⁶ Statements to Diario ABC of Spain.

"There I lived with frogs, scorpions, mice, and other insects. The heat was unbearable. When I ate and drank water it was as though I'd bathed. The suffering was great."

"On occasion of each conjugal visit my wife had to strip, they were harsh moments for her..., until I got them not to do it anymore."

"[In prison] Many of us entered without any disease, and we came out with many diseases. In my case, I suffer from high blood pressure, erosive arthritis, scarring ulcer, cervical arthrosis, reduction of the spaces, melasma, loss of vision.... Not just the political prisoners, but the common prisoners were affected by practically the same problems."

"At times there were no drugs, there were no doctors to serve us, not even a nurse to take my pressure. It was very tough...."

Víctor Rolando Arroyo Carmona

"[Upon arriving in Guantánamo] they transferred them to punishment cells, walled in and in solitary confinement.... There a very difficult situation began, because the second, third day of being in those cells we were visited by a general ..., he and I had a verbal confrontation, in addition to other officers. I was immediately taken away, to even more rigorous cells. They kept me in those cells for almost three months, and they had me sleep on a board, nothing else.... They are cells in deplorable hygienic conditions, almost all reeking of excrement, feces, from that cell and others. The rats, any type of animal. The cold and the heat; and the food and water were limited."

"Yet a situation of harassment and hostility directed at my family came such that ... we decided to go on a hunger strike, and for me it lasted 24 days.... At the time I decided to begin the hunger strike I was hit by an officer, the chief of internal order ... it wasn't the first time I'd been the target of aggression by prison officials."

"The officers who are in the prisons, even some workers from the Ministry of Interior, grow rich at the cost of the prisoners' labor, since part of their salaries often goes missing, is lost. They use prisoners for the officers' private work.... At Guantánamo there was a carpenter ... and he sustained a serious injury in the hand while making furniture for the prison warden and some officers, nonetheless, this man did not receive medical assistance, and he did not receive pay for the days of work missed.... This was reported, but no one can pursue the legal channels, it's not known, and if it is known nothing is done."

"In these prisons I had to put up with physical and psychological assaults, the psychological was losing my correspondence, not allowing me to make phone calls to my family, situations with health or medical and physical care, the aggressiveness, the beatings by the guards, it wasn't one, it was several."

Horacio Julio Piña Borrego

"I was taken to a prison more than 700 kilometers from my home, I was confined there to an isolation cell, 1.30 wide and 2.77 long. That included a toilet and a shower. My corridor was 56 cm. I was there for one year and one month."

"From there I was transferred to a cell, which was a laughable space, that is, for 24 prisoners it was 4 meters wide by 6 meters long. A collective toilet with no privacy. Sometimes we had to sleep on the floor, because the temperature was more than 40 degrees, because the ambient temperature, plus the body temperature, plus that from the whole day, we felt at night...."

"The medical situation ... we were always told we had differentiated treatment, by which I mean it was really bad, I can just imagine what it was like for the common prisoners."

"In Pinar del Rio I witnessed several deaths.... Manuel Sotolongo [common prisoner], at 6 in the afternoon began to feel a pain in the chest, which ran down his arm, at 10 pm he once again said he was feeling this pain and it had worsened. A little after 12 the prisoners knocked on the door for them to come and attend to him. They removed him a little after 1, a male nurse attended to him, gave him an aspirin, and sent him back to the cell. At 3 the same thing happened again, and they said his pressure was fine, this nurse (not a professional), brought him back again. At 5:45 ... he fell out of bed and it was a stroke, he fell from the bed and the prisoners picked him up and went running to the first aid station. As he was an obese prisoner they couldn't get him on a stretcher, and they put him on the floor. From my cell ... we saw how the man died at 6:13 and at 6:15 the physician came who was going to attend to him."

"I had just one ailment when I entered prison, which was emotive hypertension, which is now chronic. I have an ulcer provoked by the doctors, because I had a cervical problem which worsened due to the conditions, and they were giving me Piroxicam but without telling me it had to be with food, [plus when I got out] I had a hernia."

Alfredo Felipe Fuentes

"We met the lawyer five minutes before the trial, some with no time. In other words, after being held in incommunicado detention for one month, and without any possibility of accessing documents to prepare the defense's case; whereas the prosecutor's office had like a month or more to prepare its case."

"After the trial ... they locked us up in cells that I would describe as torture cells. I'm talking about the Guamaján prison in the province of Villa Clara.... There, for example, we were in a cell that is 1.40 meters wide by 2 meters long, plus a toilet area, a rustic toilet area, without any windows of any kind, the cells walled in, for one year."

364. The Commission reiterates to the State that it should observe the United Nations Standard Minimum Rules for the Treatment of Prisoners⁵⁶⁷ and the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas of the Inter-American Commission on Human Rights.⁵⁶⁸

365. The Commission also reiterates to the Cuban State the recommendation to immediately and unconditionally release all the victims of Case 12,476.

4. Restrictions on the right of residence and movement

366. The American Declaration of the Rights and Duties of Man stipulates: "Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will."⁵⁶⁹ While the American Declaration does not explicitly establish the right of every person to return to his or her country, the Commission considers that it is implicitly recognized in that instrument. Accordingly, the IACHR has held that "The right of every person to live in his own country, to leave and return when he deems fit..." is a basic right that "is recognized in every international instrument that

⁵⁶⁷ The Inter-American Commission has indicated repeatedly that the Standard Minimum Rules for the Treatment of Prisoners may be understood as adequate references to the minimum international standards for the humane treatment of prisoners, including the basic standards with respect to accommodations, hygiene, medical treatment, and physical exercise. See IACHR, Report No. 27/01, Case 12,183, Jamaica, para. 133; Report No. 47/01, Case No. 12,028, Grenada, para. 127; Report No. 48/01, Case 12,067, Bahamas, para. 195; Report No. 38/00, Case No. 11,743, Grenada, para. 136.

⁵⁶⁸ IACHR, Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.

⁵⁶⁹ Article VIII of the American Declaration of the Rights and Duties of Man.

protects human rights."⁵⁷⁰ In effect, the Universal Declaration of Human Rights, at Article 13(2), stipulates: "Everyone has the right to leave any country, including his own, and to return to his country."

367. The IACHR has previously indicated that according to the above-cited texts, there is a relationship between the right of residence and movement and the right to nationality. The right to nationality is recognized by the American Declaration at its Article XIX and the Commission has indicated it is essential that it be respected at all times, condemning those situations in which the right to nationality is violated as a result of the actions by governments against their political adversaries.⁵⁷¹

368. In addition, the IACHR considers that as regards the right to residence and movement, its exercise can in no way give rise to the deprivation of nationality, and that this sanction, if imposed on those grounds, would be illegitimate; hence in this case the loss of nationality could be brandished by any government to keep a person from returning, in any capacity, to his or her country of origin.⁵⁷²

369. The Commission observes that in Cuba the right to residence and movement does not enjoy constitutional protection, which is incompatible with the guarantees of the regional system.⁵⁷³ Moreover, the IACHR notes that Article 216(1) of Cuba's Criminal Code provides that one who leaves the national territory or performs acts aimed at leaving the territory without complying with legal formalities may be deprived of liberty for one to three years, or subjected to a fine of 300 to 1,000 quotas.⁵⁷⁴

370. The IACHR observes that by Law No. 989 of December 5, 1961, it was ordered that all assets, rights, equity holdings, and securities of those persons who leave Cuban territory definitively be nationalized by confiscation. In addition, by joint resolution of August 22, 1995⁵⁷⁵ it was ordered that in those cases in which occupants with a right to the dwelling remained in it, the inventory would be taken with the emigrants' assets, mindful of the sworn statement and such assets that have heritage value for the State. Accordingly, the movables, personal effects, electrical appliances, household and personal objects and goods that do not have heritage value shall be offered without any payment to the occupant or occupants recognized to have the right to acquire the property rights to the real property. The law also indicates that if the assets are part of the community property and the spouse who did not emigrate is not assigned housing for failure to meet the requirement of time of living together, he or she shall be offered the option of buying them for the value of the emigrant's share with a discount of 75% of their value. In addition, if the inventory includes assets that have heritage value and the non-emigrant spouse proves that they

⁵⁷⁰ IACHR. *Diez Años de Actividades 1971-1981*, General Secretariat of the Organization of American States, Washington, D.C., 1982, p. 327.

⁵⁷¹ IACHR. *Diez Años de Actividades 1971-1981*, General Secretariat of the Organization of American States, Washington, D.C., 1982, p. 330.

⁵⁷² IACHR, *Annual Report 1983*, Chapter VIII, Right to Residence and Movement.

⁵⁷³ IACHR, *Annual Report 1983*, Chapter VIII, Right of Residence and Movement.

⁵⁷⁴ Article 216 of the Criminal Code of Cuba, Chapter XI, Second Section. Subsection 2 of the same article indicates: "f in order to carry out the act referred to in the previous section one uses violence or intimidation of persons or force in respect of things, the sanction is the deprivation of liberty for three to eight years." Subsection 3 establishes: "The offenses provided for in the foregoing sections are sanctioned independent of whether they are committed in order to carry it out, or on occasion of carrying it out."

⁵⁷⁵ Joint Resolution INV-MININT-MINJUS of August 22, 1995 "On the execution of investigative steps to implement Law 989 of December 5, 1961."

were acquired during the marriage, he or she will also be offered the option of purchase for the value of the emigrant's share with no discount whatsoever.⁵⁷⁶

371. The citizens of Cuba require official permission to leave and enter the country. With respect to entering the national territory, citizens must have their passport authorized. This consists of having a permit to enter Cuba, which, after authorization by the immigration authorities, enables the holder of the passport to travel to the country so long as the passport is current. As of June 1, 2004, permanent citizens abroad who are in the category of émigrés can travel to the country with their authorized Cuban passport without needing an entry permit. Nonetheless, to authorize the passport, one must deliver it to the consular office and expressly request the authorization. The IACHR was informed that there is no express time for granting the authorization, which results in long waiting periods for obtaining it. Those Cuban citizens who left Cuba before January 1, 1971, and wish to travel to Cuba with the passport of the country where they reside must apply for a permit to enter Cuba.

372. According to the regulation of the immigration law, the current Cuban passport is valid for two years, and can be extended for two more years on two successive occasions.⁵⁷⁷ The Commission notes that the fee to apply for a passport is quite high, considering the average income in Cuba: It is approximately US\$ 50, plus the payment for exiting the country, which comes to US\$ 150, in addition to other costs depending on the reason for leaving.⁵⁷⁸ For those Cubans who wish to obtain their passport abroad the figures range from US\$ 230 to US\$ 350.

373. In addition, if a person who has had Cuban citizenship seeks to enter the country as the bearer of a foreign passport, he or she must present, when applying for the respective visa, documentary proof that the competent authority has ordered that he or she has lost his or her Cuban citizenship. Without meeting that requirement the visa will not be issued nor will the person be admitted to Cuba as a foreigner. According to the information received, in practice it is very difficult to secure documentary evidence on the loss of Cuban citizenship, which leads, in practice, to these persons not being able to enter the country.

374. According to the immigration police, those persons who want to and qualify for being able to file an application for definitive return to Cuba may only be women over 60 years of age, men over 65 years of age, and persons under 16 years of age⁵⁷⁹, severely restricting this possibility for citizens of other ages who wish to return to the country.

375. With respect to internal migration, the IACHR received information that indicates that the government has been adopting more drastic measures against the movement of citizens within Cuba, through the more forceful enforcement of Decree 217 of April 22, 1997, which regulates internal migration to Havana.⁵⁸⁰ According to the decree, persons from elsewhere who

⁵⁷⁶ Resolution No. 328, 1998, Regulation on the confiscation of assets, National Housing Institute, Circular No. 2/98.

⁵⁷⁷ Decree No. 26 of July 31, 1976, Article 23.

⁵⁷⁸ If the motive of the trip is the visa lottery, family reunification, or marriage with a foreigner, one must pay US\$ 400 for the medical exam; if the motive is visit, one must pay US\$ 150 for a letter of invitation; if the motive of travel is marriage to a Cuban residing abroad, one must pay US\$ 550 to legalize the marriage. Figures provided by Juan Antonio Blanco, in a public hearing before the IACHR, 137th period of sessions, November 6, 2009. Source: Cuba Net.

⁵⁷⁹ Ministry of Foreign Affairs of the Republic of Cuba, Cuban Interests Section in Washington, Application for Definitive Return (PE-4).

⁵⁸⁰ Decree 217 of April 22, 1997, Internal Migration Regulations for the City of Havana and infractions thereof. This situation was also documented by the organization Human Rights Watch, <http://www.hrw.org/en/world-report/2009/cuba>.

wish to reside in the city of Havana must file a request with the president of the Council of the Municipal Administration corresponding to the place where the home is located, who shall decide whether the applicant meets the requirements. Article 8 of that decree establishes that a person who violates the internal migration regulations, for example by being domiciled in, residing in, or living with another permanently in the city of Havana without having been recognized to have the right to do so shall be subject to a fine of 300 pesos and the obligation to return immediately to the place of origin.⁵⁸¹

376. As stated in Annual Report 2009, while the IACHR recognizes that internal migration in Cuba is part of an international pattern of persons seeking better living conditions, the IACHR received information that indicates that the restrictions on internal migration mainly harm Cubans who are Afrodescendants and in poverty, who live in rural areas. As a result, some discrimination results between the white population that lives mostly in the cities, and the Afro-Cuban population, which seeks to migrate to the western provinces in search of better job opportunities.⁵⁸²

377. The decree contains a special provision that authorizes the agencies of the central administration of the State to issue the provisions necessary to reduce to the essential minimum temporary or definitive stays in the city of Havana of persons from elsewhere based on the activities or tasks associated with those agencies and their offices, and other entities subordinate to them. In addition, the Ministries of Labor and Social Security and Education shall exercise control over the provisions of the decree in the cases of workers and students, respectively, who move from other parts of Cuba to the city of Havana.

378. In addition, the Ministry of Interior and the Council of the Provincial Administration of the City of Havana, as well as all other corresponding agencies of the central administration of the State, are authorized to issue, in the framework of their respective legal powers, any complementary provisions they deem necessary for giving effect to and carrying out the decree.

5. Restrictions on the Freedom of Expression

379. In 2010, Cuba released 17 journalists who had been detained in 2003; the Inter-American Commission on Human Rights considered this a positive development. Even so, conditions persisted in Cuba that allow one to state that the conditions necessary for the exercise of the freedom of expression do not exist in Cuba.

380. The following paragraphs indicate some relevant facts related to the exercise of the freedom of expression in Cuba.

- Gains

381. Up until November, Cuba had released, on condition that they travel to Spain, 17 journalists who were part of a group of prisoners arrested in 2003, during a massive detention of political dissidents and independent journalists. The IACHR encouraged the Cuban State to continue the process so as to release all the political prisoners. It also reiterated that Cuba should set aside

⁵⁸¹ In addition, those who are from other territories of the country, and are domiciled, reside in, or live together permanently in the city of Havana, without the corresponding registration in the office of the identify card, are subject to a payment of 200 pesos and the obligation to return immediately to the place of origin. Those who remain domiciled in the city of Havana after the term set for registration or the permit from the respective office of the Identification Card authorizing him or her to be temporarily or transitorily there has lapsed, are subject to a payment of 200 pesos and the obligation to return immediately to the place of origin.

⁵⁸² IACHR, Annual Report 2009, Chapter IV, Situation on Human Rights in Cuba, p. 294.

the convictions of those persons, bring its procedural rules into line with international standards of due process, make the necessary reforms in keeping with its international human rights obligations, and implement a process of democratic normalization. The journalists released are: Léster Luis González Pentón, Omar Ruíz Hernández, Julio César Gálvez Rodríguez, José Luis García Paneque, Pablo Pacheco Ávila, Ricardo González Alfonso, Omar Rodríguez Saludes, Normando Hernández González, Mijail Bárzaga Lugo, Alfredo Pulido López, José Ubaldo Izquierdo Hernández, Fabio Prieto Llorente, Juan Carlos Herrera Acosta, Juan Adolfo Fernández Saínez, Víctor Rolando Arroyo Carmona, Miguel Galván Gutiérrez, and Alfredo Felipe Fuentes. According to the information received, of the group of journalists detained in the 2003 roundup, Pedro Argüelles Morán, Héctor Maseda Gutiérrez, and Iván Hernández Carrillo are still awaiting release.⁵⁸³

- **Acts of aggression, political harassment, or detentions for exercising the right of freedom of expression**

382. In 2010 the State maintained an attitude of intolerance towards the exercise of independent journalism and peaceful opposition demonstrations. The IACHR received information on two detentions of *Hablemos Press* correspondent Calixto Román Martínez Arias, from April 23 to May 13 and from May 5 to June 5. According to the information received, on the first occasion he had been arrested while covering a ceremony commemorating the death of dissident Orlando Zapata Tamayo. In the second incident, Martínez was detained when covering a demonstration of political opposition figures in Havana.⁵⁸⁴

383. In addition, the IACHR was informed that journalists from the Information Center of the Consejo de Relatores de Derechos Humanos de Cuba⁵⁸⁵, Juan Carlos González Leiva, Tania Maceda Guerra, and Sara Marta Fonseca Quevedo, had been held in Havana for five hours, on April 8, 2010, in order to keep them from attending a meeting. Police agents returned to harass and detain González and Maceda for several hours on August 1.⁵⁸⁶

384. On June 2, the director of the *Agencia de Prensa Libre Avileña*, José Manuel Caraballo Bravo, who was taking photographs in a peaceful protest, and reporter Raúl Arias Márquez, were said to have been arrested for several hours in Havana. According to the information received, police agents beat Arias on detaining him and then questioned the journalists and confiscated their camera, recorder, and telephone.⁵⁸⁷

⁵⁸³ Committee for the Protection of Journalists, October 12, 2010. [Cuba libera decimoséptimo periodista arrestado en redada de 2003](#); IACHR. July 13, 2010. Press Release No. 69/10. IACHR Welcomes Release of Prisoners in Cuba.

⁵⁸⁴ On that occasion, also arrested were independent journalist Carlos Serpa Maceira and six protesters, who were released shortly thereafter. Martínez remained in prison, and was said to have been deported to the province of Camaguey on June 5. Reporters without Borders, June 2, 2010. [Periodista detenido de nuevo, 10 días después de haber sido puesto en libertad](#); Periodistas en Español. June 11, 2010. [El periodista Moisés Leonardo Rodríguez recibe un "acta de advertencia" de las autoridades de Cuba](#).

⁵⁸⁵ The Consejo de Relatores de Derechos Humanos is a free, democratic, and plural forum that was constituted in May 2007 for the promotion and defense of human rights.

⁵⁸⁶ Cubanet. April 13. [Arrestan a periodistas independientes del Consejo de Relatores](#). Available at: http://www.cubanet.org/CNews/y2010/abril2010/13_N_2.html. World Organisation Against Torture. April 16. [La OMCT reitera su llamado a liberar a todos los presos de conciencia](#). Available at: <http://www.omct.org/es/urgent-campaigns/urgent-interventions/cuba/2010/04/d20649/>. International Federation for Human Rights. August 6, 2010. [Hostigamiento judicial, agresión y amenazas contra varios miembros del Consejo de Relatores de Derechos Humanos](#). Available at: <http://www.fidh.org/Hostigamiento-judicial-agresion-y-amenazas-contra>.

⁵⁸⁷ Misceláneas de Cuba. June 22, 2010. Detenido y despojado de sus instrumentos de trabajo José Manuel Caraballo Bravo, director de la agencia de prensa avileña. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=28441>; The Miami Herald. June 10, 2010. Two Independent Journalists Arrested Covering Anti-Government Protest. Available at: <http://www.miamiherald.com/2010/06/24/1698289/two-independent-journalists-arrested.html>.

385. The IACHR also received information regarding several detentions, in 2010, of independent journalist and human rights activist Julio Beltrán Iglesias, on May 4, May 18, and September 30 by state security agents.⁵⁸⁸

386. In addition, the IACHR received information according to which on January 29 police agents arrested journalist Juan Carlos Reyes Ocaña, of the agency *Holguín Press*, accused of “contempt,” “disobedience,” and “unlawful economic activity,” and held him for 24 hours. He was also said to have been arrested and threatened by the Police on December 4, 2009.⁵⁸⁹

387. The IACHR was also informed that journalist Oscar Sánchez Madán was released on April 11 after serving a three-year prison sentence. According to the information received, Sánchez was convicted in April 2007 of “pre-delictive social dangerousness.”⁵⁹⁰

388. Article IV of the American Declaration indicates that every person has the right to freedom of investigation, opinion, expression, and dissemination of thought, by any medium. The IACHR reiterates that principle 1 of the Declaration of Principles on Freedom of Expression says that: “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.”

389. The IACHR also recalls principle 9 of the Declaration of Principles on Freedom of Expression, according to which: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.” The IACHR understands that the detention and subsequent restrictions directed at the reporters are clear forms of restricting journalistic endeavor, and, therefore, the exercise of the freedom of expression.

- **Restrictions on the use of the Internet**

390. In 2009, the IACHR noted the restrictions and difficulties Cubans face when it comes to accessing the Internet. In 2010, the use of the Internet continues to be far from the reach of most of the population, due to its high cost, the low connection speeds⁵⁹¹, and the restrictive rules that limit or obstruct efforts to get on line.

⁵⁸⁸ Cubanet, May 7, 2010. Independent Journalist Duped and Arrested. http://www.cubanet.org/news_english_Jan_Dec_2010.html; Misceláneas de Cuba. May 20, 2009. Detenido arbitrariamente el periodista independiente Julio Beltrán Iglesias. Available at: http://www.cubanet.org/news_english_Jan_Dec_2010.html; Misceláneas de Cuba. October 8, 2010. Víctima de un secuestro el periodista independiente Julio Beltrán Iglesias. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=30182>.

⁵⁸⁹ Reporters without Borders. February 1, 2010. Un periodista disidente arrestado en Holguín. Available at: <http://es.rsf.org/cuba-un-periodista-disidente-arrestado-01-02-2010,36263.html>; Cubanet. February 2. Arrestado en Cuba el periodista Juancarlos Reyes Ocaña. Available at: <http://www.periodistas-es.org/reporteros/arrestado-en-cuba-el-periodista-juan-carlos-reyes-ocana>; Inter-American Press Association. December 6, 2009. Amenazan con dispararle a periodista. Available at: <http://www.sipiapa.com/cuba/espanol/noticia120809b.htm>.

⁵⁹⁰ Reporters without Borders. April 16, 2010. Tras la liberación de Oscar Sánchez Madán, veinticuatro periodistas siguen esperando a recobrar su libertad.

Available at: http://www.ifex.org/cuba/2010/04/16/sanchez_madan_released/es/.

⁵⁹¹ In Cuba there are two webs, one domestic, with limited access to information resources, and the other international. The average cost of one hour of connection to the domestic web network is approximately US\$ 1.63 and to the international web US\$ 5.48, in an economy in which the average monthly salary is about US\$ 20. In January, the

391. In 2010, resolution 179/2008 continued to be part of the Cuban legal order; it establishes a "Regulation for providers of Internet services to the public, which are offered in the Internet areas, which are situated in hotels, post offices, or other institutions of the country and where national and international Internet and email services are provided to natural persons."⁵⁹² Among the provisions striking to the IACHR is the following obligation for providers: "to adopt the measures necessary to impede access to sites whose contents are contrary to the social interest, morality, and good customs; as well as the use of applications that affect the integrity or security of the State." The same provision establishes, among other points, the following: "Providers shall abide by the provisions emanating from the Organs of Defense of the country in exceptional situations, as well as the performance of tasks that cannot be put off for ensuring the defense and security of the State." When a provider fails to abide by the regulation, he or she may be sanctioned by temporary or definitive invalidation of the services and contracts he or she has signed with the provider of public services for data transmission and Internet access, according to Article 21 of that resolution.

392. In 2010, resolution 55/2009 continued in force; it came into force in June 2009; it is the basis of the same regulation mentioned in the previous paragraph for the so-called Internet Service Providers for Storage, Hosting, and Applications.⁵⁹³ According to this resolution, the regulation includes those Cuban juridical persons who have received an operating license as a Public Services Provider for Access to Internet, which includes those who rent a physical space to a client who brings his or her own computer; those who provide the service of hosting sites, applications, and information; and those who grant applications services to third persons.

393. In this respect, the IACHR reiterates that the Internet "is an instrument with the capacity to fortify the democratic system, assist the economic development of the region's countries, and strengthen full enjoyment of freedom of expression. The technology of the Internet is without precedent in the history of communications and it allows rapid access of and transmission to a universal network of multiple and varied information. Maximizing the population's active participation through the use of the Internet furthers the political, social, cultural, and economic development of nations by strengthening democratic societies. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideas and a major tool in the actions of human rights organizations, because of its speed and breadth which allow it to immediately transmit and receive information on situations affecting fundamental rights in different regions."⁵⁹⁴

394. The IACHR was also informed of different acts of police or judicial harassment of persons who have issued critical opinions or information on the Internet. The IACHR learned of the detention of writer and independent journalist Luis Felipe Rojas, who was arrested on August 16,

...continuation

government was said to have announced an improvement in the satellite connections, which would allow for a 10% increase in the connection capacity. Reporters without Borders. 2010. Internet Enemies. Available at: <http://en.rsf.org/internet-enemie-cuba,36678.html>.

⁵⁹² Ministry of Information and Communications. Resolution No. No 179/2008. Available at: <http://www.mic.gov.cu/sitiomic/legislacion/R%20179-%202008%20Reglam%20Proveedores%20Serv%20Acceso%20Internet%20al%20Publico.pdf>.

⁵⁹³ Ministry of Information and Communications. Resolution 55/2009. Available at: <http://www.mic.gov.cu/sitiomic/legislacion/R%2055-09%20Proveedores%20Serv%20Publicos%20Aloj%20Hosped%20y%20Aplic.pdf>.

⁵⁹⁴ IACHR. Annual Report 1999: Annual Report of the Special Rapporteur for Freedom of Expression 1999, Chapter II. Assessment of the Situation of Freedom of Expression in the Hemisphere; D. The Internet and Freedom of Expression.

2010, after having published on his blog *Cruzar las Alambradas* a report in which he denounced arbitrary detentions and other human rights violations in Cuba.⁵⁹⁵ The IACHR also received information according to which journalism student Darío Alejandro Paulino Escobar had been suspended for two years from the School of Social Communication of the Universidad de La Habana for having criticized, in a Facebook group, acts of repudiation against opponents.⁵⁹⁶ On April 17, police agents kept bloggers Yoanis Sánchez and Eugenio Leal from giving a lecture on the use of the Internet in a home in the locality of Punta Brava.⁵⁹⁷

395. Along the same lines, on April 24, state security agents were said to have detained, at his house in Holguín, the director of the digital daily publication *Candonga* and activist for Internet access Yosvani Anzardo Hernández for directing an independent publication. According to the information received, the authorities held Anzardo for six hours to question him. He had already been detained without charges in September 2009 for almost two weeks.⁵⁹⁸

396. The IACHR recalls that Principle 2 of the Declaration of Principles on Freedom of Expression of the IACHR indicates that: "Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition."

397. In addition, the IACHR recalls that according to Principle 13 of the same declaration: "Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression."

- **Criminalization of protest**

398. The IACHR was also informed of various acts aimed at criminalizing actions of persons who, by different means, sought to exercise their right to freedom of expression. According to the information received, on May 24 seven activists from a lesbian and gay group were arrested in Havana for distributing copies of the Universal Declaration of Human Rights and four others had been deported to other provinces.⁵⁹⁹ On August 16, police and state security agents are said to have arrested five opposition members from the steps of the Universidad de La Habana who were demonstrating there to read a communiqué in which they called for respect for human rights,

⁵⁹⁵ According to the information received, Rojas was released after being held 12 hours at a police station. Rojas was also said to have been arbitrarily detained on December 25 and 27, 2009, and on February 7, 2010. Amnesty International. June 2010. [Restricciones a la libertad de expresión en Cuba](#). P. 21; ABC. August 16, 2010. [El bloguero Luis Felipe Rojas, detenido tras un "informe del horror" en Cuba](#).

⁵⁹⁶ Reporters without Borders. 2010. [Internet Enemies](#); Penúltimos Días. February 6, 2010. [El estudiante de periodismo Darío Alejandro Paulino Escobar recurre su expulsión de la Universidad de La Habana por opinar en Facebook](#).

⁵⁹⁷ Misceláneas de Cuba. April 20, 2010. Agentes del régimen cubano abortan conferencia sobre Internet. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=27294>; Generación Y. April 19, 2010. Encuentro Blogger en Punta Brava. Available at: <http://www.youtube.com/watch?v=jZrJOjjnNw>.

⁵⁹⁸ Amnesty International. June 2010. [Restricciones a la libertad de expresión en Cuba](#). P 21. Available at: <http://www.amnesty.org/en/library/asset/AMR25/005/2010/en/b795ecee-89b4-4583-aa2b-f9c58b722e3e/amr250052010es.pdf>; Misceláneas de Cuba. April 25, 2010. [Detienen al periodista independiente Yosvani Anzardo Hernández](#). Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=27370>.

⁵⁹⁹ Misceláneas de Cuba. May 26, 2010. Arrestan a activistas por repartir ejemplares de la Declaración Universal de los Derechos Humanos. Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=28010>; Cuba Verdad. May 27, 2010. Detienen a lesbianas por repartir la Declaración Universal de los Derechos Humanos. Available at: <http://cubadata.blogspot.com/2010/05/detienen-lesbianas-por-repartir-la.html>.

shouted anti-government slogans, and displayed placards. Two women arrested were said to have been held for 24 hours, and three others for 10 days.⁶⁰⁰ In addition, the IACHR was informed of the detention said to have been suffered by at least six members of the opposition who displayed placards and shouted anti-government slogans on the steps of the National Capitol building in Havana on May 12.⁶⁰¹ In addition, on May 8 police agents are said to have prevented a group of opponents from demonstrating silently, in a sit-down protest, in the municipality of Regla, in Havana. Several members of the group were detained.⁶⁰²

399. The IACHR recalls that Principle 1 establishes: "Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society."

400. In addition, Principle 2 of the above-cited Declaration of Principles notes: "Every person has the right to seek, receive and impart information and opinions freely under terms set forth in [Article IV of the American Declaration of the Rights and Duties of Man]. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition."

6. Human Rights Defenders

401. The IACHR has received information on acts of harassment and threats to persons who participate in protest demonstrations and peaceful marches. The Human Rights Defenders Unit has information on acts of harassment allegedly perpetrated against members of the Consejo de Relatores de Derechos Humanos in the course of 2010. On January 11, 2010, an officer of the State Security agency went to the domicile of the Consejo de Relatores de Derechos Humanos to issue a summons to the owner of the property, Sergio Díaz Larrastegui, to appear before the political police and the Chief of the Police Unit in Havana, under threat of making use of force if he did not appear; he was summonsed, according to the sources of this information, to intimidate him to get him to evict the members of the Consejo de Relatores de los Derechos Humanos. This occurred in the context of acts of harassment against the Consejo de Relatores de Derechos Humanos in November 2008 and January 2009, aimed at having them evicted from their offices. According to available information⁶⁰³, the Consejo de Relatores de Derechos Humanos is subject to surveillance and their correspondence is intercepted.

402. The IACHR has learned of acts of repression against the social protest activities of the members of the Alianza Democrática Oriental (ADO) and the Movimiento Solidario Expresión Libre (MOSEL) during a demonstration in favor of the rights of persons detained, motivated by the hunger strike maintained by Mr. Zapata Tamayo. According to the information available, on May 3, 2010, a public march by those organizations was answered by the State with the violent detention

⁶⁰⁰ El Mundo. October 8, 2010. [Los jóvenes que gritaron "abajo Fidel" en la Universidad de La Habana no callan](#); Misceláneas de Cuba. September 10, 2010. [Liberados miembros del CID manifestantes en la escalinata universitaria](#). Available at: <http://www.miscelaneasdecuba.net/web/article.asp?artID=29748>. Noticias 41. August 18, 2010. [Protesta en la Universidad de La Habana](#). Available at: <http://www.youtube.com/watch?v=-0177NdmgUk>.

⁶⁰¹ Misceláneas de Cuba. May 18, 2010. [Detienen a activistas que se disponían a hacer manifestación frente al capitolio habanero](#). Cubanet. May 21. [Protesta de opositores pacíficos en el Capitolio](#).

⁶⁰² Misceláneas de Cuba. May 11, 2010. [Protesta por acoso de la policía política es recibida con más represión](#); Cuba, Democracia y Vida. May 13, 2010. [Amenazados y detenidos opositores en Regla](#).

⁶⁰³<http://www.fidh.org/Cuba-Nuevo-hostigamiento-contra-el-Consejo-de>

of numerous protesters in a political police operation, directed by the first secretary of the province of Camagüey.⁶⁰⁴

403. In addition, repression continued against the Ladies in White.⁶⁰⁵ According to information received, on April 12, 2010, nine Ladies in White were kept from carrying out their traditional walk along Quinta Avenida of the Havana neighborhood of Miramar.⁶⁰⁶ According to a statement to a national press outlet, Ladies in White members Alejandrina García de la Riva and Berta Soler were allegedly surrounded by persons convened by the government who pushed them and shouted slogans, insults, and obscene words at them for more than two hours. According to the information received, the authorities this year imposed on the mothers, wives, and family members of political prisoners the requirement of requesting, with 72 hours lead time, authorization for their usual Sunday marches; notice of the requirement was not given in writing.

404. Also, the IACHR has information on the use of forms of repression against the family members of human rights defenders. According to the information received, Roberto Arsenio López Sánchez, a former physical education teacher, member of the Colegio de Pedagogos Independiente de Cuba, and Enrique Piñeiro Azahares, of the Consejo de Relatores, denounced that their daughters had not been accepted in the respective public schools when the school year began, allegedly in retaliation for their fathers' activities as members of human rights organizations.⁶⁰⁷

405. The IACHR states its concern over the difficult situation organizations in Cuba face when it comes to informing the international community of the human rights situation in Cuban territory due, among other things, to possible reprisals.

406. In that regard, the IACHR reiterates the need to adopt the measures required to ensure that the various organs of the State are not used to harass those who are dedicated to the work of defending and promoting human rights, especially those named in the "Report on the Situation of Human Rights Defenders in the Americas."

V. POSITIVE ASPECTS AND AREAS OF GENERAL PROGRESS

407. The IACHR places positive value on the international opening expressed by the Government of Cuba since 2008. The IACHR recognizes, in particular, the release of political dissidents this year and calls on the Government of Cuba to release all political dissidents unconditionally.

408. In addition, the IACHR considers in a positive light that the United Nations Children's Fund (UNICEF), in its report for 2009, indicated that there are no problems of severe child malnutrition in Cuba. With that, Cuba has become the only country in Latin America to achieve that goal.⁶⁰⁸

⁶⁰⁴ <http://www.fidh.org/Carta-abierta-a-las-autoridades-Actos-de>.

⁶⁰⁵ See IACHR, Annual Report 2009. Available at: <http://www.cidh.oas.org/annualrep/2009eng/TOC.htm>.

⁶⁰⁶ Represión a las Damas de Blanco, at Cubanito Web, <http://cubanitoweb.wordpress.com/2010/04/19/represion-a-las-damas-de-blanco/>.

⁶⁰⁷ Information obtained from the website of the Consejo de Relatores de Derechos Humanos of September 14, 2010.

⁶⁰⁸ Interview with Juan José Ortiz, representative of the United Nations Children's Fund. Available on Internet: http://www.bbc.co.uk/mundo/cultura_sociedad/2010/01/100126_1823_unicef_cuba_gz.shtml.

409. In addition, the Commission reiterates its recognition of the important gains in Cuba in relation to the millennium development goals established by the United Nations.⁶⁰⁹ The IACHR values in particular the gains made in relation to maternal health, especially that 100% of births were handled by qualified personnel.⁶¹⁰

410. Further, the Commission values the decision of the People's Supreme Court to replace the death penalty sentence that hung against Raul Ernesto Cruz Leon for 30 years in prison⁶¹¹.

VI. CONCLUSIONS

411. Taking into consideration what is indicated above, the Commission once again states that the restrictions on political rights, freedom of expression, and dissemination of thought, the lack of elections, the lack of an independent judicial branch, and the restrictions on the freedom of movement and residence constitute a permanent situation of violation, in Cuba, of the fundamental rights of its citizens, and it urges the State to undertake the necessary reforms in keeping with its international human rights obligations.

412. The Commission urges the Cuban State to bring its procedural laws into line with the international standards of due process, so that persons before the courts for the determination of their rights and responsibilities may have minimum legal guarantees of the right to defense. In particular, nullify convictions against the victims of Case 12.476.

413. In addition, the Commission urges the Cuban State to adopt the legislative and other measures necessary for ensuring that the death penalty not be imposed in violation of the principles of due process and a fair trial before a competent, independent, and impartial court previously established by law.

414. Moreover, the Commission reiterates to the Cuban State the recommendation to order the immediate and unconditional release of all the victims of Case 12,476, setting aside their convictions for having been based on laws that impose illegitimate restrictions on their human

⁶⁰⁹ In this regard, the Cuban State has indicated that: "Cuba has fulfilled, prior to the set date, a large part of the established goals for the MDGs, in spite of the consequences coming from the application of the policy of economic, trade and financial blockade imposed by the United States of America, constituting the principal obstacle for better development of the country and for the improved living standards of its population. The country is working energetically to arrive at 2015 with the remaining goals fulfilled, and with the indicators already fulfilled several years ago much improved.

The results attained by Cuba not only show the determination of the Cuban government to continue encouraging the achievement of better standards of living and well-being for its population, in particular in areas such as the fight against poverty and hunger, the reversion of environmental deterioration, improvement of education and health, promotion of gender equality and international cooperation, but also the political will to channel the limited resources at the country's disposal towards those areas having the greatest economic and social impact.

The triumph of the Cuban Revolution permitted economic and social policies to be established that favoured coordinated and consistent work at the national level to look after the principal needs and priorities of the country. The indicators of this Report demonstrate the results of these policies, ratifying their suitability and relevance. Even though we are wholesomely proud of these results, Cuba will continue to work to improve its indicators in the fulfilment of the MDGs, aware of the fact that this implies an improvement of the standards and quality of life of its population". See at "Fulfillment of the Millennium Development Goals, Cuba 2010".

⁶¹⁰United Nations Population Fund, State of World Population 2010, Available on the Internet: at http://www.unfpa.org/swp/2010/web/es/pdf/ES_SOWP10_DemSocialEcon.pdf.

⁶¹¹ GRAMMA, December 4, 2010 "Decide Tribunal Supremo Popular sustituir pena de muerte por 30 años de privación de libertad al terrorista salvadoreño Cruz León."

rights. The IACHR also urges the Cuban Government to allow the released dissidents to reside in Cuba if they so desire.

415. Further, the Commission urges the Cuban Government to eliminate the figures of the "dangerousness" and "special proclivity of a person to commit crimes" contained in the Criminal Code.

416. Finally, the Commission urges the Cuban Government to adopt the measures necessary to prevent and eradicate the various forms of harassment of those who exercise the right of association for humanitarian and trade union purposes, and against those dedicated to the defense and promotion of human rights.

DISSENTING VOTE

In line with the position that I have kept in regards to the Republic of Cuba, I have expressed that the Commission lacks material and territorial competence with respect to the Republic of Cuba, by virtue of its exclusion from the Organization of American States. Hence, I do not share the decision of most of my colleagues on the admission and processing of cases and the issuing of reports and other activities derived from the application of the Convention. Commissioner Luz Patricia Mejía Guerrero.

HONDURAS

417. The Commission has been particularly careful to monitor the human rights situation in Honduras. Through its reports it has raised a number of structural issues in the areas of justice, security, marginalization and discrimination that for decades have been problematic for the human rights of its people.

418. On June 28, 2009, the democratically elected President of Honduras was toppled, producing an unconstitutional alteration of the constitutional order. Since that day, the IACHR has closely followed the human rights situation against the backdrop of the *coup d'état*. In keeping with its obligations of promoting and protecting human rights and given the hundreds of complaints it received denouncing serious human rights violations, the Commission granted precautionary measures to protect the lives of hundreds of persons as a consequence of the *coup d'état*;⁶¹² it requested information on the risk posed to certain persons; it also asked for information, pursuant to Article 41⁶¹³ of the American Convention on Human Rights and Article XIV of the Inter-American Convention on Forced Disappearance of Persons;⁶¹⁴ it also turned to the Inter-American Court seeking adoption of provisional measures. The Commission issued press releases, conducted *in loco* visits⁶¹⁵ and published reports.

419. In 2009, the IACHR decided to include Honduras in Chapter IV of its Annual Report, pursuant to Article 57(1)(h) of its Rules of Procedure. In the Commission's view, the human rights situation in Honduras since the *coup d'état* fit within criteria one, two and three, as set forth in the 1997 Annual Report and explained in the introduction to this chapter.

420. The Commission sent the present report to the Honduran State on January 21, 2011. The response was received on February 18, 2011.⁶¹⁶

⁶¹² Given the number of complaints, on June 28, 2009 the Commission granted [precautionary measure 196-09](#) for Honduran Minister of Foreign Affairs Patricia Rodas; it also requested information on other persons. Precautionary measure 196-09 has been amplified numerous times.

⁶¹³ [American Convention on Human Rights](#). Article 41: The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers: d. to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights.

⁶¹⁴ [Inter-American Convention on Forced Disappearance of Persons](#), Article XIV: [W]hen the Inter-American Commission on Human Rights receives a petition or communication regarding an alleged forced disappearance, its Executive Secretariat shall urgently and confidentially address the respective government, and shall request that government to provide as soon as possible information as to the whereabouts of the allegedly disappeared person together with any other information it considers pertinent, and such request shall be without prejudice as to the admissibility of the petition.

⁶¹⁵ During its visits, the Commission was accorded the courtesies necessary for it to perform its mission and, at the appropriate time, expressed its appreciation to the representatives of the State, civil society organizations and international agencies for the information and collaboration it had received.

⁶¹⁶ In its observations on the Commission's 2010 Annual Report, the Honduran State rejected the IACHR's assertion that "since the 2009 *coup d'état* violations of its people's human rights have become worse, because it is simply not the case; no mention is made of the policies, programs, projects and measures introduced and the institutions created by the Honduran State in 2010 for the purpose of preventing, promoting and protecting human rights. The international community was informed of those measures during the Universal Periodic Review held in Geneva, Switzerland in November 2010; those efforts have been recognized by the United Nations and its member states. The exception is the Organization of American States (OAS), where the resolution to exclude the State of Honduras from that regional organization is still in effect, even though it had supported the Tegucigalpa-San José Accord." In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 2.

421. In 2010, the Commission continued to observe the human rights situation in Honduras, focusing especially on the consequences of the 2009 *coup d'état*. Having evaluated the situation, at its 140th regular session the Commission decided to include Honduras in this chapter, because in its view it qualifies for inclusion based on the aforementioned three criteria.

422. The Commission has established⁶¹⁷ that the human rights violations that occurred subsequent to the 2009 *coup d'état* took a serious toll on the Honduran population; those violations continued throughout the present year.

423. In the present document, the IACHR recounts the activities conducted in 2010 in connection with the situation in Honduras and examines the human rights situation in that country. It looks at specific issues, especially the predicament of human rights defenders; the harassment of judges and magistrates; freedom of expression in Honduras and the lot of the traditionally most marginalized and vulnerable sectors of the population. It also examines the status of implementation of the precautionary measures the Commission granted, the problem of impunity and its relationship to the February 2010 Amnesty Decree. The Commission also comments on the Truth and Reconciliation Commission; identifies the progress made toward restoring the institutions of democratic government and the challenges yet to be overcome, and makes its recommendations.

I. Activities of the IACHR in Honduras during 2010

A. Visit

424. The Inter-American Commission on Human Rights visited Honduras from May 15 to 18, 2010,⁶¹⁸ as a follow-up to the *in loco* visit it made in August 2009 and to the report titled *Honduras: Human Rights and the Coup d'état*.⁶¹⁹

425. The delegation was composed of the President of the IACHR, Felipe González; its First Vice-President, Paulo Sérgio Pinheiro; the Executive Secretary, Santiago A. Canton; the Commission's Special Rapporteur for Freedom of Expression, Catalina Botero; the Coordinator for Meso-America and the Spanish-speaking Caribbean, Isabel Madariaga; the attorney with the Special Rapporteurship for Freedom of Expression, Ramiro Álvarez-Ugarte, and the Documents Technician, Gloria Hansen.

426. During the visit, the IACHR met with officials in the three branches of government: the Minister Special Commissioner for Human Rights; the Office of the Attorney General and the Office of the Special Prosecutor for Human Rights; the Vice Minister of Security and the Bureau of National Police; the Supreme Court of Justice; the officers of the National Congress and the Congressional Human Rights Commission; the Minister of Defense and the Head of the Joint Chiefs of Staff of the Armed Forces; and the Inter-institutional Human Rights Commission. It also met with human rights defenders, members of the media, representatives of civil society and members of the Truth and Reconciliation Commission. It also had an opportunity to meet with representatives of

⁶¹⁷ The State suggested that the Commission use the verb "establish" [*constatar*] rather than using the expression "received complaints" [*recibió denuncias*]; the State observed that the report has an accusatory tone that denies Honduras its right of defense. Its contention was that this attitude would detract from the credibility of the Commission's impartiality. In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 1.

⁶¹⁸ IACHR, Press Release 60/09: [IACHR presents preliminary observations on its visit to Honduras](#), August 21, 2009.

⁶¹⁹ IACHR, Press Release 5/10: [IACHR Publishes Report on Honduras](#), January 20, 2010. See Report: Honduras: [Human Rights and Coup D'état](#).

the United Nations system in Honduras and with ambassadors in the Stockholm Declaration Follow-up Group (G 16).

427. At the end of its visit, the Commission expressed its deep concern over the continuation of human rights violations in the context of the *coup d'état* that occurred in Honduras on June 28, 2009. Also, observed in the opportunity, some progress made toward the restoration of democratic institutions.⁶²⁰

428. On June 3, 2010,⁶²¹ the IACHR made public its preliminary observations⁶²² on its May 2010 visit.

B. Precautionary measures, requests for information, hearings and press releases

429. In 2010, the IACHR granted precautionary measures⁶²³ to protect the life and integrity of persons in Honduras and requested information from the State of Honduras, pursuant to Article 41 of the American Convention on Human Rights⁶²⁴ and Article XIV of the Inter-American Convention on Forced Disappearance of Persons.⁶²⁵

⁶²⁰ IACHR, Press Release 54/10: [IACHR Expresses Concern about Human Rights Violations at the Conclusion of its Visit](#), May 19, 2010. Released at a press conference that IACHR President Felipe González and Executive Secretary Santiago A. Canton held in Tegucigalpa.

⁶²¹ IACHR, Press Release 59/10: [IACHR Publishes Observations on Follow-up Visit to Honduras](#), June 7, 2010.

⁶²² IACHR, [Preliminary Observations](#) of the Inter-American Commission on Human Rights on Its Visit to Honduras, May 15 to 18, 2010.

⁶²³ The IACHR granted the following precautionary measures during 2010: MC 196/09 – Amplification granted January 8 for Mr. Marvín Emilio Hernández Duarte and his immediate family; MC 196/09 – Amplification granted January 19 for the nuclear family of Rasel Antonio Tome; MC 196/09 – Amplification granted January 22 for Gilberto Vides and his nuclear family; MC 18/10, granted on January 29 for Indyra Mendoza Aguilar, Nohelia Flores Álvarez (Noel Eduardo Flores Álvarez), Fátima Maritza Ulloa Becerra and Ana Lourdes Ordóñez; MC 196/09 – Amplification granted on February 12 for Anselmo Romero Ulloa and María Brígida Ulloa Hernández; MC 38/10 granted February 25 for Manuel de Jesús Varela Murillo, Ricardo Antonio Rodríguez and their families; MC 91/10, granted March 19 for Pedro Brizuela, Mateo Enrique García Castillo and their immediate families; MC 95/10, granted March 24 for X –whose identity the Commission is withholding because he is a minor- and his family;; MC 196/09- Amplification, granted on April 13 for Rebeca Ethel Becerra Lanza and daughters; MC 196/09 – Amplification, granted on May 3, for Inner Genaro Chévez and Lucy Mendoza; MC 196/09 – Amplification, granted June 2 for Karla Patricia Rivas Sánchez, José Pablo Peraza Chávez, Rita Suyapa Santamaría Velásquez, Alfredo Bográn, Lolany Mariela Pérez Parada, Rommel Alexander Gómez, Lesly Castro, José Domingo Miranda, Héctor Hernández, Víctor Emilio Borjas, Leticia Castellanos and Pablo Ordóñez; MC 180/10, granted June 21 for Juan Ramón Flores; MC 194/10, granted July 2 for Carolina Pineda, José Luis Baquedano and Delvid Ixcel Sánchez Ávila; and MC 221/10, granted July 22 for Edwin Róbelo Espinal. Available at [“Precautionary Measures Granted by the Commission during 2010”](#).

⁶²⁴ In 2010, the requests seeking information from the Honduran State under Article 41 of the Convention were the following: 1) March 11, request for information concerning serious acts of violence committed against members of the *Frente Nacional de Resistencia Popular* or their children –such as alleged murders, kidnappings, rapes, arbitrary detentions, assaults and persecution-; 2) May 28: request for information concerning the situation of judges and magistrates subject to disciplinary proceedings; 3) September 15: request for information concerning alleged acts of police repression said to have been committed against children and youth, and 4) September 28: request for information on the situation of the Special Prosecutor for Human Rights, Sandra Ponce.

⁶²⁵ In 2010, the IACHR requested information pursuant to Article XIV of the Inter-American Convention on Forced Disappearance of Persons on three occasions: 1) July 2, when it requested information concerning the whereabouts of Ana Gira Morales, Maribel Morales, Edgardo Cruz Morales, Roberto Orlando Suárez and Uria Josué Fonseca; 2) October 6, when it requested information on the whereabouts of Javier Emilio Mejía Morazán, and 3) November 29, when it requested information on the situation of José Luis Saucedo and Noé Pérez.

430. The Commission also issued 14 press releases⁶²⁶ on situations in Honduras and held three general public hearings. More specifically, at the 138th regular session, a hearing was held on the subject “Response of the Judiciary to the Crimes and Events related to the *Coup d’état* in Honduras” requested by a coalition of national and international NGOs.⁶²⁷ At the 140th regular session, the Commission held two hearings, also requested by national and international NGOs: “Mechanism for the Implementation of Precautionary Measures in Honduras” and the “Situation of the Right to Freedom of Expression in Honduras.”⁶²⁸ The Honduran State participated in these last two hearings and supplied information.

II. Human rights situation

A. Background

431. On June 28, 2009, Honduran Army troopers, acting on orders from the Head of the Joint Chiefs of Staff, entered the presidential residence, took President José Manuel Zelaya Rosales into custody and sent him to Costa Rica⁶²⁹ aboard a military aircraft. With that, a democratically elected President was ousted and the democratic, constitutional order was interrupted. That same day, the IACHR strongly condemned⁶³⁰ the *coup d’état* and the interruption of the constitutional order, issuing an urgent call to restore the democratic order and to respect human rights, the rule of law and the Inter-American Democratic Charter⁶³¹. It also called for absolute respect for the right to freedom of expression.

432. As noted earlier, in keeping with its obligations to promote and protect human rights and given the hundreds of complaints it had received of serious violations of the right to life and the right to humane treatment, that same day, June 28, 2009, the Commission granted precautionary measures to safeguard the lives of hundreds of persons as a consequence of the *coup d’état*. It

⁶²⁶ IACHR, Press Releases in 2010 on Honduras: Press release R2/10 – [Office of the Special Rapporteur for Freedom of Expression Expresses Concern at the Attack Suffered by a Community Radio Station in Honduras](#). January 11, 2010; Press release 5/10 – [IACHR publishes report on Honduras](#). January 20, 2010; Press release 14/10 – [IACHR Expresses Concern About Amnesty Decree in Honduras](#). February 3, 2010; Press release R24/10 – [Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras](#). March 5, 2010; Press release 26/10 – [IACHR Deplores Murders, Kidnappings and Attacks in Honduras](#). March 8, 2010; Press release R29/10 – [Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras](#). March 15, 2010; Press release 31/10 – [IACHR Deplores Murder of Journalist in Honduras](#). March 16, 2010; Press release R45/10 – [Special Rapporteurship Concerned about the Latest Murder of Journalist in Honduras](#). April 22, 2010; Press release 53/10 – [IACHR Announces Visit to Honduras](#). May 13, 2010; Press release 54/10 – [IACHR Expresses Concern about Human Rights Violations in Honduras at the Conclusion of Its Visit](#). May 19, 2010; Press release 59/10 – [IACHR Publishes Observations on its Follow-Up Visit to Honduras](#). June 7, 2010; Press release R62/10 – [Office of the Special Rapporteur Expresses Concern at the latest Murder and Vulnerability of the Media in Honduras](#). June 16, 2010; Press release R85/10 – [Special Rapporteur for Freedom of Expression Condemns Latest Murder of Journalist in Honduras](#). August 26, 2010, and Press release R96/10 – [Office of the Special Rapporteur Expresses Concern over New Attacks against Journalists and Media in Honduras](#). September 20, 2010.

⁶²⁷ See video of the public hearing on the “[Response of the Judiciary to the Crimes and Events related to the Coup d’état in Honduras](#)”, held during the IACHR’s 138th regular session.

⁶²⁸ See videos of public hearings on the “[Mechanism for the Implementation of Precautionary measures in Honduras](#)” and “[Situation of the Right to Freedom of Expression in Honduras](#)”, held October 25, 2010, during the IACHR’s 140th regular session.

⁶²⁹ “With all due respect to the Inter-American Commission on Human Rights, the Honduran State must again make the point that the facts, circumstances and constitutional provisions that put an immediate end to the Presidency of Mr. Zelaya Rosales in Honduras, are not the purview of the IACHR.” In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, p. 2.

⁶³⁰ IACHR, Press Release 42/09: [IACHR Strongly Condemns Coup d’État in Honduras](#), June 28, 2009.

⁶³¹ The [Inter-American Democratic Charter](#) was adopted on September 11, 2001 by a Special Session of the General Assembly of the OAS.

requested information on the risk that certain persons faced; it also requested information pursuant to Article 41 of the American Convention on Human Rights and Article XIV of the Inter-American Convention on Forced Disappearance of Persons. The Commission issued several press releases and on June 30, it filed a request seeking an urgent visit to Honduras.

433. At a special meeting held on June 28, 2009⁶³² in response to the interruption of democratic order, and in keeping with the provisions of the Inter-American Democratic Charter, the Permanent Council of the Organization of American States (OAS) condemned the *coup d'état* and the expulsion of President Zelaya; it demanded that he be immediately returned to his constitutional functions, and declared that no government arising from this unconstitutional interruption would be recognized.⁶³³ On July 4, 2009, the OAS General Assembly held a special session where it approved resolution AG/RES.2 (XXXVII-E/09) in which it decided to suspend the Honduran State from the exercise of its right to participate in the OAS. In that same resolution the General Assembly resolved "to reaffirm that the Republic of Honduras must continue to fulfill its obligations as a member of the Organization, in particular with regard to human rights; and to urge the Inter-American Commission on Human Rights to continue to take all necessary measures to protect and defend human rights and fundamental freedoms in Honduras."⁶³⁴

434. The IACHR conducted its *in loco* visit from August 17 to 21, 2009. Along with the loss of institutional legitimacy⁶³⁵ brought about by the *coup d'état*, during its visit the Commission confirmed that serious human rights violations had been committed, including the killing of at least seven people, an arbitrary declaration of a state of emergency, disproportionate use of force against public demonstrations, criminalization of public protest, arbitrary detention of thousands of persons, cruel, inhuman and degrading treatment, poor detention conditions, militarization of Honduran territory, an increase in incidents of racial discrimination, violations of women's rights, and severe and arbitrary restrictions on the right to freedom of expression. The Commission also established that judicial remedies were ineffective in protecting human rights in Honduras. On August 21, 2009, the IACHR publicly announced its preliminary observations on the visit in press release 60/09.⁶³⁶

⁶³² Article 20 of the Inter-American Democratic Charter reads as follows:

In the event of an unconstitutional alteration of the constitutional regime that seriously impairs the democratic order in a member state, any member state or the Secretary General may request the immediate convocation of the Permanent Council to undertake a collective assessment of the situation and to take such decisions as it deems appropriate.

The Permanent Council, depending on the situation, may undertake the necessary diplomatic initiatives, including good offices, to foster the restoration of democracy.

If such diplomatic initiatives prove unsuccessful, or if the urgency of the situation so warrants, the Permanent Council shall immediately convene a special session of the General Assembly. The General Assembly will adopt the decisions it deems appropriate, including the undertaking of diplomatic initiatives, in accordance with the Charter of the Organization, international law, and the provisions of this Democratic Charter.

The necessary diplomatic initiatives, including good offices, to foster the restoration of democracy, will continue during the process.

⁶³³ OAS, Permanent Council, *Current Situation in Honduras*, [Resolution 953 \(1700/09\)](#), dated June 28, 2009.

⁶³⁴ OAS, General Assembly, Special Session, [Resolution AG/RES 2 \(XXXVII-E/09\) of July 4, 2009](#), operative paragraphs 1 and 2.

⁶³⁵ The Honduran State argued that there was no "institutional de-legitimization" inasmuch as the institutions remained in full operation and the declaration of the state of emergency was not arbitrary "as it was done in accordance with Article 187 of the Constitution of the Republic, which is the law that governs emergency measures of this type." In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 3.

⁶³⁶ IACHR, Press Release 60/09: [IACHR presents preliminary observations on its visit to Honduras](#), August 21, 2009.

435. Subsequent to the August 2009 visit and in view of the information it had received concerning serious events occurring in Honduras, on September 23 and 29, 2009, the IACHR asked the State if it could conduct another visit. However, it did not receive a reply.

436. The IACHR prepared the report titled *Honduras: Human Rights and the Coup d'état*, and published it on January 20, 2010⁶³⁷:

Along with the loss of institutional legitimacy brought about by the *coup d'état*, during its visit the Commission confirmed that serious human rights violations had been committed, including killings, an arbitrary declaration of a state of emergency, disproportionate use of force against public demonstrations, criminalization of public protest, arbitrary detention of thousands of persons, cruel, inhuman and degrading treatment, poor detention conditions, militarization of Honduran territory, an increase in incidents of racial discrimination, violations of women's rights, severe and arbitrary restrictions on the right to freedom of expression, and serious violations of political rights. The Commission also established that judicial remedies were ineffective in protecting human rights.

From the day on which the *coup d'état* occurred, the state of emergency that the *de facto* authorities illegitimately decreed and that the security forces enforced was used as means to control the population. First, the Commission observes that the *de facto* government does not have legitimacy *ab initio* to declare a state of emergency; furthermore, under Article 27 of the American Convention, the scope of the suspensions must be those strictly necessary to relieve an emergency situation, and this implies limiting them in terms of time and space, and the rights that are suspended.

Thus, at least seven (7) people were killed as a consequence of the disproportionate force that security forces used to suppress the public demonstrations. According to the information received, there is nothing to suggest that internal investigations have made any significant headway toward identifying and punishing those responsible.

The IACHR confirmed that the security forces conducted thousands of illegal and arbitrary detentions, without an order from a competent authority. Those detained were not brought before a judge to review the lawfulness of their detention, were not informed of the reasons for their detention, and were not read their rights; many were held *incommunicado*. And while the majority of those detained were released within 24 hours, no records were made of the arrests, which in many cases obstructed execution of the writs of *habeas corpus* and provided the opportunity for violations of the detainees' right to have their physical, mental and moral integrity respected, especially in the case of women detainees, who were often sexually abused.

The material and tactics that the Army, the Police and the Cobra Command Strike Force deployed revealed a disproportionate use of force. This, combined with the conditions in which detainees were incarcerated, meant that thousands of persons endured inhuman, cruel and degrading treatment. In this context, the aggressive tactics used took a particularly heavy toll on women, who in many cases were victims of sexual violence. Other minority groups like the Garifuna, members of the gay community and foreign nationals were the target of discriminatory practices.

The Commission also received testimony about acts of harassment against persons who publicly demonstrated their political support for President Zelaya. The IACHR confirmed serious violations of political rights, such as the right to participate in politics and the right to hold public office. Ministers, governors, members of the National Congress and mayors were the targets of reprisals, threats, acts of violence and budgetary cuts, and the public offices

⁶³⁷ IACHR, Press Release 5/10: [IACHR Publishes Report on Honduras](#), January 20, 2010.

where they worked were occupied by military troops. Furthermore, *de facto* and *de jure* restrictions were imposed on the activities of the opposition parties, groups and leaders who were against the *de facto* government. The family of President Zelaya in particular reported harassment and that a smear campaign was being waged against them.

The IACHR confirmed that the flow of information and news was controlled by temporarily shutting down some media outlets; orders were given to block transmission of the signal from certain cable television networks that were covering the *coup d'état*; selective power outages were used to affect broadcasting by audiovisual media covering the *coup*, and journalists from media outlets whose editorial positions were opposed to the *coup d'état* were attacked and threatened.

The Commission also confirmed that the airing of dissident opinions or criticism was prohibited, and security forces were authorized to search and confiscate broadcasting equipment when, in the opinion of the administrative authorities, the media were engaging in behavior prohibited under the existing laws. These measures are a very serious, arbitrary unnecessary and disproportionate restriction, in violation of international law, of the right of all Hondurans to freely express themselves and to receive information from a plurality and diversity of sources. The IACHR repeats that any curtailment of the right to freedom of expression, even under a state of emergency, must be ordered by a legitimate government and must be proportionate and strictly necessary to protect the existence of the democratic system of government.

Violations of the right to life, humane treatment, freedom of association, personal liberty, judicial guarantees, freedom of expression, political rights, the rights of women and the rights of minority groups were exacerbated by the absence of a legitimate government capable of processing complaints, investigating facts, punishing those responsible, and making reparations to victims. Those sectors of Honduran society that opposed the *coup d'état* told the Commission that they feared reprisals by security agents and were mistrustful of those institutions that had not energetically condemned the break with the democratic institutional order, and that had done nothing in response to public outcries.

Under the American Convention on Human Rights, which Honduras ratified in 1977, it an international obligation to prevent human rights violations and, should they occur, to investigate, prosecute and punish those responsible. Nevertheless, the *de facto* authorities and the Supreme Court of Honduras consistently deny the existence of those violations. Inactivity and tolerance enable the repetition of human rights violations with impunity.

The organs of the Inter-American system for the protection of human rights have repeatedly held that the democratic system of government is the best guarantee for the exercise and enjoyment of human rights. Indeed, this report reveals how the human rights violations reported in Honduras are a direct consequence of the interruption of the constitutional order. The Commission therefore considers that the restoration of democratic institutions in Honduras is a condition *sine qua non* for the effective protection and observance of the human rights of all the inhabitants of Honduras.⁶³⁸

437. On January 27, 2010, Mr. Porfirio Lobo Sosa was sworn in as President of Honduras, following elections held on November 29, 2009, in which mayors, members of municipal councils and deputies were also elected.

