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**ANNUAL REPORT OF THE
INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS
2009**

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**ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION
ON HUMAN RIGHTS 2009**

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CHAPTER I

INTRODUCTION

1. Fifty years ago the Foreign Affairs Ministers of 21 countries of the Hemisphere met at the Fifth Meeting of Consultation of Ministers of Foreign Affairs, and signed the Santiago Declaration, which recognized that “harmony among the American republics can be effective only insofar as human rights and fundamental freedoms and the exercise of representative democracy are a reality within each one of them.” The ministers agreed to adopt an American convention on human rights and to create organs specifically for the purpose of protecting and monitoring these rights. The Inter-American Commission on Human Rights was born in this context, and it was the first OAS organ charged with promoting respect for fundamental rights in the region.

2. Over these past five decades, the IACHR has promoted structural reforms that have strengthened the effectiveness of human rights throughout the region. In its opinions and recommendations, reports and visits, as well as its interaction with the rest of the actors of the system, the Inter-American Commission has advanced in the protection of human rights for all sectors of the population.

3. Noteworthy among its contributions are the repeal of amnesty laws and of contempt [*desacato*] laws criminalizing critical opinions expressed about public officials. In addition, in their compliance with Inter-American Commission reports on individual cases as well as general situations, several member States of the OAS have taken measures such as, *inter alia*, the adoption of laws punishing domestic violence, the adoption of public policies for the eradication of forced labor and violence against women, and to guarantee political participation and the right of the Indigenous peoples to own their land.

4. The framework provided by the fiftieth anniversary of the IACHR has been propitious for the celebration of important achievements in the protection of human rights in the region, and has allowed the renewal of its commitment to defend and promote these rights. During the Inter-American Commission’s commemorative visit to Chile, on September 3, 2009 the IACHR signed the Declaration of Santiago de Chile, and declared that the strengthening of the system “is possible through a renewal, consolidation, and universalization of human rights ideals,” a task that should be undertaken jointly by the organs of the inter-American system, OAS Member States and civil society. It also underscored the importance of having a democracy effectively in force for the full enjoyment of the human rights, and the need to maintain a constructive dialogue with all those who use the inter-American human rights system to strengthen human rights and democracy. Lastly, the Inter-American Commission declared that “the ideals of the human rights system expressed in the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and other instruments continue to apply today, those of ensuring respect for human dignity and guaranteeing a life free of fear and misery; hence, it is essential to consolidate democratic institutions, the rule of law, and economic and social development throughout the region.”

5. In addition, as part of its commemorative activities, the IACHR had the honor of accepting an invitation from the Government of Argentina for a formal visit, which took place in the month of September, thus commemorating the thirtieth anniversary of an *in loco* visit made by the Inter-American Commission when Argentina was in the throes of a dictatorship. This occasion allowed the IACHR to reunite with the past, remember crucial moments in its history, and reflect on the challenges for the future.

6. Among these challenges is the one of increasing access to the inter-American system for victims of human rights violations. In this respect, an important step was taken in 2009,

which brings about a profound transformation of the dynamics of access to the system and the protection of human rights: the adoption of the Rules of Procedure for the Operation of the Legal Assistance Fund for the victims by the Permanent Council of the OAS. For many years the Inter-American Commission has insisted on the need to provide victims of human rights violations with the necessary tools to gain access to the inter-American system when they have not been able to obtain proper protection of their rights within their domestic jurisdictions. However, although the adoption of the rules of procedure of the fund constitutes an important step, it would also be a very small one should it not be accompanied by the financial resources to back its operation and ensure it becomes, in actual practice, a mechanism allowing any inhabitant of the Hemisphere, without regard for the place or conditions in which he or she may be, to petition the inter-American organs that exist for his or her protection.

7. The need to provide sufficient resources to the system for the protection of human rights continues to be the main debt outstanding for the strengthening of the inter-American system. The Inter-American Commission has been fulfilling its role of promoting compliance with and the defense of human rights in the Hemisphere despite its limited financial and human resources, and has always sought to reach the greatest possible number of people and provide effective responses to the victims of human rights violations. The IACHR has also accompanied the member States in their domestic proceedings in order to promote greater guarantees for the fundamental rights of their inhabitants and in their adoption of public policies that are increasingly inclusive and in concordance with inter-American ideals. This response could be even more integral and comprehensive if the resources at the disposal of the Inter-American Commission were proportionate to the mandates it is assigned and, generally, to the great needs regarding the protection of human rights in the region. If the budget of the OAS is an indicator of the priorities of the member States with respect to the activities that the organization must carry out, the 5% assigned to the IACHR from the Organization's regular 2010 budget constitutes a message conveying meager encouragement regarding the States' interest in strengthening the inter-American system.

8. Notwithstanding the foregoing, there are many instances of progress in which the organs of the inter-American system have participated, that are also the result of the tenacity of civil society in its role as overseer of the rights of those most vulnerable, as well as of the honest efforts on the part of many states to implement the decision of the organs of the system. However, the American continent continues to display a panorama plagued with a reality of social inequality, serious problems regarding access to justice, discrimination against women, Indigenous peoples, migrants, and an important number of the members of its population due to their sexual orientation.

9. Democratic instability continues to be a threat impossible to ignore, as demonstrated by the coup d'état in Honduras in 2009. This event demonstrates the fragility of democracy and the importance of continuously strengthening it, a process in which all sectors of society should participate. In this process, respect for human rights is fundamental. Undoubtedly, the rights to political participation, of freedom of expression, of freedom of association, and to protection and a fair trial are essential for the development of a pluralistic life in community, respectful of differences, where all voices are heard and force does not prevail, nor do the interests of one sector of society prevail with clear prejudice to those of another, but the good for all people.

10. In addition, the Inter-American Commission has for many years emphasized that respect for human rights must be comprehensive, because it is not enough to guarantee civil and political rights if this does not include the effective respect for the economic, social and cultural rights of the people. In this regard, it should be underscored that after 10 years of the entry into force of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, also known as "Protocol of San Salvador," only 14 countries

have ratified it, and the Working Group to analyze periodic reports by the States Parties to the Protocol has not been fully staffed.

11. The Inter-American Commission considers it appropriate to reiterate once again that the fullness and effectiveness of the protection provided to the inhabitants of the Hemisphere by the system depend, chiefly, on the efforts made by member States to achieve the system's universality by ratifying the American Convention and the other human rights instruments, as well as the acceptance of the jurisdiction of the Court; on their compliance with the obligation to adapt domestic the legislation of the States Parties to the rights provided for by the instruments adopted within the system and their proper interpretation and application by their organs, especially the courts, and, lastly, on their compliance with international commitments and the recommendations made by the IACHR and the Inter-American Court.

12. From its creation, the Commission has transformed itself and has adapted to the needs for promotion and protection of human rights in the system. Thus, it has carried out several regulatory reforms with a view to making its procedures more efficient and effective. This year, after a process that took more than two years and included the active participation of the States, civil society and an unprecedented dialogue with the Inter-American Court, both organs have carried out a profound reform of different elements related to the four essential themes of the system for the protection of human rights: the mechanism of precautionary measures, the processing of petitions and cases, the forwarding of cases to the Inter-American Court, and the hearings held on the situation of human rights in the member States. During the debates, the IACHR gave serious consideration to the valuable comments made by the States, civil society organizations, academics and private citizens from the entire Hemisphere, who responded to the consultations opened on the preliminary draft for reform, between May and August of 2009. The main objective of the reform is to strengthen the inter-American system by, *inter alia*, strengthening the participation of the victims within it, greater openness in the proceedings before its organs, and the establishment of greater guarantees to ensure procedural equality of arms.

13. The Inter-American Commission's 2009 annual report has kept the structure of prior reports, including, on the one hand, the main activities of the IACHR over the year in compliance with its mandate to promote and protect human rights and, on the other, its analysis and follow-up of the human rights situation in the region.

14. **Chapter II** of this report refers, first, to the legal foundations, functions, and jurisdiction of the Inter-American Commission, and then goes on to address different sections related to its 2009 activities including, in addition to its sessions, the Commission's visits to different countries in the region, the activities carried out by the thematic rapporteurships throughout the year, and the IACHR's activities related to the Inter-American Court of Human Rights. In closing, this chapter lists the resolutions approved by the OAS General Assembly during its thirty-eighth regular session, which establish a specific mandate for the IACHR.

15. **Chapter III** of the annual report refers to the system of petitions and individual cases; it presents statistics for 2009 and describes the follow-up made on implementation of the IACHR's recommendations and on agreements reached in friendly settlements between parties. In this regard, it is important to emphasize that the IACHR continues its supervision until there is full compliance with the recommendations or a friendly settlement is reached. This chapter also reports on provisional measures and contentious cases submitted by the IACHR to the Inter-American Court of Human Rights.

16. As it does every year, this Inter-American Commission's annual report includes a chapter that seeks to provide to the OAS member States up-to-date information on the human rights situation in the countries that received special attention from the IACHR during the reporting

period. **Chapter IV** of the 2009 annual report examines the human rights situation of Colombia, Cuba, Haiti, Venezuela, and Honduras.

17. Regarding **Colombia**, in this chapter the IACHR specifically addresses the progress and existing challenges in the clarification of crimes perpetrated during the conflict, including the participation of the paramilitary leaders extradited to the United States in the Colombian proceedings held under the Law for Justice and Peace [*Ley de Justicia y Paz*], a persistent pattern of violation of the rights to life and to humane treatment, the situation of ethnic groups, and intelligence activities against human rights defenders, community leaders and justice operators.

18. In analyzing the situation of **Cuba**, the IACHR paid particular attention to the structural situations that seriously affect the full enjoyment of human rights, especially political rights, guarantees of due process and independence of the judiciary, deprivation of liberty of political dissidents, restrictions on the right to freedom of movement and residence, restrictions on freedom of expression, the situation of human rights defenders, and the freedom to associate in labor unions. Considerations on economic and commercial sanctions imposed on the Government of Cuba were also included, along with a reiteration that the embargo must end because of the impact caused by these sanctions on the human rights of the Cuban population. This, however, does not exempt the State from compliance with its international obligations, nor is it excused from violations to the American Declaration, described in this report.

19. The Commission continued to give special follow up to the human rights situation in **Haiti** in 2009, and analyzed the structural situations that seriously affect the enjoyment of the fundamental rights of its inhabitants and, more specifically, the grave situations of violence that prevent proper rule of law, the serious institutional crises, the processes of institutional change that can have negative consequences for human rights, and the grave omissions in the adoption of the necessary norms for the effective exercise of fundamental rights.

20. With respect to Honduras, the IACHR submits, as part of its analysis in chapter IV, the executive summary of its report *Honduras: Human Rights and the Coup d'État*, which addressed the human rights situation since the date of the coup in that country, June 28, 2009. This report was largely based on a visit *in loco* of the Commission to Honduras from August 17 to 21, 2009. It can be inferred from the document that the reported human rights violations are a direct consequence of the breakdown of constitutional order. For this reason, the Commission considers that the return to democratic institutions in Honduras is necessary so that conditions may exist for the effective protection of and compliance with human rights of all the inhabitants of that country. The Commission confirmed during its visit that in Honduras, along with the institutional delegitimization caused by the coup d'état, there have been grave violations of human rights, including deaths, arbitrary declaration of a state of siege, repression of public demonstrations using disproportionate force, criminalization of social protest, arbitrary arrests of thousands of people; cruel, inhuman and degrading treatment, and poor conditions of detention, militarization of the territory, an increase in the instances of racial discrimination, violation of the rights of women, serious and arbitrary restrictions on the right to freedom of expression and grave violations of political rights. The IACHR also confirmed the ineffectiveness of judicial remedies to protect human rights.

21. Finally, regarding **Venezuela**, the IACHR includes in its chapter IV the executive summary of its report on *Democracy and Human Rights in Venezuela*, in which it examines the evolution of human rights in that country and, specifically, a series of conditions that evidence the lack of effective separation between and independence of the different branches of government in Venezuela. The Commission also has noted that in Venezuela the full exercise of their rights has not been guaranteed to all people without regard to their stance towards government policies, and that the punitive power of the state is being used to intimidate or punish persons on the basis of their

political opinions. The Commission's report establishes that conditions do not exist in Venezuela for human rights defenders and journalists to freely engage in their occupation. The IACHR has also determined that a pattern of impunity exists regarding cases of violence, which particularly affects communicators, human rights defenders, union members, persons participating in demonstrations, imprisoned persons, peasants [*campesinos*], Indigenous peoples, and women. In the opinion of the Commission, all these elements have contributed to the weakening of the rule of law and democracy in Venezuela.

22. In **Chapter V** of its annual report, the Commission includes a follow-up report to the one published in 2007, titled *Access to Justice and Social Inclusion: the Road towards Strengthening Democracy in Bolivia*. The follow-up focuses on the same aspects analyzed in the 2007 report, including both positive developments and the main conflicts that have occurred in Bolivia in recent years and their relation to the duty of the State to respect and guarantee the human rights of all persons under its jurisdiction. Also examined are the topics of the administration of justice, the rights of persons deprived of liberty, the rights of Indigenous peoples and peasant communities, the rights of women, of children, and of refugees and those seeking refugee status. Each section of the follow-up details the status of compliance with recommendations made, whether measures have been taken and, if the answer is affirmative, their results and the current challenges that remain.

23. The other follow-up report included in chapter V is on the recommendations made by the IACHR in its report on *Violence and Discrimination against Women in the Armed Conflict in Colombia*, of October 18, 2006. In this report, the Commission examines the main manifestations of violence especially affecting women within the armed conflict, as well as the impact on their bodies and their lives and, specifically, the manners of discrimination against Afro-Colombian women. The 2006 report also examines progress made and pending challenges regarding the response given by the Colombian state to the impact of the armed conflict on women, and includes a number of recommendations for the design of a comprehensive state policy to deal with these problems and advance in the protection of women's human rights.

24. The follow-up report begins with a brief diagnosis of the impact of the Colombian armed conflict on women during the period of study, from the time the recommendations were issued by the Commission in its prior report. This report also examines the current situation regarding manifestations of violence against women and the different forms of discrimination that continue to affect Indigenous and Afro-Colombian women. The state's response is also analyzed, from October 2006 to date, with respect to the design and implementation of the normative framework and public policies for the protection of the human rights of women in the face of violence and discrimination within the armed conflict, the diagnosis and prevention of violence, the administration of justice, and the humanitarian and support services given to the victims of forced displacement. The progress made by the state and the persisting obstacles towards making the rights of women to truth, justice, and reparations effective, are also examined. Finally, the conclusions summarize the main obstacles remaining and progress made in the state's compliance with its obligation to protect the human rights of women and to adopt a comprehensive state policy providing a satisfactory response to the acts of violence and discrimination suffered by women within this context.

25. Last, it should be said that in 2009 several commissioners concluded their mandates: Sir Clare K. Roberts, Florentín Meléndez, Paolo Carozza and Víctor Abramovich, whose work was outstanding during their terms with the IACHR. In 2009 the election of new members to the IACHR took place, who will replace the aforementioned commissioners: Rodrigo Escobar Gil, of Colombia; María Silvia Guillén, of El Salvador; José de Jesús Orozco Henríquez, of Mexico, and Dinah Shelton, of the United States.

CHAPTER II

LEGAL BASES AND ACTIVITIES OF THE IACHR DURING 2009

A. Legal bases, functions, and powers

1. The Inter-American Commission on Human Rights (“IACHR” or “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. They are elected by the OAS General Assembly 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 legal and administrative support to the Commission 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 (“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 105 visits to the Organization’s member states. Based in part on these on-site investigations, to date the Commission has published 82 country reports and special thematic reports.

5. In 1965, the IACHR was expressly authorized to examine complaints or petitions related to specific cases of human rights violations. By 2009, 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 (“American Convention”) was adopted in 1969 and came into force in 1978. As of December 2009, 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 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 2009

9. During the period covered by this report, the Commission met on four occasions: at its 134th regular session, from March 16 to 27, 2009; at its 135th regular session, from August 3 to 8, 2009; at its 136th special session, held in Argentina, on September 7 and 8, 2009; and at its 137th regular session, from October 28 to November 13, 2009.¹ During 2009, the Commission approved a total of 62 admissibility reports, 15 inadmissibility reports, 4 friendly settlement reports, and 12 merits reports. It also held 89 hearings and 44 working meetings and approved the reform of its Rules of Procedure.

1. 134th Regular Session

10. The Inter-American Commission on Human Rights (IACHR) held its 134th regular session from March 16 to 27, 2009. During that session, it elected its board of officers, which was composed as follows: Luz Patricia Mejía as President, Víctor Abramovich as First Vice President, and Felipe González as Second Vice President. Its other members are Commissioners Paolo Carozza, Clare K. Roberts, Florentín Meléndez, and Paulo Sérgio Pinheiro; 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 37 hearings and 16 working meetings on individual petitions and cases, precautionary measures, and other general topics. It also approved the "Report on the Rights of Women in Chile: Equality in the Family, Labor, and Political Spheres," and published the "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."

12. During this session the IACHR also met with the Inter-American Court as part of the ongoing dialogue on the amendments to the rules of procedures of the inter-American system's two organs. In addition, a dialogue between the Commission and the Court and the OAS member states was held on March 20.

13. During this session, the IACHR noted its concern at the continued use, in some of the region's countries, of the military justice system to investigate and prosecute common crimes committed by members of the armed forces or police officers. The IACHR again states that military jurisdiction is exceptional by nature and must be used solely for crimes committed in the line of duty: in other words, conduct by members of the military on active service that affects legally protected military interests. States have the obligation to provide effective judicial recourse for victims of human rights violations, consisting, in all cases, of the criminal remedies available through the regular justice system, regardless of whether the violations to be judged were committed by members of the military or not.

14. At the same time, the IACHR noted its satisfaction at the creation of interinstitutional agencies for the implementation, at the domestic level, of the decisions and recommendations of the inter-American system's organs. In addition, the IACHR expressed its pleasure at the willingness and disposition displayed by the parties at several working meetings held during this session on cases in which friendly settlement proceedings were being explored and, in

¹ For further details on the Commission's 2009 sessions, see IACHR Press Releases Nos. 13/09 and 78/09 on the IACHR web site (www.cidh.oas.org).

general, at the progress made in recent months in complying with the decisions of the inter-American human rights system, including the acknowledgement of responsibility extended in specific cases by the States of Bolivia, Ecuador, Guatemala, Nicaragua, and Panama.

2. 135th Regular Session

15. The Inter-American Commission held its 135th regular session on August 3 to 8, 2009. Because this was a session for internal matters, the IACHR held no public hearings or working meetings. The Commission approved a total of 29 reports on petitions and cases: 19 on admissibility, three on friendly settlement arrangements, three on merits, and five for publication.

3. 136th Special Session

16. This special period of sessions was held in the city of Buenos Aires, Argentina, on September 7 and 8, 2009. Over its two-day meeting, the Commission discussed and approved several cases and made progress with discussing and approving the amendments to its Rules of Procedure.

4. 137th Regular Session

17. The Inter-American Commission held its 137th regular session from October 28 to November 13, 2009. During this session, it adopted reports on individual cases and petitions and held 52 public hearings and 28 working meetings. The hearings addressed issues affecting all the region's countries in general, along with topics specific to certain particular countries and subregions. At this session, the Commission held hearings on the impact of megaconstruction projects and indigenous peoples' right of consultation; the criminalization of social protest and the situation of human rights defenders; freedom of expression, due process, and antiterrorist legislation; discrimination against ethnic groups and gay, lesbian, bisexual, and transgendered people; maternal mortality and institutional violence against women; the right to education of people with disabilities; as well as other topics.

18. The IACHR expressed its pleasure at the willingness and disposition displayed by the parties at the working meetings held on cases in which friendly settlement proceedings were being explored, which enabled significant progress to be made, specifically, in cases involving Argentina, Guatemala, Mexico, and Paraguay. In addition, it applauded the State of El Salvador's recognition of its international responsibility in the case of the murder of Msgr. Óscar Arnulfo Romero and in four cases involving children who disappeared during the armed conflict, together with its express acceptance of the binding nature of the Inter-American Commission's decisions.

19. Also during this period of sessions, the IACHR received a high-level delegation from the Government of Colombia, led by Vice President Francisco Santos. Without prejudice to the information it received, the IACHR views as extremely serious the intelligence activities carried out by Colombia's Administrative Security Department (DAS) in connection with judicial officials, political leaders, human rights defenders, and an IACHR Commissioner. The Inter-American Commission hopes that concrete actions will be taken so that this situation is not repeated and so that those responsible are identified and punished.

C. Visits

Argentina

20. On September 9 to 11, 2009, the IACHR conducted an official visit to Argentina at the invitation of that country's government, to commemorate the 30th anniversary of the Commission's on-site visit in 1979. The numerous activities carried out included a series of panel sessions on the 1979 visit, with the participation of former Commissioners who were a part of the original delegation; they were joined by various other personalities, including representatives of the Executive Secretariat, who shared their experiences and views on the impact of that visit to Argentina.

21. In addition, a working session on the inter-American system was held with state officials; the IACHR met with civil society; and a visit was made to the Space for Memory (the former ESMA), where an event to commemorate the 30th anniversary of the visit was organized, attended by the President of the Republic, at which plaques were unveiled in honor of the IACHR and, most particularly, in honor of the victims of state terrorism.

Bolivia

22. Luz Patricia Mejía, President of the Inter-American Commission, visited Bolivia on June 22 to 26 2009, in her capacity as Rapporteur on the Rights of Women. She was accompanied by two lawyers from the IACHR's Executive Secretariat. The chief aim of the visit was to gather specific information at the national level on the main advances and challenges faced by women in exercising their economic, social, and cultural rights without discrimination. The visit was also intended to support compliance with one of the agreements contained in the friendly settlement of the case of *MZ v. Bolivia*, signed on March 11, 2008.

23. During the visit, the Rapporteur and her delegation met with ranking government officials, representatives of civil society organizations, and international experts, from whom they received valuable information on progress and challenges in the protection and promotion of women's economic, social, and cultural rights in the Americas. In particular, information was received on women's working conditions, educational possibilities, and access to resources.

Chile

24. On September 3 to 4, 2009, the IACHR made an official visit to Chile, at the invitation of that country's government, to celebrate the 50th anniversary of the Inter-American Commission's creation. During the visit, the IACHR met with ranking government officials and participated in a commemorative event organized by the President of Chile. The IACHR used the opportunity to reaffirm the currency of the inter-American human rights system's ideals on the occasion of its 50th anniversary by signing the Declaration of Santiago de Chile. It also unveiled a commemorative plaque in the room where the creation of the Commission was agreed upon. Finally, in addition to meetings with various authorities, it held an academic seminar at Diego Portales University.

25. On November 25 and 26, 2009, Commissioner Paulo Sérgio Pinheiro, in his capacity as Rapporteur on the Rights of Children, made a two-day visit to Chile at the invitation of the Chilean Network of Childhood and Youth NGOs and with the support of UNICEF. The purpose of the visit was to promote the IACHR's report on "Corporal Punishment and the Human Rights of Children and Adolescents." The Rapporteur presented the report to a range of bodies, including: La Frontera University, in the city of Temuco, where he also met the rector and representatives of the Citizens' Observatory, of the Ethical Commission against Torture, and the Network of Childhood

and Youth NGOs; and the Law School of Andrés Bello University in Santiago, at a colloquium that was attended by representatives of various international agencies, including the United Nations Committee on the Rights of the Child and the Latin American and Caribbean Network for the Defense of the Rights of Children and Adolescents.

26. During his visit Rapporteur Pinheiro also met with the representative of UNICEF in Chile, and he attended the municipality of Prado's launch of its guidebook *Violence Hurts Families*, published by the Chilean government's Solidarity and Social Investment Fund (FOSIS) and UNICEF.

Guatemala

27. From June 7 to 12, 2009, Commissioner Víctor Abramovich, in his capacity as Rapporteur for Guatemala and Rapporteur on the Rights of Indigenous Peoples, led an IACHR delegation to that country. The visit's purpose was to gather information on the human rights situation in Guatemala, particularly regarding the status of the investigations into the serious human rights violations committed during the armed conflict and the prosecution of those responsible, the situation of indigenous peoples' rights, and the situation of human rights defenders.

28. The visit also involved working meetings on the implementation of precautionary measures and recommendations in a number of specific cases. Among the activities carried out was a regional meeting for Central America on "The duty of protecting the property rights of indigenous peoples in the inter-American human rights system," which was held on June 7 and was attended by noted experts from Chile, Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, and El Salvador.

29. Commissioner Abramovich also presented, in Guatemala City, the report *Access to Justice as a Guarantee of Economic, Social, and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*.

30. During this visit to Guatemala, the Rapporteur visited the indigenous community of Río Negro and also went to Pcoxom, Pacux, and Rabinal, to meet with relatives and survivors of the massacres inflicted on the inhabitants of Río Negro. He also met with several organizations representing victims of the area's internal armed conflict.

Haiti

31. The IACHR made a working visit to Haiti on May 24 to 29, 2009. The delegation was led by Commissioner Sir Clare K. Roberts in his capacity as Rapporteur for Haiti. The main aim of the visit, which was carried out in conjunction with UNICEF, was to gather information on public security and juvenile criminal justice in the country.

32. The delegation met with representatives of the Ministry of Foreign Affairs, the Ministry of Social Affairs and Labor, the Institute of Social Welfare and Research (IBESR), the Minor Protection Division of the National Police, the central directorate of the Judicial Police, the Prisons Administration, prison officers, and the Citizens' Protection Office. It also met with two members of the Juvenile Court. In addition, the delegation visited the headquarters of the United Nations Stabilization Mission in Haiti (MINUSTAH) and met with local and international NGOs active in public security and juvenile criminal justice issues in Haiti. The delegation also held a conference on the IACHR and the inter-American human rights protection system at the State University in Port-au-Prince.

33. During this working visit, the delegation visited the Haitian National Penitentiary, the Delmas Police Station, the Delmas Detention Center for Minors, the Pétion-Ville Women's Prison,

and the Le Carrefour Shelter for children in Port-au-Prince. On May 27, 2009, the delegation traveled to the city of Gonaïves where it met the Government Commissioner, the Chief of Police, and representatives of civil society. It visited the police station there, which, following a fire at the local prison in 2004, is being used to house detainees and in connection with which the IACHR granted precautionary measures in June 2008.

Honduras

34. The IACHR made an on-site visit to Honduras on August 17 to 21, 2009, following which it presented its preliminary comments. The delegation comprised the President of the IACHR, Luz Patricia Mejía Guerrero; its First Vice President, Víctor Abramovich; its Second Vice President and Rapporteur for Honduras, Felipe González; Commissioner Paolo Carozza; and Executive Secretary Santiago A. Canton. The IACHR's Special Rapporteur for Freedom of Expression, Catalina Botero, was also a part of the delegation. The aim was to observe the human rights situation following the coup d'état of June 28, 2009.

35. During the visit, the IACHR met with representatives of the *de facto* government and of different sectors of civil society, and it received more than a hundred people who submitted complaints, statements, and information. The delegation visited the cities and towns of Tegucigalpa, Tocoa, San Pedro Sula, El Paraíso, and Comayagua.

36. As a result of this on-site visit, the IACHR was able to confirm the existence of a pattern of disproportionate use of public force, arbitrary arrests, and control of information intended to restrict political participation by a segment of the public. The Commission noted the repression of demonstrations through the installation of military checkpoints, the arbitrary enforcement of curfews, arrests of thousands of people, cruel, inhumane, and degrading treatment, and poor detention conditions.

United States

37. On July 24 to 29, 2009, Commissioner Felipe González, in his capacity as Rapporteur on the Rights of Migrant Workers and their Families, along with two attorneys from the Executive Secretariat, made a visit to detention centers in the U.S. states of Arizona and Texas. During the visit, the IACHR's delegation visited two shelters for unaccompanied minors, a family detention center, and three adult detention centers. The delegation also met with representatives of civil society organizations that work with migration issues in the United States. The purpose of the visit was to gather information from detention officials, detainees, and representatives of civil society organizations regarding the enforcement of immigration rules, detention conditions, and due process issues in the United States. This information will be incorporated in the report that the IACHR is currently preparing on the subject.

38. At the end of the visit, the Rapporteur concluded that in spite of certain recent adjustments to the immigrant detention system in the United States, many of the men, women, and children at the centers he visited were being held in unacceptable conditions and that in many cases, their right to due process has been violated. The Rapporteur's office has issued its preliminary observations on the visit, identifying areas of concern in the policies and practices of the United States regarding the enforcement of rules, detention conditions, and due process.

D. Thematic and Country Reports

39. During 2009, the Inter-American Commission published the following thematic reports:

- Report on the Rights of Women in Chile: Equality in the Family, Labor, and Political Spheres.
- Preliminary observations of the Inter-American Commission on Human Rights after the visit of the Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination to the Republic of Colombia.
- The Right of Women in Haiti to be Free from Violence and Discrimination.
- Report on Corporal Punishment and Human Rights of Children and Adolescents.
- Follow-up report on the 2007 report titled *Access to Justice and Social Inclusion: The Road Toward Strengthening Democracy in Bolivia*.
- Follow-up report on the report titled *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, of October 18, 2006.
- Report on Citizen Security and Human Rights.
- Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco.
- The Duty of Protecting Indigenous Community Ownership of Lands, Territory, and Natural Resources: Study of the Standards of the Inter-American Human Rights System. Guidelines on the State Duty of Consulting about Development Projects that could affect the Rights of Indigenous Peoples.

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

- Honduras: Human Rights and the Coup d'État.
- Democracy and Human Rights in Venezuela.

E. Activities of the rapporteurships²

1. Rapporteurship on the Rights of Indigenous Peoples

41. For the entities of the inter-American system, the respect and protection of the rights of indigenous peoples is a matter of special importance. In 1972, the Commission maintained that for historical reasons, and for moral and humanitarian principles, States had a sacred compromise to provide special protection for indigenous peoples. In 1990, the Commission established the Special Rapporteurship on the Rights of Indigenous Peoples with the purpose of focusing special attention on indigenous peoples in America who are particularly exposed to human

² The activities of the Special Rapporteur for Freedom of Expression are contained in Volume II of this Annual Report.

rights violations because of their vulnerability, and to strengthen, give impetus and organize the Commission's activities in the area.

42. Since the 1980s, the Commission has systematically spoken on the rights of indigenous peoples in special reports;³ and through the case system, in admissibility reports, in-depth reports, reports on friendly settlements, the mechanism of precautionary measures, as well as through orders and requests for provisional measures filed with the Inter-American Court.

43. In that sense, the Commission has expressed the need to demand special protection of the right of indigenous peoples to their lands, because the full exercise of that right not only implies the protection of an economic unit, but also the protection of the human rights of a community whose economic, social and cultural development is based on its relationship to the land. In the 1993 Report on the Human Rights Situation in Guatemala, the Commission stated:

From the standpoint of human rights, a small corn field deserves the same respect as the private property of a person that a bank account or a modern factory receives.⁴

44. The entities of the inter-American system for the promotion and protection of human rights have developed progressive laws that recognize the collective rights of indigenous peoples. The Inter-American Commission on Human Rights reiterates its concern with the difficulties in the implementation of its recommendations, as well as with compliance with judgment and provisional measures ordered by the Inter-American Court of Human Rights in cases where the victims are indigenous peoples. To that end, the Commission encourages the States to redouble their efforts to comply with the decisions of inter-American institutions concerning indigenous peoples. In that way, not only are specific groups of people recognized, protected and made whole but also a special way of life and the human diversity inherent in societies in the American continent are respected.

45. During 2009, the office of the Rapporteur on the Rights of Indigenous Peoples, under Commissioner Víctor Abramovich, continued with its support activities within the individual petitions system and in studying and processing precautionary measures, cases, and communications involving the rights of indigenous peoples and/or of their members. It also continued to provide advice at public and private hearings before the Inter-American Court of Human Rights in cases involving the rights of indigenous peoples.

46. During the visit to Guatemala of June 7 to 12, 2009, the Rapporteur attended working meetings on the implementation of precautionary measures and on the cases of *Maurilia Coc Max et al.* (Massacre of Xaman), *Angélica Jerónimo Juárez*, *Massacre of Los Josefinos Village*, *Édgar Fernando García*, and *Óscar David Hernández Quiroa*.

47. At the same time, the office of the Rapporteur on the Rights of Indigenous Peoples was working on the preparation of a regional study into "The duty of state protection of the property rights of indigenous peoples with emphasis on the right of consultation and prior consent." With the aim of sharing experiences and receiving contributions for that report, on June 7, 2009, in

³ See: *Justice and Social Inclusion: Challenges to Democracy in Guatemala* (2003); *Fifth Report on the Human Rights Situation in Guatemala* (2001); *Third Report on the Human Rights Situation in Paraguay* (2001); *Second Report on the Human Rights Situation in Peru* (2000); *Third Report on the Human Rights Situation in Colombia* (1999); *Report on the Human Rights Situation in Mexico* (1998); *Report on the Human Rights Situation in Brazil* (1997); *Report on the Human Rights Situation in Ecuador* (1997); *Second Report on the Human Rights Situation in Colombia* (1993); *Fourth Report on the Human Rights Situation in Guatemala* (1993); *Second Report on the Human Rights Situation in Suriname* (1985).

⁴ IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, 1993.

Guatemala City, the Rapporteur's office organized a regional meeting for Central America and Mexico that was attended by experts from Costa Rica, Guatemala, Honduras, Mexico, Nicaragua, Panama, El Salvador, and various international agencies. In pursuit of that same goal, the Rapporteur's office prepared a questionnaire on best practices, legislation, jurisprudence, public policies, and the obstacles facing the property rights of indigenous peoples; this questionnaire was sent to the States on August 7, 2009, and broadly disseminated by e-mail among indigenous peoples, indigenous organizations, and civil society, as well as being published on the IACHR's web page.

48. In addition, it informed the State of Bolivia of the IACHR's adoption of the report *Captive Communities: Situation of the Guarani Indigenous People and Contemporary Forms of Slavery in the Bolivian Chaco*.

49. On July 15, 2009, the Rapporteur's office participated in the public hearing before the Inter-American Court to oversee compliance with its judgment in the *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. At the hearing, the IACHR submitted its comments on the implementation of the merits, reparations, and costs judgment in this case.

50. On October 5 and 6, 2009, the Rapporteur attended the seminar on "Challenges in implementing International Labour Organization (ILO) Convention 169 in Chile," at which it gave a lecture on "The rights of indigenous peoples in the inter-American human rights system." The seminar was organized by the Human Rights Center of Diego Portales University, the Council of Atacameño Peoples, Lafkenche Territorial Identity, the Mapuche Working Group for Collective Rights, the Citizens' Observatory, and the Regional Office for Education in Latin America and the Caribbean / UNESCO Santiago. On that same date, the Rapporteur gave a speech on the topic at the University of Chile.

51. Similarly, attorney Juan Pablo Albán represented the Rapporteur's office at a conference on the inter-American human rights system and the rights of indigenous peoples, held on September 25 in Lima, Peru, and organized by the Bar Association of Lima. Then, on September 26 to 28, he attended a workshop organized by the Social Action Office of the Peruvian Episcopal Conference (CEAS), at which he gave lectures on the right of consultation of indigenous peoples, jurisprudence of the IACHR on the rights of indigenous peoples, and jurisprudence of the Inter-American Court of Human Rights on the rights of indigenous peoples.

52. The Rapporteur's office continued to advise the chair of the Working Group to Prepare the Proposed American Declaration on the Rights of Indigenous Peoples. Attorney Isabel Madariaga, a specialist with the Rapporteur's office, attended several meetings with the chair of the Working Group, and with representatives of OAS member states' delegations, to prepare the negotiation meetings that were held during December 2009 and were attended by indigenous representatives from across the Americas.

53. As a part of this process, the Rapporteur's office assisted with the seminar, held at OAS headquarters on November 9 and 10, that was organized to update and systematize its information on the rights of indigenous peoples in the Hemisphere. It is also hoped that this exercise will allow a better understanding of the concepts reflected in the proposed American Declaration on the Rights of Indigenous Peoples.

54. On September 18, 2009, the Rapporteur's office was joined by three attorneys as recipients of the Indigenous Peoples Fellowship – Maurilio Santiago, from the Mixtec people of Mexico, Helga Ybanova Tzicap González, of the Maya people of Guatemala, and Miriam Liz, of the Nasa people of Colombia – all of whom were chosen through a public competition and selection process. In addition, on September 10, 2009, the IACHR published a call for candidates to hire a

specialist in human rights and indigenous law to work at the Rapporteur's office, replacing attorney Leonardo Alvarado.

2. Rapporteurship on the Rights of Women

55. The office of the Rapporteur on the Rights of Women, under Commissioner Luz Patricia Mejía, continued work on three initiatives to gather qualitative and quantitative information intended to identify the main progress made and challenges facing women in the discrimination-free exercise of their rights in the areas of political participation, reproductive rights, and economic and social rights. Those three projects are supported by the governments of Finland and Spain and will conclude with the publication of thematic reports. The Rapporteur's office also continued with its support activities in the individual petitions system and in studying and processing precautionary measures, cases, and communications involving women's rights.

56. On April 28 and 29, 2009, the Rapporteur's office participated at the public hearing in the *Case of Claudia Ivette González et al. ("Cotton Field") v. Mexico*, held in Chile. This is the first case taken before the Inter-American Court to deal comprehensively with matters relating to the rights of women. The petitioners in the case alleged that the Mexican State committed a series of human rights violations through irregularities and inconsistencies in investigating the disappearance and deaths of three women in Ciudad Juárez, Mexico. During the visit to Chile, the Rapporteur's office gave a lecture on progress in jurisprudence on women's rights at the Law School of Diego Portales University; held on April 30, it was attended by representatives of the school and by students from different areas.

57. As a part of the reproductive rights project funded by Spain, on May 6, 2009, the Rapporteur's office organized a third subregional workshop to address the question of access to information about reproductive matters from a human rights perspective. This event was attended by renowned experts on the topic from around the region and by the IACHR's office of the Rapporteur for Freedom of Expression.

58. On May 13, 2009, the IACHR presented its *Report on the Rights of Women in Chile: Equality in the Family, Labor, and Political Spheres*, which concludes that the problem of discrimination is one of the main obstacles women face in obtaining effective protection and observance of their rights. The report was prepared on the basis of the working visit made by the Rapporteur's office in 2007.

59. On May 18, 2009, the IACHR presented its report on *The Right of Women in Haiti to be Free from Violence and Discrimination*, produced from information gathered during visits to Haiti in 2004, 2006, and 2007, as well as other sources. The report states that in addition to its connections with acts of violence, discrimination has placed women in positions of disadvantage in the fields of economic endeavor, education, health, justice, employment, and decision-making. The IACHR believes that the problem of discrimination against women must be addressed from a multidisciplinary and intersectoral perspective that seeks to incorporate gender-equality provisions in all areas of government.

60. The Rapporteur's office also visited Bolivia from June 22 to 26, 2009, to gather specific national-level information about the main progress made and challenges facing women in exercising their economic and social rights without discrimination.

61. As part of the visit to Bolivia, on June 26, 2009, the Rapporteur's office participated at a workshop to follow up on the friendly settlement agreement reached in the case of *MZ v. Bolivia*. The case deals with the failures of due diligence by the justice system in punishing the man who sexually attacked her, arising from discriminatory gender-based prejudices. In the friendly

settlement report, the State acknowledged its international responsibility for violating MZ's rights as protected by the American Convention and the Convention of Belém do Pará, in particular as regards the right of all women to a life free from violence and the State's obligation to act with due diligence to prevent, investigate, and punish such acts. In addition, the State agreed to take steps to avoid a recurrence of such incidents and to provide training for officials of the judiciary. The purpose of the workshop held on Friday, June 26, was to train judicial officials of both sexes and at all levels in matters relating to violence and discrimination against women. The workshop was attended by some 250 representatives of the government, the justice system, civil society, and international agencies.

3. Rapporteurship on the Rights of the Child

62. The office of the Rapporteur on the Rights of the Child, under Commissioner Paulo Sérgio Pinheiro, has continued with its promotional work and with publishing reports addressing the various forms of violence faced by children and adolescents in the Americas. Thus, as provided for in the cooperation agreement signed by the IACHR and the Regional Office for Latin America and the Caribbean of the United Nations Children's Fund (UNICEF), working visits and subregional consultations were held to gather information on the topic of youth justice in the Americas, for the report on that subject being prepared by the IACHR.

63. Specifically, two subregional consultations were organized in March 2009: one for the nations of Central America, the Dominican Republic, and Mexico, held in San José, Costa Rica, on March 2 and 3, and another for the Andean nations and Brazil, held in Bogotá, Colombia, on March 5 and 6. The two consultations focused on the question of public security as well as on juvenile justice systems and human rights.

64. The Rapporteur's office led visits to the Caribbean and met with government officials and NGOs from Suriname, Guyana, Trinidad and Tobago, Belize, Jamaica, Saint Lucia, and Haiti. Detention centers for minors in all those countries were also visited, to gather information for the thematic report on juvenile justice in the Americas. In addition, a subregional consultation on youth justice in the Eastern Caribbean and The Bahamas was organized in May, with the assistance of the UNICEF subregional office. That consultation was attended by Rapporteur Pinheiro and by representatives of the governments of Antigua and Barbuda, The Bahamas, Barbados, Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines.

65. Between August and October, the Rapporteur's office continued to organize regional and expert consultations to collect material for the report on juvenile criminal justice and human rights. The final regional consultation was held on August 31 in Washington, D.C., and was attended by 50 participants from the United States and Canada. In addition, on September 29 in Montevideo, Uruguay, and on October 23 in Washington, D.C., two meetings were held with experts on juvenile criminal justice in the Americas and Caribbean. Those meetings were shown the report's table of contents, introduction, and conclusions from each of the chapters.

66. Further to the activities related to the report on human rights and juvenile criminal justice, the Rapporteur's office gave a paper in Mexico at the Seminar on Justice for Adolescents, held on April 1 and organized by the Human Rights Commission of the Federal District, the Government of the Federal District, the Superior Court of Justice of the Federal District, and the United Nations Children's Fund (UNICEF).

67. In August 2009, the report *Corporal Punishment and Human Rights of Children and Adolescents* was published, in Spanish, English, and Portuguese.

68. On September 14, the Rapporteur's office gave a paper on "The right to food of children aged under two in the inter-American system," as part of a technical consultation organized by the United Nations World Food Programme and other agencies of the UN system. This consultation, held in Panama, addressed the impact of the international crisis and the right to food among highly vulnerable groups, specifically children aged under two, in Latin America and the Caribbean.

69. As part of the celebrations for the 50th anniversary of the IACHR and during the September visit to Santiago, Chile, and Buenos Aires, Argentina, Rapporteur Pinheiro met with children's rights organizations to exchange ideas and information on priority child-related issues in the two countries. In Chile, at the invitation of the Children and Youth Chile network of NGOs and with the support of UNICEF, the Rapporteur attended meetings and events organized by UNICEF Chile, the Latin American and Caribbean Network for the Defense of the Rights of Children and Adolescents, and the Chilean Government's National Children's Service (SENAME) and Solidarity and Social Investment Fund (FOSIS). The Rapporteur was also received by the Minister Secretary General of the Presidency and the Coordinating Minister for Indigenous Affairs, to whom he presented the *Report on Corporal Punishment*. The Minister informed the Rapporteur about various issues related to the coordination of indigenous affairs in Chile, and the Rapporteur provided the Minister with information received by the IACHR and during the visit related to acts of violence involving children and adolescents in the Araucanía area between June 2008 and October 2009. The Rapporteur said it was important that the Government of Chile guarantee the protection of the rights of indigenous Mapuche children and adolescents in that region, regardless of whatever tensions that might exist.

70. Between September 22 and 25, the Rapporteur was the main speaker at the 20th Pan-American Child Congress, held in Lima, Peru, and organized by the Inter-American Children's Institute (IIN) and the Government of Peru. During that event, he also visited projects and met with the regional office of the Swedish organization Save the Children, Plan International, and UNICEF, as well as networks of organizations working with children. In addition, the Rapporteur attended a conference on corporal punishment and a round-table discussion on children's rights. The Rapporteur also met with the Prime Minister of Peru, the President of Congress, the Minister responsible for family affairs and the rights of children. He also met with the United Nations Special Representative for Violence against Children and with the Director of UNICEF-TACRO, to exchange information and study possible cooperation mechanisms for developing joint strategies for a six-month plan on violence against children in the region and on following up on the recommendations set out in the reports published by the Rapporteur's office.

71. As part of the 20th anniversary of the Convention on the Rights of the Child, the Rapporteur gave a paper at the Regional Conference on Protecting Refugees and International Migration in the Americas, organized by the UNHCR, the IOM, and the OAS. The topic of his address was protecting unaccompanied children in the context of migration. In addition, during his time in Costa Rica and in coordination with the PANIAMOR Foundation and that country's National Children's Trust (PANI), Commissioner Pinheiro presented the thematic report on corporal punishment and the human rights of children and adolescents, recently published by the Inter-American Commission on Human Rights. Among the participants were representatives of the national rights promotion and protection systems of Guatemala, Paraguay, Panama, El Salvador, Colombia, and Costa Rica. Finally, Commissioner Pinheiro participated at the colloquium on the Report on Juvenile Justice Systems and Human Rights organized by UNICEF, the Paniamor Foundation and Costa Rica's National Commission for Improving the Administration of Justice (CONAMAJ). The preliminary conclusions of the thematic report on juvenile criminal justice were presented at that meeting.

72. The Rapporteur gave presentations on the *Report on Corporal Punishment and the Human Rights of Children and Adolescents*, as well as preliminary views on the *Report on Juvenile Criminal Justice* at several meetings and conferences in Argentina, Chile, Brazil, and Panama.

4. Rapporteurship on the Rights of Persons Deprived of Liberty

73. In January 2009, Rapporteur Florentín Meléndez attended a Central American seminar on protection against torture, held in Guatemala City. In February 2009, he spoke at an international congress in Cartagena, Colombia, on the use of the inter-American system by Latin America's ombudsmen.

74. On April 24, 2009, the Rapporteur and an attorney from the Executive Secretariat visited the Mendoza Provincial Penitentiary and the Gustavo André Penal Farm, in the Argentine province of Mendoza, in order to view current conditions at those facilities and the level of compliance with the provisional measures ordered by the Inter-American Court of Human Rights in 2004. In doing so, they noted that in spite of some progress made following the provisional measure order, the situation that gave rise to those measures was still essentially the same.

75. During their visit, working meetings were held with officials of the Ministry of Foreign Affairs and the Mendoza Provincial Government, including the Governor, the Under Secretary for Justice, the Director of the Provincial Prison System, the provincial government's Director for Human Rights, sentencing judges, civil servants, and professional and security staff from the two centers that were visited. They also held a working meeting with the petitioners who had sought the provisional measures. To carry out this visit, the Rapporteur received support and cooperation from the Argentine Government, the Government of Mendoza, and the petitioners who had sought the provisional measures.

76. During the visit, the Rapporteur also spoke at the Seminar on Human Rights for Argentine Sentencing Judges, held at the National University of Mendoza. On that occasion, the Government of Mendoza published a pocket edition of the IACHR's *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, copies of which were distributed among the sentencing judges and prison officials from Mendoza. The IACHR notes its gratitude for this valuable contribution to the dissemination of those principles made by the Government of Mendoza.

77. The Rapporteur also visited the Republic of Uruguay on May 6 to 8, where he attended the 4th Congress of Mercosur Public Defenders and gave a lecture on "Principles and good practices regarding the rights of people deprived of their liberty in the Americas." In Montevideo, the Rapporteur visited the National Rehabilitation Center, the Santiago Vásquez Prison Complex, and the Medio Camino Home for Women. During his stay he held working meetings with the Foreign Minister, the Minister of the Interior, the National Prison System Director, the Parliamentary Commissioner for Prisons, the National Public Defense Director, and with civil servants, prison officers, and technical and professional staff.

78. On November 12, 2009, Commissioner Florentín Meléndez gave the OAS Committee on Juridical and Political Affairs a detailed report on his five years as Rapporteur on the Rights of People Deprived of their Liberty.

79. The Rapporteur's office worked on updating the information contained on its web page and on the publication, on paper and on the IACHR's web site, of the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* in the four official languages of the OAS (English, French, Portuguese, and Spanish). That document was adopted by the IACHR by means of Resolution 1/08 on March 13, 2008.

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

80. The office of the Rapporteur on the Rights of Afro-descendants and against Racial Discrimination, under Commissioner Sir Clare K. Roberts, continued its efforts to promote the recognition of and respect for the rights of people of African descent in the region. During this period, the Rapporteur's office continued to advise the Executive Secretariat in assessing petitions and requests for precautionary measures involving racial discrimination and/or the situation of Afro-descendants in the Americas.

81. The Rapporteur attended the Conference on the Durban Process, held in Geneva, Switzerland, on April 20 to 24, 2009. In addition, Rapporteur Roberts gave a presentation at a side event on "People of African Descent: Assessing the Progress since Durban and the Way Forward." In his presentation, the Rapporteur described the work of the IACHR since the creation of this thematic rapporteurship in 2005 for encouraging the countries of the Americas to recognize the existence of their population of African descent and the persistence of racism, racial discrimination, xenophobia, and related intolerance, pursuant to paragraph 33 of the Declaration and Program of Action of Durban.

82. Throughout the year, the Rapporteur's office continued to provide technical assistance to the CAJP Working Group charged with drafting a new regional instrument, the Inter-American Convention against Racism and All Forms of Discrimination.

83. In May 2009, the Inter-American Commission published its comments on the visit made by Rapporteur Sir Clare K. Roberts to the Republic of Colombia. The document states that Colombia's population of African descent is characterized by a history of invisibility, exclusion, and social and economic disadvantage that undermines the enjoyment of basic rights. The report also applauds the various legislative and administrative initiatives and measures taken by the State of Colombia to ensure respect for the human rights of its Afro-Colombian people; it also underscores the need for those initiatives to have a long-term commitment from the State and additional financial resources to ensure their full implementation, and the need to implement complementary public policies and specialized mechanisms for guaranteeing that Colombians of African descent can fully enjoy their basic rights and freedoms.

84. On September 16, 2009, the specialist attorney from the Rapporteur's office gave a presentation at the training workshop "Increasing the participation and influence of people of African descent in the Organization of American States and the Summits of the Americas Process," which was organized by the Global Rights organization and the OAS Department of International Affairs and was attended by 17 activists of African descent from across the Hemisphere.

85. The Rapporteur's office continued to provide technical assistance to the Working Group of the OAS Permanent Council's Committee on Juridical and Political Affairs charged with drafting a new regional instrument, the Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.

86. During the 137th period of sessions, and further to the IACHR's preliminary observations after the visit of the Rapporteurship on the rights of Afro-descendants and against racial discrimination to the Republic of Colombia, a hearing was held on the situation of the Afro-Colombian, indigenous, and campesino communities of northern Cauca.

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

87. During 2009, the office of the Rapporteur on the rights of migrant workers and their families, under Commissioner Felipe González, continued with its activities in support of the individual petitions system and in studying and processing precautionary measures, cases, and communications involving the rights of migrants and their family members.

88. The Rapporteur's office also continued its investigations into detention conditions and the right of due process of immigrants in the United States with a view to publish a thematic report . In January, a delegation from the Rapporteur's office met with immigration attorneys and detained immigrants in Philadelphia, Pennsylvania, to discuss topics related to the treatment of detainees, mental health issues, and transfer policies; other subjects addressed included the treatment of unaccompanied minors and their due process rights.

89. Between July 20 and 24, a delegation from the Rapporteur's office visited two unaccompanied minor shelters, a family detention facility, and three adult detention facilities, and it met with various representatives from civil society organizations that work with immigration issues in the United States. The delegation, headed by the Rapporteur, visited the Southwest Key Unaccompanied Minor Shelter (Phoenix, Arizona), the Florence Service Processing Center (Florence, Arizona), Pinal County Jail (Florence, Arizona), the T. Don Hutto Family Residential Center (Taylor, Texas), the Willacy Detention Center (Raymondville, Texas), and the International Education Services (IES) Unaccompanied Minor Shelter (Los Fresnos, Texas). The delegation from the Rapporteur's office also met with representatives of civil society organizations working on immigration issues in Arizona and Texas. Following the visit, the Rapporteur's office published its preliminary observations on July 28, 2009.⁵

90. In addition, on October 2, 2009, a delegation from the Rapporteur's office met with authorities from U.S. Immigration and Customs Enforcement (ICE) to present its comments on the visits made to immigrant detention centers during July. In response, ICE gave the delegation a presentation on the new administration's plans to reform the detention regime for adult immigrants and families in the United States. On October 22, 2009, the Rapporteur's office held another meeting with ICE authorities to hear about changes to the 287(g) Program, which allows state police forces to implement federal immigration laws.

91. Between September 16 and 20, 2009, Mark Fleming, specialist attorney with the Rapporteur's office, attended the 3rd Hemispheric Conference on Migration Policy in Quito, Ecuador. At that event, he gave a presentation on the concept of inter-American citizenship and the progress made with protecting migrants through the jurisprudence of the inter-American system.

92. In November 2009, the Rapporteur's office attended the Regional Conference on Refugee Protection and International Migration in the Americas: Protection Considerations in the Context of Mixed Migration, organized by the UNHCR in San José, Costa Rica. The specialist attorney from the Rapporteur's office was responsible for providing the thematic introduction to the working group on "Identifying and providing international protection for asylum seekers and refugees."

⁵ The information may be found in Press Release 53/09 on the IACHR web site at the following link: <http://www.cidh.oas.org/Comunicados/English/2009/53-09eng.htm>.

7. Human Rights Defenders Unit

93. During 2009, the Human Rights Defenders Unit, under Commissioner Paolo Carozza, noted several situations of concern related to the work of human rights defenders in the region. These included killings of indigenous and trade-union leaders; various bids to criminalize social protest in some of the region's countries; and the tapping of the telephone communications of various bodies, including human rights organizations, by the Administrative Security Department in Colombia.

94. At the same time, the Unit continued preparing the follow-up report on the *Report on the Situation of Human Rights Defenders in the Americas*, which was approved on March 7, 2006. For this, the Unit distributed questionnaires to the member states in late 2008 and among civil society in early 2009, seeking to gather information about the implementation of the recommendations contained in the 2006 report and about new obstacles faced by human rights defenders in their work. The Unit is analyzing the responses received with a view to including that information in the follow-up report.

95. A specialist attorney from the Unit attended the International Forum on the Criminalization of Human Rights Defenders and Social Protest, which took place in the city of Chilpancingo, Guerrero, Mexico, on April 19 to 21.

96. The Defenders' Unit also jointly organized, along with the FIDH and the OMCT, the Second Meeting of Protection Mechanisms for Human Rights Defenders, which took place October 21 to 22, 2009, at OAS headquarters. Those who participated for the IACHR included Commissioner Paolo Carozza, Executive Secretary Santiago Canton, and attorney Angelita Baeyens, the specialist who provides the Unit with staff support. Also present were the United Nations Special Rapporteur on Human Rights Defenders, Margaret Sekaggya; the Special Rapporteur on Human Rights Defenders for the African system, Reine Alapini-Gansou; and representatives of various organizations that focus on the protection of human rights defenders from different regions of the world.

F. Other events and activities

Inter-American Human Rights Treaties

97. In relation to the seven Inter-American human rights instruments. On September 3, 2009 Haiti deposited the ratification instrument of the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.

98. On its side, on November 23, 2009, Nicaragua deposited the instrument of adhesion to the Inter-American Convention to Prevent and Punish Torture, becoming the 18th State part of such instrument.

Scholarships and Internships

99. During 2009, the Commission's Rómulo Gallegos Scholarship Program continued. The program offers training on the inter-American human rights promotion and protection system 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 2009, a total of 15 scholarship recipients worked with the Commission: six in the first half of year, covering the 2008-09, scholarship cycle, including – in addition to three Rómulo Gallegos Scholarship recipients – three thematic scholarships, one assigned to the office of Special Rapporteur on the Rights of Indigenous Peoples, and one for the

Human Rights Defenders' Unit; in addition, another scholarship was made available to young professionals from the Central American member states. In the second half of the year, nine scholarship recipients began work. The scholarships awarded for the 2009-10 cycle included three from the Rómulo Gallegos Program, four thematic scholarships, three assigned to the office of Special Rapporteur on the Rights of Indigenous Peoples, one assigned to the office of the Rapporteur on the Rights of Women, and one arranged with the University of Notre Dame and another with the University of Quebec.

100. 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. During its visit to Jamaica in December 2008, the Commission signed an agreement with the Norman Manley Law School (NMLS) to expand and strengthen their institutional cooperative ties for raising awareness about the inter-American human rights system in the Caribbean. Under the agreement, NMLS law students will be offered internships at the IACHR to learn how to use the system for the benefit of people in the Caribbean. The first NMLS internship began during the summer of 2009. In 2009, the Commission received a total of 36 interns. Additional information on the scholarship and internship programs is available on the Commission's web site at www.cidh.org.

2008-2009	Alexandra Maria de Jesús Santos (Defenders' Unit Scholarship)	Brazil
	Carlos Federico Portillo Bonilla (Central American Scholarship)	El Salvador
	Ivonne Sheila Barrios Quiroz (Indigenous Peoples Scholarship)	Bolivia
	Naiara Leite da Silva Lisl Brunner Álvaro Botero Navarro	Brazil USA Colombia
2009-2010	Alma Beltrán y Puga (Women's Rapporteurship Scholarship)	Mexico
	Lisa Cowan Natalia Inés Chudyk Rumak Luis Alberto Cantoral Benavides	USA Paraguay Peru
	Émilie Jutras (Brian Tittmore Scholarship)	Canada
	Camilo Mejía Gómez (Notre Dame Scholarship)	Colombia
	Miriam Liz Andela (Indigenous Peoples Scholarship) Helga Ybanova Tzicap González (Indigenous Peoples Scholarship) Maurilio Santiago Reyes (Indigenous Peoples Scholarship)	Colombia Guatemala Mexico

Activities related to the Fiftieth Anniversary of the IACHR

101. As part of the activities to commemorate the creation of the IACHR 50 years ago, and as noted above, the Commission made a visit to Chile, and another to Argentina, in September of this year, at the invitation of those countries' governments.

102. In addition, a pamphlet about the IACHR was produced in the four official OAS languages, and both the OAS's *Américas* magazine and *Américas Quarterly* published special editions on the Inter-American Commission's 50th anniversary.

103. On November 11, a special meeting of the OAS Permanent Council was held to commemorate the Commission's first 50 years, the promulgation of the American Convention on Human Rights 40 years ago, and the Inter-American Court's 30th anniversary. That meeting was attended by the Chair of the Permanent Council, the Secretary General of the OAS, the President and other members of the Inter-American Commission, and the President of the Inter-American Court. OAS member states were also in attendance. In the afternoon, a round-table session on the inter-American system was held, with panelists including Helen Mack Chang, Armstrong Wiggins, Juan Méndez, Douglass Cassel, and Juan Pablo Olmedo.

104. In addition, as part of the 50th anniversary celebrations, in April 2009 the IACHR and the Inter-American Institute of Human Rights organized a poster competition, in two categories: children and adolescents, and young adults. A total of 133 posters were received, from more than 11 of the region's countries. In the young adults category, the winner selected by the jury was Emily Phillips of the United States, who also won the people's choice award with her poster titled *Defending Human Rights*. In the children and adolescents category, the winner was the joint entry by Ingrid Pereira Paine, Marcela Espinoza Nahuelán, and Karol Espinoza Nahuelán of Chile, titled *Tenemos derecho a mucho más*. The people's choice award in this category went to María Cantero, also of Chile, for her poster *Nosotros también tenemos derecho a ser felices*.

Other promotion activities

105. Throughout 2009, the members of the Commission and the Secretariat took part in international conferences, seminars, and training sessions on the international protection of human rights through the inter-American system.

106. As part of its promotional work, the IACHR supported the organization of the OAS Americas film cycle on disappearances, at which documentaries were shown and talks were held, on January 12 to 15, 2009. That same month, the Commission attended the 4th Specialized Course for State Officials, organized by the Inter-American Institute of Human Rights in San José, Costa Rica.

107. In April, among other activities, the Executive Secretariat of the IACHR attended the MERCOSUR Meeting of High Authorities on Human Rights in Asunción, Paraguay.

108. In May, the Assistant Executive Secretary attended an event on the African human rights system and other regional systems in Banjul, Gambia, at the invitation of the Human Rights Centre of the University of Pretoria, South Africa.

109. In September, the Executive Secretariat participated at a seminar on implementing the decisions handed down by convention-based bodies in the city of Bristol, United Kingdom, at the invitation of that academic institution. It also attended the Inter-Parliamentary Forum of the Americas (FIPA) held in Ottawa as part of FIPA's 6th Plenary Meeting, the goal of which was to foster a comprehensive dialogue on the migration phenomenon in the Americas and the role of

parliamentarians in creating a legal framework that upholds human rights. In addition, the IACHR participated in a technical consultation on "The international crisis and the right to food among highly vulnerable groups" in Panama City.

110. In October, the IACHR attended the Third Follow-up Meeting on the Brasilia Declaration on the Rights of Older People, held in Santiago, Chile. Additionally, at the invitation of the Ibero-American General Secretariat (SEGIB), it participated at the forum on "Current challenges in international human rights protection from an Ibero-American perspective," which took place in Madrid. During that same month, at the invitation of the regional office of the United Nations High Commissioner, the Executive Secretariat attended a regional seminar for parliamentarians in Panama City that sought to strengthen their ability to promote and protect human rights.

111. Finally, on December 8 and 9, the IACHR participated in a regional consultation organized by the United Nations on cooperation between the universal and inter-American human rights protection systems. The consultation took place at OAS headquarters in Washington and was attended by the member states, national human rights agencies and civil society organizations, in addition to the inter-American human rights bodies.

112. 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. One of the Executive Secretariat's officials participated at the 27th Model OAS General Assembly of the OAS for high-school students, which took place on December 3 to 6 and focused on migration topics. Similarly, on February 9, a presentation was given to 50 secondary-school students from various countries around the world.

G. Financial contributions

113. Throughout 2009, the Commission again asked the various organs of the Organization of American States to continue to search for ways to obtain an effective increase in the funding allocated to the IACHR, with the purpose of ensuring adequate financing for the Commission in the Organization's program-budget. Likewise, the Commission suggested to donors that, as far as possible, they assign part of their voluntary contributions as funds without a specific purpose, to provide the IACHR with flexibility in allocating resources among its various activities and programs.

114. The IACHR is especially grateful for the significant financial support received from countries inside and outside the region, as well as from foundations and other entities. These donations make it possible for the IACHR to carry out a great many of its activities related to the mandates handed down by the OAS's political bodies.

115. In particular, the IACHR would like to thank the governments of the following OAS member countries for their contributions this year: Brazil, Canada, Chile, Costa Rica, Mexico, and the United States. It would also like to thank the observer countries that support the Commission's activities: Denmark, France, Korea, Italy, Luxembourg, Spain, Sweden, Switzerland, and the United Kingdom. The Commission also welcomes and appreciates the contributions received from the Inter-American Development Bank, the European Commission, the United Nations Children's Fund, the office of the United Nations High Commissioner for Refugees, and the University of Notre Dame. These donations contribute in a concrete way to strengthening the inter-American human rights system in the Americas.

H. Activities of the Inter-American Commission in connection with the Inter-American Court of Human Rights

116. In 2009 the Commission continued litigation in a series of matters brought before the Inter-American Court of Human Rights.

117. During 2009, the Commission referred twelve (12) cases to the Inter-American Court: Guerrilla de Araguaia (Brazil), Florencio Chitay Nech (Guatemala), Inés Fernández Ortega (Mexico), Rainer Ibsen Cárdenas and José Luis Ibsen Peña (Bolivia), Teodoro Cabrera García and Rodolfo Montiel Flores (Mexico), Xákmok Kásek (Paraguay), Valentina Rosendo Cantú *et al.* (Mexico), Lysias Fleury *et al.* (Haiti), Jesús Tranquilino Vélez Llor (Panama), José Alfredo Mejía Idrovo (Ecuador), Mercedes Chocrón Chocrón (Venezuela), and Leopoldo López Mendoza (Venezuela).

118. Also during 2009, the IACHR attended hearings convened as part of the 82nd, 83rd, and 84th periods of sessions of the Inter-American Court, held at its headquarters, as well as the 38th, 39th, and 40th special sessions, held in Santo Domingo, Dominican Republic; Santiago, Chile; and La Paz, Bolivia.

119. As those sessions, public hearings were held in connection with the following cases: Discharged and Retired Employees of the Office of the Comptroller General of the Republic (Peru), Reverón Trujillo (Venezuela), Usón Ramírez (Venezuela), Anzualdo Castro (Peru), González *et al.* ("Cotton Field") (Mexico), Sétimo Garibaldi (Brazil), DaCosta Cadogan (Barbados), Barreto Leiva (Venezuela), Radilla Pacheco (Mexico), Dos Erres Massacre (Guatemala), and reparations and costs in the matter of Salvador Chiriboga (Ecuador).

120. The Commission also participated at a public hearing on the request for an Advisory Opinion submitted to the Court by Argentina regarding the admissibility of ad hoc judges in contentious cases that are not between States and the participation of judges in cases brought against their home countries, and at a public hearing on supervision of compliance with the judgment in the case of the Sawhoyamaxa Indigenous Community (Paraguay).

121. The Commission attended public hearings held in connection with the provisional measures ordered in the matter of Haitians and Dominicans of Haitian Descent in the Dominican Republic (Dominican Republic) and Urso Branco Prison (Brazil), and at the joint hearing on the implementation of provisional measures in Venezuelan prisons, covering the following matters: Monagas Judicial Prison ("La Pica"), Yare I and Yare II Capital Region Penitentiary Center ("Yare Prison"), the Center-West Region Prison ("Uribana Prison"), and El Rodeo I and El Rodeo II Capital Judicial Prison.

122. The Commission also participated at private hearings on supervision of compliance with the judgments in the following cases: Five Pensioners (Peru), Palamara Iribarne (Chile), Pueblo Bello Massacre (Colombia), Villagrán Morales *et al.* ("Street Children") (Guatemala), Ivcher Bronstein (Peru), Blanco Romero *et al.* (Venezuela), Suárez Rosero (Ecuador), El Caracazo (Venezuela), Zambrano Vélez *et al.* (Ecuador), Girls Yean and Bosico (Dominican Republic), Dismissed Congressional Workers (Peru), Herrera Ulloa (Costa Rica), Juvenile Reeducation Institute (Paraguay), Retén de Catia (Venezuela), Molina Theissen (Guatemala), Goiburú *et al.* (Paraguay), and Trujillo Oroza (Bolivia).

123. Finally, the Inter-American Commission also attended private hearings on supervision of compliance with the judgments and the implementation of provisional measures in the following cases: Mapiripán Massacre (Colombia), 19 Merchants (Colombia), Carpio Nicolle (Guatemala), Gutiérrez Soler (Colombia), Bámaca Velásquez (Guatemala), and Mack Chang (Guatemala).

124. 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, reparation, and costs in the following cases: Tristán Donoso (Panama), Ríos *et al.* (Venezuela), Perozo *et al.* (Venezuela), Reverón Trujillo (Venezuela), Acevedo Buendía *et al.* ("Discharged and Retired Employees of the Comptroller General's Office") (Peru), Escher *et al.* (Brazil), Anzualdo Castro (Peru), Garibaldi (Brazil), Dacosta Cadogan (Barbados), González *et al.* ("Cotton Field") (Mexico), Barreto Leiva (Venezuela), Usón Ramírez (Venezuela), and Radilla Pacheco (Mexico); the judgment on the merits, reparations, and costs in the case of Kawas Fernández (Honduras); and the interpretative rulings in the following cases: Ticona Estrada *et al.* (Bolivia), Valle Jaramillo *et al.* (Colombia), Escher *et al.* (Brazil), and Acevedo Buendía *et al.* ("Discharged and Retired Employees of the Comptroller General's Office") (Peru).

125. The Commission also noted the Court's decision to decline the IACHR's request for an Advisory Opinion regarding the use of corporal punishment as a means of disciplining children and adolescents (Articles 1.1, 2, 5.1, 5.2 and 19 of the American Convention on Human Rights, and Article VII of the American Declaration of the Rights and Duties of Man), and its adoption of Advisory Opinion OC-20/09 on September 29, 2009, in which it ruled on the inadmissibility of *ad hoc* judges in contentious cases not between States and on the participation of judges in cases brought against their home countries.

I. Thirty-Ninth Regular Session of the OAS General Assembly

126. At the 39th regular session of the General Assembly of the Organization of American States, held in the city of San Pedro Sula, Honduras, on June 2 to 4, 2009, the Commission was represented by its President, Luz Patricia Mejía, and by its Executive Secretary, Santiago A. Canton. The President of the Commission addressed the General Assembly with regard to the human rights situation in the OAS member states and officially presented the Commission's Annual Report for 2008.

127. The General Assembly adopted various resolutions with regard to human rights. 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. 2479 (XXXIX-O/09) Fiftieth Anniversary of the Creation and Installation of the Inter-American Commission on Human Rights, Fortieth Anniversary of the Adoption of the American Convention on Human Rights (Pact of San José, Costa Rica), and Thirtieth Anniversary of the Inter-American Court of Human Rights
2. AG/RES. 2522 (XXXIX-O/09) Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights.
3. AG/RES. 2500 (XXXIX-O/09) Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights.
4. AG/RES. 2521 (XXXIX-O/09) 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

5. AG/RES. 2455 (XXXIX-O/09) Human Rights and Older Persons.
6. AG/RES. 2501 (XXXIX-O/09) Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.
7. AG/RES. 2502 (XXXIX-O/09) The Human Rights of All Migrant Workers and of Their Families.
8. AG/RES. 2504 (XXXIX-O/09) Human Rights, Sexual Orientation, and Gender Identity.
9. AG/RES. 2506 (XXXIX-O/09) Protocol of San Salvador: Composition and Functioning of the Working Group to Examine the Periodic Reports of the States Parties.
10. AG/RES. 2509 (XXXIX-O/09) Right to the Truth.
11. AG/RES. 2510 (XXXIX-O/09) Study of the Rights and the Care of Persons under Any Form of Detention or Imprisonment.
12. AG/RES. 2512 (XXXIX-O/09) Protecting Human Rights and Fundamental Freedoms While Countering Terrorism.
13. AG/RES. 2514 (XXXIX-O/09) Access to Public Information: Strengthening Democracy.
14. AG/RES. 2523 (XXXIX-O/09) Right to Freedom of Thought and Expression and the Importance of the Media.
15. AG/RES. 2517 (XXXIX-O/09) Human Rights Defenders: Support for Individuals, Groups, and Organizations of Civil Society Working to Promote and Protect Human Rights in the Americas.

Other resolutions on human rights

16. AG/RES. 2444 (XXXIX-O/09) Meeting of Ministers Responsible for Public Security in the Americas.
17. AG/RES. 2448 (XXXIX-O/09) Strengthening the Role of National Institutions for the Promotion and Protection of Human Rights in the Organization of American States.
18. AG/RES. 2480 (XXXIX-O/09) Promotion and Strengthening of Democracy: Follow-up to the Inter-American Democratic Charter.
19. AG/RES. 2451 (XXXIX-O/09) Mechanism to Follow Up on Implementation of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention of Belém do Pará".
20. AG/RES. 2452 (XXXIX-O/09) Appointment of Women to Senior Management Positions at the Organization of American States.

21. AG/RES. 2454 (XXXIX-O/09) Promotion of Women's Human Rights and Gender Equity and Equality.
22. AG/RES. 2456 (XXXIX-O/09) Hemispheric Efforts to Combat Trafficking in Persons: Conclusions and Recommendations of the Second Meeting of National Authorities on Trafficking in Persons.
23. AG/RES. 2458 (XXXIX-O/09) XX Pan American Child Congress – Inter-American Specialized Conference.
24. AG/RES. 2463 (XXXIX-O/09) Support for the Committee for the Elimination of All Forms of Discrimination against Persons with Disabilities.
25. AG/RES. 2464 (XXXIX-O/09) Program of Action for the Decade of the Americas for the Rights and Dignity of Persons with Disabilities (2006-2016) and Support for Its Technical Secretariat (SEDISCAP).
26. AG/RES. 2465 (XXXIX-O/09) Migrant Populations and Migration Flows in the Americas.
27. AG/RES. 2466 (XXXIX-O/09) Education on Human Rights in Formal Education in the Americas.
28. AG/RES. 2483 (XXXIX-O/09) Promotion of Corporate Social Responsibility in the Hemisphere.
29. AG/RES. 2486 (XXXIX-O/09) Prevention and Eradication of Commercial Sexual Exploitation and Smuggling of and Trafficking in Minors.
30. AG/RES. 2489 (XXXIX-O/09) Support for Enhanced Interregional Cooperation with the African Union.
31. AG/RES. 2498 (XXXIX-O/09) Draft American Declaration on the Rights of Indigenous Peoples.
32. AG/RES. 2508 (XXXIX-O/09) Internally Displaced Persons.
33. AG/RES. 2511 (XXXIX-O/09) Protection of Asylum Seekers and Refugees in the Americas.
34. AG/RES. 2513 (XXXIX-O/09) Persons Who Have Disappeared and Assistance to Members of Their Families.

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 2009 in relation to the petition and case system.

2. Section B includes statistical tables on all the petitions received by the Commission in 2009, indicating the number of petitions received by country, as well as a comparison of the number of petitions received in 2009 in relation to each of the last eleven 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 2009, 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 2009. 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 2009.

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 2009, 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 94 reports that include 62 cases found admissible; 15 reports on petitions found inadmissible; 4 reports on friendly settlements; and 13 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 for 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008, 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.

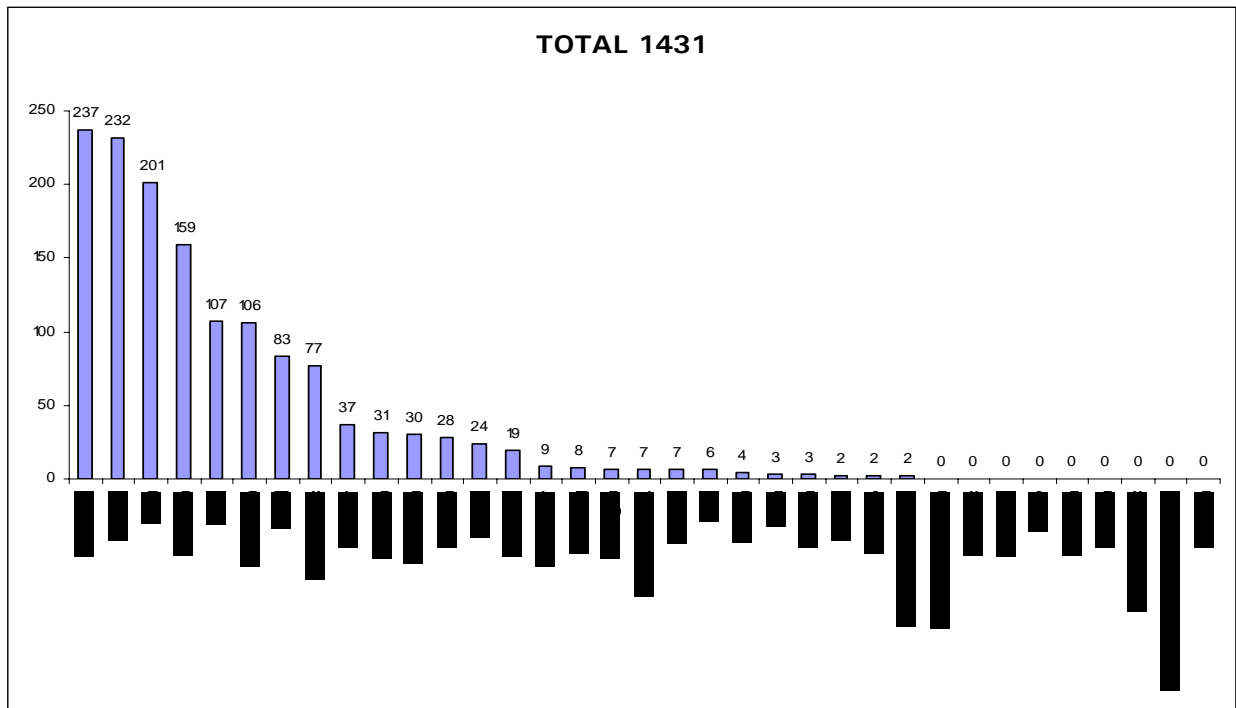
B. STATISTICS

7. This chapter of the 2009 Annual Report contains statistical information to provide a general overview of the different activities carried out by the Inter-American Commission on Human Rights.

8. 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 forwarded to the state involved but in which no report on admissibility has been issued.

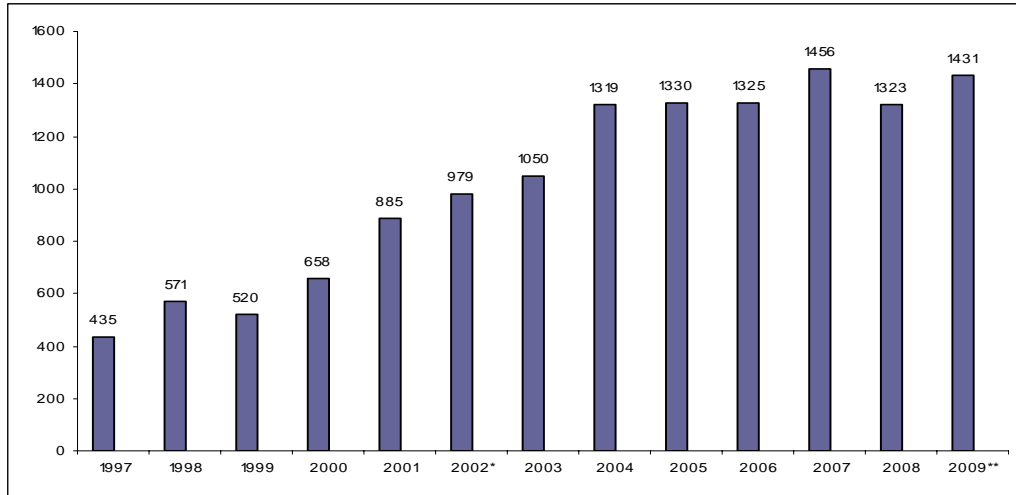
1. Petitions and cases

a. Total number of complaints received in the year 2009 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.

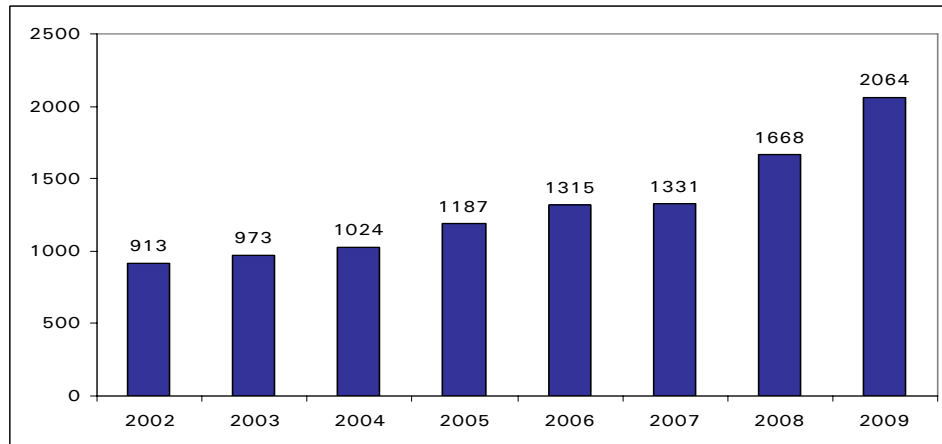


This graph illustrates the total number of complaints received by the Commission during the last eleven years. "Complaints" for the purposes of these statistics includes all complaints, presented in writing, concerning an alleged violation by an OAS member state of the Convention, the Declaration and/or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

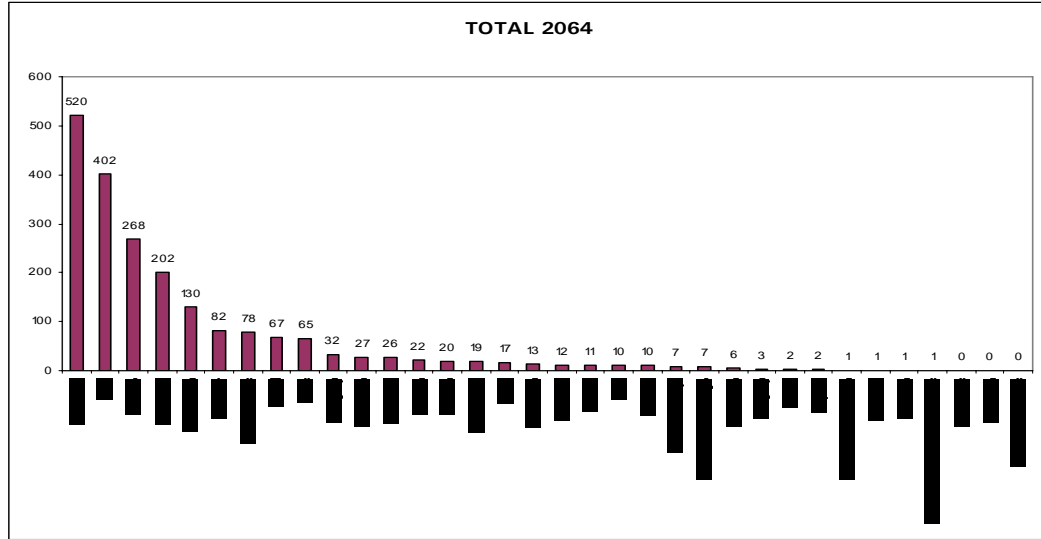
* In the year 2002, the Commission received 3,783 complaints in addition to those represented in the graph, which refer to the human rights situation of persons affected by various banking measures ("corralito") in Argentina.

** 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..

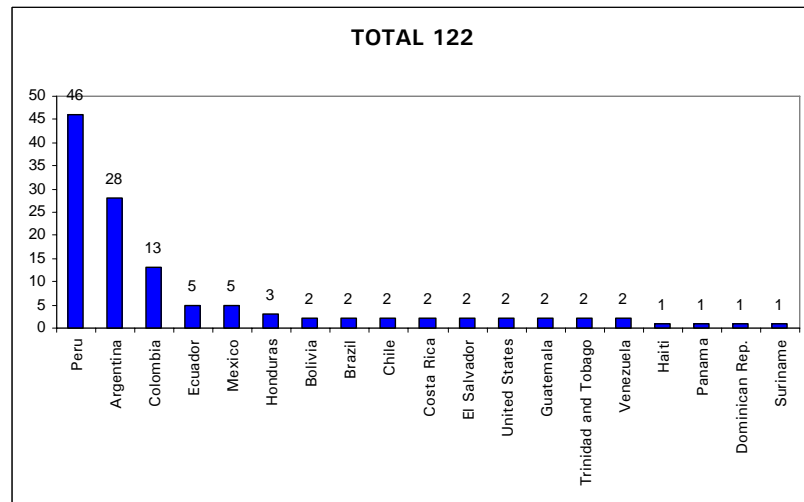
c. Total number of petitions evaluated by year



d. Total number of petitions evaluated during 2009 by country.

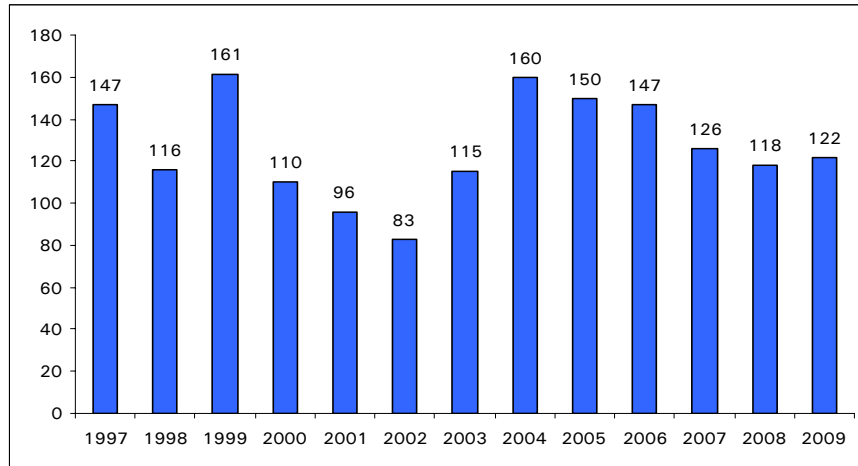


d. Petitions with refer to which there has been a decision to process during 2009, by country



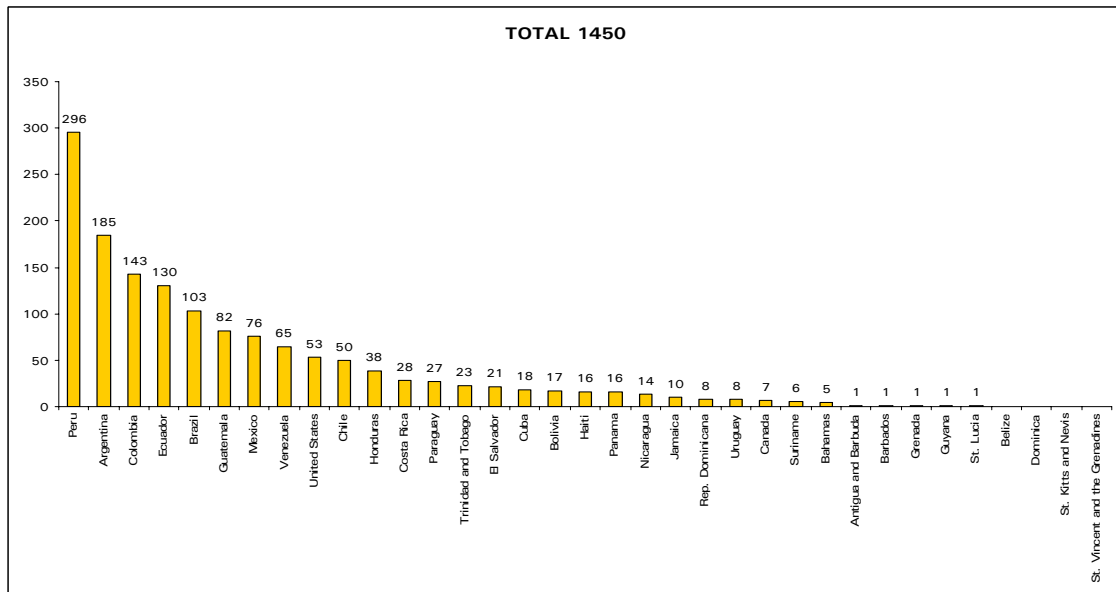
In the previous graphic is shown the total number of petitions with regard to which there has been a decision to process, taken between January 1st and December 31st of 2009, organized by Country against which the petition was filed.

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



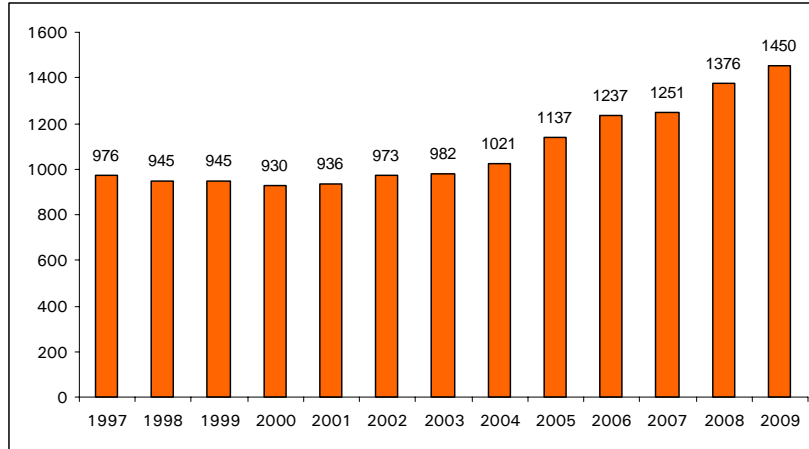
The preceding graph shows the total number of petitions transmitted to the States by year since 1997.

g. Total number of cases and petitions pending to December 31, 2009 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.

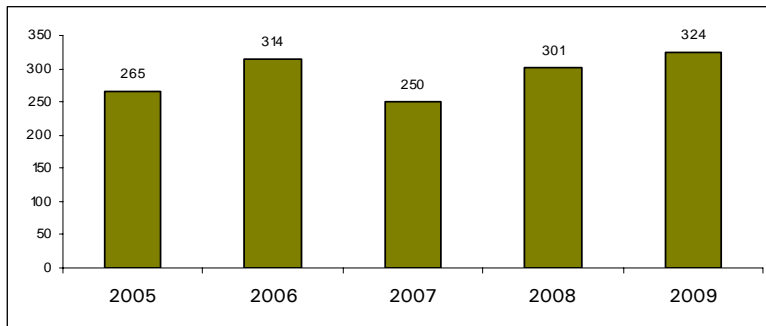
h. Total number of cases and petitions being processed by year.



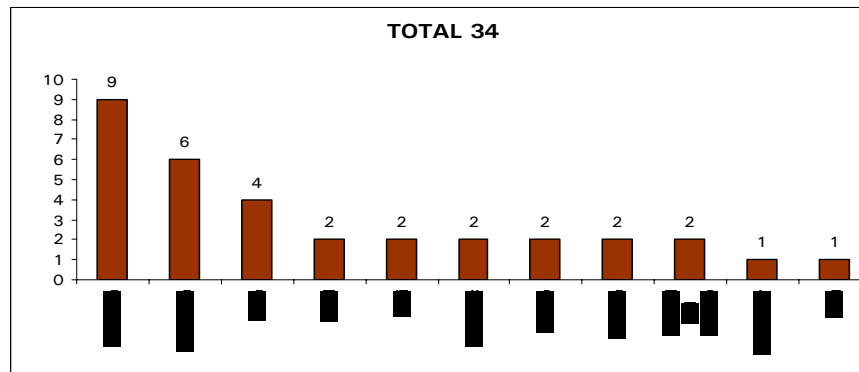
The preceding graph shows a comparison of the number of cases and petitions pending over the past thirteen years.

2. Precautionary measures

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

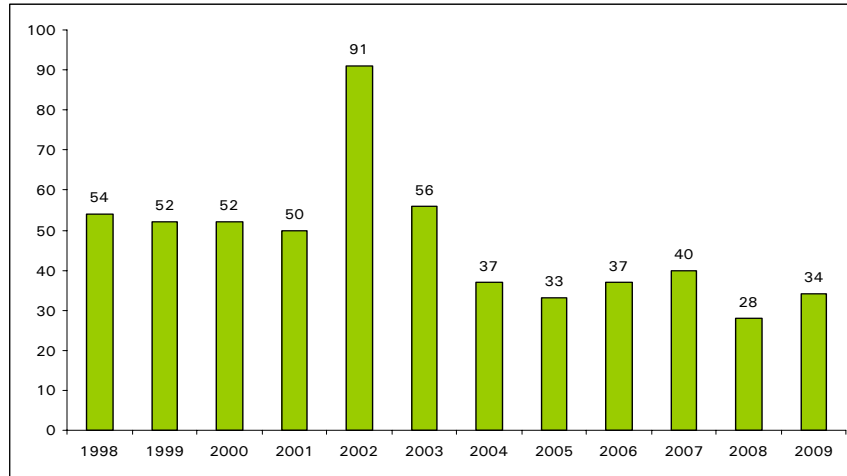


b. Total number of precautionary measures granted by country during 2009



This graph includes the total number of precautionary measures granted by country during the year 2009.

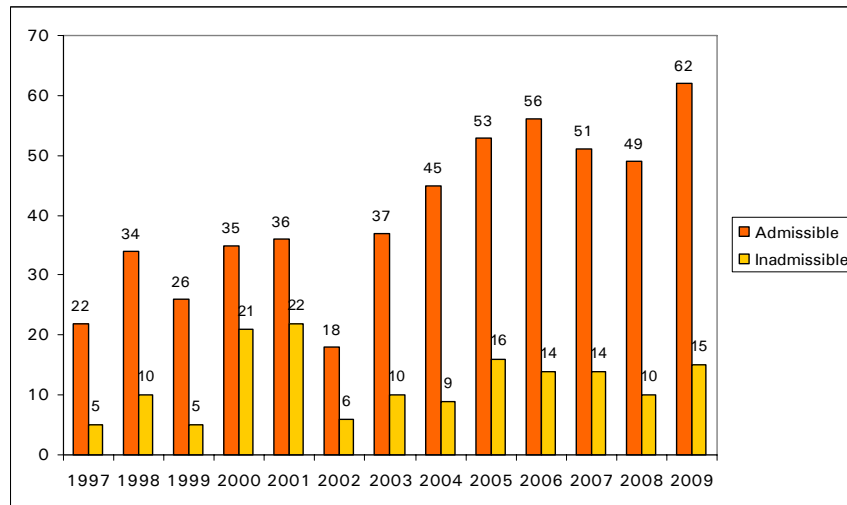
c. Total number of precautionary measures granted by year.



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.

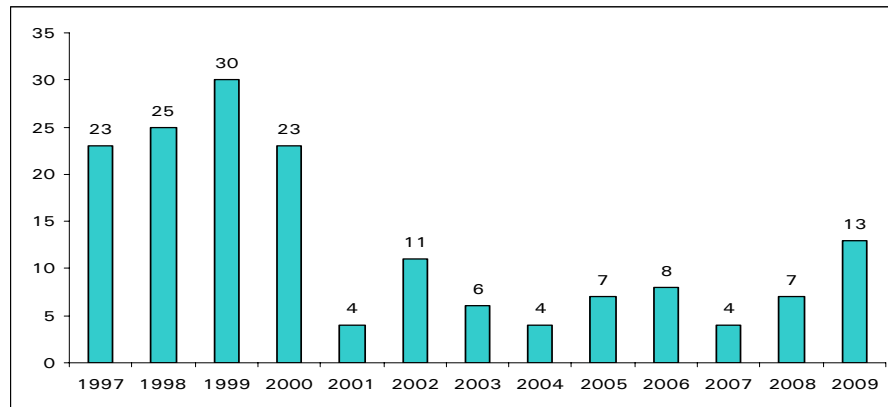
3. Reports

a. Total number of admissibility/inadmissibility reports published.



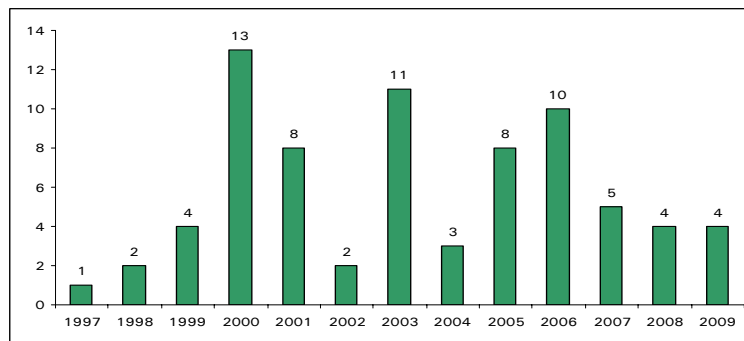
The chart shows the figures corresponding to admissibility and inadmissibility reports published in the past eleven years. These reports reflect the final decision of the IACHR on fulfillment of the admissibility requirements of petitions.

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



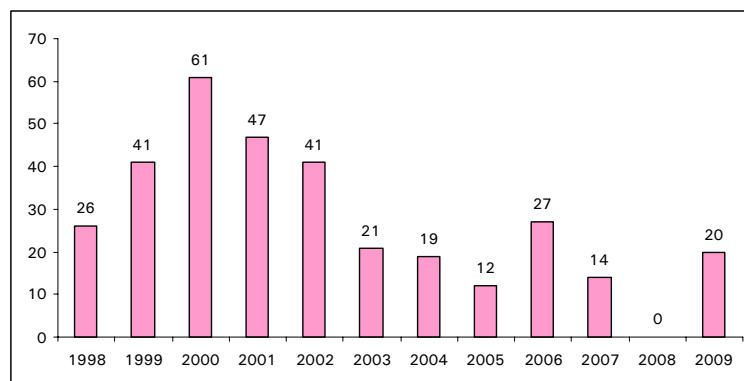
The graph illustrates the variation in the total number of reports on the merits of individual cases approved and published in the past thirteen years. The figures include reports in which the IACHR has rendered a decision on the alleged violation of the American Convention by the States parties and 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.

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



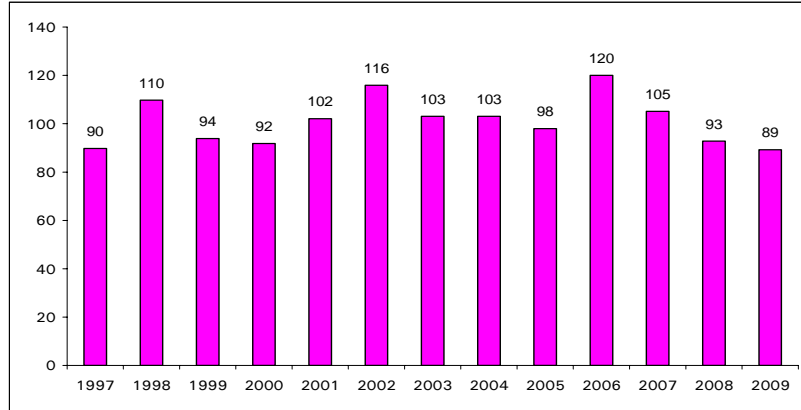
The preceding chart shows the number of cases in which under the auspices of the Commission the petitioners and the State have reached a friendly settlement agreement.

d. 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.

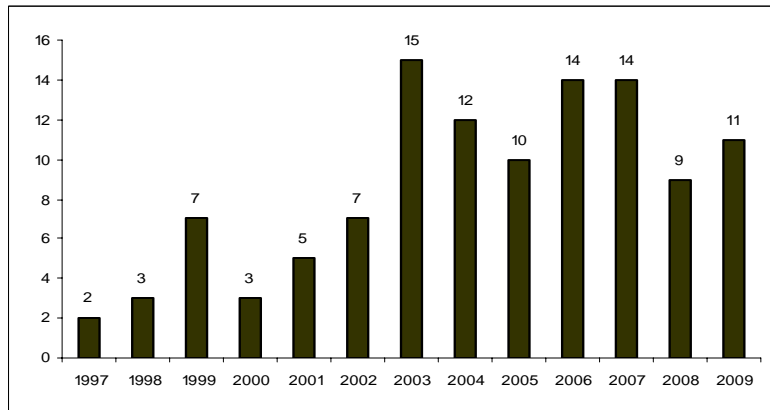
e. Total number of hearings held by year.



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.

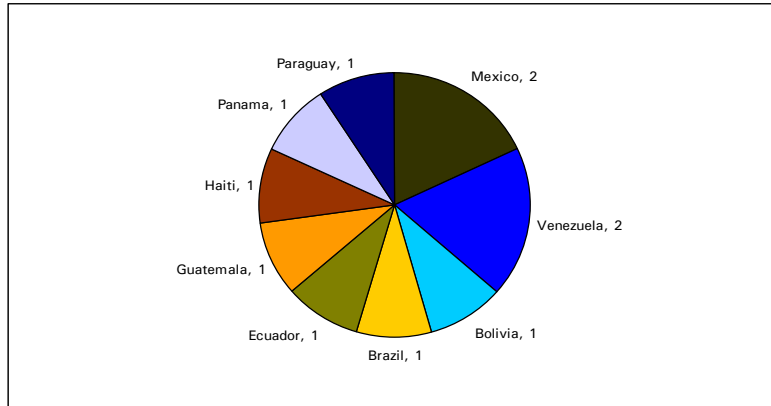
4. Cases before the Inter-American Court of Human Rights

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

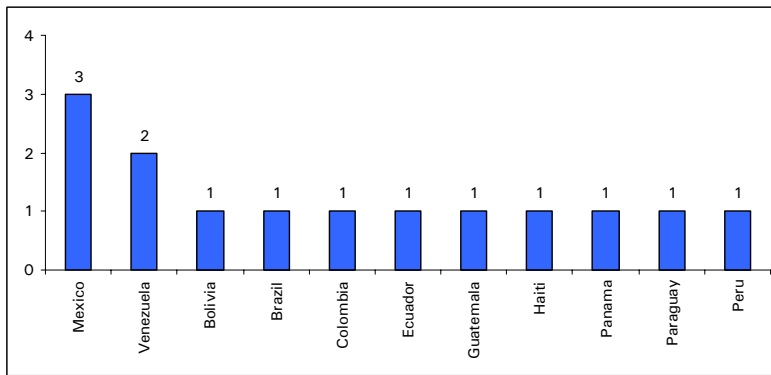


After a ruling on the merits of a case has been given pursuant to Article 50 of the American Convention, either the IACHR or the state(s) involved may submit a case to the contentious jurisdiction of the Inter-American Court of Human Rights.

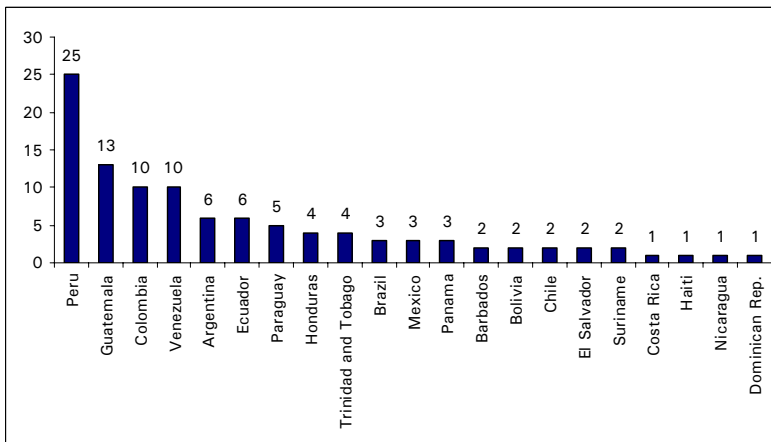
- b. Cases presented to the Inter-American Court of Human Rights by country during the year 2009.



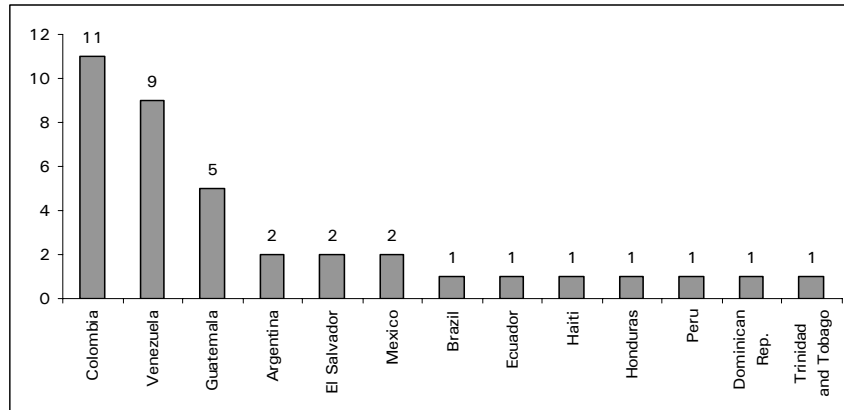
- c. Cases in process before the Inter-American Court of Human Rights in 2009



- d. Cases in compliance stage per country in 2009.



e. Provisional measures in force in 2009.



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

1. Precautionary measures granted by the IACHR in 2009

9. 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.

10. 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.

11. The following is a summary of the precautionary measures granted in 2009, 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.

BRAZIL

PM 236/08 – Persons Deprived of Liberty in the Polinter-Neves Penitentiary

12. On June 1, 2009, the IACHR granted precautionary measures for the persons deprived of liberty in the Polinter-Neves penitentiary, in the city of São Gonçalo, State of Rio de Janeiro, Brazil. The request seeking precautionary measures alleges that the inmates at the Polinter-Neves penitentiary do not have adequate access to medical attention. It is also alleged that inmates with tuberculosis and other contagious diseases share cells with other persons in a highly overcrowded situation and without sunlight. The Inter-American Commission asked the State of Brazil to

adopt all measures necessary to guarantee the life, health and physical integrity of the beneficiaries; to ensure that they have adequate medical attention and to avoid the transmission of contagious diseases through a substantial reduction of the overpopulation in this penitentiary; as well as to inform the IACHR about the actions taken in response to this request.

PM 224/09 – Adolescents Deprived of Liberty in the Socio-Educational Internment Facility (UNIS)

13. On November 25, 2009, the IACHR granted precautionary measures for adolescents deprived of liberty in the Socio-Educational Internment Facility (Unidad de Internación Socioeducativa, UNIS), in Brazil. The request for precautionary measures alleges that the life and physical integrity of some 290 adolescents deprived of liberty in the UNIS is at risk. It indicates that many of the inmates held have been subject to beatings and acts of aggression and torture, allegedly by State agents and by other adolescents, and that between April and July of 2009 three adolescents died in the facility as a result of these acts. The Inter-American Commission asked the State of Brazil to adopt the measures necessary to guarantee the life and physical integrity of the adolescents deprived of liberty in the UNIS and to keep deaths and acts of torture from occurring in the facility, as well as to inform the IACHR about the actions taken to judicially clarify the acts that warrant the adoption of these precautionary measures.