⁶³⁸ See report [Honduras: Human Rights and the Coup d'État](#).

B. Follow-up of the human rights situation in 2010 against the backdrop of the *coup d'état*

438. On February 3, 2010, the IACHR issued press release 14/10⁶³⁹ in which it expressed its concern with respect to the ambiguity of the Amnesty Decree approved by the National Congress of Honduras on January 26, 2010. Although the text made provision for certain exceptions in terms of human rights violations, the language was ambiguous and the decree did not spell out precise criteria or concrete mechanisms for its application. According to the Honduran State, the Amnesty Decree is not ambiguous, because it spells out the crimes to which it applies, the crimes to which it does not apply, based on the Honduran State's international obligations; it also spells out the procedure to be followed when applying it.⁶⁴⁰

439. On March 8, 2010, the IACHR condemned and lamented the murders of three persons who were active in the *Frente Nacional de Resistencia Popular*, a movement that opposes the *coup d'état* (hereinafter the "Resistance Front" or "the resistance"). The killings occurred between February and March of 2010. It also deplored the kidnappings, arbitrary detentions, sexual violations and illegal searches to which active members of the resistance to the *coup d'état* and members of their families had been subjected. The IACHR also expressed deep concern over the information received to the effect that children of activists were being threatened and harassed and in two cases had been killed.

440. On March 5, 15 and 16 the IACHR's Special Rapporteurship for Freedom of Expression condemned the murder of three journalists.

441. Based on the information that the Commission received regarding the human rights situation in Honduras and with the purpose to follow up on the *in loco* visit made in August 2009 and the report titled [Honduras: Human Rights and the Coup d'état](#), on March 19, 2010 the IACHR asked the Honduran State to agree to another visit by the Commission.⁶⁴¹

442. On March 27, 2010, the IACHR's Special Rapporteurship for Freedom of Expression condemned the murder of journalists from R.Z. Television Channel 4 and Radio Excelsior, Bayardo Mairena and Manuel Juárez, on March 26 in the Department of Olancho, Honduras. The Office of the Special Rapporteur expressed its deep concern over the vulnerability of the press in Honduras.⁶⁴² On April 22, 2010, another press release was issued when it was learned that yet another journalist had been murdered on April 20, 2010.⁶⁴³

443. This was the scene when the Commission visited Honduras in May 2010. It took the occasion to express its deep concern over the fact that, while progress had been made toward the restoration of democratic institutions, human rights violations continued. The Commission was of the view that the complaints received could fit the same pattern of violence that the Commission

⁶³⁹ IACHR, Press Release 14/10: [IACHR Expresses Concern about Amnesty Decree in Honduras](#), February 3, 2010.

⁶⁴⁰ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 5.

⁶⁴¹ On April 22, 2010, the IACHR received a note signed by President Porfirio Lobo Sosa, dated March 26, 2010, in which he consented to the visit. Then, in a note dated May 7, 2010, the President of the Supreme Court informed the IACHR of the name of the person who would serve as government liaison during the visit.

⁶⁴² IACHR, Press Release R39/10: [Special Rapporteurship Condemns Murder of Honduran Journalists](#), March 27, 2010.

⁶⁴³ IACHR, Press Release R45/10: [Special Rapporteurship Concerned about the Latest Murder Of Journalist in Honduras](#), April 22, 2010.

had denounced in its report [Honduras: Human Rights and the Coup d'État](#). It also said how deeply troubled it was by the absence of effective investigations that would clarify these events.

444. The Commission availed itself of its visit to make recommendations to the Honduran state, based on the *in loco* visits made in August 2009 and May 2010, the report titled [Honduras: Human Rights and the Coup d'État](#), and especially the follow-up that it had done of the human rights situation in the country since the June 28, 2009 *coup*.

445. Subsequent to the May 2010 visit, the IACHR continued to receive information on alleged human rights violations committed as a consequence of or in connection with the 2009 *coup d'état*. As previously observed, in 2010 it received information concerning a number of murders, threats and harassment of human rights defenders, journalists, social communicators, members of the resistance, teachers and members of organized labor.

446. Therefore, throughout 2010, the IACHR has had to grant a number of precautionary measures for persons who are at risk. In the majority of cases, the peril they face is associated with their involvement in activities against the *coup d'état*. On August 30, 2010 the Commission turned to the Inter-American Court seeking provisional measures for Gladys Lanza; on December 6, it did the same for José Luis Galdámez Álvarez and his immediate family. In both cases, the petitions were based on the fact that the harassment, threats and persecution that had originally prompted the Commission to adopt precautionary measures⁶⁴⁴ had persisted and were perpetrated because of the beneficiaries' opposition to the *coup d'état*: in Mrs. Lanza's case, it was her activities to promote and defend human rights;⁶⁴⁵ in Mr. Galdámez' case, it was his profession of journalism.⁶⁴⁶ On September 2, 2010, the Inter-American Court granted provisional measures for Mrs. Lanza⁶⁴⁷ and on December 22 for Mr. Galdámez Álvarez and his family.⁶⁴⁸

447. While cognizant of the high rate of common crime in Honduras,⁶⁴⁹ the Commission observes that the system of justice is not properly investigating the murders, threats and harassment of human rights defenders, journalists and members of the resistance, with the result

⁶⁴⁴ On June 24, 2009, the Inter-American Commission ordered the Honduran State to take the measures necessary to protect the rights to life and humane treatment of Mrs. Lanza and Mr. Galdámez.

⁶⁴⁵ I/A Court H.R. [Matter of Gladys Lanza Ochoa regarding Honduras](#), September 2, 2010.

⁶⁴⁶ IACHR, Brief requesting provisional measures from the I/A Court H.R., December 6, 2010, paragraph 32.

⁶⁴⁷ I/A Court H.R. [Matter of Gladys Lanza Ochoa regarding Honduras](#), September 2, 2010.

⁶⁴⁸ I/A Court H.R., [Matter of José Luis Galdámez Álvarez et al.](#), December 22, 2010.

⁶⁴⁹ As the Observatory on Violence of the *Instituto Universitario de Democracia, Paz y Seguridad* [University Institute on Democracy, Peace and Security] (IUDPAS) wrote, "In its various manifestations, violence continues to be one of the main obstacles to human development, social co-existence and democratic governance in Honduras. [...] Violence destroys life expectancy in the country, as young people, in their most productive years of life between ages 15 and 44, are those most affected by the violence, accounting for 80.8% of its victims: a total of 588 children and adolescents were murdered; another 1,974 minors sustained injuries and were examined at the Forensic Clinic of the Public Prosecutor's Office." In a presentation of the Report of the Observatory on Violence in Honduras, Violent and Accidental Deaths, Bulletin No. 17, which compiles data from January to December 2009. Tegucigalpa, Honduras: IUDPAS- UNAH, April 2010.

According to that report, in the period from 2004 to 2009, 20,590 individuals were the victims of homicide in Honduras, with the numbers climbing from 2,155 in 2004 to 5,265 in 2009, which is an increase of 144.3% Starting in 2007, rapid increases are observed in the incidence of homicide, particularly by hired killers, which also saw the highest increases[.] The country's vulnerability was such that it went from a rate of 30.7 to 66.8 homicides per 100,000 inhabitants, which represented an increase of 36.1 points. [...] In 2009, there were 8,154 violent deaths in Honduras, 925 more than in 2008, for an increase of 12.7%. The homicides claimed a total of 5,265 victims, which is an increase of 17.7% over 2008; violent deaths associated with traffic accidents remained virtually the same as the previous year, with 1,200 deaths, which represented a modest decline of -0.6%. Available [in Spanish] at: http://www.undp.un.hn/observatorio_violencia_09.htm "

that these crimes have gone unpunished. Absent a proper investigation, there is no way to determine whether these crimes are related to the 2009 *coup d'état* or are the result of common crime, and no way to prosecute and punish those responsible for such actions or to avoid a recurrence of similar events.

C. Human right defenders and social leaders

1. Murders of human rights defenders and social leaders

448. During its May 2010 visit, the Commission received information about a series of threats and acts of harassment targeted at human rights defenders, journalists, social communicators, teachers, union members and members of the Resistance. However, the Honduran system of justice has not taken the measures necessary to shed light on those attacks and to punish them, as well as to reliably establish whether or not they were in any way related to the context of the 2009 *coup d'état*.

449. On December 16, 2009, Walter Orlando Trochez, a human rights defender and activist from the LGBT community who had given testimony to the IACHR during its *in loco* visit in August 2009, was murdered in the city of Tegucigalpa, with two gunshots fired from a moving vehicle. Earlier, on December 4 of that year, Mr. Trochez had allegedly been the target of a kidnapping attempt by four men wearing hoods. While brutally beating Mr. Trochez, the four men had questioned him about the Resistance Front, its leaders and its movements. According to information received during the May 2010 visit, the investigation undertaken by the Public Prosecutor's Office has gone nowhere.

450. In Press Release 26/10,⁶⁵⁰ dated March 8, 2010, the IACHR⁶⁵¹ condemned and lamented the murders of three persons in Honduras who were active in the resistance to the *coup d'état*. The murders occurred in February 2010. According to the information received, on February 3, 2010, Vanessa Zepeda Alonzo, age 29, an active member of the Resistance Front and a member of the Social Security Employees Union, was found dead in Tegucigalpa. According to eyewitnesses, her body had been thrown from a car.

451. On February 15, 2010, Julio Fúnez Benítez, an active member of the resistance and a member of the SANAA Workers Union, was shot twice and killed as he was chatting on the sidewalk outside his home in Colonia Brisas de Olancho, by unknown persons traveling on a motorcycle.

452. On February 24, 2010, Claudia Maritza Brizuela, age 36, was killed at home. She was the daughter of union and social leader Pedro Brizuela, who participates actively in the resistance. Two unknown persons came to the door; when Claudia Brizuela opened the door, she was shot and killed in the presence of her two children, ages 2 and 8.⁶⁵²

453. After these murders in February, Francisco Castillo⁶⁵³ was murdered on March 17, 2010. He was an active member of the resistance. Mr. Castillo and his wife had allegedly been the victims of harassment by persons driving motorcycles and cars.

⁶⁵⁰ IACHR, Press release 26/10: [IACHR Deplores Murders, Kidnappings and Attacks in Honduras](#), March 8, 2010.

⁶⁵¹ Moreover, in exercise of its authority under Article 41 of the American Convention on Human Rights, on March 11, 2010 the IACHR requested information from the State concerning these events.

⁶⁵² IACHR, Press release 26/10: [IACHR Deplores Murders, Kidnappings and Attacks in Honduras](#), March 8, 2010.

⁶⁵³ On January 15, 2010, the Commission requested information from the State about the situation of Francisco Castillo. It has yet to receive a reply.

454. Mr. Juan Manuel Flores Arguijo, leader of the National Resistance Front and a member of the association of secondary-school teachers, was murdered on March 23, 2010, while at Comayagüela's Instituto San José de Pedregal, in the presence of teachers and students.

455. On May 8, 2010, Adalberto Figueroa, a leader of the Olancho environmentalist movement and of his community, was shot several times and killed one kilometer from his home by persons wearing balaclavas. According to the reports received, his death was said to be linked to complaints that the victim had filed about illegal exploitation of local forests by businessmen in the lumber industry.

456. Gilberto Alexander Núñez Ochoa, said to have been a member of the security committee of the Resistance, was murdered on May 13, 2010. He was shot 17 times.

457. On May 26, 2010, Pedro Antonio Durón Gómez, brother of Arcadia Gómez -minister to President Zelaya and an active member of the National Resistance Front-, and Oscar Tulio Martínez, an agent with the General Bureau of Special Investigative Services (DGSEI) were shot several times and killed by individuals who intercepted the vehicle they were driving.

458. As yet, the IACHR has received no information concerning the steps taken by the administration of justice to solve these murders and its findings.

459. Since its May 2010 visit the Commission has been informed that the threats, harassment and murders of human rights defenders and leaders of the opposition continue. It was against this backdrop that attorney Marco Tulio Amaya, Coordinator of Attorneys in Resistance [Abogados en Resistencia], was alleged to have been killed on July 20, 2010.⁶⁵⁴ The Commission has also learned of the murder of Juana Supaya Bustillo, regional president of the Labor Union of the Honduran Social Security Institute, who was killed on September 16, 2010 by unidentified persons shooting from a passing vehicle.⁶⁵⁵

2. Threats against and harassment of human rights defenders and other social leaders

460. In its March 8, 2010 press release,⁶⁵⁶ the Commission deplored the kidnappings, arbitrary detentions, torture, sexual violations and unlawful searches that had victimized persons active in the resistance to the *coup* and their families. The IACHR also expressed its deep concern over the information received to the effect that children of the leaders of the Resistance Front were being kidnapped, attacked and threatened, as a strategy to silence the resistance. It reported that on February 17, 2010, Dara Gudiel, age 17, was found hanged in the city of Danlí, department of El Paraíso. Dara Gudiel was the daughter of journalist Enrique Gudiel, who broadcasts a radio program called "*Siempre al Frente con el Frente*," which carries news about the resistance. Some days before she was found hanged, Dara Gudiel had reportedly been abducted for two days, physically abused and then released.

461. During the visit, the Commission received information to the effect that the threats and harassment of human rights defenders, teachers, social leaders and members of the Resistance continue. In fact, during the first five months of 2010, the IACHR felt compelled to grant a series

⁶⁵⁴ CODEH, "[Abogado Marco Tulio muere asesinado](#)" [Attorney Marco Tulio murdered], July 22, 2010.

⁶⁵⁵ Diario La Prensa, "[Asesinan a presidenta del Sitrahss, Juana Bustillo](#)" [Sitrahss president Juan Bustillo murdered], September 17, 2010.

⁶⁵⁶ IACHR, Press release 26/10: [IACHR Deplores Murders, Kidnappings and Attacks in Honduras](#), March 8, 2010.

of precautionary measures to protect the lives and personal integrity of a considerable number of persons who were in jeopardy, in general because of their activities against the *coup d'état*. In recent months, these precautionary measures have been amplified; additional precautionary measures have also been ordered and two provisional measures have been requested from the Inter-American Court of Human Rights.⁶⁵⁷ One of the episodes that precipitated the decision to seek the provisional measure for Mrs. Gladys Lanza, was an e-mail that read as follows:

"Have you forgotten about the money you stole from STENEE WITH THE ROLL ROIZ RUSH which now have a NGO stolen from Callejas and have you forgotten about the people you sent to kill in San Pedro Sula when "you controlled the guerrillas of the Communist Party in Padilla Fush? Have you forgotten that old woman? Do you believe that we do not remember? Now we will bring you down, old fool!!! Irmitya Becerra with Billy Joya Amendola renewed!!!"

⁶⁵⁸

462. Human rights defenders told the Commission that in recent months, illegal groups were said to be operating in secret, using patterns of attack that targeted persons associated with the resistance, persons who filed complaints and persons who shape public opinion. According to the human rights defenders, the situation has worsened in Honduras, because the death squads, which for some years were infamous for their brutal "social cleansing" acts, are reportedly again in operation in Honduras, this time for political persecution.

463. Information was also received to the effect that teachers who demonstrated against the *coup d'état* continue to be harassed. Specifically it was reported that 10 directors and departmental secretaries and district directors of the opposition were unlawfully removed from their posts,⁶⁵⁹ that economic reprisals are being taken⁶⁶⁰ and that dozens of educators in the opposition were said to be subject to measures provided under domestic law to "ensure the effectiveness of the procedure".⁶⁶¹ It was also reported that proceedings had been instituted against educational institutions whose teachers participated in the protests.⁶⁶² The Commission was also told that Honduran teachers are concerned now that bills have been introduced in the Honduran National Congress that, they contend, could compromise the teaching advances achieved thus far.

464. It is important to recall that amid the climate of constant harassment of social leaders and human rights defenders, the police have been accused of being behind some of the abuses and threats.⁶⁶³ Furthermore, the precautionary measures granted and the provisional measures requested have pointed up a pattern of aggression and hostility toward government

⁶⁵⁷ I/A Court H.R. [Matter of Gladys Lanza Ochoa regarding Honduras](#), September 2, 2010.

⁶⁵⁸ OMCT, "[Amenaza de muerte con la Sra Gladys Lanza](#)" [Mrs. Gladys Lanza receives death threat], July 22, 2010.

⁶⁵⁹ Information presented by COFADEH during the visit.

⁶⁶⁰ According to the information supplied by COFADEH, teachers' contributions to teacher organizations were being unlawfully withheld; irregularities had been committed in determining the deductions from the salaries of teachers who participated in resistance activities by way of the Honduran Federation of Teachers' Organizations, and that at the urging of the Public Prosecutor's Office and CONADEH, other teachers had been fined.

⁶⁶¹ Article 270 of the Honduran Code of Criminal Procedure establishes measures whose "purpose is to ensure the efficacy of the proceedings by ensuring that the accused is present and that the sources of evidence are obtained through lawful means."

⁶⁶² Notification of civil liability claims, issued by the Superior Court of Accounts of Honduras on March 8, 2010, against the director of the Instituto Marcial Solís Dacosta, hamlet of San Juancito, Central District.

⁶⁶³ See Precautionary Measure [MC 221/10](#) - Edwin Róbelo Espinal, Honduras.

opponents and human rights defenders.⁶⁶⁴ There have even been reports of attempts to abduct persons with ties to the *coup* resistance movement.⁶⁶⁵

465. Opponents of the government⁶⁶⁶ complain that political dissidence has been criminalized, and attorneys and human rights defenders have been prosecuted on baseless charges.⁶⁶⁷ In this connection, during its 140th regular session, the Commission received information suggesting that the justice system was misapplying laws criminalizing unlawful association, terrorism, rebellion, sedition, and unlawful demonstration, all in an attempt to obstruct the work being done by members of citizen groups.⁶⁶⁸

466. The Commission has received reports of a disproportionate use of force on the part of police to suppress a demonstration that professors at the Universidad Pedagógica Francisco Morazán staged on August 20. The professors were said to have been the target of gunfire and teargas grenades, after which leaders of the educators were detained. Some ended up having to be hospitalized because of the manner in which they were arrested.⁶⁶⁹

467. The Commission has also learned of the harsh police tactics used during a demonstration in San Pedro Sula on September 15, where military personnel were performing functions that properly pertain to a civilian police force.⁶⁷⁰ There, the police beat the demonstrators hard, and many children suffered the effects of the teargas chemicals spread by the security forces. Also reportedly injured in that protest was a Prosecutor from the Honduran Public Prosecutor's Office.⁶⁷¹ Police were also accused of vandalizing private property.⁶⁷² The Commission received reports of reprisals taken against employees of government agencies, allegedly because of their involvement in organized labor activities.

⁶⁶⁴ See Precautionary Measure [MC 194-10](#) - Carolina Pineda, José Luis Baquedano and Delvid Ixcel Sánchez Ávila, Honduras (all members of *Defensa de Derechos Humanos*) ; [MC 180/10](#) – Juan Ramón Flores, Honduras (the beneficiary is a member of the *coup* resistance movement), and others. See also the Provisional Measure that the I/A Court H.R. ordered in the [Matter of Gladys Lanza Ochoa regarding Honduras](#), a well-known human rights defender.

⁶⁶⁵ COFADEH, "[Encapuchados intentan secuestrar a joven universitario de la resistencia](#)" [Hooded assailants attempt to abduct young university student with ties to the resistance], March 9, 2010.

⁶⁶⁶ The Honduran State emphatically denies that the deaths, threats and harassment are the product of a State policy targeting government opponents and supporters of former President Zelaya. In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 6.

⁶⁶⁷ CODEH, "[Detenido Mario Portillo Abogado de MUCA](#)" [Mario Portillo, MUCA Attorney, Detained], August 1, 2010; Resistencia Honduras, [Pronunciamiento Público \(Mario Portillo\)](#) [Public Statement (Mario Portillo)], August 8, 2010.

⁶⁶⁸ See public hearing on the "[Situation of human rights defenders in Mesoamerica](#)", held on October 26, 2010 during the Commission's 140th regular session.

⁶⁶⁹ *Committee of Relatives of Detainees – Disappeared in Honduras*, "[Comunicación de 22 de agosto de 2010](#)" [Communication of August 22, 2010]. See also, *Periódico Honduriano*, "[Desalojo de maestros provoca caos en la capital](#)" [Dispersal of protesting professors causes chaos in the capital], August 20, 2010.

⁶⁷⁰ AMARC. September 16, 2010. "[Militares y policías atacan Radio Uno](#)" [Military and police attack Radio Uno]. TeleSur. September 16, 2010. "[Resistencia hondureña denuncia que represión injustificada causó muerte de manifestante](#)" [Honduran Resistance complains that unwarranted repression caused demonstrator's death].

⁶⁷¹ AMARC. September 16, 2010. "[Militares y policías atacan Radio Uno](#)" [Military and police attack Radio Uno]. TeleSur. September 16, 2010. "[Resistencia hondureña denuncia que represión injustificada causó muerte de manifestante](#)" [Honduran Resistance complains that unwarranted repression caused demonstrator's death].

⁶⁷² AMARC. September 16, 2010. "[Militares y policías atacan Radio Uno](#)" [Military and police attack Radio Uno]. TeleSur. September 16, 2010. "[Resistencia hondureña denuncia que represión injustificada causó muerte de manifestante](#)" [Honduran Resistance complains that unwarranted repression caused demonstrator's death].

468. The IACHR notes with concern the detention by the police of Edwain Otoniel Aguilera García -age 20- on September 18, 2010. According to the complaint, the detention was in retaliation for the activities of his mother, María Arnulfa García Ávila, in the Resistance Front. According to the information received, the police refused to divulge any information concerning the young man's detention and he was released only after a call was made to the Police Commissioner.⁶⁷³ The Commission would remind the Honduran State of its obligations under the American Convention, specifically the duty to respect Article 7, i.e., the provision prohibiting arbitrary deprivation of liberty, and requiring that any person arrested be fully informed of the reasons for the arrest and taken without delay before a competent judge to review the lawfulness of the arrest.

469. During the Commission's 140th regular session in 2010, it also received information on the situation of those who defend the right to a clean and healthy environment in Honduras.⁶⁷⁴ According to the information received, since the *coup d'état* the proceedings instituted into complaints related to the causes that persons dedicated to defending the right to a clean and healthy environment espouse, complaints related to the rights of communities neighboring large-scale mining projects, and complaints filed because of the threats and harassment that they frequently experience –at the hands of state and non-state perpetrators alike- are allegedly not moving forward as they should, which means that the perpetrators go unpunished.

470. In this connection, the Commission received information on the situation of Gelsomina Munguía, President of the National Network of Communities Affected by the Mining Industry in Honduras, and Ramón Sarmiento, the current Mayor of Juticalpa Olancho. Both received death threats after opposing the plan to operate a strip mine. Information was also received concerning the persecution of the Valle de Siria Environmentalist Committee, specifically targeting environmental defender Carlos Amador, who reportedly also received threats from sectors connected to the mining company's project. According to the information supplied to the IACHR,⁶⁷⁵ those responsible have not yet been made to answer for their actions.

471. In its response of February 18, 2011, the State of Honduras does not deny its limitations in terms of the human, economic and technological resources with which to conduct investigations and clarify the facts in order to be able to bring those responsible for the human rights violations to justice. It observes, however, that many cases are either not reported to the national authorities or are inaccurately reported, thereby making it difficult for the authorities to solve them. The State adds in this regard that the competent authorities have the deaths and/or threats denounced in the report "and those that are not mentioned therein" under investigation.⁶⁷⁶

D. Harassment and Persecution of Magistrates and Judges

472. On its Preliminary Observations on its visit to Honduras in May 2010, the IACHR was particularly troubled by the acts of harassment targeted at judges who have been identified as opponents of the *coup d'état*. In May 2010, the Commission met with members of the Association of Judges for Democracy, who reported on the situation of judges whom the Supreme Court had

⁶⁷³ CODEH, "[Policía Nacional Preventiva detiene arbitrariamente a hijo de presidenta de los mercados capitalinos](#)" [Preventive National Police arbitrarily detain son of president of the markets in the capital city], September 19, 2010.

⁶⁷⁴ See public hearing "[Situation of human rights defenders in Mesoamerica](#)", held on October 25, 2010, during the Commission's 140th regular session.

⁶⁷⁵ See public hearing "[Situation of human rights defenders in Mesoamerica](#)", held on October 25, 2010, during the Commission's 140th regular session.

⁶⁷⁶ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 5.

dismissed from the tribunal. It also met with the plenary of the Supreme Court, and brought up this situation during the meeting.

473. According to the information received after the *coup d'état* the Office of the Inspector General of Judges and Courts undertook, on its own initiative, investigations into supposed violations committed by Tirza del Carmen Flores, Magistrate on the Court of Appeals of San Pedro Sula; and Guillermo López Lone, Judge of the San Pedro Sula Sentencing Court; Ramón Enrique Barrios, Judge of the San Pedro Sula Sentencing Court; and Luis Alonso Chévez de la Rocha, Judge for Cases of Domestic Violence, all of whom were members of the Association of Judges for Democracy.

474. An official investigation of Magistrate Tirza Flores Lanza and Judge Guillermo López Lone was launched on July 1, 2009, because on June 30, 2009, they had filed a petition seeking *amparo* relief on behalf of President José Manuel Zelaya Rosales, with the Office of the Secretary of the Constitutional Chamber of the Supreme Court.⁶⁷⁷ In the case of Magistrate Flores Lanza, the Office of the Director of Personnel for the Judicial Career Service applied administrative sanctions:

"1.- for her absence from her office on June 30, 2009, because she was in the capital of the Republic engaging in activities that are not part of the functions of her post, without having requested the necessary leave; 2.- for performing activities that are incompatible with her office by engaging in attorney conduct in the nullification filed in case No. SCO-896-2009 (action seeking *amparo* relief) on August 12, 2009; 3.- for giving the offices of the San Pedro Sula Court of Appeals as the address to which notifications were to be sent in proceedings that have nothing to do with her sole function, which is to impart and administer justice impartially; 4.- for engaging in activities that, because she is a magistrate, she is not permitted to perform, by having appeared before the Office of the Attorney General of the Republic and having filed a complaint against State officials for the alleged commission of crimes, and for making comments on the judicial conduct of other courts and the Supreme Court itself."⁶⁷⁸

475. Judge Guillermo López Lone, President of the Association of Judges for Democracy, was found guilty of a "failure to perform the duties of his office when he engaged in activities offensive to the dignity of the Administration of Justice by having actively participated in the demonstration held near Toncontín International Airport on July 5, 2009 [...]"⁶⁷⁹ Judge Luis Alonso Chévez de la Rocha was found guilty of "having been detained by the National Police on August 12, 2009, when he was present at events that disrupted public order; for having discussed rebellion against the established Government with various employees of the Judicial Branch (*sic*). And for having said that he 'feels ashamed of his association with the Judicial Branch'. Incurring in acts that offend dignity in the administration."⁶⁸⁰ Judge Ramón Enrique Barrios was investigated "for having made a statement in a press conference which was then published in an editorial opinion that appeared in the August 28, 2009 issue of *El Tiempo* under the titled "THE HANDOVER WAS NOT CONSTITUTIONAL" in which he is identified as a Sentencing Judge and censures the actions of the Supreme Court in processing a prosecution request presented against Mr. JOSE MANUEL

⁶⁷⁷ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy Director for Personnel Management, Judicial Career Service, dated November 20, 2009.

⁶⁷⁸ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy Director for Personnel Management, Judicial Career Service, dated November 20, 2009.

⁶⁷⁹ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy Director for Personnel Management, Judicial Career Service, dated October 30, 2009.

⁶⁸⁰ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy director of Personnel Management, Judicial Career Service, dated November 11, 2009.

ZELAYA ROSALES, and then proceeding to specify what procedure he believed should have been followed [...].”⁶⁸¹

476. According to the affected judges, due process was not observed in the proceedings conducted against them.⁶⁸² At the May 18, 2010 meeting with plenary of the Supreme Court, the President of the Court informed the Commission that the dismissal decision had been confirmed by the Supreme Court; that in the days ahead the full membership of the Court would be discussing the wording of the bases for the respective judgments and that, once notified, the judges in question would be able to file a challenge.

477. Whatever formal reasons the Supreme Court may cite as the grounds for its rulings, the case and the final decision were undoubtedly driven by the fact that the judges in question had participated in demonstrations protesting the *coup d'état* or had expressed their dissent. Time and time again the inter-American human rights system has underscored the central role that the Judicial Branch plays in the democratic system of government. It is unacceptable that individuals charged with administering justice, who opposed the break with the democratic, constitutional order, are being charged and dismissed because of their defense of democracy.⁶⁸³

478. The Commission observes that the very same institution that investigated the magistrate and the judges for their opposition to the *coup d'état*, called upon officials and employees of the judicial branch to participate in marches in support of the *coup d'état*. The Commission received the following copy of an announcement:

JUDICIAL BRANCH
OFFICE OF THE DIRECTOR OF PERSONNEL MANAGEMENT
OFFICE OF THE CHIEF OF PERSONNEL
ANNOUNCEMENT

On orders from above, the officials and employees of the Judicial Branch are hereby invited to participate in the “**March for Peace in Honduras**” which will be held in the central park of Tegucigalpa, today, June 30, 2009, between 9:30 a.m. and 1:00 p.m.

Cordially,

(Signature Illegible)
Chief of Staff⁶⁸⁴

479. The Commission also observes that subsequent to the June 28, 2009 *coup d'état*, a number of judges and magistrates made public statements in support of the *coup*, but were never investigated for their remarks.⁶⁸⁵

⁶⁸¹ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy Director for Personnel Management, Judicial Career Service, dated October 27, 2009.

⁶⁸² In the briefs that the magistrate and judges Guillermo López Lone, Ramón Enrique Barrios and Luis Alonso Chévez de la Rocha submitted to the Supreme Court *en banc* on April 13, 2010, requesting “that the Court be persuaded by the file submitted for its consideration; that the action be declared time barred and that the proceedings be closed. That the constitutional principle of non-retroactivity be applied, and that the observations of the Office of the United Nations High Commissioner for Human Rights be taken into consideration.”

⁶⁸³ IACHR, [Preliminary Observations](#) of the Inter-American Commission on Human Rights on Its Visit to Honduras, May 15 to 18, 2010, para. 76 sq.

⁶⁸⁴ Document supplied to the IACHR inviting officials and employees of the Judicial Branch to participate in a march supporting the *coup d'état*. See also “*Multitudinaria marcha en Tegucigalpa*” [“Massive March in Tegucigalpa”]. *La Prensa*, June 30, 2009; “*Plantón por la paz y la Democracia*” [“Demonstration for Peace and Democracy”]. *La Tribuna*, June 30, 2009; and “*Somos siete millones y medio de soldados*” [“We are an army of seven and a half million soldiers”]. *La Tribuna*, June 30, 2009.

480. In press release 54/10,⁶⁸⁶ the IACHR issued an urgent call to reverse this situation, which seriously undermines the rule of Law. On May 28, 2010, by virtue of the authority it is given in Article 41 of the American Convention, the Inter-American Commission asked the Supreme Court to provide information on the situation of the judges who were subjected to disciplinary actions for their participation in activities protesting the *coup d'état*.⁶⁸⁷

481. On June 1, 2010, the Supreme Court of Honduras confirmed the decision to dismiss Magistrate Tirza del Carmen Flores and judges Guillermo López Lone, Ramón Enrique Barrios and Luis Alonso Chévez de la Rocha.⁶⁸⁸ That same day, President Porfirio Lobo stated that he was “completely against the decision; it seems to me that it does nothing to contribute to the reconciliation of the Honduran family. With all due respect to the Judicial Branch as an independent branch of government, I have to say that their decision does nothing to unify the country.”⁶⁸⁹

482. On June 18, 2010, the magistrates and judges were notified of the Supreme Court decision that ordered their removal from the bench for failure to discharge or serious violations of their duties.⁶⁹⁰ According to published reports, on June 28, 2010, the dismissed judges filed a challenge with the Judicial Career Council and requested reinstatement.⁶⁹¹ According to the press, the Council in question agreed to hear the petition.⁶⁹²

...continuación

⁶⁸⁵ For example, the newspaper “*La Prensa*”, Monday July 6, 2009, *Apertura* 23.

⁶⁸⁶ IACHR, Press Release 54/10, “*IACHR Concerned about Human Rights Violations in Honduras*,” May 19, 2010.

⁶⁸⁷ In exercise of its authority under Article 41 of the American Convention on Human Rights, on May 28, 2010 the IACHR repeated in writing its request for information on the situation of the magistrates and judges subjected to disciplinary actions.

⁶⁸⁸ Diario *El Heraldo*, “[Pleno de la Corte ratifica despido de jueces](#)” [The Supreme Court, *en banc*, confirms judges’ dismissal], June 1, 2010.

⁶⁸⁹ Diario *El Heraldo*, “[Pleno de la Corte ratifica despido de jueces](#)” [The Supreme Court, *en banc*, confirms judges’ dismissal], June 1, 2010.

⁶⁹⁰ UN, [Dismissal of Honduran judges sends an intimidating message, UN](#), July 29, 2010.

⁶⁹¹ Diario Tiempo, “*Impugnan destitución de ex jueces sampedranos*” [Dismissal of San Pedro Sula judges being challenged], June 30, 2010; Diario *El Heraldo*, “[Jueces destituidos impugnan despido](#)” [Dismissed judges challenge their removal from the bench], July 30, 2010.

⁶⁹² Diario Tiempo, “*Admiten impugnación a favor de jueces despedidos*” [Dismissed judges’ challenge will be heard], July 19, 2010. The Honduran State reported that the “Judicial Career Council is hearing the challenge that the interested parties brought; therefore, their right to due process has not been violated.” In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, p. 7.

E. Freedom of expression⁶⁹³

483. The June 2009 *coup d'état* set off a series of massive human rights violations; the right to freedom of thought and expression was not spared.⁶⁹⁴ Although Mr. Porfirio Lobo Sosa was sworn in as President of the Republic of Honduras on January 27, 2010, the danger to social communicators, journalists and human rights defenders persisted. Particularly troubling to the Commission were the number of journalists murdered in 2010; the threats, aggression and harassment perpetrated against journalists and the media; and the fact that these crimes continue to go unpunished, which has a widespread chilling effect on citizen's exercise of their freedom of expression, on their right to access information, and on the strength and vitality of public discourse.

1. Journalists murdered

484. In 2010, at least eight journalists were murdered in Honduras.

485. On March 1, 2010, Joseph Hernández Ochoa, a journalist with Channel 51 in Tegucigalpa, was shot to death. His companion, journalist Karol Cabrera, sustained injuries but survived. According to the information received, on the night of March 1, the automobile in which journalists Hernández Ochoa from Channel 51 and Cabrera from Radio Cadena Voces and State Channel 8 were traveling was attacked by a number of individuals wielding firearms. Reports indicate that Mr. Hernández Ochoa was shot to death, while Cabrera sustained three bullet wounds, but recovered. According to accounts in the local press, Cabrera –who reported having received threats on several occasions- had police protection at home and was the target of the assailants.⁶⁹⁵

486. David Meza Montesinos, 51, was murdered on March 11, 2010; at the time he was a journalist with Radio América and Radio El Patio in the city of La Ceiba. He was killed at around 17:30, near his home in the coastal city of La Ceiba, located two hundred kilometers north of Tegucigalpa, the capital of the country. The journalist was attacked from a passing vehicle as he was walking down a street in La Ceiba.⁶⁹⁶

487. On March 14, 2010, journalist Nahúm Palacios was murdered in the city of Tocoa; Palacios had been news director for Television Channel 5 in Aguán. The IACHR had requested that

⁶⁹³ Preparation of this section of the report was assigned by the Commission to the Special Rapporteur for Freedom of Expression. The section includes information received until December 1, 2010. However, it is paramount to take into account the murder of journalist Henry Suazo on December 20, 2010, in the town of La Masica, department of Atlantida. According to information available to this Office, two unknown individuals fired shots at journalist Henry Suazo as he was leaving his home. The journalist was a reporter for the HRN radio station and worked for a local TV station. Suazo had apparently denounced on the radio in days prior that he had received a death threat via a text message sent to his phone. With the death of Henry Suazo, the number of journalists murdered in Honduras in 2010 rises to nine. IACHR. *Office of the Special Rapporteur Condemns Murder of Journalist in Honduras*. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=830&IID=1>; Committee to Protect Journalists (CPJ). December 30, 2010. *Honduran journalist gunned down in front of his home*. Available at: <http://www.cpj.org/2010/12/honduran-journalist-gunned-down-in-front-of-home.php>; El Heraldo. December 28, 2010. *Another journalist murdered in the north of Honduras*. Available at: <http://www.elheraldo.hn/Ediciones/2010/12/28/Noticias/Asesinan-otro-periodista-al-norte-de-Honduras>.

⁶⁹⁴ IACHR. *Honduras: Human Rights and the Coup d'État*. OEA/Ser.L/V/II. Doc. 55. December 30, 2009.

⁶⁹⁵ IACHR, Press release No. 24-10: *Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras*. Committee to Protect Journalists. March 5, 2010, "[Journalist Killed, Another Wounded in Honduras Shooting](#)". International Press Institute. March 15, 2010. "[Second Honduran journalist killed in two weeks](#)".

⁶⁹⁶ CODEH. June 19, 2010, Entry on [Davir Meza Montesinos](#); Committee to Protect Journalists. March 12, 2010. "[Honduran Radio Reporter Gunned Down](#),"; Diario La Tribuna. March 11, 2010. "[Matan al periodista David Meza](#)" [Journalist David Meza killed].

the State adopt precautionary measures for him. According to the information received, Nahúm Palacios was murdered by two unknown assailants who attacked with AK-47 automatics on the night of Sunday, March 14, as Palacios was returning to his home in the Los Pinos neighborhood of the city of Tocoa, some 400 kilometers north of Tegucigalpa. The journalist sustained 30 bullet wounds, and the car in which he was driving was shot 42 times. The two persons with him were injured. After the June 28, 2009 *coup d'état*, Nahúm Palacios covered the demonstrations organized by the resistance and publicly criticized the *coup*. According to the information the Commission has received, on June 30, 2009, a military operation was carried out in which the channel's operating equipment was confiscated; Palacios' residence was searched, his children held at gunpoint and his vehicle confiscated. On July 24, 2009, the Commission granted precautionary measures for Nahúm Palacios and requested that the necessary measures be taken to protect his life and personal integrity. According to the information received, the Honduran authorities did not take these measures.⁶⁹⁷

488. On March 26, 2010, José Bayardo Mairena and Manuel Juárez, journalists for R.Z. Television Channel 4 and Radio Excelsior, were murdered as they were driving down a highway in the vicinity of the city of Juticalpa, in the department of Olancho. According to the reports received, Mairena and Juárez were on road near the city of Juticalpa, when they were taken over by another vehicle; those inside the second vehicle fired off several bursts of machine gun fire. Sources that the Office of the Special Rapporteur consulted indicated that Mairena had recently done newspaper reports on the land dispute and organized crime in Honduras.⁶⁹⁸

489. On April 20, 2010, Jorge Alberto "Georgino" Orellana, a journalist with the *Televisión de Honduras* channel, was murdered in the city of San Pedro Sula.⁶⁹⁹ According to the information received, Orellana was shot on Tuesday, April 20, at night, minutes after leaving the offices of channel *Televisión de Honduras*, where he was the anchor of an opinion program dealing with current issues. The journalist died shortly thereafter from the bullet wounds he had sustained.

490. On July 14, Luis Arturo Mondragón Morazán, director of Channel 19 and of the news program "Teleprensa", was killed in El Paraíso, which is in the eastern part of the country. According to the information received, Mondragón was shot four times as he was leaving the offices of Channel 19. In his program, the journalist covered such issues as corruption, crime and environmental problems. He died at the scene, having succumbed to the bullet wounds he sustained.⁷⁰⁰

⁶⁹⁷ IACHR, Press Release No. 31/10: [IACHR Deplores Murder of Journalist in Honduras](#). Committee to Protect Journalists, March 14, 2010, [article on Nahúm Palacios Arteaga](#). IFEX, March 16, 2010. ["Third Honduran Journalist Gunned Down in Two Weeks"](#).

⁶⁹⁸ IACHR, Press Release No. R39-10: [Special Rapporteurship Condemns Murder of Honduran Journalists](#); El Heraldo. ["Asesinan a dos periodistas al oriente de Honduras"](#) [Two journalists murdered in eastern Honduras], March 26, 2010; La Prensa. ["Asesinan a 2 periodistas hondureños en Olancho"](#) [Two Honduran journalists killed in Olancho], March 26, 2010; AMARC. ["Con la muerte de otros dos periodistas son ya cinco los profesionales de la prensa asesinados en Honduras en marzo"](#) [The death of two more journalists brings the number of journalists murdered in Honduras in March to 5], April 9, 2010.

⁶⁹⁹ IACHR, Press Release No. R45-10: [Special Rapporteurship Concerned about the Latest Murder of Journalist in Honduras](#); Committee to Protect Journalists. TV Host Slain. ["6th Honduran Journalist killed since March"](#); BBC Mundo. ["Asesinado otro periodista en Honduras"](#). [Another journalist killed in Honduras], April 21, 2010.

⁷⁰⁰ IACHR, Press Release No. R62-10: [Office of the Special Rapporteur Expresses Concern at Latest Murder of Journalist in Honduras](#). UNESCO. July 1, 2010. ["UNESCO Director-General condemns murder of TV journalist Luis Arturo Mondragón Morazán"](#). C-Libre IFEX. June 16, 2010. ["Another Journalist Killed"](#).

491. Israel Zelaya Díaz was murdered on August 24, 2010. He was a journalist with Radio Internacional in the city of San Pedro Sula, Honduras. According to the information received, Israel Zelaya was found shot to death in a sugarcane field. His personal belongings had not been stolen. Three months earlier, a fire had done damage to his home; the cause of the blaze was never established. The Office of the Special Rapporteur for Freedom of Expression learned that Zelaya was working on a local news program on Radio Internacional in San Pedro Sula, and routinely complained about public interest matters.⁷⁰¹

492. Henry Suazo, a correspondent for radio HRN in La Ceiba department and a journalist for a local television station, was killed on December 28, 2010, as he was leaving his home in La Masica. According to the information received, two days earlier the journalist had received a death threat delivered by a text message sent to his cell phone.⁷⁰²

493. The Secretariat of Security filed a report with the National Congress on May 5, in which it updated the status of the investigations into these murders.⁷⁰³ The report was confidential and its contents were not revealed. Authorities at the Secretariat of Security argued that revealing the content of the report could obstruct the investigations.⁷⁰⁴ In May 2010, the Vice Minister of Security, Armando Calidonio, told the Commission that “thus far, the deaths of the journalists appear to be unrelated to the practice of their profession.”⁷⁰⁵ However, both the Office of the Special Prosecutor for Human Rights and nongovernmental organizations that are monitoring the progress made into the investigations of these crimes stated that in some cases, there are credible theories that link the crimes to the victims’ practice of journalism. Those nongovernmental organizations maintained that no headway had been made in the investigations and were of the view that the authorities were not interested in solving the murders.⁷⁰⁶ The Office of the Special Prosecutor for Human Rights blamed the shortcomings in the investigations on the fact that “the police were ill-equipped to conduct investigations.”⁷⁰⁷

494. At the public hearing the Commission held on October 25, 2010 on the *Situation of the Right to Freedom of Expression in Honduras*, the State’s representatives asserted that progress has been made in the investigations into the crimes committed against journalists, and indicated that none of the journalists murdered in 2010 was killed for practicing his craft; the State’s

⁷⁰¹ IACHR, Press release No. R85-10. [Special Rapporteur for Freedom of Expression Condemns Latest Murder of Journalist in Honduras](#). Committee to Protect Journalists. [Article on Israel Zelaya Díaz](#). La Tribuna. August 25, 2010. [“Matan a periodista Israel Zelaya Díaz”](#) [Journalist Israel Zelaya Díaz murdered].

⁷⁰² IACHR, Press Release No. R125-10. Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras. December 29, 2010. [“Asesinan otro periodista al norte de Honduras”](#) [Another journalist murdered in northern Honduras] Diario El Heraldo, December 28, 2010.

⁷⁰³ The report was requested by deputy Augusto Cruz Asensio, when the violence against journalists spiked in 2010.

⁷⁰⁴ Diario La Tribuna. May 6, 2010. [“En secretividad investigación sobre asesinatos de periodistas”](#) [Investigation into murders of journalists cloaked in secrecy].

⁷⁰⁵ Diario La Tribuna. April 22, 2010. [“Capturan a implicado en la muerte de periodista”](#) [Suspect taken into custody and charged in journalist’s death].

⁷⁰⁶ Information received at the IACHR’s meeting with communicators on May 16, 2010, in Tegucigalpa, Honduras.

⁷⁰⁷ Meeting with the Office of the Special Prosecutor for Human Rights, May 15, 2010, Tegucigalpa, Honduras.

contention was that these were common crimes.⁷⁰⁸ However, like the officials the Commission interviewed during its official visit in May, the State's representatives did not offer any evidence to support their claim.⁷⁰⁹

495. In its observations on the IACHR's 2010 Annual Report, the State pointed out the following: "The preliminary investigations have established that the murders were the work of a common criminal or criminals; it has not yet found anything to suggest that the motive for the crime was the opinions expressed by the journalists or that agents of the State were in any way involved. For that reason, the cases are being investigated by the Office of the Prosecutor for Common Crimes and not by the Special Prosecutor for Human Rights. In two of the cases, the investigations have concluded, the corresponding criminal indictments have been filed, and the suspects in those two cases are in custody pending trial. In another two cases, the investigations have concluded and the Public Prosecutor's Office is expected to present them shortly."⁷¹⁰ It should pointed out that the State did not mention which cases had moved forward and did not provide any evidence to support its claims.

496. The nongovernmental organization C-Libre reported that someone was convicted of the murder of Georgino Orellana; however, suspicions that the crime was politically motivated persist. It also indicated that someone was reportedly in custody for the murder of David Meza, but said that no significant progress had been made in the case.⁷¹¹

497. As the Commission maintained after its May 2010 visit, it is imperative that the State urgently undertake investigations, run by independent, specialized bodies that follow special investigative procedures that can reliably establish whether the crimes are related to the practice of the victims' profession and that can enable the prosecution and conviction of those responsible for the crimes. The State must also adopt permanent protective mechanisms to ensure the lives and personal safety of media workers who are at risk. Allowing the perpetrators of these crimes to go unpunished not only offends the victims' next of kin but affects society as a whole as well, as it instills fear and a tendency toward self-censorship, as various journalists and social communicators have observed in the meetings held with the IACHR during its visit to Honduras in May 2010.⁷¹²

498. Principle 9 of the IACHR's Declaration of Principles on Freedom of Expression reads as follows: "The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate

⁷⁰⁸ The representatives of the Honduran State said that the alleged murderer of Georgino Orellana is locked up and that robbery had been the motive for the crime. They also reported that two persons are in custody for the murder of David Meza Montesinos, that the crime was related to organized crime and that "significant headway" had been made in the investigation of the murder of Nahúm Palacios. See IACHR, public hearing on "[Situation of Freedom of Expression in Honduras](#)" held on October 25, 2010, during the Commission's 140th regular session.

⁷⁰⁹ See IACHR, public hearing on "[Situation of Freedom of Expression in Honduras](#)" held on October 25, 2010, during the Commission's 140th regular session.

⁷¹⁰ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 7.

⁷¹¹ E-mail of November 23, 2010 (in the files of the Office of the Special Rapporteur).

⁷¹² Information received during the meeting the Commission held with social communicators in Tegucigalpa, Honduras, May 16, 2010.

such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

3. Threats, assaults and harassment of journalists

499. Sometime after 3:30 am on January 6, 2010, unknown persons set fire to the community radio station Faluma Bimetu (Coco Dulce), which serves the community of Triunfo de la Cruz in the department of Atlántida. The radio station belongs to the Garifuna community. Since the June 2009 *coup*, the radio station had received a number of threats because of its opposition to the *coup d'état* and to various real estate development projects underway in the region. As a result, the radio station told the Commission that its situation was dangerous. Alfredo López, manager of Faluma Bimetu, said that on April 24, shortly before the Commission's visit to Honduras in May 2010, he had made arrangements with the State consisting of two daily police patrols.⁷¹³ However, López said that the patrols stopped within a few days.⁷¹⁴ The Honduran State reported that the investigations into this case have “not turned up any suspects who might have caused the fire at the community radio station in question.” It reported that “investigations continue in order to find those responsible.”⁷¹⁵

500. In late March 2010, journalist José Alemán, a correspondent for Radio América and contributor to the *Diario Tiempo* in San Marcos de Ocotepeque, left the country because of the threats he received. According to the information received, on March 28, 2010 Alemán received an anonymous call in the morning, in which they threatened him. That same day, unknown persons entered his residence when he was not at home and fired off their weapons inside the reporter's home. According to the information received, the San Marcos de Ocotepeque police told him that they were “incapable” of providing him with security. As a result of these events, Alemán decided to leave the country that very night.⁷¹⁶

501. On April 9, 2010, unidentified persons fired shots at the residence of Channel 40 journalist Ricardo Oviedo. The journalist, who is also president of the Colón Social Communicators Association, complained that he has been persecuted and harassed since the June 2009 *coup d'état*. On the day his home was attacked, the journalist had covered the police barricade where security forces were stopping buses and checking their passengers. When Oviedo asked why the people were being checked, one of the police officers answered him in a hostile manner using language laced with obscenities.⁷¹⁷

⁷¹³ Information received at the meeting the Commission held with social communicators in Tegucigalpa, on May 16, 2010.

⁷¹⁴ Information received at the meeting the Commission held with social communicators in Tegucigalpa, on May 16, 2010.

⁷¹⁵ In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, p. 8.

⁷¹⁶ Committee to Protect Journalists. April 1, 2010. [“Honduran Journalist Leaves the Country after Attacks”](#); Reporters Without Borders, April 2, 2010. [Month of violence turns Honduras into world's most dangerous place for journalists](#).

⁷¹⁷ Telephone interview with Ricardo Oviedo, May 14, 2010. See also COPA Press Release, April 28, 2010. [“Otro periodista amenazado en el Aguán”](#) [Another journalist threatened in El Aguán]; C-Libre/IFEX. [“Canal 40 journalist followed, threatened](#).

502. During its May 2010 visit, the Commission received information about an attack made on members of the community radio station *La Voz de Zacate Grande*, in the town of Zacate Grande, which is in the area of the Gulf of Fonseca. This radio station has ties to a movement of *campesinos* in the region who are currently locked in a dispute with a businessman from the area over the control of land. According to the information received, in April 2010 *La Voz de Zacate Grande* was attacked by a group of individuals who supposedly had ties to the businessman in question. Later, persons bearing arms turned up at the radio station claiming to be with the Public Prosecutor's Office. They asked to see the papers authorizing the station to operate. In the days that followed, prosecutor Marco Tulio Campos filed a criminal complaint with the Amapala district court, charging Pedro Canales Torres, José Ernesto Laso, Wilmer Rivera Cabrera, Ethel Verónica Corea, Rafael Osorio, José Danilo Osorio, all employees of the radio station, with the crimes of usurpation of land and the crime of defrauding the public administration by setting up a radio station without CONATEL's authorization.⁷¹⁸ The charges of defrauding the government were dropped. According to the information received, the accused were found guilty of the crime of "usurpation." An appeal filed with the Choluteca Appellate Court was denied.⁷¹⁹

503. On April 18, 2010, journalist Jorge Ott Anderson, owner of a small cable channel in the city of Colón, received a call on his program in which the anonymous caller warned him that he would be killed at anytime. On May 13, 2010, he received another threat during the night. According to the journalist, the threats against him began two days after the *coup d'état*, on June 30, 2009. They were made by phone and were broadcast live, since the journalist takes calls from viewers live and on the air. The military shut down the channel, which was off the air for two and a half months. According to Ott Anderson, the threats have continued unabated ever since. Their frequency had reportedly increased after Ott Anderson reported on the murder of journalist Nahúm Palacios and the detention of a young man in Bonito Oriental, who had allegedly been mistreated by police in April 2010.⁷²⁰

504. In late April 2010, the Society of Jesus reported that Father Ismael Moreno, director of *Radio Progreso*, Gerardo Chévez, a journalist with the station, and Lucy Mendoza, the attorney with the Jesuit Reflection, Research and Communication Team [Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús] –ERIC- had reportedly been threatened. According to the information received, the threats that Father Moreno received forced him to go into hiding in late April 2010.⁷²¹ According to the same report, journalist Gerardo Chévez was threatened via a text message on March 29, 2010, at approximately three in the afternoon. In the early morning hours that same day, the journalist received another message which read as follows: "*Resistance, we're eliminating the Chévezes first and then the priests.*" It is important to point out that on April 11, 2010, Chévez' cousin, the broadcaster Luis Alberto Chévez, had been murdered.⁷²² Attorney Lucy Mendoza was threatened on April 24, 2010, by way of a text message that told her the following:

⁷¹⁸ Information received at the Commission's meeting with social communicators, held in Tegucigalpa, Honduras, May 16, 2010. Information also obtained from the [IFEX alert of April 29, 2010](#). See also <http://conexihon.com/?q=node/26>.

⁷¹⁹ Information supplied by C-Libre, e-mail of November 2010 (on file in the Office of the Special Rapporteur).

⁷²⁰ Telephone interview with Jorge Ott Anderson, May 14, 2010. Committee to Protect Journalists. May 4, 2010. "[Two Honduran TV reporters receive death threats](#)".

⁷²¹ *Revistazo*. April 22, 2010. "[Miembros de la Compañía de Jesús en Honduras, amenazados a muerte](#)" [Jesuits in Honduras receive death threats]. See also, *Proceso Digital*. April 22, 2010. "[Compañía de Jesús denuncia amenazas contra el Padre Melo y periodistas](#)" [Jesuits denounce threats against Father Melo and journalists].

⁷²² Telephone conversation with Gerardo Chévez, May 12, 2010. IFEX. April 26, 2010. "[Journalist receives death threat](#)".

“Colonel: You think we don’t know you? When you walk in the park, we know when you arrive. We see when you come and with whom. You better get out of all that resistance business.” Attorney Mendoza, who had been followed and threatened in other ways, has been working for ERIC for some two years; in recent months, she has been providing direct support to the journalists with Radio Progreso.⁷²³

505. Jessica Pavón is the news anchor on two news programs on Tegucigalpa’s Channel 6: *Notiseis Matutino* [The Channel 6 Morning News] and *Notiseis Nocturno* [The Channel 6 Nightly News]. On May 13, 2010, Pavón received a call on her cell phone and then a message to the following effect: “You feel death. Right, bitch? Because you’re dressed in white, we’re going to kill you, bitch” [sic]. Pavón was in fact wearing white that day. Almost ten minutes later, she received another message, which said the following: “When we see you, we’re going to blow your head off, bitch. Get ready, because it’s channel 6’s turn now. Orlin Castro [one of Pavón’s colleagues at Channel 6 who works in San Pedro Sula and had been a recent target of persecution] got away from us. The luck is for you, JESSICA PAVON. Regards el Chele” [sic]. After contacting the police, at 8:00 p.m. Pavón was taken home in a private car by two police officers sent by the Secretariat for Security. Since then she has received a number of calls and similar messages. Pavón filed a complaint with the Office of the Director General of Criminal Investigations and the Public Prosecutor’s Office. As a news anchor, she usually reports police news and had recently interviewed persons connected to the teachers union and workers and business people about the negotiations on the minimum wage⁷²⁴.

506. On May 19, 2010, Arturo Rendón Pineda, the owner of Radio *La Voz de Occidente* in Santa Rosa de Copán, and Manuel Gavarrete, a journalist with that media outlet (and director of the news program “Sucesos”), were both victims of a number of threatening telephone calls. Thus, for example, on May 17, 2010, while the news program was being broadcast, they received three calls at the station threatening the life of the owner of the station and that of journalist Gavarrete and his family. Rendón Pineda denounced that since the *coup d’état*, he and the journalists who work at his radio station have been the targets of serious acts of harassment, such as bursts of machinegun fire outside the station and at Rendón’s home.⁷²⁵ Gavarrete, for his part, complained that his wife had received a call warning her that her children would be killed unless her husband shut up.⁷²⁶ Rendón Pineda decided to file complaints with the Public Prosecutor’s Office and various civil society organizations. According to Rendón Pineda, the harassment and the threats are because of the station’s editorial line, which was very critical of the June 28 *coup d’état*. The owner of *La Voz de Occidente* recalled that shortly before receiving the threatening phone calls, they had read an opinion piece over the air that had been published in the newspaper *Tiempo* in which questions were raised about the figures from the Supreme Electoral Tribunal on the November 2009 elections.⁷²⁷

507. On June 3, 2010, members of a military and police contingent who planned to capture five leaders of the Zacate Grande Land Recovery and Titling Movement, appeared at the

⁷²³ Information received at the Commission’s meeting with social communicators, held in Tegucigalpa, Honduras, May 16, 2010.

⁷²⁴ Telephone interview with Jessica Pavón, May 18, 2010. IFEX. May 17, 2010. [“Canal 6 journalist receives death threats”](#).

⁷²⁵ Telephone interview with Arturo Rendón Pineda on May 24, 2010.

⁷²⁶ Telephone interview with Manuel Gavarrete on May 24, 2010.

⁷²⁷ The opinion piece in question is titled “Statistics from the Supreme Electoral Tribunal, 2009,” and was published on May 17, 2010, in the Honduran newspaper *El Tiempo*.

community radio station *La Voz de Zacate Grande*. According to the information received, the members of the security forces placed yellow tape reading “crime scene” on the door to the community radio station, supposedly for the purpose of preventing *La Voz de Zacate Grande* from broadcasting its programming.⁷²⁸

508. According to the information received, on August 30, 2010, *Radio Uno*, located in San Pedro Sula, was reportedly sabotaged when the power lines feeding the station’s headquarters with electric power were cut. At around 8:20 p.m., while the suppression of a teachers’ demonstration some days before was being discussed, the station was suddenly off the air.⁷²⁹

509. On September 14, unidentified persons fired on Honduran journalist Luis Galdámez Álvarez. The communicator’s quick reaction foiled the attack. The journalist heads up an opinion program on *Radio Globo* and has been critical of the June 28, 2009 *coup d’état*. Because of the death threats he had received, the IACHR granted precautionary measures for Luis Galdámez Álvarez on July 24, 2009. However, when the measures were not properly implemented and the threats continued, on December 6, 2010 the IACHR requested provisional measures of the Inter-American Court.⁷³⁰

510. Furthermore, according to information received, on September 15, 2010 security forces used teargas to break up a march and a concert organized by the San Pedro Sula Frente Nacional de Resistencia Popular, while the 189th anniversary of Honduran Independence was being celebrated. During the course of the measures taken to repress the march and concert, the building housing *Radio Uno* was attacked and its employees assaulted.⁷³¹ Once again, the Commission feels compelled to underscore the importance of observance of Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression.

4. Poor implementation of precautionary measures

511. In 2010, the Commission granted precautionary measures for 24 persons whose freedom of expression was threatened; most of the beneficiaries were journalists.⁷³² In many cases, the measures included their immediate families. Nahúm Palacios, the journalist murdered on March 14, 2010, was under that protection at the time of his murder. Both during the

⁷²⁸ AMARC. 3 de junio de 2010. [“Contingente militar-policial clausura transmisiones de la Voz de Zacate Grande;”](#) IFEX. 30 de agosto de 2010. [“Continued persecution of community radio station in Zacate Grande.”](#)

⁷²⁹ IFEX. September 1, 2010. [“Radio station forced off air by vandalism”](#).

⁷³⁰ IACHR, Press Release R96/10: [Office of the Special Rapporteur Expresses Concern over New Attacks against Journalists and Media in Honduras](#), September 20, 2010. IFEX. September 16, 2010. [“Journalist survives assassination attempt”](#). Committee to Protect Journalists. September 16, 2010. [“Critical Honduran reporter survives shooting attack”](#).

⁷³¹ AMARC. September 16, 2010. [“Militares y policías atacan Radio Uno”](#) [Military and Police Attack Radio Uno]. TeleSur. September 16, 2010. [“Resistencia hondureña denuncia que represión injustificada causó muerte de manifestante”](#) [Honduran Resistance claim that unwarranted repression caused demonstrator’s death].

⁷³² The journalists for whom the IACHR granted precautionary measures in 2010 are as follows: Marvin Emilio Hernández Duarte and his immediate family (January 8, 2010, MC 196/09, amplification); Gilberto Vides and his immediate family (January 22, 2010, MC 196/09, amplification); Anselmo Romero Ulloa and María Brígida Ulloa Hernández (February 12, 2010, MC 196/09, amplification); Manuel de Jesús Varela Murillo, Ricardo Antonio Rodríguez and their families (February 25, 2010, MC 38/10); Pedro Brizuela, Mateo Enrique García Castillo, and immediate families (March 19, 2010, MC 91/10); X and family (name withheld because he is a minor, March 24, 2010, MC 95/10); Inmer Genaro Chévez and Lucy Mendoza (May 3, 2010, MC 196/09, amplification); Karla Patricia Rivas Sánchez; José Pablo Peraza Chávez; Rita Suyapa Santamaría Velásquez; Alfredo Bográn, Lolany Mariela Pérez Parada; Rommel Alexander Gómez; Lesly Castro; José Domingo Miranda; Héctor Hernández; Víctor Emilio Borjas; Leticia Castellanos and Pablo Ordóñez (May 20, 2010, MC 196/09, amplification for journalists from Radio Progreso); Juan Ramón Flores (June 21, 2010, MC 180/10); Edwin Róbilo Espinal (July 22 2010, MC 221/10).

Commission's visit in May 2010 and at the hearing on *Mechanisms for implementation of precautionary measures in Honduras*, held in Washington, D.C. on October 25, 2010, civil society organizations and the beneficiaries themselves described the enormous difficulties they had experienced in having the precautionary measures properly implemented.⁷³³

512. The journalists' mistrust of the police and the lack of an effective response by the authorities appear to be among the reasons for the inadequate implementation of these measures.⁷³⁴ The situation is compounded by the impunity that the perpetrators of crimes against media workers enjoy, a fact mentioned in preceding paragraphs.

513. It is worthwhile noting that, thus far, the authorities' response to the precautionary measures, when there has been a response, has consisted of offering to supply identification cards, patrols of homes, escorts to and from work, and personal guard services at night.⁷³⁵ However, some journalists said that they were very fearful of the police because of their association with the repression that followed the *coup d'état* and with groups having ties to organized crime.⁷³⁶ At the hearing the Commission held in October 2010, representatives of Honduran civil society observed that the State is clearly not committed to protecting journalists and media workers who are at risk, given that there are no proper risk assessments. They also stated that the bodyguards the State provides are at the expense of the person being guarded (a cost of some 250 dollars weekly); that the patrols are stationed in urban areas and are not available in rural areas; that the telephone connections often don't work and there are no personnel who specialize in or are trained in implementing protective measures.⁷³⁷ The State reported that a Human Rights Unit was created within the Secretariat of Security in March 2010, and is tasked with arriving at a consensus on, implementing and following up on protective measures. It also reported that a Human Rights Investigation Unit had been created within the Secretariat of Security, under the Office of the Special Prosecutor for Human Rights, and that in July 2010 the Working Group of the Inter-Institutional Commission on Human Rights had agreed that a "permanent staff" should be appointed. However it did not report whether those appointments had been made or where staffing was to be reinforced. It also acknowledged that "in some instances, it is difficult to arrive at a consensus on the measures to be taken and how to implement them, but not necessarily for reasons attributable to the State." Among the difficulties mentioned, it cited the "uncooperative attitude on the part of the beneficiary" as the main problem, as well requests from beneficiaries that "exceed the national police's authority, such as providing the beneficiaries with funds to hire private security services."⁷³⁸ Finally, the State reported that the beneficiaries have to provide their bodyguards with meals since "the State is materially unable to get meals to all the places where

⁷³³ See IACHR, public hearing on "[Situation of Freedom of Expression in Honduras](#)", held October 25, 2010, during the Commission's 140th regular session.

⁷³⁴ Telephone interviews with Jorge Ott Anderson and Ricardo Oviedo on May 14, 2010.

⁷³⁵ Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa.

⁷³⁶ Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa.

⁷³⁷ Statements made by petitioners Marcia Aguiluz (CEJIL), Mary Agurcia (COFADEH) and Lucy Mendoza (ERIC) at the public hearing on the "[Situation of Freedom of Expression in Honduras](#)", held on October 25, 2010, during the Commission's 140th regular session.

⁷³⁸ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, pp 8- 9.

bodyguards are posted.” It also rejected the claim that patrols only work in urban areas and observed that it does not have the funds to pay for private guard services.⁷³⁹

514. The lives of journalists and social communicators in Honduras are fraught with peril. The crimes committed against journalists in 2010 demand efficient and effective responses. It is imperative that the State set up special, independent investigative bodies and protocols, and specialized mechanisms of protection that are effective, stronger and arranged with the journalists themselves. Principle 9 of the IACHR’s Declaration of Principles on Freedom of Expression is particularly relevant here.

4. Investigations into shutdowns of media outlets

515. On June 28, 2009, *Channel 36* was taken over by the Armed Forces and was off the air until July 4, when it resumed operation after the Office of the Special Prosecutor for Human Rights intervened. The transmission towers of *Radio Globo* and *Radio La Catracha*, located in the area of Cerro Cantagallo, were taken over.⁷⁴⁰

516. According to the information compiled, on the morning of June 28, 2009 Army Lieutenant Colonel José Arnulfo Jiménez took over the facilities of Channel 36, while Army Lieutenant Darvin Ismael Ardón took control of the Radio Globo and Radio la Catracha transmitters.⁷⁴¹ Both were charged with the crimes of “destroying or damaging the telecommunications service” and “abuse of authority.” In the case, brought by the Office of the Special Prosecutor for Human Rights, the defendants argued that they had orders from superiors and had acted in compliance with an order from the Administrative Law Court which allegedly ordered confiscation of propaganda and other materials related to the so-called “fourth ballot box”.⁷⁴² The two officers argued that they suspected that the two media outlets in question were housing such materials. As the defendants themselves acknowledged at the initial hearing, those materials were never found. However, the takeover of the Channel 36 building lasted eight days. Judge Marta Murillo decided to dismiss the case on the grounds that the military had been following a legitimate order.⁷⁴³ The Office of the Special Prosecutor for Human Rights filed an appeal on January 13, 2010. According to the information received, the appeal had not yet been decided.⁷⁴⁴ However, on August 31, 2010, Judge Lilian Maldonado of the Multi-jurisdictional Courts of Francisco Morazán ruled that Lieutenant Colonel Jiménez was innocent of the charges that the Public Prosecutor’s Office and the victims’ attorneys had brought against him.⁷⁴⁵

517. On June 28, 2009, *Radio Juticalpa* in the department of Olancho, and *Radio Progreso* in the department of Yoro were also taken over and forced to suspend broadcasting. The Office of the Special Prosecutor for Human Rights filed a formal request with the court seeking

⁷³⁹ In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, p. 20.

⁷⁴⁰ See the report titled *Honduras: human rights and the coup d’état*, IACHR, 2009, paragraphs 414 et seq.

⁷⁴¹ Record from the Initial Hearing, Case No. 0801-2009-48097, before Judge Marta Marlene Murillo Castillo.

⁷⁴² See the report titled [Honduras: human rights and the coup d’état](#), IACHR, 2009, paragraphs 82 et seq.

⁷⁴³ Record of the initial hearing, Case No. 0801-2009-48097, before Judge Marta Marlene Murillo Castillo.

⁷⁴⁴ Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

⁷⁴⁵ See C-Libre/IFEX. September 7, 2010. [“Jueza declara inocente a coronel que cerró varios medios de comunicación”](#) [Colonel who closed various media outlets found innocent by judge]. *El Libertador*. September 3, 2010. [“Jueza declara inocente a militar responsable del cierre de Canal 36”](#) [Military officer responsible for shutting down Canal 36 found innocent by judge].

indictment of the military officers who led these actions. In the case of the closing of *Radio Juticalpa*, while the lower court ordered that one of the accused members of the army be taken into custody, the Third Court of Appeals revoked that order and dropped the charges against the accused.⁷⁴⁶ In the case of the takeover of *Radio Progress*, the charges against the accused were dismissed. As of the date of preparation of this report, the appeal filed by the Office of the Special Prosecutor for Human Rights had not been decided.⁷⁴⁷

518. On September 28, 2009, the equipment of Channel 36, Radio La Catracha and Radio Globo was confiscated, making it impossible for them to go on air. The equipment seizure was the result of a process instituted by CONATEL on the basis of decree PCM-M-016-2009, which had been issued just two days earlier.⁷⁴⁸ A number of different security forces took part in the operation, some of whom wore hoods. In October, the State informed the IACHR that the equipment had been returned and that the stations had resumed normal broadcasting, since the decree authorizing the closing of those media outlets had been revoked.⁷⁴⁹ On December 15, 2009, the Office of the Special Prosecutor for Human Rights sought indictment of those members of CONATEL who had ordered confiscation of the media outlets' equipment. However, the request was denied: Judge Marta Murillo ordered that the charges against the CONATEL commissioners who had ordered this shutdown be dropped.⁷⁵⁰ The Office of the Special Prosecutor for Human Rights filed an appeal to challenge the decision on April 15, 2010, but the appeal has still not been decided.⁷⁵¹

F. Sectors of the population that have historically been marginalized and are the most vulnerable

519. Human rights violations take a particularly heavy toll on those sectors of the population that have historically been marginalized, discriminated and are the most vulnerable, such as the LGBT community, children, women and the indigenous and Garifuna peoples.

520. In its report on "*Honduras: Human Rights and the Coup d'État*," the IACHR confirmed that the situation of the Garifuna people and members of the LGBT community had worsened with the *coup d'état*,⁷⁵² and documented serious violations of women's rights.⁷⁵³

⁷⁴⁶ Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

⁷⁴⁷ Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

⁷⁴⁸ IACHR, Press release R71/09: [Office of the Special Rapporteur for Freedom of Expression Condemns the Suspension of Guarantees in Honduras and the Violations of the Right to Freedom of Expression](#), September 29, 2009. This decree suspended, among others, the constitutional right to freedom of expression, by banning all the publications that may "offend human dignity, Government employees, or may threaten the law, and the government resolutions". This decree authorized the National Commission of Telecommunications (*Comisión Nacional de Telecomunicaciones*, CONATEL) to immediately interrupt, through the use of State security forces, the broadcasting of any radio station, television channel or cable television system that in its opinion may violate the aforementioned dispositions.

⁷⁴⁹ IACHR, [Honduras: Human Rights and the Coup d'État](#), paragraph 421.

⁷⁵⁰ The accused commissioners were Miguel Ángel Rodas Martínez, Héctor Eduardo Pavón Aguilar, Gustavo Lara López, José Antonio López Sanabria and Germán Enrique Marthel Beltrán.

⁷⁵¹ Information received from the Office of the Special Prosecutor for Human Rights at a meeting held on May 15, 2010. See also *El Libertador*, "[Jueza Martha Murillo falla en contra de la Libertad de Expresión; la sentencia aprueba el saqueo y cierre de Canal 36](#)" ["Judge Martha Murillo rules against Freedom of Expression; the ruling rubberstamps the sacking and shutdown of Channel 36"].

⁷⁵² IACHR: [Honduras: Human Rights and the Coup d'État](#). OEA/Ser.L/V/II., Doc. 55, December 30, 2009, paragraph 198.

521. In the case of the LGTB community, during the visit on May, 2010, the IACHR received information indicating that the LGBT Community has taken a particularly hard hit since the *coup d'état*. Similarly, at the Commission's October 26, 2010 public hearing on "[Hate crimes against members of the LGBT and impunity in Central America](#)", the Commission was informed of the serious consequences that the LGTB community suffered as a result of the institutional breakdown and the alteration of the democratic order.⁷⁵⁴ A number of its leaders have been murdered and others are in constant danger.

522. Furthermore, the Commission has information about incidents involving threats, harassment or aggression committed against members of the LGTB community in 2010. In one particular case, the IACHR was told of an unsuccessful attempt against the life of Nohelia Flores Álvarez⁷⁵⁵ -a transsexual- on August 26, 2010.⁷⁵⁶ According to information supplied by the State, oral, public proceedings got underway before the Tegucigalpa Trial Court on August 24, 2010 for the crime of attempted murder. The oral proceedings ended on September 8, 2010. The Court convicted Armando Rodríguez Borjas of the attempted murder of Nohelia Flores Álvarez⁷⁵⁷.

523. Representatives of the LGTB community of Honduras have told the Commission that since the *coup d'état* in Honduras, the impunity in the case of crimes committed against members of their community has increased, as the security forces alleged to be responsible for these offenses rely on the fact that no national authority will institute proceedings or launch investigations against them.⁷⁵⁸

524. Given the context, the IACHR has granted multiple precautionary measures for members of the LGTB Community. The Commission is calling upon the State to immediately investigate and solve the murder of Walter Trochez, who provided essential testimony to the Commission during its visit in August 2009.

525. The Commission has also received information on allegedly arbitrary detentions of transgender or transvestite persons as a result of enforcement of the Police and Social Coexistence Act, Decree No. 226-2001. The Commission has been told that the law in question is a means to antagonize the transgender population in Honduras, as it purportedly gives the police the authority to "temporarily detain" –for up to 24 hours- persons who offend "decency, morals or goods customs"; such detentions can also be made on other grounds, thus enabling a subjective interpretation of the law's enforcement. According to the information received, in practice no order from a competent authority is required for detentions of this kind, even though the law does in fact require such an order. The Commission has also been told that while in custody, these persons are victims of sexual violence, abuse and humiliation because of their sexual orientation.⁷⁵⁹

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⁷⁵³ IACHR: [Honduras: Human Rights and the Coup d'état](#). OEA/Ser.L/V/II., Doc. 55, December 30, 2009, Chapter V, Title G.

⁷⁵⁴ See video of the public hearing on "[Hate crimes against members of the LGBT and impunity in Central America](#)" which the Commission held on October 26, 2010, during its 140th regular session.

⁷⁵⁵ A beneficiary of precautionary measures that the Commission granted on January 29, 2010.

⁷⁵⁶ CEJIL, [Honduras incumple su obligación de proteger a las personas transexuales](#) [Honduras fails to comply with its duty to protect transsexual persons], September 3, 2010.

⁷⁵⁷ Memorandum No. SP-A-62-2010 from the Honduran State dated September 30, 2010.

⁷⁵⁸ See video of the public hearing on "[Hate crimes against members of the LGBT and impunity in Central America](#)" which the Commission held on October 26, 2010, during its 140th regular session.

⁷⁵⁹ See video of the public hearing on "[Hate crimes against members of the LGBT and impunity in Central America](#)" which the Commission held on October 26, 2010, during its 140th regular session.

526. On September 15, 2010, the Commission asked the State to supply information regarding the alleged acts of police violence and repression targeted at children and adolescents and that occurred during a series of demonstrations between July and August of 2010. The Honduran State observed that there was no police repression against children and youth in Honduras, and that the unfortunate cases involving children were isolated incidents that were immediately addressed. The Commission is nonetheless concerned that in the State's own report there is an acknowledgement of police repression targeting students of one educational institution.⁷⁶⁰ The Commission learned of these events from the Honduran Children and Youth Human Rights Platform [Plataforma de Derechos Humanos de niñez y juventud en Honduras] which published a report on the most serious violations of the rights of children and adolescents that the State either causes or tolerates.⁷⁶¹

527. The information received in 2010 does not suggest that the situation of children and adolescents in Honduras is better than it was the previous year. In effect, Honduran organizations reported various cases involving violent deaths and/or executions, abductions, arbitrary detentions, physical aggression, sexual violence and threats against children, adolescents and youth.⁷⁶² According to what was reported, the acts of violence were allegedly intended to send an indirect message to the victims' parents –who were said to be leaders or members of the resistance movement.⁷⁶³

528. As previously observed, one of the most shocking cases in 2010 was that of Dara Gudliel, daughter of social communicator Enrique Gudiel⁷⁶⁴.

529. The Commission also has information to the effect that members of the National Police and Army had purportedly engaged in acts of repression and indiscriminate use of force

⁷⁶⁰ Official Communication No. SP-A-71-2010 from the Honduran State dated October 14, 2010.

According to the information the Commission received, on July 16, 2010, students at the Instituto Central "Vicente Cáceres," who were protesting the government's delay in delivering the Student Bonus, had allegedly been subjected to police repression. According to information that is public knowledge, the police had used gas to disperse the demonstrators and had chased the students, threatening them with their police sticks. Some students had reportedly been beaten, while others were detained. Some were minors under the age of 18. Honduran Children and Youth Human Rights Platform [Plataforma de Derechos Humanos de la Niñez y la Juventud de Honduras], "[CARTA PÚBLICA: A todos los Organismos de Derechos Humanos del mundo y al Pueblo Hondureño en general](#)" ["PUBLIC LETTER to all human rights organizations in the world and to the Honduran People in general"], September 7, 2010; Resistencia-Red Morazánica de Información, "[Reconciliación a toletazos: Policía ataca a niños y niñas por manifestarse](#)" [Reconciliation by force: Police attack children for demonstrating], July 16, 2010.

⁷⁶¹ "[Primer informe de la Plataforma de Derechos Humanos de niñez y juventud en Honduras, sobre las violaciones mas graves a sus derechos provocadas o toleradas por el Estado](#)" [First Report of the Honduran Children and Youth Human Rights Platform on the most serious violations of the rights of children and adolescents that the State either causes or tolerates], September 2010. The report refers to the "brutal beating and subsequent detention of 21 students, most of whom were under the age of 18. These were students from the Institutos "Jesús Aguilar Paz" and Central "Vicente Cáceres." The events happened on July 15 and 16, 2010. The report also recounts "the beatings and injuries that anti-riot police inflicted on hundreds of youth who were engaging in a peaceful demonstration on August 2, 2010, in support of the hunger strike being staged by members of the UNAH Labor Union. In this episode, 3 youth were detained, ten were injured and others beaten by police. Thousands of young people who were attending classes at the Universidad Nacional Autónoma de Honduras (UNAH) were affected by the teargas grenades that police indiscriminately hurled onto the campus of the university."

⁷⁶² Information supplied by COFADEH on February 25, 2010, and the "[Primer informe de la Plataforma de Derechos Humanos de niñez y juventud en Honduras, sobre las violaciones mas graves a sus derechos provocadas o toleradas por el Estado](#)" [First Report of the Honduran Children and Youth Human Rights Platform on the most serious violations of the rights of children and adolescents that the State either causes or tolerates], September 2010.

⁷⁶³ Information supplied by COFADEH on February 25, 2010.

⁷⁶⁴ Information supplied by COFADEH on February 25, 2010.

against children, adolescents and youth in demonstrations staged by the resistance front. It has also been informed of various cases in which children, adolescents or youth were arbitrarily detained.⁷⁶⁵

530. Also, according to the information supplied by UNICEF and COIPRODEN (Coordinator of Private Institutions Protecting Children, Adolescents, Youth and Their Rights), the rights of children and adolescents have been severely affected, as their age makes them more vulnerable. The figures supplied by the Honduran Children and Youth Human Rights Platform about the most serious violations of their rights either caused or tolerated by the State suggest that the number of violent deaths and/or executions did not decline in 2010.⁷⁶⁶ According to *Casa Alianza*, the violent deaths and/or executions of children and young people are alarming:

The records of Honduras' *Casa Alianza* on the violent deaths and/or executions of children and youth in the country during the various administrations show that from January 1998 to February 2010, a total of 5,265 children and youth under the age of 23 have been murdered. Many of these killings have the characteristics and patterns typical of lawless systematic executions.

During the administration of former president Zelaya Rosales from February 2006 to June 28, 2009, and in the six-month regime of Micheletti Bain (June 29, 2009 to January 27, 2010) the statistics on violent deaths and/or executions were dramatic. A total of 2228 children and young people under the age of 23 met violent deaths and/or executions, which was 252 more than the number killed and/or executed under the previous administration of former president Ricardo Maduro. By the end of his administration, a total 1976 children and young people under the age of 23 had been murdered.

In February 2010, under the current administration of President Porfirio Lobo Sosa, a total of 42 persons under the age of 23 were murdered; of these, 16 victims (38%) were minors under the age of 18 (who, under our laws and Constitution, are classified as children).⁷⁶⁷

531. At the end of the first half of 2010, the figures that Casa Alianza had compiled regarding the murders of children and youth continued to paint a very disturbing picture. According to Casa Alianza, as of June, 383 children and youth under 23 years of age had been murdered; 104 of these were minors under the age of 18.⁷⁶⁸

⁷⁶⁵ ["Primer informe de la Plataforma de Derechos Humanos de niñez y juventud en Honduras, sobre las violaciones mas graves a sus derechos provocadas o toleradas por el Estado"](#) [First Report of the Honduran Children and Youth Human Rights Platform on the most serious violations of the rights of children and adolescents that the State either causes or tolerates], September 2010.

On September 15, 2010, the IACHR requested information from the State on this matter, pursuant to Article 41 of the American Convention on Human Rights

⁷⁶⁶ ["Primer informe de la Plataforma de Derechos Humanos de niñez y juventud en Honduras, sobre las violaciones mas graves a sus derechos provocadas o toleradas por el Estado"](#) [First Report of the Honduran Children and Youth Human Rights Platform on the most serious violations of the rights of children and adolescents that the State either causes or tolerates], September 2010. The report states that a total of 5,547 persons under the age of 23 were arbitrarily executed between 1998 and June 2010, including 383 during the first half of 2010.

⁷⁶⁷ *Casa Alianza Honduras*, Report on Executions and/or Violent Deaths among Children and Youth in Honduras, January-February 2010.

⁷⁶⁸ *Casa Alianza Honduras*, Report on Executions and/or Violent Deaths among Children and Youth in Honduras, editions for i) January and February 2010; ii) March and April 2010, and iii) May and June 2010.

The figures that Casa Alianza recorded in previous years show a steady increase in the number of cases of extrajudicial executions and/or violent deaths among children and youth in Honduras. Thus, in 2006, the number of cases totaled 494 (109 were minors under the age of 18); in 2007, there were 504 cases (118 were children); in 2008, the number was 544 (128 were under the age of 18); in 2009 there were 686 cases (239 cases before the *coup d'état* -65 of whom were children under the age of 18- and 447 after the alteration of democratic order -109 of whom were children).

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532. The Honduran State observes in this regard that in Tegucigalpa, cases involving the murder of children and youth are investigated by the Unit against Violent Deaths of Children, which is part of the Office of the Special Prosecutor for Children. In San Pedro Sula, a Subunit for Investigation of Juvenile Deaths was created within the Office of the Prosecutor for Crimes against Life. A total of 107 complaints were filed in Tegucigalpa in 2009; 14 cases went to trial which, when added to those filed in previous years in which criminal prosecution was pending, brings the total to 46. Verdicts were obtained in nine cases, all of which were convictions. The State goes on to say that “108 complaints were filed in 2010; of these, 36 are active cases, with a suspect in hand; 20 are cases in which an arrest warrant has been issued; another 51 cases are under investigation, and only one case has been dismissed.” It states that because of the limited human and economic resources, only Tegucigalpa, San Pedro Sula, Choluteca and La Ceiba have prosecutors devoted exclusively to cases involving children; the availability of judges and prosecutors who specialize in cases involving children continues to be a challenge nationwide.⁷⁶⁹

533. As to the situation of women, in the report on *Honduras: Human Rights and the Coup d'état*, the IACHR considered numerous testimonies revealing that when the demonstrations against the *coup d'état* were being repressed and in the unlawful detentions conducted, women became the victims of verbal assaults and sexual violence at the hands of the security forces. Early in 2010, the Commission was particularly disturbed by the fact that on February 9, 2010, a young woman was abducted along with four members of her family. In August 2009, this same young woman had complained that she had been raped by four police officers after being detained in a demonstration against the *coup d'état*. The kidnapers were said to have been seven heavily armed men dressed in military uniform, with their faces masked by balaclavas. They forced the kidnap victims to walk into the mountains, where two of the women were raped; the third victim was robbed and threatened with death. The two men were physically tortured.⁷⁷⁰ During the Commission's May 2010 visit, the Public Prosecutor's Office did not supply information on advancements in the investigation into these events. During that same visit, the Commission received information indicating that women pursued or detained by security forces continue to be the victims of degrading treatment and are verbally and even sexually assaulted.

534. The Commission is alarmed by the fact that some 223 women reportedly met violent deaths between January and August 2010.⁷⁷¹ From the information received, many of the bodies of the murdered women had been left alongside roads,⁷⁷² in a barrel,⁷⁷³ discarded in bags on the banks of the Río Blanco,⁷⁷⁴ raped and then executed⁷⁷⁵ or decapitated.⁷⁷⁶ The IACHR would remind

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[“Análisis de ejecuciones arbitrarias y muertes violentas de niños, niñas y jóvenes en Honduras- Enero y Febrero de 2010”](#) [Analysis of arbitrary executions and violent deaths among children and youth in Honduras – January and February 2010, p. 27.

⁷⁶⁹ In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, p. 21.

⁷⁷⁰ IACHR, Press Release 26/10: [IACHR Deplores Murders, Kidnappings and Attacks in Honduras](#), March 8, 2010.

⁷⁷¹ Diario La Tribuna, [“Crimen organizado sediento de sangre femenina”](#) [Organized crime thirsty for female blood], October 4, 2010.

⁷⁷² Diario La Prensa, [“Encuentran muerta a una mujer en aldea El Carmen”](#) [Woman found dead in El Carmen village], September 6, 2010. Diario Tiempo, [“Hallan cadáver de mujer”](#) [Woman's body found], September 6, 2010.

⁷⁷³ Diario La Prensa, [“Hallan cadáver de una mujer dentro de barril”](#) [Woman's body found inside barrel], September 17, 2010. Diario Tiempo, [“Hallan cadáver de mujer dentro de un barril en el barrio Medina”](#) [Female body found inside barrel in the Medina district], September 17, 2010.

⁷⁷⁴ Diario La Prensa, [“En una bolsa dejan cadáver de mujer”](#) [Woman's body discarded in bag], September 20, 2010.

the Government of Honduras that by virtue of the commitments it undertook with the American Convention and the Convention of Belém do Pará, it has an obligation to act with due diligence to prevent, investigate and punish acts of violence committed against women. The Inter-American Court and the Commission have held that in cases of violence perpetrated against women, States have more than just the generic obligations contained in the American Convention; they also have a heightened obligation based on the Convention of Belém do Pará. The bodies of the Inter-American System on Human Rights have established that Article 7 of the Convention of Belém do Pará establishes that the duty of the States to act with due diligence in cases of human rights violations has special meaning in the case of violence against women, because it encompasses the implementation of comprehensive measures to apply due diligence to prevent, investigate, punish and redress violations of women's human rights and to avoid impunity.⁷⁷⁷ In effect, time and time again the IACHR has observed that the impunity that surrounds most acts of gender-based violence serves to perpetuate that form of violence.⁷⁷⁸

535. The Commission was also told that the indigenous or Garifuna organizations that came out against the *coup d'état* continue to be the target of aggression and harassment.

536. Specifically, the Commission received information about threats and assaults against members of the Civic Council of the Grassroots Indigenous Organizations of Honduras (COPINH).⁷⁷⁹ The Commission was informed that at least six of its members have received death threats.⁷⁸⁰ Another member of the organization, Salvador Zúñiga, received more than just death threats; his home was fired at on three different cases.⁷⁸¹ It was also reported that military vehicles had the homes, offices and radio stations of the COPINH organizers under constant surveillance.

537. The murder of another member, Mr. Olayo Sorto, was particularly serious. Killed by unidentified assailants on May 18, 2010, Mr. Olayo Sorto was shot to death on the outskirts of Llano Grande (Colomoncagua, department of Intibucá). According to reports, the crime was politically motivated and had to do with his work in the resistance movement.⁷⁸² Information was also received concerning Néstor Ovidio Zúñiga –a member of COPINH and of the National Resistance- and brother of the Salvador Zúñiga director of the movement. Néstor Ovidio Zúñiga

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⁷⁷⁵ Diario La Prensa, "[Hallan Cadáver de mujer al oeste de Tegucigalpa](#)" [Woman's body found west of Tegucigalpa], August 3, 2010.

⁷⁷⁶ Diario La Tribuna, "[Mueren dos mujeres en circunstancias distintas](#)" [Two women die under different circumstances], September 20, 2010; Diario Tiempo, "[Hallan mujer semi-decapitada](#)" [Semi-decapitated woman's body found], September 20, 2010.

⁷⁷⁷ IACHR, Report No. 53/01, Merits, Ana, Beatriz and Celia González Pérez, Mexico, April 4, 2001; I/A Court H.R., Case of *Fernández-Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215.

⁷⁷⁸ IACHR, Report No. 53/01, Merits, Ana, Beatriz and Celia González Pérez, Mexico, April 4, 2001.

⁷⁷⁹ Communication from the Civic Council of the Grassroots Indigenous Organizations of Honduras (COPINH), received December 2, 2010.

⁷⁸⁰ Communication from COPINH, received December 2, 2010.

⁷⁸¹ Information that COPINH members told officials of the IACHR's Executive Secretariat, December 2, 2010.

⁷⁸² Communication from COPINH, received December 2, 2010; Honduras en lucha, "[Asesinato contra Olayo Soto: otro crimen político en la resistencia popular](#)" [Murder of Olayo Soto: another political crime in the grassroots resistance], May 25, 2010.

died on October 24, 2010, three days after being run over by a motorcycle.⁷⁸³ Members of his family alleged that this was a murder and not an accident.

538. As for the situation of the Garifuna people, as previously noted an attempt was made on January 6, 2010, against the Faluma Bimetu (Coco Dulce) community radio station, which serves the Garifuna community of Triunfo de la Cruz.⁷⁸⁴

539. Another report complained of the extremely heavy militarization of indigenous territories in southern Honduras.⁷⁸⁵

540. The Commission was also informed that legislative measures had been adopted that would affect the ancestral rights of the Honduran indigenous peoples. It was said that by legislative decree, the Honduran National Congress had reportedly granted 47 concessions for hydroelectric projects, most of which would be built on the ancestral territories of the Lenca Indigenous people of Honduras. The affected communities were not consulted beforehand.⁷⁸⁶

541. Social inequality in Honduras takes its harshest toll on the indigenous and Afro-descendant population. According to the recent studies done under the United Nations Development Programme, poverty levels are significantly more severe among the indigenous and Afro-descendant population than among the rest of the population.⁷⁸⁷

542. The Honduran State observes that "Indigenous and Afro-descendant peoples are not under any greater threat as a result of the June 2009 events, nor are efforts underfoot to dispossess them of their ancestral lands."⁷⁸⁸

1. Situation in the Bajo Aguán

543. Furthermore, during its May, 2010 visit the IACHR received information about the situation of the Bajo Aguán, where there exists a long-standing land dispute between *campesinos* and business persons.

544. As background information, during the visit the IACHR was informed that, since the month of December, 2009, the conflict intensified due to the militarization of the area.⁷⁸⁹ In this

⁷⁸³ Communication received from COPINH on December 2, 2010; COPINH, "[Compañero Néstor, hasta la victoria siempre, venceremos](#)" [Néstor: Ever Onward and Upward, We Will Be Victorious], October 24, 2010; Vos el Soberano, "[Fallece artista del FNRP, hermano del dirigente indígena Salvador Zúniga, después de embestido por motociclista](#)" [Struck by a motorcycle, FNRP artist and brother of indigenous leader Salvador Zúniga dies], October 25, 2010.

⁷⁸⁴ IACHR, Press Release 02/10: "[Office of the Special Rapporteur Expresses Concern at the Attack Suffered by a Community Radio Station in Honduras](#)", January 11, 2010.

⁷⁸⁵ Communication received from COPINH on December 2, 2010; information that COPINH members told officials of the IACHR's Executive Secretariat on December 2, 2010.

⁷⁸⁶ Complaint that Berta Cáceres (as Coordinator General of COPINH) filed with the Special Prosecutor for Ethnic Groups and the Special Heritage of the Nation, October 12, 2010; Communication received from COPINH on December 2, 2010.

⁷⁸⁷ UNDP, Regional Report on Human Development for Latin America and the Caribbean 2010, "[Acting on the Future: Breaking the Intergenerational Cycle of Inequality](#)," in "[Honduras es uno de los 15 países más desiguales del mundo](#)" [Honduras is one of the 15 most unequal countries in the world], November 18, 2010.

⁷⁸⁸ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 21.

⁷⁸⁹ See also "[Carta de COFADEH dirigida al Alto Comisionado de las Naciones Unidas](#)" [COFADEH letter addressed to The Office of the High Commissioner on Human Rights, UN], April 13, 2010.

regard, the Commission was informed that an agreement was signed on April 14, 2010, between the Honduran Government and the *campesino* organizations presumably affected, the purpose of which was to find a solution to the problem.

545. Nevertheless, during its follow-up visit, civil society informed the Commission of certain outrages alleged to have been committed against the *campesino* organizations and their members, both before and after the signing of the agreement, and related to the militarization of the conflict area. However, in the meetings held with authorities from the Ministry of Defense and Security, the National Police, the Head of the Joint Chiefs of the Armed Forces of Honduras, the government representatives stated that the military forces in the area in question were subordinate to the civilian authority, which was the National Police, and that measures had allegedly been taken intended as social assistance.

546. Subsequent to that visit and throughout 2010, the Commission received information complaining of the persistent militarization within the conflict area, and the abuses and acts of aggression against members of the communities involved in the matter.⁷⁹⁰

547. The Commission again expresses its concern over the involvement of the armed forces in matters related to citizen security; as such matters should be the exclusive purview of the civilian law enforcement.⁷⁹¹ The Commission has previously observed that “the armed forces are not properly trained to deal with citizen security; hence the need for an efficient civilian police force, respectful of human rights and able to combat citizen insecurity, crime and violence on the domestic front.”⁷⁹² It has similarly pointed out that “issues that have to do with citizen security are the exclusive purview of the civilian police force, which is to be [properly] organized and trained.”⁷⁹³

548. In same line of thought, the IACHR is particularly troubled by the approval of Executive Decree PCM-014-2010, published in the Official Gazette of May 14, 2010. Under this Executive Decree, the Secretariat of National Defense is instructed to provide cooperation “in the form of Armed Forces personnel and equipment that is strictly necessary, according to how each situation evolves, so that the National Police is able to efficiently and promptly perform the functions of restoring the peace and preventing, controlling and combating crime.”⁷⁹⁴ The Commission urges the Honduran authorities to review the content of that decree and to adjust it to conform to the international standards on the subject.

549. The Commission observes that based on the information received, 18 *campesinos* who are members of the Movimiento Unificado Campesino del Aguán –MUCA- have been murdered this year, presumably as a consequence of the territorial dispute: i) on January 31, Juan Ramón Mejía⁷⁹⁵; ii) on February 4, Francisco Montes and Isidro Cano –members of the Buenos Aires

⁷⁹⁰ Information supplied by the Centro de Prevención, Tratamiento y Rehabilitación de las víctimas de la Tortura y sus familiares [Prevention, Treatment and Rehabilitation Center for victims of torture and their family members], December 1, 2010.

⁷⁹¹ Diario La Prensa, “[Honduras: Militares y policías patrullan calles](#)” [Honduras: Soldiers and police patrol streets], September 9, 2010.

⁷⁹² IACHR, “[Report on citizen security and human rights](#)”, OEA/Ser.L/V/II., Doc. 57, December 31, 2009, paragraph 100.

⁷⁹³ IACHR, “[Report on Citizen Security and Human Rights](#)”, cited above, paragraph 105.

⁷⁹⁴ Executive Decree PCM-014-2010, Article 1.

⁷⁹⁵ ACSUR-Las Segovias, “[Represión militar contra campesinos en Honduras](#)” [Military repression against *campesinos* in Honduras]; CEJIL, “[Honduras: Stop violence against peasant groups in the lower aguan](#)”, April 14, 2010.

cooperative-⁷⁹⁶; iii) February 14, Feliciano Santos –a member of the 21 de julio cooperative-⁷⁹⁷; iv) March 17, José Antonio Cardoza and José Carias –leaders of the COHDEFOR Brisas cooperative-⁷⁹⁸; v) April 1, Miguel Ángel Alonso Oliva⁷⁹⁹; vi) April 7, José Leonel Álvarez Guerra⁸⁰⁰; vii) June 20, Oscar Geovanny Ramírez,, age 17 and a member of the EAC of the La Aurora cooperative⁸⁰¹ ; viii) August 17, Víctor Manuel Mata Oliva, Sergio Magdiel Amaya and Rodving Omar Villegas (a child of 15)⁸⁰²; ix) September 10, Francisco Miranda Ortega⁸⁰³ and; x) November 15, Ignacio Reyes, Teodoro Acosta, Siriaco Muños, Raúl Castillo and José Luis Saucedo⁸⁰⁴.

550. The Commission would remind the State of its obligation to conduct an effective investigation, identify the individuals responsible for these acts, and take all measures necessary to guarantee the life and physical integrity of the people of that sector.

551. In its observations, the Honduran State reported that the Secretariat of State for Security had created the operation called “Ensuring the Rule of Law” to find a solution to the conflict in the Bajo Aguán. According to the State, the operation was allegedly conducted with absolute respect for human rights. It also provided a description of the incidents that had allegedly necessitated the intervention of the Secretariat of State for Security, and a chronology of events purportedly dating back to the 1990s. It said in this regard that “This [information] should describe the situation in the Bajo Aguan for the Commission and how the State’s activities to restore security in the area concluded. The cases in which *campesinos* and security guards died are being investigated by the Public Prosecutor’s Office.”⁸⁰⁵

2. Situation in Zúcate Grande

552. According to information circulated by Honduran civil society organizations, groups of civilians were reportedly harassing peasant groups from the “Puerto Grande” community in the

⁷⁹⁶ ACSUR-Las Segovias, “[Represión militar contra campesinos en Honduras](#)” [Military repression against *campesinos* in Honduras]; CEJIL, “[Honduras: Stop violence against peasant groups in the lower aguan](#)”, April 14, 2010.

⁷⁹⁷ ACSUR-Las Segovias, “[Represión militar contra campesinos en Honduras](#)” [Military repression against *campesinos* in Honduras]; CEJIL, “[Honduras: Stop violence against peasant groups in the lower aguan](#)”, April 14, 2010.

⁷⁹⁸ ACSUR-Las Segovias, “[Represión militar contra campesinos en Honduras](#)” [Military repression against *campesinos* in Honduras]; CEJIL, “[Honduras: Stop violence against peasant groups in the lower aguan](#)”, April 14, 2010.

⁷⁹⁹ Vos el Soberano, “[Comunicado CODEH: ante el asesinato de Miguel Alonso Oliva del Muca](#)” [CODEH Communiqué: response to the murder of Miguel Alonso Liva del Muca], April 1, 2010. CEJIL, “[Honduras: Stop violence against peasant groups in the lower aguan](#)”, April 14, 2010.

⁸⁰⁰ Communiqué from FIAN Honduras “[Ante el asesinato de José Leonel Álvarez Guerra](#)” [Response to the murder of José Álvarez Guerra], April 8, 2010.

⁸⁰¹ Diario El Libertador, “[Militares y policías hondureños asesinan a campesino adolescente y capturan a cinco](#)” [Honduran soldiers and police murder *campesino* teen and capture five], July 21, 2010; MUCA, Communiqué: “[Asesinan a campesino del MUCA en el asentamiento La Aurora](#)” [MUCA *campesino* in the La Aurora cooperative murdered], June 20, 2010.

⁸⁰² Comité para la defensa de los Derechos Humanos en Honduras, “[Atentado contra miembros del MUCA](#)” [MUCA members attacked], August 22, 2010.

⁸⁰³ FIAN Honduras, “[Asesinan campesino de la Cooperativa La Aurora](#)” [*Campesino* from the La Aurora Cooperative Murdered], September 10, 2010. Diario La Prensa, “[Asesinan a otro campesino](#)” [Another *Campesino* Murdered], September 13, 2010; Diario Tiempo, “[Asesinan a coordinador de MUCA en Tocoa](#)” [MUCA Coordinator in Tocoa Murdered], September 15, 2010.

⁸⁰⁴ MUCA, [Comunicado](#), November 16, 2010.

⁸⁰⁵ In Observations of the State of Honduras on the Draft “General Report on the Situation of Human Rights in Honduras,” Memorandum No. SP-A-13-2011 of February 18, 2011, p. 22.

Zácate Grande area, in southern Honduras.⁸⁰⁶ According to reports, on August 22, members of these civilian groups allegedly beat up *campesinos* from the area as the national police looked on but did nothing to intervene. At least three members of the community were injured. Other members of the community reportedly received death threats.⁸⁰⁷

553. From the information received, these incidents were allegedly the result of the territorial dispute between the inhabitants who benefitted under a 2008 decree (18-2007⁸⁰⁸) intended to correct the problem of the tenure of *campesino* lands in Honduras, and a local businessman⁸⁰⁹ who disapproved of the decree.

H. Implementation of precautionary measures granted by the IACHR

554. In keeping with its obligations to promote and protect human rights, the Commission has, from June 28 onward continually observed and followed the human rights situation and has used precautionary measures⁸¹⁰ and requests for information as a means to protect the human rights of thousands of persons. The IACHR has granted precautionary measures to protect the lives and safety of many people who were and/or are at risk. Precautionary measure 196-09 was a procedure devised to address a variety of situations, all of which can be traced to the *coup d'état* in Honduras on June 28, 2009 and its aftermath.

555. The mechanism of precautionary measures granted by the Commission is one of the most effective instruments for protecting the work of human rights defenders and their rights in the inter-American system. Precautionary measures are an important working mechanism of the Inter-American Commission on Human Rights that has contributed to saving numerous lives throughout the hemisphere. Precautionary measures are issued in compliance with the Commission's functions to promote and defend human rights, as set forth in Article 106 of the OAS Charter, Article 41 of the American Convention on Human Rights, and Article 18 of the Statute of the IACHR. The juridical basis for precautionary measures is found in the obligation of States to respect and ensure the human rights of all persons subject to their jurisdiction, and the general practice of compliance with them on the part of the great majority of States is based on the existing understanding of their binding nature.⁸¹¹

556. Since the *in loco* visit made in August 2009, the IACHR has received information from all affected sectors, pointing to the failings in the *de facto* authorities' response vis-à-vis implementation of the precautionary measures and their resulting inefficacy for the protection of the human rights of the persons affected. During the visit in May 2010, the IACHR received information from the beneficiaries of the precautionary measures and from the government bodies

⁸⁰⁶ Committee of Relatives of Detainees – Disappeared of Honduras, [Comunicación de 22 de agosto de 2010](#) [Communication dated August 22, 2010].

⁸⁰⁷ Committee of Relatives of Detainees – Disappeared of Honduras, [Comunicación de 22 de agosto de 2010](#) [Communication dated August 22, 2010].

⁸⁰⁸ Decree 18-2008, published April 29, 2009, in the official record *La Gaceta*.

⁸⁰⁹ Committee of Relatives of Detainees – Disappeared of Honduras, [Comunicación de 22 de agosto de 2010](#) [Communication dated August 22, 2010].

⁸¹⁰ Article 25 of the Commission's Rules of Procedure provides for the mechanism of precautionary measures. The provision states that in serious and urgent situations, and if necessary based on the information available, the Commission may, on its own initiative or at the request of a party, request that the State in question adopt precautionary measures to avoid irreparable harm to persons.

⁸¹¹ IACHR, [Resolution 1/05](#), March 8, 2005.

charged with implementing the measures and investigating the factors that necessitated precautionary measures. It found that the problems had not changed to any significant degree. The IACHR received reports indicating that the mechanism for inter-institutional coordination to implement the precautionary measures is ineffective.

557. As happened during the 2009 visit,⁸¹² the Commission was told that on May 5, 2010 –just days prior to the Commission’s visit- the Secretariat for Security had published an announcement in at least three newspapers with nationwide circulation, in which it summoned the beneficiaries of the IACHR’s precautionary measures to a meeting. The announcement reads as follows:

REPUBLIC OF HONDURAS
SECRETARIAT FOR SECURITY
ANNOUNCEMENT

All persons who are the **beneficiaries of the precautionary measures granted by the Inter-American Commission on Human Rights** are hereby summoned to a meeting whose main purpose is to verify compliance with the resolutions issued by the above-named Commission, and to review the status and adaptation of those measures where necessary, [...] ⁸¹³

558. The IACHR was able to establish that the efforts the State made to implement the precautionary measures have been few, late in coming, inadequate and in some cases nonexistent. As for the response to the above mentioned summons from the Secretariat for Security, both the State authorities and the beneficiaries of the precautionary measures granted by the IACHR reported that the authorities’ response to the precautionary measures, when there has been a response, has consisted in offering to supply identification cards, patrols of homes, escorts to and from work, and personal guard services at night. The Commission also received testimony to the effect that some beneficiaries of precautionary measures are afraid to receive any protection from the very persons they regard as the aggressors.

559. The IACHR ordered 14 precautionary measures in 2010. Of these, seven are amplifications of MC 196-09 HO benefiting persons who are at risk for having taken part in measures to protest the *coup d’état* or for their criticism of the current administration.⁸¹⁴ Other

⁸¹² At the initiative of the Supreme Court, on Saturday, August 15 –just two days before the IACHR’s official visit would begin- a list was published in the four newspapers with nationwide circulation, naming all the beneficiaries of the precautionary measures granted by the IACHR. At the foot of the page, the persons named there were told to appear, either in person or through their attorneys, at the offices of the Supreme Court to report and/or receive information concerning the application of those measures. Not included on the list were the names of the persons who were named as beneficiaries in the communication dated July 24, 2009.

⁸¹³ Announcement that appeared in *Tiempo, La Tribuna* and another newspaper with nationwide circulation, on May 5, 2010.

⁸¹⁴ Seven amplifications of MC 196-09 HO were granted. On January 8, 2010, the IACHR amplified precautionary measure MC 196/09 for Marbin Emilio Hernández Duarte and his immediate family. On January 19, 2010, it amplified precautionary measure MC 196/09 for the immediate family of Rasel Antonio Tome, in Honduras. On January 22, 2010, it amplified precautionary measure MC 196/09 for Guillermo Vides and his nuclear family. On February 12, the Commission amplified precautionary measure MC 196/09 for Anselmo Romero Ulloa and María Brígida Ulloa Hernández, in Honduras. On April 13, 2010, it amplified precautionary measure MC 196/09 for Rebeca Ethel Becerra Lanza and daughters, in Honduras. On May 3, 2010, the IACHR amplified precautionary measure MC 196/09 for Inner Genaro Chévez and Lucy Mendoza, in Honduras. On June 2, 2010, the Commission amplified precautionary measure MC 196/09 for Karla Patricia Rivas Sánchez, José Pablo Peraza Chávez, Rita Suyapa Santamaría Velásquez, Alfredo Bográn, Iolany Mariela Pérez Parada, Rommel Alexander Gómez, Lesly Castro, José Domingo Miranda, Héctor Hernández, Víctor Emilio Borjas, Leticia Castellanos and Pablo Ordóñez, journalists with Radio Progreso in Honduras.

precautionary measures were ordered to protect the lives and personal integrity of journalists, human rights defenders, student activists and activists in the resistance. One precautionary measure concerned the members of “Cattrachas,” a nongovernmental organization working for the rights of lesbians, gays, bisexuals, transgender persons and intersexuals (LGBTI)⁸¹⁵.

560. Most of the perils that the beneficiaries of 2009 and 2010 precautionary measures reported involved multiple threats by text messaging, telephone calls, personal threats or shots fired at the door to the home of the persons being intimidated. There was even a case in which someone’s car was stopped and the person threatened with death because of her involvement in the Resistance.

561. Another common denominator in the situation of the beneficiaries of the precautionary measures that Honduras was asked to take has to do with the lack of any progress in the investigations into their cases, as a means to remove the risks that were the reason why the precautionary measures were granted. In every case, the State has responded by saying that the majority of the investigations are still in their preliminary phase; it has provided no further information on the matter. Given this fact, the Commission is concerned that the failure to effectively implement the precautionary measures and to prosecute a diligent investigation might result in further loss of life or acts of aggression. Episodes like the March 14, 2010 murder of journalist Nahúm Palacios, news director at El Aguán Television Channel 5 in the city of Tocoa, and the attempted murder of Luis Galdámez Álvarez on September 14, 2010,⁸¹⁶ are particularly serious, since both victims should have been under special protection as the Commission had granted precautionary measures for them on July 24, 2009.⁸¹⁷

562. In this regard, the State must provide the Inter-Institutional Human Rights Commission –charged with internal coordination of these matters– with the proper staff and sufficient resources so that it can efficiently respond to the Commission’s precautionary measures and the provisional measures ordered by the Inter-American Court.

563. The mechanism of precautionary measures granted by the Commission, when properly implemented, is one of the most effective instruments for protecting the work of human rights defenders and their rights in the inter-American system. Like the provisional measures granted by the Inter-American Court, precautionary measures act as a safeguard in terms of preserving a legal situation vis-à-vis the exercise of jurisdiction by the Commission; they also serve a “protective function” in the sense of preserving the exercise of the human rights recognized in the provisions of the inter-American system and preventing irreparable harm to persons in serious and

⁸¹⁵ 1) MC 18-10: on January 29, 2010, the IACHR granted precautionary measures for Indyra Mendoza Aguilar *et al.*; 2) MC 221/10: on July 22, 2010, the IACHR granted precautionary measures for Edwin Róbelo Espinal; 3) MC 194-10: on July 2, the Commission granted precautionary measures for Carolina Pineda, José Luis Buquedano and Delvid Ixcel Sánchez Ávila; 4). MC 180/10: on June 21, 2010, the IACHR granted precautionary measures for Juan Ramón Flores; 5) MC 95/10: on March 24, 2010, the IACHR granted precautionary measures for X; 6) MC 91/10: on March 19, 2010, the Commission granted precautionary measures for Pedro Brizuela, Mateo Enrique García Castillo and their respective immediate families; 7) MC 38/10: on February 25, 2010, the Commission granted precautionary measures for Manuel de Jesús Varela Murillo, Ricardo Antonio Rodríguez and their immediate families.

⁸¹⁶ IACHR, Press release R96/10: [Office of the Special Rapporteur Expresses Concern over New Attacks against Journalists and Media in Honduras](#), September 20, 2010.

⁸¹⁷ On July 24, 2009, the IACHR decided to amplify the precautionary measures granted under [MC 196-09](#), this time to safeguard the lives and personal integrity of Nahúm Palacios, Luis Galdámez Álvarez and others.

urgent situations. In practice, precautionary and provisional measures have been recognized by the member states of the OAS, the individuals who use the system, and the human rights community as a whole as an important tool for protecting human rights in the inter-American system.⁸¹⁸

564. Therefore, the IACHR urges the Honduran State to comply effectively and as soon as possible with each precautionary measure granted by the Commission. The State has a duty to protect the country's inhabitants, especially those who for one reason or another find themselves in a situation of particular risk.

565. In its observations of February 18, 2011, the State asserts that with the majority of the precautionary measures granted by the Commission, a consensus is reached with the beneficiaries and the measures themselves are fully complied with, especially those ordered for human rights defenders, the LGBT community and the Garifuna Communities.⁸¹⁹ The State's assertions notwithstanding, the information received indicates that the steps taken to comply with the precautionary measures have been isolated and inadequate to the task of dealing with the perils that the beneficiaries face; in some cases, beneficiaries have been murdered, while in others they have been harassed. As was pointed out, the Commission therefore turned to the Court to request provisional measures for two beneficiaries. It should also be noted that the authorities' response to the precautionary measures, when there was one, has been to offer to provide identification cards, home patrolling, escorts to and from work, and night guards. Nevertheless, some beneficiaries said they were afraid of the police because of the latter's ties to the repressive machinery associated with the *coup d'état* and groups associated with organized crime.

H. Impunity

566. The Commission observes that the impunity for human rights violations confirmed by the IACHR⁸²⁰ and by the treaty-based bodies and special procedures of the United Nations, including the Office of the United Nations High Commissioner for Human Rights,⁸²¹ persists.

567. The Inter-American Court has defined impunity as follows:

the lack of investigation, pursuit, arrest, prosecution, and conviction of those responsible for human rights violations. To fulfill this obligation, the State has to fight impunity through all legal means available, given that it is conducive to chronic repetition of the human rights violations and total defenselessness of the victims and their next of kin. Likewise, the State has to organize its governmental apparatus and, in general, all structures through which public power is exercised, so as to legally ensure the free and full exercise of human rights.⁸²²

⁸¹⁸ IACHR, *Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, March 7, 2006, paragraphs 233 and 234.

⁸¹⁹ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 3.

⁸²⁰ CIDH, [Honduras: Human Rights and Coup D'état; Preliminary Observations of the Inter-American Commission on Human Rights on Its Visit to Honduras, May 15 to 18, 2010](#).

⁸²¹ United Nations, Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009, March 3, 2010. Compilation prepared by the Office of the High Commissioner for Human Rights pursuant paragraph 15.b) of the annex to the Resolution 5/1 of the Human Rights Council.

⁸²² I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, paragraph 234.

568. Impunity constitutes non-compliance with the State's duty that is harmful to the victim, his or her next of kin and society as a whole, as impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives.⁸²³ To prevent impunity, the State has the obligation, by virtue of Article 1 of the American Convention, to respect and ensure the rights recognized therein:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.⁸²⁴

569. Under the American Convention on Human Rights, which Honduras ratified in 1977, the State has an international obligation to prevent human rights violations; should they occur, the State has an obligation to investigate them and prosecute and punish those responsible. During the *coup d'état*, the *de facto* authorities and the Supreme Court systematically denied the existence of human rights violations, which resulted in inaction and tolerance that enabled these violations to be repeated with impunity.

570. As the Commission found during its May 2010 visit, the human rights violations persist, as does the impunity. From what the Commission observed, the situation is due to a number of factors. The authorities charged with investigating, prosecuting and punishing the guilty continue to systematically deny the existence of human rights violations, which has resulted in inaction, tolerance and even dismissal of any charges against those who carried out the *coup d'état* and the aforementioned violations.

571. According to the information received, the Supreme Court's decisions⁸²⁵ are a factor enabling human rights violations to go unpunished and thereby weaken the rule of law on issues vital to the investigation and prosecution of human rights violations committed in the context of the *coup d'état*. Specifically, the Commission has observed the role that the Supreme Court played during and after the *coup d'état*, in rulings such as the acquittal of military personnel accused of participating in the *coup* and the Court's role in the dismissal of the judges and magistrates who sought to avoid the *coup* by democratic means.

572. Here again, the State underscores the limited human, economic and technological resources that the authorities have available to investigate all the situations reported, "which in many cases are well beyond their means but not because of any policy altogether denying the commission of crimes, whatever their type."⁸²⁶

⁸²³ I/A Court H.R., *Case of Loayza Tamayo*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 170, citing I/A Court H.R., *Case of the "White Van" (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, para. 173.

⁸²⁴ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras, Merits*. Judgment of July 29, 1988, Series C No. 4, para. 176.

⁸²⁵ According to the Honduran State, the IACHR is overstepping its authority when it claims that the Supreme Court is an "enabler" of impunity. In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 28.

⁸²⁶ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 27.

1. Acquittal of military personnel accused of participating in the *coup d'état*

573. The Commission observes in this regard that the courts have ordered definitive dismissal of cases against persons who fostered, promoted and enabled the *coup d'état* or who committed crimes during the *coup*. On January 6, 2010, the Public Prosecutor's Office brought charges against the Military High-Command composed at the time of the head and deputy head of the Joint Chiefs of Staff, generals Romeo Vásquez and Venancio Cervantes. It also included the heads of the Army, General Miguel Ángel García Padgett; of the Air Force, General Luis Javier Prince; of the Navy, Rear Admiral Juan Pablo Rodríguez, and the Inspector General of the Armed Forces, General Carlos Cuéllar Castillo.⁸²⁷ The Public Prosecutor's Office deemed that a crime had been committed in the order to expatriate Zelaya to Costa Rica after the *coup d'état*. The military chiefs were also accused of noncompliance with the court order to hand over the former president to the competent authority.⁸²⁸

574. On January 26, 2010, hours before Porfirio Lobo was sworn in as Honduras' new President, the special judge and President of the Supreme Court, Jorge Rivera, dismissed the charges against the accused military chiefs. The decision stated that "In the present hearing, the party bringing the charges has failed to show that the accused willfully engaged in malicious acts that are punishable offenses; in the absence of the element of malicious intent, the actions cannot be classified as crimes. Therefore, while there is a reasonable presumption, which the accused have acknowledged, that they are responsible for the acts that the Public Prosecutor's Office has classified as criminal offenses, given the absence of malicious intent, the commission of crimes cannot be fully proven, with the result that no order for imprisonment can be issued. Furthermore, since none of the actions can be classified as a crime, the proper course of action is to order definitive dismissal of the charges."⁸²⁹ On February 18, 2010, the Court of Appeals, composed of three magistrates of the Supreme Court, confirmed the definitive dismissal of charges against the military chiefs.

2. Other cases involving human rights violations committed in the context of the *coup d'état*

575. Regarding other cases involving human rights violations committed in the context of the 2009 *coup d'état*, during its May 2010 visit the Commission was informed that one person was in prison for human rights violations. Another 12 had been indicted but the proceedings in those cases were making no headway for a number of reasons, among them the fact that the various State agencies had failed to conduct the necessary investigations, specifically the law enforcement agencies charged with conducting investigations. Subsequently, information was received to the effect that in November 2010, the number of military, police and civilian officials against whom the Office of the Special Prosecutor for Human Rights had filed criminal charges –for crimes like murder,

⁸²⁷ "On February 25, 2010, President Porfirio Lobo Sosa swore in General Carlos Cuéllar Castillo as new Head of the Joint Chiefs of Staff of the Armed Forces, replacing Romeo Vásquez Velásquez." Diario El Heraldo, "[Pepe juramenta al nuevo jefe de las Fuerzas Armadas](#)" ['Pepe' takes the oaths the new Armed Forces Chief], February 25, 2010.

⁸²⁸ According to the State, the Public Prosecutor's Office brought a bill of indictment against the Military High Command because of the order given to expatriate former President Manuel Zelaya Rosales, by virtue of the fact that the order issued by the competent judge was to arrest the former president and bring him before the proper authority; however, that is not what happened. The action that the Public Prosecutor's Office deemed to be unlawful was the expulsion of former President Manuel Zelaya Rosales. In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 28.

⁸²⁹ Decision delivered by the President of the Supreme Court of Justice, in his capacity as Special Judge, dated January 26, 2010.

torture, rape, unlawful arrest, abuses of authority and crimes against the media- came to a total of 22.⁸³⁰

576. The Commission was also informed that lower court judges had ordered dismissal of the cases that the Office of the Special Prosecutor for Human Rights⁸³¹ brought against military authorities for abuse of authority, vandalism and crimes against the media committed in the context of the *coup d'état*. Decisions on the appeals filed by the Office of the Special Prosecutor for Human Rights are pending.

577. According to the information compiled during the May 2010 visit, both from State authorities and from civil society, the measures undertaken to investigate human rights violations committed in the context of the *coup d'état* have been inadequate. The Office of the Special Prosecutor for Human Rights made public a document titled "Complaints of human rights violations subsequent to the events of June 28, 2009, in which the accused are members of the Armed Forces, law enforcement or the National Bureau of Criminal Investigation."⁸³² That document reveals that various proceedings have been conducted, yet only one person is incarcerated for violations of human rights and only 12 have been indicted.

578. The Office of the Special Prosecutor for Human Rights suggested that the problem was a lack of institutional resources, which in itself is an obstacle for investigations. She also suggested another problem, which was a lack of the kind of cooperation from other State authorities that would enable a proper investigation of the facts denounced.

579. Furthermore, the Commission observed that in this context of impunity, there is no proceeding calculated to ensure a public and transparent procedure for the selection and election of candidates for high positions within the system for the administration of justice. Although some officials in the justice system may want to conduct a proper investigation, they do not have the necessary means because the National Police, which is in charge of criminal investigation, has neither the capacity nor the preparation needed, and corruption is said to be rampant within its ranks.

580. Since its visit, the Commission has learned of complaints filed seeking investigations of human rights violations committed in the context of the *coup d'état*.⁸³³

581. Reports are that in the vast majority of cases (98.2%) in which children were executed or met violent deaths, the identity of the responsible party has still not been established.⁸³⁴

⁸³⁰ [Presentación oral del Presidente Lobo ante el Consejo de Derechos Humanos de Naciones Unidas](#) (in Spanish) [President Lobo's oral presentation before the United Nations Human Rights Council], Universal Periodic Review, November 4, 2010.

⁸³¹ See in this regard decisions in cases: SEDI 0801-2009-48097; SEDI 0801-2009-48097; SEDI 0801-2010-5200; SEDI 0801-2009-51009.

⁸³² Available in: [Preliminary Observations](#) of the Inter-American Commission on Human Rights on Its Visit to Honduras, May 15 to 18, 2010.

⁸³³ Diario Tiempo, "[Piden a Fiscalía investigue a Micheletti y a militares por violación de derechos humanos](#)" [Prosecutor's Office asked to investigate Micheletti and military personnel for violation of human rights], July 28, 2010 (a copy of the article in question available in Spanish at the website of "[Abogados por los Derechos Humanos](#)").

⁸³⁴ Casa Alianza Honduras, "[Informe de Ejecuciones y/o Muertes Violentas de niños/as y jóvenes en Honduras, Enero - Febrero 2010](#)" [Report on Executions and/or Violent Deaths among Children and Youth in Honduras. January-February 2010].

I. Amnesty

582. The Amnesty Decree was approved by the Honduran National Congress on January 26, 2010 and signed by President Porfirio Lobo on January 27, 2010, immediately upon taking office.⁸³⁵ The decree was published in the Official Gazette on February 2, 2010, and entered into force on February 22 of that year.⁸³⁶

583. On February 3, 2010, the IACHR issued press release 14/10⁸³⁷ where it observed with concern that the Amnesty Decree approved by the Honduran Congress on January 26, 2010, contained concepts that were either confusing or ambiguous.

584. The Commission observed the doctrinaire reference made to political crimes, the amnesty for conduct of a terrorist nature, and the inclusion of the concept of abuse of authority with no indication of its scope. Although the text contemplates certain exceptions in terms of human rights violations, the language is ambiguous, and the decree does not establish precise criteria or concrete mechanisms for its application.

585. The Commission is again calling upon the authorities to review the decree, having regard to the State's obligations under international treaties and, in particular, its obligation to investigate and punish serious violations of human rights.

586. During the Commission's May 2010 visit, it was told that at the time, the decree in question was not being applied.

587. [As stated, the State reiterates that the Amnesty Decree is not ambiguous.](#)⁸³⁸

J. Truth and Reconciliation Commission

588. On October 30, 2009, during the Guaymuras dialogue to resolve the political crisis in Honduras, representatives of then President Zelaya and the *de facto* authorities signed the Tegucigalpa/San José Accord⁸³⁹ for national reconciliation and strengthening of democracy in Honduras. Under that accord, a Truth Commission was to be constituted in the first half of 2010.

⁸³⁵ Decree No. 2 of the National Congress of Honduras, January 26, 2010 – Amnesty Decree.

⁸³⁶ According to statements provided by Attorney General Luís Rubí, since then the amnesty has been applied as follows: i) those investigations and other proceedings that the Public Prosecutor's Office had underway on the date of the decree's approval, are to be closed; ii) in the case of judicial proceedings being conducted for some political or related common crime, the judges with jurisdiction must end the proceedings and issue the order dismissing the charges once and for all; and iii) in cases of subsequent indictments for any of the crimes covered by the amnesty decree, the accused must make a statement in the presence of the competent judge to the effect that the action or crime with which he or she is accused is included in the decree in question.

⁸³⁷ IACHR, Press Release 14/10 "[IACHR Expresses Concern about Amnesty Decree in Honduras](#)," February 3, 2010.

⁸³⁸ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 28.

⁸³⁹ Under that accord, the parties agreed to the formation of a National Unity and Reconciliation Government composed of representatives from the various political parties and social organizations; they also agreed to explicitly renounce convocation of a National Constituent Assembly or amendment of the constitution and called upon the Honduran people to participate in the elections; the parties agreed to transfer supervision of the Armed Forces to the Supreme Electoral Tribunal one month prior to the elections and to create a Verification Commission composed of two members from the international community and two members from the national community and coordinated by the Organization of American States, in order to ensure compliance with the commitments undertaken in the Accord. They also agreed to the formation of a Truth Commission in the first half of 2010. Tegucigalpa/San José Accord. Available [in Spanish] at: <http://www.in-honduras.com/Files/guaymurasfirmado.pdf>

The agreement signed by Porfirio Lobo and the President of the Dominican Republic, Leonel Fernández⁸⁴⁰ on January 20, 2010, urged that international cooperation be provided to ensure that the commitments undertaken in that regard would be fulfilled, one of which was the Truth Commission

589. The Truth and Reconciliation Commission (CVR) was created by executive decree PCM-011-2010, dated April 13, 2010. The executive decree provided that the purpose of the Truth and Reconciliation Commission would be “clarify the events that occurred before and after June 28, 2009, in order to identify the factors that led to the crisis and provide the Honduran people with the information they need to ensure that these events will not be repeated.”⁸⁴¹

590. Truth and reconciliation commissions have been of enormous importance in many countries of the region. However, given the purpose established in the decree creating the Honduran CVR, the Commission is reminded that the right to know the truth in cases of serious human rights violations, and the right to know the identity of those who had a hand in those violations, is an obligation that every State party to the American Convention must honor, both with respect to the relatives of the victims and with respect to society in general. Public acknowledgment by identifying the victims and the events that affected their lives, their freedom and their security, is a necessary point of departure on the road to reconciliation.