COLOMBIA

PM 301/08—Leaders of the Indigenous Regional Council of Cauca (CRIC) and their Advisers

14. On January 14, 2009, the IACHR granted precautionary measures in favor of 32 leaders and advisers of the Indigenous Regional Council of Cauca (Consejo Regional Indígena del Cauca, CRIC), in Colombia. The petition for precautionary measures alleges that the CRIC leaders and advisers have been the targets of acts of violence, threats, and stigmatization as a result of their activities as indigenous leaders. It also alleges that murders, threats, and acts of harassment against the CRIC leadership have increased since August 2008 and refers to, among others, the death of Edwin Legarda Vásquez, husband of the CRIC Senior Counselor Aída Marina Quilcué Vivas. The Inter-American Commission requested that the State of Colombia adopt the measures necessary to guarantee the life and personal integrity of the beneficiaries, as well as report on the actions taken to remove the risk factors that justify the adoption of these precautionary measures. The Commission continues to monitor the situation.

PM 91/08 – Federación Agrominera del Sur de Bolívar (FEDEAGROMISBOL)

15. On May 1, 2009, the IACHR granted precautionary measures for the leaders of Federación Agrominera del Sur de Bolívar (FEDEAGROMISBOL), in Colombia. The request seeking precautionary measures alleges that the leaders of FEDEAGROMISBOL have been the target of threats since April 2008, and that on April 22, 2009, a leader of the Federation, Mr. Edgar Martínez Ruiz, was killed. The Inter-American Commission asked the State of Colombia to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and to inform the IACHR about any actions taken to eliminate the risk factors to the beneficiaries.

PM 139/09 – Martha Lucía Giraldo Villano and others

16. On May 19, 2009, the IACHR granted precautionary measures for the following relatives of Mr. José Orlando Giraldo Barrera: his daughters, Martha Lucía Giraldo Villano and Ximena Giraldo Villano; his wife, Luz Marina Villano Morales; his siblings: Marcial Orlando Giraldo Barrera, José Wilson Orlando Giraldo Barrera and Jairo Giraldo Barrera Orlando Giraldo Barrera, as well as each of their families in Colombia. The request seeking precautionary measures alleges that

these persons have been tailed and threatened, allegedly as a consequence of their participation as witnesses in the criminal proceedings on the death of Mr. José Orlando Giraldo Barrera, which occurred on March 11, 2006. The request also states that on April 28, 2009, persons wearing uniforms allegedly conducted surveillance on the residence of Mr. José Wilson Orlando Giraldo Barrera and asked for his whereabouts and that on May 10, 2009, he was the target of an attempt against his life with a firearm in the city of Cali. It also alleges that the General Attorney of the Nation has offered to include some beneficiaries on its program of protection to victims and witnesses, but that this measure would complicate the beneficiaries' participation in the criminal proceedings on the death of Mr. José Orlando Giraldo Barrera. The Inter-American Commission asked the State of Colombia to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and to inform the IACHR about any actions taken to investigate these facts.

PM 270/09 – X and XX

17. On September 21, 2009, the IACHR granted precautionary measures for two individuals in Colombia whose identity the IACHR decided to withhold. The request for precautionary measures alleges that X and her 15-year-old daughter XX had been followed and subject to physical aggressions, threats, and a kidnapping attempt after they reported the sexual violation of XX, which allegedly occurred in December 2006. The request also indicates that XX showed after-effects of having been sexually violated and having carried a high-risk pregnancy. The request alleges that the adolescent's physical and mental health had deteriorated in recent months as a result of the acts of violence to which her immediate family had been victim and due to the alleged absence of adequate medical treatment. The Inter-American Commission asked the State of Colombia to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries; guarantee that XX can have proper medical treatment for the effects of having been sexually violated and having carried a pregnancy under allegedly risk circumstances; reach agreement with the beneficiaries and their representative on the measures to be adopted; inform the IACHR within a 20-day period about any actions taken to investigate the facts that led to the adoption of the precautionary measures and update the information periodically; and adopt all necessary measures so that the beneficiaries' identity is duly protected in the implementation of the precautionary measures.

PM 242/09 - Members of the Consultancy on Human Rights and Displacement (CODHES)

18. On November 16, 2009, the IACHR granted precautionary measures for Enrique Rojas Rodríguez, Marco Romero Silva, and Edna Bibiana Ortiz, members of the Consultancy on Human Rights and Displacement (Consultoría para los Derechos Humanos el Desplazamiento, CODHES), in Colombia. The request for precautionary measures alleges that these three individuals had had their telephones tapped, had been tailed, and had been subject to other intelligence activities on the part of agents of the Administrative Department of Security (DAS). It adds that the proposed beneficiaries would seem to be at risk in light of the fact that high-level public officials had made speeches against their activities in defense of people who had been subject to forced displacement. In addition, it reports that on October 30, 2009, Edna Bibiana Ortiz was part of a humanitarian mission verifying the situation of displaced populations in the Upper Sinú and Upper San Jorge. The mission was attacked with firearms, allegedly by paramilitary groups, leaving a teacher dead and a nurse hospitalized. The Inter-American Commission asked the State of Colombia to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries; provide a nexus and/or protection system for members of CODHES who travel to conflict zones in the course of their work; provide protection around the perimeter of CODHES headquarters; and guarantee access to any information in intelligence files that may be necessary to protect their personal security.

PM 119/09 – César Julio Valencia

19. On November 17, 2009, the IACHR granted precautionary measures for Magistrate César Julio Valencia Copete, in Colombia. The request for precautionary measures alleges that Magistrate Valencia Copete had received threats to his life stemming from his participation in investigations into alleged ties between public officials and armed groups operating outside of the law. It adds that in March 2008, Magistrate Valencia Copete learned that his cellular telephone had been tapped by the Administrative Department of Security. It was allegedly learned that an official in the Office of Protection who was also assigned to the Counterintelligence Section was in possession of personal information about Magistrate Valencia Copete; that the State had still not taken the measures necessary to investigate the surveillance and telephone wiretapping to which Magistrate Valencia Copete had been subject; and that even though the State had provided him with a security scheme, neither he nor his representatives have been able to participate in its design and implementation, and the authorities responsible for implementing it were apparently not receptive to his requests. The Inter-American Commission asked the government of Colombia to adopt the measures necessary to guarantee the life and physical integrity of César Julio Valencia Copete; guarantee access to information in the intelligence files that would be necessary to protect his personal security; and report on the steps taken to judicially clarify the acts that warrant the adoption of precautionary measures.

PM 319/09 – League of Displaced Women – Cartagena

20. On November 18, 2009, the IACHR granted precautionary measures for Doris Berrio Palomino and her family, in Colombia. The request for precautionary measures alleges that on August 31, 2009, Jair Pantoja Berrio, Doris Berrio Palomino's son and the founder of the Youth League of the League of Displaced Women (LMD), was killed in Cartagena. The request indicates that the murder took place even though the family of Doris Berrio Palomino has security measures in place provided by the State of Colombia. It adds that the Constitutional Court on three occasions had pronounced itself on the situation of risk faced by members of the LMD and that members of the League had informed the Ministry of the Interior about the inadequacy of the security measures, but it alleges that the Colombian State had not acted with diligence to ensure that the security schemes were effective. The request indicates as well that in 2009, various leaders of nongovernmental organizations that work to protect the rights of the displaced population in Cartagena had allegedly been killed and that beginning in March 2001, members of the LMD were victims of acts of violence and threats, allegedly perpetrated by armed groups operating outside of the law. The Commission asked the government of Colombia to adopt the measures necessary to guarantee the life and physical integrity of Doris Berrio Palomino and her family, and to report on the actions taken to judicially clarify the facts that warrant the adoption of precautionary measures.

PM 240/09 – Mauricio Meza

21. On November 18, 2009, the IACHR granted precautionary measures to protect the life and physical integrity of Mauricio Meza Blanco, in Colombia. The request for precautionary measures alleges that the human rights defender and environmentalist Mauricio Meza resumed his efforts in September 2009 after having moved away from his family and his job in order to reduce the level of risk he was facing. The request states that it is unknown what progress has been made in the investigations into the kidnapping attempt of March 2009 and the threats that were reported to the appropriate authorities, and that the protection system granted by the Ministry of the Interior continues to be temporary, since the evaluation of the risk level was given as "ordinary." The request adds that in a public environmental hearing held on October 23, 2009, security guards allegedly followed Mr. Meza and took photographs of him, and that an automobile assigned to the Judicial Investigation Section (SIJIN) had tailed him. It is also alleged that on October 25, 2009, an unknown individual shot at his house with a firearm and that on October 31, 2009, he had been

subject to harassment, allegedly on the part of intelligence agents. The Inter-American Commission asked the Colombian State to adopt the measures necessary to guarantee the life and physical integrity of Mauricio Meza Blanco and to inform the IACHR about actions taken to investigate the facts that led to the adoption of precautionary measures.

PM-339-09 – CJD and MAG

22. On November 23, 2009, the IACHR granted precautionary measures for CJD and MAG, in Colombia. The request for precautionary measures alleges that the journalist CJD, who allegedly had been kidnapped in 2001 and forced to leave the country on three occasions, has been subject to ongoing threats and acts of harassment. The request indicates that on October 16, 2009, six individuals in four vehicles entered the residential complex where she lives, and some of them approached the door of her apartment. It adds that on June 20 and October 7, 2009, several calls were received on the cellular phones of CJD and her parents, in which unknown individuals asked about her younger daughter, MAG. The request also states that in 2008, CJD allegedly learned that her security escorts had produced intelligence reports on her and her daughter, in response to which she asked the Ministry of the Interior and Justice to appoint guards that she trusted. This request apparently received no response, and thus CJD petitioned the Constitutional Court for protection. On October 23, 2008, the Constitutional Court ordered the Ministry of the Interior and Justice to implement the security measures necessary to safeguard the life and physical integrity of CJD and ordered the Administrative Department of Security (DAS) to allow her access to the information about her in the entity's files. The request for precautionary measure indicates that the State has not complied with these orders, and that therefore there had apparently been an investigation into acts of contempt on June 11, 2009. The Commission asked the government of Colombia to adopt the measures necessary to guarantee the life and physical integrity of CJD and MAG, and to report on the actions taken to investigate the facts that led to the adoption of precautionary measures.

CUBA

PM 50/09 - Alejandro Jiménez Blanco

23. On March 18, 2009, the IACHR granted precautionary measures in favor of Alejandro Jiménez Blanco, in Cuba. The petition for precautionary measures alleges that Mr. Alejandro Jiménez Blanco was target of acts of violence at the Paso Penitentiary in Cuba, where it is alleged that he remains isolated in a punishment cell. The Inter-American Commission requested that the State of Cuba adopt the measures necessary to guarantee the life and personal integrity of the beneficiary. The Commission also requested the State to supply adequate medical treatment, in compliance to international standards regarding the treatment of persons deprived of their liberty. Finally, it requested the State to report to the IACHR on the actions taken to implement the precautionary measures.

PM 220/09 -Ariel Sigles Amaya

24. On July 10, 2009, the IACHR granted precautionary measures in favor of Ariel Sigles Amaya, in Cuba. The request for precautionary measures alleges that the life and personal integrity of Mr. Ariel Sigles Amaya are at imminent risk due to the grave state of his health. The information received by the IACHR indicates that since September 2008, his health has progressively deteriorated due to the conditions of his detention. The Inter-American Commission requested that the Cuban State adopt the necessary measures to guarantee the life, personal integrity and health of the beneficiary. Specifically, the IACHR requested that the Cuban State offer Mr. Ariel Sigles Amaya adequate medical attention in compliance with international standards regarding the treatment of persons deprived of their liberty. Additionally, the measures must be arranged with the beneficiary and his family members. Likewise, the IACHR requested that the State

of Cuba inform the Commission about its compliance with the recommendations contained in IACHR [Report No. 67/06](#), issued on October 21, 2006, where the IACHR recommended the State of Cuba the immediate and unconditional release of the victims in this case, including Mr. Ariel Sigler Amaya, declaring null the charges against them because they are based in laws that impose illegitimate restrictions on their rights.

PM 302/09 - Mario Alberto Pérez Aguilera

25. On October 22, 2009, the IACHR granted precautionary measures for Mario Alberto Pérez Aguilera, in Cuba. The request for precautionary measures alleges that the prison authorities purportedly hindered Pérez Aguilera from having access to daily meals without being subject to degrading acts. The petitioners cite as evidence the fact that the beneficiary's cell is located at the end of the corridor and thus food is often not distributed to him, and that he has had to beg to receive his ration. In this context, they reported that in January 2009 the beneficiary went for 11 days without receiving any food. In addition, they maintained that Pérez Aguilera had been isolated from the rest of those deprived of liberty and that he had been subject to beatings when he had tried to communicate with other detainees. The Inter-American Commission asked the government of Cuba to adopt the measures necessary to guarantee the life and humane treatment of Mario Alberto Pérez Aguilera and to inform the IACHR about actions taken to implement the precautionary measures.

PM 338/09 - Macdiel Bachiller Pedroza

26. On November 13, 2009, the IACHR requested the adoption of precautionary measures for Macdiel Bachiller Pedroza, in Cuba. The request for precautionary measures alleges that Macdiel Bachiller Pedroza had been deprived of liberty on four occasions, on the grounds that he was a "danger to society," in retaliation for the activities of his father, the union leader Aurelio Bachiller. It was also alleged that as a result of the State's actions, the rights and remedies to which the beneficiary would have access under domestic and international law would not be subject to effective legal protection. Consequently, the IACHR requested that the government of Cuba provide information about the beneficiary's legal situation and detention status.

DOMINICAN REPUBLIC

PM-297-09 - Juan Almonte Herrera and others

27. On December 11, 2009, the IACHR granted precautionary measures for Juan Almonte Herrera, Yuverky Almonte Herrera, Joel Almonte, Ana Josefa Montilla, Genaro Rincón, and Francisco de León Herrera, in the Dominican Republic. The request for the precautionary measure alleges that Mr. Juan Almonte Herrera had been detained by four agents of the Anti-Kidnapping Department of the National Police on September 28, 2009, as part of the investigation being carried out into the kidnapping of Eduardo Baldera Gómez. Mr. Almonte Herrera was reportedly taken to an unknown location without having access to visits by his family or his legal representatives. On October 2, 2009, the Second Criminal Court of the National District reportedly ordered the release of Mr. Almonte Herrera in a public hearing. Nevertheless, it is alleged that his whereabouts remain unknown.

28. On November 30, 2009, the IACHR asked the State of the Dominican Republic to provide information within a 48-hour time frame on the whereabouts of Mr. Almonte Herrera and on the security situation of his relatives and representatives, among other matters. To date, the IACHR has not received any response to that request for information. In addition, the IACHR received information on December 5, 2009, indicating that relatives and representatives of Mr. Almonte Herrera had reportedly been followed and subject to harassment on the part of agents of the

National Police since the date on which Mr. Almonte Herrera was detained. Given the gravity and urgency of the situation, and the lack of response regarding the whereabouts of Mr. Almonte Herrera, the Inter-American Commission requested that the government of the Dominican Republic report on the whereabouts of Juan Almonte Herrera, his state of health, and his current security situation; that it adopt the necessary measures to guarantee the life and physical integrity of Juan Almonte Herrera, Yuverky Almonte Herrera, Joel Almonte, Ana Josefa Montilla, Genaro Rincón, and Francisco de León Herrera; and that it report on the actions taken to investigate the facts that led to the adoption of precautionary measures.

EL SALVADOR

PM 239/09 – Héctor Antonio García Berríos and others

29. On October 7, 2009, the IACHR granted precautionary measures for the members of the Association of Friends of San Isidro (Asociación Amigos de San Isidro, ASIC), Héctor Antonio García Berríos, Alirio Napoleón Hernández Leiva and Miguel Ángel Rivera Moreno; for the members of the community radio Victoria, Alexander Beltrán Castillo, Ludwin Iraheta and Vladimir Abarca, and for the priest Luis Alberto Quintanilla, in El Salvador. The request seeking precautionary measures alleges that the beneficiaries have been the target of threats in the last few months, allegedly as a result of their activism in defense of the environment in the San Isidro county, department of Cabañas, and of complaints filed against the local public administration. The Inter-American Commission asked the State of El Salvador to adopt the measures necessary to guarantee the life and personal integrity of the beneficiaries, and to inform the IACHR about any actions taken to investigate the facts.

GUATEMALA

PM 63/09 – Raúl Santiago Monzón Fuentes, Gladys Monterroso Velásquez de Morales *et al.*

30. On April 8, 2009, the IACHR granted precautionary measures for Raúl Santiago Monzón Fuentes, Director of the Prosecution Department of the Office of the Human Rights Prosecutor of Guatemala; Gladys Monterroso Velásquez de Morales, wife of the Human Rights Prosecutor of Guatemala; and employees of the Office of the Human Rights Prosecutor in Guatemala. The request seeking precautionary measures alleges that these individuals were victims of various acts of violence as a result of actions undertaken by the Office of the Prosecutor with regard to the publication of historical archives of the Guatemalan National Police. The acts of violence specified include the kidnapping of Mrs. Gladys Monterroso Velásquez de Morales and a series of threats targeting Mr. Raúl Santiago Monzón Fuentes. The request also indicates that unidentified individuals had tailed employees and conducted surveillance on the buildings of the Office of the Human Rights Prosecutor. The Inter-American Commission requested that the State of Guatemala adopt the measures necessary to guarantee the life and physical integrity of Raúl Santiago Monzón Fuentes and Gladys Monterroso Velásquez de Morales; assign protection to the perimeter of the buildings of the Office of the Human Rights Prosecutor of Guatemala, so as to protect the life and physical integrity of the employees; and inform the IACHR about actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 150/09 – Mario David García and his family

31. On May 19, 2009, the IACHR granted precautionary measures for Mr. Mario David García and his family, in Guatemala. The request seeking precautionary measures alleges that Mr. García and his family are in a situation of imminent risk due to having filmed the video where lawyer Rodrigo Rosenberg Marzano made accusations of assassination and corruption against State high officials and businessmen. On May 10, 2009, Rodrigo Rosenberg Marzano was found dead with

bullet impacts. The Inter-American Commission requested that the State of Guatemala adopt the measures necessary to guarantee the life and physical integrity of Mario David García and his family, and inform the IACHR about actions taken to remove the risk factors for the beneficiaries.

PM 136/09 – Iduvina Hernández and 12 members of the SEDEM

32. On May 21, 2009, the IACHR granted precautionary measures for Ms. Iduvina Hernández, director of the Association for the Study and Promotion of Security in Democracy (Asociación para el Estudio y la Promoción de la Seguridad en Democracia, SEDEM) of Guatemala, and other 12 members of the organization. The request seeking precautionary measures alleges that Ms. Iduvina Hernández and the other members of SEDEM have been targets of threats in April and May 2009, through messages and anonymous telephone calls. It adds that no security measures were implemented, although complaints have been filed to the public authorities. The Inter-American Commission asked the State of Guatemala to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and to inform the IACHR about any actions taken to eliminate the risk factors to the beneficiaries.

PM 255/08 -19 Surviving Members of the Community of El Jute

33. On May 13, 2009, the IACHR requested the adoption of precautionary measures to protect the life and physical integrity of the survivors of the community of El Jute, in the Republic of Guatemala: Claudia Crisóstomo, Emilia Cheguen, Margarita Crisóstomo, Marcos Ramos Díaz, Francisco Javier Rivera, Aulalio Gallardo, Humberto Crisóstomo Mateo, Octavio Ramos, María Macaría López, Miguel Ángel Gallardo Álvarez, Isidoro de Jesús Gallardo Rivera, Pedro Gallardo Rivera, María Gallardo Rivera, Emilio Rivera Méndez, Maribel Crisóstomo López Ingrid, Noemí Crisóstomo López, Adán Ceferino Crisóstomo, Juan Antonio Rivera Ramos, and Nidia Crisóstomo Mateo. The decision was based on information indicating that the beneficiaries allegedly had been subject to threats since 2007 for their role as witnesses in a criminal case against members of the public security force and that the level of risk they were facing had apparently increased, inasmuch as the abovementioned criminal proceeding would take place in the course of 2009.

PM 262/09 - Félix Waldemar Maaz Bol

34. On September 29, 2009, the IACHR granted precautionary measures for Mr. Félix Waldemar Maaz Bol, in Guatemala. The request seeking precautionary measures alleges that Félix Waldemar Maaz Bol, President of the Association of Journalists of Alta Verapaz, had allegedly been the target of an attack with explosives on August 18, 2009, in the outside of his residence, due to his work as a journalist. The Inter-American Commission asked the State of Guatemala to adopt the measures necessary to guarantee the life, physical integrity and freedom of expression of the beneficiary, and to inform the IACHR about any actions taken to investigate the facts.

PM 290/09 – Jesús Tecú Osorio and his family

35. On October 6, 2009, the IACHR granted precautionary measures for Mr. Jesus Tecu Osorio and his family, in Guatemala. The request seeking precautionary measures alleges that Mr. Jesus Tecu Osorio received death threats and that on September 14, 2009; he received several telephone calls with death threats for his family. The request also alleges that these threats could be linked to the activities of Mr. Osorio as a human rights defender in Guatemala. Mr. Tecu Osorio allegedly requested protection to several instances of the National Civilian Police, which offered him protection to the perimeter of his house, but the request says that this would not be adequate for the situation of risk of the beneficiaries. The Inter-American Commission asked the State of Guatemala to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and to inform the IACHR about any actions taken to investigate these facts.

HAITI**PM 5/09 – X**

36. On April 17, 2009, the IACHR granted precautionary measures for six persons in Haiti, whose identity is kept under seal at the request of the applicants. The request seeking precautionary measures alleges that these persons have been targets of threats and assaults on the part of State security agents since 2008. It is also alleged that the father of one of the beneficiaries of these measures was killed on March 28, 2009. The Inter-American Commission asked the State of Haiti to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and inform the IACHR about actions taken to investigate through the Judiciary the facts that led to the adoption of precautionary measures.

PM 276-09 – R.S., A.B. and others

37. On October 14, 2009, the IACHR granted precautionary measures for R.S. and her 12-year old child, A.B., as well as five members of a human rights organization in Haiti, whose identity is kept under seal at the request of the applicants. The request seeking precautionary measures alleges that A.B. was raped in January 2009 by a school employee, and that A.B. and her mother are being subjected to threats and violent acts as a result of the complaints they filed. On their part, the five members of the human rights organization mentioned above have also been subjected to telephone threats and harassment in the last few months, as a result of the psychological and legal support offered to A.B and her mother. It is also alleged that on April 25, 2009, R.S.'s residence was set on fire by heavily armed individuals. According to the petitioners, the acts of violence they are being subjected to have been conducted by a local police officer, who allegedly is the brother of the professor they accuse of having raped A.B. The Inter-American Commission asked the State of Haiti to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and inform the IACHR about actions taken to investigate through the Judiciary the facts that led to the adoption of precautionary measures.

HONDURAS**PM 69/09—Inés Yadira Cubero González**

38. On April 6, 2009, the IACHR granted precautionary measures for Inés Yadira Cubero González, in Honduras. The request seeking precautionary measures alleges that Mrs. Inés Yadira Cubero González had been the target of an attempted shooting on March 16, 2009, allegedly due to her work as President of the Transparency and Anti-Corruption Commission of the Municipal Corporation of San Pedro Sula. The request further indicates that these acts were reported to the Office of the Public Prosecutor for Common Crimes in San Pedro Sula, but that Mrs. Inés Yadira Cubero had not been informed of the results of the investigation and had not been given any protection measures. The Inter-American Commission asked the State of Honduras to adopt the measures necessary to guarantee the life and physical integrity of the beneficiary, and to inform the IACHR about any actions taken to investigate the facts.

PM 196/09 - Amplification of Precautionary Measures

39. The procedure for Precautionary Measure 196.09 HO has been established to address a set of situations that came about beginning on June 28, 2009, as a result of the coup d'état in Honduras.

40. Through this measure, the President of the Supreme Court of Justice of Honduras and the President of the Congress were asked to adopt precautionary measures to protect the life and physical integrity of more than 147 individuals, and a precautionary measure to guarantee the right to freedom of expression for communications media workers at Channel 36, Radio La Catracha, Radio Cholutec Sur, Radio Globo, and the right to information by Honduran society. Requests for information were made, both under Article 25 of the IACHR Rules of Procedure as well as under Article 41 of the American Convention. Requests for information were also made under Article XIV of the Inter-American Convention on Forced Disappearance of Persons.

41. Following is a list of beneficiaries of the precautionary measures and the dates of the respective amplifications.

On June 28, 2009, the IACHR granted precautionary measures for the Minister of Foreign Affairs of the Republic of Honduras:

1. Mrs. Patricia Rodas, Minister of Foreign Affairs for President Zelaya.

On June 29, 2009, the IACHR expanded the precautionary measures for:

2. Edran Amado López, owner of Channel 36;
3. Bertha Cácares, Civic Council of Popular and Indigenous Organizations of Honduras (COPIHN);
4. César Ham, Congressional Representative for the Unificación Democrática political party.

On July 2, 2009, the IACHR decided to further amplify the PM 196-09 precautionary measures in favor of:

5. Adriana Sivori, journalist for TeleSUR;
6. Alan McDonald, cartoonist;
7. Alejandro Villatoro, Radio Globo journalist;
8. Andrés Pavón Uribe, member of the Honduran Human Rights Committee;
9. Ángel Alvarado, member of the National Resistance Committee;
10. Arcadia López, Staff Minister of the Presidential House;
11. Bertha Oliva de Nativí, member of the Committee for Family Members of the Detained and Disappeared in Honduras;
12. Carlos Eduardo Reina, member of the National Resistance Committee;
13. Carlos Humberto Reyes, member of the Bloque Popular;
14. Carlos Melano, assistant to President Zelaya;
15. Clyburn St. John, TeleSUR journalist;
16. Danny Reyes, director of the LGBT Rainbow Association of Honduras;
17. David Ellner Romero, Channel 36/ Radio Globo journalist;
18. Doris García, Minister of the National Women's Institute;
19. Eduardo Maldonado, Channel 36 journalist;
20. Edward Yeferí Lobo Sánchez, defender of the rights of children and youth;
21. Enrique Flores Lanza, Presidential Secretary;
22. Enrique Reina, assistant to President Zelaya;
23. Eulogio Chávez, member of the National Resistance Committee;
24. Franklin Mejía, Radio Globo journalist;
25. Freddy Quintero, TeleSUR journalist;
26. Guillermo de Jesús Mayen Jiménez, defender of the rights of children and youth, and member of the Unión Democrática political party;
27. Héctor Licona, employee of the LGBT Rainbow Association of Honduras;
28. Israel Moreno, director of Radio Progreso;
29. Israel Salinas, member of the Majority Union;

30. Juan Barahona, member of the Bloque Popular;
31. Larry Sánchez, TeleSUR journalist;
32. Lidieth Díaz, Radio Globo journalist;
33. Luter Castillo Harris, Chief of International Cooperation in the Foreign Ministry of the Republic;
34. Madeleine García, TeleSUR journalist;
35. Marco Tulio Burgos Córdova, National Commissioner for the Permanent Contingencies Committee;
36. María José Díaz, TeleSUR journalist;
37. Marvin Ponce, National Congressional Representative for the Unificación Democrática party;
38. Matilde Durón Ochoa, defender of the rights of children and youth;
39. Mayra Mejía, Secretary of Labor;
40. Milton Jiménez Puerto, president of the Banks and Securities Committee;
41. Miriam Mejía, Youth Institute;
42. Orlando Villatoro, Radio Globo journalist;
43. Patrick Pavón, employee of the LGBT Rainbow Association of Honduras;
44. Rafael Alegría, national director of the Vía Campesina;
45. Regina Osorio, TeleSUR journalist;
46. Roger Ulises Peña, unionist;
47. Rony Martínez, Radio Globo journalist;
48. Salvador Zúñiga, member of the Civic Council of Popular and Indigenous Organizations of Honduras;
49. Sara Elisa Rosales, member of the Las Lolos Organization and Feminist Movement;
50. Tomás Andino Mencía, defender of the rights of children and youth.

On July 3, 2009, the IACHR decided to further amplify the PM 196-09 precautionary measures for:

51. Adán Funes, Mayor of Tocoa, Colón;
52. Adelmo Rivera, Mayor of Sonaguera, Colón;
53. Buenaventura Calderón, community leader of Puerto Lempira, Gracias a Dios;
54. Dagoberto Rodríguez, director of the Cadena Voces radio station;
55. Esteban Félix, Associated Press journalist;
56. Evelio Sánchez, community leader of Guapinol, Tocoa, Colón;
57. Fabio Ochoa, local president of the Unificación Democrática party in Tocoa;
58. Felipe Antonio Gutiérrez, community leader of Guapinol, Tocoa, Colón;
59. Filemón Flores, advisor to the Mayor of Tocoa, Colón;
60. Geraldina Cerrato, Municipal Women's Office in the city of Tocoa;
61. Humberto Maldonado, community leader of Guapinol, Tocoa, Colón;
62. Iris Munguía, coordinator of the Banana Growers Union of Honduras;
63. Juan Ramón Sosa, journalist for La Tribuna;
64. Manuel Membreño, community leader of Guapinol, Tocoa, Colón;
65. Nicolás García, Associated Press journalist
66. Waldemar Cabrera, community leader of Puerto Lempira, Gracias a Dios;
67. Wilfredo Paz Maestro, member of the Honduras Federation of Teaching Organizations.

On July 10, 2009, the IACHR decided to further amplify the PM 196-09 precautionary measures to protect:

68. Andrés Tamayo, president of the Olancho Environmental Movement;
69. Angélica Patricia Benítez, former representative in the National Congress for the Unificación Democrática party and wife of César Ham, current representative of the same party;
70. Alexis Núñez, forced military recruitment;
71. Edwin Noel Mejía, forced military recruitment;

- 72. Melvin Anael Romero, forced military recruitment;
- 73. René Ruiz, forced military recruitment.

On July 24, 2009, the IACHR decided to further amplify the PM 196-09 precautionary measures to protect:

- 74. Nahún Palacios, director of Aguán Television, Channel 5;
- 75. María Margarita Zelada Rivas, representative for the Department of Cortés in the Honduran National Congress;
- 76. Gladys Lanza, coordinator of the Visitación Padilla Peace Committee;
- 77. Elsy Benegas, president of the National Agrarian Institute Workers' Union and leader of the Coordinating Committee of Popular Organizations of Aguán (COPA);
- 78. Manuel Montoya, leader of the National Electric Energy Corporation Workers' Union;
- 79. Eduardo Flores, member of the Coordinating Committee of Popular Organizations of Aguán (COPA);
- 80. José Luis Galdámez Álvarez, director of the Radio Globo program "Tras la Verdad" ("After the Truth");
- 81. Andrés Armando Molina Zelaya, journalist for Radio "Juticalpa" station located in the department of Olancho;
- 82. Martha Elena Rubí, owner of the Radio "Juticalpa" station located in the department of Olancho;
- 83. María José Méndez Rubí, son of Martha Elena Rubí;
- 84. José Daniel Méndez Rubí, son of Martha Elena Rubí;
- 85. José Levi Méndez Rubí, son of Martha Elena Rubí;
- 86. Kenia Irias, former technical director of the National Women's Institute (INAM);
- 87. Kimberly Nairoby Hernández Irias (16 years old), daughter of Kenia Irias;
- 88. Jancarlos Emanuel Velásquez Irias (5 years old), son of Kenia Irias.
- 89. Lilibeth Reyes Cartagena, member of the Center for Women's Studies-Honduras (CEM-H);
- 90. Lídice Isabel Ortega Reyes, member of the Center for Women's Studies-Honduras;
- 91. Keyla Amador member of the Center for Women's Studies-Honduras;
- 92. Isis Gabriela Arriaga Hernández, member of the Center for Women's Studies-Honduras.

On July 30, 2009, the IACHR decided to further amplify the PM 196-09 precautionary measures to protect:

- 93. Juan Carlos Trochez, son of Liberal Party representative Rodrigo Trochez,. Juan Carlos Trochez was allegedly shot after members of the Honduran Assembly, including his father, denounced the Honduran coup d'état before members of the U.S. House and Senate in Washington;
- 94. Rommel Gómez, journalist for Radio Progreso, (telephone calls containing death threats);
- 95. Miryam Espinal, wife of Rommel Gómez (telephone calls containing death threats).

On August 7, 2009, the IACHR decided to further amplify the PM 196-09 precautionary measures to protect:

- 96. Gerson Evelar Vilches Almendares, disappeared. According to information received, Almendares was last seen in the custody of agents of the State who had presumably detained him;
- 97. Eduardo Castañeda Perdomo, lawyer. Information received indicated that he had been followed by members of the military, and his house had been raided by members of the armed forces;

98. Norma Estela Mejía, vice president of the Sitrajerzeesh Union, which is affiliated with the Central General de Trabajadores (CGT). She had allegedly received death threats because of her opposition to the coup d'état;
99. Daniel Durón, national leader of the Central General de Trabajadores (CGT). He had allegedly received death threats, including text messages sent to his cellular phone.
100. Evangelina Argueta, leader of the Central General de Trabajadores (CGT), who had allegedly received death threats via telephone because of her opposition to the coup d'état.

On August 17, 2009, precautionary measures were granted for:

101. Nelly Guadalupe Doblado Guevara;
102. Justo Pastor Henríquez;
103. Children of Justo Pastor Henríquez and Nelly Guadalupe Doblado Guevara (they were not named individually in the communication, but according to information they provided, the couple have three children);
104. Edy René Doblado Guevara;

On August 21, 2009, it was communicated to the State of Honduras that precautionary measures were being amplified for:

105. Hedme Castro.

On September 4, 2009, precautionary measures were again amplified. At that time, the following were incorporated as beneficiaries of the measures:

106. Ariel Vargas, First Secretary of the Embassy of Venezuela in Honduras;
107. José Francisco Funes Rodríguez, Minister of the National Agrarian Institute;
108. Marco Tulio Cartagena Santos, Vice Minister of the National Agrarian Institute;
109. Ariel Murillo Selva Reina, Deputy Secretary of State in the Office of Agriculture and Ranching in the cabinet of President Zelaya;
110. José Edgardo Castro Rodríguez;
111. Mabel Carolina López;
112. Nelson Gustavo Rivera;
113. Nery Argentina Rivera López;
114. Ricardo Antonio Medina Ordóñez;
115. Nohemy Lizeth Carias Girón;
116. Milton Omar Ávila Benítez.

On September 23, 2009, a new amplification of the precautionary measures was granted for:

117. President Manuel Zelaya Rosales;
118. The family of President Manuel Zelaya Rosales;
119. Officials of the cabinet of President Manuel Zelaya Rosales;
120. Any Brazilian diplomatic officials in the Embassy of Brazil in Tegucigalpa;
121. Any staff members in the Embassy of Brazil in Tegucigalpa.

On October 16, 2009, a further expansion of the precautionary measure was requested in favor of:

122. Alex Eduardo Sorto Ortiz;
123. Osmin David Valle Castillo;
124. Yuris Espinoza;
125. Jonathan Pastrana Pineda;
126. Luis Alexis Vallecillos Maradiaga;

127. Media workers for Channel 36, Radio La Catracha, Radio Cholutat Sur, and Radio Globo, and the right to information of Honduran society.

On October 23, 2009, a further expansion of the precautionary measure was requested for:

128. Sandra Janeth Andino Amador;
129. Gamaliel Francisco Urbina.

On November 17, 2009, a further expansion of the precautionary measure was requested for:

130. Antonia Damary Coello Mendoza;
131. A group that includes 17 members of COFADEH and their immediate families.

On November 30, 2009, a further expansion of the precautionary measure was requested for:

132. Gregorio Ulises Sarmiento Galindo and his immediate family.

On December 23, 2009, a further expansion of the precautionary measure was requested for:

133. Emerson Yovany Martínez Amaya and his immediate family.

On December 31, 2009, a further expansion of the precautionary measure was requested for:

134. César Omar Silva Rosales

MEXICO

PM 120/09 – Marcelino Coache Verano and his family

42. On May 8, 2009, the IACHR granted precautionary measures for Mr. Marcelino Coache Verano and his family, in Mexico. The request seeking precautionary measures alleges that Mr. Coache Verano, a social leader and member of the union Sindicato Libre de Empleados y Trabajadores al Servicio del Municipio de Oaxaca de Juárez, as well as his family, have been targets of threats and harassment since 2007. It adds that in March 2009, Mr. Coache Verano was intercepted by strangers, who led him to an unknown place, where they burned him with cigars in sensitive parts of his body. Moreover, the request alleges that the family of Mr. Coache Verano has received threats by telephone in April 2009. The Inter-American Commission asked the State of Mexico to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and to inform the IACHR about any actions taken to eliminate the risk factors to the beneficiaries.

PM 192/09 – Lydia Cacho and others

43. On August 10, 2009, the IACHR granted precautionary measures for Ms. Lydia Cacho, her family and employees of the Integral Center for the Attention of Women (CIAM) of Cancun, Mexico. The request seeking precautionary measures alleges that between July 17 and 30, 2009, strangers had been around her residence and had taken pictures, and that on August 5, 2009, Ms. Cacho received death threats. It adds that CIAM employees have recently received death threats and that Lydia Cacho had refrained from adding comments to her personal blog due to the threats received through it. The Inter-American Commission asked the State of Mexico to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries and to inform the IACHR about actions taken to investigate the facts that led to the adoption of precautionary measures.

PANAMA

PM 56/08—Ngöbe Indigenous Communities *et al.*

44. On June 18, 2009, the IACHR granted precautionary measures for members of the indigenous communities of the Ngöbe people, who live along the Changuinola River in the province of Bocas del Toro, Panama. The request for precautionary measures alleges that in May 2007, a 20-year concession was approved for a company to build hydroelectric dams along the Teribe-Changuinola River, in a 6,215-hectare area within the Palo Seco protected forest. It adds that one of the dams authorized to be built is the Chan-75, which has been under construction since January 2008 and which would flood the area in which four Ngöbe indigenous communities have been established—Charco la Pava, Valle del Rey, Guayabal, and Changuinola Arriba—with a population of approximately 1,000 people. Another 4,000 Ngöbe people would also be affected by the construction of the dam. They allege that the lands affected by the dam are part of their ancestral territory and are used to carry out their traditional hunting and fishing activities. The Inter-American Commission believed that precautionary measures should be granted to avoid irreparable harm to the right to property and security of the Ngöbe indigenous people in the province of Bocas del Toro. The IACHR requested that the State of Panama suspend construction and other activities related to the concession until the bodies of the inter-American human rights system can adopt a final decision on the matter raised in Petition 286/08, which alleges violations of the rights protected under Articles 5, 7, 8, 13, 19, 21, 23, and 25 of the American Convention on Human Rights. The IACHR also asked the State of Panama to adopt the measures necessary to guarantee the free circulation as well as the life and physical integrity of the members of the Ngöbe community, in order to prevent acts of violence or intimidation measures.

PM 118/09 – Naso Indigenous People of the Bocas del Toro Region

45. On November 30, 2009, the IACHR granted precautionary measures to protect the life and physical integrity of Naso People leaders Eliseo Vargas, Tony Vargas, Oscar Vargas, Lupita Cargas, Marcial Gamarra, and Lucho Gamarra; to prevent the continuation of collective forced evictions and/or removal of dwellings; and to guarantee the free circulation and security of the Naso Indigenous People of the Bocas del Toro Region in Panama. The request for precautionary measures alleges that on March 30, 2009, police and employees of the Ganadera Bocas company arrived at the Naso community of San San Druy to execute an eviction order. According to the information received, the police agents proceeded to violently evict the families that occupied the land in conflict with the company, throwing tear gas bombs where there were children and destroying some 30 houses, the Naso cultural center, the school, the church, and other community facilities. The request indicates that the indigenous people who were evicted had installed themselves in encampments and that agents of the National Police had surrounded several Naso communities and used roadblocks to restrict the free movement of community members, which impeded the delivery of food and water to the people inside the camp. It adds that on April 15, 16, and 17, 2009, Ganadera Boca employees escorted by police agents allegedly fired gunshots into the air and knocked down six houses and the community's encampment. It was also reported that on October 2, 2009, approximately 40 heavily armed police arrested eight Naso indigenous people, including Eliseo Vargas and Lucho Gamarra, who were conducting a peaceful protest in front of the Cathedral Plaza. These individuals were reportedly freed on October 4. The information adds that on November 19, 2009, presumably without a court order, some 200 police agents arrived at the Naso communities of San San and San San Druy and threw tear gas bombs, and employees of the Ganadera Bocas company allegedly knocked down several houses with their equipment. The IACHR asked the State of Panama to take the measures necessary to prevent the continuation of collective forced evictions and/or removal of dwellings of the Naso indigenous people; provide emergency health care and housing to the members of these communities who were victims of eviction and of

the destruction of homes, crops, and animals; adopt the measures necessary to preserve the life and physical integrity of the beneficiaries; guarantee the free movement and security of the members of the Naso Indigenous People so that they do not become targets of new acts of violence or intimidating measures; and investigate the facts that led to the adoption of these precautionary measures.

PERU

PM 10/09 – Wong Ho Wing, Peru

46. On March 31, 2009, the IACHR granted precautionary measures for Wong Ho Wing, in Peru. The request for precautionary measures alleges that Mr. Wong Ho Wing had been subject to extradition proceedings at the request of the People's Republic of China, and that the Peruvian courts had ruled that the extradition was justified, even though the crime for which he would be tried in China could carry a death sentence. The petitioner states that the assurances given by the People's Republic of China are not sufficient to guarantee that such a sentence would not be applied. The Inter-American Commission requested that the Peruvian State refrain from extraditing Mr. Wong Ho Wing until the IACHR has ruled on the petition pending before the IACHR, and that it report on the implementation of this measure as soon as possible.

TRINIDAD AND TOBAGO

PM 80/09 – Ronald John

47. On April 6, 2009, the IACHR granted precautionary measures for Mr. Ronald John, who is deprived of liberty awaiting enforcement of the death penalty for the alleged commission of a crime in 2002. The precautionary measures were issued in the context of a petition on the alleged violation of the rights enshrined in Articles I, XVIII and XXVI of the American Declaration by the State of Trinidad and Tobago. The petition, which is being processed by the Commission, alleges irregularities in the arbitrary detention, process and sentencing of Mr. John, among other factors. Through the precautionary measures, the Commission asked the State of Trinidad and Tobago to refrain from executing the death sentence until it has had an opportunity to issue its decision on the petitioner's claim of an alleged violation of the American Declaration.

PM 78/09 – Ronald Tiwarie

48. On April 3, 2009, the IACHR granted precautionary measures for Mr. Ronald Tiwarie, who is deprived of liberty awaiting enforcement of the death penalty for the alleged commission of a crime in 2001. The precautionary measures were issued in the context of a petition on the alleged violation of the rights enshrined in Articles I, II, XVIII and XXVI of the American Declaration. This petition, which is being processed by the Commission, alleges irregularities during the proceedings and in the sentencing of Mr. Tiwarie, among other factors. Through the precautionary measures, the Commission asked the State of Trinidad and Tobago to refrain from executing the death sentence until it has had an opportunity to issue its decision on the petitioner's claim of an alleged violation of the American Declaration.

2. **Petitions declared admissible**
3. **Petitions declared inadmissible**
4. **Friendly settlements**

- 5. **Reports on the merits**
- 6. **Archive decisions**
- D. **Status of compliance with the recommendations of the IACHR**

49. 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 strengthen the Inter-American system for the protection of human rights. With that in mind, the IACHR, in this section, analyzes the status of compliance with the recommendations in the reports adopted by the Commission in the last nine years.

50. In this regard, the OAS General Assembly, in its resolution AG/RES. 2409 (XXXVIII-O/08), "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. 2407 (XXXVIII-O/08), "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).

51. 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 46 of the IACHR Rules of Procedure in effect in 2009, provided 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.

52. In compliance with its powers under the Convention and the Statute and with the above-cited resolutions, and pursuant to Article 46 of the Rules of Procedure in effect in 2009, 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 2008.

53. 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 nine 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.

54. 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 Merciadri de Morini (Argentina) ⁶	X		
Case 11.804, Report No. 91/03, Juan Ángel Greco (Argentina)		X	
Case 12.080, Report No. 102/05, Sergio Schiavini y María Teresa Schnack (Argentina)		X	
Petition 12.298, Report No. 81/08 Fernando Giovanelli (Argentina)			X
Cases 12.067, 12.068 and 12.086, Report No. 48/01, Michael Edwards, Omar Hall, Brian 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, Comunidad Maya del Distrito Toledo (Belize)			X
Case 12.475, Report No. 97/05, Alfredo Díaz Bustos (Bolivia)		X	
Case 12.516, Report No. 98/05, Raúl Zavala Málaga y Jorge Pacheco Rondón (Bolivia)	X		
Petition No. 269-05, Report No. 82/07, Miguel Angel Moncada Osorio y James David Rocha Terraza (Bolivia)	X		
Petition No. 788-06, Report No. 70/07, Víctor Hugo Arce Chávez (Bolivia)	X		

⁶ See IACHR Annual Report 2008, <http://www.cidh.oas.org/annualrep/2008eng/Chap3.g.eng.htm>.

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 y 11.417, Report No. 55/01, Alúcio 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) ⁷	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 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) ⁸	X		
Case 12.046, Report No. 33/02, Mónica Carabantes Galleguillos (Chile) ⁹	X		
Case 11.725, Report No. 139/99, Carmelo Soria Espinoza (Chile)			X
Petition 4617/02, Report N° 30/04, Mercedes Julia Huenteano Beroiza <i>et al.</i> (Chile)			X
Case 12.142, Report No. 90/05, Alejandra Marcela Matus Acuña <i>et al.</i> (Chile) ¹⁰	X		
Case 11.654, Report No. 62/01, Ríofrío			X

⁷ See IACHR Annual Report 2008, <http://www.cidh.oas.org/annualrep/2008eng/Chap3.g.eng.htm>.

⁸ See IACHR Annual Report 2007, <http://www.cidh.oas.org/annualrep/2007eng/Chap.3k.htm>.

⁹ See IACHR Annual Report 2007, <http://www.cidh.oas.org/annualrep/2007eng/Chap.3k.htm>.

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

Massacre (Colombia)

**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, Masacre de Villatina (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)	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 Cañaveral (Ecuador)		X	
Case 11.445, Report No. 95/00, Ángelo Javier Ruales Paredes (Ecuador) ¹¹	X		
Case 11.466, Report No. 96/00, Manuel Inocencio Lalvay Guamán (Ecuador)		X	
Case 11.584, Report No. 97/00, Carlos Juella Molina (Ecuador)		X	
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		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	

¹¹ See IACHR Annual Report 2008, <http://www.cidh.oas.org/annualrep/2008eng/Chap3.h.eng.htm>.

Case 11.441, Report No. 104/01, Rodrigo
Elicio Muñoz Arcos *et al.* (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 Huuo 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
Petition 12.238, Report No. 46/06 Myriam Larrea Pintado (Ecuador)	X
Petition 533-01, Report No. 47/06 Fausto Mendoza Giler y Diógenes Mendoza Bravo (Ecuador)	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 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 N° 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, Hermanas
González Pérez (Mexico)**

X

Case 11.807, Report 69/03, José Guadarrama (Mexico) ¹²	X	
Petition 388-01, Report 101/05 Alejandro Ortiz Ramírez (Mexico) ¹³	X	
Case 12.130, Report N° 2/06, Miguel Orlando Muñoz Guzmán (Mexico)		X
Petition 161-02, Report No. 21/07, Paulina del Carmen Ramírez Jacinto (Mexico)	X	
Case 11.381, Report N° 100/01, Milton García Fajardo (Nicaragua)	X	
Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (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 y otros, 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) ¹⁴	X	
Case 11.149, Report No. 70/03 Augusto Alejandro Zúñiga Paz (Peru) ¹⁵	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	

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#11.807>.

¹³ 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>.

¹⁴ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 332-335.

¹⁵ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 336 and 337.

Case 12.033, Report No. 49/06, Rómulo Torres Ventocilla (Peru) ¹⁶	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 y otras, 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 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
Case 11.753, Report No. 52/02, Ramón Martínez Villarreal (United States)	X	
Case 12.285, Report No. 62/02, Michael Domingues (United States) ¹⁷	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	

¹⁶ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 613-616.

¹⁷ See IACHR Annual Report 2005, <http://www.cidh.oas.org/annualrep/2005eng/chap.3f.htm>.

Case 12.534, Report No. 63/08 Andrea Mortlock (United States)		X
Case 11.500, Report No. 124/06, Tomás Eduardo Cirio (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)

55. 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 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.

56. 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.

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

58. 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.

59. 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.

60. Regarding the judicial and administrative investigations, the petitioners indicated in their submission of December 10, 2009, that, as of that date, they had not received the certified and legalized copy of the criminal case or of the administrative summary proceedings from the State, nor had they received up-to-date information on the status of those processes, as required by the commitment set out in item 2 of the friendly settlement agreement. With regard to item 7 of the agreement, the petitioners reiterated their remarks about the serious shortcomings in the powers and authorities conferred on the office of the Special Prosecutor for Human Rights by Law No. 5702. They also reported that they had learned that in June 2009, the special prosecutor's office had begun operations with very limited jurisdiction, in spite of their express request for the personnel selection process to be put on hold until the functions of the office were reviewed. In concluding, the petitioners noted that until the State provides full information on the measures adopted, they must again note the appalling precedent that the agreement represents in the Argentine government's observance of its commitments acquired through friendly settlements.

61. 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.

62. 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 12.080, Report No. 102/05, Sergio Schiavini y María Teresa Schnack (Argentina)

63. 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.

64. 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.”

65. 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.

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

67. Regarding the monetary reparations, as in previous submissions, in its reply the State spoke of the creation of the Arbitration Tribunal to determine the amount of economic reparations, which issued the corresponding arbitral award. The State reported that the arbitral award took place with the payment of monetary redress to the beneficiaries, on October 22, 2007, by means of a bank deposit.

68. Regarding the nonmonetary reparations, the State notes those involving the creation of the Truth Commission and the regulatory measures for implementing an internal procedure regulating the processing of international petitions and cases. Regarding the former, the State reported that since the petitioners submitted their candidate for membership of that Commission, of which the National Secretariat for Human Rights was informed, the competent authorities began the formalities needed for them to appoint their corresponding expert. Regarding the regulatory reforms for directing formalities with international human rights promotion and protection agencies, the State reported that a series of working meetings were held and, as a result, it was agreed to produce a Joint Resolution of the Ministry of Justice, Security, and Human Rights and the Ministry of Foreign Affairs and Worship, which will include in its appendixes a "Protocol for Actions by the National Executive in Implementing Decisions Handed Down in Communications, Petitions, and Cases from International Agencies." The State reported that the draft joint resolution is currently undergoing the approval process.

69. Based on the information available, the Commission concludes that the aspects of the agreement relating to monetary redress have been duly implemented. The Commission notes that compliance with the other reparation measures still remains pending.

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

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

71. 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.

72. 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.

73. 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.

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

75. By means of a note dated December 22, 2009, the State responded to the IACHR's request for information. In particular, the State referred to the establishment of the ad-hoc Arbitration Tribunal that will determine the amount of economic reparations to be paid to Fernando Horacio Giovanelli's family. In addition, as a part of proceedings before that tribunal, on December 18, 2009, the Government responded to the reparations claim submitted by the petitioners in accordance with the deadlines established by the procedural rules jointly agreed on by the parties. Finally, the State reported that once the compensation payment has been made, a working meeting will be convened to set the agenda for the second phase of the commitments assumed under the friendly settlement agreement.

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

Cases 12.067, 12.068 and 12.086, Report N° 48/01, Michael Edwards, Omar Hall, Brian Schroeter and Jeronimo Bowleg (Bahamas)

77. In Report N° 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.

78. 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.

79. On November 11, 2009 the Commission requested information from both parties about compliance with the recommendations set forth in Report N° 48/01, pursuant to Article 46.1 of the Commission's Rules of Procedure. The Commission has not received any responses from either party to these communications.

80. 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)

81. In Report N° 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.

82. On November 11, 2009 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)

83. In Report N° 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.

84. On November 11, 2009 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 N° 40/04, Maya indigenous communities of the Toledo District (Belize)

85. In its October 12, 2004 Report N° 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.

86. 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.