591. The IACHR has been supportive of Truth Commissions in the various countries of the hemisphere in which they have been created and to the extent that they represent a suitable mechanism for ensuring the right to the truth. The Commission has held that:

The right possessed by all persons and by society to have means of satisfaction and guarantees that the acts will not be repeated, of knowing the full, complete, and public truth on incidents which have occurred, their specific circumstances, and who participated in them, are part of the right to reparation for violations of human rights. The right of a society to know, in full, its past is not only to be found in the methods of reparation and elucidation of the incidents which have occurred, but in the objective of preventing future violations.⁸⁴²

592. The IACHR has written that the right to the truth is also related to Article 25 of the Convention, which establishes the right to a simple and prompt recourse for protection of the rights recognized in the Convention.⁸⁴³ The presence of factual or legal impediments (such as the amnesty law or domestic laws governing access to information) to accessing and obtaining important information pertaining to the facts and circumstances surrounding the violation of a fundamental right, constitutes a blatant violation of the right recognized in Article 25, and prevents one from having the remedies under domestic law that allow judicial protection of the basic rights established in the Convention, the Constitution and the laws.⁸⁴⁴

593. The CVR in Honduras launched its operations on May 4, 2010. Over the course of the year, the CVR received information from different civil society organizations, media and State

⁸⁴⁰ Agreement for National Reconciliation and Strengthening of Democracy in Honduras, January 20, 2010. The agreement was signed by Porfirio Lobo Sosa and the President of the Dominican Republic, Leonel Fernández. The following persons served as witnesses of honor: Elvin Santos, former candidate of the Partido Liberal; Cesar Ham, Partido Unificación Democrática; Felicito Ávila, former candidate of the Partido Demócrata Cristiano; Ricardo Álvarez, Mayor of Tegucigalpa and president of the Partido Nacional, and Mario Canahuate, former presidential candidate of the Partido Nacional in the primaries.

⁸⁴¹ Executive Decree PCM-011-2010, Article 1.

⁸⁴² IACHR, Report No. 1/99, Case 10,480 Lucio Parada Cea *et al.* (El Salvador), January 27, 1999, para. 155.

⁸⁴³ CIDH, Informe No. 1/99, Caso 10.480, Lucio Parada Cea y otros (El Salvador), 27 de enero de 1999, párr. 147.

⁸⁴⁴ IACHR, Report No. 1/99, Case 10,480 Lucio Parada Cea *et al.* (El Salvador), January 27, 1999, para. 152.

institutions,⁸⁴⁵ most of whom supported the *coup d'état*.⁸⁴⁶ Specifically, it received information from: the Supreme Court of Justice; the Public Prosecutor's Office;⁸⁴⁷ the Supreme Electoral Tribunal;⁸⁴⁸ the Office of the Special Prosecutor for Human Rights;⁸⁴⁹ the Superior Court of Accounts;⁸⁵⁰ the *Unión Cívica Democrática*;⁸⁵¹ *de facto* head of government Roberto Michelletti;⁸⁵² and the former head of the Joint Chiefs, General Romeo Vázquez Velázquez. The CVR reportedly also visited 14 of the 18 departments in Honduras,⁸⁵³ including: Comayagua, Atlántida and Cortés;⁸⁵⁴ Santa Bárbara, Santa Rosa de Copan, Ocotepeque, Intibucá and Lempira;⁸⁵⁵ Olancho⁸⁵⁶ and El Paraíso.⁸⁵⁷ According to the information reported on its official web page, the Truth and Reconciliation Commission will publish its Final Report in March 2011.⁸⁵⁸

⁸⁴⁵ There is also information to the effect that the Truth Commission requested information from the Honduran Armed Forces; however, the Commission does not know whether any reply was received from the authorities of whom the request was made.

⁸⁴⁶ According to the State, it is not within the Commission's purview to "refer to State institutions as having 'supported the *coup d'état*'; on the contrary, those institutions have supplied all the requested information and their representatives have met at various stages of the process." It goes on to say that the IACHR "does not point out that the obstacles obstructing the work of the CVR have come from persons who are members of the so-called "Resistance;" a prominent case in point is the refusal of former President Manuel Zelaya Rosales to receive the members of the CVR for an interview." In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 28.

⁸⁴⁷ "[Con importantes avances Comisión de la Verdad y la Reconciliación concluye su tercera jornada de trabajo](#)", [Having made significant progress, the Truth and Reconciliation Commission concludes its third working session], Truth and Reconciliation Commission, press release No. 9, July 29, 2010.

⁸⁴⁸ "[Tribunal Supremo Electoral \(TSE\) entrega segundo informe solicitado por la CVR](#)" [Supreme Electoral Tribunal (TSE) delivers second report requested by CVR], Truth and Reconciliation Commission, press release No. 20, January 5, 2011

⁸⁴⁹ "[Comisión de la Verdad visita Fiscalía de DDHH](#)" [Truth Commission visits Office of the Prosecutor for Human Rights], Diario El Heraldo, July 8, 2010.

⁸⁵⁰ "Casos de corrupción entrega TSC a Comisión de la Verdad" [TSC delivers corruption cases to Truth Commission], Diario La Tribuna, August 5, 2010; "Tribunal da cuentas del gobierno de Mel Zelaya" [Court of Accounts under the government of Mel Zelaya], Diario El Heraldo, August 4, 2010 (see newspaper articles on Truth and Reconciliation Commission; the CVR in the media; [Cuarta Jornada-Agosto de 2010](#) [Fourth Working Session-August 2010]).

⁸⁵¹ "[UCD entrega documentos a Comisión de la Verdad](#)" [UCD hands over documents to Truth Commission], Diario El Heraldo, October 13, 2010.

⁸⁵² "[Michelletti entrega a la Comisión de la Verdad un informe sobre el golpe de Estado](#)" [Michelletti delivers a report to the Truth Commission concerning the *coup d'état*], Informativo Tele Cinco, November 22, 2010.

⁸⁵³ "[Comisión de la Verdad y la Reconciliación cierra el año visitando Danlí y El Paraíso](#)" [Truth and Reconciliation Commission closes out the year with a visit to Danlí and El Paraíso], Truth and Reconciliation Commission, press release No. 19, December 2010.

⁸⁵⁴ "[Comisión de la Verdad y la Reconciliación se reúne con diferentes sectores en gira regional por el interior del país](#)" [Truth and Reconciliation Commission meets with various sectors on a regional tour of the country's interior], Truth and Reconciliation Commission, press release No. 11, August 20, 2010.

⁸⁵⁵ "[Más de mil quinientos líderes en 13 departamentos conocen los avances y el trabajo de la CVR](#)" [More than 1,500 leaders in 13 departments are made aware of the CVR's progress and work], Truth and Reconciliation Commission, press release No. 17, October 18, 2010.

⁸⁵⁶ "[Juticalpa y Catamas dialogan con la Comisión de la Verdad y la Reconciliación](#)" [Juticalpa and Catamas confer with the Truth and Reconciliation Commission], Truth and Reconciliation Commission, press release No. 18, November 2010.

⁸⁵⁷ "[Comisión de la Verdad y la Reconciliación cierra el año visitando Danlí y El Paraíso](#)" [Truth and Reconciliation Commission closes out the year with a visit to Danlí and El Paraíso], Truth and Reconciliation Commission, press release No. 19, December 2010.

⁸⁵⁸ "[Tribunal Supremo Electoral \(TSE\) entrega segundo informe solicitado por la CVR](#)" [Supreme Electoral Tribunal (TSE) delivers second report requested by CVR], Truth and Reconciliation Commission, press release No. 20, January 5, 2011.

594. It is vital that the CVR have sufficient resources, personnel and independence to do its work effectively. It is also essential that its rules of procedure, work plan and methodology make the investigation of complaints of human rights violations alleged to have occurred in the context of the coup d'état the centerpiece of the CVR's mission. The IACHR will closely follow the work of the CVR.

595. Regardless of what actions the CVR ultimately takes, they will not relieve the State of its international responsibility to investigate, prosecute and punish, through the courts, any State agents who have committed human rights violations.

596. The Commission should point out that since its visit, the CVR has reportedly been investigating the conduct of the military personnel in the context of the *coup d'état*.⁸⁵⁹ The Commission will follow the CVR's activities closely, especially the actions taken to investigate, prosecute and punish those responsible for human rights violations and to redress the victims.

1. The alternative Commission: "Truth Commission"

597. The "Truth Commission" was established on June 28, 2010, promoted by the Human Rights Platform.⁸⁶⁰ This Commission has the support of the FNRP.⁸⁶¹

598. The alternative Commission is composed of 10 national and international members. Its mandates are, *inter alia*, i) to investigate and prove the human rights violations that occurred since the June 28, 2009 *coup d'état*, and any human rights violations committed until its mandate ends, while identifying, wherever possible, the persons and institutions responsible; ii) to investigate and establish the patterns of aggression and persecution to which human rights defenders and social leaders have been subjected, identifying the actors and institutions responsible; and iii) to prepare a report to be circulated within Honduras and abroad.⁸⁶² According to public reports, the "Truth Commission" will present its report in the second half of 2011, which is when it will be holding its final sessions.⁸⁶³ As for the documentation that will be compiled for those purposes, the media reported that none of the information will be confidential, as it "will disclose all information concerning violations to the National and International Communities and nothing will be held back."⁸⁶⁴

⁸⁵⁹ Diario Tiempo, "Comisión de la Verdad también le pide informes a los militares" [Truth Commission also asks military for reports], July 27, 2010; Diario El Heraldo, "Comisión de la Verdad pide informe a FFAA" [Truth Commission asks Armed Forces for a report], July 27, 2010; Available in the files of the CVR, [Tercera Jornada de Trabajo - Monitoreo de prensa escrita, 22 y 30 de julio de 2010](#) [Third Workshop – Monitoring the Written Press, July 22 and 30, 2010].

⁸⁶⁰ The Human Rights Platform was created in late 2009 and is composed of the *Centro de Prevención Tratamiento y Rehabilitación de Víctimas de la Tortura* [Center for the Prevention, Treatment and Rehabilitation of Victims of Torture] (CPTRT), the *Comité de Familiares de Detenidos Desaparecidos en Honduras* [Committee of Relatives of Detained Disappeared in Honduras] (COFADEH), the *Centro de Derechos de Mujeres* [Center for Women's Rights] (CDM), FIAN International-Honduras, the *Centro de Investigación y Promoción de los Derechos Humanos* [Center for Investigation and Promotion of Human Rights] (CIPRODEH) and the *Comité para la Defensa de Derechos Humanos de Honduras* [Committee for the Defense of Human Rights in Honduras] (CODEH).

⁸⁶¹ "[Frente Nacional de Resistencia Popular apoya a la Comisión de la Verdad](#)" [National Popular Resistance Front supports the Truth Commission], Frente Nacional de Resistencia Popular, Press Release No. 62, June 22, 2010.

⁸⁶² As reported at the official web site of the "[Comisión de Verdad](#)".

⁸⁶³ As reported at the official web site of the "[Comisión de Verdad](#)".

⁸⁶⁴ "[La Comisión de la Verdad presentará un informe el próximo año en Tegucigalpa: entrevista a Wilfredo Méndez, Director del Centro de Investigación y Promoción de los Derechos Humanos en Honduras](#)" [The Truth Commission will present a report in Tegucigalpa next year: interview with Wilfredo Méndez, Director of the Center for Investigation and Promotion of Human Rights in Honduras], *Rebelión*, July 2, 2010.

III. RULE OF LAW: PROGRESS AND CHALLENGES

599. In April 2010, Mrs. Ana Pineda was sworn in as advisor to the President in the area of human rights, with the rank of Minister. In May 2010, the Commission had a meeting with Mrs. Pineda, who said that while the levels of aggressiveness and hostility among those who oppose the *coup d'état* and among those who support it, were less than what they had been during the *de facto* government, the country was still polarized. She underscored the fact that while there were no systematic human rights violations, the main problem was the high rate of impunity. She stressed the need for more professional investigations and observed that if possible, the investigative body (the police), which is under the Secretariat of Security, should again be placed under the Public Prosecutor's Office.

600. In this effort to restore democratic institutions, the Commission observes with concern that high-ranking Army officers or former members of the Army against whom complaints were brought for their participation in the *coup d'état*, are occupying executive positions in government offices under the administration of Porfirio Lobo. Thus, Division General Venancio Cervantes is Director General of the Bureau of Immigration and Alien Affairs (he was Deputy Head of the Joint Chiefs at the time of the *coup d'état*); Brigade General Manuel Enrique Cáceres is Director of Civil Aeronautics; former General Nelson Wily Mejía is in charge of the Bureau of the Merchant Marine, and former General Romeo Vásquez Velásquez is manager of the Honduran Telecommunications Company (Hondutel) (he was Commander-in-Chief of the Armed Forces at the time of the *coup d'état*).

601. On the other hand, the Commission is grateful for the letter that President Lobo sent to OAS Secretary General José Miguel Insulza on May 12, 2010, extending an open invitation for the inter-American system for the protection of human rights -in the form of its organs, especially the Inter-American Commission on Human Rights- to conduct official visits to Honduras whenever they deem such visits pertinent

602. The Commission acknowledges the Honduran State's recent effort to strengthen its institutions whose mission is to protect human rights. In a letter addressed to the OAS Secretary General, Mr. José Miguel Insulza, the then Minister Advisor in Human Rights, Mrs. Ana Pineda, reported that a Human Rights Unit had been established under the Secretariat of Security; she also reported that a unit to investigate human rights violations had been created within the Public Prosecutor's Office.⁸⁶⁵

603. The Commission has also been informed that the Honduran State has created a Secretariat for Justice and Human Rights⁸⁶⁶ and that Mrs. Ana Pineda has been appointed to head it.⁸⁶⁷ Also, during its May 2010 visit, the IACHR was informed that the Supreme Court had created a "Human Rights Program" whose purpose was to "ensure and confirm that every person, whether aggrieved or accused in connection with the collective history lived before, during and after June

⁸⁶⁵ Communication MDH 007/23/07/2010, July 23, 2010.

⁸⁶⁶ Communication MDH 007/23/07/2010, July 23, 2010; Diario El Herald, "[Lobo confirma que Ana Pineda dirigirá Secretaría de Derechos Humanos](#)" [Lobo confirms Ana Pineda to head Secretariat for Human Rights], September 29, 2010; and Diario La Prensa: "[Congreso aprueba Secretaría de DH](#)" [Congress approves Human Rights Secretariat], September 29, 2010.

⁸⁶⁷ Diario La Prensa, "[Ana Pineda asume Secretaría DDHH](#)" [Ana Pineda becomes head of Human Rights Secretariat], November 23, 2010; Diario La Prensa "[Secretaría de DDHH es petición de la OEA](#)" [Human Rights Secretariat is an OAS request], September 22, 2010; Diario La Prensa "[Lobo promete a OEA crear secretaria de DDHH](#)" [Lobo promises OAS to establish HR Secretariat], September 23, 2010.

28, 2009, is able to once and for all settle his or her legal problems.”⁸⁶⁸ The Commission also notes that in October 2010, the National Congress amended articles 28 and 29 of the General Public Administration Act, thereby paving the way for the creation of the Secretariat for Development of Honduran Indigenous Peoples and Afro-Descendants and Policies on Racial Equality.

604. The Commission observes that the efforts made in this attempt at institutional normalization have been inadequate. Minister Pineda herself acknowledges that the major problem is the large number of violations that go unpunished in Honduras. As was pointed out, this impunity problem has not changed and serious violations committed in the context of the 2009 *coup d'état* have still not been investigated and those responsible have not been prosecuted and punished.

605. In its observations, the State asserts that the Government of Unity and Reconciliation included members of differing political parties; it created and strengthened institutions to protect human rights and undertook other initiatives such as the formation of the National Committee of the National Mechanism for the Prevention of Torture and Cruel, Inhuman or Degrading Treatment or Punishment in order to be in full compliance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol. It also points out that President Porfirio Lobo sent an open invitation to the OAS Secretary General for the inter-American system, particularly the IACHR, to be able to make official visits to Honduras when it deems such visits necessary. On the question of impunity, the State adds that it submitted a proposal to the international system to consider the creation of an Anti-Impunity Commission in Honduras.⁸⁶⁹

IV. RECOMMENDATIONS

606. In light of the preceding analysis and considering the *in loco* visit made in August 2009, the report on *Honduras: Human Rights and the Coup d'état*, the visit made in May 2010 and the Commission's follow-up of the human rights situation in Honduras since the *coup d'état* on June 28, 2009, the Commission formulates the following recommendations to the Honduran State:

1. Ensure that the system for the administration of justice affords everyone effective access to justice.
2. Investigate, try and punish those responsible for human rights violations.
3. Prevent illegal groups from acting outside the law with impunity. In particular, the State has the duty to disband armed civilian groups that might be operating outside the law and to punish the unlawful actions they commit, in order to prevent the recurrence of acts of violence in the future.
4. Prevent the murders, threats and intimidations against human rights defenders, journalists, social communicators and social leaders by properly and efficiently implementing the precautionary measures that the Commission grants.

⁸⁶⁸ Supreme Court of Justice of Honduras, "[Programa de Derechos Humanos](#)" ["Human Rights Program"], Honduras, C.A., 2010.

⁸⁶⁹ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, p. 29.

5. Conduct immediate investigations, run by independent, specialized bodies, which clarify the facts and determine whether the murders of human rights defenders, journalists, social communicators and members of the resistance were related to the practice of their professions or to the context of the *coup d'état*. Also, prosecute and convict those responsible for these murders.
6. Redress the victims of human rights violations.
7. Provide the Inter-institutional Human Rights Commission with adequate personnel, support and sufficient resources so that it is able to respond to and implement efficiently the precautionary measures granted by the Commission.
8. Guarantee the conditions necessary so that defenders of human rights and labor rights are able to engage in their activities freely, and refrain from taking any action or adopting any legislation that might limit or obstruct their work.
9. Enhance the security and safety of the citizenry and order the Armed Forces and military intelligence units to refrain from any participation in citizen security activities; when exceptional situations arise, the military units shall be subordinate to the civilian authority.
10. Order the necessary measures so that female victims of violence have full access to adequate judicial protection, and adopt the legal, judicial and other mechanisms necessary to investigate complaints of violence against women, punish those responsible and compensate the victims.
11. Order the necessary measures to protect those sectors of the Honduran population that have been traditionally marginalized and more vulnerable, such as children, the LGBT community, women, the indigenous peoples and the Garifuna people.
12. Ensure that the Truth and Reconciliation Commission investigates complaints of human rights violations that occurred in the context of the *coup d'état*.

607. As for the recommendations of ICHR, the State suggests that some of the recommendations should be changed because: 1) the creation of the Council of the Judiciary is on the verge of materializing and will improve the performance of the Judicial Branch; 2) despite the increase in common crime, all the complaints are investigated, whether or not they are related to human rights violations. Still, there are human, economic and technological limitations; therefore the international community's support is being enlisted to strengthen investigative processes and procedures; 3) the precautionary measures are arrived at by consensus and implemented as best possible with the resources that the State is able to provide; 4) human rights defenders are not targets of State persecution; 5) the number of police available to protect the citizenry is on the decline because of the police services that have to be devoted to guarding beneficiaries of precautionary measures; 6) by law, the armed forces can assist in the work of maintaining security and domestic public order, but are always under the command of the civilian authority; 7) the Truth and Reconciliation Commission performs its functions in accordance with the law and has the full support of the institutions of the State to enable it to discharge its mission.⁸⁷⁰

⁸⁷⁰ In Observations of the State of Honduras on the Draft "General Report on the Situation of Human Rights in Honduras," Memorandum No. SP-A-13-2011 of February 18, 2011, pp. 29 and 30.

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.

CRITERIA

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.

3. 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.

4. 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.

5. 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.

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

7. 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.

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

VENEZUELA

608. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or the “IACHR”) decided to include the Bolivarian Republic of Venezuela (hereinafter “Venezuela” or “the State”) in Chapter IV of its 2010 Annual Report pursuant to Article 59(1)(h) of its Rules of Procedure.⁸⁷¹ The IACHR based its analysis on information compiled during its hearings and information available from other public sources, as well as information compiled through the mechanisms for protection, cases and precautionary measures. On January 21, 2011 the IACHR forwarded to the State a copy of the preliminary draft of this section of its 2010 Annual Report, as required under Article 59(2) of its Rules of Procedure. It asked that the State send its observations within one month’s time. On February 22, 2011, the Commission received the State’s observations and comments which, whenever relevant, were included in this report.

609. In its 1997 Annual Report, the Commission explained the five criteria it uses to identify OAS member states whose human rights practices merit special attention. The Commission considers that the Venezuelan situation fits within criterion five, which refers to

[...] structural or temporary 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 violence that prevent the proper application of the rule of law; serious institutional crises; processes of institutional change which have negative consequences on human rights; or grave omissions in the adoption of the necessary measures which would provide for the effective exercise of fundamental rights.

610. The Commission’s most recent visit to Venezuela was in May 2002, following the institutional breakdown in April of that year. After that visit, the Commission published the *Report on the Situation of Human Rights in Venezuela* in December 2003, in which it made a number of recommendations. Since then, the Commission has been monitoring the status of implementation of those recommendations and compiling firsthand information on the current human rights situation in Venezuela. Accordingly, it has made a number of overtures to request the State’s permission to conduct an observation visit. Thus far, the State has refused to allow the Commission to visit Venezuela, which not only affects the functions assigned to the Commission as one of the OAS’ principal organs for the promotion and protection of human rights, but also seriously weakens the system of protection that the member states of the Organization themselves created⁸⁷².

611. On December 30, 2009, the Commission approved the report titled *Democracy and Human Rights in Venezuela*, in which it examined developments in the area of human rights in Venezuela based on the information received in recent years through the Commission’s various

⁸⁷¹ Article 59 of the Commission’s Rules of Procedure reads as follows: “1. The Annual Report presented by the Commission to the General Assembly of the OAS shall include the following: [...] h. any general or special report the Commission considers necessary with regard to the situation of human rights in 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 respective 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.”

⁸⁷² In its reply of February 18, 2011, the State observed that Venezuela is a sovereign country that demands that its economic and political independence be respected. It reiterated that “the IACHR will visit again when it acknowledges that it supported the *de facto* government of Pedro Carmona Estanga.”

mechanisms of protection, such as the case system, the hearings, precautionary measures, the requests petitioning the Court to order provisional measures, inclusion of a country in Chapter IV of its annual reports, and press releases. The Commission also based its analysis on information that the Venezuelan State sent in response to the Commission's requests, and on the State's response to the questionnaire on human rights in Venezuela received in August 2009, which the State supplied to the Commission during the latter's hearings; it also based its analysis on available public information.

612. In its 2009 report, the Commission examined and expressed concern over the situation of freedom of thought and expression in Venezuela. It observed that the judicial branch's lack of independence and autonomy from the political branches of government made it one of the weakest pillars in Venezuelan democracy. The Commission also commented on the serious obstacles that human rights defenders encountered in performing their mission and observed that one of the most disturbing aspects of the human rights situation in Venezuela was citizen insecurity. It also commented that the State's failure to demarcate ancestral indigenous lands has caused disputes over ownership of land, disputes that had taken casualties among the indigenous peoples. The Commission continued to monitor the alarming levels of violence in Venezuelan prisons. In its 2009 report, however, it also highlighted the important headway that the Venezuelan State had made in the area of economic, social and cultural rights, both with the recognition of education, health, housing and universal social security as constitutionally protected rights, and with implementation of policies and measures designed to correct the problems besetting vast sectors of the Venezuelan population.

613. The Commission would again point out that it is ever ready to engage in dialogue with the government, to discuss the Report's content and recommendations and to work with it to advance the cause of protecting the human rights of the people of Venezuela.

614. In this chapter, the Commission will pay particular attention to the issues raised in the report on *Democracy and Human Rights in Venezuela*.

I. INDEPENDENCE AND SEPARATION OF THE BRANCHES OF GOVERNMENT: THE JUDICIAL BRANCH IN VENEZUELA

615. The Commission has stated on multiple occasions that the observance of rights and freedoms in a democratic system requires a juridical and institutional order, in which the law takes precedence over the will of the governing, and in which the courts scrutinize the constitutionality and legality of government acts; in other words, it presupposes respect for the rule of law.⁸⁷³

616. The Venezuelan State has said that the Constitution of the Bolivarian Republic of Venezuela provides the mechanisms necessary to ensure the independence of the branches of government. Specifically, Title IV, "Public Power," establishes the independence of the country's branches of government; in the rationale section, it sets forth the principle of restrictive competence, whereby those agencies that wield public power may only perform those functions that the Constitution and the law expressly assigns to them.⁸⁷⁴

⁸⁷³ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 180; IACHR. *Second Report on the Situation of Human Rights in Peru*, June 2, 2000, Chapter II, para. 1; IACHR. *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, para. 150.

⁸⁷⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 181; Venezuelan State's response to the questionnaire for the analysis of the human rights situation in Venezuela. August 13, 2009, p. 9.

617. Using the Venezuelan Constitution as its frame of reference, in its 2009 report the Commission examined –and will examine again in this chapter- whether sufficient guarantees are in place to ensure the judicial branch’s independence from the political branches of government in Venezuela.

618. The Inter-American Court has emphasized that one of the main purposes of the separation of powers is to guarantee the independence of judges.⁸⁷⁵ An independent judicial branch is vital in overseeing the constitutionality of the actions taken by the other branches of government and in its role as the branch of government charged with administering justice.

619. The Commission has devoted particular attention to the administration of justice in Venezuela, particularly in its 2009 report on *Democracy and Human Rights in Venezuela*, the Follow-up Report on Compliance by the State of Venezuela with the Recommendations made by the IACHR in its 2003, the reports included under Chapter IV of its Annual Reports, the hearings held during its sessions, and the cases submitted to the Inter-American Court.⁸⁷⁶ Through these mechanisms the Commission has expressed its concern over issues affecting the independence and impartiality of the judicial branch, particularly the high percentage of judges and prosecutors who are provisional appointees and the failure to comply with the legal and constitutional procedures when appointing and removing judges and prosecutors. The Commission has also received reports on the executive branch’s alleged interference in court rulings.

620. The Inter-American Commission has held that the guarantees necessary to ensure correct and independent operation of the judicial branch are found in the mechanisms whereby judges are appointed, the tenure they enjoy in their positions, and their proper professional preparation. Another guarantee that the courts are autonomous from the other branches of government is that they are free from any and all influence, threats or interference, whatever the source.⁸⁷⁷

621. In its report on *Democracy and Human Rights in Venezuela*, the Commission looked at the process by which judges and prosecutors are appointed in Venezuela and the provisions governing the selection of judges.⁸⁷⁸ As in previous years, in the period from January to October 2010 the Commission continued to receive information on the job stability of so-called temporary and provisional judges, and on the Supreme Court Judicial Commission’s appointment of judges without public competition (245). Of these, 66 are said to be provisional appointments (27%), 70 temporary appointments (29%), and 103 interim appointments (42%); the remaining 6 reportedly fell into other categories (3%).⁸⁷⁹ The information supplied to the IACHR shows that 100% of the 245 judicial appointments in that period were not done by the competitive procedures required under Article 255 of the Constitution of the Bolivarian Republic of Venezuela.⁸⁸⁰ The Commission

⁸⁷⁵ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, paragraph 73; and *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 55.

⁸⁷⁶ *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, and *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C. No. 197.

⁸⁷⁷ IACHR. *Report on Terrorism and Human Rights*. October 22, 2002, para. 229.

⁸⁷⁸ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, paragraphs 187-201.

⁸⁷⁹ Information received during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th Session, October 29, 2010.

⁸⁸⁰ Article 255 of the Constitution of the Bolivarian Republic of Venezuela: “Appointments to judicial positions and promotions of judges shall be done by means of public competitions to ensure the suitability and excellence of the

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also received information in 2010 to the effect that 24.32% of all provisional judges were removed from the bench, as were 21.62% of temporary judges, 27.02% of the judges appointed on the basis of the required competitive examination, 5.40% of interim judges and 21.62% of other judges.⁸⁸¹

622. As observed in the Report on *Democracy and Human Rights in Venezuela*,⁸⁸² most of the judicial appointments in 2010 were done by virtue of the establishment of a permanent state of emergency. While the various resolutions either appointing or transferring judges cite articles 255 and 267⁸⁸³ of the Constitution of the Bolivarian Republic of Venezuela and the final part of Article 20 of the Organic Law of the Supreme Court of Justice, the appointments are being made in consideration of “the urgent need to cover vacancies arising in the nation’s various courts, in order to prevent the paralysis of judicial proceedings and after an examination of the candidates’ relevant credentials...”⁸⁸⁴

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participants, with selection by the juries of the judicial circuits, in such a manner and on such terms as may be established by law. The appointment and swearing in of judges shall be the responsibility of the Supreme Court of Justice. Citizen participation in the process of selecting and designating judges shall be guaranteed by law. Judges shall be removed or suspended from office only through the procedures expressly provided by law.”

⁸⁸¹ Information received during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th Session, October 29, 2010.

⁸⁸² See IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, paragraphs 202-205.

⁸⁸³ Article 267 of the Constitution of the Bolivarian Republic of Venezuela reads as follows: “The Supreme Court shall direct, govern and administer the Judicial Branch, inspect and monitor and courts of the Republic and the Public Defenders Offices. It shall also prepare and execute its own budget and the budget of the Judicial Branch.

Discipline within the judicial system shall be the responsibility of the disciplinary tribunals that the law determines.

The disciplinary system for magistrates and judges will be based on the Code of Ethics for the Venezuelan Judge, which the National Assembly shall enact. Disciplinary proceedings shall be public, oral and swift, in keeping with due process, and under the terms and conditions that the law establishes.

To discharge these functions, the Supreme Court *en banc* shall create an Executive Directorate of the Judiciary, with regional offices.”

⁸⁸⁴ See, *inter alia*: Resolution No. 2010-003 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of January 21, 2010; Resolution No. 2010-008 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of January 25, 2010; Resolution No. 2010-009 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of January 25, 2010; Resolution No. 2010-010 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of January 25, 2010; Resolution No. 2010-015 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of February 8, 2010; Resolution No. 2010-016 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of February 8, 2010; Resolution No. 2010-021 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of February 23, 2010; Resolution No. 2010-022 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of February 23, 2010; Resolution No. 2010-023 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of February 23, 2010; Resolution No. 2010-025 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of March 12, 2010; Resolution No. 2010-029 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 8, 2010; Resolution No. 2010-033 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 8, 2010; Resolution No. 2010-034 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 8, 2010; Resolution No. 2010-042 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 28, 2010; Resolution No. 2010-037 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 22, 2010; Resolution No. 2010-040 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 27, 2010; Resolution No. 2010-041 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 27, 2010; Resolution No. 2010-042 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 28, 2010; Resolution No. 2010-043 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 28, 2010; Resolution No. 2010-045 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of April 29, 2010; Resolution No. 2010-046 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of May 11, 2010; Resolution No. 2010-047 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of May 11, 2010; Resolution No. 2010-047-A of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of May 11, 2010; Resolution No. 2010-048 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of May 11, 2010; Resolution No. 2010-049 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of May 11, 2010; Resolution No. 2010-054 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of May 11, 2010; Continúa...

623. As the Commission has previously observed, the failure to follow the procedures prescribed in the Constitution and the law for judicial appointments and the legal loophole as regards the categories of judges mentioned exposes these officials to possible undue pressure in the exercise of the important function they perform and thus poses a serious threat to the independence of Venezuela's judiciary.⁸⁸⁵ The Commission has also identified another issue that undermines judicial independence: the mechanism whereby judges' appointments can be revoked. A significant number of judges have been removed from the bench by that method, which means that the terms of the Constitution and the corresponding administrative proceedings have not been observed.⁸⁸⁶ As the Commission noted in its 2009 Report on *Democracy and Human Rights in Venezuela*, in 2010 the appointments of certain judges were revoked by virtue of resolutions issued by the Supreme Court, through its Judicial Commission. Those resolutions made no mention of the reasons why the appointments had been revoked and there is no way to discern whether the judges removed from the bench had the opportunity to defend themselves.⁸⁸⁷

624. The Inter-American Court has held that the condition *sine qua non* for the independence of the judiciary is, in addition to the appointment process, the tenure of judges in their seats on the bench.⁸⁸⁸ The United Nations Basic Principles on the Independence of the Judiciary stipulate that "the term of office of judges [...] shall be adequately secured by law" (Principle 11) and that "judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists" (Principle 12).

625. In its 2009 Report on *Democracy and Human Rights in Venezuela*, the Commission observed that in addition to guarantees of tenure, a system must be instituted to hold judges and prosecutors accountable for cases in which fair and correct proceedings have deemed their performance to be improper.⁸⁸⁹ The Commission applauded the June 2009 approval of the Code of Ethics for Venezuelan Judges, which established the system for disciplining judges for their conduct.⁸⁹⁰ Under that Code, the bodies that would have disciplinary authority over judges would be the Judiciary Disciplinary Tribunal and the Judiciary Disciplinary Court, which are to be composed of three principal judges and their respective alternates. The members of the Judiciary Disciplinary Tribunal and Court are to be elected by the Judicial Electoral Associations, composed in

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Venezuela of May 18, 2010; Resolution No. 2010-055 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of May 18, 2010; Resolution No. 2010-056 of the Supreme Court of Justice of the Bolivarian Republic of Venezuela of May 18, 2010.

⁸⁸⁵ IACHR. 2007 *Annual Report*. Chapter IV. Venezuela, para. 281; IACHR. 2008 *Annual Report*. Chapter IV. Venezuela, para. 393.

⁸⁸⁶ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 269.

⁸⁸⁷ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 274; Supreme Court of Justice, Resolution 2010-0004 of January 25, 2010; Supreme Court of Justice, Resolution 2010-011 of February 8, 2010; Supreme Court of Justice, Resolution 2010-0017 of February 23, 2010; Supreme Court of Justice, Resolution 2010-0036 of April 22, 2010; Supreme Court of Justice, Resolution 2010-0038 of April 23, 2010; Supreme Court of Justice, Resolution 2010-0039 of April 27, 2010; Supreme Court of Justice, Resolution 2010-0044 of April 29, 2010; Supreme Court of Justice, Resolution 2010-0046 of May 11, 2010; Supreme Court of Justice, Resolution 2010-0051 of May 18, 2010; Supreme Court of Justice, Resolution 2010-0058 of June 15, 2010.

⁸⁸⁸ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, paragraph 75; *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 138.

⁸⁸⁹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 239.

⁸⁹⁰ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 242.

accordance with Article 47 of the Code of Ethics.⁸⁹¹ Nevertheless, the Commission noted that until these disciplinary bodies have been established, the Commission on Functioning and Restructuring of the Judicial System continues to exercise their disciplinary functions, as provided in Transitory Provision One of that Code. The Commission has also expressed concern over the lack of independence of the Commission on Functioning and Restructuring of the Judicial System, whose members can be appointed and removed by the Supreme Court at its sole discretion. Hence, the guarantees necessary to ensure the independence of this disciplinary body's decisions simply do not exist.⁸⁹²

626. The Commission observes that on August 23, 2010, the State amended Article 61 of the Code of Ethics. That article provides that “[d]uring the investigation, and if deemed advisable for purposes of the investigation, the Judiciary Disciplinary Tribunal may order, on a precautionary basis, a judge’s provisional removal from the bench [...]” The Commission considers that the possibility of removing a judge temporarily under the Tribunal’s consideration could raise questions about possible abuse of discretion and engender legal insecurity.

627. In 2010, the Commission received information to the effect that the Judiciary Disciplinary Tribunal and Court had not been set up, with the result that the Commission on Functioning and Restructuring of the Judicial System is still in charge of suspending and permanently removing judges from the bench.⁸⁹³

628. As for the prosecutors with the Public Prosecutor’s Office, who are freely appointed and removed, the Commission has consistently pointed out that the provisional status of prosecutors and their resulting lack of job stability, could translate into a lack of resolve and follow-through, and a failure to pursue certain lines of investigation in criminal inquiries and to meet deadlines in the investigative phase.⁸⁹⁴ The Commission believes that the provisional status of judges and prosecutors in Venezuela could have negative consequences for victims’ rights in criminal proceedings involving human rights violations.⁸⁹⁵

629. In its Report on *Democracy and Human Rights in Venezuela*, the Commission stated that according to the information it had received, not one of the 2,644 prosecutors named between 2004 and September 2009 had been appointed on the basis of a public competition and hence were not permanent in their posts.⁸⁹⁶ In 2010, the Commission continued to receive information on the provisional appointments of prosecutors. Thus, of a total of 388 appointments, 126 are provisional prosecutors, 245 are assistant interim prosecutors, 10 are alternate prosecutors, 6 are superior court prosecutors, and 1 is an appointment of another type.⁸⁹⁷ Appointment of prosecutors in 2010

⁸⁹¹ Article 47 of the Code of Ethics provides that these associations will be established in each state and in the Capital District, composed of one representative of the judicial branch, one representative of the Public Prosecutor’s Office, one representative of the Public Defender’s Office, one representative of the attorneys licensed to practice, and 10 delegates from the Communal Councils legally organized by each of the federal entities in exercise of the people’s sovereignty and participatory and activist democracy.

⁸⁹² IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, paragraphs 245-249.

⁸⁹³ Information received during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th Session, October 29, 2010.

⁸⁹⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 265.

⁸⁹⁵ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 265, and IACHR, 2006 Annual Report. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 167.

⁸⁹⁶ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 225.

⁸⁹⁷ Information received during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th Session, October 29, 2010.

was done by publishing, in the Official Gazette of the Bolivarian Republic of Venezuela, the resolutions of the Public Prosecutor's Office in which different persons are appointed to the positions named above, but with no indication of the reason for the appointment.⁸⁹⁸

630. In addition to the importance of appropriate mechanisms for appointing judges, the right to an independent judiciary also requires that the same principles apply to the appointment of public prosecutors. Thus, the Commission has underscored the importance of a correctly implemented prosecutorial career service given the essential role that the Public Prosecutor's Office plays in criminal investigations. And so, the independence, impartiality, and suitability of prosecutors must be ensured as a means to guarantee that investigations are effective and that the risk of impunity is eliminated, particularly in cases of human rights violations.⁸⁹⁹

631. The Commission recalls that among the protections afforded under Article 8 of the American Convention (right to a fair trial) are certain requirements that must be observed to guarantee the independence of the officers of the court. In keeping with the jurisprudence of the European Court⁹⁰⁰ and the United Nations Basic Principles on the Independence of the Judiciary,⁹⁰¹ the Inter-American Court has held that States are required to ensure an adequate appointment process,⁹⁰² freedom from outside pressure,⁹⁰³ and tenure in positions.⁹⁰⁴

632. Based on these guarantees, the Commission observes that the stability of the officers of the court is one of the essential guarantees of due process protected under the American Convention. Under the United Nations Basic Principles on the Independence of the Judiciary, all

⁸⁹⁸ See, *inter alia*: Official Gazette of the Bolivarian Republic of Venezuela of January 20, 2010; Official Gazette of the Bolivarian Republic of Venezuela of January 22, 2010; Official Gazette of the Bolivarian Republic of Venezuela of February 10, 2010; Official Gazette of the Bolivarian Republic of Venezuela of March 3, 2010; Official Gazette of the Bolivarian Republic of Venezuela of March 18, 2010; Official Gazette of the Bolivarian Republic of Venezuela of April 8, 2010; Official Gazette of the Bolivarian Republic of Venezuela of April 9, 2010; Official Gazette of the Bolivarian Republic of Venezuela of April 12, 2010; Official Gazette of the Bolivarian Republic of Venezuela of April 14, 2010; Official Gazette of the Bolivarian Republic of Venezuela of May 5, 2010; Official Gazette of the Bolivarian Republic of Venezuela of May 6, 2010; Official Gazette of the Bolivarian Republic of Venezuela of May 18, 2010; Official Gazette of the Bolivarian Republic of Venezuela of June 3, 2010; Official Gazette of the Bolivarian Republic of Venezuela of June 4, 2010; Official Gazette of the Bolivarian Republic of Venezuela of July 19, 2010; Official Gazette of the Bolivarian Republic of Venezuela of July 21, 2010; Official Gazette of the Bolivarian Republic of Venezuela of July 26, 2010; Official Gazette of the Bolivarian Republic of Venezuela of July 27, 2010; Official Gazette of the Bolivarian Republic of Venezuela of August 25, 2010; Official Gazette of the Bolivarian Republic of Venezuela of September 3, 2010; Official Gazette of the Bolivarian Republic of Venezuela of September 6, 2010; Official Gazette of the Bolivarian Republic of Venezuela of September 7, 2010.

⁸⁹⁹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 219; IACHR. *Access to Justice and Social Inclusion: the Road towards Strengthening Democracy in Bolivia*. June 28, 2007, para. 96.

⁹⁰⁰ Cf. ECHR. *Case of Campbell and Fell v. the United Kingdom*, Judgment of 28 June 1984, Series A No. 80, para. 78; ECHR. *Case of Langborger v. Sweden*, Judgment of 22 January 1989, Series A No. 155, para. 32.

⁹⁰¹ United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

⁹⁰² I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, paragraph 75.

⁹⁰³ Cf. I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, paragraph 75.

⁹⁰⁴ Cf. I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, paragraph 75; and *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 138.

disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.⁹⁰⁵

A. The Supreme Court of Justice

633. The Commission notes that Resolution 2010-0011 of the Supreme Court of Justice, published on May 14, granted "... the retirement benefits to each and every justice on the Supreme Court who, as of the date of the resolution, meets all the legal and regulatory requirements to choose for that benefit and files to receive it."⁹⁰⁶ Under that resolution, "justices on the Supreme Court who have been granted the retirement benefit may remain on the bench provided the constitutional term to which they were appointed has not ended or until the National Assembly appoints new justices to the Supreme Court. A justice may also opt to retire before the constitutional term to which he or she was appointed has ended."

634. The Supreme Court of Venezuela has a total of 32 permanent justices, divided among 6 different chambers.⁹⁰⁷ A majority of the 32 justices were selected in 2001, one year after Venezuela's current Constitution was enacted and published; a second group was selected in 2004 after publication of the Organic Law of the Supreme Court of Justice, which increased the number of justices from 20 to 32. The Commission recalls that in its Follow-up Report on Compliance by the State of Venezuela with the Recommendations Made by the IACHR in Its 2003 Report on the Situation of Human Rights in Venezuela, it had observed that the amendment of the provisions of the Organic Law of the Supreme Court was said to have made it possible to "pack" the Court in 2004 with justices sympathetic to the government. The Executive Branch was reportedly able to manipulate the election of justices. It also pointed out that the 49 justices elected (17 full justices and 32 alternates) were said to be sympathetic to the government. Two of the new justices elected were sitting parliamentarians for the government's majority party in the National Assembly.⁹⁰⁸

635. Because Article 264 of the Constitution provides that justices shall remain on the bench for a term of 12 years from the date of their appointment,⁹⁰⁹ the terms of the justices elected in 2001 and 2004 would end in 2013 and 2016, respectively. However, based on a resolution recently approved by the Supreme Court of Justice, a considerable number of justices now on the Supreme Court bench could be replaced.⁹¹⁰ According to the information the Commission received

⁹⁰⁵ Cf. Principles 18 and 19 of the United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

⁹⁰⁶ Supreme Court of Justice, *en banc*, Resolution No. 2010-0011 of March 10, 2010, published in the Ordinary Official Gazette No. 39,324 of May 14, 2010.

⁹⁰⁷ Article 8 of the Organic Law of the Supreme Court of Justice, published in Official Gazette No. 39,522, October 1, 2010.

⁹⁰⁸ IACHR, Follow-up Report on Compliance by the State of Venezuela with the Recommendations made by the IACHR in Its 2003 Report on the Situation of Human Rights in Venezuela, para. 180.

⁹⁰⁹ Article 264 of the Constitution reads as follows: "The justices of the Supreme Court of Justice shall be elected for a single term of twelve years. The election procedure shall be determined by law. In all cases, candidates may be proposed to the Judicial Nominations Committee either on their own initiative or by organizations involved in the field of law. The Committee, after hearing the community's views, will carry out a preliminary selection for presentation to the citizens' branch, which shall then carry out a second pre-selection for submission to the National Assembly, which shall then make the final selection. Citizens may file objections to any of the candidates, for cause, with the Judicial Nominations Committee or the National Assembly."

⁹¹⁰ *El Universal*, May 17, 2010, *En Gaceta resolución de jubilación de magistrados* [Gazette has resolution on justices' retirement], available [in Spanish] at: <http://www.eluniversal.com/2010/05/17/polavaen-gaceta-resolucion17A3888263.shtml>

during its 140th session, after granting retirement benefits to a number of justices, on October 8, 2010 the law was invoked to issue a new convocation to elect 41 justices. According to the Official Gazette of December 8, 2010, the National Assembly appointed 41 new justices: 9 full justices and 32 alternates.⁹¹¹

B. Politically motivated removal and persecution of judges

636. In its 2009 Report on *Democracy and Human Rights in Venezuela*, the Commission examined the situation of various judges who were removed from the bench after adopting decisions that did not favor the government's interests. The public information available suggested that the decision to remove these judges was politically motivated.⁹¹²

637. In 2010, the Commission continued to receive information on the 31st Judge of the Court of Preliminary Proceedings of the Caracas Metropolitan Area, María Lourdes Afiuni Mora, who on December 10, 2009, decided to substitute the detention measure against citizen Elegio Cedeño with a less onerous precautionary measure,⁹¹³ since by that time he had already been held in pretrial detention for over two years (more than the maximum preventive detention of two years allowed under the Organic Code of Criminal Procedure⁹¹⁴). In making her decision, Judge Afiuni Mora cited Opinion No. 10/2009 (Venezuela) of the UN Human Rights Council's Working Group on Arbitrary Detention, dated September 1, 2009. In that opinion, the Working Group on Arbitrary Detention declared that Mr. Cedeño's incarceration was arbitrary based on the fact that he was held in preventive detention for more than the maximum allowed by law.

638. As the Commission observed in the Report on *Democracy and Human Rights in Venezuela* and as the United Nations Working Group on Arbitrary Detention pointed out in its opinion of September 3, 2010, Judge Afiuni was arrested together with bailiffs Rafael Rondón and Carlos Lotuffo at the offices of the court, minutes after issuing her decision. The arrests were made by agents with the Public Security Police Force, part of the Directorate of Intelligence and Prevention Services (DISIP, now called SEBIN). The arresting officers did not state the cause for the arrest and did not disclose what authority had ordered the arrest; nor did they show any arrest warrant.⁹¹⁵ The following day, speaking in a preemptive nationwide radio and television broadcast, the President of the Republic, Hugo Chávez, branded the judge a "bandit" and said the following: "I call for toughness against this judge, I even told the president of the Supreme Court [of Justice, Luisa Estela Morales], and I tell the National Assembly: a law must be passed because a judge who frees a bandit is much worse than the bandit himself. It is infinitely more serious than an assassination; therefore, we must apply the maximum penalty against this judge and against others

⁹¹¹ Official Gazette No. 39,569 of December 8, 2010. Issuing body: National Assembly. Title: Designation of principal and alternate members of the Constitutional, Electoral, Political-Administrative, Social Cassation, Criminal Cassation and Civil Cassation Chambers of the Supreme Court of Justice.

⁹¹² IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, paragraphs 285–301.

⁹¹³ According to Opinion No. 20/2010 of September 3, 2010 of the United Nations Human Rights Council's Working Group on Arbitrary Detention, Judge Afiuni Mora had ordered the conditional release on bail of Mr. Cedeño, in full exercise of her jurisdictional authority; in place of his preventive detention, she ordered less severe measures, among them prohibiting him from leaving the country, withholding his passport, and requiring him to make a court appearance every 15 days.

⁹¹⁴ IACHR, *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, paragraph 297.

⁹¹⁵ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 297; United Nations Human Rights Council's Working Group on Arbitrary Detentions, Opinion No. 20/2010 (Bolivarian Republic of Venezuela) adopted on September 3, 2010, in the case of the detention of Judge María Lourdes Afiuni Mora in Venezuela, para. 7 (translation ours).

who do this. I call for thirty years in prison in the name of the dignity of the country.”⁹¹⁶ On December 11, 2009, the day after her arrest, Judge Afiuni was advised of the arrest warrant, which mentioned the commission of irregularities that allowed Mr. Cedeño’s release.⁹¹⁷

639. On December 12, 2009, the Office of the Public Prosecutor charged the former judge with the commission of crimes of corruption, abuse of authority, complicity in a prison escape and conspiracy to commit crime, under the Law against Corruption, the Criminal Code and the Organic Law against Organized Crime.⁹¹⁸ The judge appointed to replace Judge Afiuni revoked Mr. Cedeño’s release on bail and issued an order for his arrest.⁹¹⁹

640. Concerning these events, on December 16, 2009, the Chair of the UN Working Group on Arbitrary Detentions, the Special UN Rapporteur on the Independence of Judges and Lawyers, and the Special UN Rapporteur on the Situation of Human Rights Defenders issued a joint statement on the situation of Judge Afiuni in which they wrote the following: “Reprisals for exercising their constitutionally guaranteed functions and creating a climate of fear among the judiciary and lawyers’ profession serve no purpose except to undermine the rule of law and obstruct justice.”⁹²⁰ On December 17, 2009, the IACHR sent a request for information to the State after receiving a request seeking precautionary measures for Judge María Lourdes Afiuni Mora on December 15, 2009. The Commission granted precautionary measures for the Judge on January 11, 2010, after receiving information to the effect that she was incarcerated at the National Institute for Women’s Guidance (Instituto Nacional de Orientación Femenina - INOF), the only women’s prison in Venezuela. She was being held together with female inmates whose cases Judge Afiuni was said to have had a hand in deciding; furthermore, on January 3, 2010, a prison riot had allegedly broken out to “burn alive” the beneficiary of these measures. During the riot, a group of female inmates had reportedly attempted to throw gasoline in the sector where Judge Afiuni was being held to set her on fire.⁹²¹

641. Throughout 2010, the IACHR has received troubling reports on the situation of Judge Afiuni, both when processing the request seeking precautionary measures and in the hearings held during its 138th and 140th sessions. These reports indicated that the judge had been in a “maximum security” cell since January 6, 2010, which means that she is being increasingly isolated. The reports indicate that she has no “access to the prison authorities” and has no way to interact with the prison personnel or the rest of the inmate population. She is reportedly being denied access to a cell that meets the minimum requirements of safety and hygiene, would have been denied food and medicine for two days and would have not been provided with the basic

⁹¹⁶ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 298.

⁹¹⁷ United Nations Human Rights Council’s Working Group on Arbitrary Detention, Opinion No. 20/2010 (Bolivarian Republic of Venezuela), adopted on September 3, 2010, in connection with the case of the detention of Judge María Lourdes Afiuni Mora in Venezuela, para. 9 (translation ours).

⁹¹⁸ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 299.

⁹¹⁹ United Nations Human Rights Council’s Working Group on Arbitrary Detention, Opinion No. 20/2010 (Bolivarian Republic of Venezuela), adopted on September 3, 2010, in connection with the case of the detention of Judge María Lourdes Afiuni Mora in Venezuela, para. 11 (translation ours).

⁹²⁰ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 300; Statement available at: [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/93687E8429BD53A1C125768E00529DB6?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/93687E8429BD53A1C125768E00529DB6?OpenDocument)

⁹²¹ On January 11, 2010, the Inter-American Commission on Human Rights granted precautionary measures for Judge Afiuni and requested that the Venezuelan State: 1) adopt the measures necessary to safeguard the life and safety of Judge Afiuni; 2) adopt measures for Judge Afiuni’s transfer to a safe location, and 3) report on the measures put in place to investigate the facts that warranted adoption of precautionary measures. See IACHR, Precautionary Measures MC 380-09 – María Lourdes Afiuni, Venezuela, available at: <http://www.IACHR.oas.org/medidas/2010.eng.htm>.

nutritional foods. She reportedly is never permitted to see sunlight as she is removed from her cell for walks by night. The Commission has been told that at INOF, no criteria are followed for classifying inmates according to the degree of danger they pose, and persons being held pending trial are not segregated from those already convicted. It also has been informed that the cellblock in which the judge is being held is where the generally violent inmates are kept to ease tensions elsewhere in the prison.

642. According to the information made available to the Commission and to the Venezuelan State, at INOF Judge Afiuni is the target of constant threats by a number of inmates, so much so that the psychiatric report that the Director of Basic Rights Protection for the Public Prosecutor's Office sent to the 50th Criminal Court Judge stated that Judge Afiuni is suffering from a "disorder that is a combination of anxiety and depression," and suggested psychotherapy and continued pharmacological treatment. In the psychiatric examination, Judge Afiuni reportedly said the following:

[I live] amid so much mental terror ... for four months in this cell...here in the prison there are two camps...government and population... I represent ... or rather I am identified with the government...and so I am to blame for them being locked up here... of course... not everyone... I have experienced events or situations...terrifying... like for example ... one inmate who stood at the door of this cell ... screaming "I want to suck... judge's cunt... I find an inmate in the room when I come out of the bathroom... [E]arly in the morning I hear ... the inmate in the next cell screaming that they paid her to stab me to death to murder me... [T]hey say I'm damned... die, bitch... one time some of the inmates got gasoline ... and were planning to pour it into this cell ... to burn me alive... [T]hey slipped papers under the cell door ... saying they're going to kill me... they're going to rape me... they're going to burn me alive.

643. During its 140th session, the Commission was told that in March 2010 Judge Afiuni reportedly discovered two lumps near her breast and had filed petitions with the court asking to receive medical treatment in a civilian hospital. The domestic court had reportedly denied her requests on the grounds that the Military Hospital was the appropriate institution to conduct the necessary medical tests. However, her first medical examination at the Military Hospital was not done until June 23, 2010, and the results did not reach the court for more than a month. As of early December 2010, the Commission had still not been informed as to whether the judge was given proper medical treatment by a physician she trusted, which was precisely what happened in the case of the other medical problems that Judge Afiuni suffered during her incarceration, which included cystitis and allergies.

644. As for visits to Judge Afiuni's cell, the Commission has received information to the effect that no physicians, priests or international organizations are permitted access to her cell. For example, the World Organization against Torture (OMCT), headquartered in Geneva, was denied access in September 2010. Judge Afiuni's parents and daughter have denounced that they have been subjected to humiliation when they have gone to the prison; not every attorney on her defense team has been allowed to visit the INOF. The State has offered no explanation whatever for all this. The information report indicates that unlike the other inmates at INOF, a record is kept of every person who visits Judge Afiuni.

645. The Commission has also learned that since the statements that Judge Afiuni made to a domestic media outlet on November 14, 2010, she has received new threats in prison against her personal integrity. Her attorney has reportedly said that the inmates told the judge that "she was going to get a pat down –even her private parts would be checked- every half hour or every

time *Globovisión* aired the tape of her speaking... and they scream at her... they will set the entire prison population against her."⁹²²

646. Based on this background information and bearing in mind that the State did not answer the requests for information that the Commission made when the precautionary measure was being processed, on August 30, 2010, the Commission petitioned the Inter-American Court asking it to grant provisional measures for Judge Afiuni. These measures were granted by an order of the President of the Court dated December 10, 2010.⁹²³ In the order, the President of the Inter-American Court decided to call upon the Venezuelan State: 1) to adopt forthwith the measures that are necessary and effective to guarantee the life and physical, mental and moral integrity of Mrs. María Lourdes Afiuni and to inform the Court of the measures taken by no later than December 20, 2010; 2) to take the necessary measures so that Mrs. Afiuni is held in a place of detention that is suited to her particular circumstances, given the function she performed as a criminal judge, and taking particular care to provide full guarantees of her security and to ensure observance of her right to receive family and visitors, her attorneys and the physicians who visit her in order to examine her, in the terms described in *consideranda* twelve; and 3) should Mrs. Afiuni require specialized medical attention, and without prejudice to any care that the physicians attached to the state institutions are able to provide, to take the necessary measures so that she can be seen by physicians of her choosing.⁹²⁴

647. During the course of 2010, the United Nations Human Rights Council's Working Group on Arbitrary Detention,⁹²⁵ the European Parliament,⁹²⁶ the United Nations Human Rights Council's Special Rapporteur on the Independence of Judges⁹²⁷ and the United Nations High Commissioner for Human Rights⁹²⁸ all issued statements on the case of Judge Afiuni.

648. As for the criminal case prosecuted against Judge Afiuni, the IACHR was informed that she was formally charged on January 26, 2010. Under Venezuela's law on criminal procedure, her trial should have started ten days after the preliminary hearing was held. However, the Commission was told that the preliminary hearing was postponed several times before it was finally held on May 17, 2010. In a communication dated February 18, 2011, the Venezuelan State asserted that "the former judge's judicial guarantees were respected in every judicial proceeding conducted in her case."

⁹²² Article. Anyimar Cova Lugo, "Denuncian tortura psicológica contra la jueza Afiuni" [Mental torture of Judge Afiuni denounced], *El Universal*, available [in Spanish] at http://www.eluniversal.com/2010/11/16/pol_ava_denuncian-tortura-ps_16A4736457.shtml

⁹²³ I/A Court H.R., Matter of María Lourdes Afiuni regarding Venezuela. Order of the President of the I/A Court H.R., December 10, 2010 [available in Spanish only].

⁹²⁴ I/A Court H.R., Matter of María Lourdes Afiuni regarding Venezuela. Order of the I/A Court H.R., December 10, 2010, p. 13 [available in Spanish only].

⁹²⁵ United Nations Human Rights Council's Working Group on Arbitrary Detention, Opinion No. 20/2010 (Bolivarian Republic of Venezuela), adopted September 3, 2010, in connection with the case of the detention of María Lourdes Afiuni Mora in Venezuela.

⁹²⁶ European Parliament resolution of 8 July 2010 on Venezuela, in particular the case of María Lourdes Afiuni, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0289+0+DOC+XML+V0//EN>

⁹²⁷ Statement by the United Nations Human Rights Council's Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Carina Knaut de Albuquerque e Silva. TERRORISM AND GLOBAL SECURITY: THREATS TO THE INDEPENDENCE OF THE JUDICIARY IN A CHANGING WORLD. INTERNATIONAL ASSOCIATION OF WOMEN JUDGES, 2010 10TH BIENNIAL INTERNATIONAL CONFERENCE, SEOUL, REPUBLIC OF KOREA, May 12, 2010.

⁹²⁸ Statement by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, International Association of Women Judges, Jubilee Biennial Conference, Seoul, 12 May 2010.

649. The Commission reiterates that the case of Judge Afiuni sends a strong negative message to society as a whole and to the other judges in the judicial branch, who are not free to adopt decisions that go against the government's interests;⁹²⁹ if they do, they run the risk of being removed from the bench, prosecuted and subjected to conditions that violate human dignity.

II. SITUATION OF HUMAN RIGHTS DEFENDERS

650. In its Report on the Situation of Human Rights Defenders in the Americas (hereinafter "Report on Human Rights Defenders"), published in 2006, the Commission wrote the following:

Human rights defenders play a leading role in the process of pursuing the full attainment of the rule of law and the strengthening of democracy. The IACHR has indicated that the work of human rights defenders, protecting individuals and groups of individuals who are victims of human rights violations, publicly denouncing the injustices that affect large sectors of society, and pointing to the need for citizen oversight of public officials and democratic institutions, among other activities, means they play an irreplaceable role in building a solid and lasting democratic society.⁹³⁰

651. Therefore, the process of democratic strengthening in the hemisphere must include full respect for the work of human rights defenders⁹³¹ and States must guarantee the conditions necessary for human rights defenders to be able to engage freely in their activities and must refrain from taking any action that might limit or obstruct their work.⁹³²

652. In its 2009 Report on *Democracy and Human Rights in Venezuela*, the Commission wrote that according to the information it had received, human rights defenders in Venezuela are not only the target of smear campaigns and criminalization campaigns, but are also victims of attacks, threats and harassment, and even murders. This has a ripple effect that affects the observance of human rights in general, as human rights defenders can only work to protect the rights of others when their own rights are properly observed and protected.⁹³³

653. Throughout 2010, the Commission received information concerning the murders of human rights defenders, excessive use of force to suppress public demonstrations, and the use of the criminal justice system as a means to obstruct the work of human rights defenders in Venezuela. In the case of the murders of human rights defenders in Venezuela, the situation of the union leaders is particularly concerning. According to the information that civil society provided during the Commission's 140th session, in the period from June 2009 to May 2010, at least 30 union leaders had died as a result of clashes between unions or infighting within the same union. According to the information the Commission received, there is a pattern in the killings of union leaders: 1) the murderers are contract killings, and 2) the investigations conducted by the authorities move very slowly.⁹³⁴

⁹²⁹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 301.

⁹³⁰ See, OEA/Ser.L/V/II.124, Doc. 5 rev.1, March 7, 2006, available at: <http://www.IACHR.oas.org/countryrep/Defenders/defenderstoc.htm>, para. 23.

⁹³¹ IACHR, Report on the Situation of Human Rights in Venezuela. October 24, 2003, para. 222.

⁹³² I/A Court H.R. Case of Lysias Fleury. Order of June 7, 2003, *consideranda* 5; Case of Nieto Palma. Order of July 9, 2004, *consideranda* 8.

⁹³³ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter V, para. 621; IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, paragraph 41.

⁹³⁴ The following are among the most emblematic cases brought to the Commission's attention: 1) the case of Wilfredo Rafael Hernández Avilés, Jesús Argenis Guevara and Jesús Alberto Hernández, officials of the Bolivarian Union of Continúa...

654. During the 140th session, the Commission was informed of various attacks that human rights defenders had suffered in 2009 and 2010, including: the murder of Mijael Martínez, an activist member of the Lara State Anti-Impunity Victims Committee, which happened in the city of Barquisimeto (state of Lara) on November 26, 2009.⁹³⁵

655. Also during the 140th session, the Commission was informed that organized labor leader Rubén González, Secretary General of the Orinoco Iron Miners' Union (Sintraferrominera) was taken into custody on September 24, 2009, together with other union members, after heading up a work stoppage at the Orinoco Iron Mine Company to protest the failure to honor commitments made in the collective bargaining agreement. González is still under arrest as of this writing, having been charged with the crimes of conspiracy to commit crime, instigating the commission of criminal acts, restricting the right to work and failure to comply with the special regime governing security zones.⁹³⁶ The Commission concurs with the International Labour Organisation's Committee on Freedom of Association observation that "the multiple charges laid against these unionists for activities connected with the exercise of trade union rights" is cause for concern. Subsequently, on November 18, 2010, the ILO's Governing Body, based on the 358th Report of the Committee on Freedom of Association, asked the Venezuelan Government that Mr. González "be released without delay pending judgment,"⁹³⁷ which it has not done thus far.

656. The Commission has also received information concerning the State's exercise of punitive authority to criminalize human rights defenders in Venezuela and concerning police excesses committed when suppressing peaceful protests. In early March 2010, 300 workers, human rights activists, union leaders and leaders of leftist organizations staged a peaceful demonstration in the city of Maracay in the state of Aragua, to demonstrate their discontent over the economic measures taken by the national government, to defend the collective bargaining contracts and to object to the arbitrary detention of Rubén González, a union leader; they also protested to demand that the assassins of labor leaders Richard Gallardo, Luis Hernández and Carlos Requena be punished. Some 150 police from the Aragua State Regional Police Force immediately suppressed the demonstration by attacking the demonstrators with toxic gases and arresting some

...continuation

Workers in the Construction, Timber, Heavy Machinery, and Similar Industries, who were found shot to death in the vehicle in which they were traveling along the El Tigre-Pariaguán highway (state of Anzoátegui) on June 24, 2009; 2) the case of David David Alexander Zambrano and Freddy Miranda, members of the Single Construction Industry Trade Union (SUTIC), who were murdered on October 29, 2009; 3) the case of Héctor Montaña López, President of the Metam Petrol Bolívar trade union, who was murdered in San Félix (state of Bolívar) on December 23, 2009, when unidentified persons fired on him as they passed him on a motorcycle; 4) the case of Vilma Yenitza Zambrano and Rafael Antonio García, officials in the Venezuelan Workers Union for the Construction and Related Industries of the Capital District (SOVICA), employed in the construction work being done on the Caracas-Los Teques metro line, who were murdered on March 10, 2010, by someone who shot them at close range; 5) the case of Francisco Ferreira, delegate for control of working conditions and environment and union delegate claims secretary in the workers' union of the company SIDETUR (Siderúrgica del Turbio), who was murdered on March 27, 2010, shot by persons unknown; and 6) the case of Jerry José Díaz, who was public information secretary for the union of the Manpa company (Sintrampa) and a member of the Ccura union movement, who was killed by two unidentified persons on April 24, 2010, in the La Barraca sector of Maracay (state of Aragua) as he was in a car waiting for his wife and children.

⁹³⁵ According to the information received, Mijail's father told the media that the motive for the murder was political and that its purpose was to silence complaints of human rights violations committed in that region of the country. The Anti-Impunity Victims Committee to which Mijail Martínez belonged was founded in 2004 and has been denouncing the involvement of high-ranking regional officials in the creation of police mafias. Reports are that the murder occurred in a context of serious human rights violations in the region, which human rights organizations like Provea have been reporting. Indeed, the Lara State Police Force is the second police force denounced for violations of the right to life.

⁹³⁶ Information supplied during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, held during the Commission's 140th Session.

⁹³⁷ The 358th Report of the Committee on Freedom of Association (ILO), paragraph 1012, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_146695.pdf

30 people, among them union leaders and three activist members of the Provea research team (Marco Antonio Ponce, Rober Calzadilla and Rafael Uzcátegui); the police also threatened to assault hundreds of demonstrators.

657. The Commission has previously observed that agents may impose reasonable restraints on demonstrators to ensure that they are peaceful or to contain those who are violent, as well as to disperse demonstrations that become violent and obstructive. However, the actions of the security forces should protect, rather than discourage, the right to assembly and therefore, the rationale for dispersing the demonstration must be the duty to protect people. The law enforcement officers deployed in such contexts must contemplate the safest and quickest methods of dispersal that cause the least harm to the demonstrators.⁹³⁸

658. On March 25, 2010, before the close of its 138th session and based on the information received during that session, the Commission issued a press release expressing its deep concern over the State's use of its punitive power to criminalize human rights defenders, to make peaceful social protest an offense and to prosecute as criminals those persons whom the authorities regard as political opponents in Venezuela.⁹³⁹ In its communication of February 18, 2011, the State told the Commission that "if the Maracay police took measures, it was because the demonstration was turning violent."

659. In 2010, the Commission received information concerning the situation of Sabino Romero Izarra, a leader [cacique] and activist for the rights of the Yukpa people who had been detained since October 13, 2009, when incidents of violence broke out in the area of the Rio Yaza, Sierra de Perijá, state of Zulia, and who was then prosecuted by the ordinary justice. *Cacique* Olegario Romero and Wayuu Alexander Fernández, an indigenous person, were also prosecuted in the regular court system, despite the fact that both the 1999 Venezuelan Constitution and the 2005 Organic Law of Indigenous Peoples and Communities recognize the right of indigenous peoples to settle their disputes by their own system of justice.⁹⁴⁰

660. According to the information supplied to the IACHR, Sabino Romero has been a leading advocate for demarcation of the indigenous territories recognized in the 1999 Venezuelan Constitution, which has thus far not materialized. According to the information received, after being detained Mr. Romero was taken to a Venezuelan Army installation and was brought before the criminal courts of the Zulia State Criminal Law Circuit charged with the crimes of felony murder, attempted murder, association or conspiracy to commit crime and theft of livestock. Mr. Romero was not given the assistance of an interpreter in his language, contrary to the requirements under Venezuelan law.⁹⁴¹ Furthermore, the wife, daughter and other family members of Sabino Romero have reportedly been the target of constant sexual harassment by soldiers from Fort Maroa. He has also been subjected to the Escape Law (Ley de Fuga); his medical examinations have been delayed; what little food he is given is bad; one of the two days he has to visit with his defense attorneys

⁹³⁸ IACHR, Press Release 77/10, IACHR expresses concern over deaths and injuries during demonstrations in Panama. Washington, D.C., August 3, 2010, available at: <http://www.IACHR.oas.org/Comunicados/English/2010/77-10eng.htm>.

⁹³⁹ IACHR Concerned about the Use of the Punitive Power of the State to Silence Opponents in Venezuela. Washington, D.C., March 25, 2010.

⁹⁴⁰ Information supplied in the hearing on "Democratic Institutions and Human Rights Defenders in Venezuela," held during the Commission's 140th session.

⁹⁴¹ Information supplied in the hearing on "Democratic Institutions and Human Rights Defenders in Venezuela," held during the Commission's 140th session.

has been eliminated, and he is not allowed to leave the room, not even to sign powers of attorney.⁹⁴²

A. Obstacles to the defense of human rights

661. Throughout 2010, the Commission continued to receive information on measures taken to discredit and harass human rights defenders. During its 140th session the Commission was told that COFAVIC, an NGO, has been the target of harassment and threats.

662. The reports received by the IACHR indicate that on May 6, 2010, Rocío San Miguel, Director of the NGO called Citizen Oversight of Security, Defense and the National Armed Forces, publicly denounced that active high ranking members of the National Armed Forces were members of the United Socialist Party of Venezuela [Partido Socialista Unido de Venezuela (PSUV)] against the Constitution. The Commission received information indicating that on the program aligned with the Venezuelan government “La Hojilla” that aired on May 10, she was accused of inciting insurrection and exposing the military to public scorn. On May 11 and 12, on the program aligned with the government “Los Papeles Mandinga,” she was described as “a CIA agent” and her work as a human defender was called into question because she received funding from abroad. According to the information received, all these facts were reported to the Office of the Prosecutor General and the Office of the Ombudsperson.⁹⁴³ In its communication of February 18, 2011, the State argued that if human rights defenders have the right to play the role of opposition political actors and have their criticisms aired in the social media, then the communications media have the same right to criticize representatives of NGOs, “without claims that such criticism constitutes harassment.”

663. It was also reported that on May 27, 2010, six individuals on motorcycles without plates, dressed in black jackets, helmets and gloves, and without any identification, appeared in the vicinity of the residence of Humberto Prado, Director of the NGO called Venezuelan Observatory of Prisons, who was also the beneficiary of provisional measures ordered by the Inter-American Court in late 2009 and still in effect. The unidentified persons made attempts to inquire about the exact address of his house, a fact that was documented and reported to the Public Prosecutor’s Office so that a formal investigation into these events might be instituted⁹⁴⁴.

664. The Commission also received information that on December 16, 2010, Director of the NGO “Espacio Público”, Carlos Correa was beaten when he attended National Assembly with other members of the Venezuelan civil society to present a letter that contained the opinion of Alianza por la Libertad de Expresión” (Alliance for the Liberty of Expression) regarding the modification of various laws related to the exercise of freedom of expression and the proposed “Law authorizing the President of the Republic to issue decrees with the rank, value and force of law, on the subject matters delegated to him” (known as “Ley Habilitante”) which were being discussed at the National Assembly. On December 21, 2010, the Commission requested information to the Venezuelan State under Article 41 of the American Convention, to which the State responded on December 29, 2010.

⁹⁴² Ameco. Venezuela: Mujeres yukpas denuncian violaciones por parte de militares [Yukpa Women Denounce Rapes by Military]. Available [in Spanish] at: <http://www.amecopress.net/spip.php?article4616>; SEMLAC, http://www.redsemlac.net/web/index.php?option=com_content&view=article&id=663:venezuela-mujeres-yukpas-denuncian-violaciones-por-parte-de-militares&catid=45:derechos-indigenas&Itemid=64

⁹⁴³ IACHR, 140th Session, Hearing on “Citizen Security, Prisons, Sexual Diversity, and Equality in Venezuela.”

⁹⁴⁴ In its communication of February 18, 2011, the State indicated that despite the complaints filed by Mr. Humberto Prado, “nothing has happened to him, thanks to God and to the rule of law that prevails in Venezuela.”

665. As previously observed, in the Commission's view, the statements either made by or tolerated by State officials to discredit human rights defenders have not only violated the honor and dignity of those who have been attacked, but have also served to create adverse conditions and indeed deter the work that human rights defenders perform. Discrediting human rights defenders and their organizations could cause them, for fear of reprisals, to refrain from making public statements critical of government policies, which in turn makes it difficult to engage in debate and arrive at basic agreements regarding the problems besetting the Venezuelan people.⁹⁴⁵

B. The International Cooperation Bill

666. Addressing the issue of the administrative and financial controls placed on human rights organizations, in its 2009 Report on *Democracy and Human Rights in Venezuela* the Commission noted with concern that although civil society organizations may be established by foreigners and external financing is allowed, participation by certain organizations in public affairs continues to be restricted based on their financing, their members' national origin, the type of organization or the absence of laws governing their activity.⁹⁴⁶ These restrictions are based on Venezuelan Supreme Court rulings dated June 30, 2000, August 21, 2000 and November 21, 2000.⁹⁴⁷ In these rulings, the Venezuelan Supreme Court held that the representative authority of these organizations depends on the size of their membership and they must meet the same prerequisites as political parties.⁹⁴⁸ The Supreme Court also held that:

[...]civil society, as considered by the Constituent Assembly, is Venezuelan civil society, wherefrom arises the principle of its general, joint responsibility with the State, and its particular responsibility vis-à-vis the economic, social, political, cultural, geographical, environmental and military arenas. The consequence of this national character is that its representatives may not be foreigners or bodies affiliated with, or led, subsidized, financed, or sustained, either directly or indirectly, by states or by movements or groups influenced by states, nor by cross-border or global associations, groups, or movements that pursue political or economic goals to their own benefit [...].⁹⁴⁹

667. The Commission also underscored its concern over the possible passage of the International Cooperation Bill approved by the National Assembly in June 2006 after the first round of debate. It also observed that a number of civil society organizations had told the State of their concern over the passage of this bill. They include the Forum for Life (a Venezuelan coalition of 14

⁹⁴⁵ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 603.

⁹⁴⁶ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 562.

⁹⁴⁷ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 562.

⁹⁴⁸ Supreme Court of Justice, Constitutional Chamber, "Ombudsman's Office v. National Legislative Commission," June 30, 2002, Judgment "Governors v. Minister of Finance", November 21, 2000.

⁹⁴⁹ Supreme Court of Justice of Venezuela, Constitutional Chamber, Justice writing the decision: Jesús Eduardo Cabrera Romero, Judgment of November 21, 2000.

human rights NGOs⁹⁵⁰) and the social development network SINERGIA, which submitted its observations on the bill to the National Assembly's Foreign Policy Commission in August 2006.⁹⁵¹

668. In 2010 the Commission received information -which the State later confirmed in response to a request for information which the Commission filed under Article 41 of the American Convention- about the existence of a request filed with the Office of the Prosecutor General asking that a criminal investigation be launched into the organizations *Espacio Público* and the Instituto *de Prensa y Sociedad* (IPYS) in order to ascertain the source of the funding of their activities, on the premise that their funding came from the United States Department of State, which presumably was a strategic connection with the Venezuelan media for the purpose of undermining the established order.⁹⁵² According to this information, the complaint was filed in July 2010, by members of the *Movimiento Periodismo Necesario*, an organization integrated by revolutionary journalists.

669. Later, on November 23, 2010, the President addressed a special session of the National Assembly held on the occasion of the "Act of State in Defense of the Homeland's National Sovereignty and against the Hegemonic Interests of Imperialism". His speech was carried in a nationwide broadcast from the National Assembly's Salón Elíptico; he asked the Assembly to create a law banning international funding of political parties and nongovernmental organizations:

"How can we allow political parties, NGOs, counterrevolutionary figures to continue to be funded with millions and millions of Yankee imperialist dollars? These groups then take advantage of our freedom to abuse and violate our constitution and try to destabilize the country. I implore you: toughen the law so that this can be stopped," the President said.

"That must be the answer to the imperialist aggression, the imperialist threat; we have to radicalize our positions, and not relent,"

670. The Commission has repeatedly expressed its concern over the renewed efforts to pass the International Cooperation Bill, which was approved at its first debate by the National Assembly in 2006, in the press release issued on July 19, 2006, in Chapter IV of its 2006 Annual Report, in the letter it sent to the State in April 2009 in exercise of its authorities under Article 41

⁹⁵⁰ Members of the Foro por la Vida: Acción Ciudadana Contra el Sida [Citizen Action against AIDS] (ACCSI), Cáritas de Venezuela [Caritas of Venezuela], Cáritas de Los Teques [Caritas of Los Teques], the Human Rights Center of the Universidad Católica Andrés Bello, the Center for Peace of the Universidad Central de Venezuela, Comité de Defensa del estado Guárico [Guárico State Defense Committee], Comité de Familiares y Víctimas de los sucesos febrero-marzo de 1989 [Committee of Relatives and Victims of the events of February-March 1989] (COFAVIC), Espacio Público [Public Arena], Fundación de Derechos Humanos de Anzoátegui [Anzoátegui Human Rights Foundation], Observatorio Venezolano de Prisiones [Venezuelan Observatory of Prisons], Red de Monitores de Táchira [Táchira Monitors Network], Servicio Jesuita para Refugiados [Jesuit Service for Refugees], Vicaría de Derechos Humanos Caracas [Caracas Human Rights Vicariate] and Vicaría de Puerto Ayacucho [Puerto Ayacucho Vicariate].

⁹⁵¹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 575.

⁹⁵² On July 23, 2010, the Commission, exercising its authorities under Article 41 of the American Convention, asked the Venezuelan State to report the following to the Commission within five days: the criminal investigations that were requested; the organizations and persons that are the targets of the requested criminal investigations; the bases or grounds for requesting those investigations; and, most especially, the laws and regulations that prohibit NGOs from receiving international funding and the status of the earlier cases. In a communication dated August 10, 2010, the State informed the IACHR that in fact, on July 13, 2010, the *Movimiento Periodismo Necesario*, represented by journalists Esther Quiaro, Harin Rodríguez D'Santiago and Isidoro Hugo Duarte, filed a complaint with the Prosecutor General's Office asking for an investigation of the millions of dollars in financing that the United States Government's Department of State was allegedly funneling to media outlets and journalists by way of Venezuelan nongovernmental organizations, as reported in documents declassified and researched by Eva Golinger, a Venezuelan-American journalist.

of the American Convention, in its 2009 Report on *Democracy and Human Rights in Venezuela*,⁹⁵³ and in its press release of December 3, 2010.⁹⁵⁴

671. In its communication of February 18, 2011, the State reported that “it is true that the Venezuelan State has been critical of NGOs that accept funding from foreign governments,” which is why a law prohibiting it was enacted.” It observed that in exercise of its constitutional functions, the National Assembly had debated and passed the Defense of National Political Sovereignty and Self-Determination Act, published on December 23, 2010 in the Official Gazette of the Bolivarian Republic of Venezuela No. 39,580. That law “prohibits foreign-government funding of NGOs and political parties.”⁹⁵⁵

672. The Commission also observes that on Friday, December 17, 2010, the Bolivarian Official Gazette published the “Law authorizing the President of the Republic to issue decrees with the rank, value and force of law, on the subject matters delegated to him.” Known as the “Ley Habilitante” [“Enabling Law”], the new legislation gives the executive branch the ability to make law on the subject of international cooperation for a period of 18 months.⁹⁵⁶ As pointed out in press release 122/10, the Commission is concerned that the Enabling Law might seriously compromise the ability of nongovernmental human rights organizations to perform their important functions. In its communication of February 18, 2011, the State wrote that the 1999 Constitution gives the President this authority in its Article 203, which is a legacy passed down from all previous Venezuelan constitutions and a function present in the constitutions of a number of Latin American countries.

673. As for the possible restrictions that states can impose on human rights organizations’ involvement in public affairs, invoking arbitrary rationales for those restrictions, the IACHR recalls that in its Report on the Situation of Human Rights Defenders in the Americas, it recommended to the states that they refrain “from restricting the means of financing of human rights organizations. The States should allow and facilitate human rights organizations’ access to foreign funds in the context of international cooperation, under conditions of transparency” (Recommendation No. 19). The Commission wishes to underscore the recommendation it made in its report on *Democracy and Human Rights in Venezuela*, published in 2010, to the effect that Article 203 of Venezuela’s Constitution should be amended; as it now reads, Article 203 allows legislative powers to be delegated to the President of the Republic without establishing clear and unambiguous limits on the nature of that delegation.

C. Registration and establishment of human rights organizations

674. In its 2009 Report the Commission observed that in connection with the registrations required under domestic law in order to set up an organization whose purpose is to promote and defend human rights, and in order to finance its activities, the State has said that Venezuela’s legal system does not have laws or rules regulating nongovernmental organizations’

⁹⁵³ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, paragraphs 576-581.

⁹⁵⁴ IACHR, Press Release 118/10, IACHR concerned over International Cooperation initiative in Venezuela, December 3, 2010.

⁹⁵⁵ Communication from the State, dated February 18, 2011.

⁹⁵⁶ Official Gazette of the Bolivarian Republic of Venezuela, Special Issue No. 6,009, Caracas, Friday, December 17, 2010.

financing or use of funds; thus their structure and legal and administrative operations are to conform to the provisions of the Civil Code that are for foundations and nonprofit organizations.⁹⁵⁷

675. As it had in 2009 -and as reported in the document on *Democracy and Human Rights in Venezuela-*, the Commission continued to receive information in 2010 to the effect that some civil society organizations have had their rights to freedom of association and participation restricted due to obstacles and difficulties encountered when attempting to register with the competent authorities. The Commission was told that in 2010 officials with the Ministry of the People's Power for Domestic Relations and Justice denied the request of the newly created *Asociación Civil Civilis* to legalize its operating statute⁹⁵⁸ on the grounds that the document could not make reference to terms like democracy and politicians.⁹⁵⁹

676. As the Commission has observed, "freedom of association, in the specific case of human rights defenders, is a fundamental tool that makes it possible to fully carry out the work of human rights defenders, who, acting collectively, can achieve a greater impact. Because of this, when a state impedes this right, it not only restricts the freedom of association, but also obstructs the work of promoting and defending human rights."⁹⁶⁰ Thus, any act that tends to impede the association of human rights defenders, or in any way thwarts the purposes for which they have formally associated, is a direct attack on the defense of human rights.⁹⁶¹

III. POLITICAL RIGHTS AND PARTICIPATION IN PUBLIC LIFE

677. The Commission has stated that political rights, understood as being those that recognize and protect the right and the duty of every citizen to participate in his or her country's political life, are by nature rights that serve to strengthen democracy and political pluralism.⁹⁶² The Inter-American Court, for its part, has written that effective exercise of political rights constitutes an end in itself and also a fundamental means that democratic societies possess to guarantee the other human rights established in the Convention.⁹⁶³

678. In its 2009 Report on *Democracy and Human Rights in Venezuela*, the Commission expressed concern over information it had received suggesting a troubling tendency towards retaliatory measures against persons who made public their disagreement with government policies. This tendency, the Commission observed, affected both the opposition authorities and the citizens who exercised their right to express their disagreement with the policies put forth by the government.⁹⁶⁴ That same disturbing tendency continued in 2010.

679. On March 25, 2010, the Commission issued a press release in which it expressed concern over, among other issues, the use of the State's punitive power to criminally prosecute

⁹⁵⁷ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 5, para. 560.

⁹⁵⁸ Information supplied during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, held during the Commission's 140th session.

⁹⁵⁹ Information supplied during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, held during the Commission's 140th session.

⁹⁶⁰ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, paragraph 69.

⁹⁶¹ IACHR. *Report on the Situation of Human Rights Defenders in the Americas*. March 7, 2006, paragraph 76.

⁹⁶² IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter II, para. 18.

⁹⁶³ I/A Court H.R. *Case of Castañeda Gutman v. Mexico*. Judgment of August 6, 2008. Series C No. 184, para. 143.

⁹⁶⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter II, para. 95.

persons whom the authorities consider to be political opponents in Venezuela.⁹⁶⁵ As observed in the section on freedom of thought and expression of the present chapter (B. Disciplinary, administrative and criminal proceedings against media and journalists), over the course of 2010, three opposition candidates for seats in the National Assembly (Biagio Pillieri, Hernán Claret Pérez Alemán and José Sánchez) were criminally prosecuted, and the former candidate for the governorship of Táchira state (Gustavo Azócar Alcalá) was convicted and sentenced to two years, six months in prison with release on parole and political disqualification.

680. The Commission has continued to receive allegations to the effect that mechanisms have been created in Venezuela to limit the chances that opposition candidates will have to be elected to office.⁹⁶⁶ For example, in May 2010, the “Controlaría General de la República” (CGR) disqualified eight candidates for political office: six opposition candidates and two PSUV candidates, so that they were unable to run in the parliamentary elections held on September 26, 2010. They included: Ramón Martínez and Manuel Rosales, former governors of the states of Sucre and Zulia, and former police chiefs Iván Simonovis, Henry Vivas and Lázaro Forero.⁹⁶⁷ Concerning the former governors of the states of Sucre and Zulia, the State reported that these public officials were found guilty of and punished for corruption in office; under the Organic Law of the Office of the Comptroller General of the Republic and the National System of Fiscal Control, they are ineligible to run for popularly elected office.⁹⁶⁸ As for former police chiefs Iván Simonovis, Henry Vivas and Lázaro Forero, the State reported that these three persons were convicted in criminal court of having caused the deaths and injuries that occurred in the events of April 11, 2002, during the *coup d’état*.⁹⁶⁹ The Commission must again make the point that political rights are fundamental rights inherent to all persons and are subject only to the limitations expressly established in Article 23, subparagraph 2 of the Convention, to avoid the possibility of discrimination against individuals in the exercise of their political rights.⁹⁷⁰

681. The Commission was also told that on October 14, 2009, the National Assembly passed the new Organic Law on Election Processes (LOPE), which had reportedly eliminated the constitutional principle of representation of minorities and had left certain election-related questions up to the CNE’s discretion, such as flexible redistricting. It was also reported that LOPE had limited access to information on the electoral register and that fundamental guarantees such as the secret ballot and citizen oversight of the elections had allegedly been set aside. That information also indicates that LOPE would give the advantage to the parties that carry the majority of votes, thereby producing a kind of “over-representation of the majorities, or “winner takes all”.⁹⁷¹

⁹⁶⁵ IACHR, Press release 36/10, IACHR Concerned about the Use of the Punitive Power of the State to Silence Opponents in Venezuela. Washington, D.C., March 25, 2010.

⁹⁶⁶ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter II, para. 48.

⁹⁶⁷ Information received during the Commission’s hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th session, October 29, 2010. VTV, 01.06.2010. *Inhabilitaciones impuestas por la Controlaría General están ajustadas a derecho* [Disqualifications ordered by the Office of the Comptroller General are lawful]. Available [in Spanish] at: <http://www.vtv.gob.ve/noticias-nacionales/36649>. Cited in *Civilis. Investigación y Acción de la Sociedad Civil de Derechos Humanos. Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela Informe Comprehensivo de Seguimiento*. [Civilis. Investigation and Action by Human Rights Civil Society. Threats and Restrictions to Human Rights and Democracy in Venezuela. Comprehensive Follow-up Report], January-September 2010, p. 46.

⁹⁶⁸ Communication from the State, dated February 18, 2011.

⁹⁶⁹ Communication from the State, dated February 18, 2011.

⁹⁷⁰ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter II, paragraphs 56 and 57.

⁹⁷¹ Information received at the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th Session, October 29, 2010. Cited in *Civilis. Investigación y Acción de la Sociedad Civil de Derechos Humanos. Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela Informe Comprehensivo de Seguimiento*. [Civilis. Continúa...

682. On September 26, 2010, legislative elections were held in Venezuela with the participation of the principal opposition parties. During the past legislative elections held in 2005 the opposition parties decided to withdraw and called upon voters to boycott the polls, alleging a lack of confidence in the National Electoral Council. The governing party (Partido Socialista Unido de Venezuela – PSUV) won 103 seats and the opposition (united under the Mesa de Unidad Democrática – MUD) won 62 seats.

683. Furthermore, during the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, the Commission learned of a ruling issued by the Constitutional Chamber of the Supreme Court of Justice (TSJ) in response to the case brought by the civil association “Súmate” seeking nullification of the procedures for convocation of the referendum on amendment of the Constitution, held in 2009. The Commission was told that the mentioned court ruling denied “Súmate” its “legal standing” based on the fact that it engages in activities related to democracy, the rule of law, or any of the “guiding principles of the Venezuelan State”, its participation in the “public debate, so as to influence the Nation’s domestic policy”, and receiving funding from an entity associated with another State.⁹⁷² The ruling reads as follows:

[...] the political life of the Nation [...] can be undermined by factors exogenous to the reality of a given State, such as the activity of organizations that are ideologically, organically and functionally associated with foreign interests, which back such organizations for the sake of furthering their own particular interests and to influence public policy and create conditions conducive to their expansionist ambitions in the economic and political realm.

[...] to keep the sovereignty of the Republic fully protected, and to safeguard its independence and the duty of the organs of the State not to subordinate themselves to a foreign power (articles 1 and 5 of the Constitution), this Chamber, in order to ensure that the functions of the State are carried out unilaterally for the benefit of private citizens and not the interests of another State, in keeping with Article 19.6 of the Organic Law that governs the functions of this High Court, finds that the “Civil Association SÚMATE does not have standing to file this nullification complaint, as it does not have legal standing to defend foreign interests over matters of domestic policy (...)”⁹⁷³.

684. Based on the information it has received the Commission reiterates its concern over the possibility that restrictions on the exercise of political rights without discrimination could be set up in Venezuela. The Commission urges the State to create the appropriate conditions and

...continuation

Investigation and Action by Human Rights Civil Society. Threats and Restrictions to Human Rights and Democracy in Venezuela. Comprehensive Follow-up Report], January-September 2010, p. 47.

⁹⁷² Information received at the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th Session, October 29, 2010. Supreme Court. Ruling No. 796 of July 22, 2010. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Julio/796-22710-2010-09-0555.html>. Cited in *Civilis. Investigación y Acción de la Sociedad Civil de Derechos Humanos. Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela Informe Comprehensivo de Seguimiento*. [Civilis. Investigation and Action by Human Rights Civil Society. Threats and Restrictions to Human Rights and Democracy in Venezuela. Comprehensive Follow-up Report], January-September 2010, p. 47.

⁹⁷³ Information received at the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th Session, October 29, 2010. Supreme Court. Ruling No. 796 of July 22, 2010. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Julio/796-22710-2010-09-0555.html>. Cited in *Civilis. Investigación y Acción de la Sociedad Civil de Derechos Humanos. Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela Informe Comprehensivo de Seguimiento*. [Civilis. Investigation and Action by Human Rights Civil Society. Threats and Restrictions to Human Rights and Democracy in Venezuela. Comprehensive Follow-up Report], January-September 2010, p. 47.

mechanisms so that political rights can be effectively exercised in observance of the principle of equality and nondiscrimination.

IV. THE RIGHTS TO LIFE, TO HUMANE TREATMENT, TO PERSONAL INTEGRITY AND TO PERSONAL LIBERTY AND SECURITY

685. In its 2009 Report on *Democracy and Human Rights in Venezuela*, the Commission observed that the violence in Venezuela affects all its citizens, who must contend with acts of common and organized crime, and the excessive use of force on the part of law enforcement authorities. Violence takes a particular toll on those persons who are in the custody of the State, held in prisons and detention centers, where thousands of persons have been wounded and killed in recent years.⁹⁷⁴

A. Violence and citizen security

686. The Commission has observed on multiples occasions that States must take measures not only to protect their citizens from the human rights violations committed by agents of the State, but also to prevent and punish acts of violence among private citizens. The Commission has also spoken about the states' obligations in connection with the actions of non-state agents involved in organized crime, corruption, drug trafficking, etc. Since a lack of security directly affects people's ability to fully enjoy their basic rights, the Commission has also underscored the importance of addressing citizen security and respect for and observance of human rights, and of taking effective measures to prevent, control and reduce crime and violence.⁹⁷⁵

687. The information the Commission received during its 140th session suggests that the social violence in Venezuela continues to rise in alarming fashion, affecting the lives of Venezuelans in every quarter and in every social stratum.⁹⁷⁶ According to a study done by the *Instituto Nacional de Estadísticas* [National Institute of Statistics], violence claimed 19,133 lives in 2009; as of June 2010 5,186 people had been killed in 10 of the country's 24 states.⁹⁷⁷ In Caracas alone, there were 2,513 murders in the first half of 2010 (an average of 419 per month).⁹⁷⁸ Nationwide studies show that 72% of the murder victims are between 15 and 29 years of age and 90% are male. In over 60% of the cases, the crimes occur near the victim's home; 63% of the murders are committed with firearms and the persons killed sustain on average 5 bullet wounds.⁹⁷⁹

⁹⁷⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para. 668.

⁹⁷⁵ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para.672; Press release 16/07. IACHR calls upon States to reflect on the importance of public security. March 15, 2007. IACHR. *2008 Annual Report*. Chapter I: Introduction.

⁹⁷⁶ IACHR, 140th Session, Hearing on citizen security, prisons, diversity and sexual equality in Venezuela.

⁹⁷⁷ *Diario El Nacional*, 20.08.2010. *19,133 personas fueron asesinadas en Venezuela en 2009. Cifra extraída de estudio realizado por el Instituto Nacional de Estadísticas (INE), "Encuesta Nacional de Victimización y Percepción de Seguridad Ciudadana 2009"* [19,133 persons murdered in Venezuela in 2009. Figure taken from the study done by the National Institute of Statistics (INE), "National Survey of Victims and Perception of Citizen Security 2009"]. Available [in Spanish] at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/150260/Sucesos/19.133-personas-fueron-asesinadas-en-Venezuela-en-2009

⁹⁷⁸ *Diario Últimas Noticias*, 07.07.2010. *Hubo 2.513 homicidios en el primer semestre* [2,513 murders in the first half year].

⁹⁷⁹ Reports of the Venezuelan Observatory on Violence done by LACSO and other academic institutions: Incosec Reports on Security in Venezuela. Available (in Spanish) at: <http://incosec.sumospace.com/>

688. On May 18, 2010, Elvis Mendoza Carvajal, the beneficiary of IACHR precautionary measures since October 2002, was murdered by officers with the Portuguesa State Police Force. He had been shot a number of times.

689. One situation that the IACHR has followed closely is that of the Barrios family. Since 1998, six members of the Barrios family have been murdered and at least five of those murders were extrajudicial executions perpetrated by Aragua State police officers.⁹⁸⁰ The Commission brought the case of the Barrios family to the Inter-American Court of Human Rights in the first half of 2010 and learned later that on September 1, 2010, Wilmer José Flores Barrios had been murdered. The Commission condemned the murder and made the following observations:

The Inter-American Commission and Court of Human Rights have followed this situation through all available mechanisms (requests for information, precautionary and provisional measures, Commission reports on admissibility and on the merits, and submission of an application to the Inter-American Court), but the Venezuelan State has not adopted the necessary measures to protect the life of the members of this family, who continue to be targets of assassination, detention, raids, threats and harassment. Moreover, the State has not ordered an effective investigation of these crimes, which remain in impunity.

The Inter-American Commission requested that the State of Venezuela adopt the necessary measures to protect the life and integrity of the members of the Barrios family, but the State never implemented measures to protect them. Similarly, the protection measures ordered by the Inter-American Court in November 2004 were never implemented either; another three members of the family were killed since these have been in force.

In its Resolution dated February 4, 2010, the Inter-American Court referred to “the State’s failure to comply with the measures ordered by the Court” and described the situation as one “of extreme gravity and urgency that puts in grave risk the life and integrity” of the members of the family.

The Inter-American Commission views as extremely serious that the State of Venezuela had not adopted effective protection measures even though since at least 2004 it has had full knowledge of the extrajudicial executions that had begun to be carried out against members of the Barrios family.

The IACHR recalls that it is the obligation of the State to investigate on its own initiative events of this nature and to punish those responsible. Moreover, the IACHR once again urges the Venezuelan State to immediately adopt all necessary measures to guarantee the right to life, integrity and security of the surviving members of this family.⁹⁸¹

690. The Commission has received information to the effect that the principal victims of the violence are children and adolescents. UNICEF reported that homicide is the main cause of death among young males between the ages of 15 and 19.⁹⁸² A study done by Cecodap, an organization that promotes and protects the human rights of children and adolescents, found that between 2008 and 2009, the press reported 3,231 cases of physical aggression against this population group. The first category of physical aggression was homicide, which claimed a total of 585 victims. These were killings for the purpose of ‘settling accounts’, murders committed in the course of robberies or altercations, by stray bullets, in gang violence, execution-style killings, children killed when caught in the line of fire, children killed in clashes with police, cases of manslaughter and filicide (cases in which parents killed their own children). There were also 367 cases in which children were abducted and held in prisons (called “autosequestros” or “self-kidnappings”, these happen when family members are retained inside the prisons after visiting hours

⁹⁸⁰ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter V, para. 638.

⁹⁸¹ IACHR, Press Release No. 102/10 – IACHR deploras extrajudicial executions against a family in Venezuela. Washington, D.C., October 8, 2010.

⁹⁸²; http://www.unicef.org/venezuela/spanish/overview_4200.htm ; *Diario El Nacional*, 28.02.10. *Venezolanos pagan con la vida las omisiones del Estado* [Venezuelans pay for the State’s omissions with their lives].

are over), 311 victims of sexual violence, 137 wounded by firearms and 128 kidnapping victims.⁹⁸³ Another study done by the Miranda State Government found that 90% of 1,221 children interviewed in school settings were of the view that the greatest danger was within their communities; 77% felt that the danger within the community prevented them from doing things like going out to play or going out with the family.⁹⁸⁴

691. The State acknowledged that violence is high in Venezuela, but said that this is a global problem and that no country is spared.⁹⁸⁵

692. Given the panorama for citizen security in Venezuela, the Commission is of the view that the measures taken by the State have been inadequate and insufficient, as it indicated in the 2009 Report on *Democracy and Human Rights in Venezuela*.

693. In its Report on *Democracy and Human Rights in Venezuela*, the Commission made reference to the Organic Law of the Bolivarian National Armed Forces (LFANB), enacted in October 2009, which provides that the civilian population can be armed and receive military training to defend the political interests of the government.⁹⁸⁶ Under this law, the Bolivarian Militia was created –which was part of the rejected constitutional reform. It is defined as an “armed corps” to assist the Bolivarian National Armed Forces in organizing territorial militias and corps of civilian combatants in public agencies, the private sector, social organizations and communities.⁹⁸⁷

694. During its 140th Session, the Commission received information to the effect that in January 2010, the *Frente Socialista de Trabajadores de Petróleos de Venezuela* [Venezuelan Oil Workers’ Socialist Front] (PDVSA) reportedly had close to 150,000 workers organized into militias within the state-run companies in the oil, electric power, construction and transportation sectors, and in basic businesses. The Commission was told that some labor oversight offices refuse to approve collective bargaining contracts in those businesses that cannot show proof that their workers are organized into militias or are PSUV militants.⁹⁸⁸ The *Instituto Nacional de Capacitación y Educación Socialista* [National Socialist Training and Education Institute] (INCES), the Ribas Mission, the *Instituto de Prevención, Condiciones y Medio Ambiente de Trabajo* [Institute on

⁹⁸³ Cecodap/Agencia Pana. Informe Impacto de la Cobertura de las Diferentes Formas de Violencia contra Niños, Niñas y Adolescentes [Impact of the Coverage of the Various Forms of Violence Inflicted on Children and Adolescents]. Available in Spanish at: <http://www.cecodap.org.ve/papagayo/files/Informe%20Monitoreo%20Violencia%20Octubre%202008-Septiembre%202009%20VD.pdf>; and at <http://www.cecodap.org.ve/papagayo/files/Noticias%20Balance.pdf>; *Investigación y Acción de la Sociedad Civil de Derechos Humanos (Civilis). Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela Informe Comprehensivo de Seguimiento*. [Investigation and Action by Human Rights Civil Society (Civilis). Threats and Restrictions to Human Rights and Democracy in Venezuela. Comprehensive Follow-up Report], January-September 2010, p. 72

⁹⁸⁴ Miranda State Government. Bureau of Social Development. Let’s Hear from Miranda’s Children and Adolescents. Summary of the findings of a survey conducted among students in grades 3 to 9 of the Miranda state schools. May-June 2009; *Investigación y Acción de la Sociedad Civil de Derechos Humanos (Civilis). Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela Informe Comprehensivo de Seguimiento*. [Investigation and Action by Human Rights Civil Society (Civilis). Threats and Restrictions to Human Rights and Democracy in Venezuela. Comprehensive Follow-up Report], January-September 2010, p. 72.

⁹⁸⁵ Communication from the State dated February 18, 2011.

⁹⁸⁶ See, IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para. 697.

⁹⁸⁷ See, IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, paragraphs 694-700.

⁹⁸⁸ IACHR, 140th Session, Hearing on Citizen Security, Prisons, Diversity and Sexual Equality in Venezuela.

Prevention, Working Conditions and Environment] (INPSASEL) and the INCE-Militar, provide military training to those workers who want to join the workers' militias.⁹⁸⁹

695. In March 2010, the Ministry of Women's Issues and Gender Equality began to form "combatant corps" within that ministry, its affiliated institutions,⁹⁹⁰ and the Mission (or program) called *Madres del Barrio*, all with the support of the Office of the General Command of the Bolivarian National Militia. These groups are defined as "a solid and cohesive rapid-response corps, highly trained and skilled, composed of decent men and women loyal to the Nation and using defense tactics, measures and actions to take on any threat to the interests of the homeland, both in peacetime and time of conflict."⁹⁹¹ On July 26, the Minister of Women's Affairs, María León, reported that 1200 women combatants had taken the oath in August. She went on to say the following: "... we're going to swear in 20,000, then 200,000, and then two million female militia members (...) moving beyond the boundaries of gender to build a community of interests between men and women, expressed in the form of mutual respect, consideration and support."⁹⁹²

696. The Commission has also learned that in April, the Office of the Prosecutor General created its own "combatants corps", which is attached to the "Batalla de la Victoria Reserve Battalion" at Fort Tiuna, with support from the Office of the National Coordinator of Combatant Corps of the Bolivarian National Militia, under Colonel Carlos Colombani Lanz.⁹⁹³

697. April 13 was declared the "Day of the Bolivarian National Militia of the People in Arms and the April Revolution," at an official ceremony held to commemorate the events of April 2002.⁹⁹⁴ At the official ceremony, the Minister of Public Works and Housing said that the goal was to organize 200,000 people to take on anyone who might attempt another *coup d'état*.⁹⁹⁵

698. The State, for its part, told the IACHR that any Venezuelan who wanted to volunteer to join the Militia was welcome to do so. Nevertheless, it denied that some labor oversight offices had refused to approve collective bargaining contracts in businesses that could not show proof that their workers were organized into militias or were PSUV militants. The State confirmed that every

⁹⁸⁹ *Diario El Universal*, 27.01.2010. Empresas estatales ya cuentan con cerca de 150.000 milicianos [State-run businesses already have close to 150,000 militia members]. Available [in Spanish] at http://economia.eluniversal.com/2010/01/27/eco_art_empresas-estatales-y_1739358.shtml

⁹⁹⁰ *Prensa Minmujer*, 22.04.2010. Milicia Nacional: Derrotaremos la cultura machista heredada del capitalismo [National Militia: Let's Abolish the *Machista* Culture: Capitalism's Legacy]. Available [in Spanish] at: http://www.minmujer.gob.ve/index.php?option=com_content&view=article&id=85:miliciaderrotarmachismo&catid=52&Itemid=69

⁹⁹¹ *Prensa Minmujer*, 24.03.2010. Ministerio de la Mujer conformó cuerpo de combatiente de la Milicia Bolivariana [Ministry of Women's Issues formed Bolivarian Militia corps of combatants]. Available [in Spanish] at: <http://www.ojopelao.com/nacionales/13142-ministerio-de-la-mujer-conformo-cuerpo-combatiente-de-la-milicia-bolivariana-10-fotos.html> and at <http://www.notivargas.org/nacionales/9176-ministerio-de-la-mujer-conformo-cuerpo-combatiente-de-la-milicia-bolivariana-10-fotos.html>

⁹⁹² VTV, 26.07.2010. *Ministra León anunció juramentación de 1200 mujeres combatientes para el mes de agosto* [Minister León announced that 1200 women combatants took the oath in August]. Available [in Spanish] at: <http://www.vtv.gob.ve/noticias-nacionales/21345> and <http://www.laprensadebarinas.com.ve/nueva/xxview.php?ArtID=83954>

⁹⁹³ IACHR, 140th Session, Hearing on Citizen Security, Prisons, Diversity and Sexual Equality in Venezuela.

⁹⁹⁴ Resolution from the Office of the President of the Republic No. 7,362. Official Gazette No. 39,401.YVKE Mundial. Available [in Spanish] at: <http://www.radiomundial.com.ve/yvke/noticia.php?455540>

⁹⁹⁵ VTV, 12.04.2010. *Diosdado Cabello: Los venezolanos tendrán una Asamblea más rojita y radical* [Diosdado Cabello: Venezuelans will have a slightly redder and more radical Assembly]. Available [in Spanish] at: <http://www.vtv.gob.ve/noticias-nacionales/33574>

ministry has its own combatant corps of the Bolivarian Militia and that membership was voluntary.⁹⁹⁶

699. As it did in its 2009 Report on *Democracy and Human Rights in Venezuela*, the Commission must once again point out that it is deeply troubled by the fact that citizens are receiving military training through the Bolivarian National Militia and then returning to civilian life to cooperate in maintaining domestic law and order. The IACHR again emphatically states that military training is not appropriate for controlling domestic security and that combating violence on the domestic front must be the exclusive purview of a properly trained police force that is fully respectful of human rights. In the Commission's view, citizens who receive military training must not be used for domestic defense, nor should society's role vis-à-vis national security be misrepresented or misconstrued.

B. The prison situation

700. In 2010, the Commission continued to monitor the insecurity and violence in Venezuelan prisons. In its 2009 Report on *Democracy and Human Rights in Venezuela*, the Commission wrote that apart from a proper regulatory framework for prisons, the implementation of specific measures and policies to immediately ease the perils that persons deprived of their liberty face is also urgently needed. The Commission observed that the State's obligation vis-à-vis prison inmates is more than a matter of enacting laws to protect them; nor is it enough for State agents to refrain from actions that might result in violations of the inmates' rights to life and physical integrity. International human rights law demands that States take every measure they can to guarantee the life and personal integrity of persons deprived of liberty.⁹⁹⁷

701. During the Commission's 140th Session, two hearings were held at which the Inter-American Commission received information on the levels of violence inside Venezuela's prisons. It was reported that the number of deaths in Venezuelan prisons is 25% higher than it was in 2009; until October 2010, there have been 352 deaths in the country's prisons. The number of injured is up by 31% over last year; through the third quarter of 2010 a total of 736 injuries had been recorded. Civil society organizations told the Commission that the State did not effectively manage and police the prisons; that corruption was rampant and that criminal gangs were often in control.

702. Thus far this year, the Commission has issued four press releases -Nos. 10/10, 27/10, 50/10 and 110/10- in which it expressed deep concern over the serious episodes of violence in various prisons, such as: the "La Planta" Re-Education and Work Prison ("El Paraíso"), in Caracas; the Yare I Capital Region Penitentiary, in Caracas; the Western Penitentiary in the state of Táchira, and the Central-West Regional Penitentiary (Uribana Prison), in the state of Lara. In all these cases, the press releases were basically issued because of episodes in which inmates met violent deaths, or episodes involving aberrant acts of physical aggression of the kind practiced among the inmate population in what is known as "The Coliseum" in the Uribana Prison. In these press releases, the Commission consistently referenced the fact that as guarantor of the lives and personal integrity of those persons it deprives of liberty, the State has an unavoidable duty to take concrete measures to protect the lives and person of those deprived of liberty, both from the actions of State agents and those of private third parties. The Commission emphatically reiterates that the State has the duty to exercise effective control of prisons, to confiscate weapons and other illegal goods and to stop the influx of such weapons and goods into the prisons, and to combat acts of corruption committed by prison personnel and the National Guard.

⁹⁹⁶ Communication from the State, dated February 18, 2011.

⁹⁹⁷ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para. 826.

703. As for the mechanisms of protection, in October 2010 the Commission asked the Inter-American Court to grant provisional measures at the Aragua Penitentiary ("Tocorón Prison") because of the seriousness and urgency of the situation that resulted when a fight broke out among the inmates that left more than 16 inmates dead and at least 36 injured. This event was not an isolated episode. According to the information provided, between 2008 and 2010 84 inmates have died at that prison. The Inter-American Court granted the provisional measures on November 1, 2010⁹⁹⁸.

704. The State acknowledged that it has serious prison problems. Nevertheless, its contention is that Venezuela's are not the worst prisons, when compared with other member countries of the Organization of American States, and that poverty in the hemisphere, citizen insecurity and the increase in the prison population are interrelated problems.⁹⁹⁹

705. The Commission is alarmed by the fact that gang fights in Venezuelan prisons have taken on such senseless proportions and that inmates are in possession of and routinely use high-caliber firearms, grenades and weapons of all kinds. The Commission observes that prisons are confined places and are the sole and exclusive responsibility of the State.

706. But violations of the rights to life and to humane treatment are not the only threats to persons in the custody of the State. The more than 43,000 persons deprived of liberty in Venezuela are also contending with delays in the proceedings against them, overcrowding in prison and the lack of basic services in prisons.

707. The Commission once again emphasizes that given the urgency and immediacy of the situation in the Venezuelan prisons, the Venezuelan State must take measures that will immediately ease the danger and threats that detainees in the State's custody face. The IACHR therefore urges the State to immediately take the measures necessary to bring detention conditions in Venezuelan prisons in line with international standards and to take immediate steps to ensure the lives and person of prison inmates in Venezuela, over and above any medium-or long-term plans it might have in this regard.¹⁰⁰⁰

1. Other situations that persons in the custody of the State endure

708. On January 11, 2010, the IACHR granted precautionary measures for Franklin José Brito Rodríguez, a farmer and owner of a small property in the state of Bolívar. He was engaging in a hunger strike to get back the land of which he claimed to have been unlawfully dispossessed by Venezuelan government agencies. In the request for precautionary measures, it was alleged that early on the morning of December 13, 2009, Caracas Metropolitan Police officers had taken Franklin José Brito to the Military Hospital against his will and as he was staging a hunger strike in front the OAS offices in Caracas. Mr. Brito said that he had been unlawfully deprived of his personal liberty as he was confined to the hospital against his will. The Commission was told that on January 6, 2010, Mr. Brito was still in the Military Hospital and was not permitted to see a physician of his choosing. It was also told that on January 9, 2010, State officials allegedly sedated him by force and transferred him again. The Inter-American Commission asked the Venezuelan State to take the necessary measures to permit a physician of Mr. Brito's choosing to visit him, treat him and monitor

⁹⁹⁸ I/A Court H.R., Matter of Centro Penitenciario de Aragua "Cárcel de Tocorón" regarding Venezuela. Order of the President of the Inter-American Court of Human Rights of November 1, 2010.

⁹⁹⁹ Communication from the State, dated February 18, 2011.

¹⁰⁰⁰ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para. 905.

his health situation, so as to ensure that Mr. Brito receives regular visits. The Commission continued to monitor the beneficiary's situation by means of various requests for information from the State, until the day of the beneficiary's death on August 30, 2010.

C. The LGTBI population

709. During the Commission's 140th Session, the IACHR received information concerning the increase in the number of assaults and extortion by police and military against lesbians, gays, bisexuals, transsexuals, transgender and intersexual persons in Venezuela, which materialize in the form of: physical assaults, verbal assaults, moral assaults and combinations of verbal, physical and moral assaults, as well extortion in which the victims are required to hand over money or even perform sexual acts as a condition for their release or to avoid being charged with alleged drug possession or indecent acts. According to the information provided, victims do not report police and military harassment for fear of direct reprisals and because in most cases the officials involved show no documentation or identification, thereby making it impossible for the victims to file effective complaints.¹⁰⁰¹ According to the information supplied by the Venezuelan organization *Diversidad e Igualdad a través de la Ley* [Organization for Diversity and Equality by Law] (DIVERLEX), 84% of transsexual persons have reported police aggression.

710. The International Gay and Lesbian Human Rights Commission reported that on October 9, 2009, Yonatan Matheus and Omarliv Márquez, members of the organization Venezuela Diversa A.C., were arbitrarily detained by Caracas police when they tried to obtain information and film police procedure. The police detained 19 gays and lesbians, 11 of whom were minors; police confiscated their documents and cell phones and the other detainees were taken to Policaracas station in Cota 905. It reported that this is just one of the many arbitrary arrests made of members of the LGTB community, as part of the "Operation Safe Caracas" campaign whose objective is to wipe out crime. It also reported that the police pursue and abuse persons whose sexual orientation and/or gender identity differs from the social norms.¹⁰⁰²

711. On October 2, 2010, Venezuela Diversa A.C. reported that the work its members do is becoming increasingly more dangerous and that its Director General, Yonatan Matheus, was again detained by officers with the Metropolitan Police Force's Motorcycle Brigade, as he was doing his routine rounds to monitor the human rights of transsexual persons who work the streets. It also reported that discrimination and exclusion based on sexual orientation and gender identity are on the rise in Venezuela, as the State is taking no affirmative actions to stop these situations. They called upon the Ombudsperson¹⁰⁰³ to take action and instruct officials with the Ombudsperson's Delegate in Caracas to remain alert for cases of this type; they also called upon the Minister of People's Power for Domestic Affairs and Justice to continue to purge the police forces and establish blame for the systematic human rights violations committed by some officers in the Metropolitan Police Force.¹⁰⁰⁴

¹⁰⁰¹ IACHR, 140th Session, Hearing on Citizen Security, Prisons, Diversity and Sexual Equality in Venezuela.

¹⁰⁰² <http://www.iglhrc.org/cgi-bin/iowa/language/4/index.html>

¹⁰⁰³ According to article 279 of the Venezuelan Constitution, the Venezuelan Ombudsman as part of the organs exercising Citizen Power is charged, in accordance with this Constitution and with the law, with preventing, investigating and punishing actions that undermine public ethics and administrative morals; to see to sound management and legality in the use of public property, and fulfillment and application of the principle

of legality in all of the State's administrative activities, as well as to promote education as a process that helps create citizenship, together with solidarity, freedom, democracy, social responsibility and work.

¹⁰⁰⁴ <http://venezueladiversaac.blogspot.com/2010/10/brigada-motorizada-de-la-policia.html>

712. The Commission was informed that hate crimes (murders, rapes and physical assaults) are not being investigated and there are no statistics on the matter: in cases of deceased male transsexuals, the medical examiner's reports state simply that the individual is a "male", without any clarification that would expose a hate crime.

713. The Commission received information to the effect that the LGBTI population in Venezuela cannot acquire a legal identity that matches their gender identity. The Commission was told that on May 17, 2004, a constitutional petition was filed seeking direct recognition of rights (direct protection) with a writ of *habeas data* to implement the ruling; the petition has been re-filed 27 times, but the Constitutional Chamber of the Supreme Court thus far has not issued any decision on the case, not even on the petition's admissibility.

714. For its part, the State asserted that "this is another human rights issue for every country in the world" and is the product of a cultural situation that all states are gradually working to resolve. It observed that Venezuela has public policies in place for these matters, above all with respect to police and military.¹⁰⁰⁵

715. The IACHR would remind the Venezuelan Government that the right of all persons to live free of any form of discrimination is guaranteed by international human rights law, and specifically by the American Convention on Human Rights. The Commission urges Venezuela to take urgent measures to prevent and respond to these human rights abuses, including the adoption of public policy measures and campaigns against discrimination based on sexual orientation, as well as amendments to the laws to bring them in line with the American Convention on Human Rights.

V. Freedom of thought and expression¹⁰⁰⁶

716. The Commission notes that notes that Rafael Segundo Pérez, a former Carabobo state police officer, was sentenced to 25 years in prison after being convicted of the crimes of contract killing and conspiracy to commit crime, all in connection with the murder of journalist Orel Zambrano. The Carabobo Sixth Examining Court delivered the sentence on May 19. According to the information received, the journalist was murdered on January 16, 2009, in the city of Valencia. Orel Zambrano was director of the political magazine *ABC*, an editorial writer for the newspaper *Notitarde* and vice president of a private radio station, *Radio América 890 AM*. According to the reports received, the journalist had reported that members of the Makled family, in the state of Carabobo, were allegedly involved in the drug trafficking business. In August, Colombian authorities detained the alleged Venezuelan drug trafficker Walid Makled. In November, President Juan Manuel Santos promised the Venezuelan State that the suspect would be swiftly extradited to stand trial for his links to a number of murders, one of which was that of Orel Zambrano. Two other persons are also being prosecuted in Venezuela for their involvement in the journalist's murder.¹⁰⁰⁷

717. The Commission also notes that on August 12, the Zulia State Legislative Council unanimously approved the Zulia State Transparency and Information Access Act. According to the

¹⁰⁰⁵ Communication from the State, dated February 18, 2011.

¹⁰⁰⁶ In this section, the Office of the Special Rapporteur for Freedom of Expression recounts some of the events documented in the Special Report on Freedom of Expression in Venezuela in 2009 and adds what happened in 2010.

¹⁰⁰⁷ Public Prosecutor's Office. May 19, 2010. *Former Carabobo police officer sentenced to 25 years for murder of Orel Sambrano and Francisco Larrazabal*. Available at: <http://www.ministeriopublico.gob.ve/web/guest;jsessionid=99E6CE71A48F599F434E36B1B56CBA05>; Reporters Without Borders. May 21, 2010. *First suspect convicted in journalist Orel Sambrano's murder*. Available at: <http://en.rsf.org/venezuela-breakthrough-arrests-of-suspected-02-03-2010,36575.html>; Agencia EFE. November 21, 2010. *Chávez says he believes Santos' word on Makled's extradition*. Available at: <http://www.sandiegored.com/noticias/543/Chavez-dice-que-cree-en-la-palabra-de-Santos-sobre-extradicion-de-Makled/>.

wording of the first article of that law, the law is intended to facilitate citizen oversight of state public affairs, to ensure that personal information is properly protected within the state government, and enable persons to participate in decision-making and oversight of the business of government in the state of Zulia.¹⁰⁰⁸

A. Acts of aggression presumably related to the practice of journalism

718. The Commission is troubled by a number of incidents in which State agents or private citizens allegedly behaved aggressively toward persons working in the communications business during coverage of the news. According to information received, on June 7 a group of motorcyclists allegedly hurled five Molotov cocktails at the Torre de la Prensa (Press Building), headquarters of *Cadena Capriles* in Caracas. *Cadena Capriles* publishes newspapers, magazines and hosts news portals. Although the explosive devices never detonated, they did alarm the workers in the building. No organization claimed responsibility for the attack.¹⁰⁰⁹ According to what the IACHR was told, on June 8 the Public Prosecutor's Office launched an investigation and performed technical tests and procedures at the scene of the incident.¹⁰¹⁰ In August 2009, a number of journalists working for Capriles had allegedly been the victims of violent assaults, presumably by government sympathizers.¹⁰¹¹ Nevertheless, as of the date this report went to press, none of the assailants had been brought to trial. Early on the morning of August 3, motorcyclists threw two homemade bombs at the offices of the newspaper *Las Noticias de Cojedes*, in San Carlos, Cojedes state. According to the information received, one of the explosive devices blew up against a car, and the other against the façade of the building that is home to the newspaper. The newspaper publishes complaints of community problems and prior to the attack had investigated cases of discoveries of spoiled food from the Venezuelan Food Producer and Distributor [*Productora y Distribuidora Venezolana de Alimentos*] (PDVAL). The Public Prosecutor's Office launched an investigation.¹⁰¹²

719. On September 26 in El Tigre, Anzoátegui state, persons presumed to be PSUV sympathizers allegedly attacked Sara Vargas, a journalist with channel Órbita TV, and Susana Quijada, a journalist with TV Sur, as they were covering the moment when the former mayor and member of the opposition, Ernesto Paraqueima, cast his vote. According to the reports received, shortly after interviewing the former mayor, who had been beaten up by supporters of the party in power, someone had grabbed the camera from the Órbita TV cameraman. The camera, which was on the ground broken, was picked up and hurled at the head of Sara Vargas; in trying to avoid the blow, she cut her hand and needed ten stitches. In the same incident, government sympathizers had reportedly surrounded Susana Quijada and grabbed her microphone.¹⁰¹³

¹⁰⁰⁸ Zulia State Legislative Council. August 12, 2010. *Transparency Law unanimously approved*. Available at: http://www.clezulia.gov.ve/index.php?option=com_content&view=article&id=4474%3Aley-de-transferencia-fue-aprobada-por-unanimidad&catid=1&Itemid=1

¹⁰⁰⁹ Associated Press and France Presse. June 9, 2010. *Five Molotov cocktails hurled at various Venezuelan newspapers*. Available at: http://www.clarin.com/mundo/america_latina/Lanzan-bombas-molotov-diaros-Venezuela_0_277172330.html

¹⁰¹⁰ Public Prosecutor's Office. June 9, 2010. *PPO stepped up investigation into explosives thrown at Cadena Capriles*. Available at: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/49993

¹⁰¹¹ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 705.

¹⁰¹² Public Prosecutor's Office. August 4, 2010. *PPO investigates detonation of 2 explosive devices intended for Las Noticias de Cojedes*. Available at: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/52738

¹⁰¹³ El Universal. September 26, 2010. *Voting in Anzoátegui marked by aggression and taunting*. Available at: http://www.eluniversal.com/2010/09/26/v2010_ava_proceso-en-anzoategu_26A4523533.shtml; El Nacional. September 26, 2010. Continúa...

720. The IACHR received information on an attack that journalist Andrea Rocha and cameraman Víctor Davalí, from the press retinue of opposition deputy Ismael García, reportedly experienced after recording the destruction that presumed government sympathizers had allegedly caused at the scene of a campaign event staged by the Podemos party on May 28. When members of the group realized that they had been caught on film, they demanded that the journalists hand over the film. When the cameraman refused, the group surrounded him, and beat and kicked him. Andrea Rocha managed to safely reach in a vehicle and get away. One member of the group reportedly threw a stone that broke the vehicle's window and injured the reporter's arm.¹⁰¹⁴

721. On September 25, the Vice President of Venezuela, Elías Jaua, allegedly shoved a journalist from *Globovisión*, Johnny Ficarella, when he tried to interview him about the flooding caused by the rains in the community of Marapa, Vargas state. According to the information received, within minutes soldiers tried to confiscate the film from the *Globovisión* cameraman.¹⁰¹⁵ On September 30, another *Globovisión* journalist, Beatriz Adrián, was allegedly shoved and beaten by a group of persons, as she was asking for information in a shelter of victims of the rains. According to what was reported to the Commission, the attack allegedly happened in the presence of Vice President Elías Jaua, who reportedly did not intervene to stop the attack.¹⁰¹⁶ On October 17, a group of persons presumed to be supporters of the government allegedly attacked the teams of journalists from the newspapers *El Siglo* and *Notitarde* as they were covering the process of collecting signatures for a petition to protest the fact that specimens were being sent from the Valencia Aquarium to South Korea.¹⁰¹⁷ On November 17, teams of journalists from *Globovisión* and *Televén*, who were covering the damage done by the heavy rains, were said to have been attacked in Guarico, Lara state, by an official from the mayor's office and persons wearing PSUV shirts. According to the information received, the presumed assailants reportedly attempted to use force to disrupt the journalists' work.¹⁰¹⁸

B. Disciplinary, administrative and criminal proceedings against media outlets and journalists

722. The Office of the Special Rapporteur for Freedom of Expression continued to receive information on judicial proceedings instituted for airing opinions or reporting information of great public interest. The Office of the Special Rapporteur is troubled by the fact that a number of cases brought against media outlets or journalists critical of the government began after the highest ranking officials of the State were publicly critical of their editorial position.

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2010. *Former mayor of El Tigre and journalists attacked by PSUV sympathizers*. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/157171/Sufragio%202010/Ex-alcalde-de-El-Tigre-y-periodistas-fueron-agredidos-por-simpatizantes-de-PSUV

¹⁰¹⁴ Instituto de Prensa y Sociedad. June 9, 2010. *Press team the target of violence*. Available at: http://www.ifex.org/venezuela/2010/06/09/aragua_protest/es/

¹⁰¹⁵ *Colegio Nacional de Periodistas*. September 25, 2010. *President of National Press Association asks Vice President Jaua for respect*. Available at: <http://www.cnpven.org/data.php?link=2&expediente=626>

¹⁰¹⁶ *Colegio Nacional de Periodistas*. October 1, 2010. *National Press Association communiqué responds to attack on Beatriz Adrián*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/885-comunicado-del-cnp-ante-agresion-a-beatriz-adrian>

¹⁰¹⁷ *Espacio Público*. October 18, 2010. *Journalists assaulted in Carabobo state*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/898-agreden-a-periodistas-en-el-estado-carabobo>

¹⁰¹⁸ *Colegio Nacional de Periodistas*. *National Press Association deplors assault on journalists in Lara*. Available at: <http://www.cnpven.org/data.php?link=2&expediente=648>

723. The Office of the Special Rapporteur was informed that on June 11, 2010, a criminal court in the city of Valencia convicted journalist Francisco “Pancho” Pérez and sentenced him to three years and nine months in prison and a fine of some US\$20,000 for supposed crimes of defamation against the mayor of the city of Valencia, Edgardo Parra. The court also ordered additional penalties involving political disqualification and disqualification from the practice of his profession. According to the information received, the conviction was the result of a complaint concerning a column published in the newspaper *El Carabobeño* in March 2009, in which the reporter mentioned the fact that members of the mayor’s family were in the municipal government.¹⁰¹⁹ According to the information received, on Tuesday November 30, 2010, the Carabobo State Court of Appeals overturned Pérez’ conviction.¹⁰²⁰ The Office of the Special Rapporteur applauds the court’s ruling.