87. 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 N° 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.

88. 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 N° 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 N° 40/04.

89. 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.

90. 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.

91. 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".

92. 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".

93. 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.

94. 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.

95. 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 a IACHR delegation conduct an on-site visit to Belize in order to observe the situation.

96. 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.

97. 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.

98. 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”.

99. 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.

100. On the basis of the information supplied by both parties, the Inter-American Commission observes some important efforts and actions by the State, but notes 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, Informe No. 97/05, Alfredo Díaz Bustos (Bolivia)

101. 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.

102. 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;

103. 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.

104. 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.

105. 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.

106. 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.

107. On November 10, 2009, the Commission requested both parties to provide updated information on the progress being made in fulfilling the commitments made by the State by virtue of the friendly settlement agreement. At the time of the drafting of the present chapter, none of the parties had responded to this request for information.

108. On the basis of available information, the IACHR concludes that the Friendly Settlement Agreement has been partially complied with. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.516, Report No. 98/05, Raúl Zavala Málaga and Jorge Pacheco Rondón (Bolivia)

109. On October 27, 2005, by Report No. 98/05, the Commission approved a friendly settlement agreement in the case of Raúl Zavala Málaga and Jorge Pacheco Rondón.

110. In the friendly settlement agreement, the State undertook as follows:

1. Contract Jorge Pacheco Rondón for the ODESUR Project;
2. Reinstate Raúl Zavala Málaga as head of sports infrastructure with rank [*Item*] No. 13, as of January 3, 2005.

111. For their part, Jorge Pacheco Rondón and Raúl Zavala Málaga agreed to:

1. Formally and expressly discontinue all legal action taken, on a national level, with the Fifth Court for Preliminary Criminal Proceedings, and internationally, with the Inter-American Commission on Human Rights.
2. Refrain from undertaking any future judicial or extrajudicial action pertaining to compliance with Administrative Resolution SSC/IRJ/139/2003 of August 28, 2003.

112. On November 1, 2007, the Commission asked the parties for updated information on implementation of the agreement. On November 13, 2007, the petitioner submitted a brief communication reporting that "as all the recommendations made by the IACHR have been carried out in their entirety, no additional observation whatsoever is in order." The Commission did not receive any response from the State.

113. On November 10, 2009, the Commission requested both parties to provide updated information on the progress being made in fulfilling the commitments made by the State by virtue of the friendly settlement agreement. At the time of the drafting of the present chapter, none of the parties had responded to this request for information.

114. Based on the information provided, the Commission concludes that the friendly settlement was agreement carried out in its entirety by the parties

Petition 269-05, Report No. 82/07, Miguel Angel Moncada Osorio and James David Rocha Terraza (Bolivia)

115. On October 15, 2007, by Report No. 82/07, the Commission approved a friendly settlement agreement in the case of Miguel Angel Moncada Osorio and James David Rocha Terraza. In summary, the petitioner alleged that the State was responsible for the violation of the rights of the alleged victims to judicial guarantees, to have access, on equal conditions, to public office in their country, and to judicial protection, established at Articles 8, 23, and 25, of the American Convention on Human Rights, due to the non-enforcement of an amparo judgment issued on their behalf by the Superior Court of Justice of La Paz.

116. In the friendly settlement agreement, the State undertook as follows:

a) To pay to James David Rocha Terraza the sum of B. 55,392.12 corresponding to pay accrued for fiscal year 2004 according to the Act of Reconciliation of Accrued Remuneration signed on January 12, 2006 by the interested party and the Ministry of Services and Public Works (today the Ministry of Public Works, Services and Housing). This payment shall be made in three installments, in the months of June, July and August 2007, by the 15th day of each month. From this amount, equivalent to B. 55,392.12, James David Rocha Terraza authorizes the Ministry of Public Works, Services and Housing to withhold the amount of B. 6,750, representing the salary he received between June 16 and July 31, 2005 for services provided to the National Fund for Regional Development. That sum of B. 6,750 will be withheld from the third installment, corresponding to the month of August 2007. Subsequently, the Ministry of Public Works, Services and Housing will transfer this amount of B. 6,750 to the National Fund for Regional Development, and will deliver a legalized receipt for that amount to Mr. James David Rocha Terraza and to the Ministry of Foreign Relations and Worship.

b) To pay to Miguel Angel Moncada Osorio the sum of B. 64,761.90 corresponding to pay accrued for fiscal year 2004 according to the Act of Reconciliation of Accrued Remuneration signed on January 12, 2006 by the interested party and the Ministry of Services and Public Works (today the Ministry of Public Works, Services and Housing). This payment shall be made in three installments, in the months of June, July and August 2007, by the 15th day of each month.

117. By means of a communication received on November 12, 2007, the State of Bolivia informed about the payment of the checks to Mr. Moncada and Mr. Rocha for the concept of the salaries earned in 2004, highlighting that it had complied with the friendly settlement agreement. On its part, on January 25 of 2008, the petitioners informed that they did not have any observation on the case and that they were "fully satisfied with the fulfillment of the agreement".

118. On November 10, 2009, the Commission requested both parties to provide updated information on the progress being made in fulfilling the commitments made by the State by virtue of the friendly settlement agreement. At the time of the drafting of the present chapter, none of the parties had responded to this request for information.

119. As a result of the above, the Commission concludes that the friendly agreement has been totally complied with.

Petition 788-06, Report No. 70/07, Víctor Hugo Arce Chávez (Bolivia)

120. On July 27, 2007, by Report No. 70/07, the Commission approved a friendly settlement agreement in the case of Víctor Hugo Arce Chávez. In summary, the petitioner argued that the State was responsible for violating the rights of the alleged victim to judicial guarantees, to have access in general conditions of equality to public office in his country, and to judicial protection, established at Articles 8, 23, and 25 of the American Convention on Human Rights for failure to enforce an amparo judgment issued on his behalf by the Superior Court of La Paz.

121. Through the friendly settlement agreement the State undertook to carry out the following measures:

PECUNIARY MEASURES

a) To pay Víctor Hugo Arce Chávez the sum of Bs 988 (nine hundred eighty-eight bolivianos) to make up for the difference owed to him for his Christmas bonus of the year 2002. This payment must be made within five days of the signature of this document.

b) To pay Víctor Hugo Arce Chávez the sum of Bs 3,440 (three thousand four hundred and forty bolivianos) to complete the infant nursing subsidy owed to him on account of the birth of his son Hugo Alberto Arce Cano. This payment must be made within five days of the signature of this document.

c) To pay Víctor Hugo Arce Chávez the sum of Bs 11,228 (eleven thousand two hundred and twenty-eight bolivianos) as the difference owed to him on account of his position in the career ladder and his years of service for the period between January 2002 and September 2006, and for payments to the Future of Bolivia Pension Fund Office for the period between January and September of 2002. This payment must be made within five days of the signature of this document. The payments into the fund shall be the responsibility of police officer Víctor Hugo Arce Chávez once he receives the sum from the Physical Security Battalion.

d) To pay Víctor Hugo Arce Chávez the sum of Bs 5,000 (five thousand bolivianos) in damages for pain and suffering caused to him and his next of kin. This payment must be made within five days of the signature of this document.

NON-PECUNIARY MEASURES

e) The Battalion and the National Police shall abstain from taking any measure against police officer Víctor Hugo Arce Chávez in reprisal for the international complaint filed by him against the Bolivian State. Likewise, any present or future investigation and/or disciplinary procedure against police officer Víctor Hugo Arce Chávez shall be conducted under strict adherence to the guarantees of due process provided for by the internal rules of the National Police, the laws of the Nation, the Constitution, and the American Convention on Human Rights.

g) To add to the personal file of police officer Víctor Hugo Arce Chávez, a copy of Decision 359/2002, handed down by the Second Civil Chamber of the Superior Court of Justice of La Paz, a copy of Constitutional Judgment 1239/2002-R, a copy of this compromise agreement, and a copy of the Report on Friendly Settlement that the Inter-American Commission on Human Rights may approve. The first three documents shall be added to his personal file within five days of the signature of this agreement. The copy of the Report on Friendly Settlement of the IACHR shall be added to the file within ten days of its notification to the Bolivian State by the IACHR.

122. On November 3, 2008, the Commission requested the parties to provide information on compliance with the friendly settlement agreement. By means of a communication received on December 5, 2008, the petitioner indicated that he agreed with the compliance agreement that had been reached by his representatives and the Bolivian State. As for the State, it requested an

extension to respond, which was granted by the IACHR. By means of a communication dated January 2, 2008, the State indicated that true fulfillment with each one of the commitments made in the light of Article 49 of the American Convention had been checked.

123. On November 10, 2009, the Commission requested both parties to provide updated information on the progress being made in fulfilling the commitments made by the State by virtue of the friendly settlement agreement. At the time of the drafting of the present chapter, none of the parties had responded to this request for information.

124. As a result of the above, the Commission concludes that the friendly agreement has been totally complied with.

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

125. 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.

126. 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.

127. The State did not submit information on compliance with those recommendations of the IACHR. The petitioners submitted information on compliance with those recommendations of the IACHR on December 14, 2009, and January 7, 2009¹⁸.

128. 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*¹⁹. Accordingly, the Commission will subsequently examine the degree of compliance with recommendations Nos. 2 and 4, pursuant to the information provided by the petitioners.

129. With respect to recommendation No. 2 *supra*, the petitioners observed that administrative proceeding No. 200820000002601, initiated before the National Council of Justice (CNJ), was rejected by said Council on February 13, 2009, without it having examined the alleged irregularities, since the convict was already serving the sentence imposed. According to the petitioners, due to the confidential nature of the proceedings before the CNJ, they and the victim only learned of said decision on December 9, 2009. Moreover, on this same date the petitioners became aware that a new proceeding based on the same grounds, administrative proceeding No. 200910000052964, had been initiated on September 25, 2009 before the CNJ, and was pending. The petitioners underscored the importance of implementing this recommendation, which would not only compensate the victim for all the years she spent seeking justice but also constitute a significant step toward eliminating discrimination by the police and the Judiciary against female victims of violence.

130. In terms of the different points of recommendation No. 4 *supra*, the petitioners acknowledged the progress achieved with the adoption of the “Maria da Penha Law” (Law No. 11,340 of August 7, 2006), and emphasized that the effective implementation of said law would signify compliance with the above-mentioned recommendation. However, the petitioners noted with concern that Brazil’s implementation of the Maria da Penha Law has been slow and uneven. In this regard, the petitioners point out that while some states of the Federation have made headway in implementing the mechanisms foreseen under said law—e.g., specialized courts, special precincts, and victim shelters—others still lack some or all such mechanisms. The petitioners also noted a lack of permanent, relevant, and effective educational measures or the inclusion within educational curricula of units to promote understanding of the importance of respect for women and their rights. Lastly, the petitioners noted that only some 20 out of 27 states of the Federation have signed the “National Pact to Curb Violence against Women”, confirming that advances in this regard have been uneven throughout Brazil.

¹⁸ The IACHR did not include this information in its 2008 Annual Report, since it received the petitioners’ communication subsequent to the approval of said Annual Report.

¹⁹ IACHR, Annual Report 2008. Chapter III.D, paras. 101 and 103.

131. 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)

132. 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.

133. 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 be 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 take 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.

134. The State did not submit information concerning compliance with the recommendations issued by the IACHR. On the other hand, the petitioners provided information regarding the judicial proceedings related to this case on December 9, 2009.

135. In this regard, the petitioners noted that the criminal proceedings regarding victims Aluísio Cavalcanti and Marcos de Assis Ruben are still pending final decisions; that the criminal proceedings regarding victims Clarival Xavier Coutrim and Delton Gomes da Mota have been closed due to the acquittal of the accused military police; and that the criminal proceedings regarding victims Wanderlei Galati, Celso Bonfim de Lima, Marcos Almeida Ferreira, and Carlos Eduardo Gomes Ribeiro have been closed due to expiration of the statute of limitations for the crimes allegedly committed by the military police.

136. 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)

137. 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)).

138. 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.

139. The State provided information regarding compliance with the recommendations issued by the IACHR on June 29, 2009. The petitioners submitted information on compliance with said recommendations on September 3, 2009 and December 10, 2009.

140. With respect to recommendation No. 1 *supra*, both parties noted that the police investigation is still pending before the 15th Civil Police Subprecinct of Guaraniacú, Paraná. The IACHR notes with concern that more than 16 years after the death of the victim, the corresponding criminal proceeding is still in the initial stage of police investigation.

141. With respect to recommendation No. 2 *supra*, both parties agree that civil lawsuit No. 30798, filed by the victim's widow for reparations, has resulted in a final judgment in her favor.

The foregoing notwithstanding, both parties state that payment of these reparations has not yet been made, owing to the deaths of the victim's widow and son. Consequently, said payment is due to the victim's daughter-in-law and grandchildren.

142. With respect to recommendation No. 3 *supra*, the State pointed out a series of programs and measures implemented to prevent violence associated with agrarian conflict, through the creation of the *Ouvidoria Agrária Nacional* (OAN), an ombudsman for rural affairs, tasked with preventing, mediating, and reducing agrarian conflict. Important in this regard are the National Program to Combat Rural Violence, the Rural Peace Program, and the creation of the National Commission to Combat Rural Violence. With particular regard to the state of Paraná, the State emphasized the establishment in 2007 of the Office of the Special Coordinator to Mediate Agrarian Conflict (COORTERRA).

143. Despite the adoption of the aforementioned measures, the State concedes and regrets those deaths associated with agrarian conflict that have yet to be adequately resolved. Moreover, and despite the measures adopted by the State in this regard, the petitioners pointed out that no significant reduction has been observed in the number of agrarian conflicts that would indicate such measures have been effective. In this regard, the petitioners noted that, according to the Pastoral Land Commission, 731 agrarian conflicts were registered between January and November 2009, resulting in 20 deaths, and that 11 of such conflicts occurred in the state of Paraná. Furthermore, the petitioners underscored that the impunity observed in most cases of deaths due to agrarian conflict continues to be the primary obstacle to reducing rural violence.

144. In view of the above-mentioned considerations, the Commission concludes that the recommendations noted have been partially carried out. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

145. 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.

146. 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.

147. 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.

148. Neither the State nor the petitioners furnished information regarding compliance with the above-mentioned recommendations of the IACHR for inclusion in this Annual Report. However, the IACHR notes that the petitioners furnished information on compliance with IACHR recommendations on January 7, 2009, in response to the Commission’s request in 2008²⁰.

149. With respect to recommendation No. 1 *supra*, the petitioners emphasized that compliance with this recommendation was still pending, along the same lines considered by the IACHR in Report No. 40/03 (see *supra*).

150. With respect to recommendation No. 2 *supra*, the petitioners reiterated the points raised by the IACHR in its 2008 Annual Report, in the sense that solitary confinement cells continue to be used in the state of Roraima, and that no information is available on said recommendation regarding the states of Amapá, Ceará, Goiás, Minas Gerais, Mato Grosso, Paraíba, Paraná, Piauí, Rio Grande do Norte, Rondônia, Sergipe, or the Federal District.

151. As regards recommendation No. 3 *supra*, the petitioners indicated that no significant progress has been made in the last year with respect to the criminal proceedings. The petitioners also pointed out that they have no information on compliance with this recommendation as regards the military police involved in the events.

152. With respect to recommendation No. 4 *supra*, the petitioners noted that according to the recent report of the Working Group formed to identify the beneficiaries and the amount of compensation, it has not been possible to identify and/or locate the next-of-kin of some of the victims. In this regard, the IACHR urges the parties to overcome the remaining obstacles so as to comply with this recommendation and locate the family members of all the victims.

153. In view of the foregoing, the IACHR concludes that the State has partially carried out the recommendations indicated. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

154. 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.”

²⁰ The IACHR did not include this information in its Annual Report 2008, inasmuch as it received the petitioners’ communication subsequent to the approval of said Annual Report.

155. 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-a-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.

156. 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

157. The State submitted information on the implementation of the friendly settlement agreement on December 14, 2009. The petitioners submitted information on the implementation of the friendly settlement agreement on December 11, 2009.

158. With respect to compliance with the judicial arrest warrants against the accused for the crimes committed against José Pereira (*supra* item 3), both parties noted that these are still pending.

159. 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. As concerns Proposed Law (PL) No. 2,667/2003 (combined with DL No. 5,016/2005), which would include the crime of “reduction to conditions analogous to slavery” under the category of heinous [*hediondos*] crimes, the petitioners alleged that said proposed law continues to be in the preliminary study stage after six years before Congress. For its part, the State noted that this proposed law was rejected and replaced with PL No. 3,283/2004 and the latter was combined with PL No. 5,016/2005, which is being studied by the Commission of Agriculture, Livestock, Supply, and Rural Development. As concerns PL No. 1,985/2003, which establishes the fines imposed on those responsible for slave labor, and would amend the Rural Labor Law, both parties noted that the Commission for Constitutional Affairs, Justice, and Citizenship issued a favorable opinion about said draft law, and that its inclusion on the voting docket of the Chamber of Deputies has been pending since May 2009.

160. As regards PL No. 207/2006, which would compile a “dirty list” of landowners with recurring violations of the crime of reduction to conditions analogous to slavery, the petitioners noted that no significant progress has been made thus far. However, the State underscored that said “dirty list” already exists since the approval of Administrative Decision (*Portaria*) No. 540 of October 15, 2004, and that the most up-to-date version of the list (December 4, 2009) includes the names of 163 individuals. Both parties acknowledged that Proposed Constitutional Amendment (“PEC” from the Portuguese original) No. 438 of 2001, regarding the expropriation of lands for which proof of the practice of slavery has been established, is awaiting a second-round plenary vote before the Chamber of Deputies, and, if approved, it would need to be voted on in the second round by the Senate. Likewise, both parties concur that approval of PL No. 2.022/1996 would still be pending. This proposed law would ban companies that use slave labor, whether directly or indirectly, from receiving public contracts or participating in public bidding processes. On another point, both parties noted that the State continued to fund the budget of the Program for the Eradication of Slave Labor for the 2008-2011 period.

161. With respect to legislative approval 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” (*supra* item 6(i)); the petitioners maintained that this proposed law was set aside

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

on January 31, 2007. In a different way, the petitioners endorsed the position advocated by the State since 2008, regarding amendment of Article 149 of Brazil's Criminal Code (*supra* item 6(ii)).

162. With respect to the establishment of federal jurisdiction to prosecute the crime of "reduction to a condition analogous to that of a slave" (*supra* item 7), the petitioners acknowledged the decision of the Federal Supreme Court which, in 2006, established the jurisdiction of the federal judiciary to try a case of the aforesaid crime in the state of Pará, opening the doors to more effective prosecution against the impunity associated with these cases. In this regard, on March 5, 2009, a Marabá federal judge, state of Pará, handed down 26 judgments against 27 individuals, most of whom were large-scale estate owners in southern and southeastern Pará. However, the petitioners emphasized that these judgments were not final decisions, thus mean merely a first step toward eliminating the impunity associated with cases of slave labor.

163. With respect to the adoption of immediate measures related to the strengthening of the Public Ministry of Labor and of the Mobile Group of the MTE, as well as initiatives along with the Judicial Branch and its representative entities (*supra* item 8), the petitioners regretted that despite the efforts of the Mobile Group of the MTE, this organ was only able to respond to some 21% of slave labor complaints submitted by the Pastoral Land Commission in 2009—the lowest percentage rate of the last 15 years. The petitioners allege that insufficient inspection operations in the Amazon is of particular concern, especially taking into account new sources of slave labor in the South and Southeast regions of the country associated with ethanol production. In counter to this claim, the State maintained that significant progress can be observed in the performance indicators of the Mobile Group during the 2003-2008 period, and that since November 2009 the Mobile Group has carried out 85 operations, inspected 200 estates, and rescued 2,216 workers.

164. Furthermore, the petitioners emphasized the lack of transparency associated with the dissemination of data and information regarding the response of the Judicial Branch, especially on criminal proceedings associated with slave labor uncovered through inspections of the Mobile Group. The petitioners also maintained that more coordination is needed between the Public Ministry of Labor (MPT) and the Ministry of Labor and Employment (MTE). The State did not provide specific or up-to-date information on this point.

165. 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.

166. With respect to items 10 and 11 *supra*, the petitioners noted they have no access to up-to-date information on coordinated action with the Federal Police, and emphasized that a number of inspections had to be canceled in 2009, owing to lack of participation of the Federal Police. Furthermore, the petitioners indicated that Federal Prosecutors do not ordinarily participate in operations of the Mobile Group, with the exception of operations carried out in the state of Mato Grosso. The State did not provide detailed information regarding this point.

167. 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.

168. 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.

169. 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)

170. In Report No. 32/04, of March 11, 2004, the Commission concluded that the Brazilian State 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.

171. 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.

172. The State did not submit information on compliance with those recommendations of the IACHR. The petitioners submitted information on compliance with those recommendations of the IACHR on December 25, 2009.

173. With respect to recommendation No. 1 *supra*, the petitioners indicated that no complete, impartial or effective investigation of the facts in dispute was ever carried out beyond the one described by the IACHR in Report No. 32/04, and, consequently, compliance with this recommendation is still pending.

174. As regards recommendation No. 2 *supra*, the petitioners indicated that no consensus has been reached with the State regarding the number of victims in the conflict, and that the family members of the deceased victims have yet to be compensated. The petitioners allege there were more than 50 injured victims. In this respect, the Commission reiterates that Report on the Merits No. 32/04 mentions 28 victims; 11 killed and 17 injured (Report on the Merits No. 32/04, para. 306). The petitioners reported on the status of different civil reparation proceedings, but did not identify specific victims in their account about these proceedings. The IACHR urges the parties to overcome the remaining obstacles so as to comply with this recommendation, and requests that the

parties offer specific information on this recommendation regarding the 28 victims specifically identified in Report No. 32/04.

175. On recommendation No. 3 *supra*, the petitioners noted that the State has yet to comply, inasmuch as the situation of violence associated with agrarian conflict continues to be serious in Brazil.

176. On recommendation No. 4 *supra*, the petitioners indicated that no progress has materialized since approval of Law No. 9,299, of 1996, which partially reformed the scope of jurisdiction of military justice.

177. 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)

178. In Report No. 33/04 of March 11, 2004, the Commission concluded that: (a) the Brazilian State 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.

179. 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.

180. The State submitted information on the implementation of the IACHR's recommendations on September 24, 2009. The petitioners submitted information on the implementation of the IACHR's recommendations on January 7, 2009²² December 10, 2009.

181. With respect to recommendations Nos. 1 and 3 *supra*, both parties acknowledged compliance was met through the payment of reparations for moral and material damages to the mother of the victim during a ceremony held August 25, 2009, in which the Governor of Rio de Janeiro made a formal and public apology for the arbitrariness perpetrated against the victim. However, the petitioners noted that neither they nor the victim were consulted regarding the organization and planning of the ceremony.

182. None of the parties made specific reference to the other recommendations.

183. 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)

184. In Report No. 66/06 of October 21, 2006, the IACHR concluded that the Brazilian State 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.

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

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;

²² The IACHR did not include this information in its Annual Report 2008, inasmuch as it received the petitioners' communication subsequent to the approval of said Annual Report.

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.

186. The State presented information on compliance with the aforementioned recommendations on February 17, 2009 and September 4, 2009. The petitioners submitted information regarding implementation of those recommendations by the IACHR on June 9, 2009, and December 10, 2009.

187. With respect to recommendations Nos. 1, 2, and 4 *supra*, both parties acknowledged that the victim received reparations of R\$ 36.000 (thirty-six thousand *reais*) for the moral and material damages suffered on March 18, 2008; and that the Governor of São Paulo publicly acknowledged responsibility for violations of the victim's human rights in a ceremony held on December 19, 2007. The IACHR notes, however, that neither the victim nor the petitioners were present at the ceremony, because they had not been invited.

188. With respect to recommendation No. 3 *supra*, both parties acknowledged that compliance is still pending, inasmuch as the victim was taking the university entrance examination for the University of Guarulhos on December 10, 12, and 13.

189. With respect to recommendation No. 5 *supra*, both parties acknowledged that Proposed Law (PL) No. 309 of 2004 and No. 6,624 of 2005 (statute on racial equality) had yet to be approved by the Legislative Branch. Furthermore, the petitioners maintained that these proposed laws, if approved, would be insufficient to remedy the obstacles indicated in paragraphs 78 and 94 of the Report on the Merits.

190. With respect to recommendation No. 6 *supra*, both parties acknowledged that compliance is still pending.

191. With respect to recommendations Nos. 7 and 9 *supra*, the State indicated courses 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 Secretariat of Justice and Citizenship of São Paulo in 2007 and 2008 for civil servants of the criminal justice system and members of the Public Ministry, the Judicial Branch, and the Secretariat of Public Security of São Paulo. In counter to this claim, the petitioners asserted that these events were limited to the state of São Paulo, and that the State should not only provide information on national initiatives in this regard, but also promote compliance with this recommendation in all states of the Federation through the Special Secretariat for the Promotion of Racial Equality (SEPPPIR), since racism and racial discrimination are national problems.

192. With respect to recommendation No. 8 *supra*, the State indicated that since 2006 such a document already exists regarding discrimination in advertising, which was prepared during the seminar "Reflections on the Role of Advertising in the Dissemination and Fight against Discrimination," organized by the Secretariat of Justice and Citizenship of São Paulo. The petitioners noted that they did not participate in any event with Brazilian press organizations, and that the document referred to by the State was limited to São Paulo.

193. With regard to recommendation No. 10 *supra*, the State indicated that, in São Paulo, Decree No. 50,594 of March 22 2006 established the Special Precinct for Racial Crimes and Intolerance. It also pointed out that SEPPIR is currently working on a financial assistance project to encourage the establishment of specialized precincts for racial and related crimes in all states of the Federation. For their part, the petitioners claimed they are unaware of the existence of such police precincts in any other state of the Federation.

194. With regard to recommendation No. 11 *supra*, the State pointed out that, in São Paulo, Supplemental Law No. 1,083 of December 17, 2008, established the Office of the Special Prosecutor on Human Rights Issues. The petitioners, however, argued that this measure is limited to São Paulo, and that the Office of the Special Prosecutor of São Paulo on Human Rights Issues may not necessarily have any special expertise in fighting racism and racial discrimination.

195. With regard to recommendation No.12 *supra*, the State indicated that compliance had been fully carried out through the launching of the "Racism: If You Don't Report it Who Will?" campaign by the Government of São Paulo on May 13, 2009; and through three national public awareness campaigns carried out by the Federal Government in 2008.

196. In view of the foregoing, the Commission concludes that the recommendations outlined have been partially carried out.

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

197. In Report No. 35/08 of July 18, 2008, the IACHR concluded that, with respect to Mr. Antonio Ferreira Braga, the Brazilian State violated his rights to physical integrity, to personal freedom, to judicial guarantees, and to judicial protection enshrined 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 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.

198. 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.

199. 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.

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

200. 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.

201. 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.

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

203. 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.

204. 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.

205. 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.

206. 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 requiring the determination of responsibility for Samuel Alfonso Catalán Lincoleo's murder has not been addressed, since the Chilean judicial authorities ordered the definitive dismissal of the proceedings and, consequently, the incident remains unpunished. 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.

207. 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 11.715, Informe No. 32/02, Juan Manuel Contreras San Martín *et al.* (Chile)

208. On March 12, 2002, by Report No. 32/02, the Commission approved a friendly settlement agreement in the case of Juan Manuel Contreras San Martín, Víctor Eduardo Osses Conejeros, and José Alfredo Soto Ruz. In summary, the petitioners had made arguments alleging the responsibility of the State for having been deprived of liberty for more than five years due to a judicial error, and for then having denied the compensation they claimed. The three persons were detained for the homicide of a woman and alleged that the police subjected them to physical abuse and psychological pressures until obtaining their confession.

209. According to the friendly settlement agreement, the State undertook to:

1. Award to Messrs. Juan Manuel Contreras San Martín, José Alfredo Soto Ruz and Víctor Eduardo Osses Conejeros, a discretionary annuity of three minimum wages each;
2. Provide to them free of charge adequate training in skills and trades in accordance with their expectations, aptitudes and possibilities, through the office of the National Training and Employment Service (SENCE) in the region where they live, in order to enable them to increase their financial incomes and enhance their quality of life;
3. Publicly provide reparation to the victims before their community by means of an act of the Regional Government duly disseminated by the mass media, designed to restore their reputation and honor that had been certainly damaged by the judicial decisions that once harmed them.

210. In the same report, the Commission took note of the implementation of these commitments, and urged the State to promote relevant studies and legislative initiatives in relation to the rules governing compensation in the case of judicial error.

211. The Commission asked the parties to provide information on the status of implementation of the recommendations. The Commission received information from the petitioners on January 20, 2005. The petitioners informed that Commission "that with respect to carrying out the conditions adopted in the context of those friendly settlement agreements, the Chilean State has faithfully executed them." The State reported that it has fully carried out the commitments it assumed in the respective agreement.

212. Accordingly, the IACHR concluded that the friendly settlement agreement was fully implemented.

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

213. In Report No. 139/99 of November 19, 1999, the IAHCR 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.

214. 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.

215. 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.

216. 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.

217. 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 extracontractual 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.

218. 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.

219. 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.

220. 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.

221. 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.

222. The Commission, based on the information it has in this case, observes that all the commitments assumed by the parties in Report No. 19/03 have been carried out. As regards compliance with the recommendations made by the Commission in Report No. 139/99, the Commission considers that the State has carried these out in part.

223. On November 13, 2009, the IACHR requested the parties to provide updated information; however, at the time of completing the present Annual Report, additional information on compliance with the recommendations made in Report No. 139/99 had not been received. As a result, the Commission concludes that compliance with these recommendations is still pending.

224. Therefore, the Commission concludes that the Chilean State has partially complied with the recommendations indicated. As a result, the Commission shall continue to monitor the items that are pending.

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

225. 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.

226. 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.

227. The State reported that on September 15, 2008, it ratified ILO Convention 169 and that it was promulgated on October 2, 2008, and was published in the Diario Oficial on October 14, 2008. The State indicated that Convention 169 will come into force in Chile on September 15, 2009, as established by Article 38(3) of said Convention, which would mean that commitment 2(a) of the previous agreement would be met.

228. By communication of December 18, 2008, the State reported that commitment 3(a) had been carried out. As regards commitment 3(b), the State reported that lands had been bought for almost all the Pewenche communities that belonged to the Comuna del Alto Bío Bío, and that at that time work was under way to follow through on the purchases for the communities of Butalebun, Malla Malla, and Trapa Trapa, all of them belonging to the Cajón del Queuco. With respect to commitment 3(c), the State indicated that the Office of the Provincial Governor and the Corporación Nacional de Desarrollo Indígena, CONADI, have continued making efforts to be able to constitute the Board of the Indigenous Development Area, pursuing all alternatives that may lead to that. As regards commitment 3(d), the State indicated that to date CONADI and the Corporación Nacional Forestal, CONAF, are studying, along with the indigenous communities, how to administer the Ralco reserve.

229. As regards commitment 4(a) of the friendly settlement agreement, the State indicated that the measures necessary for the audit results to be sent, among others, to the municipality of Santa Bárbara and Alto Bío Bío had been taken for public consultation, and published at the CONAMA website. In addition, it notes that the office of Executive Director of CONAMA and the public services have monitored and overseen the project, as established in the resolution with the environmental assessment. As regards the impacts of the Ralco reservoir on the sector of the Alto Bío Bío, the State reports that it will perform an independent audit once three years have elapsed since the start-up of the hydroelectric plant; the objective will be to propose the measures necessary for correcting possible unforeseen effects, especially in tourism development along the banks of the reservoir.

230. With respect to commitment 4(b), the State reported that a meeting had been held between CONADI and the Municipality of Alto Bío Bío in 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 with special purposes in the high cordillera, and that as a result of the commitment made by ENDESA regarding the return of the remnant lands not flooded by the Ralco reservoir, CONADI is processing the restitution of the remnants 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.

231. The petitioners submitted a communication dated April 10, 2007, that was received at the IACHR on May 8, 2007, in which detailed reference is made to each point of the agreement. They note compliance with the point regarding the creation of a *comuna* in the sector of the Alto Bío Bío, whose elected mayor is Mapuche Pehuenche. They also consider that there has been compliance with the point of agreeing upon a mechanism to ensure the participation of the indigenous communities in administering the Ralco Forestry Reserve. In terms of the point referring to the measures to satisfy the particular demands of the Mapuche Pehuenche families affected, they indicate that a memorandum of understanding has been signed with the Government and the Pehuenche families, which has been partially implemented.

232. At the request of the IACHR, 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 Alto 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.

233. On November 13, 2009, the Commission requested the parties to provide information; however, at the time the present Annual Report was completed, the parties had not submitted updated information regarding compliance with the friendly settlement agreement. As a result, the Commission confirms what was indicated in the Annual Report of 2008, which on the basis of the information provided by the parties concluded that the friendly settlement agreement had been partially complied with.

234. 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 12.142, Report No. 90/05, Alejandra Marcela Matus Acuña *et al.* (Chile)

235. In Report No. 90/05 of October 24, 2005, the Commission concluded that: (a) Marcela Alejandra Matus Acuña was a victim of censorship of the book “Libro Negro de la Justicia Chilena,” and that her books were confiscated by judicial order and out of circulation for more than two years; (b) Ms. Matus Acuña was subjected to a judicial proceeding that forced her to leave her country to protect against being deprived of liberty; and (c) Chilean society was deprived of the right of access to information. Accordingly, the Commission determined that the State had violated Articles 13 and 21 of the American Convention, all in violation of the obligation to respect and ensure the rights, enshrined in Article 1(1) of the American Convention and the obligation to bring domestic provisions of law into line with the commitments assumed by the State, in keeping with Article 2 of the same Convention.

236. The Commission made the following recommendation to the State:

Provide for adequate reparations to Alejandra Marcela Matus Acuña for the consequences of the violations of the right to freedom of expression and the right to property, to the detriment of the journalist Alejandra Matus Acuña.

237. At the Commission’s request, the State reported on December 19, 2007, that “in July 2007, the State Defense Council issued its favorable opinion regarding the possibility of

settlement in case No. 9,822-06, before the Fifteenth Civil Court of Santiago" for the damages suffered by journalist Alejandra Matus on occasion of the seizure of the publication by her called "El Libro Negro de la Justicia Chilena." The State indicated that to go forward in the dialogue with the complainant and her legal representative, it was necessary "to have a specific proposal, on both the economic aspects and the symbolic or moral reparation, that satisfied both parties and that would make it possible to consider the recommendation fulfilled." Finally, it indicated that "to facilitate such conversations the State Defense Council specially designated three of its members to coordinate the respective proposals, and to promote and facilitate conversations until the matter is resolved."

238. Subsequently, on October 8, 2008, the State reported to the Commission by sending a communication signed by the legal representative of Ms. Alejandra Matus and the Director of Human Rights at the Ministry of Foreign Relations of Chile dated September 30, 2008, that a settlement had been reached in domestic court between Ms. Matus's representative and the State Defense Council. According to that settlement, the petitioner considered definitively terminated the international complaint presented in case 12,142 and considered the recommendations contained in Report 90/05 of the Inter-American Commission on Human Rights to have been carried out. According to press information attached by the State, the petitioner had received compensation of 30 million Chilean pesos. In addition, in this same communication it was indicated that the petitioner also recognized that the Chilean State has brought its domestic legislation into line with the American Convention on Human Rights in respect of freedom of expression, on having issued and promulgated Law No. 19,733, repealing the crime at Article 6(b) and the measures at Article 16 of Law on Internal State Security, No. 12,927, and Article 41 of Law No. 16,643 on Abusive Advertising, making it possible to dismiss with prejudice the criminal case against her, and to lift the confiscatory measures and prohibition that affected her book.

239. In a communication of November 10, 2008, the Commission requested up-to-date information from both parties. The State reported, in a communication of November 21, 2008, that it referred to what was indicated in the communication received by the Commission on October 8, 2008, and indicated that the forwarding of joint "State and petitioner" communications was, in its view, the appropriate means for considering a friendly settlement finalized, accordingly that procedure would be adopted as a regular practice by the Chilean State.

240. The petitioners informed the Commission in a communiqué of May 5, 2008, that in January 2008 the State Defense Council, the organ that represented the government's interests in the previous trial, resolved to reject the proposed settlement formulated by petitioner Alejandra Matus, thereby possibly cancelling the friendly settlement reached with the Human Rights Office of the Chilean Foreign Ministry.

241. On January 7, 2009, at the request of the IACHR, the petitioners reported that the process of carrying out the recommendations issued by the Commission was in its final stage, since the Ministry of Justice had sent the respective payment decree, through Resolution 3849 of December 31, 2008, which could materialize "in the coming days," once the General Treasury of the Republic issues the respective document. Accordingly, the petitioners indicated that "the recommendation of reparation issued by the IACHR with respect to this case has been fully carried out by the Chilean State."

242. Based on the foregoing, the Commission concludes that the Chilean State has fully carried out the recommendation made in Report No. 90/05, *Alejandra Matus Acuña et al.*

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

243. 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 Cénaida 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 Estela 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 Cedeño Lozano, Miguel Ladino, Cénaida 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.

244. 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.

245. On December 4, 2009, the State reported 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.

246. The State submitted information on the implementation of policies regarding human rights and international humanitarian law to be applied to all members of the Security Forces, on measures taken to forward cases linked to possible human rights violations from military to ordinary justice, as well as on proposed legislation to reform military criminal justice that are currently in process in the Congress of the Republic. These legislative bills, the State said, were based on the parameters established by the Commission and the Court in their legal precedents. The petitioners did not respond to the request for information.

247. 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)

248. 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.

249. 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.

250. In a note received on December 4, 2009, the State reported that in consideration of Report 63/01 and the request forwarded by the Special Agent of the Office of the Inspector General of the Nation, there is currently an ongoing criminal investigation by the Office of Specialized Prosecutor No. 16 of the Unit of Human Rights and International Humanitarian Law of the Office of the Attorney General, under control number 4417 for the crime of homicide. The State also said that on December 23, 2008, a decision to file charges was issued against 15 persons, including measures to ensure their presence in court. This decision was confirmed by the Office of the Prosecutor No. 26 in the jurisdiction of the Superior Court of Bogotá, on June 12, 2009.

251. The State reported that Section Three of the Council of State handed down a judgment on March 26, 2009 ordering the State to indemnify the next of kin of Carlos Prada and Evelio Morales for non pecuniary damages and that the Ministry of Defense issued Decision No. 46014 of October 27, 2009, ordering the payment of damages.

252. The State also submitted information on the implementation of human rights and international humanitarian law policies to be applied to all members of the Security Forces, on measures aimed at transferring cases linked to possible human rights violations from the military courts to the regular courts, as well as proposed reforms to the military criminal justice system currently before the Congress of the Republic. It mentioned that those proposed reforms would be based on the parameters established by the Commission and the Court in their precedents. The petitioners did not respond to the request for information.

253. 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)

254. 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.

255. 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.

256. The Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Relations reported that it reiterated to the Coordinator of Specialized Procurator Offices the request to study the possibility of carrying out an action of review in relation to that ruling, who responded to the request saying that a review action is legally inappropriate in the instant case. 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.

257. 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 on the implementation of human rights and international humanitarian law policies applicable to all members of the Security Forces, on measures to forward cases linked with possible human rights violations from military to ordinary justice, and on legislative proposals to reform military criminal justice that are currently in process in the Congress of the Republic. It added that these legislative bills were based on the parameters established by the Commission and the Court in their precedents. The petitioners did not respond to the request for information.

258. 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)

259. 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, Johnny Alexander Cardona Ramírez,

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>.

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.

260. 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.

261. 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.

262. The State, on December 14, 2009, 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. The petitioners did not respond to the request for information.

263. 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.

Case 10.205, Report No. 53/06, Germán Enrique Guerra Achuri (Colombia)

264. 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.

265. 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

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>

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.

266. The State reported on December 10, 2009, that by Resolution No. 3003 of July 15, 2008 payment for reparations was made to Mr. Guerra Achurri.

267. The State reiterated that the decision on the action for review is pending before the Chamber of Criminal Cassation of the Supreme Court of Justice. The petitioners did not respond to the request for information.

268. 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 pending items.

Case 12.009, Report No. 43/08 Leydi Dayán Sánchez (Colombia)

269. 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.

270. 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, 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.

271. 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.

272. By communication received December 11, 2009, the State reported that by a January 22, 2009 decision, the Office of the Prosecutor No. 49 in the jurisdiction of the Superior Court of Bogotá overturned the October 31, 2008 decision definitively closing the investigation. The State maintained that the decision declaring the expiry of the statute of limitations delayed the normal course of the proceedings but that corrective measures had been taken and that to date the proceedings are in the judicial stage. It reported that at this time the criminal proceeding is under the Thirty-ninth Criminal Court of the Circuit of Bogotá and that a public hearing is pending. The petitioners did not respond to the request for information.

273. 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.

Case 12.448, Report No. 44/08 Sergio Emilio Cadena Antolinez (Colombia)

274. In Report No. 44/08 of July 23, 2008, the Commission concluded that the State was responsible for violating the right to judicial protection of Sergio Emilio Cadena Antolinez, enshrined in Article 25 of the American Convention on Human Rights, as well as the generic obligation to respect and ensure the rights protected, set out at Article 1(1) of that Convention. In addition, it concluded that as reparation had been made for the material harm caused Mr. Cadena Antolinez during the course of the processing of his case before the IACHR, there was no violation of Article 21, and that there were no violations of Articles 2 or 8 of the American Convention. This case has to do with the responsibility of the Colombian State for depriving access to an effective judicial remedy for determining the rights of Sergio Emilio Cadena Antolinez due to contempt of Judgment No. SU-1185/2001 of the Constitutional Court, issued November 13, 2001, by the Chamber for Labor Cassation of the Supreme Court of Justice (a situation known as "*choque de trenes*," or conflicting jurisdictional claims).

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

1. Adopt the necessary measures to avoid future violations of the right to judicial protection enshrined in the American Convention, pursuant to the obligation of prevention and guarantee of the fundamental rights recognized by the American Convention.
2. With respect to the non-pecuniary damage caused to Mr. Cadena Antolínez as a result of the violation of his right to judicial protection, it is the opinion of the Commission that the instant report constitutes in itself reparation.

276. On December 4, 2009, the State informed that the Constitutional Court reported on Decision 100 issued by its Full Chamber, establishing that, faced with the "train wreck," the affected parties have two options: (i) to appear before any judge of the Republic for processing and decision, or (ii) to comply with the appropriate requirements and file a petition for constitutional protection with the General Secretariat of the Constitutional Court towards obtaining an eventual review. The State also reported that the Labor and Criminal Cassation Chambers of the Supreme Court of Justice recently decided on their own authority to process and decide the petitions for constitutional protection filed against the judicial decisions of that body, and to forward the case file to the Constitutional Court for an eventual review of judicial decisions.

277. The State reported, in addition, that the Full Chamber of the Constitutional Court approved, in its December 3, 2008 session, an amendment to its Internal Rules of Procedure, adding a second paragraph to article 54 A. This paragraph establishes that once petitions for constitutional protection against judicial decisions taken by the Supreme Court and the Council of State have been selected, the petitions must be forwarded to the Full Chamber of the Constitutional

Court, for it to determine whether or not it will perform a review based on the monthly report presented to it beginning in March 2009. It also said that the Constitutional Court issued decision 124 of March 25, 2009, adopting measures to resolve conflicts of jurisdiction among the courts.

278. The State reported that, based on its priority of jurisdiction, the Constitutional Court has intervened to enforce the orders issued by the Full Chamber or the Chambers for Constitutional Protection Review, as in the case of Sergio Emilio Cadena Antolínez.

279. It also reported that the Criminal and Labor Cassation Chambers of the Supreme Court of Justice on their own authority decided in 2008 to process and forward to the Constitutional Court those of their orders against which petitions for constitutional protection had been filed, for purposes of eventual review, in compliance with Decree 2591 of 1991 and article 86 of the Constitution. The petitioners did not respond to the request for information.

280. Based on the foregoing, the Commission concludes that there has been full compliance with its recommendations.

Petition 477-05, Report No. 82/08, X and Relatives (Colombia)

281. 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. .

282. 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 nonpecuniary 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.

283. 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.

284. The State submitted a report on December 11, 2009 with respect to its pending commitments. It said 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.

285. The State reported that after the decision declaring that the statute of limitations had expired had been overturned, several procedures furthering the investigation have been carried out, such as the reception of uninterrogated testimony [*versión libre*] of two suspects and the issuance of an order for their detention on September 19, 2008. On October 21, 2008 the legal situation was resolved by issuing an arrest warrant for the two accused persons. The legal status of

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>.

the case was resolved by an order for their preventive detention. On June 26 and July 6, 2009, the two suspects were formally charged. The petitioners did not respond to the request for information.

286. 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 pending items.

Petition 421-05, Report No. 83/08, Jorge Antonio Barbosa Tarazona (Colombia)

287. 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.

288. 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.

289. 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.

290. The State submitted a report on December 11, 2009 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 reported that the Ministry of Defense is currently coordinating with the victims' representatives to celebrate a conciliation hearing.

291. The State reported that the Office of the Attorney General of the Nation continues to investigate the facts, that several suspects have been found, and that there have been convictions. It further reported, regarding the proceedings that had been closed and the final judgment handed down by military criminal justice, that a petition for review had been filed before the Criminal Chamber of the Supreme Court of Justice, which was accepted on March 30, 2009. The petitioners did not respond to the request for information.

292. 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.

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>

Case 12.476, Report No. 67/06, Oscar Elias Biscet *et al.* (Cuba)

293. 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 Sainz, 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.

294. 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.

295. 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.

296. On November 12, 2009, 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.

297. The IACHR received information from the petitioners regarding the situation of the victims of Case 12.476 during the hearings held on the human rights situation in Cuba at its 137th Regular Session. According to information received by the IACHR, 21 victims of Case 12.476 had been released from jail on parole because they were suffering from severe diseases. Up to 2009, the following victims have been granted leave of absence from jail: 2004: Osvaldo Alfonso; Margarito Broche Espinosa; Carmelo Díaz Fernández; Oscar Espinosa Chepe; Orlando Fundadora Álvarez; Edel José García Díaz; Marcelo López Bañobre; Roberto de Miranda; Jorge Olivera Castillo; Raúl Rivero Castañeda; Martha Beatriz Roque Cabello; Julio Valdés Guevara; Miguel Valdés Tamayo (deceased January 10, 2007) and Manuel Vásquez Portal. 2005: Mario Enrique Mayo Hernández and Héctor Palacio Ruiz received leaves. 2008: José Gabriel Ramón Castillo, Pedro Pablo Álvarez, Alejandro González Raga and Omar Pernet. 2009: Nelson Alberto Aguiar Ramírez. Furthermore, Rafael Millet Leyva, who had never been tried, was released on December 19, 2006.

298. The Commission indicates its concern that most of the victims of case 12.476 continue to be in prison living in precarious conditions. Likewise, it was observed that 22 victims have been released because of severe health conditions or, as in the case of Mr. Millet Leyva, because they had never been tried.

299. 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)

300. 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.

301. 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.

302. On November 12, 2009, 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 3, 2009, they reported that there is no evidence that the Cuban State has complied with the recommendations made by the IACHR.

303. 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)

304. 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.

305. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 93/00²⁷, 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.

306. In November 13, 2009, 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.

307. 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.

²⁷ Report No. 93/00, Case 11.421, Edison Patricio Quishpe Alcívar, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Sol.Ami/Ecuador11.421.htm>

Case 11.439, Report No. 94/00, Byron Roberto Cañaverl (Ecuador)

308. 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.

309. On October 5, 2000²⁸, 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.

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.

310. The IACHR requested information from both parties regarding compliance with the pending items on November 13, 2009. 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.

311. 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)

312. 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.

313. 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:

²⁸ Report No. 94/00, Case 11.439, Byron Roberto Cañaverl, Ecuador, October 5, 2000, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.439.htm>

²⁹ Report No. 96/00, Case 11.466, Manuel Inocencio Lalvay Guzmán, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Sol.Ami/Ecuador11.466.htm>

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.

314. On November 13, 2009, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded stating that the criminal action had prescribed because of the Police Judge's failure to act, that he had been told by the Public Prosecution Service in 2001 that statutory limitations did not prevent prosecutors from taking repetition actions against the guilty. They also reported that they had no knowledge of any repetition actions or other civil or administrative steps taken in order to punish the perpetrators. The State did not respond to the request for information.

315. 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 11.584, Report No. 97/00, Carlos Juela Molina (Ecuador)

316. 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.

317. 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.

318. The IACHR requested information from both parties regarding compliance with pending items on November 11, 2009. The petitioners responded that the State has not initiated

³⁰ Report No. 97/00, Case 11.584, Carlos Juela Molina, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000sp/CapituloIII/Sol.Ami/Ecuador11.584.htm>

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.

319. 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)

320. 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.

321. 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.

322. On November 10, 2009, the IACHR asked both parties to report on compliance with the items still pending; however, no replies were received.

323. 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)

324. 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

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>

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.

325. 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 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."

326. On November 10, 2009, the IACHR asked both parties to report on the steps taken in compliance with the pending items; however, no replies were received.

327. 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)

328. 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.

329. 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.

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>

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>

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.

330. On November 11, 2009, 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.

331. 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.

Case 11.478, Report No. 19/01, Juan Clímaco Cuéllar *et al.* (Ecuador)

332. 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.

333. 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.

334. On November 10, 2009, the IACHR requested information from both parties regarding compliance with the pending items, but received no responses.

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>

335. 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)

336. 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 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.

337. 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.

338. On November 11, 2009, 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.

339. 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)

340. 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.

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>

341. 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.

342. On November 11, 2009 the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded by reporting that the State had imposed no judicial or administrative sanctions on the person responsible for the facts alleged. The State did not respond to the request for information.

343. 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)

344. 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.

345. 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.

346. On November 12, 2009, 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

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>

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>

punishment of those responsible for the alleged facts. The State did not respond to the request for information.

347. 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)

348. 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 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.

349. The Commission issued the following recommendations to the State:

1. Proceed to grant full reparations, which involves granting adequate compensation to Mrs. Dayra Maria Levoyer Jimenez;
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.

350. On November 11, 2009, 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.

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 pending items.

Case 11.441, Report No. 104/01, Rodrigo Elicio Muñoz Arcos *et al.* (Ecuador)

352. 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.

353. On October 11, 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.

354. On November 12, 2009, 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.

355. 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)

356. 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.

357. 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

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>

implementation of the obligations assumed by the State under this friendly settlement agreement.

358. On October 11, 2009, 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.

359. 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)

360. 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.

361. 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.

362. On November 12, 2009, 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. The State did not respond to the request for information.

363. 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)

364. 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

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>

Convention on Human Rights. The State also agreed to pay compensatory damages and to 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.

365. 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.

366. On November 12, 2009, 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.

367. 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)

368. 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.

369. 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.

370. On November 16, 2009, 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.

371. 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)

372. 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.

373. 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.

374. On November 12, 2009, 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.

375. 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)

376. 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.

377. 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.

378. On November 12, 2009, the IACHR requested both parties to report on the state of compliance with pending items. The petitioners responded saying that the State had not initiated any criminal or administrative investigation to punish the police officers responsible for the murder of Vidal Segura Hurtado. The State did not respond to the request for information.

379. 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)

380. 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).

381. 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/2001sp/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.

382. On November 12, 2009, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported 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 facts alleged before the IACHR. The State did not respond to the request for information.

383. 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)

384. 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.

385. 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.

386. On November 12, 2009, 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.

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/2003sp/Ecuador.12188.htm>

387. 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)

388. 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."

389. 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.

390. On November 12, 2009, the IACHR asked both parties to report on compliance with the items still pending, but received no response.

391. 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)

392. 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 Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty.

393. 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

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>

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.

394. 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.

395. On November 12, 2009, 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 those responsible for violations of the American Convention, nor had it carried out all necessary reparations measures such as lifting the prohibition against transferring ownership of the property of the alleged victim. The State did not respond to the request for information.

396. 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)

397. 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.

398. 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.

399. On November 13, 2009, the IACHR requested both parties to report on the state of compliance with the pending items. In their response, the petitioners indicated that the State had not initiated any real action to punish all those responsible, nor have, in practice, restrictions been lifted in the Property Registry. The State did not respond to the request for information.

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, Lizandro Ramiro Montero Masache, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12207eng.htm>

400. 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)

401. 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.

402. 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.

403. On November 13, 2009 the IACHR requested both parties to report on the compliance measures adopted, but received no response.

404. 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)

405. 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.

406. 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 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.

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>

407. 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.

408. On November 16, 2009, the IACHR requested both parties to report on the state of compliance with the pending items, but received no response.