724. On March 8, 2010, Oswaldo Álvarez Paz, former governor of the state of Zulia and a member of the National Assembly, made a statement on the program *Aló Ciudadano*, aired on *Globovisión*, in which he complained that high-ranking state officials supposedly had ties to drug trafficking. The following day, PSUV deputy Manuel Villalba filed a complaint with the Public Prosecutor’s Office asking that Álvarez Paz’s conduct be investigated for commission of a number of offenses criminalized in Venezuela’s Penal Code, including conspiracy against the republican form of government, public instigation to commit crime, public intimidation, false information and creating uncertainty among the public. On March 22, Álvarez Paz was detained and the court confirmed his detention on March 24. Álvarez Paz was held in a unit of DISIP.¹⁰²¹ Álvarez Paz was held in custody for almost two months. On May 7, 2010, the Public Prosecutor’s Officer dropped the “conspiracy” charge, which had been the most serious charge, carrying a penalty of six to eight years’ imprisonment under Venezuelan law.¹⁰²² As a result, on May 13, 2010, he was released on bail; as conditions for his release, he was prohibited from leaving the country, had to appear before the court hearing the case every fifteen days, and was prohibited from making any public statements about the case against him.¹⁰²³ As of the date this report went to press, the case against Álvarez Paz was still open and his trial had not yet been held.¹⁰²⁴

¹⁰¹⁹ Cf. Hearing on the right to freedom of expression and information in Venezuela, held on October 29, 2010, during the Commission’s 140th Session; *Espacio Público*. June 11, 2010. *Espacio Público rejects conviction of journalist Francisco Pérez*. Available at: <http://www.espaciopublico.org/index.php/inicio-mainmenu-1/1-libertad-de-expresi/805-espacio-publico-rechaza-condena-contra-periodista-francisco-perez>

¹⁰²⁰ El Universal. *Conviction of “Pancho” Pérez overturned*. December 1, 2010. Available at: http://www.eluniversal.com/2010/12/01/pol_art_anulan-fallo-contra_2123719.shtml. Agencia Carabobeña de Noticias. *“Pancho Pérez” conviction overturned*. November 30, 2010. Available at: <http://www.acn.com.ve/regional/item/18950-este-30-de-noviembre-le-dictan-sentencia-a-pancho-p%C3%A9rez.html>

¹⁰²¹ El Universal. March 23, 2010. *Oswaldo Álvarez Paz taken into custody and held in El Helicoide*. Available at: http://www.eluniversal.com/2010/03/23/pol_art_detienen-y-recluyen_23A3629571.shtml. LA Times. March 25, 2010. *Venezuela ex – governor to remain in jail over drug remarks*. Available at: <http://articles.latimes.com/2010/mar/25/world/la-fg-venezuela-governor25-2010mar25>

¹⁰²² El Universal. May 7, 2010. *Álvarez Paz near release on bail*. Available at: http://politica.eluniversal.com/2010/05/07/pol_art_alvarez-paz-a-pocos_1891456.shtml

¹⁰²³ IFEX. May 19, 2010. *Former governor granted parole after two months in detention*. Available at: http://www.ifex.org/venezuela/2010/05/19/alvarez_paz_parole/19 de mayo de 2010. El País. May 14, 2010. *Political opponent who linked Chávez to ETA and FARC released*. Available at: http://www.elpais.com/articulo/internacional/Liberado/opositor/vinculo/Chavez/ETA/FARC/elpepiint/20100514elpepiint_10/Te
[s](http://www.elpais.com/articulo/internacional/Liberado/opositor/vinculo/Chavez/ETA/FARC/elpepiint/20100514elpepiint_10/Te)

¹⁰²⁴ According to information received from Juan Carlos Álvarez, by e-mail dated November 13, 2010 (on record with the Office of the Special Rapporteur for Freedom of Expression). Aporrea. August 10, 2010. *Antonio Rivero told media outlets that he knew beforehand that the Military Prosecutor would investigate him*. Available at: <http://www.aporrea.org/oposicion/n163204.html>. Aporrea. August 14, 2011. *Court orders precautionary measures for Antonio Rivero*. Available at: <http://www.aporrea.org/actualidad/n163383.html>. On this issue, it is worth noting that the State of Venezuela said that Rivero “hasn’t been detained or subjected to any kind of trial, as the Commission stated.”

725. On March 24, Congressional Deputy Manuel Villalba also asked the Public Prosecutor's Office to launch an investigation into Guillermo Zuloaga, president of *Globovisión*, for statements made at an assembly of the Inter-American Press Association.¹⁰²⁵

726. On March 25, 2010, the IACHR expressed its deep concern over the use of the State's punitive power to criminally prosecute persons whom the authorities consider to be political opponents in Venezuela.¹⁰²⁶ The IACHR also stated that "the lack of independence and autonomy of the judiciary with respect to the political branches constitutes one of the weakest points of democracy in Venezuela, a situation that seriously hinders the free exercise of human rights in Venezuela. In the Commission's judgment, it is this lack of independence that has allowed the use of the State's punitive power in Venezuela to criminalize human rights defenders, penalize peaceful social protest, and persecute political dissidents through the criminal justice system."¹⁰²⁷ The IACHR underscored the fact that "it is extremely troubling that those who make allegations or state opinions about the situation in the country are charged with such offenses as the instigation to commit a crime. The public statements made by many government officials supporting the detention of Álvarez Paz and calling for criminal proceedings to be brought against other individuals such as Guillermo Zuloaga, simply because they expressed their opinions in public forums, demonstrate a troubling consensus among the government authorities that it is legitimate to identify those who criticize the government with criminals."¹⁰²⁸

727. The IACHR also learned that in August, the military prosecutor's office charged former director of Civil Protection, retired general and independent candidate for the National Assembly, Antonio Rivero, with the crimes of slandering the Armed Forces and disclosing private or secret military information. The charges carry a sentence of three to 10 years in prison. General Rivero went into retirement in April 2010, and shortly thereafter called a press conference where he denounced Cuba's supposed influence over the Armed Forces. The military justice system ordered precautionary measures that prohibited Rivero from leaving the country and from making statements to the domestic or international media about information that might "compromise the Bolivarian National Armed Forces."¹⁰²⁹

728. On March 30, a Táchira state court convicted Gustavo Azócar, a journalist and former candidate for the office of Governor of Táchira state, and sentenced him to two and a half years' imprisonment, with conditional release, for the crime of "unlawful enrichment from the business of government." The court also imposed an additional penalty which was to disqualify Azócar from participation in politics. According to the information reported to the Commission, the

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Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression. It is worth noting that, as stated in the relevant paragraph, the Commission never stated that Rivero has been "detained."

¹⁰²⁵ Diario El Impulso. March 24, 2010. *Manuel Villalba requested investigation of Guillermo Zuloaga*. Available at: <http://www.elimpulso.com/pages/vernoticia.aspx?id=99763>

¹⁰²⁶ IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

¹⁰²⁷ IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

¹⁰²⁸ IACHR. Press Release 36/10 of March 25, 2010. IACHR concerned about the use of the punitive power of the State to silence opponents in Venezuela. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/36-10eng.htm>

¹⁰²⁹ El Universal. August 9, 2010. *Military Prosecutor's Office charges Antonio Rivero*. Available at: http://www.eluniversal.com/2010/08/09/pol_ava_fiscalia-militar-imp_09A4317051.shtml; New York Times. 11 de agosto de 2010. *Ex - General in Venezuela, a Chávez Foe, faces inquiry*. Disponible en: <http://www.nytimes.com/2010/08/12/world/americas/12venez.html>.

case started in 2000 when a complaint was filed in the Public Prosecutor's Office when the station at which the journalist then worked allegedly stopped airing commercials advertising a state entity. Azócar was prohibited from speaking about his case and in July 2009 was incarcerated for eight months for publishing, on a personal blog site, news related to his legal situation. Media organizations believe that Azócar's conviction was politically motivated, as he was critical of the local government; they also believe it was in retaliation for accusations he made alleging corruption.¹⁰³⁰

729. The Commission was also informed of a number of court cases against persons who expressed comments critical of the authorities. The Ministry of the People's Power for Communications and Information allegedly requested that journalist and humorist Laureano Márquez be prosecuted for an editorial he wrote on January 29, in which he imagined the day when a presidential succession would take place in Venezuela.¹⁰³¹ In the opinion of the Ministry of the People's Power for Communications and Information, the humorous article was "a blatant call for the public to refuse to recognize the constitutional order and incited it to violence," an "invitation to a genocidal and terrorist plot to overthrow the government." The Ministry also announced that it would file a criminal complaint against the newspaper so that the "appropriate" sanctions might be enforced.¹⁰³² Regarding this issue, the State of Venezuela stated that Márquez "only suffered criticism through the mass media by some citizens who thought that he was calling for the disregard of the constitutional order"¹⁰³³. It is worth noting that public officials, though entitled to their right to freedom of expression, are subject to strict limitations as a consequence of their particular duties and responsibilities¹⁰³⁴.

730. A baseball fan, Miguel Hernández Souquett, was tried on December 1, 2010, for having worn a shirt that read "Hugo, Screw Your Revolution." He could receive a sentence of 3 to 6 years in prison for the crime of offending heads of government. According to the information reported to the Commission, Miguel Hernández wore the shirt at a sports event on the island of Margarita. As he was leaving the stadium, he was allegedly stopped by the police and taken to a unit of the Bolivarian Intelligence Service (SEBIN). A court ordered that he be released, but he was required to make regular appearances before the judge. He was later notified that he would stand trial.¹⁰³⁵ In the observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010, the State informed that "this citizen is not [currently] detained"¹⁰³⁶.

¹⁰³⁰ Public Prosecutor's Office. March 27, 2010. *Journalist Gustavo Azócar sentenced to prison for two years six months*. Available at: http://www.ministeriopublico.gob.ve/web/guest/buscador/-/journal_content/56/10136/36783

¹⁰³¹ Tal Cual Digital. January 29, 2010. *A Venezuela without Esteban*. Available at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=31096&secid=44>. See also Reporte 360. January 29, 2010. *Minci will charge Laureano Márquez*. Available at: <http://www.reporte360.com/detalle.php?id=24154>

¹⁰³² Ministry of the People's Power for Communications and Information. Communiqué dated January 29, 2010. Available at: http://www.minci.gob.ve/noticias/1/195620/comunicado_del_ministerio.html.

¹⁰³³ Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

¹⁰³⁴ On this issue, see *infra* par. *** 469.

¹⁰³⁵ Espacio Público. November 12, 2010. *Fan will have to stand trial for anti-revolutionary message on T-shirt*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/914-fanatico-debera-comparecer-ante-tribunales-por-mensaje-antirrevolucionario-en-franela>

¹⁰³⁶ Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights by the IACHR, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

731. On November 12, 33 people were reportedly arrested at a Caracas metro station for having demonstrated to protest train delays and service problems.¹⁰³⁷

732. On June 8, the Health Commission of the Anzoátegui Legislative Council launched an investigation into the Director of the Tropical Medicine Center of the Universidad de Oriente, Antonio Morocoima, for statements made concerning Chagas disease and a possible outbreak of that sickness. According to the information received, Venezuela's Parasitological Association supported Morocoima and asked authorities to rely on research papers which, the Association said, would back up what the scientist was saying.¹⁰³⁸

733. The IACHR received information to the effect that on April 7, *Globovisión* journalist Beatriz Adrián was reportedly held for several hours at the Directorate of Military Intelligence (DIM) for having taped an interview in the parking lot of a business center located in the building that houses the Office of Comprehensive Security of the Armed Forces Social Security Institute (IPSFA). According to the information received, the journalist was interviewing someone who had been summoned to make a statement in the Office of the Military Prosecutor.¹⁰³⁹

734. The Office of the Special Rapporteur received information to the effect that members of the Venezuelan Army had detained Colombian journalists Philip Moreno, Milton Uscátegui and Paula Osorio on July 16. According to the reports received, the Venezuelan military held the journalists in custody for two days. The news material that the journalists had gathered (a video containing recordings taken on Venezuelan soil) were said to have been confiscated by members of the Venezuelan Army. According to the reports received, the journalists were deported to Colombia on July 18, 2010. On August 3, 2010, the Office of the Special Rapporteur for Freedom of Expression asked the Venezuelan State to provide information regarding these events. Thus far, it has not replied.¹⁰⁴⁰

C. Ban on publishing certain materials in the print media

735. On August 13, 2010, the newspaper *El Nacional* published on its front page a picture of nude and presumably lifeless bodies inside what was said to be the Bello Monte morgue in Caracas, Venezuela. The photograph was accompanied by an article on the increase in violent crime in Caracas. After officials publicly complained about the photograph published on the cover of *El Nacional*, the newspaper *Tal Cual* published the same photograph on August 16, 2010 out of solidarity with *El Nacional*.¹⁰⁴¹

¹⁰³⁷ El Nacional. November 12, 2010. *33 people detained after protests at Caracas metro*. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/165218/Ciudad/Protesta-en-estaci%C3%B3n-del-Metro-de-Propatria-dej%C3%B3-33-personas-detenido

¹⁰³⁸ Sociedad Parasitológica Venezolana. May 27, 2010. *Comunicado from the Sociedad Parasitológica Venezolana*. Available at: <http://www.asovac.org/2010/05/31/comunicado-de-la-sociedad-parasitologica-venezolana/>. Espacio Público. June 11, 2010. *Parliament of the state of Anzoátegui begins investigation against doctor from that state*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/803-parlamento-del-estado-anzoategui-inicio-investigacion-en-contra-de-medico-de-esa-entidad>

¹⁰³⁹ Federación de Periodistas de América Latina y el Caribe. April 8, 2010. *FEPALC joins the SNTP in condemning the detention of a Venezuelan journalist*. Available at: http://www.fepalc.org/noticias_det.php?Itemid=516

¹⁰⁴⁰ El Tiempo. July 16, 2010. *Colombian journalists detained in Venezuela held incommunicado*. Available at: <http://www.eltiempo.com/archivo/documento/CMS-7810897>

¹⁰⁴¹ Committee to Protect Journalists. August 20, 2010. *Venezuelan censorship over morgue photos is selective*. Available at: <http://cpj.org/blog/2010/08/venezuelan-censorship-over-morgue-photos-is-select.php>. El Universal. August 16, 2010. *Newspaper Tal Cual denounced for Publishing Photo of Morgue*. Available at: http://www.eluniversal.com/2010/08/16/pol_ava_denuncian-a-diario-t_16A4345011.shtml

736. As a result of the photograph published in the two newspapers, representatives from the Ombudsperson's Office filed a petition seeking protection in which they requested that all the print media be ordered to refrain from publishing images that are "violent, bloody and grotesque (sic), irrespective of whether they are depicting events and inasmuch as such pictures violate the mental and moral integrity of children and adolescents."¹⁰⁴² Representatives of the Public Prosecutor's Office brought a similar action against the newspaper *El Nacional*, to protect the collective and diffuse rights of children and adolescents. In that action, the Public Prosecutor's Office asked that the court order "that [...] publication of images, information and advertising of any type, containing blood, weapons, messages of terror, physical aggression, images that depict war and messages on killing and death be prohibited as they can affect the psychological health of children and adolescents."¹⁰⁴³

737. On August 16, 2010, the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents, William A. Páez, ruled that the right to freedom of expression is not absolute and has limits when it affects other basic rights, such as "the right to have one's physical, mental and moral integrity respected; the right to timely, truthful and impartial information, especially when it conflicts with the best interests of children and adolescents, which always takes preference."¹⁰⁴⁴ The magistrate therefore decided that "the newspaper *El Nacional* is prohibited from publishing images, information, and advertisements of any type that contain blood, weapons, messages of terror, physical assaults, images that evoke content about war, and messages about deaths that could alter the psychological well-being of children and adolescents who reside in the Bolivarian Republic of Venezuela, until the merits of the present petition seeking protection are decided."¹⁰⁴⁵

738. On August 17, 2010, the same magistrate decided the merits of the petition brought by the Ombudsperson's Office seeking an order of protection and prohibited the newspaper *Tal Cual* from "publishing images containing violent, bloody or grotesque content, irrespective of whether they are depicting events, and which in one way or another are detrimental to the mental and moral integrity of children and adolescents..." Applying the principle of *jura novit curia*, the court also stated that "All print media published in the Bolivarian Republic of Venezuela shall refrain from PUBLISHING IMAGES that are violent, bloody or grotesque, irrespective of whether they are depicting actual events, as they may in one way or another be detrimental to the mental and moral integrity of children and adolescents ..."¹⁰⁴⁶ The magistrate reasoned that "when the media are

¹⁰⁴² Office of the Ombudsperson of the Bolivarian Republic of Venezuela. August 16, 2010. *Ombudsperson's Office asks print media to refrain from publishing images that adversely affect children and adolescents.* Available at: http://www.defensoria.gob.ve/index.php?option=com_content&view=article&id=589:defensoria-solicita-a-tribunales-medida-preventiva-para-que-medios-impresos-se-abstengan-de-publicar-imagenes-que-atenten-contra-la-infancia-y-la-adolescencia-&catid=7:principal&Itemid=79

¹⁰⁴³ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional*," dated August 16, 2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

¹⁰⁴⁴ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional*," dated August 16, 2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

¹⁰⁴⁵ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 107/10 addressed to Miguel Enrique Otero, Editor of the newspaper "*El Nacional*," dated August 16, 2010. Available at: http://www.el-nacional.com/www/files/ADMISION_DICTADA_MEDIDA_PREVENTIVA_INNOMINADA_17_8_2010.pdf

¹⁰⁴⁶ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 111/10 addressed to Editor/President of the Newspaper "*Tal Cual*," dated August 17, 2010. Available at: http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg

used in a superficial way, heavily biased in favor of a given sector, they [the media] become a weapon wielded against the citizenry.”¹⁰⁴⁷

739. On August 19, 2010, the magistrate lifted the general ban established on all the print media, but left the ban in place in the case of the newspapers *El Nacional* and *Tal Cual*.¹⁰⁴⁸

740. The defense of the superior interests of children and adolescents is a common objective of all nations that is protected by international law. This important interest may give rise to legal restrictions on freedom of expression, which should be clear, precise and proportional in conformity with article 13.2 of the Convention. In turn, judges have the ability to apply such restrictions in concrete cases in which they should, within the strict requirements of article 13.2, weigh the legal interests in conflict taking into account the superior interest of the child. None of these requirements is compatible with the existence of judicial decisions of an injunctive nature that impose generic prior constraints on content in an ambiguous or imprecise manner, as was ordered by the judge in the situation just discussed¹⁰⁴⁹.

D. The Law on Social Responsibility in Radio and Television is extended to include cable channels, and RCTV is taken off the air

741. In late late 2009 the Bureau of Social Responsibility issued Administrative Order No. 1/09 of December 22, 2009, in which it published the *Technical Standard on Domestic Audiovisual Production Services* (hereinafter, the “Technical Standard”).¹⁰⁵⁰ This Technical Standard extends the reach of the Law so that it applies to cable television channels, unless:

“1. Over 70% of a channel’s weekly programming consists of programs, advertising or commercials that, taken together, do not qualify as domestic production under the terms of Article 2 of this technical standard.// 2. When more than 70% of the total time of a channel’s weekly programming consists of programs, advertising or commercials that, taken together, do not qualify as domestic production under the terms of Article 2 of this technical standard.”¹⁰⁵¹

742. As can be inferred from the text of the provision cited above, the Technical Standard divides cable television channels into “domestic” and “international”. Whereas the system created by the Technical Standard applies to domestic cable television channels, which implies enforcement of the Law on Social Responsibility in Radio and Television, that system does not apply to

¹⁰⁴⁷ Cf. Decision of the Judge of the Twelfth Court of First Instance for Mediation and Protection of Children and Adolescents. Communication 111/10 addressed to Editor/President of the Newspaper “*Tal Cual*,” dated August 17, 2010. Available at: http://static.eluniversal.com/2010/08/17/medida_de_proteccion.jpg

¹⁰⁴⁸ Agencia Venezolana de Noticias. August 19, 2010. *Ban on publishing violent images in print media lifted*. Available at: <http://www.avn.info.ve/node/12388>

¹⁰⁴⁹ At the time, the IACHR’s Office of the Special Rapporteur for Freedom of Expression and the UN Special Rapporteur for Freedom of Expression, in an August 19, 2010 joint press release, expressed their concern regarding these events. Press Release R82/10. Rapporteurs for Freedom of Expression concerned over Prior Censorship in Venezuela. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=811&IID=1>

¹⁰⁵⁰ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

¹⁰⁵¹ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Article 3. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

international cable television channels.¹⁰⁵² The Technical Standard establishes certain specific obligations, such as broadcasting of government messages or speeches (Article 5); a ban prohibiting commercial interruption of programs (Article 6); registration of these channels in the record created for that purpose (Article 10); and others. Finally, the conditions it imposes in the area of advertising are more restrictive than the conditions imposed under the Law on Social Responsibility in Radio and Television; whereas the Law on Social Responsibility allows five commercial interruptions every 60 minutes, the Technical Standard bans any commercial interruption and confines advertising to the intervals between various programs.¹⁰⁵³

743. The Technical Standard establishes a procedure where cable channels will be evaluated to determine whether they qualify as “domestic” or “international”. Channels that were already broadcasting when the norm was approved are to submit to CONATEL,¹⁰⁵⁴ “within fifteen (15) working days from the date of publication of this technical standard, the paperwork to show that they either are or are not purveyors of domestic audiovisual production services for a sample period of four (4) months of programming aired prior to publication of the standard.”¹⁰⁵⁵ The provision also states that if channels fail to produce the required documentation, they will automatically be regarded as Domestic Audiovisual Production Services.

744. Finally, the last paragraph of Transitory Provision One requires that cable television providers exclude “those audiovisual production services that have failed to produce for the National Telecommunications Commission the documentation to which this article refers and those that are not listed in the register of domestic audiovisual production services.”¹⁰⁵⁶

745. A number of earlier reports have documented the tension between government authorities and channel RCTV due to the latter’s editorial position. The authorities have described the channel as “horsemen of the Apocalypse”, “fascists”, the force behind “a campaign of terrorism against the people, the law and the Republic,” “liars, perverts, immoral people, rebels and terrorists” and other epithets.¹⁰⁵⁷ In 2007, its license expired and was not renewed.¹⁰⁵⁸ Around the middle of

¹⁰⁵² In this connection, Article 4 of the Technical Standard provides that “Domestic Audiovisual Production Services shall comply with the provisions of the Law on Social Responsibility in Radio and Television.” Available [in Spanish] at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

¹⁰⁵³ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Article 6. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

¹⁰⁵⁴ See, in this regard, CONATEL. December 2009. *Guide to doing notifications for Domestic Audiovisual Production Services*. Available at: http://docs.google.com/viewer?a=v&q=cache:wSCBZFIZ01kJ:www.conatel.gob.ve/download/Servicio_Produccion_Nacional_Audiovisual/Guia_Notificacion_PNA_%2812-2009%29.pdf+para+los+servicios+de+Producci%C3%B3n+Nacional+Audiovisual+%22Gu%C3%ADa+para+realizar+notificaciones+%22+site:www.conatel.gob.ve&hl=en&gl=us&pid=bl&srcid=ADGEESiilcads2V6qHGI5mtWFieEj6Fynro3K9xhit4kMnrhSXR2mzBYchVagBvIF1wQ7Ftf6JgiBEUbkxJi7iDLYFjoXrLbS4r4XEU7XXOv6HoQ3-JiKtEjav0_HDZPjOR08j6pRfRm-&sig=AHIEtbTUEin-D4wSYmTqSx92OAXpf2ZliQ&pli=1

¹⁰⁵⁵ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

¹⁰⁵⁶ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

¹⁰⁵⁷ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 115.

¹⁰⁵⁸ See IACHR. 2007 Annual Report. Volume II: Annual Report of the Office of the Special Rapporteur for Freedom of Expression, Chapter II (Situation of Freedom of Expression in the Region).

that year, RCTV began to broadcast on cable television, which meant that the provisions of the Law on Social Responsibility in Radio and Television did not apply to it. As previously observed, the language of that law is too vague and imprecise for the law to constitute a legitimate restriction on freedom of expression. Under the Law on Social Responsibility in Radio and Television, those television channels that are subject to its provisions are required to carry the blanket presidential broadcasts. According to the information supplied by civil society organizations that monitored the use of this resource, there were 1,932 blanket official broadcasts between February 1999 and July 2009, which amounted to 52 uninterrupted days of presidential broadcasts.¹⁰⁵⁹

746. Given the new provision issued by CONATEL, RCTV decided to change its programming to conform to the parameters established by the Technical Standard for international channels, a decision it reported to the State on January 13, 2010.¹⁰⁶⁰ This meant drastic programming changes, such as cancellation of a number of programs produced in Venezuela.¹⁰⁶¹ In the words of RCTV International, “within the established time period it applied the new programming parameters described for International Channels operating within Venezuelan territory; it did so in order to continue to function as we are, an International Channel.”¹⁰⁶²

747. Despite the programming changes RCTV made, on January 15, 2010 CONATEL classified RCTV International as a domestic audiovisual production service, and so notified RCTV International on Thursday, January 21, 2010. RCTV challenged that decision by filing a writ for constitutional protection (*amparo*).¹⁰⁶³ Since the petition seeking *amparo* relief was pending before the courts, RCTV -which felt it had proven that it was an “international” channel- decided not to carry the blanket presidential broadcasts on the following Friday and Saturday. CONATEL did an evaluation of the content, using a sample taken from the four months that preceded issuance of the Technical Standard. As a result, the changes that RCTV made to its programming starting on December 22, 2009, did not count since, in order to be classified as an “international producer” under the technical standard issued on December 22, 2009, RCTV had to be in compliance with the requirements stipulated therein four months before the standard was issued, in other words, as of August 22, 2009.

748. On Saturday night, January 23, 2010, Minister Cabello made public statements in which he asserted that there were cable channels that were not in compliance with Venezuelan law. According to administrative order 01/09 of the Bureau of Social Responsibility, if channels fail to comply with the Technical Standard established in that regulation, cable television providers are to eliminate them from their programming. In effect, the final paragraph of Transitory Provision One of the Technical Standard reads as follows:

¹⁰⁵⁹ IACHR. 2009 Annual Report of the Inter-American Commission on Human Rights. *Report of the Special Rapporteur for Freedom of Expression*. Chapter 2, Para. 572. OEA/Ser.L/V/II. Doc. 51, December 30, 2009. Available at: <http://www.IACHR.oas.org/pdf%20files/Annual%20Report%202009.pdf>

¹⁰⁶⁰ CONATEL. Administrative Order 1,569 dated March 4, 2010. On file with Office of the Special Rapporteur. See also Apporea. March 5, 2010. *Conatel rejects RCTV's inscription as extemporaneous*. Available at: <http://www.aporrea.org/medios/n152383.html>

¹⁰⁶¹ *El Universal*. January 21, 2010. *RCTV radically changes its programming*. Available at: http://www.eluniversal.com/2010/01/21/til_art_rctv-cambia-radicalm_1731007.shtml

¹⁰⁶² Communiqué from RCTV Internacional, dated January 21, 2010. Available at: <http://www.rctv.net/Noticias/VerNoticia.aspx?Noticiaid=8207&Categoriald=31>

¹⁰⁶³ CONATEL. Administrative Order 1,569 of March 4, 2010. On file with Office of the Special Rapporteur. See also Apporea. March 5, 2010. *Conatel rejects RCTV's inscription as extemporaneous*. Available at: <http://www.aporrea.org/medios/n152383.html>

“Cable providers are to exclude from their programming any audiovisual production services that have not produced for the National Telecommunications Commission the documentation to which this article refers, as well as those not listed in the register of domestic audiovisual production services.”¹⁰⁶⁴

749. The Minister therefore served notice to all cable operators that they were to take off the air those channels that were not in compliance with the law, under penalty of facing administrative proceedings. Specifically, Minister Cabello said the following:

“If a cable operator -let’s call it Cable Venezolana- found that a certain channel was not in compliance with Venezuelan law, and Cable Venezolana did nothing to remove that channel from its offerings, we would institute an administrative proceeding against Cable Venezolana, the provider which brings the channel into the home. I should point out that in this instance, the cable operators themselves have been telling CONATEL which channels are not in compliance with the Law on Social Responsibility, even though they have been classified as Domestic Audiovisual Producers, and they simply operate on that basis.

(...)

We’re not obligating them to anything; this is simply a matter of compliance. And we’re not sanctioning anyone (...) What I’m saying is this: this time the cable operators have done what they are supposed to do. If they don’t, I will enforce the Organic Law on Telecommunications and institute administrative proceedings. We’ll take action against the cable operator, but thus far this hasn’t happened. We’ve already called them and told them: look, read the technical standard, then look at which channels are classified as domestic audiovisual producers and which channels are international producers, and then verify that. The cable operators have discovered which channels are not in compliance. In keeping with the technical standard, they simply drop any channel that is not in compliance with Venezuelan law.

[Question from a journalist on how much time operators have to drop channels]

This was approved on Thursday and the list went out. To be honest, the operators should have already done it. They have a little time, perhaps. Here, everyone has to do one’s duty. (...) By now, anyone who is not in compliance... well the operators will begin to make their decisions. I guarantee you, that’s how it will be!¹⁰⁶⁵”

750. At midnight, January 23, RCTV and five other television stations went off the air.¹⁰⁶⁶

751. The Commissioner for Venezuelan Affairs and the Special Rapporteur for Freedom of Expression expressed their deep concern over the fact that the channels in question were taken off the air. In press release 08/10 they expressed the following:

“The decision to take a cable channel off the air for alleged non-compliance with the Law of Television and Radio Social Responsibility means, for all intents and purposes, the closure of a channel for not complying with this law. This decision therefore has enormous repercussions when it comes to freedom of expression, and as such must comply with all the guarantees consecrated in law, in the Venezuelan Constitution and in the international treaties to which

¹⁰⁶⁴ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Transitory Provision One. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

¹⁰⁶⁵ Venezolana de Televisión. Minister Cabello’s press conference. Available at: http://www.youtube.com/watch?v=UPQ0nu2WC_I&feature=related

¹⁰⁶⁶ In addition to RCTV, the following channels were also taken off the air: América TV, TV Chile, American Network, Ritmo Son and Momentum. See IFEX. January 26, 2010. *Cable companies take six television stations off the air following communications regulator’s orders.* Available at: http://www.ifex.org/venezuela/2010/01/26/cable_stations_off_air/. Committee to Protect Journalists. February 25, 2010. *Venezuela bars RCTV, 5 other stations from cable, satellite.* Available at: <http://cpj.org/2010/01/venezuela-bars-rctv-5-other-stations-from-cable-sa.php>

the Bolivarian Republic of Venezuela is a party. In particular, in order for the closing of a media outlet to be legitimate, it is necessary that prior to the exhaustion of due process, an independent and impartial state body verify that the media outlet committed an offense clearly established by law and that the agency charged with enforcing the law adequately and sufficiently justifies the decision. These minimum guarantees of due process cannot be sidestepped on the pretext that the media outlet in question is a cable channel. // In this case, the channels that were so suddenly taken off the air did not have an opportunity to defend themselves with due process and before an impartial authority. These channels were punished summarily, without due process and without justification under Venezuelan law. With this decision, the right to freedom of expression in Venezuela is further eroded, as it blocks cable media outlets from operating independently and without fear of being silenced on account of the focus of their reporting or their editorial stance."¹⁰⁶⁷

752. In the case described here, the cable television providers were informally warned that they should take the supposedly noncompliant television channels off the air; if they failed to do so, they would face administrative proceedings and penalties. That indirect pressure is based on retroactive enforcement of a provision that had reportedly been devised to get at RCTV specifically. This would imply a violation of the principle of legality, which presupposes that any restrictions on freedom of expression must be established by pre-existing law, written in clear and unambiguous language in order to provide the necessary "foreseeability", as both the IACHR and the European Court have recognized.¹⁰⁶⁸ Moreover, as the Office of the Special Rapporteur for Freedom of Expression wrote in its 2009 Annual Report, "because punitive procedures can seriously affect the exercise of freedom of expression, they must provide for all of the due process guarantees enshrined in Articles 8 and 25 of the American Convention."¹⁰⁶⁹

753. The IACHR was told that in February 2010, five of the six suspended cable channels were authorized to broadcast again. The exception was RCTV International. Later that same month, RCTV International agreed to its classification as a "domestic audiovisual producer."¹⁰⁷⁰ In effect on February 22, 2010, RCTV International notified CONATEL of its intention to provide two services: one domestic audiovisual production service, which would be subject to the laws described in the preceding paragraphs, and RCTV Mundo, an "international" channel whose "domestic" content would not exceed 29%.¹⁰⁷¹ On March 4, 2010, CONATEL ruled that the petition that RCTV International filed to register that channel as a domestic audiovisual production service had been

¹⁰⁶⁷ Office of the Special Rapporteur for Freedom of Expression of the IACHR. Press release No. R08/10 of January 24, 2010. Available at: <http://www.IACHR.org/relatoria/showarticle.asp?artID=781&IID=1>

¹⁰⁶⁸ European Court of Human Rights, Case of Tolstoy Miloslavsky v. United Kingdom, Judgment of July 13, 1995, para. 37, where it wrote that: "The expression 'prescribed by law' [in Article 10 of the European Convention on Human Rights] requires firstly that the impugned measures should have a basis in domestic law. It also refers to the quality of the law in question, requiring that it be accessible to the persons concerned and formulated with sufficient precision to enable them [...] to foresee, to a degree that is reasonable in the circumstances, which a given action may entail."

¹⁰⁶⁹ In this regard it is worth recalling that the Inter-American Court held that "Although Article 8 of the American Convention is entitled 'Judicial Guarantees' [in the Spanish version – 'Right to a Fair Trial' in the English version], its application is not strictly limited to judicial remedies, 'but rather the procedural requirements that should be observed in order to be able to speak of effective and appropriate judicial guarantees, so that a person may defend himself adequately in the face of any kind of act of the State that affects his rights.'" And that "although this article does not establish minimum guarantees in matters relating to the determination of rights and obligations of a civil, labor, fiscal or any other nature, the full range of minimum guarantees stipulated in the second paragraph of this article are also applicable in those areas and, therefore, in this type of matter, the individual also has the overall right to the due process applicable in criminal matters." IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter VI (Freedom of Expression and Broadcasting), para. 144; I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraphs 69-70.

¹⁰⁷⁰ Reporters without Borders. February 23, 2010. *RCTV yields in order to resume broadcasting, but problem of "cadenas" remains*. Available at: <http://en.rsf.org/venezuela-rctvi-yields-in-order-to-resume-23-02-2010,36202.html>

¹⁰⁷¹ See CONATEL. Administrative order No. PASDR-1.569. March 4, 2010.

submitted too late, and it would therefore take no further action. In so doing, CONATEL applied Article 32 of the Organic Law on Telecommunications which provides that no further action shall be taken on applications filed with CONATEL for licensing if, through the interested party's fault, the proceedings come to a standstill for more than fifteen working days.¹⁰⁷² CONATEL also claimed that the documentation presented in connection with RCTV Mundo had been "inaccurate and incomplete" and, as a result, CONATEL could not do the necessary evaluation to determine whether this was a "domestic" or "international" channel.¹⁰⁷³ At the present time, RCTV is not being carried by cable providers.

754. RCTV filed an action asking the courts to strike down the Technical Standard and the decision that classified RCTV as a domestic audiovisual production service. On August 11, 2010, Examining Court of the Administrative Political Chamber of the Supreme Court agreed to hear the nullification action; the next step was to be the hearing.¹⁰⁷⁴ As of the date this report went to press the hearing had not been held.

E. The *Globovisión* case

755. *Globovisión* is a privately-owned Venezuelan television channel whose position tends to be critical of the Venezuelan government. In previous reports, the Office of the Special Rapporteur has recounted various episodes of harassment of the channel because of its editorial position. In the 2009 Annual Report the IACHR and the Office of the Special Rapporteur singled out at least six administrative proceedings that CONATEL had instituted against *Globovisión* for alleged violation of Article 29(1) of the Law on Social Responsibility in Radio and Television, and articles 171(6) and 172 of the Organic Law on Telecommunications.¹⁰⁷⁵ As of the date this report went to press, the outcome of these proceedings was still unknown.

756. Between March 19 and 22, 2010, the midyear meeting of the Inter-American Press Association was held in Oranjestad, Aruba. Participating in the event was Guillermo Zuloaga, president of *Globovisión* of Venezuela. At the meeting, Zuloaga made a statement in which he criticized the handling of public funds to support public media outlets that serve governmental ends; he underscored the political polarization in Venezuela, which he blamed on the President of the Republic. According to Zuloaga, Venezuela's head of state "has devoted himself to being President of one group of Venezuelans and has tried to divide Venezuela for the sake of something, and that something is twenty-first century socialism." Zuloaga also denied the accusations that President

¹⁰⁷² Organic Law on Telecommunications. Article 32. Available at: http://www.tsj.gov.ve/legislacion/lt_ley.htm

¹⁰⁷³ See CONATEL. Administrative order No. PASDR-1.569. March 4, 2010.

¹⁰⁷⁴ See Supreme Court, Political Administrative Chamber, Examining Court. August 11, 2010. Available at: <http://www.tsj.gov.ve/decisiones/jspa/Agosto/467-11810-2010-10-657.html>

¹⁰⁷⁵ Article 171.6 of the Organic Law on Telecommunications provides as follows: "Article 171. Without prejudice to the fines that are to be applied in accordance with the provisions in this Law, the penalty shall be cancellation of the government license or concession, as the case may be, in the case of: [...] (6) Someone who utilizes or allows the use of telecommunications services for which one is licensed, as a means to aid and abet the commission of crimes." Article 172 of the Organic Law on Telecommunications states: "Article 172. Natural or legal persons whose government license or concession is revoked will be unable to obtain another, either directly or indirectly, for a period of five years. This period will be start as of the date the administrative decision becomes final. In the case of legal persons, the de-licensing will extend to administrators or other organs responsible for the management and direction of the sanctioned operator which were performing these functions at the time the offense was committed, provided they had knowledge of the situation that led to the de-licensing and did nothing to notify the National Telecommunications Commission in writing before the opening of the punitive proceedings. The violation of the de-licensing and disqualifications established in this Law will cause natural persons responsible for such an offense to be liable for a special disqualification prohibiting them from owning capital shares in or being administrators or managers of telecommunications companies, either directly or indirectly, for a period of five years." Available at: http://www.tsj.gov.ve/legislacion/lt_ley.htm

Hugo Chávez Frías had made publicly against him, to the effect that he and other media entrepreneurs were somehow linked with the 2002 *coup d'état*.¹⁰⁷⁶

757. On March 23, 2010, the National Assembly approved a draft resolution in which Zuloaga's assertions were rejected. Through this resolution, the National Assembly urged "the Public Prosecutor's Office to conduct all investigations and take all measures necessary to determine what crimes citizen Guillermo Zuloaga had committed under the current legal system by uttering the statements he made before the Inter-American Press Association, in which he repeated a series of false accusations against the legitimate and democratic government of constitutional President Hugo Chávez."¹⁰⁷⁷ The following day, Deputy Manuel Villalba, President of the National Assembly's Commission on the Social Media, met with Prosecutor General Luisa Ortega Díaz to file a formal complaint.¹⁰⁷⁸

758. On March 25, 2010, at Josefa Camejo Airport in Punto Fijo, Falcón state, Zuloaga was detained by virtue of an arrest warrant requested by the Public Prosecutor's Office as part of the investigation instituted against him. The Public Prosecutor reported that "the evidence is sufficient to presume that the businessman constitutes a flight risk in an attempt to avoid the criminal proceedings brought after the complaint filed concerning his remarks at a meeting of the Inter-American Press Association."¹⁰⁷⁹ Villalba emphasized the fact that Zuloaga's statements constituted the crime of "contempt of and offending" the President of the Republic.¹⁰⁸⁰ The following day, Caracas' 40th Examining Court decided to grant Zuloaga conditional release, although in lieu of incarceration, it ordered him not to leave the country.¹⁰⁸¹ As of the date this report went to press, the case against Zuloaga was still ongoing.

759. On June 3, 2010, President Hugo Chávez Frías allegedly publicly criticized the Judiciary for having allowed Guillermo Zuloaga to remain at liberty.¹⁰⁸²

760. On June 11, 2010, Caracas' 13th Examining Court issued a warrant for the arrest of Guillermo Zuloaga and his son Guillermo Zuloaga Siso. Both were accused of the crimes of usury

¹⁰⁷⁶ Guillermo Zuloaga's statements, available at: <http://www.youtube.com/watch?v=1KpM4g1uwa4>

¹⁰⁷⁷ National Assembly. *National Assembly asks Public Prosecutor's Office to investigate Guillermo Zuloaga*. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_content&task=view&id=24416&Itemid=27

¹⁰⁷⁸ Reporte 360. March 24, 2010. *Manuel Villalba asked Public Prosecutor's Office to investigate Zuloaga*. Available at: <http://www.reporte360.com/detalle.php?id=29756&c=1>

¹⁰⁷⁹ IPYS. March 25, 2010. *Globovisión Owner Taken into Custody*. Available at: <http://www.ipys.org/alertas/atentado.php?id=2231>. Noticias 24. March 25, 2010. *Prosecutor General explains reasons for Zuloaga's arrest*. Available at: <http://www.noticias24.com/actualidad/noticia/149235/video-fiscal-general-cuenta-razones-de-la-detencion-de-zuloaga/>

¹⁰⁸⁰ El Universal. March 25, 2010. *Zuloaga to be charged with crime of contempt and offending the President*. Available at: http://www.eluniversal.com/2010/03/25/pol_ava_imputaran-a-zuloaga_25A3646055.shtml

¹⁰⁸¹ El Universal. March 26, 2010. *Zuloaga will not be jailed during his trial for "contempt of and offending the President"*. Available at: http://politica.eluniversal.com/2010/03/26/pol_art_enjuiciaran-en-liber_1810121.shtml

¹⁰⁸² El Universal. June 12, 2010. *Arrest warrant issued for Zuloaga and his son*. Available at: http://www.eluniversal.com/2010/06/12/pol_art_dictan-orden-de-apre_1936129.shtml. Tal Cual. June 12, 2010. *Chávez gives the orders and the judge acts*. Available at: <http://www.talcualdigital.com/Avances/Viewer.aspx?id=36344&secid=28>. Notitarde. June 11, 2010. *13th Examining Court ordered arrest of Guillermo Zuloaga*. Available at: <http://www.notitarde.com/notitarde/plantillas/nota.aspx?idart=1051140&idcat=9841&tipo=2>

and hoarding for having kept 24 vehicles in storage on a property they owned in the countryside.¹⁰⁸³ According to the information received, Zuloaga is the owner of a car dealership.¹⁰⁸⁴

761. Reacting to this turn of events, the Office of the Special Rapporteur for Freedom of Expression sent a letter to the Venezuelan government expressing concern over various issues related to freedom of expression, one of which was the order issued for the arrest of Guillermo Zuloaga and his son. The Office of the Special Rapporteur for Freedom of Expression expressed its concern regarding the arrest warrant, “noting the constant threats and harassment of *Globovisión* in general and Zuloaga in particular”. It also pointed out that, “according to information received, on June 3, 2010 (...) the President of the Republic had criticized the Judicial Branch because Zuloaga was still free. It observed that it seems no coincidence that just eight days after the President’s rebuke, the Judicial Branch issued a warrant for Zuloaga’s arrest”.¹⁰⁸⁵

762. The Office of the Special Rapporteur underscored the fact that “freedom of expression is a right that can be violated by direct and indirect means. Article 13, subsection 3 of the American Convention states that ‘the right of expression may not be restricted by indirect methods or means, such as abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.’ From this point of view, criminal prosecution for supposed crimes unrelated to the exercise of freedom of expression may constitute an illegitimate infringement of that right if it is established that prosecution is exclusively because of the accused’s political position or the exercise of his fundamental rights, such as freedom of expression in this case.”¹⁰⁸⁶

763. According to the information received, Zuloaga left the country, whereupon proceedings for his extradition were instituted, at the request of the Public Prosecutor’s Office.¹⁰⁸⁷ In mid-August 2010, the Supreme Court cleared the way for the extradition request to proceed.¹⁰⁸⁸

¹⁰⁸³ El Universal. June 11, 2010. *Zuloaga ordered arrested for usury and hoarding*. Available at: http://www.eluniversal.com/2010/06/11/pol_ava_ordenan-arrestar-a-z_11A4006611.shtml. *El Nacional*. June 29, 2010. *Public Prosecutor’s Office accuses Zuloaga of usury and hoarding*. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/143323/Nacional/Ministerio-P%C3%BAblico-acusa-a-los-Zuloaga-de-usura-y-agavillamiento

¹⁰⁸⁴ Telesur. June 11, 2010. *Venezuelan Public Prosecutor’s Office orders businessman’s arrest for the crime of usury*. Available at: <http://www.telesurtv.net/secciones/noticias/73447-NN/ministerio-publico-venezolano-ordena-captura-de-empresario-por-delito-de-usura/>

¹⁰⁸⁵ Office of the Special Rapporteur for Freedom of Expression of the IACHR. Letter sent to the Bolivarian Republic of Venezuela on June 14, 2010, in connection with the Situation of Freedom of Expression in the Bolivarian Republic of Venezuela (on file with the Office of the Special Rapporteur). See in this regard, IACHR Commissioner for Venezuelan Matters and the Special Rapporteur for Freedom of Expression Send Communication to the Venezuelan State Expressing Deep Concern over the Serious Situation of Freedom of Expression. Press Release No. R61/10, July 14, 2010. Available at: <http://www.IACHR.org/Relatoria/showarticle.asp?artID=800&IID=1>

¹⁰⁸⁶ Office of the Special Rapporteur for Freedom of Expression of the IACHR. Letter sent to the Bolivarian Republic of Venezuela on June 14, 2010, in connection with the Situation of Freedom of Expression in the Bolivarian Republic of Venezuela (on file with the Office of the Special Rapporteur).

¹⁰⁸⁷ El Universal. June 29, 2010. *Public Prosecutor’s Office seeks extradition of Guillermo Zuloaga*. Available at: http://www.eluniversal.com/2010/06/29/pol_ava_ministerio-publico-p_29A4106093.shtml. Ministry of the People’s Power for Communications and Information. June 29, 2010. *Public Prosecutor’s Office asks for Zuloaga’s extradition*. Available at: http://minci.gob.ve/nacionales/1/200778/ministerio_publico_solicita.html

¹⁰⁸⁸ El Universal. August 17, 2010. *Supreme Court authorizes Zuloaga’s extradition*. Available at: http://www.eluniversal.com/2010/08/17/pol_ava_tsj-autoriza-extradi_17A4349131.shtml. Agencia Venezolana de Noticias. August 17, 2010. *Supreme Court allows request to extradite Guillermo Zuloaga*. Available at: <http://www.avn.info.ve/node/11919>

764. Nelson Mezerhane Gozen is one of *Globovisión's* co-founders and serves as its Principal Director. He is also president of the Federal Bank. On December 19, 2009, in one of his nationwide broadcasts, the President of the Republic questioned statements made by Mezerhane and ordered an investigation of him for the statements Mezerhane had made to the daily newspaper *El Mundo Economía y Negocios*. President Chávez said the following: "I'm going to call the Prosecutor General later and ask that she have those statements investigated, as I consider them to be very serious and irresponsible, especially coming from the mouth of the president of a bank, which has had serious problems, for sure."¹⁰⁸⁹

765. On December 21, 2009, a criminal investigation was instituted against Mezerhane, by order of the Prosecutor General of the Republic, Luisa Ortega Díaz.¹⁰⁹⁰

766. On June 14, 2010, the Minister of State for Public Banking, Humberto Ortega Días, decided to take over the Federal Bank.¹⁰⁹¹ On June 16, 2010, in one of his nationwide broadcasts, President Chávez said the following: "While it is true that Mr. Banker, who left and said he wasn't coming back [Mezerhane] has shares in *Globovisión*, Zuloaga is going to have to show up for us to come to some understanding over that channel."¹⁰⁹² He also said that if the court cases demonstrate that both Zuloaga and Mezerhane have shares in *Globovisión*, "both will have to straighten up and come my way; I have a flower to offer."¹⁰⁹³

767. The statements made by the President of the Republic suggest that the State wants to take over *Globovisión* by intervening in the Federal Bank, whose president, Nelson Mezerhane, is also a shareholder in *Globovisión*:

"Mezerhane has a business that was taken over, and that business has a 20% stake in *Globovisión*. He owns another business that has a 5.8% stake in *Globovisión*. Adding the two together, that's a 25.8% stake. Well, come to see me, I have a flower. In the days ahead, the Board that intervened in the Federal Bank is required (...) to appoint a representative to sit on *Globovisión's* Board of Directors, because the 25.8% stake we now have gives us the right to name a representative to the Board of Directors. And I was thinking who should I nominate? (...) Well, it's not my function to appoint the Board member, but I would recommend someone to be appointed to the Board. (...) We hear names, someone to defend the shareholders' interests (...) This is pure capitalism, my friend, pure capitalism by the shareholders (...) We're joining the business (...) And oh, by the way, another 20% of the shares in *Globovisión* are up in the air. They're up in the air because when the State awarded

¹⁰⁸⁹ Public statements by the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías. Available at: <http://www.youtube.com/watch?v=3NzmvGtqls>

¹⁰⁹⁰ El Universal. December 21, 2010. *Prosecutor's Office launches investigation into alleged bank-related "rumor mills"*. Available at: http://www.eluniversal.com/2009/12/21/pol_ava_fiscalia-abre-invest_21A3220251.shtml. Noticias RTV. December 22, 2010. *Chávez again says that Mezerhane's claims will be investigated*. Available at: <http://noticiastv.com/noticiastv/2009/12/22/chavez-reitero-que-declaraciones-de-mezerhane-seran-investigadas/>

¹⁰⁹¹ Venezolana de Televisión. June 14, 2010. *Sudeban announces closed-door takeover of Federal Bank*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/37501>. El Universal. June 14, 2010. *Closed-door takeover of Federal Bank ordered*. Available at: http://www.eluniversal.com/2010/06/14/eco_ava_ordenan-intervencion_14A4020011.shtml

¹⁰⁹² Código ADN. June 16, 2010. *Chávez: 'Zuloaga and the Banker: Come to me, I have a flower'*. Available at: <http://www.codigovenezuela.com/2010/06/noticias/pais/chavez-zuloaga-y-el-banquero-vegan-a-mi-que-tengo-flor/>. Venezolana de Televisión. June 16, 2010. *Revelan que Banco Federal posee acciones de Globovisión* [Revealed: Federal Bank has shares in Globovisión]. Available [in Spanish] at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/37707>

¹⁰⁹³ Código ADN. June 16, 2010. "Chávez: 'Zuloaga y 'El Banquero': Vengan a mí, que tengo flor" Chávez: 'Zuloaga and the Banker: Come to me, I have a flower'. Available [in Spanish] at: <http://www.codigovenezuela.com/2010/06/noticias/pais/chavez-zuloaga-y-el-banquero-vegan-a-mi-que-tengo-flor/>. Venezolana de Televisión. June 16, 2010. *Revelan que Banco Federal posee acciones de Globovisión* [Revealed: Federal Bank has shares in Globovisión]. Available [in Spanish] at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/37707>

the concession, 20% of the shares went to a gentleman by the name of (...) Tenorio; he got 20 percent (...). Regrettably, the gentleman is now deceased. By law, these concessions are not inherited; in other words, what one leaves to one's children, one's heirs is one's own property, but radio frequencies are the property of the State. If anyone receives a concession it is for use of the radio frequency; when that person dies, the concession goes back to the State. We'll see to whom it goes now. So, adding all this together, 28.5% plus 20%, well, my friends that's a 48.5% stake in *Globovisión*."¹⁰⁹⁴

768. The same day the President made these statements, PSUV deputy Carlos Escarrá said the following on the *La Hojilla* television program:

"Mr. Zuloaga is being criminally prosecuted for a number of crimes that are violations of the Defense of the People Law, which makes hoarding and speculation criminal offenses. That law gives the State the authority to adopt precautionary measures, because the crime of which Mr. Zuloaga is accused affects all people (...). The State is fully within its rights to take over, as a precautionary measure, Mr. Zuloaga's shares in *Globovisión*, which would make the State the majority shareholder in *Globovisión*. Being a majority shareholder means having 55% of the shares; but taking over Mr. Zuloaga's shares would mean that the State would have roughly a 77% stake (...). This is far more than a 55% stake in that phantom business."¹⁰⁹⁵

769. Subsequently, in a blanket presidential radio and television broadcast delivered on July 2, 2010, the President again made reference to *Globovisión* and stated "Let's see who holds out longer: crazy *Globovisión* or Venezuela." He went on to say the following: "So some thought will have to be given to the question of what happens to that television channel; so, what's going to happen? The owners are out there, fugitives from justice. And I'm calling upon those who run that channel -who are not the owners- and especially those on the front lines, who are acting on the instructions from the owners -who are in hiding, as fugitives from justice-: you are undermining the country's stability on the owners' orders...; it's very dangerous to allow a television channel to incite a country. That's something we just can't allow."¹⁰⁹⁶

770. The facts recounted in the preceding paragraphs are troubling. According to the statements made by public officials, the State intends to seize control of the *Globovisión* channel. As previously mentioned, Article 13(3) of the American Convention prohibits any indirect methods or means intended to restrict freedom of thought and expression.

771. On November 20, 2010, the President gave *Venezolana de Televisión* an interview, in which he said the following about Guillermo Zuloaga:

"And he's not just a fugitive from justice; just yesterday he was at the United States Congress casting aspersions on his own country, his own government, this president; and he's the owner of that channel. As Head of State, I am calling upon Vice President Elías Jaua, the Prosecutor General, and the Supreme Court to do something. Because this is something very odd: here we have the owner of a television channel who is a criminal and a fugitive from justice. He appears at the United States Congress and says whatever he pleases against this government, and conspires against it. They're raising money to pay someone to kill me. I'm telling you this. Yes, Yes. They're paying someone; (...) I have it from very reliable

¹⁰⁹⁴ Statements made by President Hugo Chávez, available at: <http://www.youtube.com/watch?v=PWp2PQ6iKUQ>

¹⁰⁹⁵ *Venezolana de Televisión*. Programa La Hojilla. July 20, 2010. On file with the Office of the Special Rapporteur for Freedom of Expression and available at: <http://www.ojopelao.com/opinion/la-hojilla/18065-la-hojilla-del-dia-martes-20-de-julio-de-2010-video.html>

¹⁰⁹⁶ *Debate socialista*. Address by President Chávez. Available at: http://www.debatesocialistadigital.com/Discursos/discursos_2010/julio/acto_ahorrista_banco_federal.html

sources that they have 100 million dollars for the person who kills me. And he's one of them; the owner of a television channel that is at this very moment broadcasting in Venezuela. Do you realize what's happening? I'm asking the appropriate organs to investigate this, because something has to be done. Either the owner comes to defend his assets -show his face, as he should- or something will have to be done about that channel..."¹⁰⁹⁷

772. In an address to university students on November 21, 2010, the President said the following:

"Just three or four days ago representatives of the ultra right gathered in Washington. And the *Globovisión* owner was there at that meeting, one of them for sure. This is inexplicable; I still don't understand it, and hope to understand it better... In other words, here we have a Venezuelan who is a fugitive from justice. He is the owner of, among other things, a television channel that is on the air every day. Broadcasting from here! Right here in Caracas! And he's out there, a fugitive from justice. Oh, he also goes to Washington to say... well to say whatever he wants; to brand this soldier a tyrant; to say that Venezuela is a dictatorship and Venezuela is foundering; he is practically asking the Yankee imperialists to intervene in Venezuela. And he's the owner of a television channel that remains on the air. I've called upon the branches of government (...) the Office of the Prosecutor General, the Judicial Branch, the Vice President -our dear friend Elías Jaua- to see what we can do. Right? Because that gentleman fled the country, a fugitive from justice; he is a criminal and yet he has a television channel criticizing the government every day, misrepresenting the truth. This government and the Venezuelan State have to do something about this! Let's see what happens... But this situation cannot go on; it is a violation of the Constitution and the law. That gentleman should come here and show his face ... Face the Venezuelan courts. But no, he's there in Washington, asking the empire to intervene in his own country, which is very likely treason (...). I know that this matter is already under review, to see what we can do. Either this man shows up here or some action will have to be taken against his businesses, one of which is a television channel..."¹⁰⁹⁸

773. Because of these statements, in which the President asked State authorities to take measures against *Globovisión*, on November 22, 2010 the Office of the Special Rapporteur requested information from the Bolivarian Republic of Venezuela, asking that it report any measures taken with respect to *Globovisión* since the statements made by President Hugo Chávez; information concerning the status of the administrative proceedings that CONATEL previously instituted with respect to *Globovisión*; information about whether Venezuela's legal system allows administrative or judicial proceedings against media outlets because of their editorial stance or the political alignment of their shareholders; information about whether Venezuela's legal system allows intervention or measures against a media outlet because one of its shareholders is being prosecuted for reasons unrelated to the ownership of shares in that outlet; and, finally, the reasons that would explain why the President of the Republic would accuse the *Globovisión* shareholder Guillermo Zuloaga of the crimes of plotting to assassinate him and treason.

774. On November 24, 2010, the Bolivarian Republic of Venezuela responded to request for information made by the Office of the Special Rapporteur and observed the following: "Thus far, no measures of any kind have been taken against *Globovisión* television, inasmuch as each of the constitutionally established branches of government are independent of each other; hence, simple

¹⁰⁹⁷ President's interview with *Venezolana de Televisión* on November 20, 2010. Video available at: <http://www.youtube.com/watch?v=zpR-V-MQnEw>

¹⁰⁹⁸ Address delivered by the President of the Republic before a gathering of students. Video available at: <http://www.youtube.com/watch?v=EuSspn04hEg>. See also: Bloomberg. November 21, 2010. *Venezuela's Chavez Threatens 'Actions' Against Globovisión*. Available at: <http://www.bloomberg.com/news/2010-11-21/venezuela-s-chavez-threatens-actions-against-globovision.html>. El Universal. November 22, 2010. *Chávez gives orders to go after Zuloaga*. Available at: <http://www.eluniversal.com.mx/internacional/70630.html>

statements made by the President do not constitute an order that the other branches of government are bound to follow.” The State also noted that “just as Citizen Guillermo Zuloaga turned to the United States Congress to exercise his right to freedom of expression, Citizen President Hugo Chávez has the same right to answer the accusations made against his Government.” Lastly, it wrote that “the investigations instituted against citizen Guillermo Zuloaga have to do with alleged criminal offenses, and not with *Globovisión’s* editorial stance; the fact that he is a shareholder in that television channel does not make him immune to investigation or to any criminal, civil or administrative penalties that may be in order after an impartial investigation and a trial with all the guarantees of due process established in the Constitution and the law.”¹⁰⁹⁹

775. It is important to point out that, as the Office of the Special Rapporteur for Freedom of Expression observed in its 2009 Annual Report, “Public officials, like all people, are entitled to the right to freedom of expression in its diverse manifestations. Nevertheless, the exercise of this fundamental freedom acquires certain connotations and specific characteristics that have been recognized under the case law of the inter-American system.”¹¹⁰⁰ That case law has held that public authorities’ right of freedom of expression has certain strict limits that are the product of the particular obligations and responsibilities vested in officials who serve in public office. In effect, when public officials exercise their freedom of expression, either in compliance with their obligation under the law or as a simple exercise of their right to express themselves, “in making such statements the authorities are subject to certain restrictions such as having to verify in a reasonable manner, although not necessarily exhaustively, the truth of the facts on which their opinions are based, and this verification should be performed subject to a higher standard than that used by private parties, given the high level of credibility the authorities enjoy and with a view to keeping citizens from receiving a distorted version of the facts.”¹¹⁰¹

776. Furthermore, given the State’s obligations to ensure, respect and promote human rights, public officials have a duty to ensure that when exercising their right to freedom of expression, they are not disregarding fundamental rights. As the Inter-American Court wrote: “[T]hey should bear in mind that, as public officials, they are in a position of guarantors of the fundamental rights of the individual and, therefore, their statements cannot be such that they disregard said rights.”¹¹⁰² Therefore, public officials may not, for example, “violate the presumption of innocence by accusing media outlets or journalists of crimes that have not been investigated and judicially determined.”¹¹⁰³

777. In making statements, public officials must also be certain not to infringe upon the rights of those who contribute to the public discourse by expressing and publishing their thoughts, such as journalists and media outlets. Here, the Inter-American Court has indicated that public officials must bear in mind the context in which they express themselves, so that their utterances

¹⁰⁹⁹ Response received from the Bolivarian Republic of Venezuela on November 24, 2010. AGEV. 000485 (on file with the Office of the Special Rapporteur).

¹¹⁰⁰ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 200.

¹¹⁰¹ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131. See also: I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151

¹¹⁰² I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

¹¹⁰³ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter III (Inter-American Legal Framework of the Right to Freedom of Expression), para. 204.

do not constitute “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute to public deliberation through the expression and dissemination of their thoughts.” This duty of special care becomes all the more important in situations of heightened “social conflict, alterations of public order or social or political polarization, precisely because of the set of risks they may imply for certain people or groups at a given time.”¹¹⁰⁴

778. Public officials have a duty to ensure that their exercise of the right to freedom of expression does not interfere with or encumber the functions that other public officials are called upon to perform and in a manner detrimental to the rights of individuals, particularly in the case of the autonomy and independence of the courts. As the Inter-American Court has found: “public officials, particularly the top [g]overnment authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action,” as that would adversely affect the citizens’ right to an independent judiciary.¹¹⁰⁵

779. As the Inter-American Court held in the *Ríos* and *Perozo* cases, in contexts and periods of “very high political and social polarization and conflict”¹¹⁰⁶ it is especially imperative that public officials exercise prudence, so as not to create dangerous situations or further inflame the dangers already present.

780. Finally, the Office of the Special Rapporteur recalls that criminal prosecution for crimes unrelated to exercise of freedom of expression may constitute a violation of that right if it is shown that the investigation was motivated exclusively by the accused’s political stance or his or her exercise of the right to freedom of expression.

F. Legal actions instituted against organizations that defend human rights and freedom of expression

781. The IACHR and its Special Rapporteurship received information concerning accusations brought in Venezuela against Venezuelan organizations that defend human rights and, particularly, against organizations that defend the right to freedom of expression. The accusations concern the international funding they have received. The IACHR was informed that on July 12, the Minister of Public Works and Housing and director of CONATEL, Diosdado Cabello, publicly criticized the funding received by some nongovernmental organizations devoted to defending the right to freedom of expression. Minister Cabello based his criticism on an article written by Eva Golinger that appeared on a number of sites on the internet and was titled “United States finances Venezuelan media and journalists.”¹¹⁰⁷ According to the article, United States government agencies or agencies that receive funding from the US government were reportedly funneling monies to nongovernmental organizations in Venezuela. One day later, the Venezuelan group “*Periodismo*

¹¹⁰⁴ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 139; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 151.

¹¹⁰⁵ I/A Court H.R., *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131.

¹¹⁰⁶ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 121; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 132.

¹¹⁰⁷ United Socialist Party of Venezuela. July 12, 2010. *Cabello: Counter-revolutionary journalists receiving funding from abroad*. Available at: <http://www.psu.org.ve/temas/noticias/cabello-periodistas-contrarrevolucionarios-reciben-financiamiento-externo/>

Necesario” filed a complaint with the Office of the Prosecutor General asking it to investigate the organizations that are receiving funds.¹¹⁰⁸ Both President Chávez and the Venezuelan National Assembly asked for in-depth investigations into the financing of the organizations.¹¹⁰⁹ On August 16, Eva Golinger supplied documents to the Office of the Prosecutor General that allegedly showed the international funding that a number of Venezuelan organizations had allegedly received.¹¹¹⁰ However, as of the date this report went to press, the organizations under investigation had not been notified of what crime one commits by accepting funds from foreign agencies or governments to be used to promote and guarantee human rights. Nor have they been notified that an investigation is being conducted into their affairs.

782. The IACHR also received information on a series of televised messages and programs shown repeatedly by official media outlets that attempt to discredit and stigmatize the aforementioned nongovernmental organizations that are critical of the government.¹¹¹¹ Both *Espacio Público* and the *Instituto de Prensa y Sociedad*, two of the organizations in question, have publicly reiterated that the international funding they receive comes from multiple sources and that they are operating within the law.¹¹¹² On December 16, 2010, as mentioned previously, the Executive Director of *Espacio Público*, Carlos Correa, was in front of the National Congress when he was physically assaulted and threatened with death. With no police control, persons hurled an object at him and seriously injured him in the head.¹¹¹³ Correa had gone to the National Assembly to submit a petition with objections to some of the laws that the deputies were discussing at the time (see *infra*). The attack against Correa, following the campaign to smear and discredit him driven by the government via the public airwaves, demonstrates just how serious government campaigns of this kind can become. The Inter-American Court had already warned Venezuela about this possibility and pointed out that while these official addresses may not directly instigate violence, they nonetheless place the individuals attacked in the speeches in a situation of greater vulnerability vis-à-vis the

¹¹⁰⁸ Venezolana de Televisión. July 13, 2010. *Movimiento Periodismo Necesario asked that alleged U.S. funding of NGOs and the media be investigated*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/39519>; El Universal. July 13, 2010. *Investigations of IPYS and Espacio Público sought*. Available at: <http://www.vtv.gov.ve/noticias-econ%C3%B3micas/39519>

¹¹⁰⁹ On July 14, in a publicly televised event, President Hugo Chávez asked for an “in-depth” investigation of the complaint filed with the Office of the Prosecutor General concerning the funding of nongovernmental organizations. *Programa Venezolano de Educación-Acción en Derechos Humanos*. July 14, 2010. President Chávez asked for “in-depth” probe of U.S. funding of Venezuelan NGOs. Available at: <http://www.derechos.org.ve/proveaweb/?p=5140>. Similarly, on July 20, the Permanent Parliamentary Commission on Science, Technology and Social Communication presented a report on foreign funding of journalists and political parties in Venezuela, based on “declassified U.S. State Department documents.” The Chair of the Commission, Manuel Villalba, recommended that the investigation delve further “to ascertain whether activities that could be classified as crimes under the Constitution and other laws, are being carried out.” El Nacional. July 20, 2010. *National Assembly approves report on international funding of Venezuelan journalists*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/145966/Nacional/AN-aprueba-informe-contr-financiamiento-internacional-a-periodistas-venezolanos

¹¹¹⁰ Venezolana de Televisión. August 16, 2010. *Golinger files complaint with Prosecutor General concerning U.S. funding of opposition NGOs*. Available at: <http://www.vtv.gob.ve/noticias-nacionales/42054>

¹¹¹¹ International Coalition of Organizations for Human Rights in the Americas [*Coalición Internacional de Organizaciones por los Derechos Humanos en las Américas*]. August 12, 2010. *International Coalition condemns harassment of organizations and persons who defend human rights in Venezuela*. Available at: <http://www.derechos.org.ve/proveaweb/?p=5871>

¹¹¹² Instituto Prensa y Sociedad. July 2010. *Concerning our funding and the smear campaign against PIYS Venezuela*. Available at: <http://www.ipys.org.ve/documentos/En%20Venezuela.pdf>

¹¹¹³ El Nacional. December 16, 2010. *Carlos Correa struck on the head during NGO demonstration en route to the National Assembly*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/172370/Naci%C3%B3n/Carlos-Correa-result%C3%B3-agredido-en-manifestaci%C3%B3n-de-ONG-hacia-la-AN. El Universal. December 17, 2010. *Reporters without Borders condemns attack on Carlos Correa*. Available at: http://tiempolibre.eluniversal.com/2010/12/17/pol_ava_reporteros-sin-front_17A4868573.shtml

State and certain sectors of society.¹¹¹⁴ In the case of employees of a television channel harassed by Venezuelan authorities and labeled as the “opposition” and branded as “rebel”, “uninformed” or “destabilizing,” primarily in the presidential addresses, the Court held that this alone meant that this group of persons ran the risk of having their rights violated by private persons, not because of their personal qualities or condition but merely because of their status as employees of that channel.¹¹¹⁵

783. On July 23, the IACHR asked the Venezuelan State to supply information on the criminal investigations requested against the aforementioned persons and nongovernmental organizations, the grounds for requesting such inquiries, the status of the investigations and the laws that prohibited NGOs from receiving international funding. In its request for information, the IACHR reminded the Venezuelan State of the recommendation made to States that they “[r]efrain from restricting the means of financing of human rights organizations”¹¹¹⁶; of the leading role that human rights defenders play in the full achievement of the rule of law and in strengthening democracy, and that freedom of expression is incompatible with direct or indirect pressure brought to silence the work done by social communicators to report and inform.¹¹¹⁷

784. On February 22, 2011, the IACHR received the observations of the State of Venezuela on the IACHR’s Annual Report for 2010. There, in relation to this issue, the State observed: “It is true that the Venezuelan State has questioned NGOs that receive funding from foreign governments. For this reason, a law was passed that forbids this kind of financing. The Venezuelan State has corroborated that the NGOs from Venezuela supported the coup d’état of April 11, 2002 [and] none of them presented a request for precautionary measures to the Commission to guarantee the life of President Chávez.”¹¹¹⁸

G. The use of blanket presidential broadcasts [*cadena presidenciales*]

785. The IACHR and the Office of the Special Rapporteur have acknowledged the authority that the President and high-ranking State officials have to use the media to inform the public on issues of vital public interest and those that urgently need to be reported by way of the independent communications media. In effect, as the Inter-American Court has stated, “making a statement on public interest matters is not only legitimate but, at times, it is also a duty of the state authorities.”¹¹¹⁹

786. Exercise of this authority, however, is not absolute. The information that the head of state conveys to the citizenry in the blanket presidential broadcasts must be that strictly necessary

¹¹¹⁴ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 145; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 157.

¹¹¹⁵ I/A Court H.R., *Case of Ríos et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 194, para. 146; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, para. 158.

¹¹¹⁶ IACHR. Report on the situation of human rights defenders in the Americas, para. 342, recommendation 19. OEA/Ser.L/V/II.124. Doc. 5 rev.1. March 7, 2006.

¹¹¹⁷ IACHR. Request to the Bolivarian Republic of Venezuela seeking information. Ref: Investigation launched against nongovernmental organizations. July 23, 2010.

¹¹¹⁸ Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

¹¹¹⁹ I/A Court H.R. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 5, 2008, Series C No. 182, para. 131; IACHR. *2008 Annual Report*. Volume II: 2008 Annual Report of the Office of the Special Rapporteur for Freedom of Expression. Chapter III: Inter-American legal framework of the right to freedom of expression, para. 202. OEA/Ser.L/V/II.134. Doc. 5 rev. 1. February 25, 2009. Available at: <http://www.IACHR.oas.org/annualrep/2008eng/INFORME%20ANUAL%20RELE%202008.pdf>

to address urgent needs for information in matters that are clearly and genuinely of public interest, and during the time strictly necessary to relay the information. Applying international standards, both the IACHR and its Special Rapporteurship,¹¹²⁰ as well as certain domestic agencies of States parties to the American Convention, have indicated that “it is not just any information that gives the President of the Republic the authority to interrupt regular programming; rather, it is information that the general public wants or needs to know about issues that may be of importance to the public and really essential for citizens to be truly able to participate in collective life.” Principle 5 of the Declaration of Principles of Freedom of Expression explicitly provides that “Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.”

787. In 2009, the IACHR received information from civil society organizations and the academic sector indicating that between February 1999 and July 2009 the Venezuelan communications media transmitted a total of 1,923 blanket presidential broadcasts, equivalent to 1,252 hours and 41 minutes, in other words 52 days of uninterrupted broadcasting of presidential messages.¹¹²¹ The trend held in 2010. On February 2, 2010, President Hugo Chávez went on the airwaves with his 2000th blanket presidential broadcast.¹¹²²

788. On December 22, 2009, the Bureau of Social Responsibility of the Bolivarian Republic of Venezuela issued an Administrative Order establishing the Technical Standard on Domestic Audiovisual Production Services, according to which cable television channels that have less than 70% international programming would be regarded as Domestic Audiovisual Production Services and would be required to carry government messages or addresses free of charge, in keeping with the provisions of the Law on Social Responsibility in Radio and Television (*Ley Resorte*).¹¹²³

789. On June 17, 2010, one of the five electoral rectors on the National Electoral Council, Vicente Díaz, questioned the increase in the frequency and duration of the presidential broadcasts, as the September 26 parliamentary elections approached. According to the information received, Mr. Díaz publicly stated that the blanket presidential broadcasts would serve to promote the party in power and the intent might be to influence the electorate.¹¹²⁴

790. The Office of the Special Rapporteur recalls that any obligation requiring a media outlet to broadcast content that it has not itself selected must be applied in strict accordance with

¹¹²⁰ CIDH. *Democracy and Human Rights in Venezuela*. December 30, 2009, Chapter IV, para. 411. Available at: <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09CHAPIVENG.htm>

¹¹²¹ IACHR. 2009 Annual Report of the Inter-American Commission on Human Rights. *Report of the Special Rapporteur for Freedom of Expression*. Chapter II, Para. 572. OEA/Ser.L/V/II. Doc.51, December 30, 2009. Available at: <http://www.cidh.oas.org/pdf%20files/Annual%20Report%202009.pdf>

¹¹²² Reporters without Borders. February 3, 2010. *Presidential speeches should have to be broadcast by just one station*. Available at: http://en.rsf.org/venezuela-presidential-speeches-should-have-03-02-2010_36299

¹¹²³ CONATEL. Administrative Order 01/09 of December 22, 2009. Technical Standard on Domestic Audiovisual Production Services. Available at: http://imagenes.globovision.com/archivos/136439_2009_diciembre_g.o_39.333.pdf

¹¹²⁴ El Nacional. June 17, 2010. *Vicente Díaz complains that presidential broadcasts are being increased to help the government party's campaign*. Available at: http://el-nacional.com/www/site/p_contenido.php/comentar/p_contenido.php?q=nodo/141940/Nacional/Vicente-D%C3%ADaz-denuncia-incremento-de-cadenas-para-favorecer-campa%C3%B1a-oficial; Venevisión. *National Electoral Council Dean Vicente Díaz complains of notable increase in blanket presidential broadcasts*. Available at: <http://www.youtube.com/watch?v=4RRChK90aOQ>; Informe21.com. June 17, 2010. *Electoral Dean Vicente Díaz asks for an investigation of the increase in blanket presidential broadcasts*. Available [at: <http://informe21.com/politica/rector-vicente-diaz-pide-investigar-incremento-las-cadenas-presidenciales>

the requirements set forth in Article 13 of the American Convention, in order for a limitation on the right to freedom of expression to be deemed acceptable.

791. Based on the foregoing considerations, the Office of the Special Rapporteur again urges the State to adapt its legislation on presidential broadcasts so that it conforms to the standards herein described.

792. On February 22, 2011, the IACHR received the observations of the State of Venezuela to the IACHR's 2010 Annual Report. There, the State of Venezuela indicated that presidential broadcasts have a legal basis in article 58 of the Constitution¹¹²⁵ of the Bolivarian Republic of Venezuela.¹¹²⁶

H. The of right of access to information

1. The National Situational Study Center

793. On June 1, 2010, the President of the Republic created the National Situational Study Center [Centro de Estudio Situacional de la Nación] (hereinafter, "CESNA") by Decree 7,454 (Official Gazette 39,436 of June 1, 2010).¹¹²⁷ CESNA was created as a decentralized organ of the Ministry of the People's Power for Domestic Relations and Justice. The Center will have administrative and financial autonomy and will be headed by a president who shall be an appointee of the Minister of the People's Power for Domestic Relations and Justice, with the President's authorization.¹¹²⁸

794. The purpose of this agency, created invoking national security arguments,¹¹²⁹ is "to constantly compile, process and analyze information from the various situation rooms or similar bodies belonging to institutions of the State and of society, on any issue of national interest. The goal is to provide analytical and informational support to the Office of the Presidency, keeping it supplied with the up-to-date information needed to facilitate strategic decision-making and thus protect the Nation's vital interests and objectives, and to facilitate execution of public policy and fulfillment of the State's essential functions."¹¹³⁰

795. Article 9 of the Decree gives CESNA the authority to classify as "confidential, classified or for limited distribution, any piece of information, fact or circumstance that the National

¹¹²⁵ Article 58 of the Constitution states: "Communication is free and plural, according to the duties and responsibilities established by law. Every person is entitled to timely, truthful and impartial information, with no censorship, in accordance with the principles established in this Constitution, as well as to reply and rectify whenever [the person] is harmed by inaccurate or harmful information. Boys, girls and teenagers have a right to receive appropriate information for their holistic development."

¹¹²⁶ Observations by the State of Venezuela to the draft of the General Report on the Situation of Human Rights in Venezuela, 2010. Communication of February 22, 2011, observations on the section on Freedom of Thought and Expression.

¹¹²⁷ Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Available [in Spanish] at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹¹²⁸ Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Articles 1 and 4. Available [in Spanish] at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹¹²⁹ See in this regard the *consideranda* to Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2> (where it is asserted that national security "is an essential authority and responsibility of the State" and that the National Executive has exclusive authority over "the collection, classification and dissemination of those matters that have a direct bearing on the planning and executions of operations that concern the security of the Nation.")

¹¹³⁰ Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Article 3. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

Situational Study Center learns of or processes in discharging its functions...¹¹³¹ A number of Venezuelan civil society organizations challenged this provision, arguing that it could “lead to abuses on the part of CESNA officials” and that it implies “serious restrictions [on the exercise of the right to freedom of thought and expression] with multiple adverse consequences.”¹¹³²

796. National security objectives are most certainly legitimate, as expressly stated in Article 13(2)(b) of the American Convention. However, the concept of “national security” used in regulations that restrict access to public information and authorize that information to be classified as confidential, must be compatible with the standards of openness and transparency essential in a democratic society.¹¹³³ In effect, in order for a restriction on access to information to be valid, the State must show that disclosing certain information in the State’s possession would do certain, objective, serious and immediate harm to a democratic state’s national security.¹¹³⁴ In this specific case, the provision speaks of generic national security purposes, without specifying the circumstances and conditions under which a piece of information that in principle should be public, is legitimately withheld from the public. Nor does the regulation make any reference to or cite a law that spells out those circumstances and conditions.

797. Furthermore, Article 9 of Decree 7,454 authorizes the president of CESNA to classify as confidential any type of “information, fact or circumstance of which he/she learns in the course of performing his/her functions or that is processed at the National Situational Study Center ...”¹¹³⁵ The authorities given to CESNA are a source of concern, because it has broad discretionary powers to establish exceptions to the exercise of freedom of information and access to information, exceptions that, as the case law of the inter-American system has held, may only be established by law, both in the formal and material sense, written in precise and unambiguous language. The relevant definition in this regard is the one that the Inter-American Court established in Advisory Opinion OC-6/86, where it wrote that “the word ‘law’ is not just any legal norm, but rather a general provision enacted for the general welfare by a legislative body provided for in the Constitution and democratically elected according to procedures set forth in the Constitution.”¹¹³⁶ If the State cannot determine by decree the conditions under which certain information can be classified, it can hardly delegate that function to an administrative official, as it appears to do in article 9 of decree 7,454.

798. It must be recalled that under Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression, “[a]ccess to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

¹¹³¹ Decree 7,454 from the Office of the President of the Republic. Official Gazette 39,434 of June 1, 2010. Article 9. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹¹³² Espacio Público. July 15, 2010. *Espacio Público, CNP and SNTP demand repeal of CESNA decree*. Available at: <http://www.espaciopublico.org/index.php/noticias/1-libertad-de-expresi/825-espacio-publico-cnp-y-sntp-exigen-derogatoria-del-decreto-del-cesna->

¹¹³³ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter IV (The right of access to information), paras. 52, 57, 59. See also, IACHR, *Final written pleadings to the Inter-American Court in the Case of Julia Gomes Lund et al (Guemilha do Araguaia)*.

¹¹³⁴ See in this regard, IACHR, *Final written pleadings to the Inter-American Court in the Case of Julia Gomes Lund et al (Guemilha do Araguaia)*.

¹¹³⁵ Decree 7,454 from the Office of the President of the Republic, Article 9. Official Gazette 39,434 of June 1, 2010. Available at: <http://www.tsj.gov.ve/gaceta/Junio/162010/162010-2863.pdf#page=2>

¹¹³⁶ I/A Court H.R., *Case of Claude Reyes et al*. Judgment of September 19, 2006. Series C No. 151, para. 89.

2. Judgment 745 of the Constitutional Chamber of the Supreme Court

799. On July 15, 2010, the Constitutional Chamber of the Supreme Court decided an action seeking constitutional *amparo*. The action was brought by the Public Arena Civil Association [*Asociación Civil Espacio Público*] to challenge the refusal of the Office of the Comptroller General of the Bolivarian Republic of Venezuela to turn over information concerning the “base salary and other benefits that the Comptroller General of the Republic receives and the remunerations received by the rest of the staff at the Office of the Comptroller General of the Republic...”¹¹³⁷ By a majority vote, the Constitutional Chamber of the Supreme Court decided to deny the petition seeking *amparo* relief on the grounds that the request to have access to that information violated the right to privacy of the public officials.

800. As there was no specific law governing this matter, the Constitutional Chamber of the Supreme Court established binding jurisprudence to the effect that anyone requesting information of this type must “expressly state the reasons why the information is needed or purposes to which it will be used” and must prove that “the amount of information being requested is commensurate with the use to which the requested information will be put.”¹¹³⁸

801. The jurisprudence established by the Constitutional Chamber of the Supreme Court in its ruling of July 15, 2010, disregards the principle of “maximum disclosure” which must govern access to information in the possession of the State. In effect, in its case law the Inter-American Court has established that “in a democratic society, it is essential that the State authorities are governed by the principle of maximum disclosure.”¹¹³⁹ The IACHR has also held that under Article 13 of the American Convention, the right of access to information must be governed by the principle of maximum disclosure.¹¹⁴⁰

802. The Inter-American Court established that the principle of maximum disclosure “establishes the presumption that all information is accessible, subject to a limited system of exceptions.”¹¹⁴¹ That limited system of exceptions must be set forth by law; in the event of any doubt or gap in the law, then access to information should be allowed. The Court also wrote that, living in a state, every person has a legitimate interest in knowing how public resources are being used. Therefore, persons interested in knowing how much a civil servant earns need not show and demonstrate what their specific interest in the information is.

803. Principle 4 of the IACHR’s Declaration of Principles on Freedom of Expression provides that “Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right.”

¹¹³⁷ Constitutional Chamber of the Supreme Court of Justice. Judgment 745 of July 15, 2010. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html>

¹¹³⁸ Constitutional Chamber of the Supreme Court of Justice. Judgment 745 of July 15, 2010, Section V. Operative paragraph two. Available [in Spanish] at: <http://www.tsj.gov.ve/decisiones/scon/Julio/745-15710-2010-09-1003.html>

¹¹³⁹ I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 92.

¹¹⁴⁰ IACHR. Arguments made to the Inter-American Court of Human Rights in the case of *Claude Reyes et al.* Transcribed in: I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 58 c).

¹¹⁴¹ I/A Court H.R., *Case of Claude Reyes et al.* Judgment of September 19, 2006. Series C No. 151, para. 92. See also, the 2004 Joint Declaration of the UN Rapporteur for Freedom of Expression, the OAS Rapporteur for Freedom of Expression and the OSCE Representative on Freedom of the Media, where they explained that the principle of maximum disclosure establishes “a presumption that all information is accessible subject only to a narrow system of exceptions.”

I. Criminalization of offenses against honor and the *Case of Usón Ramírez v. Venezuela*

1. The Penal Code

804. In its 2009 Annual Report, the Office of the Special Rapporteur made reference to the March 2005 changes in the Penal Code, which expanded the scope of the provisions on protection of state officials' honor and reputation against criticisms aired publicly that may be deemed offensive to them.¹¹⁴² Prior to the 2005 reform, the President of the Republic, the Executive Vice President, the ministers of government, the governors, the Mayor of the Caracas Metropolitan District, the justices of the Supreme Court, the chairpersons of the Legislative Councils and the superior court judges had the authority to institute criminal proceedings for the crime of *desacato* [disrespect]. The amendment of the law added the following to the list: the members of the National Assembly, officials on the National Electoral Council, the Prosecutor General, the Attorney General, the Ombudsperson, the Comptroller General and the members of the Military High Command.¹¹⁴³ The March 2005 reform retained the article criminalizing the offense known as "*vilipendio*" (contempt or scorn), which is a kind of offense against the institutions of the State.¹¹⁴⁴

805. The 2009 Annual Report criticized the fact that these laws were still on the books. The Commission and the Special Rapporteur pointed out that, as the Inter-American Court has stated, "defense of freedom of expression includes the protection of affirmations that could be offensive, disturbing or unpleasant for the State, since this is the requirement of a democratic order

¹¹⁴² In its 2005 Annual Report, the IACHR observed that: "The Commission and the Office of the Special Rapporteur also express their concern over the March 2005 amendment to the Criminal Code. The Office of the Special Rapporteur believes that this amendment strengthens and expands a legal framework that criminalizes forms of expression protected by the American Convention, by both journalists and private citizens. The Office of the Special Rapporteur observes that the amendment expands the reach of *desacato* laws in terms of the number of public officials protected, and in terms of content. It also observes that the new provisions increase the penalties for *desacato* and other forms of defamation, libel, instigation, outrage, and slander, among other criminal offenses. It also criminalizes new types of protest against the government, in both the public and private spheres, and increases the penalties for violating these laws." IACHR. *2005 Annual Report*. Chapter IV, para. 357. Available at: <http://www.IACHR.oas.org/annualrep/2005eng/chap.4d.htm>. See also: IACHR. *2005 Annual Report: Volume II: Annual Report of the Special Rapporteur for Freedom of Expression*. Chapter II, para. 227. Available at: <http://www.IACHR.oas.org/relatoria/showarticle.asp?artID=662&IID=1>; Office of the Special Rapporteur – IACHR, March 28, 2005. *Press Release No. 118/05*. Available at: <http://www.IACHR.org/relatoria/showarticle.asp?artID=402&IID=1>; IACHR. *Report on the Situation of Human Rights in Venezuela*, paragraphs 451-466. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.IACHR.oas.org/countryrep/Venezuela2003eng/chapter6.htm>

¹¹⁴³ "Article 147. One who offends by word or in writing, or in any other manner disrespects the President of the Republic or whoever is taking his or her place, shall be punished with imprisonment of six to thirty months if the offense was grave, and with half that period if it was minor.//The penalty will be increased by one-third if the offense was committed publicly".

"Article 148. When the acts specified in the previous article are carried out against the person of the Executive Vice President of the Nation, one of the Judges of the Supreme Court of Justice, a Cabinet Minister, a Governor of a state, a deputy of the National Assembly, the Metropolitan Mayor, a dean of the National Electoral Council, the Human Rights Ombudsman, the Solicitor General, the Attorney General, the Comptroller General of the Republic, or some members [sic] of the High Military Command, the penalty indicated in that article will be reduced to one half, and to one third in the case of municipalities". Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available at: <http://www.ministeriopublico.gob.ve/web/guest/codigo-penal>

¹¹⁴⁴ "Article 149. Whoever publicly denigrates the National Assembly, the Supreme Court of Justice, or the Cabinet, or the Council of Ministers, as well as one of the legislative councils of the states or one of the superior courts, shall be punished with imprisonment for a period of fifteen days to ten months.

The penalty will be half that period in the case of those who commit the acts referred to in this article with respect to municipal councils.

The penalty will be increased by half if the offense was committed while one of the enumerated bodies was exercising its official functions". Penal Code of Venezuela. Official Gazette No. 5768E of August 13, 2005. Available [in Spanish] at: <http://www.ministeriopublico.gob.ve/web/guest/codigo-penal>

founded on diversity and pluralism. In addition, the doctrine and jurisprudence have been consistent and repetitive in indicating that critical expressions that question public authorities or institutions deserve a greater –not lesser- protection in the inter-American system. This has been affirmed by the Inter-American Court in each and every case resolved in the area of freedom of expression.”¹¹⁴⁵

806. Indeed, the IACHR and the Office of the Special Rapporteur have repeatedly voiced their objections to the existence of laws criminalizing *desacato* [disrespect], such as those just described. The Commission has echoed the conviction that *desacato* laws “conflict with the belief that freedom of expression and opinion is the ‘touchstone of all the freedoms to which the United Nations is consecrated’ and ‘one of the soundest guarantees of modern democracy’.”¹¹⁴⁶ In this regard, *desacato* laws are an unlawful restriction on freedom of expression, because (a) they do not serve a legitimate end under the American Convention, and (b) are not necessary in a democratic society.

807. Therefore, as the IACHR did in its 2003 *Report on the Situation of Human Rights in Venezuela*, the Office of the Special Rapporteur once again concludes that Venezuela’s criminal laws contain provisions that are incompatible with Article 13 of the American Convention¹¹⁴⁷ and therefore urges the Venezuelan State to take urgent action to bring its criminal laws into compliance with the aforementioned standards on *desacato* and *vilipendio*.

2. The Organic Code of Military Justice

808. Article 505 of the Organic Code of Military Justice provides that: “Whosoever in any way defames, insults or disparages the National Armed Forces or any of its units, shall face a term of three to eight years imprisonment.”¹¹⁴⁸ Establishing criminal penalties for someone who expresses views that can “offend” or “disparage” institutions is contrary to international standards on freedom of expression, because it is a needless restriction in a democratic society.

809. As happens in the case of laws criminalizing disrespect, contempt, defamation, and slander, the language of Article 505 is so imprecise as to make it impossible to foresee with any degree of certainty precisely what behaviors can be punishable offenses. The text of the provision blurs the line between the permissible exercise of freedom of expression with respect to the armed forces and the realm in which the legal prohibition applies. Since there can be no certainty as to what behavior or conduct is deemed to be unlawful, any statement that someone can interpret as criticism of the Armed Forces could be covered in the description of the offense in the article in question.

810. The Inter-American Court of Human Rights addressed this specific provision in the case of *Usón Ramírez v. Venezuela*, decided in late 2009. In that case, the Court was called upon to examine the case of a retired military officer, Francisco Usón Ramírez, who, while appearing on a television program, had expressed opinions critical of the Armed Forces in a case involving a group

¹¹⁴⁵ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur on Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), para. 550.

¹¹⁴⁶ IACHR. 1994 Annual Report. Chapter V: Report on the Compatibility of the *Desacato* Laws with the American Convention on Human Rights. OEA/Ser. Doc. 9 rev., February 17, 1995, Title I: Introduction. L/V/II.88. doc. 9 rev. February 17, 1995. Available at: <http://www.IACHR.oas.org/annualrep/94eng/chap.5.htm>

¹¹⁴⁷ IACHR. *Report on the Situation of Human Rights in Venezuela*, para. 452. OEA/Ser.L/V/II.118. Doc. 4 rev. 1. October 24, 2003. Available at: <http://www.IACHR.oas.org/countryrep/Venezuela2003eng/chapter6.htm>

¹¹⁴⁸ It is important to point out that this was the article under which Francisco Usón Ramírez was convicted and sentenced to six years and five months in prison. I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 38.

of soldiers who had been severely injured in a military institution. Analyzing Article 505 of the Organic Code of Military Justice, the Inter-American Court held that the provision in question “does not establish the elements that may offend, slander, or disparage, and it does not specify whether it is important that the active subject attribute facts that damage the honor or whether it suffices simply to give an offensive or disparaging opinion, without attributing any illicit acts, for example, for the imputation of the crime.”¹¹⁴⁹ The Court therefore considered that Article 505 “is vague and ambiguous and it does not specify clearly the typical context of a given criminal behavior, which could lead to broad interpretations, allowing the behaviors in question to be penalized incorrectly using the criminalized offense of slander.”¹¹⁵⁰ It therefore found that the article was incompatible with the American Convention. The Court also found that in this particular case, the use of criminal sanction was unsuitable, unnecessary and disproportionate in a democratic society.¹¹⁵¹

811. In its ruling the Court ordered, *inter alia*, that within the space of one year, the State was to vacate the entire military criminal trial instituted against the victim and, within a reasonable period of time, amend Article 505 of the Organic Code of Military Justice. However, as of the date this report went to press, the legal provision remains in effect.

J. Amendments and bills in the National Assembly

1. Regulation of Telecommunications

812. Telecommunications in Venezuela are regulated, fundamentally, by the Organic Law on Telecommunications and the Law on Social Responsibility in Radio, Television and Electronic Media. These provisions, which were discussed in previous reports, remain in force and in 2010 CONATEL expanded their application to new subjects, such as cable television and Internet providers and users that utilize the internet for content distribution.

813. The original law gave CONATEL and the Bureau of Social Responsibility the authority to regulate the telecommunications sector and impose sanctions.¹¹⁵² In August 2010, CONATEL was placed under the Office of the Executive Vice President of the Republic.¹¹⁵³ In the 2009 Annual Report, the IACHR and the Office of the Special Rapporteur reiterated their concern over the laws in force, writing that “the search for a significant degree of impartiality, autonomy and independence for the organs charged with regulating telecommunications in a country arises from the duty of the states to guarantee the highest degree of pluralism and diversity of communications media in the public debate. The necessary safeguards for avoiding the cooptation of the communications media by the political and economic powers are nothing other than a functional and institutional guarantee to promote the formation of free public opinion, fluidity and depth in social communications processes, and the exchange and publication of information and ideas of all kinds. The guarantees

¹¹⁴⁹ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 56.

¹¹⁵⁰ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, para. 56.

¹¹⁵¹ I/A Court H.R., *Case of Usón Ramírez v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2009. Series C No. 207, paras. 59 *et seq.*

¹¹⁵² The relevant laws and regulations are explained in greater detail in the 2009 Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere), paragraphs 505 *et seq.*

¹¹⁵³ National Assembly of the Bolivarian Republic of Venezuela. *Decree 7,588 from the Office of the President of the Republic* (Official Gazette No. 39,479 of August 3, 2010). Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_download&gid=2500&Itemid=250&lang=es

of impartiality and independence of the enforcement entity ensure the right of all inhabitants that the communications media will not be, by indirect means, controlled by political or economic groups.”¹¹⁵⁴

814. Again in its 2009 Annual Report, the IACHR urged the state to modify the text of Article 29 of the Law on Social Responsibility,¹¹⁵⁵ to subject the interpretation of the provisions on sanctions to the regional standards mentioned there, and to establish institutional, organic and functional guarantees to ensure the independence of the authorities enforcing the laws on broadcasting with the aim of ensuring that the opening of administrative proceedings and the eventual imposition of sanctions in the framework of this instrument are the responsibility of impartial organs that are independent of the Executive Branch. To date, however, Article 29 is still in effect and, as will be described below, CONATEL has expanded the scope of its authorities.

815. In early December 2010, the National Assembly began discussion of a series of bills that have the potential to seriously impact the observance and exercise of human rights. As of the date this report went to press, some of those bills had been passed, while others were on the way to being passed. Of particular concern where freedom of expression is concerned is a law, written in vague language, that gives broad legislative authority to the Executive Branch. Others of concern are those that unduly restrict the right to freedom of thought and expression and another aimed at limiting the activities of social organizations that defend and promote human rights. The National Assembly took less than a week to discuss and vote on these legislative initiatives, since the President let it be known that he wanted them passed before the end of 2010, in other words, before the end of the legislative term, which is December 15, 2010.¹¹⁵⁶ In effect, President Hugo Chávez Frías said that “there is a set of laws that I need and want to have enacted quickly, by Christmas; these are decrees, emergency laws for housing, urban and rural land. They are special laws.”¹¹⁵⁷

816. One of the laws that the National Assembly passed was the “Enabling Law” that vests the Executive Branch with the authority to exercise legislative functions for a period of twelve months. That law, enacted on December 18, 2010, is written in sweeping and ambiguous language, which implies a delegation of authority that is incompatible with the American Convention. In effect, as the Commission and its Special Rapporteurship for Freedom of Expression stated: “[t]he principle

¹¹⁵⁴ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), paragraphs 535 *et seq.*

¹¹⁵⁵ IACHR. 2009 Annual Report. Volume II: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter II (Evaluation of the state of freedom of expression in the hemisphere), para. 538. Under Article 29 of the Law on Social Responsibility, providers of radio and television services that “promote, justify or incite to war; that promote, defend or incite disruption of law and order; promote, defend or encourage crime; are discriminatory; promote religious intolerance; [or] are inimical to the Nation’s security” may face a penalty of suspension for a period of 72 hours or have their operating license revoked for up to five years in the case of repeat offenders. Heretofore, the Commission has commented on the dangers that provisions like Article 29 pose [which] “set very punitive sanctions for violating restrictions that are defined in vague or generic language.” Cf. IACHR. 2008 Annual Report. Chapter IV. Human Rights Developments in the Region, para. 381. Available at: <http://www.IACHR.oas.org/annualrep/2008eng/Chap4eng.htm>

¹¹⁵⁶ Article 219 of the Constitution of the Bolivarian Republic of Venezuela reads as follows: “Article 219. The first regular legislative session of the National Assembly shall begin, without advance notice, on January fifth of each year or as soon thereafter as possible, and will last until August 15.// The second session shall begin on September 15 or as soon thereafter as possible and will end on December 15.” Available at: <http://www.tsj.gov.ve/legislacion/enmienda2009.pdf>

¹¹⁵⁷ *El Nacional*. December 10, 2010. Chávez solicitará Habilitante a la AN para aprobar leyes extraordinarias en navidad [Chávez will ask NA for Enabling Law in order to approve special laws at Christmas]. Available at: http://el-nacional.com/www/site/p_contenido.php?q=nodo/171254/Naci%C3%B3n/Ch%C3%A1vez-solicitar%C3%A1-Habilitante-a-la-AN-para-aprobar-leyes-extraordinarias-en-navidad. *Noticiero Digital*. December 10, 2010. Chávez solicitará una Ley Habilitante y pide “celeridad” a la AN [Chávez will seek an Enabling Law and is asking the NA to work quickly]. Available at: <http://www.noticierodigital.com/2010/12/chavez-solicitar-ley-habilitante-a-la-an/>

of legality, which must be respected when imposing restrictions on human rights, is jeopardized by permitting the delegation of legislative authority in terms that are overly broad and that could extend to criminal matters. The frequent concentration of executive and legislative functions in a single branch of government, in the absence of appropriate controls and constraints set by the Constitution and the Enabling Law, allows interference in the realm of rights and freedoms.”¹¹⁵⁸

817. From the standpoint of freedom of expression, it is troubling that Article 1(2)(b) of the law gives the President the authority to “enact and amend regulatory provisions in the telecommunications and information technology sector, [and with regard to] the public mechanisms of informatics, electronic and telematic communications.”¹¹⁵⁹ This provision gives the Executive Branch the authority to modify any telecommunications regime without having to go through the National Assembly, thereby preventing a complex system of laws and regulations –such as the one governing broadcasting- from being discussed and debated in the legislative branch. This type of broad, generic delegation of authority allows the executive branch to act suddenly, without the time necessary to reach a reasonable consensus, and modify a provision on the subject from one moment to the next, even those related to control of content, bans, sanctions and procedures that affect the communications media subject to the State’s control. The mere existence of this possibility could have a chilling effect on freedom of expression incompatible with the American Convention.

818. That same week, the National Assembly passed an amendment to the *Law on Social Responsibility in Radio and Television*, now called the *Law on Social Responsibility in Radio, Television and Electronic Media*. The Chair of the National Assembly’s Commission on Science, Technology and Social Communications, Manuel Villalba, said that the law does not regulate the Internet and observed that it must be interpreted according to the Constitution, which guarantees freedom of expression and free and pluralistic communications, bans prior censorship, and provides for subsequent imposition of liability. According to Deputy Villalba, “[t]he idea is to be able to put this informative medium to good use, while protecting the integrity of the most vulnerable among us, namely children and adolescents.”¹¹⁶⁰

819. As will be briefly examined later in this report, the new law increases the likelihood of interference in Internet content and applications;¹¹⁶¹ it adds more conditions to be able to operate as a domestic cable television channel and regulates cable and noncable content;¹¹⁶² and it adds to

¹¹⁵⁸ IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

¹¹⁵⁹ Law authorizing the President of the Republic to issue decrees with the rank, value and force of law on the subjects delegated to him. Approved by the National Assembly on December 16, 2010. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2783&tmpl=component&format=raw&Itemid=185&lang=es

¹¹⁶⁰ El Universal. December 21, 2010. *New Ley Resorte said to limit internet violence*. Available at: http://internacional.eluniversal.com/2010/12/21/eco_ava_afirman-que-nueva-le_21A4883573.shtml. Telesur. December 22, 2010. *Venezuela’s Media Law enacted*. Available at: <http://www.telesurtv.net/secciones/noticias/86202-NN/promulgada-ley-de-medios-en-venezuela/>

¹¹⁶¹ See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Article 1 reads as follows: The provisions of the present law shall apply to any text, image or sound that is disseminated and received within the territory of the Bolivarian Republic of Venezuela, whether it be by way of: (...) 4. Electronic media.”

¹¹⁶² See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&format=raw&Itemid=185&lang=es. Article 6 establishes four content types for rating programs: language, health, sex and violence. The regulation defines various types of content whose broadcasting by the communications media, mainly the

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the list of prohibitions by introducing a number of extremely broad, far-reaching and ambiguous restrictions.¹¹⁶³ The new law also makes the penalties for violating the bans or prohibitions much stiffer.¹¹⁶⁴ The amendment does not incorporate any of the recommendations the Commission has made in its various reports, as it offers no new guarantees in proceedings in which penalties are imposed, it does not make the administrative bodies charged with imposing those penalties any more autonomous, and it does not limit the scope of the pre-existing prohibitions, which were already sweeping and ambiguous.¹¹⁶⁵

820. As for the added content restrictions, the bill introduces new prohibitions on conduct using vague and ambiguous language. For example, it prohibits any media outlet, even those on the Internet, regardless of the format, from circulating statements or information that “incite or promote hatred or intolerance”, “cause anxiety and fear in the citizenry”, “ignore the legally constituted authorities,” or “incite or encourage disobedience of the established legal system.”¹¹⁶⁶ These behaviors are extremely difficult to define, leaving the persons (the broadcasters or carriers of these messages) uncertain as to just how far their right to freedom of expression goes and what ideas or information cannot be broadcast by a cable or noncable communications medium or even over the Internet. For these reasons, and as the Commission has explained, laws and regulations of this type give the authorities charged with enforcing them enormous latitude and discretion to a degree that is incompatible with full observance of the right to freedom of thought and expression.¹¹⁶⁷

821. As previously observed, the new law authorizes the State to restrict access to Internet content or web sites that, in its judgment, violate the ambiguous provisions of the law.¹¹⁶⁸ Specifically, the law authorizes CONATEL to order electronic media “to refrain from circulating the

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audiovisual media, is subject to prohibitions and restrictions that confine that content to certain times of the day, which are spelled out in Article 7.

¹¹⁶³ See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es. Article 27 provides that: “The radio, television and electronic media services are not permitted to broadcast messages that: // 1. Incite or promote hatred and intolerance on grounds of religion, politics, gender, racism or xenophobia. // 2. Incite or promote and/or justify or defend crime. // 3. Constitute war propaganda. // 4. Cause public fear or unrest. // 5. Ignore the legally constituted authorities. // 6. Induce killing. // 7. Incite or encourage disobedience of the established legal system.”

¹¹⁶⁴ See Law on Social Responsibility in Radio, Television, and Electronic Media. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es. Indeed, Article 29 of the law establishes a fine for violations whereas under the previous version of the law, the penalty was simply to make airtime available for public interest announcements and the like.

¹¹⁶⁵ See in this regard, IACHR. Democracy and Human Rights in Venezuela (2009). Available at: <http://www.cidh.oas.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>. See the recommendations in Chapter IV at paragraphs 555 *et seq*, especially paragraph 555(1).

¹¹⁶⁶ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es

¹¹⁶⁷ This has been the Commission’s finding when similar provisions were examined. In effect, the Office of the Special Rapporteur for Freedom of Expression wrote that “vague, ambiguous, broad or open-ended laws, by their mere existence, discourage the dissemination of information and opinions out of fear of punishment, and can lead to broad judicial interpretations that unduly restrict freedom of expression” (IACHR, 2008 Annual Report. Volume II. Chapter III, paragraphs 65-66. Available at: <http://www.cidh.oas.org/annualrep/2008eng/Annual%20Report%202008-%20RELE%20-%20version%20final.pdf>).

¹¹⁶⁸ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es

kinds of messages that the law prohibits".¹¹⁶⁹ The law also requires Internet service providers to create mechanisms "that enable them to restrict (...) the dissemination" of messages of this kind and holds a service provider liable for messages circulated by third parties when the service provider fails to take the necessary measures to restrict those messages when so requested by CONATEL which, as previously observed, is an agency of the executive branch.¹¹⁷⁰ This means that a service provider, like for example a business that provides data hosting or storage services, would have to take immediate steps to eliminate content that CONATEL deems to be prohibited whenever CONATEL simply issues an administrative order to that effect. The digital media that violate these regulations could face fines of up to 13 thousand bolivars (three thousand United States dollars). Furthermore, those that do not comply with CONATEL's orders regarding prohibited content could be fined as much as four percent of the gross profits earned in the year prior to the one in which the violation was committed.¹¹⁷¹ Service providers that do not respond to the government's requests could face fines based on "10 percent of the previous year's gross earnings" as well as "suspension of service for 72 uninterrupted hours."¹¹⁷²

822. The possibility of the government excluding any electronic media content when, in its judgment, the ideas or information stored might cause anxiety and fear in the public, promote intolerance, ignore the authorities, or promote noncompliance with the legal system, without any guarantee of due process, appears to constitute a restriction on the right to freedom of expression on those who transmit that content and those who receive it, as well as a violation of due process and of freedom of expression in the case of those who originated the banned message, whose views are silenced and excluded from the Internet without understanding clearly what the prohibited content is and without ever having had the opportunity to defend themselves before an impartial authority separate from the executive branch. In order to avoid the possible abuses that can be committed via the Internet, there are general standards that apply in cases in which a message has done unwarranted harm. These provisions should apply only to the authors of Internet content, i.e., those who are directly responsible for the offending content. Only in very rare cases can an

¹¹⁶⁹ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 33. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es. See, in particular, Article 33 of the law, which reads as follows: "In the course of the penalty phase of the proceedings, or even when the case is opened, the National Telecommunications Commission may, either *ex officio* or at a party's request, order the following precautionary measures: 1.- Order the providers of radio, television, cable or electronic media services to refrain from circulating messages that violate the provisions of this law. (...)".

¹¹⁷⁰ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 28. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es. The pertinent part of Article 28 reads as follows: "Electronic media providers shall be liable for any prohibited information and content to which the present article refers, in those cases in which they were the originators of the transmission, altered the data, selected the receivers or neglected to limit access to them, when so requested by the organs with competence in this matter."

¹¹⁷¹ See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 27. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es. The pertinent part of Article 27 provides as follows: "Paragraph One. The owners of the electronic media shall face a fine of from 50 to 200 tax units when they violate any of the bans contained in this article. Paragraph Two: Electronic media providers that fail to heed requests from the competent authorities to comply with the provisions of this law, shall face a fine of up to 4% of the gross earnings in the year immediately preceding the year in which the violation was committed."

¹¹⁷² See Law on Social Responsibility in Radio, Television, and Electronic Media. Article 29. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2771&tmpl=component&form_at=raw&Itemid=185&lang=es. The pertinent part of Article 29 reads as follows: "The subjects to whom this law shall, whenever warranted, face the following penalties in the circumstances indicated: 1. A fine of up to 10% of the gross earnings in the year immediately preceding the year in which the violation was committed, and/or suspension for up to seventy-two uninterrupted hours of broadcasting, when they disseminate messages that: a) promote, justify or incite disruptions of public law and order; b) promote, justify or incite crime; c) incite or promote hatred or intolerance based on religion, politics, gender difference, racism or xenophobia; d) encourage discrimination; e) use anonymity; f) constitute propaganda for war; g) cause public anxiety or unrest; h) ignore the legitimately constituted authorities."

independent judicial authority order certain network content removed, and then only in strict and complete conformity with international human rights norms. To do so, the provisions applied must conform to international law and must be fully respectful of the guarantees of due process; adequate and effective control and oversight must be in place.¹¹⁷³

823. For these reasons, the IACHR and its Office of the Special Rapporteur for Freedom of Expression questioned the reform. They expressed that “[b]y holding service providers responsible and extending the application of vague and ambiguous norms that have been questioned by the IACHR and the Office of the Special Rapporteur in their 2009 report *Democracy and Human Rights in Venezuela*, the draft law targets freedom of expression on the Internet in an unprecedented fashion. The initiative includes ambiguous norms that sanction intermediaries for speech produced by third parties, based on assumptions that the law does not define, and without guaranteeing basic elements of due process. This would imply a serious restriction of the right to freedom of expression enshrined in the American Convention on Human Rights.”¹¹⁷⁴

824. The National Assembly also passed a bill amending the Organic Law on Telecommunications.¹¹⁷⁵ The bill declares “telecommunications, radio, television and domestic audiovisual production services” to be public interest services, which means that “they may be subject to the limitations and restrictions that the Constitution and law establishes for the sake of the public interest.”¹¹⁷⁶ Given the broad legislative power that has been given to the President through the “Enabling Law,” the Executive Branch now has the authority to institute any restriction or limitation that, in its judgment, is called for in the area of telecommunications. The amendment of the Law on Telecommunications also provides that it shall be the National Telecommunications Commission (CONATEL) that determines the “General conditions that those seeking to obtain a government license, concession or permit under the provisions of this law must meet,” which means that a government agency in the executive branch (CONATEL) is being given the authority to determine the conditions under which one can engage in radio broadcasting in Venezuela.¹¹⁷⁷ The law provides that current providers of domestic audiovisual production services must re-apply to CONATEL in order to be able to remain in operation, even though they may already have valid,

¹¹⁷³ 2005 joint declaration of the rapporteurs for freedom of expression of the United Nations, the OSCE and the OAS. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=650&IID=1>

¹¹⁷⁴ IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

¹¹⁷⁵ AFP. December 21, 2010. *New controls established on telecommunications and the internet in Venezuela*. Available at: <http://www.google.com/hostednews/afp/article/ALeqM5hVpCngs2i2MAWWTbatMQewyMMa2Q?docId=CNG.f7b316619e9b55b1cae698370b94f3cb.131>. ANSA. December 21, 2010. *Law regulating telecommunications passes*. Available at: <http://www.ansa.it/ansalatina/notizie/notiziari/venezuela/20101221155135194298.html>. El Nacional. December 21, 2010. *Telecommunications Law passed Monday night*. Available at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/173005/Naci%C3%B3n/Aprobada-Ley-de-Telecomunicaciones-en-horas-de-la-noche-del-lunes

¹¹⁷⁶ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es

¹¹⁷⁷ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&format=raw&Itemid=185&lang=es. Article 20 reads as follows: “The National Telecommunications Commission shall establish, based on the distinguishing characteristics of the type of networks and services concerned, the General Conditions that those interested in obtaining a government license, concession or permit must meet under the provisions of this law.”

current operating licenses.¹¹⁷⁸ The law authorizes a government agency¹¹⁷⁹ to revoke licenses or concessions when “it deems such action to be in the Nation’s interest or when public order or security so demands.”¹¹⁸⁰ Finally, the provision stipulates that repeat offenders of any of the violations proscribed in the first section of Chapter II of the law shall face the possibility of losing their radio frequency concession if the repeat offense occurs within the space of one year from the date on which the first violation was definitively established.¹¹⁸¹ This means that recidivism with respect to any of the offenses proscribed by the law, even those punishable by a fine, will lead to loss of the operating license. All decisions in such cases shall be taken by the Executive Branch.

825. The IACHR and its Special Rapporteurship for Freedom of Expression indicated their concern over these reforms, as the new law creates very powerful mechanisms for interfering in the communications media, but adds no guarantees to ensure that such mechanisms will not be used to prevent dissemination of information that may be unsettling for the authorities.¹¹⁸² Furthermore, the law establishes very strict conditions for engaging in radio broadcasting which, when combined with enforcement by an agency in the executive branch and patently ambiguous provisions, renders broadcasters highly vulnerable to possible pressure or abuses on the part of State authorities.

2. Other laws passed in December 2010 that restrict freedom of expression

826. The bill passed by the National Assembly, called Law on Defense of the Nation’s Political Sovereignty and Self-Determination is also troubling.¹¹⁸³ This law makes it illegal for

¹¹⁷⁸ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&form_at=raw&Itemid=185&lang=es. Transitory regulation fourth reads as follows: “Current providers of domestic audiovisual production services shall apply to the National Telecommunications Commission for the necessary permit, within the time period and under the conditions that the National Telecommunications Commission establishes for that purpose. Only those natural or legal persons that apply for and obtain the corresponding permit, under the terms prescribed in this law, may continue to provide domestic audiovisual production services.” (On file with the Office of the Special Rapporteur for Freedom of Expression).

¹¹⁷⁹ The law simply states that “[a]s the appointed organ, the National Telecommunications Commission is in charge of telecommunications in the State, and as such establishes the policies, plans and general standards that are to be followed in the telecommunications sector, in accordance with this law and in keeping with the national development plans that the National Executive establishes” (Article 34).

¹¹⁸⁰ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&form_at=raw&Itemid=185&lang=es. The pertinent part of Article 22 reads as follows: “The lead agency may, when it deems such action to be in the national interest or when public order or security so demand, revoke or suspend the government licenses or concessions.” (On file with the Office of the Special Rapporteur for Freedom of Expression).

¹¹⁸¹ Organic Law on Telecommunications (on file with the Office of the Special Rapporteur for Freedom of Expression). See also, Report of the Permanent Commission on Science, Technology and Social Communications, for second round of debate. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2780&tmpl=component&form_at=raw&Itemid=185&lang=es. Article 170(10) provides that: “A repeat of any of the offenses to which this section refers and that occurs within the space of one year from the date when the previous violation was definitively established.” (On file with the Office of the Special Rapporteur for Freedom of Expression).

¹¹⁸² IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

¹¹⁸³ *Radio Nacional de Venezuela*. December 22, 2010. *Head of State enacts laws on Parties and Defense of Sovereignty*. Available at: <http://www.rnv.gob.ve/noticias/index.php?act=ST&f=2&t=145270>. La Crónica de Hoy. Continúa...

organizations charged with promoting citizen participation, overseeing the exercise of public power or defending the full exercise of political rights, to receive funds in the form of international cooperation. It also establishes severe penalties for the organizations and their members if such funding is received. Those penalties include political disqualification for periods ranging from five to eight years.¹¹⁸⁴ This bill is of great concern, because “of the possibility that non-governmental human rights organizations whose purpose is to monitor the exercise of public power (which is true of the vast majority of these organizations) will see their capacity to perform their important functions seriously compromised”.¹¹⁸⁵ In Latin America, most non-governmental organizations dedicated to defending and promoting human rights and monitoring the government rely on the funding they receive through international cooperation in order to be able to function effectively, since there are few or no opportunities for financial independence at the local level. By prohibiting funding of this kind, the law proposed in the National Assembly would have the effect of shutting down all independent organizations, which in recent years have done important work in all countries in the region to defend and promote human rights, often by bringing cases to the inter-American system for the protection of human rights.

827. That same bill makes it illegal for any Venezuelan citizen to invite to the country any foreign person or organization that expresses views that may “[offend] the institutions of the State, its high-ranking officials or attack its exercise of sovereignty.”¹¹⁸⁶ It also stipulates that aliens who participate in such activities will be expelled from Venezuelan territory; sanctions will be imposed on the citizens who invited them to Venezuela.

828. Finally, the National Assembly passed a bill on University Education which, at the time this report went to press, had generated a broad national debate.¹¹⁸⁷ This bill provides that university education is not just a universal human right, but also “an irrevocably public good that serves to transform society, (...) in the context of building a socialist society”¹¹⁸⁸ and “to build

...continuation

December 23, 2010. *National Assembly approves law that prevents parties and NGOs from receiving foreign support.* Available at: http://www.cronica.com.mx/nota.php?id_notas=551474

¹¹⁸⁴ Bill on Defense of the Political Sovereignty and Self-Determination of the Nation. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2769&tmpl=component&format=raw&Itemid=185&lang=es

¹¹⁸⁵ IACHR. Press Release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives in Venezuela that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>

¹¹⁸⁶ Bill on Defense of the Political Sovereignty and Self-Determination of the Nation. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2769&tmpl=component&format=raw&Itemid=185&lang=es. Article 8. Representatives of political organizations, representatives of organizations for the defense of political or private individuals that invite, under their sponsorship, foreign citizens or organizations to express views that offend the institutions of the State, its high-ranking officials or attack their exercise of sovereignty, shall face a fine of between five and ten thousand tax units, apart from any penalties established in other laws. // Foreign citizens who participate in the activities described in this article shall be expelled from the territory of the Republic, in accordance with the provisions of the laws that regulate this subject.

¹¹⁸⁷ According to the information received, at the time this report went to press, the President had vetoed the legislation. For original articles, see AFP. December 23, 2010. *Venezuela approves law that promotes socialism in universities.* Available at: <http://www.google.com/hostednews/afp/article/ALeqM5jMroNmzm-jj5jPOE72U9hdDBeoBQ?docId=CNG.50e279c89752000e7527bb02f044cce8.331>. La Nación. December 23, 2010. *Polémica ley sobre socialismo en Venezuela.* Available at: <http://www.nacion.com/2010-12-24/Mundo/NotasSecundarias/Mundo2631604.aspx>

¹¹⁸⁸ University Education Bill. Article 3.2. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es

cultural hegemony to definitively do away with capitalist society.”¹¹⁸⁹ The State’s establishment of public policies in the area of university education is a legitimate State objective. However, that objective must be pursued within the boundaries that respect for human rights imposes. In the area of university education, those rights include, *inter alia*, the right to freedom of thought and expression, which is the very basis of academic freedom. Although the law establishes strong mechanisms for intervention in university affairs and in the content of instruction, the law does refer to the autonomy of universities and provides that their autonomy shall be exercised “through academic freedom, in order to debate the current trends in thinking.”¹¹⁹⁰ From that standpoint, the bill poses a serious contradiction since freedom of thought and expression, which is the basis of academic freedom, is to be strictly observed in the academic and university environment, and can in no way be limited by subordinating it to the ideological, religious or moral principles that the State imposes as an obligation.

VI. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

829. In its Report on Democracy and Human Rights of 2009, the Commission analyzed the legal framework of protection of economic, social, and cultural rights in Venezuela as well as the status of such rights taking particular account of poverty, education, and health indicators, in the light of the American Convention on Human Rights, the San Salvador Protocol and the Inter-American Democratic Charter. Within that legal framework of protection, the Commission considered the protection of the rights of indigenous peoples along with trade unions rights¹¹⁹¹.

830. During 2010, the Commission received information from civil society to the effect that between 2009 and 2010 “the severe structural deficiencies present in virtually every realm of social welfare (health, education, work, food and housing) persisted, which points up the State’s failure to observe and comply with the guarantees of these rights upheld in the Constitution.”¹¹⁹²

831. At the Commission’s 140th Session, a hearing was held at the State’s request, where it explained the progress made, particularly with respect to the exercise of economic, social and cultural rights. The State supplied information on its fulfillment of the Millennium Development Goals and presented a study that relied on comparative indicators spanning the period from 1990 – the majority- to the present day, to show the improvements made by the Government. The State reported that the objectives set out in the directive “Supreme Social Happiness” are as follows: to reduce poverty to zero and accelerate the rate at which poverty declines; transform the corporate production relationships by building socialist-type relationships based on communal ownership; promote a liberating and unifying ethic, culture and education, and deepen the solidarity with the alienated sectors of Latin America and the Caribbean. It maintained that the Bolivarian Government’s social and economic policy had made it possible for Venezuelan society, working together, to achieve the goals of reducing poverty and of instituting gender equality, eradicating

¹¹⁸⁹ University Education Bill. Article 3.6. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es

¹¹⁹⁰ University Education Bill. Article 17. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es

¹¹⁹¹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter V, paragraphs 953-956.

¹¹⁹² Information received at the hearing on Democratic Institutions and Human Rights Defenders in Venezuela, 140th Session, October 29, 2010. Cited in *Civiliis. Investigación y Acción de la Sociedad Civil de Derechos Humanos. Amenazas y Restricciones a los Derechos Humanos y la Democracia en Venezuela Informe Comprehensivo de Seguimiento*. [Civiliis. Investigation and Action by Human Rights Civil Society. Threats and Restrictions to Human Rights and Democracy in Venezuela. Comprehensive Follow-up Report], January-September 2010, p. 50.

illiteracy, providing persons with HIV-AIDS free treatment, reducing tuberculosis morbidity and mortality, supplying potable water and the goals of environmental protection. It also maintained that significant progress has been made in making the benefits of the new information and communications technologies available, and that it was on its way to achieving the goals of reducing infant mortality, making elementary education universal, and others.¹¹⁹³

832. The Report prepared by the United Nations Development Programme and the OAS General Secretariat, published in October 2010, featured a table of indicators of poverty, indigence and economic inequality in Latin America (1999-2008) which shows that the poverty rate in Venezuela dropped from 49.9% to 27.6%; the report also ranks Venezuela in 6th place of the countries with the strongest indicators in the region. As for indigence, the report states that the 1999 figure of 21.7% dropped to 9.9% by 2008; unemployment was also down in urban areas, from 11.7% in 2000 to 6.8% in 2008.¹¹⁹⁴

833. In its report titled "*CEPAL evalúa impacto de la recuperación económica en la pobreza de la región*" [ECLAC evaluates economic recovery's impact on poverty in the region], ECLAC underscores the progress that Venezuela has made toward poverty reduction.¹¹⁹⁵

834. Based on the information received, the Commission acknowledges and appreciates the progress made in the area of economic, social and cultural rights through policies and measures designed to correct the problems plaguing broad sectors of the Venezuelan population, and the progress that Venezuela has made in instituting laws that protect and guarantee these rights. The priority that the State assigns to this measure is essential in guaranteeing a decent life for the Venezuelan population and lays a fundamental piece of the foundation necessary for preserving democratic stability.

835. On the other hand, the Commission observes that Venezuela has not yet completed ratification of the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), under which the States parties pledge to adopt the necessary measures, to the extent that the available resources allow and taking their degree of development into account, for the purpose of achieving progressively and pursuant to their domestic laws, the full observance of economic, social and cultural rights. Venezuela signed the Protocol of San Salvador on January 27, 1989. The National Assembly discussed and approved it in March 2005; on May 23, 2005 it was published in the Official Gazette of the Bolivarian Republic of Venezuela under number 38,192. Nevertheless, the State has not yet ratified that instrument with the Organization of American States. Therefore, the Commission calls upon the Venezuelan State to complete its ratification of the Protocol of San Salvador.

VII. RECOMMENDATIONS

836. The Commission is reiterating the specific recommendations made in the various chapters of the Report on *Democracy and Human Rights in Venezuela* and its final observations, which follow¹¹⁹⁶:

¹¹⁹³ Information received at the hearing on the Situation of Human Rights in Venezuela, 140th Session, October 29, 2010. Bolivarian Republic of Venezuela. *Accomplishing the Millennium Development Goals*.

¹¹⁹⁴ United Nations Development Programme and the OAS General Secretariat. *Nuestra Democracia*, 2010.

¹¹⁹⁵ <http://www.americaeconomia.com/economia-mercados/finanzas/cepal-destaco-reduccion-de-la-pobreza-en-argentina-brasil-venezuela-y-bol>.

¹¹⁹⁶ In its response of February 18, 2011, the State recognized that its weakness regarding procedural delays, Venezuela's overcrowded prisons and high rate of violence, mentioned in the eleventh recommendation.

a. Guarantee the full exercise of political rights to all individuals, irrespective of their positions on government policies, and adopt the measures necessary to promote tolerance and pluralism in the exercise of political rights.

b. Refrain from taking reprisals or using the punitive power of the State to intimidate or sanction individuals based on their political opinions, and guarantee the plurality of opportunities and arenas for democratic activity, including respect for gatherings and protests held in exercise of the right of assembly and peaceful protest.

c. Effectively guarantee the separation and independence of the branches of government and, in particular, adopt urgent measures to ensure the independence of the judicial branch, by strengthening the procedures for appointing and removing judges and prosecutors, affirming their job stability and eliminating the provisional status in which the large majority of judges and prosecutors find themselves.

d. Adopt the measures necessary to protect the life and personal integrity of all persons, as well as specific measures to protect social communicators, human rights defenders, unionists, individuals who participate in public demonstrations, individuals who have been deprived of their liberty, and the LGTBI community. Additionally, strengthen the institutional capacity of the judicial bodies to combat the pattern of impunity in cases of violence and guarantee due diligence and effectiveness in the investigations into these cases.

e. Adopt urgent measures aimed at dismantling the armed civilian groups that operate outside the law and sanction the illicit acts of these groups to prevent acts of violence from being repeated in the future.

f. From the highest levels of government, continue to publicly condemn acts of violence against social communicators, communications media, human rights defenders, unionists, and political dissidents, with the aim of preventing actions that foment these crimes and of avoiding continued cultivation of a climate of stigmatization towards those who maintain a stance critical of government actions.

g. Promote a climate of tolerance that encourages and is conducive to the active participation of and an exchange of ideas among the various sectors of society, and design institutions that promote rather than inhibit or thwart public discourse.

h. Guarantee the conditions necessary for defenders of human rights and union rights to be able to engage freely in their activities, and refrain from taking any action or adopting any legislation that would limit or impede their work.

i. Take all necessary measures so that women who are victims of violence have full access to proper judicial protection and adopt the legal, judicial and other mechanisms necessary to investigate, punish and provide reparations when complaints are filed reporting violence committed against women in Venezuela.

j. Adopt urgent measures to comply with the State's obligation to demarcate and delimit the ancestral lands of the Venezuelan indigenous communities, establishing adequate and effective procedures for such measures and for effectively giving the corresponding communities legal title to the lands.

k. Urgently adopt the measures necessary to correct the procedural delays and the high percentage of persons deprived of liberty without a final verdict, thereby avoiding the excessive,

unnecessary and disproportionate reliance on preventive detention or detention pending trial . Also, take measures to reduce prison overcrowding and improve detention conditions so that they are in line with international standards in this area, while taking particular care to ensure safety inside prisons, effective control of weapons inside prisons, proper segregation of the inmate population to conform to the categories and criteria established in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, and to prohibit prisons from holding more prisoners than they have space for.

l. Step up efforts so as to gradually give full effect to economic, social and cultural rights while ensuring that that this does not come at the cost of the people's other basic rights. Furthermore, adopt public policies that allow for long-term continuity of efforts to guarantee economic, social and cultural rights, thereby ensuring that full enjoyment of these rights will not depend on the resolve of any future administration.

m. Implement the laws and mechanisms necessary so that the citizenry has easy and effective access to public information and ensure widespread circulation of information on the business of the various organs of government.

n. Adjust domestic law to conform to the parameters established by the inter-American human rights system, while taking into account the recommendations on the specific provisions that the Commission has examined in this report, including the laws approved by the National Assembly in December 2010.

o. Complete the ratification of the Protocol of San Salvador.