409. 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 12.028, Report N° 47/01, Donnason Knights (Grenada)

410. In Report N° 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.

411. 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.

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>.

412. On December 23, 2002, the petitioner wrote to the Commission and reported of the following: On May 2001, Anslam 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.

413. By communications of November 9, 2004, the Commission requested information from the parties about compliance with the recommendations set forth in Report N° 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.

414. 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.

415. 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.

416. 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 N° 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.

417. 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.

418. On November 12, 2009 the Commission again requested both parties updated information concerning compliance with the Recommendations in Report N° 47/01. Neither party responded within that time period.

419. 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 N° 55/02, Paul Lallion (Grenada)

420. In Report N° 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.

421. 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.

422. 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.

423. 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.

424. 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.

425. 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 N° 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.

426. 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.

427. On November 12, 2009 the Commission again requested both parties updated information concerning compliance with the recommendations in Report N° 55/02. Neither party responded within the one month time period established.

428. 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 N° 56/02 Benedict Jacob (Grenada)

429. In Report N° 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.

430. 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.

431. 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.

432. 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.

433. 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.

434. 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 N° 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.

435. 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.

436. On November 12, 2009 the Commission again requested both parties for updated information concerning compliance with the Recommendations in Report N° 56/02, and set a one month period to that effect. Neither party responded within that time period.

437. 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)

438. 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.

439. 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.

440. 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."

441. On November 12, 2009, the Commission requested the parties to provide updated information on the status of compliance with the recommendations.

442. During 2009, the State reported that, in November 2008, it had fulfilled its commitment to publish one thousand copies of the academic textbook entitled "World Vision of the Mayas and Women: Contributions from the Perspective of an Ajq'ij (La Cosmovisión Maya y las Mujeres: Aportes desde el punto de vista de una ajq'ij). In addition, it reported that, on April 23, 2009, a public ceremony took place to officially deliver this academic textbook and there was a public presentation of the María Eugenia Morales Aceña de Sierra Foundation for Dignity (Fundación para la Dignidad María Eugenia Morales Aceña de Sierra). Furthermore, it reported that the invitation to the specific national academic contest for women took place on April 6, 2009 as a result of the publication of Ministerial Agreement No. 240-2009 in the Official Register (Diario Oficial). It also indicated that, to disseminate the invitation to the contest, a press conference was held on June 9, 2009 and advertising materials were distributed to 334 municipalities in the country and universities.

443. As for the petitioners, this year, they have submitted information agreeing with the State regarding the aspects that were complied with. In addition, they indicated that compliance with some of the commitments made between the parties in the Agreement on Specific Compliance with Recommendations signed on March 3, 2006 is still pending. Finally, they indicated that the State of Guatemala must adopt legislative and other kinds of measures that might be necessary to amend, repeal or invalidate the internal regulatory framework that is not in keeping with the American Convention and full respect for the rights and liberties of women in Guatemala.

444. The Commission observes that, to date, Article 317 of the Civil Code has not been amended.

445. 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)

446. 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.

447. 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.

448. On November 12, 2009, the Commission requested updated information to the parties on the status of implementation of the recommendations issued in this case.

449. On December 11, 2009, the State reported that, to comply with the first recommendation of the IACHR, the Attorney General's Office of the Human Rights Section (Fiscalía de Sección de Derechos Humanos) filed a request for personal appearance for the benefit of Oscar Manuel Gramajo López before the Supreme Court of Justice, which is the authority that, after the corresponding proceedings, declared that the request was inadmissible. The State added that the District Attorney's Office requested records from the following institutions: Superintendency of Tax Administration; General Directorate for Migration; Registry of Citizens of the Supreme Electoral Court; Traffic Department of the National Civilian Police Force; General Directorate of the Penitentiary System; and National Registry of Persons, which reported that Mr. Oscar Manuel Gramajo López does not appear in their records. It also indicated that the Historical Archives Section of the National Civilian Police Force reported the name of the person who was the Head of the First Corps of the National Police Force in 1980. It also indicated that the Human Rights Prosecutor's Office reported that, in the Unified Registry for the Special Cases of Forced Disappearance and Other Forms of Disappearance, the only information that appears on the victims has been provided by COPREDEH. It also indicated that the Criminal Investigation Department submitted a report on the investigation that was conducted, which indicated that it was impossible to carry out actions because nothing is known about the place of origin of the victim which would make it possible to locate friends, relatives or coworkers and/or fellow students who would be able to provide background information. Furthermore, it reported that the Minister of Education submitted a report indicating that an investigation had been conducted in the units of the Ministry but that the data that were provided were insufficient to check whether the victim had been a student or not. Furthermore, it indicated that the Minister of National Defense was requested to present a report containing the names and work record of the persons who held the positions of Commander of the Justo Rufino Barrios General Headquarters, Commander of the Military Zone with headquarters in Huehuetenango, and Commander of the Military Zone with headquarters in Petén during 1980. Regarding this, he indicated that the Ministry of National Defense requested a court order to provide what was required and, when this order has been received, it would be processing this request.

450. The State also reported that it submitted letters to Guatemalan nongovernmental organizations, asking them if they had information about the disappearance of Mr. Oscar Manuel Gramajo López and that it was looking forward to a response to this request.

451. Regarding the second recommendation made by IACHR, the State reported that it has continued taking steps to locate the relatives of the victim for the purpose of reaching a

reparations agreement. Nevertheless, it indicated that all the steps taken have been of no use. Regarding this, it repeated the request for information on the relatives of the victim to ensure compliance with the recommendations.

452. The petitioners have not submitted information to the IACHR since the year 2001.

453. The Commission appreciates the efforts made by the Guatemalan State to comply with the recommendations of Report on the Merits No. 58/01. At the same time, it observes that, in the present case, the relatives of the victim or their representatives need to provide certain information that would enable the State to make progress in complying with the recommendations. Accordingly, the IACHR will continue to monitor the item still pending compliance.

454. Because of the above, the IACHR concludes that the State has partially complied with the recommendations that were indicated.

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)

455. 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 Ajquí 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 Ajqui 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 Ajqui 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 Baycá, Antulio Delgado, Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez, and Orlando Adeldo 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.

456. 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.

457. 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.

458. On November 12, 2009, 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)

459. 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.

Case 10.627 Pedro Tiu Cac (Guatemala)

460. 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.

461. 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.

462. 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.

463. 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.

464. Regarding the first recommendation about conducting a complete, impartial and effective investigation to determine the circumstances of the extrajudicial execution of the victim and to punish those responsible, the State pointed out on May 4, 2009 that, at a meeting held on March 3, 2009, the prosecutors of the District Attorney's Office were informed about the request of the petitioners to coordinate a timetable for the presentation of the next-of-kin of the victims with prosecutors in charge of the investigation, as well as for the taking of statements or the extension of the latter.

465. The State specified that payment to one of the victim's next-of-kin is still pending, since inheritance proceedings had started because of his death. It indicated that, regarding this, a meeting had been coordinated with the petitioners, the Office of the Prosecutor General of the Nation and the attorney in charge of the above-mentioned proceedings.

Case 11.198(A) José María Ixcaya Pixtay *et al.* (Guatemala)

466. 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 Ajuí 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.

467. 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.

468. Regarding the recommendation to conduct a complete, impartial and effective investigation to determine the circumstances of the extrajudicial execution of the victim and punish those responsible, the State indicated on May 4, 2009 that, a meeting was held on March 3, 2009 with the staff of the District Attorney's Office to address case 11.198, among others. It indicated that, at this meeting, the prosecutors of the District Attorney's Office were informed about the request of the petitioners to coordinate a timetable for the presentation of the next-of-kin of the victims with the prosecutors in charge of the investigation, as well as the taking of statements or the extension of these statements.

469. In the same communication, the State indicated that, on April 21, 2009, a memorial plaque was installed in a plot of land belonging to the next-of-kin, located in the village of La Montaña, Parraxtut, El Quiché, with the unveiling of the plaque scheduled to take place later. As for financial compensation, the State specified that payment to three relatives was still pending, since inheritance proceedings had been filed as a result of the decease of the respective victims. He indicated that a meeting had been coordinated with the petitioners, the Office of the General Prosecutor of the Nation and the attorney in charge of the above-mentioned proceedings.

470. Regarding the measures to restore the dignity of Juan Tzun Us and Camilo Ajqui Gimón, the State indicated that the petitioners had not submitted a dignity restoration proposal. As for contacting the next-of-kin of the victims, it pointed out that, without detriment to the eventual identification of the groups of relatives, on the basis of the data provided by the representatives, as yet there is no specific budget allocation for the payment of financial reparation.

Case 10.799 Catalino Chochoy *et al.* (Guatemala)

471. 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.

472. 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.

473. In 2008 and 2009, 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)

474. 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.

475. The State has not provided updated information regarding compliance with the recommendation to investigate.

476. Regarding reparation, the State repeated that it has not been possible to contact the petitioners for the purpose of reaching a reparation agreement to comply with the recommendations set forth in Report No. 59/01.

Case 10.901 Antulio Delgado (Guatemala)

477. 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.

478. The State has not provided updated information on the recommendation to investigate.

479. Regarding reparation, the State repeated that it has not been possible to contact the petitioners to reach a reparation agreement and comply with the recommendations to provide reparation as set forth in Report No. 59/01.

480. 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)

481. 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.

482. 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.

483. On November 12, 2009, the Commission requested the parties to provide updated information on compliance with the recommendations set forth in Report No. 60/01.

484. On December 7, 2009, 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.

485. 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 over by a several state authorities, among whom Mr. Mynor Morales, Department Governor; Felipe Rojas Rodríguez, Mayor; Ruth del Valle Cobar, President of COPREDEH; Lorena Pereira, Executive Director of COPREDEH; and Julieta Solares Solares, representative of the Solares Castillo family.

486. It also indicated that, during the above-mentioned ceremony for unveiling the plaque, the President of COPREDEH extended apologies to the family for the violations against Ileana Solares and delivered a letter of public apologies signed by the President of the Republic of Guatemala, Mr. Álvaro Colom Caballeros, and an enlarged portrait of the victim to be located in city hall.

487. Furthermore, the State indicated that the Solares family indicated their wish that the biography and executive summary of the case be distributed and reproduced electronically, for which purpose 50 to 100 copies were requested. The State accepted the request and, on September 22, 2009, it delivered 100 copies to the family's representative. It also indicated that steps had been taken with the Ministry of Education to include the issues requested in the program of studies, which were included, thus complying with what had been agreed on.

488. As for financial reparation, it was reported that this had been complied with partially and that it is expected that full compliance will take place by December 2009. The State added that the amount referred to for financial compensation included payment pertaining to the percentage involved for the three academic scholarships, which is a commitment that was agreed to be effectively fulfilled with two payments. Finally, regarding the establishment of the Foundation, it reported that compliance with the commitment is still pending until the Solares family submits the required documents.

489. Regarding the next-of-kin of Ana María López and Luz Leticia Hernández, the State specified that, alongside the proceedings for granting the mandate to COPREDEH for signing the Agreements to Comply with the Recommendations of the cases of María Ana López Rodríguez and Luz Leticia Hernández, working meetings have been held with the representatives of these families and the Mutual Support Group (Grupo de Apoyo Mutuo—GAM).

490. As a result of the above, the Commission concludes that the above-mentioned recommendations have been partially complied with. As a result, the Commission shall continue to monitor items that are pending. Furthermore, on this occasion, the IACHR once again calls upon the Guatemalan State to make progress in investigating the present case, as well as to fully implement the reparation measures for all victims.

Case 11.382, Report No. 57/02, Workers at the Hacienda San Juan, Finca "La Exacta" (Guatemala)

491. 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.

492. 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.

493. By means of a communication dated November 12, 2009, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case.

494. As for the State, it reported that, through COPREDEH, it has set up the Labor Justice Working Forum (Mesa de Trabajo Justicia Laboral) which shall be tackling the issues involving justice that are currently affecting all the farm laborers and rural areas in the country. It specified that this Labor Justice Forum was set up at the request of the representatives of the Inter-

Diocese Land Pastorship (Pastoral de la Tierra Interdiocesana), who are representing various farm worker groups. Nevertheless, the first general meeting was held on February 18, 2009, which was attended by various State institutions and representatives of the Inter-Diocese Land Pastorship, as well as one of the cases of the farm workers of Guatemala.

495. In addition, the State indicated that the Labor Forum is scheduled to meet once a month at which time concrete proposals and requests shall be made for State representatives regarding drafting public policies that provide solutions to farm problems, proposals for amending labor laws and other related solutions to be submitted to the President of the Republic for his consideration and then to be submitted as a draft bill of law to the Congress of the Republic of Guatemala. It stated that this Forum intends "to be a forum for dialogue between workers and the State to improve general labor conditions."

496. As for the granting of housing, the State indicated that, on December 15, 2008, it signed a cooperation agreement for building housing and that, at present, it is waiting for the documentation to be provided by the petitioners to continue with the building of 96 housing units for the beneficiary families in the present case.

497. Furthermore, it indicated that, on February 24, 2009, a meeting was held with the representatives of the National Fund for Peace (Fondo Nacional para la Paz—FONAPAZ) for the purpose of establishing the procedures that are needed to ensure compliance with the request for reparation and the building of schools, which was proposed in the draft compliance agreement sent by the representatives of the petitioners.

498. In short, the State indicated that it has not ceased in its efforts to ensure compliance with the recommendations made by the Inter-American Commission and that, at present, it is continuing all possible efforts to ensure that a specific compliance agreement is signed, while conducting all the corresponding consultations with State institutions to determine the viability of meeting the requests made by the petitioners.

499. In its communication of December 7, 2009, the petitioners indicated that, to date, no progress had been made in investigating the incidents that took place on August 24, 1994. Regarding the Labor Justice Forum, they indicated that they had not participated in this forum, but that they were waiting for information from the State regarding the progress made regarding it.

500. Regarding the other reparations set forth in the agreement signed on October 24, 2003, among others, the building of a monument restoring the dignity of and rendering tribute to the victims, the granting of housing, as well as clean water services, ongoing staff and budget resources for teachers, they indicated they can be found in a draft Specific Compliance Agreement, whose signing is still pending. Nevertheless, they report that, in 2008, an agreement was signed to build the housing as pledged between COPREDEH and FOGUAVI, with the extension of the time-limits for compliance currently being discussed, because as there are 96 beneficiaries in this case difficulties have emerged with respect to determining those aspects related to requirements requested for building.

501. Finally, the petitioners repeated their observation that, to date, no measure has been taken to guarantee that the violations that took place because of the absence of suitable investigation, trial, and punishment of those criminally responsible, as well as the absence of any labor-related measures to govern labor relationships and impose penalties for incidents like those that occurred in this case, shall not occur again.

502. 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)

503. 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.

504. 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.

505. By means of a communication dated November 12, 2009, 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.

506. By means of a communication dated December 11, 2009, 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.

507. As for the above-mentioned communication, it pointed out that, regarding the still pending matter of the investigation of the facts, it has requested the District Attorney's Office to provide updated information on the allegedly illegal arrest of the victim Emilio Tec Pop, which states that it shall be transmitted in due time to the IACHR. It also added that it should be stressed that it has information that Mr. Emilio Tec Pop filed a complaint on November 13, 2006 about a legal situation other than the settlement agreement that has been signed.

508. With respect to the commitment of providing seed capital and basic grains to improve the quality of life of Mr. Manuel Emilio Tec Pop, the State reported that, on November 21, 2005, steps were taken to organize with the Ministry of Agriculture, Livestock and Food (Ministerio de Agricultura, Ganadería y Alimentación—MAGA) a visit with Mr. Emilio Tec Pop, for the purpose of providing him with the basic grains that were deemed necessary. Nevertheless, it was indicated that the legal representatives reported that they were not sure where the place of residence of Mr. Tec Pop was located. Regarding this, it reported that COPREDEH undertook actions for its location, with the support of the municipalities of the Department of Petén and the radio broadcasting stations of the locality, but without any positive results.

509. It added that, to date, there is no knowledge about the location of Emilio Tec Pop, as he has not shown up or contacted the staff of COPREDEH; and that the representatives in this case have not informed the State or the Commission about the whereabouts of Mr. Tec Pop to coordinate fulfillment of the above-mentioned commitment. In this regard, the State alleges that, in the present case, approximately more than four years have elapsed without the legal representative or the State being able to contact Mr. Emilio Tec Pop, and because of this, in conformity with the provisions of Article 48, paragraph b) of the American Convention on Human Rights and Article 30, paragraph 6) of the Regulations of the Inter-American Commission on Human Rights, as well as because of the absence, lack of interest and communication on the part of Emilio Tec Pop with his legal representatives and State institutions, it requested the Commission to file case No. 11.312 Emilio Tec Pop.

510. As for the petitioners, in a communication dated December 7, 2009, they indicated they had no information about any progress in the investigation of the case. They pointed out that the latest information submitted by the State indicates that the case is currently being investigated by the First Chamber of the Criminal Court of Izabal under proceedings No. 325-94. They added that, in the state's report, reference is made to a report submitted by Mr. Emilio Tec Pop on November 13, 2006 to the Justice of the Peace Court of the municipality of San Juan Chamelco in Alta Verapaz, but that these incidents had nothing to do with the acts perpetrated against him.

511. They pointed out that another aspect that continues to be unfulfilled is the one referring to the granting of seed capital and basic grains improve his quality of living. Regarding this, they indicated that it is important for the Guatemalan State to once again attempt to locate Mr. Manuel Emilio Tec Pop, because to date his whereabouts are unknown and that, in addition, for this purpose it is essential to learn about the steps taken by the State to locate him to determine whether all possible measures to locate him have truly been exhausted. They proposed that these steps to locate him should also take place in Alta Verapaz in view of the information transferred by the State in June 2009 on a complaint filed by Mr. Tec Pop with the Justice of the Peace Court of San Juan Chamelco.

512. 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)

513. 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.

514. 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.

515. 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.

516. 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.

517. By means of a communication dated November 12, 2009, the Commission requested the parties to provide updated information on compliance with the items of the agreement that are still pending in the present case.

518. On March 23, 2009, the State of Guatemala reported that it had complied with the commitment regarding the delivery of a Letter of Apology to the next-of-kin of Irma Flaquer and

that it is taking steps to meet the requirement of providing a scholarship to study journalism, as well as to investigate, bring to trial, and punish those responsible.

519. Concretely, the State reported that, on January 15, 2009, at the National Palace of Culture, the State of Guatemala, through Mr. Orlando Blanco, Secretary for Peace, and Ms. Ruth del Valle Cobar, Chair of the Presidential Commission to Coordinate the Human Rights Policy of the Executive Branch of Government (Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos—COPREDEH), appointed by the Constitutional President of the Republic of Guatemala, held the ceremony to deliver the Letter of Apologies to the next-of-kin of Irma Flaquer. During the ceremony of the letter of apologies, the updated documentary on Irma Flaquer was projected as part the effort to restore the dignity of and render tribute to the journalist.

520. In addition, the State submitted information about the latest steps taken in the investigation conducted by the District Attorney's office and specified that it is in the process of drafting a proposal to create the Irma Flaquer scholarship, for which a consensus must be reached with the School of Communication Sciences of the University of San Carlos de Guatemala and then submit it to the International Cooperation Unit of the University of San Carlos de Guatemala. In this regard, it indicated that it shall report on the progress made for fulfilling the commitment. It also pointed out that, in the course on History of Journalism of the Communication Science School of the University San Carlos de Guatemala, a specific section was included on Irma Flaquer.

521. 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)

522. 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.

523. 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. he 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.

524. By means of a communication dated December 17, 2009, with respect to the commitment to grant housing, the State indicated that, in the course of 2009, the petitioners have brought together the requirements requested by FOGUAVI for building housing. Likewise, it specified that, by virtue of the cooperation agreement between COPREDEH and the Guatemalan Fund for Housing signed for one year, working meetings have been held with the new officers of FOGUAVI to inform them about the State's commitment to grant housing to the victims of the present case and to request them to extend the deadline for providing housing and that a positive response has been received from FOGUAVI. It indicated that the representatives of the case must now send their personal information (identity card numbers) so that FOGUAVI can carry out the corresponding socioeconomic studies.

525. Regarding the transfer of rights, the State reported that COPREDEH is in the process of setting up the files pertaining to each person and that all that is missing is the incorporation of the certification of some fiscal registration records, which have been requested from the Department of Real Estate Survey and Appraisal. It was specified that, once the files are complete, they shall be remitted to the Agrarian Affairs Secretariat, so as to draw up the unilateral donation title deed by the petitioners for the benefit of the State of Guatemala.

526. Regarding the investigation, they indicated that the District Attorney's Office was requested to provide information on the progress of the investigation of the facts in the present case, which shall be remitted once it is available.

527. Finally, the State indicated that conversations continue between the legal representative of the petitioners and COPREDEH to sign the specific compliance agreement, where setting the deadline for compliance with outstanding commitments is still pending.

528. By means of a communication dated December 2, 2009, the petitioners indicated that, in 2007, an inter-agency forum was set up with representatives from various State institutions to work on integral compliance with the signed agreement. They also indicated that, prior to the establishment of this forum, representatives from these institutions went with CALDH and COPREDEH to visit the community for the purpose of learning about the situation of its inhabitants. They indicated that, as a result of this visit, it was possible to concretely identify those compliance aspects that are still pending, establishing within this same process the need to create a "Specific Agreement" that would delimit more clearly the agreements that were signed, since what was initially agreed upon was very general. Regarding this, the petitioners specified that, to date, the signing of this Specific Agreement is still pending and it is hoped that progress shall be made the first quarter of 2010, not only in terms of the signing of this specific agreement but also regarding compliance with pending aspects, especially with regard to continuation.

529. First of all, regarding the item on production projects, where it is established that they should be negotiated urgently, within 60 days after settlement of the community, they indicated that to date this commitment has not been fulfilled. They pointed out that this is one of the most important aspects, because the land's production capacity is not being taken advantage of, which would also benefit to some extent the food and economic situation of the beneficiaries.

530. Regarding the processes for the transfer of land ownership, possession and inheritance rights in Quiché, they indicated that the community dwellers of San Vicente Los Cimientos are completely ready to fulfill the above-mentioned commitment, but the process has been slow, which has made it impossible for them to make any progress and to gain access to the projects offered by international organizations.

531. Regarding the investigation of the incidents and those responsible, they indicated that to date no progress has been made in this process. They specified that, although two meetings were held with the District Attorney's Office in 2007, to date neither the representatives or the community have been informed about the steps that have been taken to comply with this aspect.

532. In addition, they indicated that the State reported in June 2009 that the file on the facts has been identified as MP/2001/52118 and that it is now in the First Chamber of the Court for Crime, Drug Activities and Environmental Offenses of El Quiché. They specified that, in the same report, there is a court order for the arrest of one of those charged, but to date it is not known whether it has been implemented or not.

533. 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)

534. 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.

535. 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.

536. 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.

537. By means of a communication dated November 12, 2009, the Commission requested the parties to provide updated information on the status of compliance with the items of the agreement that were still pending in the present case.

538. By means of a communication dated December 10, 2009, the State reported on the granting of scholarships, which it was ready to comply with since the signing of the Friendly Settlement Agreement but that the corresponding procedures never started because the beneficiaries of the scholarships had not provided the information required for this purpose within the time-limits that were set. Despite this, it referred to the fact that, on November 6, 2009, a Commitment Document between the Parties was signed at IACHR headquarters at a working meeting of the 137th Regular Session of the IACHR, for the purpose of agreeing upon the way to fulfill the commitment involving the scholarship so that María Luisa Rosal Vargas could study. The State pledged to grant a scholarship to María Luisa Rosal Vargas "...for the master's degree program in agricultural economics or in political science at McGill University in Montreal, Canada, including relevant courses to learn the French language." It specified that, since Jorge Alberto Rosal Vargas did not attend that meeting, the State confined itself to ratifying its commitment to providing education, indicating that, to carry out the corresponding steps, the interested party should contact COPREDEH as quickly as possible.

539. With respect to granting a plot of land to Ms. Blanca Elvira Vargas Cordón de Rosal, the State indicated that it took the respective steps to grant Ms. Vargas the land indicated in the agreement, checking that it was registered in the Ministries of Labor and Social Security, Public Finance and Education since October 13, 2003. Because of this, it specified that the farm that was indicated was already awarded to the above-mentioned entities two months before the signing of the Friendly Settlement Agreement, which prevented it from being granted. Furthermore, it indicated that the Ministry of Public Finance reported on February 8, 2005 that the donation of State assets is not authorized by law, that usufruct is only for the benefit of decentralized State entities and legal entities that carry out social welfare projects and that it is not possible to grant usufruct to individual persons to meet their specific interests or needs.

540. Nevertheless, in follow-up to this commitment, it indicated that the Cadastre Information Registry submitted a Report on the Results of the Commercial Appraisal of the plot described above owned by the State, and in this appraisal it was indicated that area equivalent to 2 hectares is a rural farm close to the city which was appraised at an average value of Q 6.00 per square meter. The State indicated that this appraisal was requested for the purpose of giving Ms. Rosal Vargas the equivalent amount of the price of the farm, but that this offer was rejected because of the amount offered.

541. In this regard, the State indicated that, at the working meeting held on November 4, 2009, it was agreed to look for other possible state-owned plots of land in another municipality of Guatemala or conduct a commercial appraisal that would make it possible to establish another financial value, which proposal was accepted by the petitioner. The State concluded that it felt that this commitment was not possible to fulfill from the start, because the State has special programs to grant housing and/or plots of land for crops to low-income persons such as the Unit for the

Development of People's Housing, the Guatemalan Fund for Housing, and the National Land Fund, but none of these programs has the capacity to endow one single person with an area equivalent to two hectares, as a result of which they shall continue looking for and proposing options for the family.

542. As for the investigation of the facts, the State of Guatemala expressed its commitment to reactivate the investigation of the facts by the District Attorney's Office. Immediately thereafter, the State submitted concrete information with respect to the hypothesis of the investigation and the last proceedings being carried out in the process. Regarding them, it is worth highlighting that the District Attorney's Office, in its last report of 2009, reported that, in the investigation of the forced disappearance of Jorge Alberto Rosal Paz y Paz, three allegedly responsible persons have been identified. It was also indicated that the Forensic Anthropology Foundation of Guatemala (Fundación de Antropología Forense de Guatemala—FAFG) took DNA samples from the next-of-kin of the victim and that the samples remained in the databank for the purpose of comparison with bone samples that can be retrieved from the disinterments made by the FAFG. In addition, it was indicated that, to obligate the Ministry of Defense to report on the creation of the Detachment of Santa Ana Berlín and the name of its commanders, a court order was requested from the unit overseeing the investigation because of its refusal to do so without this order. Finally, the State provided a detailed account of the facts as determined to date in the investigation and the steps that are expected to be taken over the medium term.

543. In conclusion, the State indicated that the steps needed to ensure fulfillment of the commitments made in the present case have been taken and that it is satisfied at being "in good standing with respect to the provision of financial compensation for the petitioners, to have complied with the designation of a public institution named "Ing. Ag. Jorge Alberto Rosal Paz y Paz", and to have reactivated the investigation on the incidents that took place."

544. The commission appreciates the commitments made by the State in the context of the working meeting held at the 137th Regular Session of the IACHR with respect to the state's commitment to grant scholarships for study abroad.

545. 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.

Petition 133/04, Report No. 99/05, José Miguel Mérida Escobar (Guatemala)

546. 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.

547. 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.

548. 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.

549. 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.

550. By means of a communication dated November 12, 2009, the Commission requested the parties to provide updated information on compliance with the friendly settlement agreement in Report No. 99/05. The parties did not respond within the time-limits stipulated to present the information required.

551. Nevertheless, it must be indicated that, by means of a communication dated April 22, 2009, the State requested the Commission to take into account the material and legal obstacles

that had been encountered regarding compliance with the commitments made in the friendly settlement agreement, which led to an involuntary delay in the process of fulfilling these commitments. Despite this, the State repeated its willingness to comply.

552. As for the scholarships, the State reported that, on April 3, 2009, it held a meeting with representatives of the Planning and Programming Secretariat of the Office of the President of the Republic (SEGEPLAN) and the Ministry of Governance, where the topic of instating the scholarship was addressed and it was first proposed to review the commitment that was made and the actions that had been taken up until then.

553. Regarding the meeting that was held, SEGEPLAN submitted a report involving a series of observations to be considered by the competent bodies prior to establishing the scholarship, which had not been considered at the time the friendly settlement agreement was signed by the parties. Among them, there is no indication of the level of studies being supported by the scholarship or the period of time for which it is to be granted or the specific fund allocation to cover the cost of the scholarship (whether it is partial or total) or identification of the area of studies for which training shall be provided, etc. In this regard, the State reported that, at present, the institutions involved referred to the need to conduct a feasibility study for the commitment as currently agreed upon or to envisage the possibility of making a new proposal for the present commitment as applicable to the concrete reality of the National Civilian Police Force and its staff.

554. Regarding the granting of a lifetime pension, the State pointed out that, on February 4, 2009, COPREDEH was notified of the legal opinion appearing in file No 2006-3329 regarding the request for a lifetime pension for the benefit of the parents of Mr. José Miguel Mérida Escobar. It indicated that, in this opinion, the General Legal Counsel Department and the Consultative Corps of the General Secretariat of the Office of the President, by virtue of its internal regulatory framework, ruled that this request should be denied.

555. As a result, the State indicated that COPREDEH submitted a request to the General Prosecutor of the Nation so that he could identify and agree on an alternative way to fulfill the commitments made in the friendly settlement agreement which have not been feasible because of material and legal obstacles. If authorized, it indicated that this proposal would be submitted to the next-of-kin of Mr. José Miguel Mérida Escobar, so they could express their agreement with the form of compliance, as well as to the Commission as the body overseeing the friendly settlement agreements that were signed until they are fully complied with.

556. 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)

557. 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.

558. 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.

559. 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.

560. 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.

561. By means of a communication dated November 12, 2009, the Commission requested the parties to provide updated information on compliance with the friendly settlement agreement appearing in Report No. 100/05.

562. By means of a communication dated December 11, 2009, the State reported that, with respect to the real estate property for the operation of the Indigenous Association for Business Development (Asociación Indígena para el Desarrollo Empresarial—ASINDE), the Department for State Assets had informed that the urban farm registered in the Second Property Registry with number 11.748, page 248 of ledger 38 of the Assets of the Nation, which is owned by the State of Guatemala, located in street 10 and avenue 22, in the canton of Democracia, zone 3, in the municipality and department of Quetzaltenango, shall be given for usufruct by the ASINDE Association, because it was determined that it meets all the requirements of the Association. It was specified that the above-mentioned Department of State Assets had also reported that the file is still in the stage of submitting the draft government agreement and explanation of reasons for signing by the Minister of Public Finance so that it can thereafter be sent to the Consultative Corps of the General Secretariat of the Office of the President of the Republic for final approval.

563. As for technical training for the families García Yax and García Chuc, the State indicated that it has requested support from the Training and Productivity Technical Institute (Instituto Técnico de Capacitación y Productividad—INTECAP), whose principal goal is to train and certify workers and persons so they can enter the labor market, as well as provide technical and technological assistance in all economic activities and contribute to the country's competitiveness and development. It specified that, according to the information provided by the representatives and petitioners in the case, Mr. Walter Rolando García Yax shall be the person representing the García Yax family and shall establish contact with the staff of INTECAP in Quetzaltenango; and that he had reported to the State about the concrete issues regarding which the members of the ASINDE

Association would be interested in being trained by INTECAP, which was reported in due time to the institution in charge.

564. In addition, by means of a communication of December 7, 2009, regarding the investigation of the facts, the petitioners indicated that it is the State's duty to learn about the circumstances of the progress made in the file of the investigation, because since the date the file was identified until the present date, one year nine months have elapsed without any further information about progress in the investigation.

565. Regarding the granting of the real estate property, the petitioners indicated that the State has reported about the property that can be granted for the operation of the Association. Nevertheless, they pointed out that this property, according to the next-of-kin of the victim who visited the place, has no building whatsoever, so that it is necessary to urgently resolve this inconvenience so that the Association can benefit from adequate facilities for its functioning. They also indicated that the next-of-kin have sent their proposals and requirements for technical training to the State.

566. 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)

567. 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.

568. 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.

569. On November 12, 2009, 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.

570. Despite this, it must be stressed that the State pointed out that it was impossible to comply with the second recommendation because the next-of-kin of the victim were not interested in signing a recommendation compliance agreement or to receive any financial compensation. Regarding this, the State indicated that the absence of an agreement with the next-of-kin of the victim prevents compliance with the recommendations made in this case; nevertheless, it reiterated its position to comply with these recommendations.

571. Regarding this, the Commission reiterates that the first, third and fourth recommendations of Report No. 69/06 can and must be complied with by the State, even when it cannot benefit from the participation or acquiescence of the next-of-kin of the victim. Regarding the second recommendation, the State is urged to establish a special fund to provide reparations to the next-of-kin of the victim in case they accept these reparations in the future.

572. 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 11.658, Report No. 80/07, Martín Pelicó Coxic (Guatemala)

573. 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.

574. 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.

575. 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.

576. 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.

577. 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.

578. By means of a communication dated November 12, 2009, the IACHR requested the parties to provide updated information on the status of compliance with the recommendations made for the present case.

579. The State of Guatemala reported to the Commission that, on July 18, 2007, the Court of Criminal Sentencing issued a ruling acquitting Pedro Acabal Chaperón, who had been charged with the homicide of Mr. Martín Pelicó Coxic. By means of a communication received on July 13, 2009, the State stressed, regarding the investigation, trial and punishment of those responsible, that the corresponding investigation had been conducted and that a trial had been held, in conformity with due process of law, where the injured party filed a petition for total withdrawal of both criminal and civil proceedings against the accused Pedro Acabal Chaperón, which led to a ruling of acquittal in the case (...).”

580. By means of a communication dated November 20, 2009, the petitioners argued that even though the State of Guatemala had taken substantive steps towards full compliance with the IACHR recommendations, some items were still pending. In particular, they pointed out that the State of Guatemala has to investigate the violations that occurred in a complete and exhaustive manner. Also, they referred to the situation of the implementation of the study scholarships offered to the beneficiaries.

581. 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 N° 1/06, Franz Britton (Guyana)

582. In Report N° 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.

583. 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.

584. On November 2, 2007; November 4, 2008; and November 12, 2009 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.

585. 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)

586. 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.

587. 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.

588. On November 12, 2009 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 N° 78/02, Guy Malary (Haiti)

589. In Report N° 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.

590. 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.

591. 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 N° 78/02.

592. 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 N° 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley (Jamaica)

593. In Report N° 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.

594. 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.

595. 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.

596. 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.

597. 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.

598. 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.

599. 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.

600. 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.

601. 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.

602. The IACHR requested updated information to both parties on November 4, 2008 and November 12, 2009, but neither of them replied.

603. 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 N° 50/01, Damion Thomas (Jamaica)

604. In Report N° 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.

605. 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.

606. 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 N^o 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.

607. 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.

608. The IACHR requested updated information to both parties on November 12, 2009 and set a one month period tot 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.

609. 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 N° 127/01, Joseph Thomas (Jamaica)

610. In Report N° 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.

611. 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.

612. 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 re-trial 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.

613. 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.

614. 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.

615. 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 effected 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.

616. In its 2004, 2006, 2007 and 2008 Annual Reports, the Commission stated there had been partial compliance with the Commission's second and third recommendations in Report N° 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.

617. 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 N° 58/02, Denton Aitken (Jamaica)

618. In Report N° 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.

619. 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.

620. 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 effected 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.

621. 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.

622. 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.

623. 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.

624. 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.

625. In its 2004, 2005, 2007 and 2008 Annual Reports, the Commission stated that there had been partial compliance with the Commission's first, second, and third recommendations in Report N° 58/02. 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.

626. 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 N° 76/02, Dave Sewell (Jamaica)

627. In Report N° 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.

628. 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.

629. 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 effected 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.

630. 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.

631. 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 effected 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.

632. 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.

633. In its 2004, 2005, 2007 and 2008 Annual Reports, the Commission stated that there had been partial compliance with the Commission's first and second recommendations in Report N° 76/02. 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.

634. 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 N° 41/04, Whitley Myrie (Jamaica)

635. In Report N° 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.

636. 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.

637. 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.

638. 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.

639. 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 N° 92/05, Michael Gayle (Jamaica)

640. In Report N° 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.

641. 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.

642. 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.

643. 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".

644. 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 N° 61/06, Derrick Tracey (Jamaica)

645. In Report N° 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.

646. 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.

647. The parties have not provided the Commission with up-to-date information regarding compliance with its recommendations set out in Report 61/06. In light of the available information, the Commission holds that compliance with its recommendations is still pending. As a result, the Commission shall continue to monitor its compliance.

Case 11.565, Report No. 53/01, González Pérez Sisters (Mexico)

648. 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.

649. 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.

650. 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.

651. The parties held a working meeting at the 131st Regular Session of the IACHR and agreed to carry out the remaining steps to be taken within the framework of military jurisdiction (drawing a spoken portrait, taking the testimony of one of the victims, and the extension of the statement of the mother of the victims) assuming that afterwards the case would be fully investigated in regular criminal court. As for the State, it pledged to submit its observations to the proposal submitted by the petitioners in July 2001 for integral reparation of damages.

652. By means of a communication dated November 12, 2009, the Commission requested the parties to provide updated information on compliance with the recommendations. The State informed, by means of a communication dated November 3, 2009, that it has demonstrated its will and carried out all the measures at its disposal to request the alleged victims and their representatives to collaborate with the investigating authorities in putting light into the facts. The State provided a list of investigation activities. The State expressed that it will deal with the issues related to the reparation of damages once the ongoing criminal procedure is over. Finally, the State requested a recognition to be made of its will and the efforts it has undertaken to comply with the recommendations included in Report No. 79/00.

653. As for the petitioners, by means of a communication dated December 16, 2009, they indicated that, in compliance with the agreement reached at the working meeting on March 11, 2008, the last three steps were taken on May 21, 2009 in the framework of the military criminal investigation for the purpose of having that authority transfer the investigation to the regular jurisdiction to continue the investigations.

654. Despite this, they indicated that, once all the steps had been taken, the military authorities did not transfer the preliminary inquiry to Mexico's regular criminal jurisdiction, thus failing to comply with what had been agreed upon. On the contrary, they specified that, on November 3 and 27, 2009, the Office of the General Justice Prosecutor of the State of Chiapas notified the victim's legal representative about two writs regarding the preliminary investigation that continues to be conducted under military jurisdiction in the above-mentioned case, where it is indicated that the Attorney General of the Armed Forces would be proposing that criminal proceedings are not admissible because it had not been proven that any crime had even been committed.

655. The petitioners claimed that this means there is complete ignorance of the agreements reached by the parties, which provide that the investigation would be transferred to regular jurisdiction, which never did occur. They added that the representatives do not have the copies of resolutions that were notified and therefore they do not know what they contain exactly and that was the why the Military Attorney General ordered dismissal of the case.

656. Regarding the obligation of providing adequate reparations to the victims, the petitioners indicated that they had not received any communication from the Mexican State referring to the proposal to provide reparations for damages that it must grant to the victims because of the declaration of international responsibility that the Commission made in the respective report.

657. Because of the above, the Commission notes that the investigation of the facts remain in the military jurisdiction and concludes that the above-mentioned recommendations are pending compliance with. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.130, Report No. 2/06, Miguel Orlando Muñoz Guzmán (Mexico)

658. 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.

659. 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.

660. 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.

661. By means of a communication dated November 12, 2009, the IACHR requested both parties to report on the measures taken to comply with these recommendations.

662. By means of a communication dated December 13, 2009, 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 importance of having the State present an examination of the results of the steps taken in the framework of the criminal investigations, their relevance and the goal that was being aimed at with these steps was stressed. They indicated that this request was proposed at the above-mentioned meeting since, to date, the State has not provided the investigation plan whereby explanations are provided about the lines of investigation on which the steps to be taken are based.

663. Regarding this, they specified that, because no adequate information has been provided regarding the progress of the investigations and because the State has only prepared itself to carry out the steps, the authorities of the State of Chihuahua have been approached to work on this matter. Nevertheless, they indicated that the State continues to fail to comply with the agreements that were drawn up internally in the framework of the working meetings that started in 2008 with the Office of the Deputy Prosecutor for Human Rights and Services to the Victims of Crime of the General Justice Prosecutor's Office of the State of Chihuahua.

664. As a result, the petitioners repeated the need to "benefit from a systematization of the steps taken and to be taken in the prior inquiry started by the Office of the General Justice Prosecutor of the State of Chihuahua," as well as the importance of "reviewing the internal case file at a meeting attended by the petitioners, the Office of the Prosecutor of Chihuahua, and the Foreign Affairs Secretariat of Mexico.

665. Regarding the recommendation referring to reparations of violations for the benefit of the next-of-kin, the petitioners indicated that, for the purpose of making progress on this item, they have pledged to submit a proposal to the State, about which information shall be provided to the Commission in due time.

666. The State mentioned that on November 4, 2009, a working meeting took place to follow up to the case in the headquarters of the IACHR. It indicated that in that opportunity, the parties agreed on meeting during 2010 to dialogue on the possible revision and analysis of the file initiated by the Office of the Prosecutor of Chihuahua with regards to the disappearance of lieutenant Miguel Orlando Muñoz Guzman.

667. 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)

668. 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.

669. 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.

670. 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.

671. By means of a communication dated November 12, 2009, the Commission requested the parties to provide updated information.

672. By means of a communication dated October 9, 2009, the State reiterated full compliance with the friendly settlement agreement with regard to school support.

673. Regarding promotion of the legislative reform agreed upon in the eleventh item of the friendly settlement agreement, the presentation of institutional letters constitutes a conclusive action in this aspect. Indeed, the State pointed out that these official letters are the institutional communication mechanism that authorities have at their disposal to provide evidence of their orders, instructions, recommendations, information, petitions, or positions on issues of interest. By virtue of the above, the State considered that it had completely complied with the present item of the agreement.

674. Regarding training, the State indicated that the petitioners had not contacted the state authorities of Baja California for the purpose of agreeing upon a timetable for providing courses. As for the State, it asserted that it does not require publication of the circular issued by the Health Secretary on October 4, 2006 in the states official gazette. It pointed out that the above stems from the fact that the contents of the above-mentioned circular envisages provisions previously found in legal frameworks already in force and which were duly published for their entry into force. The State added that this circular does not provide additional rights or guarantees for women with respect to nonpunishable abortion cases and that it does not generate rights and obligations for the medical staff that might be different from the legal provisions. The State considers that this point of the agreement has totally been complied with.

675. With respect to the production project, the State indicated that the Government of the State of Baja California has at all times shown willingness to support Ms. Paulina del Carmen Ramírez Jacinto in formalizing her business, as well as the land where she is currently operating, and pledged to the interested party to exonerate her from paying for State procedures and to even cover the corresponding payment to the municipal authority for the issuance of the land-use permit. It also indicated that Ms. Paulina del Carmen Ramírez Jacinto had not appeared at the training course that she was invited to take, claiming that, as she did not have the land-use permit, she could not trust that her business would operated.

676. It indicated that it has complied with the agreement, in addition to the amendment of NOM-190-SSA1-1999, "Medical assistance in cases of domestic violence," which was amended as NOM-046-SSA2-2005 "Prevention and attention of domestic and sexual violence and violence against women." It specified that this norm was published in the Official Register of the Federation on April 16, 2009.

677. The State finalized its presentation, repeating its willingness and commitment to comply with the agreements reached with Ms. Paulina del Carmen Ramírez Jacinto.

678. As for the petitioners, by means of a communication dated December 14, 2009, they reported on school support, indicating that although to date school support had been provided, in previous years it was not provided on time. Therefore, they indicated that it is a matter of concern that the mechanism to ensure its future compliance has not as yet been developed. They indicated that this mechanism is also aimed at preventing Paulina from depending on the good will of those who are responsible for providing this school support and at confirming full compliance with an international commitment.

679. Regarding legislative reform, the petitioners reported that the commitment to submit the respective bills of reform was fulfilled on September 5, 2006, although the obligation to promote it remained unmet. The petitioners claimed that the State has partially and insufficiently complied with this item, as the lobbying that was promised was missing, and that after the constitutional reform it is urgent that legislative reforms be adopted as well, to thus ensure that, at

least in cases such as rape, women can gain access to abortions practiced in safe conditions and in the framework of the law.

680. With respect to training, the petitioners pointed out that they hope to deal with this matter in the future using a practical approach with the IACHR in the context of a working meeting. Moreover, the petitioners reported that, to comply with the terms of the friendly settlement agreement and to effectively guarantee that the events suffered by Paulina Ramírez would not be repeated, it is indispensable for the State to take action so that the circular of Baja California issued by the Health Secretariat of this state shall be published quickly in the official gazette of the state of Baja California.

681. Regarding the obligation of the State to update NOM-190-SSA1-1999 "Medical assistance in case of domestic violence," although it is certain that it was amended and published in April 2009 as NOM-046-SSA2-2005 "Prevention and attention of domestic and sexual violence and violence against Women," there were certain matters of concern. Indeed, it was pointed out that, although the norm was updated, the approved version includes substantial changes that, in the case of rape, would make an abortion, "instead of an obligation and a right, a mere possibility which, according to the language of the regulation, could be construed as an action to be decided by medical staff."

682. With respect to the production project, the petitioners reported on the procedures with the Government of the state of Baja California, indicating that there was no willingness or support from those who had the obligation to facilitate these procedures. They specified that, although it involves the jurisdiction of two levels of government that are different and independent, this does not prevent the Government from interceding in the competent bodies to sensitize them about Paulina's needs.

683. 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 11.381, Report No. 100/01, Milton García Fajardo (Nicaragua)

684. 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.

685. 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.

686. 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.

687. On November 12, 2009, the Commission requested the State and the petitioners to provide information about the status of compliance with the recommendations.

688. On December 15, 2009, the State reported that it was impossible to comply with the first recommendation because, by virtue of domestic legislation, the statute of limitations for the crime had come into force, which prevented the corresponding investigations from being conducted. Concretely, he indicated that the domestic legal provisions regarding the statute of limitations in criminal proceedings are a previously established legal norm that is currently in force, setting limits for the investigation, prosecution and criminal proceedings, and as long as these provisions are not amended or reformed, they constitute an objective legal obstacle to compliance with this recommendation. In this regard, it repeated that compliance with this recommendation was not possible and requested the IACHR to declare that compliance had been completed.

689. In addition, the State pointed out, regarding compliance with the agreements reached with most of the former Customs employees, that these agreements are in the process of being fulfilled to the extent that it is feasible in the country and indicated that, to date, it had proceeded to reinstate 43 former employees and that there is full willingness to continue this process. Regarding the payment of reparations, it indicated that the State acted to the extent of its financial capacity to provide a positive response to the petitioners. Finally, regarding the proposal submitted by the petitioner Alfredo Barberena regarding the six victims who did not sign the reparations agreement with the State, it indicated that it does not have the capacity to take up new and different agreements, and because of this the agreement signed on June 7, 2007 is available for those who wish to adhere to it, without privileges or preferential treatment, in line with Nicaragua's economic reality.

690. As for the petitioners, in 2009, they reported that the State had not investigated or punished those responsible for injuries to the victims. As for reparations, they reported that the State had not fulfilled the commitments made with the victims who signed the agreement, because they have only paid part of the amount that was pledged and have not recognized social security quota payments, nor have they reinstated most of the employees into the public sector. They also reiterated the need for the State to sign a reparation agreement with the victims who had not participated in the agreement of 2007, on the basis of international human rights standards referring to reparation.

691. The IACHR appreciates 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 reminded the State of its obligation to investigate and punish those responsible for the human rights violations.

692. 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)

693. 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.

694. 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.

695. On November 13, 2009, the Commission requested the parties to provide updated information; nevertheless, at the close of the present Annual Report, the parties had not submitted any information regarding compliance with the above-mentioned recommendations of the IACHR. 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 11.800, Report No. 110/00, César Cabrejos Bernuy (Peru)

696. 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.

697. 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.

698. 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.

699. By communication of October 31, 2008, the IACHR asked both parties to submit up-to-date information on the implementation of the above-noted recommendations. The IACHR did not receive any response from the parties within the time set.⁵²

700. On November 10, 2009, the Commission requested both parties to provide updated information on progress in the process of implementing the recommendations.

701. By means of note 7-5-M/826 received on December 14, 2009, with annexes, the State indicated, in accordance with ruling No. 19627-09-DIRPEN-PNP/UNIASJUR of October 30, 2009, that it had complied with the three recommendations specified in report 110/00 of December 4, 2000. Nevertheless, it did not explain what the reparations for moral and material injury which it supposedly granted to the victim consisted of.

702. At the time of drafting the present chapter, the petitioner had not provided any information on the status of the implementation of the recommendations.

703. As a result, the IACHR does not have enough elements to judge whether the State has totally complied with the recommendations contained in the report or not. Therefore, the Commission shall continue to monitor its compliance.

Case 11.031, Report No. 111/00, Pedro Pablo López González *et al.* (Peru)

704. 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

⁵² It should be noted that by communication of December 5, 2008, the State requested an extension to answer, which was granted by the IACHR for seven days by note of December 10, 2008. Subsequently, by communication of December 24, 2008, the State presented a new request for extension, which was not granted to it as the pertinent deadlines for the purposes of preparing this section were falling due.

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.

705. 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.

706. By communication of October 31, 2008, the IACHR asked both parties to submit up-to-date information on implementation of the above-noted recommendations. The IACHR not receive information from the State within the time set.⁵³

707. By communication of December 5, 2008, the petitioners submitted follow-up information. Specifically, with respect to the first recommendation of the IACHR, the petitioners reported that in prosecuting the persons allegedly responsible for the disappearance of Pedro López González and the other victims from “El Santa,” the State has been taking investigative actions with respect to the persons allegedly responsible for the facts. Nonetheless, they indicated that five years after the beginning of the criminal proceeding and three years since the beginning of the oral trial, to date not all of the persons responsible for these facts have been sanctioned, which translates into a violation of the right of the victims’ next-of-kin to know the circumstances in which their loved once disappeared. They noted that in effect, the Second Special Criminal Court opened a criminal proceeding on February 14, 2003, against 27 persons for the crimes against life, the body, and health – aggravated homicide and against liberty, in the form of aggravated kidnapping to the detriment of the victims, and that the oral trial began on August 15, 2005, yet to date it has not concluded with the issuance of a conviction or an acquittal.

⁵³ It should be noted that by communication of December 5, 2008, the State asked for an extension to answer which was granted by the IACHR for seven days by note of December 18, 2008.

708. They indicated, nonetheless, that seven of those indicted confessed; one, upon early termination of the process, accepting the charges brought against him, has been sentenced to six years in prison and the payment of a monetary sum as civil reparation; and four of those indicted signed effective cooperation agreements with the Public Ministry, which were eventually approved. They also note that the sanctions imposed on some of those responsible have come about as a result of their initiative, in order to get the benefits of effective cooperation, which at the end of the day may have translated into the impossibility of identifying the whereabouts of the victims' remains given that they had not given that information when accessing the benefit.

709. As for the recommendation to consider without effect any internal, legislative, or other measure that tends to impede the investigation, prosecution, and punishment of the persons responsible for the victims' forced disappearance, the petitioners reported that by virtue of the judgments issued by the Inter-American Court in the Barrios Altos case, the Peruvian State has not considered the amnesty laws to be an obstacle to the prosecution and sanction of the persons responsible for the forced disappearance of the victims in this case. They also noted that said situation motivated pronouncements from the Peruvian Constitutional Court on the lack of effect of those provisions. They indicated that notwithstanding the foregoing, recently two proposed laws (No. 2844/2008-CR and No. 2848/2008-CR) were drawn up whose eventual approval could constitute a step backwards in the implementation of this recommendation. They indicated, in this respect, that such proposed laws have been presented to the Congress of the Republic on November 6, 2008, proposing that amnesty and pardon be granted, respectively, for members of the Armed Forces and National Police who have participated in actions related to human rights violations.

710. With respect to the adoption of the measures necessary for the victims' next-of-kin to receive adequate and timely reparation, the petitioners reported that while the Peruvian State has designed a program of reparations, supplement by the approval of Law No. 28592 "Law of the Comprehensive Plan of Reparations" and its regulation, to date measures are pending adoption for making the payment of individual compensation to the victims' next-of-kin as well as non-monetary reparations, specifically, reparations in respect of housing. With respect to the housing benefit they indicated that the Peruvian State adjudicated to the Ministry of Justice a piece of land located in Huapicha, in order to give a lot to the next-of-kin of the 200 victims included in section (c) and (d) of the Joint Press Release, with respect to which the State continues undertaking actions for clearing title and preparing that piece of land for the purpose of adjudicating title to the lots. Nonetheless, to date other lots have yet to be located for the victims' next-of-kin who have not been included in the list of beneficiaries of the land located in Huachipa. Finally, with respect to the health benefit they indicated that the Executive Secretariat of the High-level Multisectoral Commission (CMAN) communicated to APRODEH that the list of beneficiaries was submitted to the Integrated Health System (SIS) so that it can be submitted to the country's health centers, so the persons included in those lists can affiliate with them.