837. Finally, as it did in the Report on *Democracy and Human Rights in Venezuela*, the Commission is once again urging the State to comply with the international obligations it undertook upon ratifying the American Convention. Accordingly, it is reiterating its interest in making a visit to Venezuela and extends, within the framework of its competencies, its offer of cooperation and advisory assistance to the Venezuelan State to facilitate the adoption of the measures necessary to enable the State to carry out the Commission's recommendations.

CHAPTER V

FOLLOW-UP REPORT ON THE SITUATION OF HUMAN RIGHTS IN HAITI

I. INTRODUCTION

1. The aim of this report is to provide joint follow-up on the recommendations made by the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) in its report *The Right of Women in Haiti to be Free from Violence and Discrimination* of March 10, 2009, (hereinafter, also, “the 2009 Report”), in the *Observations of the Inter-American Commission on Human Rights upon conclusion of its April 2007 visit to Haiti*, published on March 2, 2008 (hereinafter, also, “the 2008 Observations”), and in Chapter IV of the Annual Report of the Inter-American Commission on Human Rights 2009 (hereinafter, also, “Chapter IV”). The Republic of Haiti (“the State” or “Haiti”) has received particular attention from the Inter-American Commission during 2010. The IACHR notes certain signs of progress in Haiti before the devastating earthquake that hit the country on January 12, 2010. As a consequence of that unprecedented catastrophe, the existing challenges were compounded by new problems of a unique nature. Because of that, and bearing in mind the particular situation Haiti is facing, the IACHR has decided to analyze the situation of human rights in the country through joint follow-up of the 2009 Report and the 2008 Observations.

2. In its 2009 Report, the Commission analyzed the situation of discrimination and violence against women in Haiti and the legislative, institutional, and judicial response given to that problem. That report also states that although the public security situation began to improve in 2007 with the stabilization of the country’s political situation, the IACHR continued to receive information on the continued commission of physical, sexual, and psychological violence and acts of discrimination against women in Haiti. The 2009 Report therefore describes acts of violence against women as a particularly extreme and serious manifestation of the discriminatory treatment suffered by Haitian women. It also states that society’s tolerance of that discrimination perpetuates a climate of impunity and encourages the repetition of such incidents. Finally, in its 2009 Report, the IACHR notes that one of the areas of greatest concern were the shortcomings identified within the Haitian judicial system. The report therefore noted with concern that most cases of violence against women are never formally investigated, prosecuted, or punished, which creates a pattern of systematic impunity. The recommendations offered propose the design of a national state policy that would address the existing manifestations of violence and discrimination against women and the inclusion of women’s specific needs on the national agenda.

3. The 2008 Observations were published following the IACHR’s visit to Haiti on April 16 to 20, 2007. The purpose of that visit was to receive information on the human rights situation in Haiti, in particular with respect to the administration of justice, the situation of women, children, and adolescents, and other matters. The Observations highlighted the Inter-American Commission’s main areas of concern regarding long-term stability in Haiti, namely: the need to develop an exhaustive strategy to address the root causes of violent crime and the activities of organized criminals and gangs; the need to allocate resources for the long-term reform of the justice system and for measures to address deficiencies in the administration of justice; and the need to implement programs aimed at providing essential social services to meet the basic needs of the Haitian population, particularly the serious shortcomings in access to decent housing, drinking water, health, education, and employment. The recommendations to the Haitian State addressed such areas as the adoption of various measures in the field of public security, the judicial system, the prison regime, and the adoption of public policies that recognize the specific needs of women and their right to a life free of violence and discrimination.

4. In Chapter IV, the IACHR noted that the year 2009 was characterized by relative stability in Haiti and a general improvement of the security situation. Despite specifically identified advances, the IACHR expressed its concerns about the problems it had observed in previous years, including, among others, the administration of justice and impunity. In particular, the Commission stressed that the lack of an efficient judicial system, the prevalence of corruption, and the lack of significant financial and human resources all contribute to the creation of an environment of general impunity that affects the capacity of the State to guarantee the fundamental rights of its inhabitants. In this regard the Commission highlighted the importance of developing strategy and policy of long-term reform to address structural and legislative weaknesses in these areas. Finally, the Commission recommended the Republic of Haiti take steps to ensure, inter alia, that the courts are able to assume their role, in particular the duty to investigate, prosecute, and punish the persons responsible for the violations of human rights, and that the prevention and punishment of violent crimes strengthen accountability mechanisms to effectively hold offenders accountable for their crimes.

5. On November 30, 2010, the IACHR requested the Haitian State to provide information on the measures adopted to implement the recommendations contained in the 2009 Report and the 2008 Observations. Additionally, the preliminary version of this report was transmitted to the Republic of Haiti on February 11, 2011, with a request to submit its observations before March 1, 2011. At the date of the publication of this Annual Report, the Commission has not yet received a response to the requests.

6. In the following sections, the Inter-American Commission will briefly describe the main developments that took place in Haiti during 2010. Due to the emergencies that Haiti faced during 2010 and the challenges posed by the reconstruction process, the Commission will not offer a detailed analysis of the State's compliance with each recommendation; instead, it will focus on a number of particular issues to which the IACHR has been paying special attention. As described in the corresponding sections, these topics are related to various recommendations made in the 2009 Report, in the 2008 Observations, and in Chapter IV. The information used in this chapter was obtained from several different sources, including United Nations agencies, academic papers, reports by international organizations and civil society, and press reports. The IACHR hopes that the conclusions and recommendations set out in this report will assist the Haitian State and the international community in identifying appropriate, effective solutions for dealing with some of the problems in the current situation of the country.

7. Finally, the IACHR reiterates its willingness to make itself available to the Haitian authorities and the international community to cooperate, within the framework of its functions, with the initiatives being undertaken to overcome the critical situation faced by the people of this OAS member state.¹ The Inter-American Commission acknowledges the efforts of the Haitian government in dealing with the emergency caused by the unprecedented earthquake of January 2010. The IACHR is also aware of the essential role played by the international community through the Interim Haiti Recovery Commission and other international agencies in the implementation of international human rights obligations during the reconstruction process.

¹ See, in this regard: Press Releases Nos. 4/10 and 11/10, published by the Inter-American Commission on Human Rights on January 14 and February 2, 2010. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2010/2-10sp.htm> and <http://www.cidh.oas.org/Comunicados/Spanish/2010/11-10sp.htm>.

II. MAIN DEVELOPMENTS IN HAITI DURING 2010

– Human and economic consequences of the earthquake

8. The 7 Mw earthquake that hit Haiti on January 12, 2010, affected 3.5 million people – a third of the population. Ninety percent of the city of Léogâne, located at the quake's epicenter 25 kilometers from Port-au-Prince, was destroyed. The earthquake was followed by more than 50 aftershocks and, according to figures provided by the Haitian State, it killed 222,570 people, injured a further 300,572, and left some 2.3 million homeless.² It is estimated that in December 2010, there were still more than a thousand internally displaced persons camps (hereinafter, also, "IDP camps" or "camps") in Haiti, the vast majority of them located in Port-au-Prince, housing some 1.4 million people. The earthquake's impact on the human rights situation will be addressed in the following sections of this chapter. In addition, it is estimated that the economic losses total some US\$ 7.8 billion, equal to 120% of Haiti's 2009 gross domestic product (GDP). According to the Haitian State, 60% of the government, administrative, and economic infrastructure was destroyed, including Parliament, the Palace of Justice, and several other courts.³

– Reconstruction process

9. In response to the grave humanitarian crisis, the State developed an Action Plan for the Reconstruction and Development of Haiti. It estimated that the country will need US\$ 3.9 billion over the coming 18 months and US\$ 11.5 billion for long-term reconstruction. The United Nations and the United States of America, working in cooperation with the Haitian government and with the support of Brazil, Canada, the European Union, France, and Spain, organized an international donors' conference called "Towards a New Future for Haiti," which was held on March 31, 2010, at United Nations Headquarters in New York. The goal of the conference was to mobilize the international community in securing financial commitments that would enable the foundations for long-term reconstruction to be set. At the end of the conference, pledges for donations totaling US\$ 5.3 billion over the following 18 months were obtained.⁴ As for the amounts effectively disbursed for reconstruction activities, according to information as of November 2010, the 24 main donors had handed over 42.3% of the total promised for 2010.⁵ In addition, as of December 2010, the promised total of long-term donations was in excess of US\$ 10 billion.⁶

10. As a part of the reconstruction process, by means of a presidential decree dated April 21, 2010, the Interim Haiti Recovery Commission (the "IHRC" or "the Interim Commission") was established. Made up of Haitian officials and members of the international community, and jointly chaired by Prime Minister of Haiti Jean-Max Bellerive and former U.S. President Bill Clinton, the Interim Commission's mandate is to run for 18 months. The members without voting rights include a representative of the Organization of American States. The Interim Commission's mission is to coordinate and supervise the reconstruction effort. For this, it must define the strategy, coordinate and implement the development plans, and manage the funds contributed by the

² Office of the United Nations Special Envoy for Haiti. Information available at: http://www.haitispecialenvoy.org/key_statistics/.

³ Office of the United Nations Special Envoy for Haiti. Information available at: http://www.haitispecialenvoy.org/key_statistics/.

⁴ For further information, see: <http://www.haiticonference.org/story.html>.

⁵ Information published by the Office of the United Nations Special Envoy for Haiti, available at: http://haitispecialenvoy.org/press/press_releases/new-analysis-shows-42-3-percent-donor-disbursement-rate-for-haiti-recovery.

⁶ For up-to-date information, see: <http://www.cirh.ht/sites/ihrc/en/pledges/Pages/default.aspx>.

different donors.⁷ Once its mandate comes to an end on October 21, 2011, the Interim Commission's functions will be handed over to the Haitian Development Agency, made up exclusively of Haitian officials, which will continue with the long-term execution of planning and support for Haiti's reconstruction and development.

11. Finally, it should be noted that international cooperation in Haiti is organized according to the sectoral group approach or cluster model.⁸ In accordance with that model, it has been structured into several clusters specializing in different areas, including nutrition, education, camps, water, sanitation, and hygiene. In addition, subclusters have been created within some of these.

– **Elections**

12. The parliamentary elections planned for February 28 and March 3, 2010, to elect a third of the Senate and to replace the Chamber of Deputies, respectively, were suspended and rescheduled for November 28, 2010; on that date, the legislative election was held alongside the presidential ballot. As of the date of this report's drafting, the second round in the presidential vote will take place on January 16, 2011, and the new government will take office on February 7, 2011. The Provisional Electoral Council (CEP for its acronym in French), whose nine members represent different sectors of Haitian society, is the body responsible for organizing the elections. In addition, the Universal Civil Identity Program of the Americas, a project carried out by the OAS in Haiti, was intended to implement a digital civil registry system to address situations caused by the collapse of government offices and the loss of ID papers during the earthquake.

13. The OAS and CARICOM deployed a Joint Electoral Observation Mission (JEOM) on August 3, 2010, in which more than 175 observers participated in the country's ten departments.⁹ The plan is for the Mission to remain in Haiti until the final results of the election are announced. In his statement given on December 1, 2010, regarding his visit to Haiti during the election, OAS Assistant Secretary General Albert R. Ramdin acknowledged the fraud accusations made by some of the presidential candidates and their requests for the election to be annulled. He emphasized that the laws and electoral procedures provided for in Haitian legislation for investigating those accusations and objections must be followed in a serious and urgent fashion. The Assistant Secretary General also called on the candidates to work for peace and stability in the second round of Haiti's electoral process.¹⁰ Similarly, the Secretary General of the OAS, José Miguel Insulza, spoke out in favor of validating the elections.¹¹

14. The CEP met with the presidential candidates on December 3, 2010, on which occasion it acknowledged the organizational failures and incidents of vandalism and violence that had marred election day. The CEP also promised to implement the corrective steps necessary for

⁷ For further information, see: <http://www.cirh.ht/sites/ihrc/en/Pages/default.aspx>.

⁸ According to the Norwegian Refugee Council (<http://www.nrc.no/arch/img/9444938.pdf>), that management model arose from a study of the humanitarian system requested by the United Nations Secretary-General on account of weaknesses in the humanitarian response to situations of displacement in the camp management area in different countries. Based on the recommendations in that report (*Humanitarian Response Review*), published in 2005, the Inter-Agency Standing Committee – the main international body for humanitarian coordination – adopted a series of measures to increase predictability and accountability in the humanitarian response to situations of internal displacement. One of those initiatives was the sectoral group or cluster approach, wherein an overall leader is appointed for each sectoral group or area of humanitarian work that needs predictable leadership and a more solid framework for cooperation.

⁹ For further information, see: <http://www.oas.org/es/sap/deco/moe/haiti2010/default.asp>.

¹⁰ Press Release C-463/10, published by the Organization of American States on December 1, 2010. Available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-463/10.

¹¹ Press Release C-462/10, published by the Organization of American States on November 29, 2010. Available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-462/10.

the second electoral round.¹² Later, on December 6, 2010, the JEOM reported that it was observing the reception, processing, and verification of the results sheets (“procès-verbaux”) of the November 28 election results. It also explained that processing and verifying the results sheets would assist it in identifying and combating electoral fraud and thereby obtain results that accurately reflect the will of the people. It further noted that it would continue to monitor the following phases of the electoral process very closely, including the processing of challenges to the preliminary results. Finally, the Mission called on the candidates and political parties to exercise their right of challenge peacefully and in accordance with the Electoral Law, which provides legal remedies for those wishing to file claims regarding the results.¹³

– **New humanitarian crisis**

15. Following the devastating earthquake, Haiti was hit by a hurricane and an outbreak of cholera. On November 5, 2010, Hurricane Tomas passed over the west of the island, causing tropical downpours, storms, and winds of up to 130 kph. As a result, according to figures from the Haitian government, an estimated eight people died, massive flooding affected several internal displacement camps, and more than 16,000 people were voluntarily relocated. The floods also spread contagion from the cholera epidemic that had broken out in late October 2010. United Nations figures indicate that as of November 24, 2010, a total of 2,000 deaths had been reported and 70,000 cases had been diagnosed. According to the Pan American Health Organization, cases of contagion could rise to 200,000 people by February 2011. The fact that 58% of the population is without drinking water makes the situation even more critical.

16. This situation of extreme vulnerability was compounded by the violent demonstrations that began on November 15, 2010, against the United Nations Stabilization Mission in Haiti (MINUSTAH) in Cap-Haïtien, one of the cities most hardly hit by the epidemic, and that later spread to other cities including Port-au-Prince. At least two people were killed and another 16 were injured. The demonstrators blocked roads, bridges, and airports, thus hampering access to medical assistance and health services by thousands of people affected by the epidemic. Finally, in the aftermath of the announcement of the presidential election’s preliminary results, thousands of people protested the results published by the CEP and called for the annulment of the elections. According to various news reports, demonstrators burned barricades and sparred with UN peacekeepers, which led to the closing of Haiti’s international airport.

– **Response of the inter-American human rights system**

17. On January 14, 2010, the Inter-American Commission issued Press Release No. 4/10, expressing its solidarity at the crisis suffered by Haiti as a result of the earthquake and its aftermath. Then, on February 2, 2010, the IACHR published Press Release No. 11/10, in which it recalled the importance of respecting international human rights obligations in all situations, particularly nonderogable rights and the rights of the most vulnerable. The IACHR also called on the Government of Haiti and the international community to make efforts to control the actions of private security forces and to ensure that human rights were upheld at all times. Finally, the IACHR stressed the importance of focusing on family reunification efforts.

18. Because of the grave situation that emerged in the aftermath of the earthquake, the Executive Secretariat of the IACHR decided to suspend the deadline for the processing of the

¹² Press Release C-467/10, published by the Organization of American States on December 6, 2010. Available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-467/10.

¹³ Press Release C-467/10, published by the Organization of American States on December 6, 2010. Available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-467/10.

petitions and individual cases for six months. As indicated in the relevant sections in this Annual Report, the IACHR has continued to process normally the demands for precautionary measures and hold thematic hearings. In July 2010, the Executive Secretariat lifted the suspension of the above deadlines. In addition, the Inter-American Court of Human Rights resolved to suspend its processing of the case of Lysias Fleury and his family, presented on August 5, 2009, for the duration of 2010. The Inter-American Court is to make a decision on recommencing its processing of the case at its first period of sessions in 2011.¹⁴ Similarly, the United Nations Human Rights Council decided to postpone its universal periodic review of Haiti, initially scheduled for May 2010, and set October 13, 2011, as the new date.¹⁵

19. Finally, as described in the following section, the Inter-American Commission addressed the human rights situation in Haiti following the earthquake through various mechanisms and approaches.

III. SITUATION IN THE CAMPS FOR INTERNALLY DISPLACED PERSONS

A. General situation

20. The IACHR has received troubling information on the serious situation regarding living and security conditions at the internal displacement camps. As noted in the previous section, the earthquake left some 2.3 million people homeless; in December 2010, it was estimated that there were more than a thousand camps, most of them spontaneous, housing around 1.4 million people. According to the information received, the most basic needs of hundreds of thousands of displaced persons – particularly water, food, and health care – remain unmet.

21. According to a mission carried out by international and local nongovernmental organizations more than a month after the earthquake,¹⁶ most of the survivors had not received the minimum assistance necessary to satisfy their most basic needs. The organizations noted, *inter alia*, that food distribution was sporadic and apparently arbitrary; that less than a quarter of the displaced people had some kind of closed, weatherproof shelter; that sanitation conditions were deplorable; and that there were no plans to assure the residents' self-sufficiency. In addition, the organizations saw that the humanitarian assistance was being distributed according to mechanisms designed outside the camps, without consulting the displaced people themselves.

22. Following a September 2010 visit, Walter Kaelin, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, reported that nine months after the earthquake, Haiti was still immersed in a profound humanitarian crisis affecting the human rights of its displaced population. Mr. Kaelin emphasized those people's right to return to their homes, as established by the Guiding Principles on Internal Displacement. He added, however, that in cases where that was not possible, consideration could be given to voluntary relocation or local integration, provided that means of subsistence and access to basic services were assured. During his visit, the Representative also noted that the situation of people living away from the camps was less visible but not less serious.¹⁷

¹⁴ Order of the Inter-American Court of Human Rights, dated February 1, 2010. Available at: http://www.corteidh.or.cr/docs/asuntos/Fleury_01_02_10_fr.pdf.

¹⁵ Information available at: <http://www.upr-info.org/+Haiti-s-UPR-postponed+.html>.

¹⁶ *Neglect in the Encampments: Haiti's Second-Wave Humanitarian Disaster*. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/03/Neglect-in-the-Encampments-FINAL.pdf>.

¹⁷ News story published by the Office of the United Nations High Commissioner for Human Rights. Available at: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=10467&LangID=F>.

23. During 2010, the IACHR paid particular attention to the serious situation prevailing in Haiti's internal displacement camps. As will be described below, the Inter-American Commission has addressed the topic through several of the mechanisms provided for as a part of its functions: general hearings, precautionary measures, requests for information Article 41 of the American Convention, and press releases. At the IACHR's 140th regular session, three general hearings were held on human rights in Haiti, at which reference was made to the situation in the camps.¹⁸ The attending organizations set out the conclusions of their observation missions carried out in Haiti. They stated that the displaced populations were in a situation of particular vulnerability. Among the shortcomings detected at various camps, the organizations spoke of unhealthy conditions, nauseating smells, and overcrowding, which encourage the transmission of diseases. They also indicated that most of the residents had nothing more than a tarpaulin to provide shelter.

B. Situation of violence against women and girls

24. In both the 2008 Observations and the later report *The Right of Women in Haiti to be Free from Violence and Discrimination*¹⁹ of March 10, 2009, the Inter-American Commission referred to and again noted its concern at the serious situation of widespread and systematic violence and discrimination affecting Haitian women and at the State's inadequate response to those problems, which served to perpetuate a climate of impunity with respect to such actions and to encourage their repetition. The state of impunity was also mentioned by the Commission in Chapter IV.

25. The IACHR stated that the phenomenon of discrimination against women in Haiti was widespread and tolerated, and was based on stereotypical perceptions of women's inferiority and subordination that maintain deep cultural roots. That situation, along with the civil, political, economic, and social consequences of those disadvantages, leave them exposed to acts of physical, sexual, and psychological abuse in the public and private arenas.

26. The Inter-American Commission stated that the situation of women and girls was of particular concern given the growing number of acts of sexual violence since early 2004, most of them carried out by armed groups or gangs. The IACHR also noted the need to adopt urgent measures to provide appropriate legal, medical, and other related services for women and girl victims, in order to ensure that their right to a life free of violence and discrimination is duly guaranteed by statute. The Inter-American Commission also issued a series of recommendations intended to improve the situation of women and girls in Haiti, including the enactment of legislation to afford them proper protection from acts of discrimination and all forms of violence in the private and public arenas, the establishment of legal services, the development of public awareness programs, and the adoption of public policies and programs intended to realign stereotypes regarding the role of women in society.

27. In its 2009 Report, the IACHR specifically stated that the problems of discrimination and violence against women in Haiti were interconnected and involved an extremely complex set of

¹⁸ On October 26, 2010, three general hearings dealing with Haiti were held: "Human Rights Situation in the Camps for Internally Displaced Persons in Haiti," participants: International Human Rights Law Clinic, American University–Washington College of Law, Institute for Justice and Democracy in Haiti, Bureau des Avocats Internationaux; "Human Rights Situation During Reconstruction in Haiti," participants: Fédération Internationale des Ligues des Droits de l'Homme, Réseau National de Défense des Droits Humains, Centre Ecuménique des Droits Humains, Comité des Avocats pour le Respect des Libertés Individuelles; and "Human Rights Situation of Children and Women in the Area of Ouanaminthe, Haiti," participants: Regroupement des Citoyens pour la Protection des Droits Humains (RECIPRODH) and Haitian State. The Haitian State was invited to the three hearings in accordance with the IACHR's Rules of Procedure; however, it only attended the third hearing. The audio record of the hearings is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=120>.

¹⁹ IACHR, *The Right of Women in Haiti to be Free from Violence and Discrimination*, March 10, 2009.

social, cultural, and economic factors requiring comprehensive and multidisciplinary solutions that could be delayed no longer. In addition, pursuant to its acquired human rights commitments, the Haitian State is obliged to exercise due diligence to prevent, punish, and eradicate the widespread discrimination and violence against women found in Haiti. Thus, the Inter-American Commission's recommendations proposed the design and implementation of a national state policy, with a multisectoral approach, that would address the manifestations of discrimination and violence affecting Haiti's women, during periods of both peace and political instability, in order to progress with analyzing, preventing, and responding to those problems and with incorporating the needs of women into the public agenda. It also recommended the adoption of urgent measures to educate the general public in order to eradicate sociocultural patterns that encourage the treatment of women as inferiors and perpetuate their inequality within society.

28. Since the January 2010 earthquake, the IACHR has been closely monitoring with great concern the grave situation of sexual violence against women and girls at a number of camps for internally displaced persons. In May and June 2010, a group of nongovernmental organizations carried out an observation mission to investigate a series of rapes and other forms of gender violence at the displaced persons' camps in Port-au-Prince. According to the report published after that mission,²⁰ the earthquake and the large-scale displacements led to a severe security crisis, particularly at the IDP camps, which worsened the sexual violence problem that already existed. The vast majority of the women interviewed who had suffered sexual violence at the camps reported having been raped by two or more individuals, that their assailants were almost always armed, and that the attacks took place at night.

29. Overcrowding, a lack of privacy and lighting, insecurity, and other factors make women and girls particularly vulnerable to sexual violence. Women and girls generally sleep outside, with no form of protection, lacking the assistance of relatives or friends, and they bathe in public in full view of the men. The information received by the IACHR indicates that the police do not enter the IDP camps; instead, they merely patrol the perimeters, and then only during daylight hours.²¹

30. In addition, there has been a lack of official response to these acts of violence, on account of either an absence of will or an inability to address the situation. Some victims stated that reporting the attacks to the police is completely useless, since they are unable to identify their assailant(s). Several women said that when they sought help, the police told them to go back to their camps and return after they had identified their attackers. Among the reported cases is one of a woman who was abducted from a camp and taken to a house, where she was beaten and raped by several men for three days before she managed to escape. In another case, a woman was stabbed and raped by a group of men in front of her small children.²²

31. The information received indicates that the reporting of such incidents is hampered by limited access to justice, by the very low probability that the assailants will be detained, and by the fear of reprisals and stigmatization. Other obstacles are posed by corruption within the National

²⁰ *Our bodies are still trembling: Haitian women's fight against rape*, July 2010. Institute for Justice & Democracy in Haiti, Bureaus des Avocats Internationaux, Madre, University of Minnesota, University of Virginia School of Law, TransAfrica forum. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/07/Haiti-GBV-Report-Final-Compressed.pdf>.

²¹ *Our bodies are still trembling: Haitian women's fight against rape*, July 2010. Institute for Justice & Democracy in Haiti, Bureaus des Avocats Internationaux, Madre, University of Minnesota, University of Virginia School of Law, TransAfrica forum. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/07/Haiti-GBV-Report-Final-Compressed.pdf>.

²² *Our bodies are still trembling: Haitian women's fight against rape*, July 2010. Institute for Justice & Democracy in Haiti, Bureaus des Avocats Internationaux, Madre, University of Minnesota, University of Virginia School of Law, TransAfrica forum. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/07/Haiti-GBV-Report-Final-Compressed.pdf>.

Police (cases were reported in which the police requested bribes before issuing arrest warrants or visiting the camps) and by the lack of access to legal assistance. Since before the earthquake, the reluctance of women to contact the justice system was a source of particular concern to the IACHR. In its 2009 Report, the Inter-American Commission said that this situation was due to the victims' doubting the judicial system's ability to ensure justice, together with the mistreatment they frequently suffer in attempting to access judicial remedies.

32. Similarly, following his visit to Haiti, the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons expressed great concern at the rapes committed both on and off the camps and asked the National Police of Haiti and MINUSTAH to step up their presence in the IDP camps. The Representative also said that increased patrols were a partial solution, since the government must ensure that the police and judiciary clearly understand that eradicating impunity is a priority.²³ Because of the security crisis and the grave conditions of sexual violence in the camps, a battalion of 130 female police officers from Bangladesh joined MINUSTAH in May 2010 to patrol the IDP camps. However, because of the language barrier, the expected results have not been obtained.²⁴

33. At the same time, at the general hearings held during its 140th session, the Inter-American Commission received troubling information on the lack of medical attention in the camps. In addition, even in cases where such attention is available, the assistance does not provide an appropriate response to the needs of victims of sexual violence, particularly because of the absence of specialized medical care. Similarly, the report published following an observation mission cited above²⁵ indicates that the vast majority of women and girls interviewed who had suffered sexual violence stated that they had received no medical attention following their attacks. According to the report, this was due to several factors: (i) unawareness of the availability of such services; (ii) unawareness of the fact that such services are provided free of charge; (iii) shortage of money to cover transportation costs to the locations where care is offered; and (iv) fear of reprisals or stigmatization. In addition, many of the victims who sought medical assistance only went for first aid care for injuries associated with the attacks but did not disclose the rape because of shame or because they felt uncomfortable. At the same time, not all the clinics offer prophylactic treatment or emergency contraception.

34. According to information from the International Organization for Migration (IOM),²⁶ in response to this situation of violence, the Camp Coordination and Camp Management cluster (CCCM), through its Protection Unit, launched various activities at the IDP camps. These included identifying cases of gender-related violence, accompanying victims to service providers (for example, medical or legal assistance, filing complaints with the police, referral to NGOs), and conducting case follow-up. The IOM reports that the increased personnel numbers at the camps led to an increase in the number of cases of violence against women and girls that were reported. It states that between March and May 2010, CCCM staff reported 12 cases, whereas between June and September 2010, the figure was more than three times higher. It also reports that 83% of the

²³ News story published by the Office of the United Nations High Commissioner for Human Rights. Available at: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=10467&LangID=F>.

²⁴ News story published in several media outlets. Available at: <http://www.worldpulse.com/magazine/articles/special-report-haiti-women-and-the-elections-following-africas-lead?page=0,3>.

²⁵ *Our bodies are still trembling: Haitian women's fight against rape*, July 2010. Institute for Justice & Democracy in Haiti, Bureaus des Avocats Internationaux, Madre, University of Minnesota, University of Virginia School of Law, TransAfrica forum. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/07/Haiti-GBV-Report-Final-Compressed.pdf>.

²⁶ *IOM Haiti, Gender-Based Violence, CCCM GBV Strategy*. Available at: http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/brochures_and_info_sheets/CCCM_GBV_Strategy.pdf.

victims interviewed stated that they did not know where to report their attacks or where to go to obtain medical assistance.

35. The report presented by the United Nations independent expert on the situation of human rights in Haiti²⁷, Michel Forst, states that the General Hospital in Port-au-Prince stopped issuing certificates to women who had suffered sexual violence, arguing that it was not an “essential service.” Regarding this point, the IACHR has stated on repeated occasions that the health of victims of sexual violence must occupy a priority position in legislative initiatives and in state health policies and programs.²⁸

36. On May 3, 2010, the United Nations independent expert on the situation of human rights in Haiti informed the Human Rights Council that in the aftermath of the earthquake, women suffered other forms of violence on account of their gender.²⁹ The expert reported that women did not enjoy equal access to the distribution of food or of food coupons; some were even forced to walk for several hours; others lacked the strength to carry their bags of rice; while others had their food stolen while on the road. Some testimonies also describe an increase in cases of forced prostitution in exchange for food or coupons.

37. Given that situation, in a press release published at the close of its 140th regular session, the Inter-American Commission noted its concern regarding sexual violence against women and girls in Haiti.³⁰ In addition, in light of the seriousness of the facts set before it, and using the power granted by Article 41 of the American Convention on Human Rights, the Inter-American Commission sent the Haitian State a request for information on November 10, 2010. In its communication, the IACHR informed the State of the reports it had received regarding sexual violence against women and girls in the internal displacement camps.

38. In that same communication, the Inter-American Commission recommended that the State adopt the following measures: improve lighting inside the camps; guarantee the presence of female security personnel around and inside the camps, particularly in the vicinity of the bathrooms; implement measures to facilitate the filing of legal actions and to improve the efficiency of judicial investigations, including in particular training police officers in their duties in cases of violence against women; and provide free medical assistance from specialists with experience in treating victims of sexual violence. On November 23, 2010, the Executive Secretariat of the IACHR received a note from Foreign Affairs Minister Marie-Michèle Rey, dated November 16, 2010, acknowledging receipt of the Inter-American Commission’s communication. The Minister also reported that the communication had been forwarded to the competent ministries. As of the drafting of this chapter, the IACHR had not yet received a reply from the Haitian State regarding the measures adopted to implement its recommendations.

39. Similarly, on November 18, 2010, the IACHR published Press Release No. 115/10, in which it noted its concern regarding the situation prevailing in Haiti’s internal displacement

²⁷ *Rapport de l’expert indépendant sur la situation des droits de l’homme en Haïti*, Michel Forst. General Assembly. United Nations, May 3, 2010. A/HRC/14/44 (in French only). Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.44_fr.pdf.

²⁸ IACHR, Report No. 21/07, Petition 161/02, Friendly Settlement, Paulina del Carmen Ramírez Jacinto (Mexico), March 9, 2007; IACHR, *Access to Maternal Health Services from a Human Rights Perspective*, June 7, 2010.

²⁹ *Rapport de l’expert indépendant sur la situation des droits de l’homme en Haïti*, Michel Forst. General Assembly. United Nations, May 3, 2010. A/HRC/14/44 (in French only). Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.44_fr.pdf.

³⁰ Press Release No. 109/10, published on November 5, 2010. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2010/109-10sp.htm>.

camps.³¹ The Inter-American Commission referred to the information it had received on the situation of extreme vulnerability facing women and girls living in the camps as well as on the practice of forced evictions. The IACHR reminded Haitian State of the importance of respecting its international human rights obligations in all circumstances, particularly nonderogable rights and the rights of the most vulnerable groups.

C. Forced evictions

40. In its 2008 Observations, the Inter-American Commission noted among its main concerns the severe restrictions on access to basic services and it underscored the need to implement programs for providing basic social services to address the essential needs of the Haitian population, including access to decent housing. One of the main consequences of the devastating January 2010 earthquake was a severe housing crisis, unprecedented in the country's recent history. Immediately after the natural disaster struck, an estimated 2.3 million people were left homeless and, ten months later, some 1.4 million people are still without a roof over their heads. In addition, the repercussions of this crisis worsened the significant levels of social inequality reported in the 2008 Observations by expanding even further the gap between the rich and the poor.

41. The IACHR has received troubling information about the existence of a growing number of forced evictions in the internal displacement camps. According to the information received,³² although the State selected some plots of land for the installation of the camps, given the urgency of the situation the vast majority of displaced persons set up spontaneous camps on unoccupied public or private lands. Moreover, several months after the earthquake, most of the displaced people have been unable to return to their homes, which has fueled great tension between the residents of the unofficial camps and the owners or purported owners of the land. Since prior to the earthquake only 5% of Haiti's land area was registered,³³ it cannot be known for sure that people claiming to own land do in fact have rights over the parcels in question. Figures from the International Organization for Migration³⁴ point to the magnitude of the problem: 60% of the IDP camps are located on private property; 70% of the people living in the camps were in rented accommodation prior to the earthquake; and only 19% have homes that they can rebuild.

42. According to numerous sources, only weeks after the earthquake, state agents and people claiming to own the land where the camps had been set up began to remove families from the IDP camps, generally through the use of force. These evictions were carried out with no prior notification and without following the procedure established in Haitian law. According to the available information, the presumed landowners blockaded the camps in order to pressure the residents to leave, and they prevented the international cooperation agencies from supplying them

³¹ Press Release No. 115/10, published by the IACHR on November 18, 2010. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2010/115-10sp.htm>.

³² Information provided by the participants at the general hearing on the "Human Rights Situation in the Camps for Internally Displaced Persons in Haiti," held on October 26, 2010, and from reports by international and local nongovernmental organizations published following observation missions, such as "We became garbage to them. Inaction and complicity in IDP expulsions," *International Action Ties*, August 14, 2010; available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/08/IDP-Land-Report-Aug12-21.pdf>; and "Vanishing camps at gunpoint," July 14, 2010, *International Action Ties*; available at: http://ijdh.org/wordpress/wp-content/uploads/2010/07/IAT_vanishing_camps_report_haiti.pdf.

³³ Press Release C-399/10, published by the Organization of American States on October 24, 2010. Available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-399/10.

³⁴ *Registration Update, February 25 – June 25, 2010*. Haiti Camp Coordination Camp Management Cluster. International Organization for Migration. Cited in: *We became garbage to them. Inaction and complicity in IDP expulsions*, *International Action Ties*, August 14, 2010. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/08/IDP-Land-Report-Aug12-21.pdf>.

with food, drinking water, and medical assistance. The State did not offer the evicted families alternative places to live, and so thousands of people were left with no place to go to.

43. According to information published by one international nongovernmental organization,³⁵ over several nights in June 2010, a group of men armed with machetes made threats against families living at Camp Immaculée, located in the vicinity of Cité Soleil, so that they would abandon the camp. They allegedly slashed tents, stole property, and physically attacked camp residents. International observers notified the Haitian National Police and MINUSTAH about the incident. However, during the night that the observers spent at the camp, not one patrol entered the IDP camp between the hours of one and five in the morning. According to the observers, by the morning of July 12, the camp had completely disappeared. The Parc Sportif de Cité Soleil Camp, located a 15-minute walk from Camp Immaculée, was home to 500 displaced persons. After a week of constant attacks with machetes and gunfire by people from outside the camp, and threats of arson, all the residents abandoned it. By the end of May, the camp had disappeared. Two children were killed by gunfire. The same fate was suffered by more than a thousand displaced persons from Delmas 60, an area organized into 14 small camps known as "CR."

44. It should be noted that according to the information available, these evictions are taking place with the acquiescence and, in some cases, with the involvement of Haitian authorities. Officials from the Interior Ministry, the National Police of Haiti, and the municipal authorities of Port-au-Prince, Pétiion-Ville, Croix des Bouquets, and other localities are accused of direct participation in the forced eviction campaigns. According to information provided to the IACHR,³⁶ officials from those agencies, in their capacity as state agents, demolished one IDP camp with a bulldozer, denying the residents the opportunity to gather their belongings, carried out arbitrary arrests, wounded some people with rubber bullets, and, in some cases, denied them access to basic services provided by nongovernmental organizations. In addition, state agents have reportedly refused to protect displaced communities from violence at the hands of private citizens. That situation is particularly critical, given that the vast majority of IDP camps residents are members of vulnerable groups.

45. In addition, the Inter-American Commission has received troubling reports about the situation of some 30,000 displaced families living in the Canaán, Onaville, and Jerusalén sectors on the outskirts of the city of Croix des Bouquets, some 15 km from Port-au-Prince.³⁷ According to the available information, on March 22, 2010, the Haitian government issued a decree expropriating a large area of inhabited land in that area, in order to relocate a significant number of displaced families who were occupying public spaces in various parts of the country's capital. Following the enactment of the decree, thousands of families began to arrive to set up shelters in the area; in July the first temporary homes were built; and by December 2010, the number of families there was estimated to be 30,000.

46. However, after tensions arose between the owner and the displaced families, the State began to backtrack and contacted the organizations working with the displaced communities to get them to abandon their activities and withdraw from the area. Then, on August 2, 2010, the Ministry of the Economy and Finance published a notice indicating that any building or structure erected in the area without the ministry's authorization would be demolished without prior notice.

³⁵ "Vanishing camps at gunpoint," July 14, 2010, International Action Ties; available at: http://ijdh.org/wordpress/wp-content/uploads/2010/07/IAT_vanishing_camps_report_haiti.pdf.

³⁶ Hearing request filed by American University, the Bureau des Avocats Internationaux, and the Institute for Justice and Democracy in Haiti for the 140th session of the IACHR.

³⁷ The people who furnished the Inter-American Commission with this information expressly requested that their identities be kept confidential.

As a result of these actions by the State, these displaced communities are currently in a situation of great vulnerability and abandonment.

47. At the hearing held on October 26, 2010,³⁸ the IACHR received information on this practice of forced evictions gathered during an observation mission carried out by the participating organizations in conjunction with local organizations. According to the figures given at the hearing, since May 2010 some 30,000 people had reportedly been evicted from more than 200 camps and 144,000 displaced persons had received eviction threats. The attending organizations reported that the alleged landowners were accompanied by heavily armed police officers, public officials, and corrupt lower-court magistrates, and that the evictions were carried out without court orders. They noted that the evictions are made without a bailiff being present, as required by Haitian law. They also reported that during forced evictions, displaced people suffer verbal, physical, and sexual violence and that their property is destroyed. In addition, several people have reportedly received death threats from purported landowners.

48. The organizations participating in the hearing also spoke about the eviction victims' difficulties in securing access to justice, on account of the fragility and alleged corruption of the judicial system. They indicated that they had asked magistrates to conduct on-site inspections, but that it was difficult for that to take place. The participants concluded that Haiti's main problem is social exclusion. They reported that although a high proportion of the lands occupied by displaced people are public, they are being transferred to private interests, which, they claimed, points to the lack of political will to protect the neediest sectors of society.

49. On account of the humanitarian crisis created by this situation, the United Nations and the Haitian government negotiated a three-week moratorium on evictions from April 22 to May 13, 2010. However, international observers reported that the evictions continued after the moratorium ended. The Secretary-General's Representative on the Human Rights of Internally Displaced Persons also noted his concern at the growing number of forced evictions of people living on private land. In connection with this, he pointed out that property rights must be seen in conjunction with the economic and social rights of the earthquake victims. He also pointed out that the State should publicly announce that it will allow no evictions that do not comply with established procedures.³⁹

50. In the press release published at the close of the 140th Regular Session, the Inter-American Commission noted its concern regarding the illegal forced evictions of people from the internal displacement camps and it recommended that the Haitian State place a moratorium on evictions until the new government is sworn in.⁴⁰ In addition, on November 15, 2010, the IACHR granted precautionary measures (MC-367-10) to protect the lives and integrity of the people living in five internal displacement camps that had been targeted by forced evictions or threats of expulsion. In that precautionary measure, the IACHR asked the Haitian State to place a moratorium on evictions until the new government took office; to ensure that people illegally evicted from the camps are relocated in places that meet minimum sanitary and security requirements; to ensure displaced people access to an effective remedy before the courts and other competent authorities; to implement effective security measures to safeguard the physical integrity of camp residents,

³⁸ General hearing on the "Human Rights Situation in the Camps for Internally Displaced Persons in Haiti," October 26, 2010. Participants: International Human Rights Law Clinic, American University–Washington College of Law, Institute for Justice and Democracy in Haiti, Bureau des Avocats Internationaux. The audio record is available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=120>.

³⁹ News story published by the Office of the United Nations High Commissioner for Human Rights. Available at: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=10467&LangID=F>.

⁴⁰ Press Release No. 109/10, published by the IACHR on November 5, 2010. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2010/109-10sp.htm>.

ensuring special protection for women, children, and adolescents; to provide the security forces with training on the rights of displaced people, in particular the right of freedom from forced evictions; and to ensure that the international cooperation agencies have access to the internal displacement camps. Later, in Press Release No. 115/10, published on November 18, 2010,⁴¹ the Inter-American Commission noted its concern at the forced evictions of the IDP camps and reported on the actions taken by the Haitian State to comply with the requested precautionary measures (MC-367-10).

51. Finally, it should be noted that since June 2010, the Department of State Modernization and Good Governance of the OAS Secretariat of Political Affairs has been carrying out a strategic land registry and registration effort through a team working with the National Land Registry Office (ONACA), which is responsible for preparing the "Foncier Haiti" project.⁴² This project, intended to modernize the land registry, will be implemented in two phases carried out over a period of seven years. Foncier Haiti receives technical support from overseas experts and agencies, such as Quebec's General Land Registry Directorate and National School of Public Administration. In October 2010, the project received a donation of US\$ 1.5 million from the private sector. Although the principal goal of this project is to boost the country's economic development by attracting foreign investments, it could also have an impact on the displaced population.

IV. OTHER TOPICS OF CONCERN

A. Children

52. In its 2008 Observations, the IACHR said that one of the specific purposes of its visit to Haiti was to assess the situation of children and adolescents by collecting information on forms of discrimination and violence as well as on the State's response. In the Observations, the Commission noted that street children and child domestic workers (*restavek*) were among the most vulnerable groups within that segment of the population. The Inter-American Commission identified the worst forms of abuse faced by children and adolescents as including sexual abuse and rape, trafficking in minors, child prostitution, and the growing phenomenon of child abductions. An estimated 2,500 children and adolescents of both sexes were living on the streets of Port-au-Prince at the time of the visit.

53. In its Observations, the IACHR noted that homeless children and adolescents were extremely vulnerable to abuse by state agents and/or criminal gangs, particularly from 2004 to date. Because of the proliferation of weapons and of violent criminal gangs in certain areas of Port-au-Prince, many youngsters have been recruited by those groups. The adults in these criminal gangs use the children and adolescents as human shields, as bait, and as a source of labor for work of all kinds, and on occasions they force them to participate directly in the gang rapes and other crimes that the groups commit. As a result, children and adolescents are particularly exposed to acts of violence in Haiti. Similarly, in its report *The Right of Women in Haiti to be Free from Violence and Discrimination*, the Inter-American Commission indicated that according to figures from the service-provider organization Kay Famn, approximately half the country's rape victims were aged under 18. Finally, in Chapter IV the Commission expressed its concerns about the situation of *restavek* children, and the situation faced by children on the street and in detention.

⁴¹ Press Release No. 115/10, published by the IACHR on November 18, 2010. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2010/115-10sp.htm>.

⁴² Press Release C-399/10, published by the Organization of American States on October 24, 2010. Available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-399/10.

54. After the January 2010 earthquake, there was an upswing in the already serious levels of vulnerability faced by children and adolescents. This group was particularly affected chiefly because almost half Haiti's population is under 18 years of age⁴³ and 40% are younger than 15.⁴⁴ According to figures from the United Nations,⁴⁵ 1.5 million under-18s were affected by the earthquake, of whom approximately 720,000 were aged between six and twelve and 500,000 were aged under five. In addition, some 300,000 children and adolescents were displaced to other departments of the country. According to the Haitian Ministry of Education, approximately 5,000 schools were affected – 23% of all schools in the country – with the vast majority of them forced to close. In Port-au-Prince, as many as 80% of the schools were affected.

55. Similarly, the United Nations independent expert on the situation of human rights in Haiti, in his report to the Human Rights Council,⁴⁶ stated that in spite of the good work carried out by UNICEF, in May 2010 a large number of minors were still either living alone or living with other families. He noted that this situation encourages the *restavek* phenomenon, which predates the humanitarian crisis. The independent expert also noted his particular concern at the reports of trafficking in children and adolescents on the border with the Dominican Republic. He also reported that foreign families with adoption procedures underway in Haiti have attempted to speed up the formalities, running the risk of failing to abide by the process provided for in domestic law. On this point, and given the great increase in adoption requests coming from abroad after the earthquake, the expert noted that international adoptions, under the Hague Convention on International Adoption, must be seen as a last resource, once all possibilities for adoption at the domestic level have been exhausted.

56. Finally, at the 140th regular session's general hearing on the situation in Ouanaminthe,⁴⁷ a northern city located on the border with the Dominican Republic, the attending organization reported that the region had a high percentage of children and adolescents not attending school (with girls accounting for 67% of the total). It informed the Commission that children and adolescents worked carrying produce to the border city of Dajabón in the Dominican Republic. Once at the border, they were exposed to a wide variety of risks, including trafficking in human lives for the purposes of sexual exploitation and organ trafficking. The organization also spoke of rapes of children and adolescents and specifically reported the case of one 11-year-old boy who had been raped by a customs officer; although the case was public knowledge, no investigation had been opened.

B. People with disabilities

57. One of the vulnerable groups most affected by the natural disaster were people with disabilities. According to information from the United Nations independent expert on the situation of human rights in Haiti,⁴⁸ prior to the earthquake Haiti was home to 800,000 people with physical

⁴³ UNICEF figures. Available at: http://www.unicef.org/spanish/infobycountry/haiti_statistics.html#68.

⁴⁴ Figures from the Pan American Health Organization (PAHO). Available at: http://www.paho.org/Spanish/DD/AIS/cp_332.htm.

⁴⁵ Information obtained from the Office of the United Nations Special Envoy for Haiti.

⁴⁶ *Rapport de l'expert indépendant sur la situation des droits de l'homme en Haïti*, Michel Forst. General Assembly. United Nations, May 3, 2010. A/HRC/14/44. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.44_fr.pdf.

⁴⁷ General hearing on the "Human Rights Situation of Children and Women in the Area of Ouanaminthe, Haiti," participants: Regroupement des Citoyens pour la Protection des Droits Humains (RECIPRODH) and Haitian State. Audio available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=120>.

⁴⁸ *Rapport de l'expert indépendant sur la situation des droits de l'homme en Haïti*, Michel Forst. General Assembly. United Nations, May 3, 2010. A/HRC/14/44. Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.44_fr.pdf.

disabilities, equal to 10% of the country's total population. In early February 2010, Handicap International estimated that at least a thousand prosthetic legs were needed. According to information furnished by the Haitian State, by May 2010 more than 5,000 cases of people who had been physically disabled as a result of the earthquake had been reported. In addition, the main prosthetics facility in Haiti prior to the disaster (Healing Hands for Haiti) was destroyed by the earthquake. The expert also pointed out that extreme poverty affected this vulnerable sector of the population to a much greater extent, on account of the work-related problems they face.

C. Economic, social, and cultural rights

58. On March 23, 2010, during its 138th regular session, the IACHR held a public hearing on the situation of economic, social, and cultural rights following the earthquake.⁴⁹ In particular, the attending organizations provided information on the rights to food, health, and housing. That information was collected during the observation missions carried out by some of the organizations in the first two months after the earthquake; it was then processed and analyzed in a report submitted to the Inter-American Commission.⁵⁰

59. In its 2008 Observations, the IACHR noted its concern at the serious restrictions on access to decent housing, drinking water, health, education, and employment. It also identified structural inequalities between men and women in the economic, health, and other sectors. Thus, in its report *The Right of Women in Haiti to be Free from Violence and Discrimination*, the Inter-American Commission recommended that Haitian State adopt legislation, public policies, and programs to correct the inequalities between men and women, particularly in sectors such as health. Additionally, in Chapter IV the Commission stressed that extreme poverty remains one of the most extensive and complex challenges Haiti faces, with its consequent effects on human rights.

60. Regarding the right to food, the attending organizations indicated that more than half the people interviewed said they had received no food assistance whatsoever, and that between 60% and 100% said they were in urgent need of water. In some communes located away from Port-au-Prince, all the respondents had indicated a need for food. They also described poor coordination in the distribution of food aid. There had even been reports of women forced into sex in exchange for food distribution cards.

61. Regarding the right to health, almost half of the interviewees stated that there was at least one sick person in the family. That is compounded by the serious hygiene problems at the IDP camps, including poor sanitation, foul smells, contaminated water, and a shortage of latrines. Those unhealthy conditions were a key factor behind the cholera epidemic referred to in the second section of this chapter. Vulnerable groups – such as newborns, young children, pregnant women, the disabled, and the elderly – have been particularly hard hit. At the same time, the exodus of thousands of people from the capital to the country's interior has outstripped the capacities of the host communes, which even before the earthquake were in need of aid. For example, the commune of Saint Marc, home to 300,000 people, received 35,000 displaced persons.

62. Regarding the right to housing, the vast majority of the camps, which were installed spontaneously, are lacking in all regular services. Only 21% of camp residents sleep in tents, 58% sleep under tarpaulins, and the rest have no weatherproof materials at all to protect them. Finally,

⁴⁹ General hearing on "Economic, Social, and Cultural Rights in Haiti following the Earthquake," March 23, 2010, participants: Institute for Justice and Democracy in Haiti, Bureau des Avocats Internationaux, Center for Human Rights and Global Justice, Robert F. Kennedy Center for Justice and Human Rights, Partners in Health, and the Haitian State. Available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=118>.

⁵⁰ *Neglect in the Encampments: Haiti's Second-Wave Humanitarian Disaster*. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/03/Neglect-in-the-Encampments-FINAL.pdf>.

the organizations stressed the urgency of a mechanism for tracking the international aid funds sent to Haiti, which would ensure the right of the population to know how much has been sent to the country and how those resources are being used. It would also assist the Haitian people's participation in the reconstruction effort and the provision of assistance based on a human rights approach.

63. On September 21, 2010, the attending organizations submitted updated information to the IACHR to follow up on the points addressed at the hearing. They reported that the economic and social rights situation of the affected population remained unchanged. They also spoke of the forced evictions from the displacement camps, sexual violence at the camps, and the limited access to basic goods and services such as water and food. On a more positive note, they also referred to the establishment of the Interim Commission responsible for coordinating Haiti's reconstruction. They also mentioned the creation of the Haiti Reconstruction Fund at the donors' conference held in March 2010, which offered mechanisms that could improve coordination, accountability, and transparency in the handling of funds. They pointed out, however, that only a small portion of the financial assistance had been placed in that fund.

D. Justice system

64. In its 2008 Observations, the Inter-American Commission identified several structural weaknesses in the institutions responsible for the administration of justice. During its 2007 visit, the IACHR concluded that those institutions needed broad, long-term reforms to train the Haitian police and courts so they could ensure the population effective and impartial justice. It also stated that although urgent measures were needed, they were insufficient for dealing with deep-rooted institutional weaknesses. It therefore recommended that the Haitian state draw up an exhaustive national judicial reform program and ensure the allocation of sufficient resources to implement that plan, including providing the Secretariat of State for Justice with adequate technical and financial support. In addition, it recommended the prompt enactment of the draft legislation on the status of judges, the establishment of the judicial school, and the creation of the Superior Council of Magistrates.

65. In its Chapter IV the Commission noted that in 2009 the information received indicated that the system of justice continues to be characterized by grave deficiencies, notably an insufficiency of judges, *ultra vires* decisions, corruption and the excessive use of preventive detention.

66. A study conducted by the Institute for Justice and Democracy in Haiti⁵¹ identified three main challenges facing the Haitian judiciary in the aftermath of the earthquake. The first challenge is to respond to the needs of the vast majority of the population (80%) living below the poverty line. That majority is unable to enforce their most basic rights – essential for escaping from the poverty cycle – on account of the notorious corruption within the judicial system. Second, the study notes that sexual violence against poor women and girls has never been effectively investigated or punished.

67. The study also referred to the challenge of security in land ownership. It noted that judicial corruption, the inadequate land registration system, and political instability had led to great insecurity regarding the ownership of land. Several properties had two legally recognized owners, and most small landowners had property deeds that were either informal or questionable. That insecurity discourages investment and land improvements, in addition to allowing individuals with political, economic, or military power to assume ownership over the work or property of others.

⁵¹ *Challenges Facing Haiti's Justice Sector*, July 13, 2010. Available at: <http://ijdh.org/wordpress/wp-content/uploads/2010/07/Justice1pagerbcdraft7-12-2010.pdf>.

Finally, the study also highlighted the disastrous consequences of this situation in the aftermath of the earthquake.

68. As the Inter-American Commission has stated on several occasions, a judicial system with adequate and effective resources is vital for the future of Haiti and for protecting the rights of its population. The new specific challenges that have arisen as a result of the earthquake and its repercussions have compounded the enormous challenges that the country already faced. Identifying solutions is a key factor in the reconstruction process. In that context, the role of the judiciary is crucial in providing a response to the extremely grave situations that have arisen following the earthquake, such as violence against women and girls in the IDP camps and the forced evictions in conjunction with the complex problems of land ownership.

V. CONCLUSIONS AND RECOMMENDATIONS

69. Prior to the devastating earthquake of January 12, 2010, Haiti was showing some signs of progress in specific areas, such as civil and political rights and security, thanks to the political stabilization of the country as of February 2006. In that context, the State had undertaken a series of specialized initiatives to provide women violence victims with greater protection and additional services. In its report *The Right of Women in Haiti to be Free from Violence and Discrimination*, the Inter-American Commission acknowledged the willingness and commitment shown by the Ministry for Women in drawing up a plan of action for eradicating discrimination and violence against women in Haiti.

70. In spite of those efforts and indicators of progress, the IACHR noted an upswing in poverty in the country, a worsening economic gap, the absence of effective accountability mechanisms, as well as other problems. The Inter-American Commission also noted that it continued to receive information on persistent acts of violence and discrimination against women. In its 2008 Observations, the IACHR also concluded that in spite of the progress observed during the 2007 visit, Haiti's institutions remained weak, with inadequate resources and personnel, and that they were neither properly trained nor properly organized. As a result, the agencies of the State were largely unable to provide the population with basic services in the areas of health, education, and social welfare. For those reasons, Haiti continued to face a structural situation with a grave impact on its inhabitants' enjoyment of their essential rights.

71. That preexisting situation of extreme structural gravity was compounded by the emergencies caused by the earthquake and its aftermath. Following the earthquake, the challenges identified by the Inter-American Commission prior to the disaster have worsened and, at the same time, new problems related to the emergency situation have arisen. Consequently, the grave structural situation that already existed was compounded by more immediate and urgent challenges. One of the main challenges is a lasting solution to the problem of housing the people affected by the natural disaster. Meanwhile, the even more immediate challenge of improving living conditions in the internal displacement camps must be addressed. To keep the situation in Haiti from continuing to worsen, the State and the reconstruction agencies must resolve three issues at the IDP camps: (i) security, (ii) preventing violence against women, and (iii) access to basic goods and services.

72. Mechanisms must also be created to ensure that evictions are carried out in accordance with legal procedures, that the evicted people are voluntarily relocated, and that their basic rights are respected. To achieve that, resettlement strategies and measures to regularize land ownership must be adopted. Those measures are essential for attaining sustainable development and for keeping the existing camps from turning into new slums. In addition, a comprehensive solution to the deficiencies of the registration system is essential in ensuring the country's long-term economic and social development.

73. The IACHR points out that during times of displacement, as has been established by the organs of the inter-American human rights system, states must interpret the rights enshrined in the American Convention in the light of the United Nations Guiding Principles on Internal Displacement.⁵² Those principles indicate that the authorities must prevent and avoid the emergence of conditions that could lead to the arbitrary displacement of persons.⁵³ In addition, the principles must be enforced regardless of any distinctions of sex, and certain internally displaced persons – such as children, female heads of household, and persons with disabilities – have the right to treatment that takes their special needs into account.⁵⁴

74. Regarding the situation of women and girls in Haiti following the earthquake, the Inter-American Commission expresses its particular concern at the seriousness, urgency, and irreparable nature of the sexual violence and humiliation being suffered by women and girls in the internal displacement camps. In Haiti's history, sexual violence has been frequently used by both state and nonstate agents as an instrument and strategy to control women and the community that surrounds them. In addition, as noted by the IACHR in its 2009 Report, discrimination against women is a constant and structural characteristic of Haitian society and culture, during periods of peace and instability alike, and one that must be addressed to guarantee the full protection of women's rights.

75. With regard to the reconstruction efforts, the Inter-American Commission believes that incorporating a human rights based approach into that process is of key importance in attaining sustainable development. To achieve that, the goal of each cooperation and development program must make a direct contribution to the pursuit of one or more human rights recognized by international law.⁵⁵ A reconstruction process focused primordially on humanitarian assistance without an approach based on human rights will not allow long-term solutions to be attained. In addition, Haitian society must have an active role in this process and must not be relegated to an essentially passive role limited exclusively to receiving international aid.

76. The IACHR believes that in the current context of reconstruction, the Haitian authorities and the international community have a valuable opportunity to adopt measures for strengthening the institutional apparatus of the Haitian State and thus ensure sustainable development for the country. It is in order to take advantage of that opportunity that the Inter-American Commission addresses the State of Haiti and the other authorities involved in the reconstruction, particularly the IHRC, to underscore the need to continue deploying efforts to meet the recommendations set out in the report *The Right of Women in Haiti to be Free from Violence and Discrimination*, in the *Observations of the Inter-American Commission on Human Rights upon conclusion of its April 2007 visit to Haiti*, and in Chapter IV of the Annual Report of the Inter-American Commission on Human Rights 2009

77. The Inter-American Commission reiterates the recommendations made in the said documents, since their implementation by the State is still pending. However, on account of the particular situation that Haiti is currently facing, those recommendations must be expanded with other more specific recommendations, focused on the new reality of reconstruction following the January 2010 earthquake.

⁵² I/A Court H. R., *Case of the Ituango Massacres*, Judgment of July 1, 2006, Series C No. 148, para. 209.

⁵³ United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, February 11, 1998, principles 5 and 6.

⁵⁴ United Nations Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, February 11, 1998, principle 4.

⁵⁵ See, in this regard, the publications of the Instituto Universitario de Desarrollo y Cooperación, available at: <http://www.ucm.es/info/IUDC/pagina/158>.

Recommendations

Preliminary observation: Although the State of Haiti, in its capacity as a member state of the Organization of American States, is the chief intended recipient of these recommendations, they are also intended for the international agencies directly involved in the country's reconstruction process as well as for the interim authorities created in response to the humanitarian crisis.

- **Regarding the situation of girls and women in the IDP camps**

1. Ensure that adequate medical and psychological services for victims of sexual violence are provided in accessible venues that:
 - address the need for privacy during exams;
 - have female medical providers and culturally sensitive medical providers who have experience working with rape victims;
 - issue medical certificates to rape victims;
 - provide HIV prophylaxis and emergency contraception;
2. Ensure adequate security be provided in the IDP camps, including public lighting, appropriate patrolling, and an increase in women police officers on patrol in and around IDP camps and at police stations near IDP camps;
3. Implement measures to facilitate the filing of legal actions and to improve the efficiency of judicial investigations, including, in particular, training police officers in their duties in cases of violence against women;
4. Ensure that special units within the judicial police and the Prosecutor's Office be created and fully funded in order to investigate cases of rape and other forms of sexual violence; and
5. Ensure Haitian grassroots women's groups full participation and leadership in all planning and implementation of policies and practices designed to address and prevent rape and other forms of sexual violence in IDP camps.

- **Regarding the practice of forced camp evictions**

6. Place a moratorium on evictions until the land ownership situation has been settled.
7. Ensure that land regulation, which is essential for the country's development, is carried out with regard to the economic and social rights of the earthquake victims.
8. Issue a public statement prohibiting all evictions that do not meet the legally established procedures, and publicize it massively.
9. Provide illegally evicted displaced people with effective judicial remedies.
10. Ensure that people illegally evicted from the camps are voluntarily relocated in places that meet minimum sanitary and security requirements.
11. Adopt security measures to safeguard the physical integrity of camp residents, with guarantees for the special protection of women, children, and adolescents.

12. Ensure that human rights defenders be provided with adequate protection.
13. Provide the security forces with training on the rights of displaced people, in particular the right of freedom from forced evictions.
14. Ensure that the international cooperation agencies have access to the internal displacement camps.

- **Regarding the reconstruction process**

15. Incorporate a human rights-based approach into the different aspects of the reconstruction process.
16. Ensure that the strengthening of the judicial system is a priority in the reconstruction effort.
17. Incorporate a comprehensive approach to the rights of children into the design of public policies, with particular emphasis on orphaned children and adolescents.
18. Ensure the timely disbursement of the donation pledges made at international donors' conferences.
19. Establish an accountability mechanism in the implementation of cooperation and development projects.
20. Ensure the participation and consultation of the beneficiaries of the cooperation, along with the involvement of Haitian society in all aspects of the reconstruction.