711. On November 10, 2009, the Commission requested both parties to provide updated information on progress in implementing the recommendations. At the time of the drafting of the present chapter, the State had not responded to this request for information.

712. By means of a communication dated December 10, 2009, the petitioners indicated that, to date, no ruling in the criminal proceedings in the domestic system had been issued with respect to the disappearances of "El Santa" and that it had not been possible either to locate the remains of the victims.

713. They reported in addition that projects Nos. 2844/2008-CR and 2848/2008-CR to grant amnesty and pardon, respectively, to the members of the Police Force charged with

participating in the violation of human rights continue to be examined by the Justice and Human Rights Commission of Congress.

714. They finally pointed out that, to date, the measures for compliance with the non-monetary reparations for the next-of-kin of the victims are still pending.

715. Based on the above-mentioned, the IACHR concludes that the State has partially complied with the recommendations set forth in the report. As a result, the Commission shall continue to monitor the items that are pending.

Case 11.099, Report No. 112/00, Yone Cruz Ocalio (Peru)

716. 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.

717. 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.
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.

718. 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.

719. 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."

720. In addition, the State indicated that the Provincial Prosecutor of the Office of the Specialized Prosecutor against Terrorism and Crimes against Humanity for the Judicial District of Huánuco presented report No 010-2006-MP-FPECTy LH-TM related to the case of Mr. Yone Cruz Ocalio. That report notes that in the investigation pursuant to the Resolution of August 22, 2008, by which it was decided to expand the investigations in said prosecutorial office, the Provincial Prosecutor of the Mixed Prosecutorial Office of Aucayacu was asked to send a certified copy of the criminal complaint. In addition, it is noted that the Prosecutor of the Mixed Prosecutorial Office of Aucayacu sent a certified copy of Case File 39-2008 against the accused ... for the alleged crime against the life, body, and health to the detriment of Mozambique Quiñones *et al.*, accordingly that case file is still pending an evaluation by the Office of the Specialized Prosecutor against Terrorism and Crimes against Humanity of the Judicial District of Huánuco considering that “they are tomes of 750 and 397 folios, respectively, and due to the number of injured parties, in addition to the excessive workload of the prosecutor’s office.”

721. As for implementation of the recommendations, it should be recalled that the Government of Peru, in relation to the second recommendation, has repeatedly indicated that there is a practice in its institutions, based on the judgment of the Inter-American Court in the Barrios Altos case, that amnesties cannot be validly raised in opposition to investigations undertaken to identify and subsequently sanction persons responsible for human rights violations. In this sense, the Peruvian State has indicated that the solution to the procedural obstacle posed by amnesty laws was duly established by that judgment of the Inter-American Court, which by disposition of that Court is of general scope for any case in which such laws have been applied. In that Report No. 210-2008-JUS/CNDH-SE/CESAPI, the State noted that no consideration has been given to derogating the amnesty laws since it would be tantamount to implicit recognition of its effect in time, and therefore would be applicable based on the criminal justice principle of benign retroactivity.

722. On November 10, 2009, the Commission requested both parties to provide updated information on progress in implementing the recommendations. At the time of the drafting of the present chapter, none of the parties had responded to this request for information.

723. Based on the above-mentioned, the IACHR concludes that the State has partially complied with the recommendations set forth in the report. As a result, the Commission shall continue to monitor the items that are pending.

Cases 10.247 *et al.*, Report No. 101/01, Luis Miguel Pasache Vidal *et al.* (Peru)

724. 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.

725. 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.

726. By communication of October 31, 2008, the IACHR asked both parties to submit up-to-date information on the implementation of the above-noted recommendations.

727. By communication of December 5, 2008, the State submitted report No. 211-2008 JUS/CNDH-SE/CESAPI with respect to case No 10,247 - Luis Pasache Vidal *et al.*, indicating that it would send in supplemental information in relation to the other persons injured in report No. 101/01.⁵⁴ In particular, the state reported that the Office of the Second Supra-provincial Criminal Prosecutor of Lima formalized a complaint and an amended complaint lodged against the accused ... for aggravated homicide and kidnapping to the detriment of Luis Miguel Pasache Vidal. In effect, it is indicated that by complaint No. 211-2002 of December 18, 2007, it is noted with respect to the death of Mr. Pasache Vidal and Mr. Sócrates Javier Porta Solano that, in view of the indicia, and the version of a witness, the alleged perpetrators of the above-noted deaths had been members of the self-styled "Comando Rodrigo Franco," accordingly said action was necessarily carried out with the knowledge and approval of the accused ... in his capacity as the head of the group. Finally, it is indicated that there are indicia suggesting that the way in which those persons were executed suggests that it was done with "unnecessary suffering," as the autopsy by the medical examiner indicates that Mr. Pasache Vidal had hematomas that show that he was submerged in the sea, which caused his death.

728. It should be recalled that the Government of Peru, in relation to the first recommendation, has on several occasions noted that there is a practice on the part of its institution, based on the judgments of the Inter-American Court of Human Rights in the Barrios Altos case, to the effect that amnesties cannot be validly raised in opposition to the investigations undertaken to identify and punish the persons responsible for human rights violations. In this sense, the Peruvian State considers that the solution to the procedural obstacle posed by the amnesty laws was duly established by those judgments of the Inter-American Court, which by disposition of that Court are of general scope over any case in which the laws in question have been applied. Therefore, it has not considered derogating those laws.

729. By communication of December 5, 2008, the petitioners submitted information with respect to the status of the investigations in relation to a series of cases encompassed in report No 101/01. The representatives of the victims included in Case No. 10,247 – Luis Pasache Vidal *et al.*– indicated that the Fourth Supra-provincial Criminal Court, by resolution of May 28, 2008, ordered that a criminal proceeding be opened against two accused as alleged immediate perpetrators and against one accused as a mediate perpetrator of the crime of kidnapping and aggravated homicide (with great cruelty) considered crimes against humanity to the detriment of Luis Pasache Vidal. In relation to Case No. 11,680, whose victim is Mr. Moisés Carbajal Quispe, they indicate that the Second Transitory Criminal Chamber of the Supreme Court ruled that there

⁵⁴ By communication of December 24, 2008, the State submitted a request for an extension, which was not granted given that the deadlines for purposes of preparing this section were falling due.

was no nullity in the judgment of January 31, 2008, in the grounds for absolution of the accused of the indictment, for crime against the life, body, and health, in the modality of aggravated homicide, to the detriment of Moisés Carbajal Quispe, it being found that the matter is still in the investigative phase. As for Case No. 11,132, whose victim is Ms. Edith Galván Montero, it was reported that on February 17, 2008, the Office of the Fourth Supra-provincial Criminal Prosecutor notified APRODEH of the issuance of the resolution of January 7, 2008, by which it was resolved that the proceedings should be archived definitively, on the grounds, among others, "that despite all the investigative steps taken and evidence produced in this investigation there has been no determination of the real existence of the unlawful act investigated, and obviously the alleged perpetrators have not been individually identified." Nonetheless, they report that on September 22, 2008, it was ordered to find the complaint remedy (*recurso de queja*) filed against the resolution of the Office of the Fourth Supra-provincial Criminal Prosecutor to be well-founded, ordering the continuation of the investigations into the forced disappearance of Edith Galván Montero.

730. As for the recommendation of striking down all internal measures, legislative or otherwise, that tend to impede the investigation, prosecution, and punishment of the persons responsible for the forced disappearance of the victims, the petitioners reported that by virtue of the judgments handed down by the Inter-American Court in the Barrios Altos case, the Peruvian State has not considered the amnesty laws to be an obstacle for prosecuting and punishing the persons responsible for the forced disappearance of the victims in this case, noting, moreover, that this situation had motivated pronouncements by the Peruvian Constitutional Court on the lack of effect of those norms. They also indicated that this notwithstanding, recently two proposed laws were drawn up (No. 2844/2008-CR and No. 2848/2008-CR) whose eventual adoption would constitute a step backwards in implementing this resolution. They indicated, in this respect, that such legislative proposals have been introduced to the Congress of the Republic on November 6, 2008, proposing an amnesty and pardon, respectively, for members of the Armed Forces and National Police who have participated in actions related to human rights violations.

731. With respect to the adoption of the measures needed for the victims' next-of-kin to be able to receive adequate and timely reparation, the petitioners reported that while the Peruvian State has designed a reparations program, supplemented by the adoption of Law No. 28592 "Law on the Comprehensive Reparations Plan" and its regulation, no individual compensation has yet to be paid to the next-of-kin of the victims in the case, nor have measures been adopted to implement non-monetary reparations, specifically reparations in housing. With respect to the benefit of housing, they indicated that the Peruvian State adjudicated to the Ministry of Justice the land located in Huapicha, so as to give a lot to the next-of-kin of the victims included in sections (c) and (d) of the Joint Press Release, with respect to which the State continues to take actions to clear title and prepare that land for the purpose of adjudicating title to the lots. Nonetheless, other lots have yet to be located for the next-of-kin of the victims who have not been included in the list of the beneficiaries of the land located in Huachipa. They specified that the next-of-kin of the victims in cases Nos. 10,247, 10,472, 10,994, 11,051, 11,057, 11,088, 11,161, 11,292, 10,744, 11,040, 11,132, 10,431, and 11,064 are included in the list of beneficiaries of the land at Huachipa. The next-of-kin of the victims in cases Nos. 10,805, 10,913, 10,947, 11,035, 11,065, 11,680, 10,564, 11,126, 11,179, and 10,523 are waiting for a piece of land to be located before they will be able to have lots adjudicated to them.

732. With respect to the health benefit, they noted that the Executive Secretariat of the High-level Multisectoral Commission (CMAN) communicated to APRODEH that the list of beneficiaries was sent to the Integrated Health System (SIS) for it to be forwarded to the country's health centers, so that the persons in those lists could become affiliates. In addition, the petitioners reported that the Peruvian State ratified the Inter-American Convention on Forced Disappearance of Persons on February 8, 2002.

733. The petitioners and legal representatives of the victims in case No 11,064, whose victims are Flaviano Sáens Chuquivilca, Edgar Chaguayo Quispe, Miriam Lidia Navarro Concha, Miguel Angel Cieza Galván, Socimo Curasma Sulla, Justiniano Fredy Vicente Rivera, Augusto Galindo Peña, Juana Ñahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Sáenz Munarris, Hugo Puente Vega, and Peter David Cosme Ureta, reported that the investigations have been under way for more than seven years and to date they have yielded no significant advances. They noted that the prosecutorial office in charge of the case does not have a plan for collecting evidence, and that as it is not a specialized prosecutorial office, it has an excessive workload for it investigates and prosecutes common crimes with an accused in jail, which are given priority, to the detriment of cases such as this one. As regards Case No. 10,744, whose victim is Arturo Torres Quispe, they indicate that it is a case that has seen no progress in the investigations given that the possible perpetrators have not been identified, and it has been inactive for several years. As for the question of reparations, they indicated that very little progress has been made, and that only some next-of-kin have benefited. They indicate that the greatest difficulties are in health care, given that the beneficiaries in the most remote parts of the country apparently were not registered as affiliates, or not all the beneficiaries are registered, requirements are demanded of them that are not provided for as conditions for securing medical care, they must register in plans that are not the right ones, and they do not receive the corresponding medical exams, although they should be covered by insurance through the Integrated Health Service. In terms of the housing benefit they indicated that the Ministerial Resolution on adjudication had not been issued, nor had the title been processed for the beneficiaries. As for the education benefit, they indicated that none of the persons represented by CEAS has acceded to this type of reparation. With respect to Case No.10,433 they indicated that more than two years have elapsed and the Forensic Anthropology Team has not issued the respective forensic report, and the DNA tests have not been done of the 55 human remains exhumed at the Jaula cemetery, seriously jeopardizing the investigation and the right to the truth. As for that case and case No. 10,551, they reiterated the difficulties in terms of the reparations in health, housing, and education detailed above.

734. On November 24, 2009, the Commission received information from the petitioners about the total failure to comply with the Commission's recommendations for case 11.064, included in the report whose implementation is reviewed in the present section. Specifically with regard to the situation of the victim Miguel Ángel Cieza Galván, it was reported that the State, despite commitments made in the framework of a working meeting held in 2008 at the Commission's headquarters, went back on its intention to provide reparations for the victim until the National Reparations Plan starts being applied, which is supposed to be implemented in the course of 2010.

735. On November 10, 2009, the Commission requested the parties to provide updated information regarding progress in implementing the recommendations. At the time of drafting the present chapter, the State had not responded to this request for information.

736. By means of a communication dated December 10, 2009, the petitioners reported that projects No 2844/2008-CR and 2848/2008-CR to grant amnesty and pardon, respectively, to the members of the Police Force charged with participating in the violation of human rights continue to be examined by the Justice and Human Rights Commission of Congress.

737. Regarding the investigations conducted in domestic jurisdiction, they indicated that in general there is no progress except with the facts of case No. 11.051. On October 6, 2009, the hearing of evidence against Santiago Martín Rivas and Eudes Najarro Gamboa as the alleged perpetrators of the crime was held, pursuant to Article 108, third paragraph of the Criminal Code.

738. They pointed out that, in addition, to date, the measures for complying with the program of non-monetary reparations for the next-of-kin of the victims are still pending.

739. As a result, the IACHR concludes that the State has partially complied with the recommendations set forth in Report No. 101/01. Therefore, the Commission shall continue to monitor the items that are pending.

Case 12.191, Report No. 71/03, María Mamérita Mestanza (Peru)

740. On October 10, 2003, by Report No. 71/03, the Commission approved a friendly settlement agreement in the case of María Mamérita Mestanza.

741. 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 Merstanza 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, 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.

742. 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.

743. By communication of December 5, 2008, the State submitted report No. 209-2008-JUS/CNDH-SE/CESAPI with information on the implementation of the clauses of the friendly settlement agreement. As regards the investigation into the facts of this case, the State reported

that the Office of the Special Prosecutor for Human Rights issued a resolution on January 16, 2007, by which it removed the proceedings to the Office of the Superior Prosecutor of Cajamarca for the purpose of having indictments handed down against a series of persons allegedly involved in the facts for a series of crimes, among which one can mention the crime against the life, body, and health – unintentional homicide and exposure to danger of a dependent person with an aggravating circumstance – both crimes to the detriment of Ms. María Mamerita Meztanza. It also indicated that in that resolution it is noted that an exhaustive investigation is in order with respect to the judges (*magistrados*) involved in processing the original complaint, since the family members had apparently had no timely access to justice, and it was ordered that the matter be archived definitively; as well as the need for an investigation into the conduct of the physicians who performed the autopsy. In addition, the State reported that the Office of the Specialized Provincial Prosecutor for Crimes against Human Rights ordered that the proceedings be joined to complaint No. 18-2002, whose objective is to clarify the aim of the Program for the Application of Voluntary Surgical Contraception nationally, and the alleged commission of crimes against humanity and genocide.

744. It also indicated that by resolution of September 19, 2007, the summary was prepared of the 25 volumes that constitute the record, and several investigative measures were ordered, and that a Work Plan be drawn up that includes a social study with respect to the impact and repercussions on the family environment caused by the application of contraceptive methods, with special emphasis on tubal ligation and vasectomies. In this respect, the State indicated that it was requesting information from the Office of the Attorney General.

745. In addition, it 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.

746. Subsequently, the State indicated that from the up-to-date information submitted by the Provincial Prosecutor of the Office of the Specialized Prosecutor for Crimes against Human Rights, it appeared that given the complexity and extent of investigation No. 18-2002, the prosecutors who were in charge of that Office ordered, on several occasions, the extension of the deadline so as to continue with the inquiries as needed to fully clarify the facts. In this regard, it indicated that said prosecutorial office is presently engaged in the analysis of the entire investigation to determine whether there was some crime in the application of the Voluntary Surgical Contraception Program (Programa AQV), and if so to identify the persons allegedly responsible.

747. 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. Mamèrita Meztanza 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. Mamèrita Meztanza'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.

748. 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.

749. With regard to the educational benefits, particularized information was given with respect to Ms. Mamérita Meztanza Chávez's seven children.

750. 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 Diplomat 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.

751. The petitioners indicated that with respect to the investigation into the facts, the State, through the Office of the Specialized Prosecutor for Human Rights, initiated the investigations into this case on March 9, 2004, and note that four years have gone by without any official complaint being lodged against the persons allegedly responsible, thus they indicate that this is evidence of sluggishness in the investigations. In addition, they indicated that the prosecutor responsible for the investigations presented his resignation to the Public Ministry in December 2007, and that in May 2008 the Office of the Attorney General appointed a new prosecutor in charge, thus that office had no prosecutor designated to it for five months, which seriously affected the development of the investigation. In addition, the petitioners indicated that the State had not taken any state action with a view to going forward in the administrative and criminal investigations into the action of the representatives of the Public Ministry and the Judicial Branch who failed to take measures aimed at clarifying the facts alleged by the widower of Ms. Mamérita Meztanza. They noted that there is only a resolution from the prosecutorial office in charge, of November 24, 2004, which states that based on the functional conduct of the judges involved, one should begin an exhaustive investigation, but that since that resolution was adopted no steps have been taken in that direction. In summary, they indicated that to date, more than 10 years after the facts, and five years since the friendly settlement agreement was signed, there is no criminal or administrative sanction against the perpetrators of the facts of this case.

752. 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.

753. 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.

754. 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.

755. 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.

756. Regarding administrative investigations conducted in Cajamarca, the petitioners reported that, to date, there are only two resolutions against the alleged responsible parties and that, nevertheless, these officers continue working in public health institutions and have not been dismissed.

757. As for the State, it indicated its willingness to hold once again the working group meetings to ensure follow-up of this and other cases of women in the same situation. It considered that the Attorney General’s Office is encountering problems in the investigation and that the current work system is not adequate. It stressed that the case of Ms. Mestanza is representative of involuntary contraceptive surgeries in Peru, which encompass a known universe of 2,074 injured parties.

758. It added that, in its opinion, the investigation was exhaustive, regardless of the outcome leading to its dismissal because of the statute of limitations. It indicated that, in this regard, the Organizational Law of the District Attorney’s Office grants powers to the attorney generals to act on the basis of their own judgment. It also indicated that, in this case, the resolution to dismiss the case because of the statute of limitations is not viewed as *res judicata* and that it is possible to start a new investigation, extracting the case from investigation file 18/2002 to which it was added and which includes, in addition to that of Ms. Mestanza, 199 other victims. It asserted that, before the end of the year, a resolution would be issued by the Attorney General’s Office regarding the case of Ms. Mestanza.

759. 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.

760. At the time of the drafting of the present chapter, the State's reply to the communication referred to in the preceding paragraph had not been received.

761. As a result of the information that was presented, the Commission concludes that the friendly settlement agreement has been partially complied with. Therefore, the Commission shall continue to monitor the items that are pending.

Case 12.078, Report No. 31/04, Ricardo Semoza Di Carlo (Peru)

762. On March 11, 2004, by Report No. 31/04, the Commission approved a friendly settlement agreement in the case of Ricardo Semoza Di Carlo.

763. 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.

764. 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.

765. 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.

766. 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.

767. Furthermore, the State indicated that it was waiting for updated information from the Ministry of the Interior about the investigation of the facts and the punishment of those responsible. At the time of the drafting of the present report, this information had not been provided to the Commission.

768. Because of this, the IACHR 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.

Petition 185-02, Report No. 107-05, Roger Herminio Salas Gamboa (Peru)

769. On December 28, 2005, by Report No. 107/05, the Commission approved a friendly settlement agreement in the petition regarding Roger Herminio Salas Gamboa.

770. 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.

771. 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.

772. 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.

773. 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.

774. 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.

775. On November 10, 2009, the Commission requested both parties to provide updated information on the progress being made in complying with the commitments made by the State as a

result of the friendly settlement agreement. At the time of drafting the present chapter, the State had not responded to this request for information.

776. As a result, the IACHR 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.

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)

777. 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.

778. 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.

779. By communications of November 3, 2008, the IACHR asked both parties to provide up-to-date information on the implementation of the friendly settlement agreements contained in the above-mentioned reports.

780. 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.

781. 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.

782. 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.

783. In response to the information submitted by the parties, the IACHR concludes that the friendly agreements included in the reference reports have been partially complied with and, as a result, the Commission shall continue to monitor the items that are pending.

784. It must be reiterated that the Commission cannot neglect to note and appreciate that the State has stated on several occasions its international responsibility for the violation of human rights of the persons who were the subject of the process of ratification conducted by the National Judicial Council in the conditions indicated in the approved reports, that the State has signed several friendly settlement agreements with a large number of individual victims, that many unratified judges who signed these agreements have been reinstated and that, in 2008, a ceremony of public apologies was held for 79 judges. Despite the above and in conformity with information received by the IACHR, the clauses of the friendly settlement agreements signed up to now have not been fully complied with. As a result, the IACHR repeats its request to the State to make all relevant and possible efforts to guarantee full compliance with the agreements for the specific characteristics of each case.

Petition 494-04, Report No. 20/08, Romeo Edgardo Vargas Romero (Peru)

785. 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.

786. 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.

787. 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 of drafting the present chapter, none of the parties had responded to the request for information. As a result, the Commission shall continue to monitor the items that are pending.

Case 9903, Report N° 51/01, Rafael Ferrer Mazorra *et al.* (United States)

788. In Report N° 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.

789. 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.

790. 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.

791. 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.

792. 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 N° 52/01, Juan Raul Garza (United States)

793. In Report N° 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.

794. 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.

795. In its 2006 and 2007 Annual Reports, the IACHR presumed that the recommendations were pending compliance. By note dated March 6, 2007, the State informed the Commission that Mr. Garza had been executed in June of 2001; with regard to recommendation No. 2, the State reiterated its previous position stated in its letter of December 15, 2005, insofar as it disagreed with this recommendation. By letter dated January 6, 2009, the State reiterated its position.

796. On November 12, 2009, the IACHR requested both parties to submit within one month updated information 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 petitioner responded on November 12, 2009 and reiterated that Mr. Garza had indeed already been executed and that the State had also failed to comply with recommendation No. 2.

797. On the basis of the foregoing information, the Commission concludes that the recommendations are still pending compliance. Accordingly, it will continue to monitor compliance with recommendation No.2 of the Report.

Case 11.753, Report N° 52/02, Ramón Martínez Villarreal, (United States)

798. In Report N° 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. Martinez Villareal 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.

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

1. Provide Mr. Martinez Villareal 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. Martinez Villareal'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.

800. 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 Villareal was considered incompetent to stand trial, and subsequently, the death sentence was vacated. According to the State, as of February 5, 2007, Mr. Martínez Villareal was undergoing treatment at an Arizona State Hospital, and was still determined to be incompetent to be re-sentenced.

801. 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.

802. 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".

803. 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.

804. 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.

805. 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 N° 75/02, Mary and Carrie Dann (United States)

806. In Report N° 75/02 dated December 27, 2002, the IACHR concluded that the State failed to ensure the Danns' 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.

807. 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 Danns' 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.

808. 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.

809. 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.

810. 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.

811. 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 cyanid 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 Danna 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”.

812. 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.

813. 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.

814. 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.

815. 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.

816. 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.

817. 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".

818. Based upon the information available, the Commission considers that compliance with its recommendations set forth in Report N° 75/02 remains pending. Therefore, it will continue to monitor compliance with its recommendations.

Case 11.193, Report N° 97/03, Shaka Sankofa (United States)

819. In Report N° 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.

820. 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.

821. 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 N° 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.

822. 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.

823. 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 laws, 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.

824. The Petitioners have not provided the Commission with updated information since the publication of its 2006 Annual Report.

825. Therefore, the Commission concludes that compliance with the recommendations in Report N° 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 N° 98/03, Statehood Solidarity Committee (United States)

826. In Report N° 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.

827. 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.

828. 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.

829. 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.

830. Based upon the information available, the Commission considers that compliance with its recommendation remains pending. Accordingly, it will continue to monitor compliance with its recommendations.

Case 11.331, Report N° 99/03, Cesar Fierro (United States)

831. In Report N° 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.

832. 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.

833. 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.

834. 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*).

835. 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".

836. 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.

837. 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".

838. For its part, the United States sent a letter on January 6, 2009 that reiterates the position held earlier on this case.

839. 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.

840. 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 N° 100/03, Douglas Christopher Thomas (United States)

841. In Report N° 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.

842. 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.

843. 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.

844. 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.

845. 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.

846. In view of the above, the Commission declares that compliance with the recommendations in Report N° 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 N° 101/03, Napoleon Beazley (United States)

847. In Report N° 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.

848. 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

849. 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.

850. 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.

851. 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 N° 1/05 Roberto Moreno Ramos, (United States)

852. In Report N° 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.

853. 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.

854. 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.

855. 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.

856. 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)

857. 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.

858. 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.

859. 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.

860. 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.

861. 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".

862. 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)

863. 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.

864. 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.

865. In its 2006, 2007 and 2008 Annual Reports, the Commission presumed that the recommendations in Report N° 91/05 were pending compliance.

866. 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.

867. 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.

868. 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)

869. 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.

870. 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".

871. 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.

872. 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".

873. 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 11.500, Report No. 124/06, Tomás Eduardo Cirio (Uruguay)

874. 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.

875. 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.

876. On November 13, 2009, the Commission requested the parties to provide updated information on the status of compliance with the recommendations.

877. By means of a note dated December 9, 2009, the State reported to the Commission that it had complied with the recommendations made in Report No. 126/06 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.

878. 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.

879. 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.

880. On the basis of the information provided by the parties, the Commission observes that the State has complied with both the first and the second recommendations, as set forth in its Report No. 124/06. As for the third recommendation, the Commission appreciates the efforts made by the Uruguayan State to adjust domestic legislation to the standards of the American Convention with respect to freedom of expression and due process of law in military jurisdictions. In this regard, it takes note of the adoption by Parliament of the National Defense Law, as well as the objection made by the State on the basis of which its entry into force is pending because of the veto imposed by the Executive Branch of Government. The IACHR encourages the Uruguayan State to continue its efforts to ensure full compliance with the recommendations made by the Commission in the present case.

881. Based on the above-mentioned, the IACHR concludes that the State has partially complied with the recommendations set forth in the report. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.555 (Petition 562/03), Report No. 110/06, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola (Venezuela)

882. On October 27, 2006, by means of Report No. 110/06⁵⁵, 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.

883. 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.

884. 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

⁵⁵ 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>

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. 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.

885. On November 13, 2009, the Commission asked the parties for up-to-date information on the state of compliance with the agreement, but did not receive a response.

886. 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

887. 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.

888. The following is a summary of the 41 provisional measures in force during the period covered by this report, according to the country ordered to implement them. 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.*

889. 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 de los 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.

890. Over the year 2009, the Commission periodically submitted its observations on the State's reports regarding these measures.

Mendoza Prisons

891. In 2009, the Commission presented information and comments related to 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.

892. Over the year 2009 the Commission submitted observations on the State's reports regarding these measures. In addition, in November 2009 the Commission submitted a report on the visit made to the prisons by the Rapporteur on the Rights of Persons Deprived of Liberty.

b. Barbados

Tyrone DaCosta Cadogan

893. On October 31, 2008, the Commission submitted a request to the Court seeking provisional measures to protect the life and physical integrity of Mr. Tyrone DaCosta Cadogan, a prisoner on death row in Barbados, until such time as the Inter-American Court rules on the violations alleged by the Commission in the application it filed with the Inter-American Court that same day. On November 4, 2008, the President ordered urgent measures on Mr. Cadogan's behalf and asked the State and the other parties to submit their comments, which have been reported in due course. On December 2, 2008, the Court *en banc* confirmed the President's order and ordered provisional measures on behalf of Mr. Cadogan.

894. The Court handed down its judgment on preliminary objections, merit, reparations, and costs on September 24, 2009, in which it lifted the provisional measures because "the State's obligations within the framework [of same], particularly the obligation to refrain from executing Mr. DaCosta Cadogan, are superseded by those that ordered in the [...] Judgment."

c. Brazil

Urso Branco Prison

895. In 2009, 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".

896. The President of the Court issued an order on August 17, 2009, convening the parties to a public hearing at the Court's headquarters on September 30, 2009. The order is available at: http://www.corteidh.or.cr/docs/medidas/urso_se_07_portugues.pdf (in Portuguese) and at: http://www.corteidh.or.cr/docs/medidas/urso_se_071.pdf (in Spanish).

897. A public hearing was held on September 30, 2009, during the Court's 84th regular session, to receive up to date information from the parties regarding the implementation of these measures; participating were the Commission, the beneficiaries' representatives, and the State.

898. The Court issued an order on November 25, 2009 confirming the obligation on the part of the State with respect to these provisional measures. The order is available at: http://www.corteidh.or.cr/docs/medidas/urso_se_08_portugues.pdf (in Portuguese) and at: http://www.corteidh.or.cr/docs/medidas/urso_se_08.pdf (in Spanish).

d. Colombia

19 Merchants

899. Throughout 2009, the Commission submitted periodic comments on the reports that the State filed in connection with these provisional measures. The Court ordered these measures on September 3, 2004, in response to a request from the Commission and for the purpose of protecting the life and humane treatment of Mrs. Sandra Belinda Montero (next of kin of two victims in the case; see "Contentious Cases," below) and her family.

900. The President issued an order on November 26, 2008 convening a public hearing for the purpose of informing the Court regarding the implementation and effectiveness of the provisional measures as well as regarding the request made by the State for them to be lifted. The aforementioned private hearing was held on January 20, 2009.

901. The Court issued an order on July 8, 2009, confirming the State's obligation to comply with these provisional measures; it also declared them to be henceforth inapplicable to some of the beneficiaries, who had left the country. The order can be found (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/comerciantes_se_061.pdf.

Álvarez *et al.*

902. In 2009 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

903. Over the year 2009 the Commission submitted its observations on the reports made by the Colombian State regarding these measures.

904. 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.

905. The President of the Court issued an order on December 8, 2009 convening the parties to a public hearing to be held at the Court's headquarters on January 29, 2010. The order can be found (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/caballero_se_09.pdf

San José de Apartadó Peace Community

906. 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.

907. Over the year 2009, the Commission submitted its observations to the Court on the reports by the Colombian State and the representative of the beneficiaries regarding these measures.

Community Council of Jiguamiandó and the Curbaradó families

908. These measures were ordered by the Court 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. It also submitted a report on a working visit made in November 2008 by the Commissioner/Rapporteur for Colombia.

Giraldo Cardona

909. 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. On November 29, 2006, the Court issued an order in which it reiterated that the provisional measures ordered for the beneficiaries remained in effect. That order is available at: http://www.corteidh.or.cr/docs/medidas/giraldo_se_09_ing.doc.

910. Over the year 2009, the Commission submitted periodically its observations on the State's reports regarding these measures.

Gutiérrez Soler

911. Over 2009, 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*.

912. On December 3, 2009, the President issued an order convening a hearing for the Inter-American Court to be informed on the implementation and effectiveness of the provisional measures. The aforementioned private hearing was held on January 20, 2009.

913. The Court issued an order on July 9, 2009, confirming the obligation on the part of the State regarding these provisional measures. The order can be found (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/gutierrez_se_03.pdf

La Rochela

914. 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.

915. On November 19, 2009, the Court handed down an order for the State to adopt provisional measures in favor of the aforementioned persons. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/rochela%20_se_02.pdf.

Mapiripán Massacre

916. Over the year 2009 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*.

917. On November 26, 2008, the President of the Court issued an order in which she convened the Inter-American Commission, the Colombian State and the representatives of the victims' next of kin for a private hearing, to be held at the seat of the Inter-American Court on January 20, 2009. At the hearing, the Court will hear the State's report concerning compliance with the judgment delivered in the contentious case and the comments of the Inter-American Commission and the representatives of the victims' next of kin on the State's report. It will also receive information on the implementation and effectiveness of the provisional measures it ordered and the possibility of their being lifted.

918. On January 19, 2009, the Court held a private hearing with the purpose of obtaining information from the State on compliance with the judgment in the instant case, and to hear related observations of the Inter-American Commission and the representatives.

Mery Naranjo *et al.*

919. By 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 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.

920. Over the year 2009, pursuant to the Court's mandate, the Commission submitted information and observations regarding these provisional measures.

Kankuamo Indigenous People

921. In 2009 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.

922. On April 3, 2009, the Court handed down an order confirming the obligation on the part of the State with respect to these provisional measures. The text of the order can be found (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/kankuamo_se_03.pdf

e. Dominican Republic

Haitians and Dominicans of Haitian origin in the Dominican Republic

923. In 2009 the Commission expressed concern over the lack of information. It also submitted its periodic comments to the State's reports on the measures adopted for the beneficiaries of the provisional measures ordered, all of whom are Haitians or Dominicans of Haitian origin subject to the jurisdiction of the Dominican Republic and who face the threat of collective "expulsion" or "deportation." The Court ordered those measures on August 18, 2000.

924. On February 2, 2006, the Court issued an order in which it expanded the scope of the protective measures ordered back on August 18, 2000, and resolved that the State was to keep the measures already ordered in place and make immediate provision for any other measures needed to effectively protect the beneficiaries' lives and humane treatment. The text of the order is available at: http://www.corteidh.or.cr/docs/medidas/haitianos_se_06_ing.doc.

925. The President handed down an order on May 19, 2008 convening a hearing for the Inter-American Court to be informed on the implementation and effectiveness of the provisional measures. The aforementioned private hearing was held by the Court on July 8, 2009.

f. Ecuador

Sarayaku Indigenous People

926. In 2009, 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.

927. The measures were confirmed on June 17, 2005, subsequent to a public hearing held with the parties in Asunción, Paraguay, on May 11, 2005. The orders in question are available at the following links: http://www.corteidh.or.cr/docs/medidas/sarayaku_se_02.doc (in Spanish) and http://www.corteidh.or.cr/docs/medidas/sarayaku_se_01_ing.doc.

g. El Salvador

Gloria Giralte de García Prieto *et al.*

928. In 2009, 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). The text of the order for these provisional measures is available at: http://www.corteidh.or.cr/docs/medidas/giralte_se_03_ing.doc.

929. Concerning the fact that the provisional measures remained in force subsequent to the issuance of the judgment on the merits, see, also, the judgment on interpretation that the Court delivered on November 24, 2008.

Major Meléndez Quijano *et al.*

930. In 2009, 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.

h. Guatemala

Bámaca Velásquez

931. In 2009, 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.

932. On November 11, 2008, the President handed down an order convening a hearing for the purpose of informing the Inter-American Court regarding the implementation and effectiveness of the provisional measures, as well as regarding the request for the lifting of these measures submitted by the State. The aforementioned private hearing was held on January 20, 2009.

933. On January 27, 2009 the Court handed down an order confirming the obligation on the part of the State regarding these provisional measures. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/bamaca_se_10.pdf.

Carpio Nicolle

934. In 2009, the Commission supplied information and comments in connection with the provisional measures ordered in this case since July 4, 1995. 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.

935. On November 18, 2008, the President handed down an order convening a hearing for the purpose of informing the Inter-American Court regarding the implementation and effectiveness of the provisional measures, as well as regarding the request for the lifting of these measures submitted by the State. The aforementioned private hearing was held on January 20, 2009.

936. On July 6, 2009 the Court handed down an order confirming the obligation on the part of the State with respect to these provisional measures. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/carpio_se_13.doc

Guatemalan Forensic Anthropology Foundation

937. 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. The text of the July 4 order is available at: http://www.corteidh.or.cr/docs/medidas/antropo_se_02_ing.doc.

938. On January 26, 2009, the Court handed down an order confirming the obligation on the part of the State regarding these provisional measures. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/antropo_se_05.pdf

Helen Mack *et al.*

939. In 2009, 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.

940. On January 26, 2009, the Court handed down an order confirming the obligation on the part of the State regarding these provisional measures and lifted them for three beneficiaries. The order is available at: http://www.corteidh.or.cr/docs/medidas/mackchang_se_05_ing.pdf

941. On August 14, 2009, the President handed down an order summoning the parties to a private hearing to be held at the Court's headquarters on October 1, 2009.

942. A public hearing was held on October 1, 2009, during the Court's 84th regular session, for it to receive updated information from the parties on the process of implementation of these measures; participating were the Commission, the beneficiaries' representatives, and the State.

943. The Court handed down an order on November 16, 2009, in which it confirmed the obligation on the part of the State regarding these provisional measures, and lifted them for some beneficiaries. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/mackchang_se_06.pdf

Plan de Sánchez Massacre (Community Studies and Psychosocial Action Team "ECAP")

944. In 2009, the Commission presented its comments on the State's reports concerning these measures, which are related to the petition lodged on October 15, 2006, by the Human Rights Legal Action Center, asking the Court to adopt provisional measures to ensure Guatemala's protection of the lives and humane treatment of the members of the NGO "Community Studies and Psychosocial Action Team" (ECAP), who are assisting with the process of securing reparations for the victims and survivors of the Plan de Sánchez Massacre (see "Contentious Cases," below). On November 25, 2006, the Court issued an order fully confirming the order of October 20, 2006, in which the President of the Court granted the requested measures. The text of the orders can be found at: http://www.corteidh.or.cr/docs/medidas/plandesanchez_se_04.doc (in Spanish) and http://www.corteidh.or.cr/docs/medidas/plandesanchez_se_05_%20ing.doc.

945. The Court handed down an order on July 8, 2009, lifting the provisional measures. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/plandesanchez_se_07.pdf

Raxcacó et al.

946. In 2009, the Commission continued to submit its periodic comments on the State's reports concerning 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 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).

i. Haiti**A.J. et al.**

947. 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. (iii) After precautionary measures were granted by the Commission, A. J., her family and ACREDH continued to be threatened and harassed.

948. On August 24, 2009, the President of the Court handed down an order for urgent measures to be taken to protect the life and integrity of A. J., J. L., Sterlin Joudain, Michelet Laguerre, Pierre Luc Sael and André Junior Laureore. The text of this order can be found (in French) at: [http://www.corteidh.or.cr/docs/medidas/aj se 01 fr.pdf](http://www.corteidh.or.cr/docs/medidas/aj_se_01_fr.pdf) and (in Spanish) at: [http://www.corteidh.or.cr/docs/medidas/aj se 01.pdf](http://www.corteidh.or.cr/docs/medidas/aj_se_01.pdf). 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 Laureore. 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) and (in Spanish) at: [http://www.corteidh.or.cr/docs/medidas/aj se 02.pdf](http://www.corteidh.or.cr/docs/medidas/aj_se_02.pdf)

j. Honduras**López Álvarez et al.**

949. During 2009 the Commission submitted its comments on the provisional measures the Court ordered on September 21, 2005, to protect the life and humane treatment of Mr. Alfredo López Álvarez, Mrs. Teresa Reyes Reyes and Mrs. Gregoria Flores Martínez, and the latter's mother and children. The beneficiaries had appeared at a hearing held by the Court on June 28, 2005, as witnesses in the case of *López Álvarez et al.* See "Contentious Cases," below. The order is available (in Spanish) at: [http://www.corteidh.or.cr/docs/medidas/lopez se 01.doc](http://www.corteidh.or.cr/docs/medidas/lopez_se_01.doc).

950. On January 26, 2009, the Court handed down an order lifting the provisional measures. The text of the order is available at: [http://www.corteidh.or.cr/docs/medidas/lopez se 02 ing.pdf](http://www.corteidh.or.cr/docs/medidas/lopez_se_02_ing.pdf).

Kawas Fernández

951. 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.

952. Over the year 2009 the Commission submitted its observations regarding these provisional measures.

k. Mexico

Inés Fernández Ortega *et al.*

953. 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.

954. 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: http://www.corteidh.or.cr/docs/medidas/fernandez_se_02_ing.pdf Subsequently the Commission submitted its observations on the provisional measures.

Pérez Torres *et al.* ("Campo Algodonero")

955. 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."

956. 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: http://www.corteidh.or.cr/docs/medidas/algodonero_se_01_ing.pdf Subsequently the Commission submitted its observations regarding the provisional measures.

I. Peru

Gómez Paquiyauri

957. At the Commission's request, the Court ordered provisional measures in the *Case of Gómez Paquiyauri* (see "Contentious Cases," below) to protect the life and humane treatment of the following: Ricardo Samuel Gómez Quispe, Marcelina Paquiyauri Illanes de Gómez, Lucy Rosa Gómez Paquiyauri, Miguel Ángel Gómez Paquiyauri, Jacinta Peralta Allccarima, Ricardo Emilio, Carlos Pedro, and Marcelina Haydée, all by the surname Gómez Paquiyauri, and the minor Nora Emely Gómez Peralta. The Court also decided to order the State to adopt forthwith the measures necessary to protect the life and humane treatment of Mr. Ángel del Rosario Vásquez Chumo and the members of his family.

958. On January 22, 2009 the Court handed down an order lifting the provisional measures that had been mandated by the Inter-American Court of Human Rights in its orders of May 7, 2004, September 22, 2006, and May 3, 2008, regarding Mr. Ángel del Rosario Vásquez Chumo and his next of kin. The text of this order can be found at: http://www.corteidh.or.cr/docs/medidas/gomez_se_04_ing.pdf

Ramírez Hinostroza et al.

959. In 2009, 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. The text of the most recent order, dated May 17, 2007, is available at: http://www.corteidh.or.cr/docs/medidas/Ramirez_se_02_ing.doc.

m. Trinidad and Tobago

Dottin et al. (before James et al.)

960. On April 3, 2009, the Court handed down an order lifting the provisional measures regarding the following beneficiaries: Wenceslaus James, Anthony Garcia, Darrin Roger Thomas, Haniff Hilaire, Denny Baptiste, Wilberforce Bernard, Naresh Boodram, Clarence Charles, Phillip Chotalal, George Constantine, Rodney Davis, Natasha De Leon, Mervyn Edmund, Alfred Frederick, Nigel Mark, Wayne Matthews, Steve Mungroo, Vijay Mungroo, Wilson Prince, Martin Reid, Noel Seepersad, Gangadeen Tahaloo, Keiron Thomas, Samuel Winchester, Peter Benjamin, Amir Mowlah, Allan Phillip, Krishendath Seepersad, Narine Sooklal, Mervyn Parris y Francis Mansingh, and substituted the examination of the State's obligations as to these victims with the assessment applicable within the framework of the supervision of compliance with the *Hilaire, Constantine and Benjamin et al. Judgment*. The Court also 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.

n. Venezuela

Carlos Nieto Palma et al.

961. On January 26, 2009 the Court handed down an order lifting the provisional measures. The order is available at: http://www.corteidh.or.cr/docs/medidas/nieto_se_05_ing.pdf

Eloisa Barrios *et al.*

962. In 2009, 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 the following persons: Eloisa Barrios, Jorge Barrios, Rigoberto Barrios, Oscar Barrios, Inés Barrios, Pablo Solórzano, Beatriz Barrios, Caudy Barrios, Carolina García and Juan Barrios, all eye witnesses and/or complainants in the investigations into the murder of Narciso Barrios. The parties alleged to be responsible for the murder are agents of the State. In 2005, while the provisional measures were in effect, Rigoberto Barrios was shot nine times and killed. In addition, on November 28, 2009, Oscar Barrios was allegedly murdered by police officers of the State of Aragua.

Guerrero Gallucci and Martínez Barrios

963. The Commission submitted, over the year 2009, 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: http://www.corteidh.or.cr/docs/medidas/guerrero_se_02_ing.pdf

Liliana Ortega *et al.*

964. Over the year 2009 the Commission submitted information and observations regarding the provisional measures related to this matter. On July 9, 2009 the Court handed down an order lifting the provisional measures ordered by the Inter-American Court of Human Rights in its orders of November 27, 2002, February 21, 2003, December 2, 2003, May 4, 2004, March 1, 2005, and June 14, 2005 in favor of Mmes. Liliana Ortega, Hilda Páez [Gilda Páez], Maritza Romero, Aura Liscano [Lizcano] and Alicia de González. The text of the order is available at: http://www.corteidh.or.cr/docs/medidas/ortega_se_06_ing.pdf

Luis Uzcátegui

965. On January 27, 2009 the Court handed down an order deciding to maintain the provisional measures provided for in its November 27, 2002 order for an additional six months starting from the date of notification of same. The text of the decision is available at: http://www.corteidh.or.cr/docs/medidas/uzcategui_se_04_ing.pdf

Luisiana Ríos *et al.*

966. In 2009, 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

967. In 2009, the Commission submitted information and comments related to 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.

The case of the "La Pica" Judicial Detention Center (Monagas)

968. In 2009, the Commission submitted to the Court its periodic comments on the Venezuelan State's reports concerning the provisional measures requested by the Commission and ordered by the Court on February 9, 2006, to protect the lives and physical integrity of the inmates at the "La Pica" Judicial Detention Center at Monagas.

969. On August 12, 2009, the President of the Court issued an order convening the parties to a joint public hearing regarding the provisional measures related to the different Venezuelan prisons, to be held at the Court's headquarters on September 30, 2009. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/lapica_se_04.pdf. On September 30, 2009, the aforementioned public hearing was held, during the 84th Regular Session of the Court.

"Globovisión" Television

970. In 2009, the Commission submitted information and comments related to 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.

971. On January 29, 2008, the Inter-American Court issued an order in which it reconfirmed its decision to dismiss a request made by the beneficiaries' representatives to expand the scope of the order so that it would apply to issues not covered in the original order. The text of the order is available at the following link: http://www.corteidh.or.cr/docs/medidas/globovision_se_04_ing.doc.

Penitentiary Center of the West-Central Region (Uribana Prison)

972. In 2009, the Commission submitted periodic comments to the Court concerning the Venezuelan State's reports on the measures requested by the Commission and ordered by the Court on February 2, 2007. The measures were ordered to protect the lives and physical integrity of the inmates at the Penitentiary Center of the Central Western Region, known as "Uribana."

973. On August 12, 2009 the President of the Court handed down an order convening the parties to a joint public hearing regarding the provisional measures related to the different Venezuelan prisons, to be held at the Court's headquarters on September 30, 2009. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/lapica_se_04.pdf. On September

30, 2009, the aforementioned public hearing was held, during the 84th Regular Session of the Court.

Yare I and Yare II Capital Region Penitentiary

974. In 2009, the Commission submitted to the Court its periodic comments on the reports filed by the Venezuelan State in connection with these provisional measures. The latter were requested by the Commission and ordered by the Court on March 30, 2006, to protect the lives and physical integrity of the inmates at the Yare I and Yare II Capital Region Penitentiary.

975. On August 12, 2009 the President of the Court handed down an order convening the parties to a joint public hearing regarding the provisional measures related to the different Venezuelan prisons, to be held at the Court's headquarters on September 30, 2009. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/lapica_se_04.pdf. On September 30, 2009, the aforementioned public hearing was held, during the 84th Regular Session of the Court.

El Rodeo I and El Rodeo II Capital Region Judicial Confinement Center

976. On December 17, 2007, the Inter-American Commission on Human Rights filed a request with the Inter-American Court seeking provisional measures, requesting the Court to order the Venezuelan State to protect the inmates at the El Rodeo I and El Rodeo II Capital Region Judicial Confinement Center, and those who visit or work at that prison facility. The Commission's request was driven by the presence of grave and imminent danger of irreparable harm to the lives and the humane treatment of inmates, prison staff and visitors. The Commission observed that in 2006, 86 inmates had been killed and 198 injured in various incidents of violence inside the facility; in 2007, 51 inmates had died and 101 had been injured. The Inter-American Commission had therefore concluded that the insecurity and violence inside the prison were a severe threat. As of the date of approval of this report, the order from the Court is still pending.

977. On February 8, 2008, the Inter-American Court ordered the Venezuelan State to take provisional measures to protect the lives and humane treatment of all the inmates at the El Rodeo I and El Rodeo II Capital Region Judicial Confinement Center, and to take particular care to prevent injuries and deaths resulting from violence. The order in question is available at the following link: http://www.corteidh.or.cr/docs/medidas/rodeo_se_01_ing.doc.

978. Over the year 2009, the Commission periodically submitted to the Court its observations on the reports of the Venezuelan State regarding these provisional measures.

979. On August 12, 2009 the President of the Court handed down an order convening order convening the parties to a joint public hearing regarding the provisional measures related to the different Venezuelan prisons, to be held at the Court's headquarters on September 30, 2009. The order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/lapica_se_04.pdf. On September 30 the aforementioned public hearing was held, during the 84th Regular Session of the Court.

Humberto Prado and his immediate family

980. On May 16, 2007, the Commission filed a request with the Court seeking provisional measures to protect the lives and physical integrity of human rights defender Humberto Prado and his immediate family, and Mr. Prado's right to pursue his work of defending and promoting human rights in Venezuela in his capacity as Director of the Venezuelan Observatory of Prisons.

981. On July 13, 2007 and November 29, 2007, the Court informed the parties of its decision to keep the matter under study and to then reassess Mr. Prado's situation to decide whether provisional measures were in order.

982. The Commission is currently awaiting updated information from Mr. Prado's representatives and the Court's decision in this matter.

Natera Balboa

983. 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.

984. 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. The aforementioned order is available (in Spanish) at: http://www.corteidh.or.cr/docs/medidas/natera_se_01.pdf

2. Contentious Cases

a. Argentina

Case of Bayarri

985. 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.

986. 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.

987. As of the date of preparation of this report, the Commission had not yet received the State's first report on compliance with the judgment.

988. 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%2>

[OESP.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_187_ing.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

989. 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.

990. 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.

991. During 2009, the Commission submitted periodic observations on state compliance with the orders in the Court's judgment.

992. 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

993. 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.

994. 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.

995. In 2009 the Commission continued to submit its periodic comments on the State's compliance with the reparations ordered by the Court in the judgment delivered on September 18, 2003, specifically concerning the investigations pending at the domestic level, the punishment of those responsible for the acts committed in this case, and on the adoption of legislative or any other measures necessary to bring the domestic legal system in line with international human rights provisions and to make them fully effective as a means of guaranteeing that such violations do not recur.

996. 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

997. 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.

998. 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.

999. In 2009 the Commission continued to present its periodic comments on the State's compliance with the measures ordered by the Court in its November 28, 2002 judgment on the merits, reparations, and costs. On July 6, 2009 the Court issued an order on compliance with the judgment, in which it decided to keep open the proceeding for monitoring the judgment until the State complies fully with its obligations. The text of that order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/cantos_06_07_09_ing.pdf.

1000. 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

1001. 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.

1002. 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.

1003. In December 2009 the IACHR received the State's report on compliance with the judgment. It will present its comments within the established period.

1004. 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

1005. 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.

1006. 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.

1007. In 2009 the Commission submitted comments on information that the State presented on compliance with the judgment.

1008. The text of the application is available (in Spanish) 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.*

1009. 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.

1010. 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.

1011. In 2009 the Commission submitted comments on compliance with the orders in the Court's judgment.

1012. 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 Tyrone DaCosta Cadogan

1013. 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.

1014. On July 1, 2009, the IACHR participated in a public hearing on the case during the Court's LXXXIII regular session, and 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.

1015. The text of the application is available at the following link: <http://www.cidh.oas.org/demandas/12.645%20Cadogan%20Barbados%2031%20oct%2008%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

1016. 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.

1017. In July 2009 the Court notified the parties of the application and in November 2009 the IACHR received the written requests, arguments, and evidence submitted by the victim's representatives. At the time of preparation of this report, the IACHR is awaiting the State's response to the application.

1018. The text of the application is available at the following link: <http://www.cidh.oas.org/demandas/12.529%20Rainer%20Ibsen%20Cardenas%20y%20Jose%20Luis%20Ibsen%20Peña%20Bolivia%2012%20mayo%2009%20ENG.pdf>.

Case of Ticona Estrada

1019. 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.

1020. 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.

1021. In 2009 the Commission has received information from the State and the victims' representatives on some aspects of compliance with the judgment.

1022. 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_esp.pdf (in Spanish).

Case Trujillo Oroza

1023. 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.

1024. 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.

1025. In 2009 the IACHR submitted comments on the reports presented by the State and the representatives on compliance with the judgment. On October 1, 2009, the IACHR took part in a private hearing on compliance, and on November 16 the Court issued an order requesting the State to take immediately all necessary measures for the effective and timely compliance with the pending points.

1026. 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)

1027. 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..

1028. 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.

1029. 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%2020%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_esp.pdf (in Spanish)

Case of the Araguaia Guerrillas

1030. 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.

1031. In May 2009, the Court notified the parties of the application, and in August 2009, the IACHR received the written requests, arguments, and evidence submitted by the victims' representatives. As of the preparation of this report, the IACHR is awaiting the State's response to the application.

1032. 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>.

Case of Sétimo Garibaldi

1033. 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.

1034. On April 29 and 30, 2009, the IACHR took part in the public hearing of the case during the Court's XXXIX special session in Santiago, Chile, and 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..

1035. 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

1036. 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.

1037. 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.

1038. In 2009 the IACHR submitted its comments on the reports by the State and the representatives on compliance with the judgment.

1039. 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.doc.

e. Colombia

Case of the 19 Tradesmen (Álvaro Lobo Pacheco *et al.*)

1040. 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.

1041. 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

1042. In 2009 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..

1043. A private hearing was held on January 20, 2009, during the Court's LXXXII regular session at its headquarters. On July 8, 2009, the Court issued an order on compliance with the judgment. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/comerciantes_08_07_09.pdf

Case of Caballero Delgado and Santana

1044. 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.

1045. 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

1046. On November 17, 2009, the Court adopted a resolution of compliance with the judgment, in which it said the State had complied with some operative points of the judgment and decided to keep the monitoring proceeding open for a) investigation and punishment of the persons responsible for the disappearance and presumed death of the victims, and b) location of the victims' remains and their delivery to the next of kin. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/caballero_17_11_09.pdf

Case of Escué Zapata

1047. 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.

1048. 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.

1049. 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.

1050. 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. In 2009 the Commission submitted its comments on compliance with the Court's orders in its judgment.

Case of Las Palmeras

1051. 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.

1052. 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 .

1053. On December 7, 2009 the Court summoned the parties to a private hearing at the Court's headquarters on January 29, 2010, to get information from the State on compliance with the provisions of the judgment in this case and to hear the observations of the Commission and the victims' representatives. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/LasPalmeras_07_12_09.pdf .

Case of La Granja and El Aro (Ituango Massacre)

1054. 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.

1055. 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.

1056. On July 7, 2009 the Court issued an order on monitoring compliance, in which it kept the proceeding open as regards: payment of compensation for pecuniary and non-pecuniary damages; due diligence to bring justice in the case; proper treatment for the next of kin of the executed victims; the actions necessary to ensure security so that the former residents of El Aro and La Granja that were displaced can return to El Aro or La Granja if they so desire; the public act of acknowledgement of international responsibility; implementation of a housing program to provide adequate housing to surviving victims who lost their houses and so request; placement of a plaque in a public location; and publication in the official gazette. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/ituango_07_07_09.pdf

Case of Manuel Cepeda Vargas

1057. 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.

1058. In the Commission's view, the facts in this case constitute violations of the rights protected by articles 4, 5, 8, 11, 13, 16, 22, 23 and 25 of the Convention, and a failure to comply with the general obligation to respect and ensure the Convention-protected rights, established in Article 1(1) of the Convention. The text of the application is available at the following link:: <http://www.cidh.oas.org/demandas/12.531%20Manuel%20Cepeda%20Vargas%20Colombia%2014%20nov%2008%20INGLES.pdf>

Case of the Mapiripán Massacre

1059. 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.

1060. 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.

1061. During 2009, the Commission submitted periodic observations on state compliance with the orders in the Court's judgment.

1062. The Court held a private hearing to monitor compliance with the judgment on January 19, 2009, during its LXXXII regular session at the Court's headquarters.

1063. On July 8, 2009, the President of the Court issued an order on monitoring compliance that left open several points to be monitored, and said, "in decisions on the application of various proceedings against an individual, priority must be given to charges of grave violations of human rights. The application of proceedings such as extradition must not be a mechanism to favor, obtain, or ensure impunity." The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/mapiripan_08_07_09.pdf

Case of the La Rochela Massacre

1064. 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>

1065. 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.

1066. On September 3, 2007 the State filed a request for interpretation of the Judgment in relation to: (i) the compensation of some family members that had already been compensated at domestic level; (ii) the public release of the results of the criminal proceedings; (iii) what happens when a person is not appointed to receive the payment for expenses or when the family group does not come to an agreement on the matter. 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

1067. In 2009 the Commission submitted its comments on state compliance with the orders in the Court's judgment on merits, reparations, and costs.

Case of the "Pueblo Bello" Massacre (José Álvarez Blanco *et al.*)

1068. 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%20ES_P.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.

1069. 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

1070. During 2009 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 delivered on January 31, 2006.

1071. A private hearing to monitor compliance with the judgment was held on January 20, 2009, during the Court's LXXXII regular session.

1072. On July 9, 2009 the Court issued an order in which it declared that the State had met its obligations to offer a public apology, acknowledge its international responsibility, and publish the judgment. The Court left open monitoring of compliance with the other obligations of the State. The text of the order is available at: http://www.corteidh.or.cr/docs/supervisiones/bello_09_07_09_ing.pdf

Case of Jesús María Valle Jaramillo *et al.*

1073. 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.

1074. On November 30, 2007, the Court convened a public hearing on merits, reparations, and costs, held in San José, Costa Rica, on February 6-7, 2008. Participating were the Commission, the representatives of the victims and their families, and the Colombian State.

1075. On March 10, 2008, the parties filed their final briefs of pleadings, motions and evidence and are currently awaiting issuance of the judgment in the case..

1076. On November 27, 2008 the Court issued its judgment on the Merits, Reparations and Costs. There,

a) It accepted the State's partial acknowledgement of international responsibility, and declared a violation of the following Articles: 7(1), 5(1), and 4(1), respectively, of the American Convention, in relation to Article 1(1) thereof, to the detriment of Jesús María Valle Jaramillo; (ii) 7(1) and 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Nelly Valle Jaramillo and Carlos Fernando Jaramillo Correa; (iii) 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of 23 family members; (iv) 22(1) of the American Convention, in relation to Article 1(1) thereof, to the victim's wife, his son and his 2 daughters; (v) 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of 25 family members.

b) The Court decided that the State violated Article 5(1) of the American Convention, in relation to Article 1(1) thereof, 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.

c) The Court decided that it had not been proved that the State violated: (i) Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Jesús María Valle Jaramillo and Carlos Fernando Jaramillo Correa; nor (ii) Articles 11(1), 11(2), 13 and 17 of the American Convention. The text is available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_192_ing.pdf

1077. 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 Court established the meaning and scope of several paragraphs of the judgment concerning reparations. It also dismissed two requests made by the representatives concerning costs and expenses, because they were inconsistent with the judgment; and concerning the question whether the State was required to "provide appropriate economic conditions" for the return of Carlos Fernando Jaramillo Correa to Colombia, because the judgment did not order that reparation measure. The text of the Court's judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_201_ing.pdf

Case of Wilson Gutiérrez Soler

1078. 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.

1079. In 2008, the Commission continued to present its periodic comments on the matter of the State's compliance with the Court's judgment on merits, reparations and costs, dated September 12, 2005.

1080. On December 3, 2008, the President of the Court issued an order in which she summoned the Commission, the State and the Representatives of the victim and his next-of-kin to a private hearing, to be held at the seat of the Court on January 20, 2009. There, the Court will receive information from the State on its compliance with the judgment delivered in the contentious case; it will hear the comments that the Commission and the representatives of the victim and his next of kin have on this matter; and it will receive information on the implementation and effectiveness of the provisional measures and whether they can be lifted. The order convoking the hearing in question is available (in Spanish) at: http://www.corteidh.or.cr/docs/asuntos/gutierrez_03_12_08.doc. The hearing took place at the place and on the date indicated.

1081. 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.pdf

f. Chile

Case of Almonacid Arellano

1082. This case concerns the failure to investigate the extrajudicial execution of Mr. Almonacid-Arellano, and the failure to punish those responsible for his extrajudicial execution by invoking the Amnesty Law enacted in Chile by Decree Law No. 2,191 of 1978. Mr. Almonacid-Arellano was executed on September 16, 1973, in Rancagua, Chile.

1083. In 2009 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..

Case of Claude Reyes *et al.*

1084. On July 8, 2005, the Commission filed an application with the Court against the Chilean State, in case 12,108, Marcel Claude Reyes, Sebastián Cox Urrejola and Arturo Longton Guerrero. In its application, the Commission alleged the state's international responsibility for its refusal to allow access to public information and for not granting the victims an effective judicial remedy to contest a violation of the right of access to information.

1085. On September 19, 2006, the Court held that the State had violated the rights to freedom of thought and expression, to a fair trial and to judicial protection, recognized in articles 13, 8 and 25 of the American Convention, all in conjunction with article 1(1) and article 2 thereof. In the judgment, the Court set the reparations that it deemed appropriate. The full text of the

judgment is available at the following link:
http://www.corteidh.or.cr/docs/casos/articulos/seriec_151_ing.doc.

1086. On May 2, 2008, the Court issued an order monitoring compliance, concerning those points whose compliance was still pending. On June 10, the President decided to convene the parties for a private hearing to discuss those. The hearing was held in Montevideo, Uruguay, on August 14, 2008. On November 24, 2008, the Court issued an order in which it decided to close the case of Claude Reyes *et al.*, inasmuch as the Chilean State had fully complied with the Judgment delivered by the Court on September 19, 2006. The full text of that order is available at: http://www.corteidh.or.cr/docs/supervisiones/reyes_24_11_08_ing.pdf:

Case of Humberto Palamara Iribarne

1087. 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. 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.

1088. In 2009 the Commission submitted its comments on the information regarding the compliance with November 22, 2005 judgment.. On December 15, 2008 the Inter-American Court issued an order convening the parties for a private hearing to monitor compliance with judgment to be held at the Court's seat on January 20, 2009. The hearing took place at the place and on the date indicated

1089. On September 21, 2009, the Court issued an order to continue monitoring compliance with the following obligations of the State: a) adopt, within a reasonable time, all measures necessary to amend the domestic rules concerning/pertaining freedom of thought and expression; b) adapt its domestic law in such a way that, if the existence of military jurisdiction is considered necessary, this one will only be competent on crimes "of function de function" committed by military personnel on active service, and c) guarantee due process in criminal military jurisdiction and judicial protection regarding the actions of military authorities. The text of that order is available (in Spanish) at the following link:
http://www.corteidh.or.cr/docs/supervisiones/palamara_21_09_09.pdf

g. Costa Rica

Case of the "La Nación" Newspaper (Herrera Ulloa)

1090. 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

1091. On June 2, 2009, the President of the Inter-American Court, in consultation with the other judges of the Court, issued an order convening the parties for a private hearing to monitor compliance, to be held at the Court's headquarters. The hearing took place at the place and on the date indicated. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/herrera_02_06_09.pdf

1092. 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.pdf

1093. In 2009 the Commission continued to submit its periodic comments concerning the compliance with the Court's July 2, 2004 judgment on the merits, reparations and costs.

h. Dominican Republic

Case of Dilcia Yean and Violeta Bosico

1094. 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.

1095. 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

1096. In 2009, the Commission submitted its comments regarding compliance with the reparations ordered in the Court's judgment of September 8, 2005. It said it was gratified by the fact that the State had complied with the pecuniary damages ordered in the judgment, and was waiting for the State's future reports concerning compliance with the other obligations set out in the judgment..

1097. On May 18, 2009, the President of the Court issued an order on compliance in which she convened the parties to a private hearing that was held at the seat of the Court on July 8, 2009. That order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/yeen_18_05_09.pdf

i. Ecuador

Case of Acosta Calderón

1098. On June 25, 2003 the Commission filed an application with the Court in the case of Rigoberto Acosta Calderón to have the Court find Ecuador responsible for violation of articles 7, 8,

24, and 25 of the Convention, in conjunction with the obligations set out in articles 1.1 and 2 thereof. On June 24, 2005, the Court delivered its judgment in the case, and held that the State had violated the victim's rights to personal liberty, judicial protection, and a fair trial, protected under articles 7, 25, and 8, respectively, of the Convention, in conjunction with Article 1(1) thereof. The Court also held that the State failed to comply with its duty under Article 2 of the Convention, as regards Article 7. In its judgment, the Court set out the measures of reparation that it deemed appropriate. The full text of the judgment can be found at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_129_ing.doc.

1099. In 2006, the State submitted its first report on compliance with the judgment in this case. In August 2007, once the Commission had received the comments of the victim's representatives, it forwarded its own comments on the matter of compliance with the reparations ordered in the Court's June 24, 2005 judgment.

1100. On February 7, 2008, the Inter-American Court ordered that the Acosta Calderón case be considered closed inasmuch as the State of Ecuador has complied with the Judgment issued by the Inter-American Court on June 24, 2005. The full text of this order is available at: http://www.corteidh.or.cr/docs/supervisiones/acosta_07_02_08_ing.doc

Case of Benavides Cevallos

1101. 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. .

1102. 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.

1103. In 2009, 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

1104. 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.

1105. 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 State to: immediately expunge the names of Messrs. Juan Carlos Chaparro Álvarez and Freddy Hernán Lapo Iñiguez from all public documents in which they still appear with criminal records; immediately inform the relevant private agencies that they must delete from their records all mention of Messrs. Chaparro Álvarez and Lapo Iñiguez as the perpetrators of or suspects in the crime with which they were charged; publish the judgment; bring its laws into line with the American Convention; immediately adopt all the administrative and other measures necessary to expunge, *ex officio*, the criminal records of individuals acquitted of or dismissed from criminal charges, and implement the appropriate legislative measures to bring that about; and pay to Messrs. Chaparro Álvarez and Lapo Iñiguez the compensation for pecuniary and non-pecuniary damages and for costs and expenses set out in paragraph 270 of the judgment. Finally, the Court ordered that the State and Mr. Juan Carlos Chaparro Álvarez must 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.doc

1106. On November 26, 2008, the Court delivered its judgment on the State's application seeking an interpretation of the judgment in this case. In its judgment of interpretation, it dismissed the State's request on the grounds that it was inadmissible. The text of the judgment is available (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_189_esp.pdf. The Commission also continued to submit its comments on the information supplied by the parties regarding the progress made on compliance with the judgment delivered in this case.

1107. On April 29, 2009, the Court issued an order declaring that the State had fully complied with the operative paragraph concerning elimination of the names of Messrs. Chaparro and Lapo from the public records in which they appeared with a criminal record. It decided to continue monitoring compliance with the following obligations of the State: a) to inform the relevant private institutions indicated by the victims that they should eliminate from their records any reference to Messrs. Chaparro and Lapo as authors or suspects of the criminal act of which they were accused in this case; b) to publicize the judgment on radio and television; c) to adapt its legislation so that it ceases to charge fees for the deposit and management of property seized to those who have not been convicted in a final judgment; d) to adopt forthwith all the administrative or other measures necessary to eliminate *de oficio* the criminal record of those persons who are acquitted or whose cases are dismissed; e) to submit to an arbitration procedure to establish the amounts corresponding to pecuniary damage of Mr. Chaparro; and f) to pay Mr. Chaparro interest corresponding to banking interest on arrears in Ecuador. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/chaparro_29_04_09.pdf

1108. In 2009 the IACHR continued to submit comments on the information provided by the parties concerning progress in compliance with the judgment in this case.

Case of Cornejo *et al.*

1109. 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. .

1110. 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 State to publish certain parts of the judgment; to fully divulge the rights of the patients, using the proper media and according to the existing legislation in Ecuador and international standards; to implement an education and training program for justice operators and health care professionals about the laws enacted by Ecuador in relation to patients' rights and the penalties for violating them, and to pay the sum established for compensation for pecuniary and non-pecuniary damages and for costs and expenses. The full text of the judgment is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_171_ing.doc

1111. On August 5, 2008, the Court delivered its judgment on the application filed by the representatives on January 19, 2008, seeking an interpretation of the judgment on the merits, reparations and costs. In the August 5 judgment, the Court denied the request for interpretation on the grounds of inadmissibility. The text of the judgment is available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_183_ing.doc . The Commission continued to submit comments on the information reported by the parties concerning compliance with the January 19, 2008 judgment delivered in this case.

1112. On July 6, 2009, the Court issued an order declaring that the State had fully complied with payment of compensation for pecuniary and non-pecuniary damage, and for the costs and expenses. It decided to continue monitoring compliance with the following obligations of the State: a) to publish the pertinent parts of the judgment in a newspaper of national circulation; b) to disseminate patients' rights fully, using appropriate media and according to existing legislation in Ecuador and international standards; and c) to implement, within a reasonable term, an education and training program for justice operators and health care professionals about Ecuador's laws for protection of patients' rights and the penalties for violating them. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/cornejo_06_07_09.pdf

Case of Mejía Idrovo

1113. 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.

Case of Salvador Chiriboga

1114. 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.

1115. 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

1116. 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

1117. 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.

1118. On July 10, 2007, the Court adopted an order monitoring compliance with the judgment in question. In the order, it decided to keep the procedure open for monitoring compliance with the State's pending obligations. It also instructed the State to set up a trust on behalf of Micaela Suárez Ramadán (containing the amount owed, plus the corresponding interest) as promptly as possible, in a solvent national financial institution and under the most favorable financial terms allowed by law and banking practices. It would also be monitoring for investigation of the case (here the Court ordered the State to reopen the investigation and to ensure that all public agencies furnish the information sought by the judicial authorities). The full text of the order may be found at: http://www.corteidh.or.cr/docs/supervisiones/suarez_10_07_07_ing.pdf .

1119. On March 20, 2009, the President of the Court issued an order summoning the parties to a private hearing to be held during the Court's LXXXIII regular session to receive information from the State on compliance with the pending points in execution of the judgments on merits and on reparations and costs. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/suarez_20_03_09.pdf The hearing took place on July 4, 2009.

Case of Tibi

1120. 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. The Inter-American Court delivered its judgment on the preliminary objections, merits, and reparations in this case on September 7, 2004..

1121. On September 22, 2006, the Court issued an order on the status of compliance with the judgment in the case, in which it instructed the State to take all steps necessary for prompt and effective compliance with the points of its judgment that were still pending. The full text of the order can be found at: http://www.corteidh.or.cr/docs/supervisiones/tibi_22_09_06_ing.doc

1122. On July 7, 2009, the Court issued an order declaring that the State had fully complied with payment for material and moral damages. It left open monitoring of compliance with the following obligations of the State: a) to identify, try, and if applicable punish within a reasonable time all those responsible for the violation of Daniel Tibi's rights; b) to publish, in a daily in France, the pertinent parts of the judgment; c) to publish, in a daily in France, a formal written statement issued by high authorities of the State that acknowledges its international responsibility for the facts of the case and apologizes to Mr. Tibi and the other victims; d) to establish an interagency committee to prepare and execute training programs on human rights and treatment of inmates for the staff of the judiciary, the public prosecutor's office, the police and penitentiary staff, including the medical, psychiatric, and psychological personnel; e) to pay Daniel Tibi compensation for damages for his confiscated property; and f) to pay interest for the delay in payment of the compensation. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/tibi_01_07_09.pdf.

Case of Zambrano Vélez *et al.*

1123. 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. The facts were never investigated thereafter.

1124. 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.

1125. On May 22, 2009, the President of the Court issued an order summoning the parties to a private hearing to be held during the Court's LXXXIII regular session to receive information from the State on compliance with the pending points in execution of the judgments on merits and on reparations and costs. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/zambrano_22_05_09.pdf. The hearing was held on July 4, 2009. Subsequent to the hearing, the State submitted its state report and the IACHR submitted its comments thereon.

j. El Salvador

Case of García Prieto Giralt

1126. 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..

1127. 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.

1128. 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. The parties are awaiting the State's report on compliance with the Court's judgment of November 20, 2007.

1129. During 2009 the IACHR continued to submit comments on the information provided by the parties concerning progress in compliance with the judgment in this case.

1130. On December 18, 2009, the President of the Court issued an order summoning the parties to a private hearing to be held on January 28, 2010, to receive information from the State on compliance with the pending points in execution of the judgments on merits and on reparations and costs. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/garcia_18_12_09.pdf

Case of the Serrano Cruz Sisters

1131. 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.

1132. 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.

1133. On December 18, 2009, the President of the Court issued an order summoning the parties to a private hearing to be held on January 28, 2010, to receive information from the State on compliance with the pending points in execution of the judgment on merits, reparations, and costs.

1134. During 2009 the IACHR continued to submit comments on the information provided by the parties concerning progress in compliance with the judgment in this case.

k. Guatemala

Case of Bámaca Velásquez

1135. In 2009, 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.

1136. On January 16, 2008 the Court issued an Order where it summoned the parties to a hearing to be held in private. The text is available at http://www.corteidh.or.cr/docs/supervisiones/Bamaca_16_01_08_ing.pdf. On November 11, 2008, the President of the Court issued an order in which she convened the Commission, the State of Guatemala, and the representatives of the victim's next of kin to a private hearing to be held at the seat of the Court on January 20, 2009, so that the Court can receive information from the parties on the request that the provisional measures be lifted; it will also enable the Court to compile information from the State concerning its compliance with the judgment on the merits and the judgment on reparations and costs delivered in this case, and to hear the comments from the Commission and from the representatives of the victims and the beneficiaries of the provisional measures. The order convening the hearing is available (in Spanish) at http://www.corteidh.or.cr/docs/medidas/bamaca_se_09.doc.

1137. On January 27, 2009, the Court issued an order to continue monitoring compliance with the following obligations of the State: a) to locate the mortal remains of Mr. Bámaca Velásquez, exhume them in the presence of his widow and next of kin, and deliver the remains to them; and b) to investigate the facts that constituted violations of the American Convention and the Inter-American Convention to Prevent and Punish Torture, to identify and, if applicable, punish the appropriate parties, and to publicly disseminate the results of the investigation. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/Bamaca_27_01_09.pdf

Case of Blake

1138. In 2009, the Commission continued to provide its comments on compliance with the Court's January 22, 1999 judgment on reparations.

1139. On January 22, 2009, the Court issued an order to continue monitoring compliance with the obligation to investigate the facts of the instant case and to identify and punish those found responsible. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/blake_%2022_01_09.pdf

Case of Carpio Nicolle *et al.*

1140. In 2009, the Commission continued to submit its periodic comments concerning compliance with the reparations ordered by the Court in its judgment of November 22, 2004. In its comments to the Court, the Commission acknowledged the steps taken for payment of the compensatory damages and costs, but expressed concern over the lack of progress made toward compliance with the other reparations ordered in the judgment. On November 18, 2008, the Court summoned the parties for a hearing to monitor compliance with its judgment, slated for January 20, 2009. The Order is available at http://www.corteidh.or.cr/docs/medidas/carpio_se_13.pdf. The hearing took place at the place and on the date indicated.

1141. On July 1, 2009, the Court 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.pdf

Case of Fermín Ramírez

1142. 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.

1143. 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.

1144. In 2009 the Commission continued to submit its periodic comments regarding compliance with the Court's July 20, 2005 judgment on the merits, reparations and costs.

Case of Florencio Chitay Nech

1145. 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.

1146. On December 21, 2009, the President of the Court convened a public hearing to be held at the Court's headquarters on January 2 and 3, 2010.

Case of Maritza Urrutia

1147. In 2009 the Commission continued to submit its periodic comments concerning compliance with the reparations ordered in the Court's November 27, 2003 judgment. 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.

1148. 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 (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/urrutia_22_01_09.pdf

Las Dos Erres Massacre

1149. 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.

1150. In its application, the Commission noted the positive attitude of the Guatemalan State in acknowledging the facts and its responsibility arising from them, as well as the efforts to make reparation for the human rights violations suffered by the victims in the case, all of which has full effect in relation to the judicial proceeding now proposed. However, 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>.

1151. On July 14, 2009, there was a public hearing on the case during the XL special session held in Bolivia.

1152. 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 (in Spanish) at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_211_esp.pdf

Case of the "Plan de Sánchez" Massacre

1153. 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.

1154. On August 8, 2008 the Court issued an Order of Compliance Supervision with its Judgment. There, the Court decided that on monitoring overall compliance with the Judgment, the Court finds it essential for the State to provide information on the following aspects which are still pending: a) Investigation, identification and possible punishment of the perpetrators and masterminds of the Massacre; b) Publicizing of the text of the American Convention in the Spanish and Maya-Achí languages and dissemination thereof in the Municipality of Rabinal; c) Publication in Spanish and Maya-Achí of the pertinent parts of the Judgment on Merits, and of the Judgment on Reparation and Costs in a newspaper with national coverage; d) Payment of the amount for infrastructure maintenance and improvements at the chapel in memoriam of the victims; e) Provision of free-of-charge medical and psychological treatment and medication to those victims who may so require; f) Provision of adequate housing to those survivors of the village of Plan de Sánchez who may so require; g) Implementation of programs on the following issues in the affected communities: (i) study and dissemination of the Maya-Achí culture in the affected communities through the Guatemalan Academy of Mayan Languages or a similar organization; (ii) maintenance and improvement of the road systems between the said communities and the municipal capital of Rabinal; (iii) sewage system and potable water supply; (iv) supply of teaching personnel trained in intercultural and bilingual teaching for primary, secondary and comprehensive schooling in these communities; h) Payment of the compensation amount awarded in the Judgment on Reparations on account of pecuniary and non-pecuniary damage to those victims or next of kin who are yet to be

paid such amount in full. The text of the order is available at: http://www.corteidh.or.cr/docs/supervisiones/sanchez_05_08_08_ing.pdf

1155. On July 1, 2009, the Court issued an order declaring that the State had fully complied with publication of the judgment and payment of the sum set for maintenance and improvements at the chapel in which the victims honor the memory of the individuals executed in the massacre. The Court left open the procedure for supervision of compliance with the following obligations of the State: a) to investigate, identify, and punish as applicable the perpetrators and masterminds of the “Plano de Sánchez” **massacre**; b) to give the text to the victims and to disseminate the text of the American Convention in Maya-Achí in the municipality of Rabinal; and c) to provide free medical and psychological treatment and medication to the victims who may need it. The text of that order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/sanchez_01_07_09_ing.pdf

1156. In 2009 the Commission submitted its comments on the State’s compliance reports. The Commission noted that it appreciated the State’s efforts to comply with the judgment on reparations 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 Molina Theissen

1157. In 2009, 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 case concerns the forced disappearance of Marco Antonio Molina Theissen, a boy of 14 who was abducted from his parents’ home by members of the Guatemalan Army on October 6, 1981.

1158. According to the Court’s most recent order monitoring compliance, which is dated July 10, 2007, 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. The full text of the order can be found at: http://www.corteidh.or.cr/docs/supervisiones/molina_10_07_07%20ing.pdf.

1159. On August 17, 2009, the President of the Court issued an order summoning the parties to a private hearing on October 1, 2009, for the purpose of obtaining information from the State on compliance with the pending points in execution of the judgment. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/molina_17_08_09.pdf. The hearing took place at the place and time announced.

1160. On November 16, 2009, the Court issued an order declaring that the State had fully complied with the publication of the pertinent parts of the judgments on merits and reparations. The Court left open the procedure for supervision of compliance with the following obligations of the State: a) to locate the mortal remains of Marco Antonio Molina Theissen and deliver them to his next of kin; b) to investigate the facts of the case so as to identify, prosecute, and punish the masterminds and perpetrators of the victim’s disappearance; c) to establish a prompt procedure to obtain a declaration of absence and presumption of death by forced disappearance; and d) to adopt such legislative, administrative, and other measures as may be necessary to create a genetic

information system. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/molina_16_11_09.pdf

Case of Myrna Mack

1161. In 2009 the Commission continued to submit its periodic comments concerning compliance with the Court's November 25, 2003 judgment on merits, reparations and costs.

1162. According to the Court's most recent order monitoring compliance, dated November 26, 2007, the last pending requirement is to investigate the facts of the case in order to identify, prosecute and punish all the material and intellectual authors and others responsible for the extrajudicial execution of Myrna Mack Chang, and for covering up the crime and other facts in the case..

1163. On August 14, 2009, the President of the Court issued an order summoning the parties to a private hearing on October 1, 2009, to obtain information from the State on compliance with the pending points in execution of the judgment. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/mack_14_08_09.pdf. The hearing was held at the place and on the date indicated.

1164. On November 16, 2009, the Court issued an order leaving open the procedure for supervision of compliance regarding the State's obligation to execute the judgment in the domestic courts, for which it must undertake due diligence to capture Juan Valencia Osorio to serve his sentence, because he is currently a fugitive. The text of that order is available (in Spanish) at the following link: http://www.corteidh.or.cr/docs/supervisiones/mack_16_11_09.pdf

Case of Paniagua Morales *et al.*

1165. On November 27, 2007, the Court issued an order monitoring compliance in which it instructed the State to adopt all measures necessary for prompt compliance with the reparations still outstanding from the judgment of May 25, 2001, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights; the Court also instructed the State to submit a detailed report indicating all the measures adopted to implement the Court-ordered reparations whose compliance was still pending.

1166. In 2009 the Commission continued to submit its periodic comments concerning compliance with the Court's May 25, 2001 judgment, the text of which is available at the following link: http://www.corteidh.or.cr/docs/casos/articulos/Seriec_76_ing.doc. .

Case of Raxcacó Reyes

1167. 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..

1168. In 2009 the Commission continued to submit its periodic comments regarding compliance with the Court's September 15, 2005 judgment on merits, reparations and costs.

1169. 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>.

Case of Tiu Tojín

1170. 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.

1171. 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.

1172. 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 esp.doc>.

Case of the "Street Children" (Villagrán Morales *et al.*)

1173. In 2008 the Commission submitted its periodic comments regarding compliance with the reparations and costs the Court ordered in its judgment of May 26, 2001..

1174. On April 16, 2008, the Court issued an Order where it summoned the parties to a private hearing to be held in the venue of the Court. The text of the Order is available in the following link: <http://www.corteidh.or.cr/docs/supervisiones/villagran 16 01 08.pdf>. On November 11, 2008, the President of the Court issued an order in which she summoned the Inter-American Commission, the State and the representatives of the victims' next of kin to a private hearing scheduled to be held at the seat of the Court on January 20, 2009. The hearing is being held to afford the Court an opportunity to receive information from the parties concerning that item of the judgment on merits and the judgment on reparations and costs whose compliance is still pending. It will also enable the Court to hear the comments of the Commission and the representatives of the victims' next of kin regarding the question of compliance. The text of the order convoking the hearing is available (in Spanish) at <http://www.corteidh.or.cr/docs/supervisiones/Villagran 11 11 08.doc>. The hearing took place at the place and time scheduled.

1175. On January 27, 2009, the Court issued an order to continue the procedure for supervision of compliance with the identification and, as applicable, punishment of the responsible parties and to adapt domestic legislation to include the necessary provisions to ensure compliance with this obligation. The text of that order is available (in Spanish) at the following link: <http://www.corteidh.or.cr/docs/supervisiones/villagran 27 01 09.pdf>

I. Haiti

Case of Lysias Fleury

1176. 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>

Case of Yvon Neptune

1177. 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.

1178. The Inter-American Commission, the victim's representatives and the State submitted their final briefs of pleadings, motions and evidence on September 30, 2007.

1179. On November 29, 2007, the Court convened a public hearing to receive Mr. Yvon Neptune's statement and hear the parties make their case with regard to certain specific topics indicated in the order convoking the hearing. That hearing was held in San José, Costa Rica, on January 30, 2008, with the participation of the Commission, the victim's representatives, and the Haitian State.

1180. 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.

1181. As of the date of preparation of this report, the State had not transmitted its first report on compliance with the judgment.

m. Honduras

Case of Alfredo López Álvarez

1182. 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.

1183. 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

1184. On February 6, 2008 the Court issued an Order where it deemed it imperative that the State submit updated information on the following obligations pending compliance: a) the investigation of the case and the application of the measures resulting from such investigation to those responsible, and b) the specific actions taken concerning the improvement of conditions in penitentiary centers and the implementation of training programs on human rights to the agents working in such centers. The text is available http://www.corteidh.or.cr/docs/supervisiones/lopezal_06_0208_ing.pdf

1185. In 2009 the Commission submitted its comments on the information reported by the State and by the representatives of the victim and his next of kin. The Commission observed that in order for the inter-American system to be able to make a complete assessment of compliance with the judgment, it must have the necessary information regarding the measures taken by the State in the investigation into the facts of the case, the characteristics of those measures, and the measures taken to improve the conditions of incarceration of persons being held in Honduran prisons.

Case of Blanca Jeannette Kawas Fernández

1186. 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..

1187. 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.

1188. On May 7, 2008, the representatives of the victim and her next of kin filed their brief of pleadings, motions and evidence. On July 3, the Honduran State submitted its brief answering the application, in which it acknowledged international responsibility for violation of the rights protected under articles 8 and 25 of the American Convention; it also acknowledged its obligation to offer reparations to the victim's next of kin..

1189. By an order of October 7, 2008, the Court convoked a public hearing on the merits, reparations and costs in this case. The hearing was held on December 2, 2008, during the Court's XXXVII special session, held in Mexico City. In attendance were the Commission, the representatives of the victim and her next of kin, and the Honduran State. The parties are to submit their final briefs of pleadings, motions and evidence by no later than January 20, 2009..

1190. The application is available at the following link: <http://www.cidh.org/demandas/12.507%20B%20J%20Kawas%20Honduras%204%20febrero%202008%20ENG.pdf>.

1191. 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

Case of Juan Humberto Sánchez

1192. 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 on June 7, 2003.

1193. On November 21, 2007, the Court issued an order monitoring compliance with the judgment, in which it found that some of the reparation measures it had ordered had been complied with in full. However, it also decided to keep open the monitoring procedure vis-à-vis compliance with the pending items, namely: (a) paying Mr. Julio Sánchez the compensation ordered for non-pecuniary damages; (b) conducting an effective investigation into the facts of the case, identifying the direct perpetrators, the instigators, and any accessories after the fact, and punishing them through the appropriate administrative and criminal justice channels; and establishing a log of detainees with which to verify the legality of the detentions.

1194. In 2009, 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.*

1195. 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..

1196. On January 29, 2008 the Court issued an Order in which it determined that it will monitor compliance with seven pending matters. On August 5, 2008, the Court issued another Order where it determined that it will monitor compliance with the pending matters in the present case, specifically: a) to carry out all actions necessary to identify, prosecute and, as the case may be, punish all the perpetrators of the violations committed in detriment of the victims and to remove all obstacles and mechanisms of fact and of law that have maintained impunity in the instant case and b) to carry out a campaign to sensitize the Honduran society regarding the importance of the protection of children and youngsters, to inform about the specific duties for their protection that correspond to the family, society and the State, and to show the population that children and youngsters in risky situations are not associated to delinquency. The Orders are available at: http://www.corteidh.or.cr/docs/supervisiones/servellon_29_01_08_ing.pdf http://www.corteidh.or.cr/docs/supervisiones/servellon_05_08_08_ing.pdf

n. Mexico

Case of Cabrera García and Montiel Flores

1197. 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>

Case of Castañeda Gutman

1198. 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.

1199. On November 30, 2007, the Court convoked a public hearing on preliminary objections, merits, reparations, and costs, which was held in San José, Costa Rica, on February 8, 2008, with the participation of the Commission, the representatives of the victim and his family, and the Mexican State. On March 10, the parties submitted their final briefs of pleadings, motions and evidence.

1200. 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

1201. On July 1, 2009, the Court issued an order declaring that the State had fully complied with its obligation to publish the pertinent parts of the judgment, and its obligation to pay Mr. Castañeda Gutman the amount established for costs and expenses. The Court also decided to continue the procedure of supervision of compliance concerning the State's adaptation of its domestic law to the Convention, in order to adapt the secondary legislation and the norms that regulate the action for the protection of the rights of the citizen to the provisions of the constitutional reform of November 13, 2007, so that, using this remedy, citizens are effectively guaranteed the possibility of contesting the constitutionality of the legal regulation of the right to be elected. The text of that order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/castañeda_01_07_09_ing.pdf

Case of Campo Algodonero (González *et al.*)

1202. 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.

1203. On May 26, 2008, the State filed its brief answering the application, but did not file any express preliminary objection. Nevertheless, as the Court held, "the arguments [...] regarding the alleged lack of competence of the Court to 'examine direct violations of the Convention' would constitute a preliminary objection.

1204. The Commission filed its arguments regarding the preliminary objection on August 20, 2008..

1205. 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>

1206. The public hearing was held on April 28-29, 2009 during the Court's XXXIX special session, held in Chile.

1207. 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 (in Spanish) at http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_esp.pdf

Case of Inés Fernández Ortega

1208. 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 (in Spanish) at the following link: <http://www.cidh.oas.org/demandas/12.580%20Ines%20Fernandez%20Ortega%20Mexico%207mayo09.pdf>

Case of Rosendo Radilla Pacheco

1209. 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>

1210. The State presented preliminary observations and the parties have presented their comments thereon. Convocation of the public hearing to hear the evidence and the arguments in this case is pending.

1211. On July 7, 2009, there was a public hearing during the Court's LXXXIII regular session at its headquarters.

1212. 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_esp.pdf

Case of Valentina Rosendo Cantú *et al.*

1213. 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>

o. Nicaragua

Case of the Mayagna (Sumo) Awas Tingni Community

1214. On June 4, 1998 the Commission filed an application in this case with the Inter-American Court. The case concerns the State's failure to demarcate the communal lands of the Awas Tingni Community, its failure to take effective measures to ensure the Community's property

rights to its ancestral lands and the natural resources on and in those lands, the fact that the State granted a concession on community lands without the Community's consent and without guaranteeing an effective remedy to answer the Community's claims to its property rights. The Court delivered its judgment on merits and reparations on August 31, 2001.

1215. On March 14, 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 7, 2008 the Court issued another Order where it decided that it will keep open the procedure of monitoring compliance with the pending aspect of this case, concerning the State's obligation to delimit, demarcate and title the lands that correspond to the members of the Awas Tingni Community and, until that delimitation, demarcation and titling has been done, it must 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 where the members of the Community live and carry out their activities. The text of the Orders are available in the following links:

http://www.corteidh.or.cr/docs/supervisiones/mayagna_07_05_08_ing.pdf

http://www.corteidh.or.cr/docs/supervisiones/mayagna_14_03_08_ing.pdf

1216. On Sunday, December 14, 2008, the Government of Nicaragua gave the Awas Tingni Community title to 73,000 hectares of its territory, located in Nicaragua's Atlantic Coast region. The Commission took this as a major step toward resolution of the case that it brought to the Inter-American Court in 1998. It was the first case that the Commission took to the Court on the issue of the collective ownership of indigenous lands. By this measure, the judgment the Inter-American Court delivered on August 31, 2001 becomes a historic milestone in the recognition and protection of the rights of indigenous people at the global level, and a major legal precedent in international human rights law..

1217. On April 3, 2009, the Inter-American Court issued an order on compliance in which it decided to archive the case because the State had fully complied with the provisions of the judgment rendered by the Court on August 31, 2001. The text of that order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/mayagna_03_04_09_ing.pdf

Case of Yatama

1218. 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.

1219. 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

1220. In 2009, the Commission submitted its periodic comments on the information reported by the representatives and by the State on the matter of compliance with the reparations the Court ordered in its judgment of June 23, 2005..

p. Panama

Case of Baena Ricardo *et al.*

1221. 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 issued its judgment on merits and reparations on February 2, 2001. .

1222. On February 11, 2008 the Court summoned the parties to a private hearing on compliance with the judgment, to be held on May 3, 2008. On October 30, 2008, it announced that it was standardizing the agreements concluded between some victims and the State. It also instructed Panama to take the measures necessary to make, promptly and effectively, the payments required under the agreements to those victims or heirs who signed agreements. In the case of victims or heirs who did not sign agreements or who signed but then retracted their signature, the Court ordered that the discrepancies over the total amount owed under the judgment and compensation and reimbursements owed pursuant to operative paragraphs six and seven of the Judgment must be settled at the domestic level, following the appropriate procedures. This includes the possibility of recourse to the competent authorities, including the domestic courts. The Court also announced that it would keep open the procedure to monitor compliance with the judgment in order to receive: a) the vouchers certifying payments to victims or heirs who signed agreements; and b) bank deposit vouchers in the case of those persons who have not signed agreements or who signed but then retracted their signature. The full text of that order is available at: http://www.corteidh.or.cr/docs/supervisiones/baena_30_10_08_ing.pdf

1223. On July 1, 2009, the Inter-American Court issued an order on compliance in which it declared: a) that the State has complied with its duty to deliver the checks for the first of the four payments agreed, in relation to 255 victims or successors signatory to the agreements and to the issuance of the payment receipts. (The Tribunal was left awaiting confirmation of the situation of

the five persons who signed the agreements and who would have withdrawn the check, and with the two persons who signed the agreements but have not withdrawn their checks); b) that the State has yet to comply with its obligation to make a specific bank deposit and send the corresponding deposit slips, in connection with those persons who have not signed the agreements or who, after the signature, withdrew their consent. The text of the aforesaid order is available at http://www.corteidh.or.cr/docs/supervisiones/baena_01_07_09_ing.pdf.

Case of Heliodoro Portugal

1224. 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.

1225. On November 29, 2007, the Court convened a public hearing on preliminary objections, merits, reparations, and costs, which was held in San José, Costa Rica, January 29-30, 2008, and was attended by the Commission, the representatives of the victim and his family, and the Panamanian State. .

1226. 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 Heliodor 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. In 2009 the Commission submitted its comments on the first report of the State on compliance, as well as its comments on the observations of the representatives in that respect.

Case of Tristán Donoso

1227. 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..

1228. 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.

1229. 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

Case of Vélez-Loor

1230. 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%20Panama%208oct09%20ENG.pdf>

q. Paraguay

Case of the “Panchito López” Juvenile Reeducation Center

1231. In 2008, the Commission presented its periodic comments concerning compliance with the Court's September 2, 2004 judgment on merits, reparations and costs in this case, and highlighted the fact that almost nothing of what the Court ordered in its judgment has been carried out thus far.

1232. 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..

1233. 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

1234. 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.

1235. 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

Case of Goiburú *et al.*

1236. In 2008, the Commission continued to file its periodic comments concerning compliance with the Court's September 22, 2006 judgment in this case. The latter concerns 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 full text of the judgment can be seen at the following link: http://www.corteidh.or.cr/docs/casos/articulos/seriec_153_ing.doc..

1237. On August 7, 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 October 1, 2009. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/goiburu_07_08_09.pdf. The hearing was held on the appointed day.

1238. On November 19, 2009, the Court issued an order on compliance in which it declared that the State had complied with its obligation to: a) publish several parts of the Judgment;

b) implement, within a reasonable time, permanent programs of human rights training in the Paraguayan police forces, at all levels, and, c) pay the amounts set in costs and expenses. The Court also declared that it would keep open the procedure for monitoring compliance with respect to the points pending in this case, which were to: a) immediately carry out the necessary procedures to activate and conclude effectively the investigation of the facts; b) proceed immediately to seek the three disappeared victims and, if their remains are found, deliver them to their next of kin forthwith and cover the costs of their burial; c) organize a public act acknowledging responsibility and in reparation; d) provide all the next of kin of the victims with appropriate treatment including medicines, after they have given their corresponding consent; e) erect a monument in memory of Agustín Goiburú Giménez, Carlos José Mancuello, Rodolfo Ramírez Villalba, and Benjamín Ramírez Villalba; adapt the definition of the crimes of torture and “involuntary” (*forzosa*) disappearance of persons contained in articles 236 and 309 of the current Penal Code to the applicable provisions of international human rights law, and, g) pay in cash to the next of kin of the victims the compensation set for pecuniary and non-pecuniary damages. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/goiburu_19_11_09.pdf

Case of Ricardo Canese

1239. In 2008, the Commission submitted its periodic comments on the State’s compliance with the Court’s August 31, 2004 judgment on merits, reparations and costs in this case. .

1240. On December 14, 2007, the President of the Inter-American Court decided to summon the Commission, the victims’ representatives and the Paraguayan State to a private hearing, to get up-to-date information on the status of compliance with the judgment on reparations. That hearing was held at the seat of the Court on February 4, 2008.

1241. On February 6, 2008 the Inter-American Court issued an order requiring the victim’s representatives to inform the Court, by no later than March 28, 2008, of the victim’s position regarding the Paraguayan State’s request to be released from the obligation to pay interest in arrears

1242. Having seen the information supplied by the victim’s representation, on August 6, 2008 the Court decided that the State has fully complied with the Judgment on merits, reparations and costs that the Court delivered on August 31, 2004, and therefore considered the case of Ricardo Canese v. Paraguay closed and the proceedings in the case filed. The corresponding order is available at http://www.corteidh.or.cr/docs/supervisiones/canese_06_08_08.doc..

Case of Sawhoyamaya

1243. In 2009, the Commission submitted its periodic comments concerning compliance with the Court’s March 29, 2006 judgment on merits, reparations and costs..

1244. 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..

1245. 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

1246. 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/sawhoyamaxa_20_05_09.pdf. The hearing was held on the appointed day.

Case of Vargas Areco

1247. In 2009, the Commission continued to submit its periodic comments concerning compliance with the Court's September 26, 2006 judgment in this case. The latter 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

1248. On October 30, 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, to wit: a) to take, in full accordance with the right to a fair trial and within a reasonable period of time, all such actions as may be necessary to identify, prosecute, and punish all those responsible for the violations committed in the instant case; b) to hold a public act to acknowledge its international responsibility in relation to the violations declared in [the] Judgment, in the community where Gerardo Vargas-Areco's next of kin reside, and in the presence of the State's civilian and military authorities make a public apology and place a plaque in memory of the child Vargas-Areco; c) to provide medical, psychological, and psychiatric treatment, as appropriate, to De Belén Areco, Pedro Vargas, and Juan, María Elisa, Patricio, Daniel, Doralicia, Mario, María Magdalena, Sebastián, and Jorge Ramón, all of them Vargas-Areco, if they so require, and for as long as necessary; d) to implement training programs and regular courses on human rights for all the members of the Paraguayan Armed Forces; e) to publish once in a nationwide daily newspaper the chapter on Proven Facts of the Judgment, without the corresponding footnotes, and the operative paragraphs thereof; f) to adapt its domestic legislation on recruitment for voluntary military service of minors under the age of 18 into the Paraguayan Armed Forces, in conformity with the applicable international standards, and g) to pay default interests on the amounts set as compensation for pecuniary and non-pecuniary damages and reimbursement of costs and expenses. The Order is available in the following link: http://www.corteidh.or.cr/docs/supervisiones/vargas_30_10_08_ing.pdf

Case of Yakye Axa Indigenous Community

1249. 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..

1250. 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.

1251. On February 4, 2008, the Court held a private hearing at its seat in San José, Costa Rica. After the hearing, the Commission was present to witness the parties sign an agreement. On February 8, 2008, the Court issued an Order where it decided that it will keep open the procedure to monitor compliance with the following pending points: (a) The granting of the traditional territory to the members of the Yakye Axa Indigenous Community; (b) The provision of the basic goods and services required for the subsistence of the members of the Community; (c) The establishment of a fund exclusively for the purchase of the lands to be granted to the members of the Community; (d) The implementation of a community development fund and program; (e) The adoption of such domestic legislative, administrative and other measures as may be necessary to guarantee the effective exercise of the right to property of the members of the indigenous peoples; (f) Publication and radio broadcast of the Judgment. The Order is available in the following link: http://www.corteidh.or.cr/docs/supervisiones/yakyeaxa_08_02_08-ing.pdf. In 2009, 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

1252. 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%20ESP.pdf>

r. Peru

Case of Acevedo Jaramillo *et al.* (SITRAMUN)

1253. 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.

1254. 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

Case of Baldeón García

1255. 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.

1256. 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..

1257. 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.

1258. 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_03_04_09.pdf.

Case of Barrios Altos

1259. 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.” .

1260. 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..

1261. On September 22, 2005, the Court decided to keep open the monitoring procedure with respect to the measures of reparation whose implementation was still pending. In 2008, 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 those comments the Commission expressed concern over the failure to comply with some of the reparations not yet implemented.

1262. On August 4, 2008, the Court issued an Order where it decided that it shall keep the monitoring of compliance proceedings open regarding the points pending fulfillment in the instant case, to wit: a) payment of the compensation owed to Mr. Martín León-Lunazco, son of victim Máximo León-León; b) payment of the interest in arrears regarding the compensations of beneficiaries Cristina Ríos-Rojas, daughter of deceased victim Manuel Isaías Ríos-Pérez, and Rocío Genoveva Rosales-Capillo, daughter of deceased victim Alejandro Rosales-Alejandro; c) the payment of the amount of interest in arrears owed to Mrs. Maximina Pascuala Alberto-Falero; d) the duty to investigate the facts to ascertain those responsible for the violations of the human rights referred to in the Judgment on the merits, as well as the public release of the results of said investigation and the punishment of the responsible parties; e) the health services provided; f) the educational services provided; g) the progress in the inclusion of the “legal concept resulting most convenient to typify the crime of extrajudicial killings”, and h) the memorial monument to be erected. The text of the Order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/barrios_04_08_08_ing.pdf.

1263. On December 7, 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/barrios_7_12_09.pdf.

Case of Cantoral Benavides

1264. 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.

1265. In 2009, the Commission submitted its periodic comments on the State’s compliance with the Court’s December 3, 2001 judgment on merits, reparations and costs.

1266. On December 14, 2007, the President of the Court summoned the Commission, the victims’ representatives and the Peruvian State to a private hearing, to get up-to-date information on the status of compliance with the judgment on reparations. That hearing was held at the seat of the Court on February 1, 2008.

1267. On February 7, 2008, the Inter-American Court issued an order instructing the Peruvian State to adopt all measures necessary to promptly and effectively comply with the pending obligations under the Judgments on merits and reparations of August 18, 2000 and December 3, 2001, respectively, delivered by the Inter-American Court of Human Rights in the Case of Cantoral-Benavides, pursuant to the provisions of Article 68(1) of the American Convention on Human Rights. The order in question is available at http://www.corteidh.or.cr/docs/supervisiones/cantoral_07_02_08_ing.doc

1268. On November 20, 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 operative points pending, namely: a) provide Luis Alberto Cantoral Benavides with a fellowship to pursue advanced or university studies, in order to defray the costs of the professional degree that the victim elects to pursue, as well as his living expenses for the duration of the victim’s studies, at a center of recognized academic excellence selected by mutual agreement between the victim and the State; b) provide medical treatment and psychotherapy to Mrs. Gladys Benavides López; and, c) investigate the facts of the present case and identify and punish the responsible parties. The text of the order is available at http://www.corteidh.or.cr/docs/supervisiones/cantoral_20_11_09.pdf

Case of Cantoral Huamaní and García Santa Cruz

1269. 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.

1270. 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.

1271. 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

Case of Castillo Páez

1272. In 2009, the Commission continued to submit its periodic comments concerning compliance with the Court's judgments of November 3, 1997 and November 27, 1998. 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.

1273. In the Court's most recent order monitoring compliance in this case, dated November 17, 2004, it found that the State had as of that date not complied with its obligations to investigate the case, identify and punish those responsible, and locate the mortal remains of Ernesto Rafael Castillo Páez. The text of the order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/castillo_17_11_04_ing.doc.

1274. According to the latest information supplied by the parties, a final judgment delivered by the Supreme Court on June 30, 2008, allegedly upheld the conviction of four members of Peru's National Police, as the persons responsible for the victim's forced disappearance.

1275. 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

1276. 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 .

1277. The State did not report any information in 2009 concerning its compliance with the Court's judgment in this case..

Case of Cesti Hurtado

1278. 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.

1279. On September 22, 2006, the Court issued an order monitoring compliance with the judgment in the case and instructed the State to adopt all measures necessary to promptly and duly comply with the Court's orders in the Judgment on merits of September 29, 1999 and in the Judgment on reparations of May 31, 2001. It ordered the State to submit a detailed report specifying the measures adopted to pay interest on the amount ordered in the form of non-pecuniary damages, the investigation into the facts of the instant case and punishment of the perpetrators, the measures adopted to pay the pecuniary damages ordered, and any progress made in the annulment of the military proceedings and the consequences. The full text of the order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/cesti_22_09_06_ing.doc.

1280. In 2009, the Commission submitted its comments on the information reported by the representatives and by the State concerning compliance with the reparations ordered by the Court in its judgment of May 31, 2001. The Commission observed that no information had been provided on the matter of compliance and that a number of obligations incumbent upon the State had not been carried out subsequent to issuance of the judgments, after the time period for compliance had elapsed. It also pointed to the considerable effort the injured party has had to make to obtain reparations.

1281. On August 4, 2008, the Court issued an Order where it decided that the Court will consider the general status of compliance with said Judgment once it has received information regarding: a) payment of interest on the amount of compensation for moral damage; b) annulment of the military proceedings and the effects resulting therefrom; c) payment of pecuniary damages; and d) investigation of the facts surrounding this case and punishment of the perpetrators. The text is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/cesti_04_08_08_ing.pdf.

1282. On December 7, 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/cesti_7_12_09.pdf

Case of the Five Pensioners

1283. 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.

1284. The Court's most recent order regarding compliance is dated July 4, 2006. According to that order, the following points are still awaiting compliance in the case at hand: to conduct the corresponding investigations and apply the pertinent punishments to those responsible for failing to abide by the judicial decisions delivered by the Peruvian courts during the applications for protective measures filed by the victims; to pay the four victims and Maximiliano Gamarra Ferreyra's widow the amount set for nonpecuniary damages; and to pay the amount set for expenses and costs. The Court also ruled that the possible patrimonial consequences of the violation of the right to property should be established, under domestic law, by the competent national organs. The full text of the order can be found at: http://www.corteidh.or.cr/docs/supervisiones/Pensionistas_04_07_06_ing.doc .

1285. On December 3, 2008 the Court summoned the parties to a private hearing, which will be held at the seat of the Court on January 20, 2009.

1286. 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.pdf

Case of De la Cruz Flores

1287. 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.

1288. On November 23, 2007, the Court issued an order on compliance in which it determined that the State had not yet complied with the following obligations: a) observance of the principle of freedom from *ex post facto* laws and the non-retroactivity of the law and of the requirements of due process in the new proceeding brought against Ms. De La Cruz Flores; b) providing medical and psychological care to the victim through the State's health services, including the supply of free medication; c) providing a grant to Ms. De La Cruz Flores for training and

professional development; d) re-listing Ms. De La Cruz Flores in the respective retirement register, and e) publishing the section titled "Proven Facts" as well as operative paragraphs 1 to 3 of the declaratory part of the Judgment in the Official Gazette. The text of the order is available at: http://www.corteidh.or.cr/docs/supervisiones/cruz_23_11_07_ing.doc.

1289. The victim's representative reported that in the new trial of Mrs. María Teresa De La Cruz Flores, on March 11, 2009, the Second Transitional Chamber of the Supreme Court of Justice ruled that it was not the conviction, but the sentence, imposed on Mrs. Cruz Flores that was vacated/null and it emerged from her brief that the sentence was increased. Based on the foregoing the representative requested provisional measures in favor of the victim. The Commission deemed it essential that the State forward the decision to it as soon as possible so that it might examine in the light of the judgment of the Inter-American Court the requirement to observe the principles of *nullum crimen nulla poena sine lege praevia* and freedom from *ex post facto* laws recognized by the Court, together with the concrete measures adopted by the State to ensure that those principles are observed in full; during which time the personal liberty of the victim should be ensured, as should the prevailing objective of justice in the case.

1290. On December 21, 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 at http://www.corteidh.or.cr/docs/supervisiones/cruz_21_12_09.pdf

Case of Durand and Ugarte

1291. 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.

1292. 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.

1293. In 2009 the Commission submitted its comments on compliance in this case.

Case of García Asto and Ramírez Rojas

1294. In 2009, the Commission continued to submit its periodic comments regarding compliance with the Court's November 25, 2005 judgment in this case. The latter 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.

1295. 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

1296. 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.

1297. According to the Court's latest order monitoring compliance, which is dated October 18, 2007, the State had not yet complied with the reports requested by the Court, which would suggest that all the obligations required under the judgment are still pending. The text is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/gomez_18_10_07_ing.doc. In November 2008, the State forwarded the requested report. The time period for the parties to submit their comments has not yet expired.

1298. 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

Case of the Gómez Paquiyauri Brothers

1299. 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.

1300. On September 22, 2006, the Court issued an order on compliance with the judgment in this case, instructing Peru to take all the steps necessary for prompt and effective implementation of the pending elements of its judgment, namely: effectively investigating the events to identify, prosecute, and punish all perpetrators of the violations committed against the victims; officially bestowing the names Rafael Samuel Gómez Paquiyauri and Emilio Moisés Gómez Paquiyauri on a school in the province of El Callao, in a public ceremony attended by the families of the victims; and creating a scholarship covering studies up to the university level for Nora Emely Gómez Peralta and facilitating her vital-records registration as daughter of Rafael Samuel Gómez Paquiyauri. The full text of the order can be found at: http://www.corteidh.or.cr/docs/supervisiones/gomez_22_09_06_ing.doc.

1301. 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

1302. In 2009, the Commission filed its comments on the information reported by the representatives and by the State concerning compliance with the reparations ordered by the Court in its judgment of July 8, 2004. The IACHR again expressed its concern over the lack of tangible progress and the delay in complying with the three obligations that, according to the order of September 22, 2006, were still pending..

Case of Huilca Tecse

1303. In 2009, 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.

1304. 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

1305. 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.

1306. In its brief answering the application, the State filed a preliminary objection, in response to which the parties submitted their written observations. The Court has scheduled a public hearing to be held at the Court's seat on January 21, 2009, where evidence will be taken and arguments heard.

1307. On January 21, 2009, a public hearing was held in the framework of the Court's LXXXII Regular Session.

1308. 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.

1309. 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 at http://www.corteidh.or.cr/docs/casos/articulos/seriec_210_esp1.pdf

Case of Ivcher Bronstein

1310. In 2008, the Commission submitted its comments on compliance with the reparations ordered by the Court in its judgment of February 6, 2001, and in the Court's most recent order of September 21, 2005. According to that order, still pending are the State's obligations to investigate the incidents that led to the violations described in the judgment; to facilitate the victim's efforts to recover the use and enjoyment of his rights as the largest shareholder in *Compañía Latinoamericana de Radiodifusión S.A.*; to pay compensation for moral damages; and to reimburse the costs and expenses incurred at the domestic and international venues..

1311. The Commission has expressed its concern over the State's failure to fully comply with the Court's judgment in this case, more than seven years after it was served notice of the judgment. The Commission asked the Court: as to the obligation to facilitate the victim's efforts to

recover the use and enjoyment of his rights as the largest shareholder in the business, as he was on August 1, 1997, to order the State to take concrete steps to put a stop to any measures preventing Mr. Ivcher Bronstein from exercising and enjoying his rights as the major shareholder in the *Compañía Latinoamericana de Radiodifusión S.A.*

1312. 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.

1313. 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

Case of Juárez Cruzatt *et al.* " Miguel Castro Castro Prison"

1314. 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. .

1315. 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.

1316. 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..

1317. 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

1318. The State was to present its first report on compliance with the judgment in the month of June 2008. The Commission has still not received it.

Case of Kenneth Ney Anzualdo Castro

1319. 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>

1320. The public hearing was held on April 2, 2009, during the Court's XXXVIII Special Session in the Dominican Republic.

1321. 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

1322. 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.

1323. 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.

1324. 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

1325. On November 20, 2009, the Court issued an order on compliance in which it declared that the State had complied with its obligations to: a) publicly acknowledge its liability, and, b) ensure that, within the term of one year, the 10 individuals declared executed or forcefully disappeared victims should be represented in the memorial named "*El Ojo que Llora*" (The Crying Eye) if they are not represented so far and provided their relatives so desire. The Court also decided that it would keep open the procedure for monitoring compliance with the State's obligations to: a) take without delay the necessary actions to effectively conduct and complete, within a reasonable time, the ongoing investigations and the criminal proceedings pending in the domestic courts, and to carry out, as the case may be, the necessary investigations to determine the criminal liability of the perpetrators of the violations committed to the detriment of the victims; b) forthwith carry out the search and localization of the mortal remains of Hugo Muñoz-Sánchez, Dora Oyague-Fierro, Marcelino Rosales-Cárdenas, Armando Richard Amaro-Cóndor, Robert Edgar Teodoro-Espinoza, Heráclides Pablo-Meza, Juan Gabriel Mariños-Figueroa and Felipe Flores-Chipana and, once located, deliver them as soon as practicable to the relatives and bear the burial costs; c) publish the pertinent parts of the judgment; d) provide the relatives with any necessary treatment including medicines; e) implement, on a permanent basis, human rights-oriented programs for the members of intelligence services; and, f) pay the amounts set as compensation for pecuniary damages, non-pecuniary damages, and costs and expenses. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/cantuta_20_11_09.pdf

Case of Loayza Tamayo

1326. In 2009, 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.

1327. 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 .

1328. At the hearing held at the Court's seat on February 4, 2008, the Commission spoke to the points whose compliance is still pending. It noted in particular that the most recent development in criminal law is that members of the National Terrorism Directorate accused of committing the violations against the victim can no longer be subject to criminal prosecution. This is a deeply disturbing development and contrary to the State's international obligations.

Case of Lori Berenson

1329. In 2009, the Commission submitted its periodic comments concerning compliance with the Court's judgment of November 25, 2004. 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 .

1330. 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

1331. 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 .

1332. 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.

Case of the Constitutional Court

1333. 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.

1334. On February 7, 2006, the Court issued an order monitoring compliance with the judgment in this case, in which it decided to keep the monitoring procedure open with respect to the State's pending obligations, namely: to investigate to identify the persons responsible for the violations of human rights against the victims in the case and to punish them; to determine and pay the interest accrued on the back pay and other benefits owed to Messrs. Manuel Aguirre Roca, Guillermo Rey Terry, and Delia Revoredo Marsanoy, under the applicable domestic law most favorable to the victims and with the necessary guarantees of due process. The full text of this order is available at the following link: http://www.corteidh.or.cr/docs/supervisiones/tribunal_07_02_06_ing.doc.

1335. On August 5, 2008, the Court issued an Order where it considered necessary that the State inform on the status of compliance with the determination and payment in full of the amounts corresponding to the interest accrued during the time the State incurred in arrears with respect to the payment of the back salaries and other benefits of Manuel Aguirre Roca, Guillermo Rey Terry and Delia Revoredo Marsano, as has been established in the operative paragraph five of the Judgment. In relation to the other aspects of the Judgment so delivered, the Court reserves the possibility of duly assess them in a possible public hearing to be convened to such end. The Order is available in the following link: http://www.corteidh.or.cr/docs/supervisiones/tribunal_05_08_08_ing.pdf.

1336. In 2009, the State provided no information on the status of compliance with the judgment delivered on January 31, 2001. The Commission has, therefore, been unable to prepare its periodic comments on the State's compliance with the Court's judgment in this case.

Case of the Dismissed Congressional Employees

1337. 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..

1338. 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..

1339. In 2009 the Commission submitted its comments on compliance with the judgment.

1340. On June 8, 2009, the President of the Court issued an order in which she convened the parties to a private hearing to be held on July 8, 2009, in the course of the Court's LXXXIII Regular Session held at its seat. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/aguado_08_06_09.pdf. The hearing was held on the appointed day.

1341. On November 20, 2009, the Court issued an order on compliance in which it declared that the State had complied with its obligations as regards payment of the amounts set as costs. The Court also declared that it would keep open the procedure to monitor compliance with respect to the points pending for full compliance, which are to: a) guarantee to the 257 victims

access to a simple, prompt and effective recourse; and, b) pay immediately the amount established as non-pecuniary damages in favor of the 257 victims. The text of the order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/aguado_20_11_09.pdf

s. Suriname

Case of the Moiwana Community

1342. 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.

1343. According to the Court's most recent order monitoring compliance with the judgment delivered in this case, dated November 21, 2007, compliance with the following obligations is still pending: a) to implement the necessary measures to investigate the facts of the case, as well as to identify, prosecute, and eventually punish the responsible parties; b) to recover the remains of the Moiwana community members killed during the events of November 29, 1986, as soon as possible, and deliver them to the surviving community members; c) to adopt legislative, administrative, and other measures necessary to ensure the property rights of the members of the Moiwana community in relation to the traditional territories from which they were expelled, and to provide for the members' use and enjoyment of those territories; d) to guarantee the safety of those community members who decide to return to Moiwana Village; e) to establish a community development fund; and f) to build a memorial in a suitable public location. The text of the order is available at: http://www.corteidh.or.cr/docs/supervisiones/moiwana_21_11_07_ing.pdf.

1344. 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

Case of the Twelve Saramaka Clans

1345. 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

1346. 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.

1347. 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. In it the State requested an interpretation of the "meaning and scope" of several issues, which the Court summarized as follows:

- a) with whom must the State consult to establish the mechanism that will guarantee the "effective participation" of the Saramaka people ordered in the Judgment;;

- b) to whom shall a “just compensation” be given when, for example, only part of the Saramaka territory is affected by concessions granted by the State; that is, whether it must be given to the individuals directly affected or to the Saramaka People as a whole;
- c) to whom and for which development and investment activities affecting the Saramaka territory may the State grant concessions;
- d) under what circumstances may the State execute a development and investment plan in Saramaka territory, particularly in relation to environmental and social impact assessments, and,
- e) whether the Court, in declaring a violation of the right to juridical personality recognized in Article 3 of the Convention, took into consideration the State’s arguments on that issue..

1348. On May 19, 2008, the representatives and the Commission presented their briefs on the State’s application seeking an interpretation.

1349. 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..

1350. In 2009, the State presented its first report on compliance and the Commission submitted its comments in that regard and on the observations of the victims’ representatives.

t. Trinidad and Tobago

Case of Hilaire, Constantine and Benjamin *et al.*

1351. 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 nonavailability of legal counsel to assist some of the victims in securing access to domestic remedies for claiming violation of their rights.

1352. 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

1353. Again in 2009, no information was forthcoming from the State regarding compliance with its obligations under the judgment in this case. .

Case of Winston Caesar

1354. 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..

1355. 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. Venezuela

Case of Chocrón

1356. 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.

Case of El Amparo

1357. 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.

1358. The Court's most recent order is dated July 4, 2006. In it, the Court declared that the State had fully complied with the obligation to pay the accrued interest in the case. It also held that if, after ten years, the next-of-kin of Mr. Julio Pastor Ceballos did not claim the amounts kept in their name at the corresponding financial institution, those funds would be returned to the State, with the interest earned. It also found that the one obligation pending in the case was to continue with the investigation into the facts and to punish the guilty parties. The text of that order may be found at: http://www.corteidh.or.cr/docs/supervisiones/amparo_04_07_06_ing.pdf

1359. In 2009, the State did not comply with its duty to report to the Court on those aspects whose compliance was pending, despite repeated requests to that effect.

1360. 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

Case of the Caracazo

1361. According to the most recent order, the State has still not complied with the following obligations:

- a. investigating, identifying, and punishing, administratively and criminally, with all the conditions and characteristics set out in the judgment;
- b. finding, exhuming, and identifying the mortal remains of certain victims, and handing them over to their families;
- c. reporting, when burials have taken place, if the State assumed the costs thereof and took into account the locations chosen by the next-of-kin for the interment of the mortal remains of the individuals referred to in the second operative paragraph;
- d. taking the steps necessary to avoid recurrence of the circumstances and facts of the instant case; and,
- e. reimbursing the Center for Justice and International Law (CEJIL) for costs and expenses.

1362. In 2009, the Inter-American Commission submitted its comments concerning compliance with the reparations ordered by the Court.

1363. 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.

1364. 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

Case of the Disappeared of Vargas (Blanco Romero, Hernández Paz and Rivas Fernández)

1365. 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.

1366. 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.

1367. In 2009, the Commission submitted comments concerning the information supplied by the parties. It underscored how important it is that the binding judgments of the Court be complied with in the time and manner set by the Court, and how imperative it was for the State to report the specific measures adopted to comply with the judgment and to refrain from making its own interpretations that seek to alter the judgment and the reparations owed .

1368. On May 18, 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 July 4, 2009. The order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/blanco_18_05_09.pdf

1369. On July 7, 2009 the Court issued an order on compliance in which it declared that it would not continue to monitor compliance with the obligation to "adopt the essential measures required to facilitate minor Aleoscar Russeth Blanco-Iriarte's departure from Venezuela," given that said person had reached majority of age. The Court also declared that it would continue to monitor compliance with the other obligations set down in the judgment. The order is available (in Spanish only) at http://www.corteidh.or.cr/docs/supervisiones/blanco_07_07_09.pdf

Case of Francisco Usón Ramírez

1370. 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.

1371. On April 1, 2009, a public hearing was held in the framework of the Court's XXXVIII Special Session in the Dominican Republic.

1372. 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 (in Spanish only) at http://www.corteidh.or.cr/docs/casos/articulos/seriec_207_esp.pdf

Case López Mendoza

1373. 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.

Case of Luisiana Ríos *et al.* (RCTV)

1374. 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.

1375. 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.

1376. 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)

1377. 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.

1378. 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..

1379. 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

1380. 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)

1381. 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..

1382. 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.

1383. The Commission is currently awaiting the judgment that the Court is to deliver in this case..

1384. The application is available at the following link: <http://www.cidh.org/demandas/12.442%20Globovision%20Venezuela%2012%20abril%202007%20ENG.pdf>

1385. 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 Pallen, 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 Oscar Barreto Leiva

1386. 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.

1387. 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>.

1388. On July 2, 2009, a public hearing was held at the seat of the Court.

1389. 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 (in Spanish only) at http://www.corteidh.or.cr/docs/casos/articulos/seriec_206_esp1.pdf

Case of Reverón Trujillo

1390. 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>

1391. 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.

1392. 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)

1393. 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>

1394. 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

1395. 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

2. Advisory Opinions

Request for an advisory opinion

1396. On December 29, 2008, the Commission submitted a request to the Inter-American Court of Human Rights for an advisory opinion in order for the Court to determine “whether the use of corporal punishment as a method of disciplining young children and adolescents is compatible with Articles 1.1, 2. 5.1, 5.2 and 19 of the American Convention and Article VII of the American Declaration on the Rights and Duties of Man, consistent with the relevant provisions of the Convention on the Rights of the Child.

1397. On January 27, 2009, the Inter-American Court issued a Resolution whereby it decided “not to answer the request for an advisory opinion [...] because the criteria regarding the issue mentioned in the consultation [...] could be drawn from the analysis and comprehensive interpretation of the Court’s *corpus juris* on the rights of the child *vis-à-vis* other criteria established, as well as from the obligations arising from other international instruments ratified by the States of the region.” Therefore, in its considerations the Court indicated that

as regards the matter of the request, the Court observes that in the development of international human rights law there have been advances relevant to the protection of the human rights of children and adolescents. In particular the Convention on the Rights of the Child [...] which has been signed and ratified by 195 States [...], among them 34 States of the American Continent, [...] and which establishes the obligation of the States party to respect the responsibilities, rights and duties of those persons who are legally responsible for providing the child with direction and guidance [...]. Nevertheless, it subjects such a right to the obligation to establish the superior interest of the child as a basic element during their upbringing and development, either by the parents or legal guardians. [...] Similarly this obligation extends to school discipline, in order that it may be administered in a way compatible with human dignity [...] Added to which the Convention on the Rights of the Child obliges the States to ensure that no child is subjected to torture or other cruel, inhumane or degrading treatment or punishment [...] as well as to any form of physical or psychological abuse, injury, neglect, negligent treatment, mistreatment or exploitation; whether in the care of parents, legal guardians or any other person in charge of the child [...]. IA Court HR, Resolution of 27 January 2009, on the Request for Advisory Opinion presented by the Inter-American Commission on Human Rights, available at <http://www.corteidh.or.cr/docs/asuntos/opinion.pdf> (in Spanish only).

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1398. On August 14, 2008, Argentina presented a request for an Advisory Opinion regarding “the interpretation of Article 55 of the Convention” on “*ad hoc* judges and equality of arms during the proceedings before the Inter-American Court in the context of cases originating from individual petitions”, as well as the “nationality of members [of the Court] and the right to an independent and impartial judge.”

1399. On September 29, 2009, the Court issued Advisory Opinion No. 20 where it established that: a) pursuant to Article 55.3 of the American Convention, the possibility of States Party in a case submitted to the Inter-American Court to appoint an *ad hoc* judge to join the Tribunal whenever there is no judge of that nationality in its composition, is restricted to contentious cases in inter-state petitions (Article 45 of the said instrument) and that it is not possible to derive a similar right in cases originating from individual petitions (Article 44 of the said Treaty); and b) that the judge of the nationality of a State brought before the Court should not participate in the consideration of contentious cases originating from individual petitions. Full text of the opinion available at http://www.corteidh.or.cr/docs/opiniones/seriea_20_esp1.pdf (Spanish only).

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 five member states: Colombia, Cuba, Haiti, Honduras, and Venezuela.

COLOMBIA

9. As in previous years, the situation in the Republic of Colombia in 2009 falls within the framework of the criteria set forth in the introduction to Chapter IV of the Annual Report of the Inter-American Commission on Human Rights (IACHR). In the case of Colombia, these criteria are particularly relevant with regard 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 57(1)(h) of its Rules of Procedure,¹ for their inclusion in its Annual Report. The preliminary version of this report was transmitted to the Republic of Colombia on November 13, 2009, for its observations. On December 13, 2009, the State submitted its observations, which have been incorporated in this report.²

10. The IACHR is keenly aware of the complex situation in 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 of the State's endeavors to combat that problem. 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 protection of its citizens.

11. Among other things, attention should be drawn to the continued efforts under the "Program for Protection of Human Rights Defenders, Trade Unionists, Journalists, and Social Leaders,"³ which encompassed 8,796 persons, from January to June 2009, including 1,402 union

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

² Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009.

³ Created in 1997, the Protection Program was a partnership of government and civil society to protect certain sectors of the population at particular risk from the actions of armed outlaw groups, as regards their rights to life, humane treatment, freedom, and personal security. The objectives of the Program are: (1) to strengthen government agencies at the national regional, and local levels so as to enable them to undertake joint, coordinated, integrated, and permanent measures to prevent human rights violations and to protect the rights of inhabitants of targeted at-risk communities; (2) to strengthen the traditional organizational structures, traditional authorities, and social organizations of the targeted at-risk communities, so that they can develop initiatives, make proposals, coordinate with public authorities, and become involved in the implementation, follow-up, and oversight of measures aimed at preventing violations and protecting human rights and

members, 950 social, community, campesino, indigenous, and Afro-descendant leaders, 550 members of human rights defenders' organizations, and 150 journalists,⁴ whose importance the IACHR has underscored in previous reports. The IACHR reiterates the need to continue strengthening the protection mechanisms created by such programs.

12. The Commission notes, however, that that alongside initiatives to promote and protect human rights, such as the one cited above, violence persists and continues to afflict the most vulnerable sectors of the civilian population. There are also new challenges to administering justice and ensuring comprehensive reparations for the damage caused to the victims of the conflict.

13. Consequently, based on information received from the State and civil society, the IACHR has drawn up a list of comments on the human rights situation in Colombia in the course of 2009. Specific reference is made to progress achieved and obstacles encountered in investigating the crimes perpetrated during the conflict, including the participation of paramilitary leaders extradited to the United States in trials that took place in Colombia under the Justice and Peace Law, persisting patterns of violation of rights to life and humane treatment, the situation of ethnic groups, and intelligence activities against human rights defenders, social leaders, and justice sector operators.

I. THE DEMOBILIZATION OF ARMED GROUPS AND JUDICIAL INVESTIGATION AND REPARATION OF CRIMES PERPETRATED IN THE CONTEXT OF THE CONFLICT

14. The agreements reached by the government of President Álvaro Uribe Vélez and the leaders of the United Self-Defense Forces of Colombia (hereinafter "the AUC") led to the collective demobilization of over thirty thousand⁵ individuals identified as members of 34 units of the AUC, with international verification by the OAS Mission to Support the Peace Process in Colombia (hereinafter the "MAPP/OAS"). The government has also engaged in dialogue with other armed guerrilla groups, some of which have joined the collective demobilization process.⁶ The legal

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international humanitarian law; and (3) to re-establish or improve the relationship between the state and the community, for the purpose of coordinating, developing, monitoring, and evaluating the preventive and protective measures proposed in the action plans.

⁴ Information available in: <http://www.mij.gov.co/eContent/newsdetailmore.asp?id=2827&idcompany=2&idmenucategory=142> and in the Press Bulletin of the Ministry of Foreign Affairs of the Republic of Colombia, "Defense of human rights is a legitimate and necessary action for democracy," October 13, 2009, available at: http://www.cancilleria.gov.co/wps/portal/espanol!/ut/p/c0/04_SB8K8xLLM9MSSzPy8xBz9CP0os_jQsKAwo2AXYwN_Aws3A_08Dd1Pf4CB3ixMvM_2CbEdFAJe-aDs!/?WCM_GLOBAL_CONTEXT=/wps/wcm/connect/WCM_PRENSA/prensa/boletines/2009/octubre/la+defensa+de+los+derechos+humanos+es+una+accion+legitima+y+necesaria+para+la+democracia. The 2009 budget for the Protection Program is over \$47 million. Letter from Carolina Barco, Colombian Ambassador to the United States, in a hearing on the Situation of Human Rights Defenders in Colombia, held in the Tom Lantos Human Rights Committee, United States House of Representatives, October 20, 2009.

⁵The state has reported that this figure is the result of an updating of the records of demobilized persons by the Office of the High Commissioner for Peace. Note DDH No. 5717/0223 from the Department of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, dated February 5, 2009, page 3.

⁶ Official figures indicate that from 2002 to 2009, over 50,000 members of illegal armed groups (AUC, FARC, ELN) demobilized. This figure includes both persons who demobilized collectively, as well as the approximately 19,500 persons linked to paramilitary or guerrilla groups who turned in their arms individually. The figure was provided by the High Commissioner for Peace and the Presidential Advisor for Reintegration in Colombia, Frank Pearl, in his presentation of the document on "Contribution of Cartagena to Disarmament, Demobilization, and Reintegration (DDDR)," in Washington, D.C. on September 28, 2009. Statistics of the National Police, Office of Liaison with the Presidential High Council for Continued...

framework of the process, established, inter alia, by Law 975 of 2005 (“Justice and Peace Law”),⁷ provides a series of procedural benefits and reduced penalties for those who, having been involved in the commission of crimes, participate in the demobilization process.⁸

15. Since 2004, the IACHR has followed the dismantling of illegal armed structures and, in particular, the enforcement of the legal framework designed to establish the truth and ensure justice and reparations for victims of the conflict, as a fundamental part of its advisory role for OAS member states, the General Secretariat of the Organization, and the MAPP/OAS.⁹ In the following sections, the IACHR describes the challenges pending with respect to dismantling armed structures, administration of justice, and reparation of damages caused to victims of the conflict.

A. Dismantling of armed structures and reintegration

16. The Presidential High Council for Reintegration has indicated that as of June 2009, the program for the reintegration of demobilized persons had 31,199 active participants: 22,269 from AUC; 7,259 from FARC; 1,398 from ELN; and, 273 from other groups.¹⁰ In its observations, the State reported that as of November 2009, the national government, the U.S. Agency for International Development (USAID), and the International Organization for Migration (OIM) supported productive initiatives of 73 persons in the process of reintegration.¹¹

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Reintegration, Oversight and Monitoring Report, July 29. Document available at: <http://www.verdadabierta.com/web31/conflicto-hoy/50-rearmados/1677-narctorafico-y-rearme-amenazan-desmovilizaciones>.

⁷ 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).”

⁸ When the constitutionality of Law 975 was challenged in a case before the Constitutional Court, the latter ruled that Law 975 was in general terms constitutional and spelled out conditions for making certain that its provisions were compatible with the Constitution. Among the parameters for interpretation established by the Constitutional Court were rules to protect victims’ participation in the process and to give them access to full reparations. The judgment also clarifies the obligation to enforce the reduced prison sentence stipulated therein and to introduce legal consequences, such as loss of benefits, if demobilized personnel claiming benefits under the law should withhold information from the judicial authorities. The judgment also made clear that paramilitary activity is a common crime. In short, demobilized personnel who committed crimes during the armed conflict and who apply for the benefits of Law 975 will have to cooperate with justice so that the victims’ rights to the truth, to justice, to reparations, and to non-repetition can be realized. Constitutional Court, Case D-6032, Judgment C-370/06, made public on July 13, 2006.

⁹ 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 and 2007.

¹⁰ Information broken down by principal reception sites: Antioquia 7,308, Bogotá 3,753, Córdoba 2,609, other sites 15,776. Information broken down by gender: female 3,878 and male 27,321. See information disseminated by the Presidential High Council for Reintegration at: <http://www.reintegracion.gov.co/>

¹¹ The State reported that the support included, among other things, an investment of 400 million pesos. Senior Presidential Adviser for Reintegration, <http://www.reintegracion.gov.co/prensa/noticias/2009/noviembre/O91133.html> in

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17. Among efforts to reintegrate demobilized persons from armed groups, attention should be drawn to the CONPES 3554 document dated December 1, 2008, regulating the national social and economic reintegration policy for illegal armed groups and persons,¹² and Resolution No. 008 of 2009 regulating access to social and economic benefits for the demobilized population participating in the reintegration process, and the Reintegration Information System. MAPP/OAS has highlighted the following advances: improvement in statistics in data bases on demobilized persons; publication of the national register of deaths, captures, and arrests in May 2009, and its system for periodic updating; and, the record on mobility of demobilized persons or groups.¹³

18. MAPP/OAS also points out in its report that participants in the reintegration program have been the target of acts of harassment and violence.¹⁴ The IACHR notes that the National Police Office of Liaison with the High Council for Reintegration reported the death, mostly by homicide, of 2,036 demobilized persons from 2001 to July 2009.¹⁵ The High Council for Reintegration attributes the homicides to “settling of accounts” or disputes over drug trafficking routes.¹⁶ In its observations, the State reported on the establishment of the Program for Humanitarian Care of Demobilized Persons (PAHD) under the Ministry of Defense, which after verification decides whether to grant program benefits including inter alia a security plan consistent with the citizen’s risk level.¹⁷

19. Nevertheless, as stated in previous 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. Consequently, the Procurator General of the Nation (*Procuraduría General*

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Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, page 4.

¹² The CONPES document covers aspects such as inclusion of the institutions available for the children and adolescents who have severed ties under the action plan of the national reintegration policy, and specifies a joint strategy with the Office of the National Prosecutor General to resolve delays in judicial proceedings, especially in rendering voluntary statements. In addition, the document includes a gender perspective. Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), 19 October 2009.

¹³ The ACR uses this data base to keep a monthly statistical record of participants who transfer from one services center to another. Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 19, 2009.

¹⁴ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 19, 2009.

¹⁵ Statistics from that office refer to 63 cases in Bogota, 96 in the Department of Cesar, 110 in the Department of Córdoba, and 263 in the metropolitan area of Valle de Aburrá, in the Department of Antioquia, followed by Córdoba with 110 homicides, Antioquia with 99, and Cesar with 96. Figures from the National Police, Liaison Office with the High Presidential Council for Reintegration, Reporting, Control, and Monitoring, July 29009. Document available at: <http://www.verdadabierta.com/web31/conflicto-hoy/50-rearmados/1677-narctorafico-y-rearme-amenazan-desmovilizaciones>.

¹⁶ Information provided by Frank Pearl, the High Commissioner for Peace and the Presidential Advisor for Reintegration in Colombia, in presentation of the document entitled “Contribution of Cartagena to Disarmament, Demobilization, and Reintegration (DDDR)” in Washington D.C. on September 28, 2009.

¹⁷ The State reported that the program also includes housing and food, transportation, clothes, and medical and psychological care. The program starts with presentation of the individual to the nearest authority and ends with action by the Operational Committee for Surrender of Weapons – CODA. Ministry of Defense. Background and Nature of the Program for Demobilization and Reincorporation, in Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 4 and 5.

de la Nación) 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.¹⁸ In 2009, the Procurator General of the Nation (*Procuraduría General de la Nación*) 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 (*Procuraduría General de la Nación*) has pointed out that demobilized persons who participate in military operations become de facto military targets of illegal armed groups. Thus, such participation creates criminal, administrative, or international liability, as applicable.¹⁹

20. 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 reports by the Secretary General of the Organization of American States to the OAS Permanent Council, he 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.²⁰ MAPP/OAS has reported that “in some parts of the country, massacres and threats have reappeared, in conjunction with so-called ‘social cleansing’²¹ of some vulnerable population groups.” These acts have generally been attributed to so-called emerging gangs. It has been further observed that “in some capitals and municipalities, high-impact crimes such as homicides, generally executed by hired guns, have reappeared.”²²

21. In the early months of 2009, MAPP/OAS reported recruitment operations by illegal armed groups in over 17 departments, and the effects of armed groups on the demobilized population and other vulnerable groups, such as youth and minors. MAPP/OAS pointed out that in “most urban areas, so-called emerging gangs are acknowledged to be the principal recruiters, whose targets are demobilized combatants, youth, and minors. In outlying rural areas, however, it is the guerrillas who recruit peasants, indigenous people, youth, and minors.”²³ In its observations, the

¹⁸ Procurator General of the Nation (*Procuraduría General de la Nación*), Directive No. 0013 of June 16, 2008, pages 5 and 6. http://www.procuraduria.gov.co/descargas/documentoshome/home2008/directiva_0013.pdf.

¹⁹ Words of the Procurator General of the Nation (*Procuraduría General de la Nación*), Dr. Alejandro Ordóñez Maldonado, in 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.

²⁰ 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, 30 August 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, 14 February 2007; Ninth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS). 3 July 2007; Tenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 31 October 2007; Eleventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 25 June 2008; Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 9 February 2009.

²¹ MAPP/OEA points out that the term “social cleansing” also refers to violent acts against specific persons for the purpose of seeding fear and gaining social control in communities. Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009.

²² Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009.

²³ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009.

State reported on investigations²⁴ by the National Human Rights Unit of the Office of the Prosecutor General of the Nation (*Fiscalía General de la Nación*) for the offense of recruitment of children by irregular armed groups. It said that 125 persons have been implicated in this offense and five have been convicted. The State also reported that the National Justice and Peace Prosecution Unit has been filing charges for the offense of illicit recruitment against various individuals in the framework of the Justice and Peace Law.²⁵

22. In 2009, the IACHR received, as it had in previous years, reports of the following groups: so-called “New Generation”²⁶ groups, with influence in the northern zone; “Gaitanista Self Defense Units” and “Renacer,” with influence in the Banana Belt; and “Águilas Negras” with influence in different parts of the country. The press also reported that these groups could number around 4,000 persons.²⁷ The State informed in its observations that according to statistics of the National Police, 2,419 members of criminal bands were captured between January and October of 2009, and 420 were killed in combat between 2008 and 2009.²⁸ It added that of the 33 structures identified in 2006 with an armed strength of over 4,000, all that is left now is six active groups: “Banda Criminal de Urabá”, “Los Paisas”, “Rastrojos”, “ERPAC”, “Los Machos,” and “Renacer,” which together have 3,749 members (2,579 armed and 1,170 in support networks).²⁹

23. There are questions as to how many of the members of these group may have belonged to demobilized AUC units, and whether in fact they demobilized before joining or creating other illegal groups. Statistics of the National Police Office of Liaison with the High Council for Reintegration indicate that between July 2006 and July 2009, 977 of the 6,537 captured members

²⁴ The State reported 193 investigations, of which 63 are in pre-trial proceedings. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 7.

²⁵ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 7.

²⁶ The State said in its observations that “[a]ccording to information compiled by the Joint Intelligence Center against Criminal Bands (*Centro Integrado de Inteligencia contra las Bandas Criminales*), the organizations called Nueva Generación and Magdalena Medio have become part of Los Rastrojos, Los Urabeños, and Los Paisas, respectively.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 7.

²⁷ See “Warning on the boom in gangs of former paramilitaries: their numbers are estimated at up to 4,000 men,” *El Tiempo*, 18 August 2009. “The ‘Águilas Negras’, ‘la Cordillera’, ‘los Rolos’, ‘los Rastrojos’ and ‘los Paisas’ are referred to as the most feared and widespread gangs. [...] For the authorities, the ‘Rastrojos’ gang has become a criminal network, which in recent months has also been engaged in recruiting youth who never belonged to a paramilitary unit. For the Police, part of the criminal activities in the country is headed by this gang, as well as ‘los Paisas’, ‘Nueva Generación’, ‘Renacer’ and the Magdalena Medio gang. And, it estimates that together they could add up to 4,000 men. [...] According to testimony by local people in various regions of the country, unlike the AUC, many of today’s gangs are penetrating urban areas, without uniforms or rifles. [...] In the case of the ‘Envigado Office,’ made up of ‘combos’ which include former ‘paras’ from the Metro and Nutibara units, in addition to young hired guns from the communes of Medellín. [...] The authorities are investigating a group that calls itself ‘Gaitanistas of Colombia Self Defense Unit,’ which formed to combat the ‘Comba’ organization. At the same level as ‘los Rastrojos’ is Erpac (People’s Anti-terrorist Colombian Army) of Pedro Olivero Guerrero, alias ‘Cuchillo’, a demobilized paramilitary and repeat offender from the Guaviare unit. Then in Urabá and Antioquia, you have ‘los Paisas’, under the command of Ángel Pacheco, ‘Sebastián,’ who started a war to control the drug route with ‘los Rastrojos’, in Córdoba. [...] For the police, the other gangs, such as ‘los Machos’ and ‘Renacer’ are smaller groups, but play an increasingly more important role in controlling drug trafficking. ‘Los Machos,’ the former men of ‘don Diego’, number about a hundred and are headed by Dilver Urdinola, alias ‘H’. Another gang is ‘Renacer’, that operates in Chocó with about 80 men.

²⁸ Statistics from the Human Rights Observatory, Presidential Human Rights Program, Office of the Vice President of the Republic, in Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 5.

²⁹ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 5 and 6.

of “criminal gangs” were demobilized combatants.³⁰ In its observations the State asserted that the National Human Rights and International Humanitarian Law Unit of the Public Prosecutors Office has been able to confirm the existence of criminal gangs made up of demobilized members of the AUC, which has made it possible to start investigations that have implicated 272 individuals on charges of homicide and aggravated criminal conspiracy.³¹ The High Council for Reintegration is of the opinion that the percentage of acts of violence on the part of demobilized combatants linked to the reintegration process is no more than 7.2%, a figure that shows “that the reintegration process is solid and those participating in it are keeping their pledge to stay away from arms and violence.”³²

24. The State for its part implemented a national strategy against the so-called criminal gangs (ENBAC),³³ aimed primarily at capturing the main leaders and dismantling the armed structure of these groups³⁴. To this end, security forces have given priority to the presence of specialized units in five zones.³⁵ Although they have managed to capture leaders such as Daniel Rendón Herrera, alias “Don Mario,” and middle-level commanders, MAPP/OAS has pointed out that the capacity of these illegal structures to reorganize poses a challenge to the authorities.³⁶

B. Enforcement of the legal framework: Situation of demobilized combatants under the Justice and Peace Law

25. Of the more than 30,000 persons who demobilized between November 2003 and mid-2006, 3,734 expressed an interest in receiving the benefits of the Justice and Peace Law.³⁷ However, as already indicated in last year’s report,³⁸ 1,189 candidates decided not to go through with the

³⁰ Figures from the National Police, Liaison Office with the Presidential High Council for Reintegration, Reporting, Control, and Monitoring, July 2009. Document available at: <http://www.verdadabierta.com/web31/conflicto-hoy/50-rearmados/1677-narctorafico-y-rearme-amenazan-desmovilizaciones>.

³¹ The State said that of the 272 persons, 48 accepted an early verdict, and 96 have been formally indicted. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 7.

³² See “Repeated offense of demobilized is 7.2%,” Frank Pearl, October 6, 2009: <http://www.reintegracion.gov.co/prensa/noticias/2009/octubre/091012.html>

³³ Among measures taken in the framework of the national strategy against the so-called criminal gangs, the State in its observations also mentioned Order 208 of 2008, “which established an Advisory Group at the highest legal and military level to evaluate and recommend to the Commandant General the approval of military support for the National Police when a criminal gang exceeds the National Police’s operational capacity.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 7.

³⁴ The State said in its observations that between January 1 and November 30, 2009, the National Police carried out 406 operations against these organizations, in which 815 handguns were seized. It also said that the National Police has confiscated 19.7 tons of drugs from criminal gangs and has expropriated 112 properties. Defense Ministry. From Internet December 7, 2009, <http://www.mindefensa.gov.co/index.php?page=181&id=9866&PHPSESSID=d956c975f2d569da4e5f9b303c480328> in Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 5 and 6.

³⁵ The MAPP/OEA has indicated that the five zones are: I. Urabá; II. Córdoba, Sucre, Bajo Cauca antioqueño; III. Casanare, Meta, Vichada, Guaviare y Guanía; IV. Sur del Cesar, Sur de Bolívar y Norte de Santander y V. Nariño. Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009.

³⁶ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009.

³⁷ Figures from the Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009, updated on 24 June 2009.

³⁸ See 2008 Annual Report of the IACHR, Chapter IV - Colombia, paragraph 26. <http://www.cidh.oas.org/annualrep/2008sp/cap4.Colombia.sp.htm>

process, because the Prosecutor's Office had no record of complaints against them.³⁹ 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 in a condition of defenselessness,"⁴⁰ despite the fact that they subsequently chose not to continue to participate in the Justice and Peace Law process.⁴¹ With regard to the more than 2,500 applicants who are still part of the process, a total of 1,932⁴² voluntary statements have been initiated, of which 1,215 have been formally completed, but only five ended in a full confession of the facts.⁴³

26. The information gathered in voluntary statements up to September 30, 2009 led to the exhumation of 2,778 corpses, 804 of which were fully identified and 693 have already been returned to their families.⁴⁴ The State said in its observations that as of October 2009, 16,125 crimes were confessed in voluntary statements, including 4,969 homicides, and 18,043 victims were involved.⁴⁵ At the same time, collective voluntary statements are being taken⁴⁶ in an attempt to reconstruct events

³⁹ National Unit of Justice and Peace Prosecutor's Offices, information in the process of being consolidated and verified, November 27, 2008. See also International Crisis Group, "Correcting Course: Victims and the Justice and Peace Law in Colombia", Latin America Report No. 29, 30 October, 2008. In its comments, the state provides the figure of 1,195 applicants who have not confirmed their intention to continue with the process. Source not given. DDH Note No. 5717/O223 of the Department of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, Republic of Colombia, February 5, 2009, page 7.

⁴⁰ 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. In its observations, the State said that Article 50 of said law states: "[the] national government may in each individual case grant a pardon to citizens who have been convicted and sentenced for political crimes when in the government's opinion the irregular armed group in the peace process, to which the applicant belongs, has demonstrated a willingness to return to civilian life.

Pardon may also be granted to citizens who request it and, individually and of their own free will, abandon their activities in irregular armed groups and demonstrate to the national government's satisfaction their willingness to return to civilian life.

The provisions of this article shall not apply to persons whose conduct constitutes ferocious or barbarous atrocities, terrorism, kidnapping, genocide, homicide outside of combat, or rendering the victim defenseless.

Paragraph 1°. Pardon shall not be granted for acts for which this benefit has previously been denied, unless the interested party supplies new evidence that alters the circumstances that were the basis of the decision." Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 7.

⁴¹ 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, pars. 20-24. Available at www.cidh.oas.org/pdf%20files/Colombia-Demobilization-AUC%202008.pdf.

⁴² Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 15.

⁴³ Open Truth: *Four Years after the Justice and Peace Law*, 24 July 2009. <http://www.verdadabierta.com/web3/justicia-y-paz/1447-cuatro-anos-despues-de-la-ley-de-justicia-y-paz>. In MAPP's report, it indicates 1,791 voluntary statements to the Justice and Peace Unit of the Office of the Prosecutor General of the Nation (*Fiscalía General de la Nación*), from the Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009., updated on 24 June 2009.

⁴⁴ Statistics from the National Unit of Justice and Peace Prosecutors. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 8.

⁴⁵ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 9.

⁴⁶ The Commission has learned from information in the press that in September 2009, Ramón Isaza, alias 'El Viejo', ex-commander of the Campesino Self-Defense Forces of Magdalena Medio, and six former commanders of the Isaza Héroes del Prodigio Front gave voluntary statements involving hundreds of crimes committed in Puerto Nare. Weekly Review, Collective voluntary statements attempt to reconstruct crimes in Puerto Nare, September 11, 2009, <http://www.semana.com/noticias-justicia/version-libre-colectiva-intenta-reconstruir-crimenes-puerto-nare/128516.aspx>.

such as massive disappearances, collective armed raids, and massacres, and to allow Justice and Peace prosecutors to triangulate information or identify points of coincidence or contradiction between one or more applicants.⁴⁷

27. The Commission observes that five years have elapsed since the promulgation of the Justice and Peace Law and yet still no convictions have been handed down. The Commission notes that only one applicant, Wilson Salazar Carrascal, alias “El Loro”, has advanced to the trial stage, based on partial charges, and without it being possible to issue a final judgment. Specifically, on March 19, 2009, the Justice and Peace Chamber of the Superior Court of the District of Bogota issued a judgment of first instance declaring that Wilson Salazar Carrascal alias “El Loro” was eligible to accede to benefits under the Justice and Peace Law. In the judgment, he was convicted of aggravated homicide involving repeated instances of the same crime [en concurso homogéneo y sucesivo], extortion, and falsification of public documents, and he was given the principal sentence of 460 months in prison and the additional sanction of prohibition of public functions and rights for 20 years. The Court also granted him the benefit of the alternative sentence of 70 months’ imprisonment and, as a result, suspended the regular sentence.

28. The lower court’s judgment was appealed by a representative of the *Ministerio Público* [Public Ministry] and by representatives of the victims, and on July 31, 2009, the Criminal Cassation Chamber of the Supreme Court of Justice declared null and void the proceedings beginning with issuance of the charges, and ordered the case to be referred to the Barranquilla Justice and Peace Prosecutor’s Office, to proceed with the issuance of charges against “El Loro” for conspiracy to commit crimes and other relevant charges. In its judgment, the Supreme Court considered that the partial charges “could not be converted into generalized practice, and that the proceedings conducted in respect of them in a parallel and separate manner should be merged in the act of the issuance of charges.”⁴⁸ It further pointed out that the judgments issued within the framework of Justice and Peace processes should “identify the action of the demobilized combatants within the armed group and the front to which they belonged, their activities, the internal power structure, the criminal pattern of the group, the orders given, and the criminal plans made, in order to place the crimes for which they are convicted in the context of the widespread, systematic attack on the civilian population [...]”⁴⁹ Finally, the Court stated that the crimes committed by the applicants are the consequence of the conspiracy to commit a crime, and that the bringing of charges for that crime is a prerequisite for issuance of judgment. Following the nullity decreed by the Supreme Court, there has been a persistent absence of convictions under the Justice and Peace Law.

29. The Criminal Cassation Chamber of the Supreme Court of Justice upheld its position on the charge of conspiracy to commit a crime in its decision of September 21, 2009, in which it decided to annul the legalization determined by the Justice and Peace Chamber of the Superior Court of Bogota in respect of the charges brought against Gian Carlo Gutiérrez Suárez by Prosecutor’s Office 18 of the Justice and Peace Unit. The Court questioned the fact that the Justice and Peace court decision had not exercised material control over the charges accepted by the applicant, limiting its action to indicating that the alleged conduct had occurred during and on the occasion of his operation as a combatant in the Calima Unit of the AUC, and that the charges had been accepted in a voluntary, free, conscious, and informed manner. It further pointed to the fact that the Justice and Peace decision legalized the criminal charges in the context of the armed

⁴⁷ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009.

⁴⁸ Supreme Court of Justice, Criminal Cassation Chamber, appellate procedure – Justice and Peace, Process No. 31539, July 31, 2009 (Case of William Salazar Carrascal, alias “El Loro”).

⁴⁹ Supreme Court of Justice, Criminal Cassation Chamber, appellate procedure – Justice and Peace, Process No. 31539, July 31, 2009 (Case of William Salazar Carrascal, alias “El Loro”).

conflict, such as homicide involving protected persons, but excluded others that occurred in the same context, such as forced displacement, despite the fact that the same conduct is established as a serious violation of international humanitarian law in the Criminal Code.⁵⁰

30. On this point, the Court stated that at the time that of establishing the crimes represented by the acts in question, certain conduct could not be placed within the specific context of international humanitarian law while placing other conduct that occurred in the same context outside of it, without valid arguments to so justify.⁵¹ On this point, it determined that recognition should be given to the fact that paramilitaries organized initially on the basis of two specific objectives: to act as an anti-subversive structure; and, to act as an organized criminal gang. In this context, it held that they simultaneously committed war crimes, crimes against humanity, and common crimes, and that based on that finding, it is possible to issue charges for conspiracy to commit an aggravated crime when it is a matter of central criminal behavior, since the criminal activities referred to in Law 975 of 2005 respond to phenomena belonging to "*organized crime*" and "*systematic and widespread human rights violations*."⁵²

31. In the substantive part of the Court's judgment, it appealed to the national government to convene the principal social forces (representatives of the three branches of government, victims' organizations, human rights organizations, and other civilian groups) to consider the viability of forming a truth commission that would have duly defined functions and would help in building the historical memory of the "paramilitary barbarity."⁵³

32. The Commission also deems it pertinent to recall 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 measures⁵⁴ for the crime of conspiracy as a result of having being members of armed groups operating outside the law.⁵⁵ In its observations, the State reported that as of October 2009 pardons had been granted to 278 applicants under Law 975 and 267 requests for pardon had been denied.⁵⁶

⁵⁰ Supreme Court of Justice, Criminal Cassation Chamber, Judge Sigifredo Espinosa Pérez, Appeal, September 21, 2009.

⁵¹ Much less if, as already noted, having recourse to international humanitarian law necessary entails recognition that some conduct is not criminal (*inter alia*, the attack on armed forces, if they are part of the conflict), as it is understood to be a natural part of the hostilities.

⁵² Order of July 31, 2009, Case No. 31.539, Supreme Court of Justice Criminal Cassation Chamber, Judge Sigifredo Espinosa Pérez, Appeal, September 21, 2009.

⁵³ Specifically, the Court stated that "in view of the magnitude of the crimes committed by demobilized paramilitaries and the difficulties that have arisen so far in completing the few proceedings that have managed to reach advanced stages, it is recommended that a truth commission be set up in keeping with the particular needs of our situation, to operate alongside judicial processes and fulfill complementary roles related to clarification of the truth sought by society." Supreme Court of Justice, Criminal Cassation Chamber, Judge Sigifredo Espinosa Pérez, Appeal, September 21, 2009.

⁵⁴ 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 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."

⁵⁵ 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.

⁵⁶ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 10.

33. 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 constituted a lost opportunity for compiling information on the units, their members, and the socioeconomic dynamics that kept them in existence and operating.⁵⁷

34. A decision of the Supreme Court of Justice of July 11, 2007,⁵⁸ precluded any further pardons to members of paramilitary groups. As a result, the legal status remains unclear of approximately 19,000 demobilized combatants who failed to obtain pardons or equivalent measures,⁵⁹ or who did not apply for the benefits available under the Justice and Peace Law. 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 in 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.

[...]

For these conditions to apply, the demobilized individual shall be required to sign a sworn statement in which they declare on pain of loss of the benefit set forth in this article in accordance with the Criminal Code that they have not committed any offence other than those set forth in these conditions.

The Commission is troubled by the promulgation of this law inasmuch as the ambiguity of its provisions creates doubts regarding the investigation and punishment of crimes committed by immobilized individuals and, therefore, it could constitute a mechanism of impunity.⁶⁰

⁵⁷ 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) pars. 36 and 37. Available at www.cidh.oas.org/pdf%20files/Colombia-Demobilization-AUC%202008.pdf.

⁵⁸ 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 bearing in mind 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.

⁵⁹ *Fundación Social*. Principio de oportunidad para los desmovilizados que no pueden ser indultados. Available at http://www.observatorio.derechoshumanospaz.org/descargar_agenda.php?id=134

⁶⁰ 110. The 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

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35. In its observations, the State said that the principle of opportunity is not a mechanism of impunity, that the law is clear and not at all ambiguous, and that benefits granted under this law can be withdrawn at any time if the demobilized individual is found guilty of involvement in a grave felony. It also said the principle of opportunity is in the hands of the Guarantees Control Judges and reparation to the victims is a requirement for eligibility.⁶¹

36. Another considerable obstacle to efforts to try 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 elucidate these crimes undermines the rights of the victims to the truth, justice, and reparation.

37. In 2008, the IACHR expressed its concern over the potential impact that extradition of 26 paramilitary leaders to the U.S.⁶² will have on efforts to clarify thousands of crimes.⁶³ 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. The Colombian government explicitly rejected the IACHR's press release, with the argument that it was "not consistent with the truth ... in that it was issued without hearing the arguments of the Colombian

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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. 111. Crimes against humanity give rise to the violation of a series of undeniable rights that are recognized by the American Convention, which violation cannot remain unpunished. The Court has stated on several occasions that the State has the duty to prevent and combat impunity, which the Court has defined as "the lack of investigation, prosecution, arrest, trial, and conviction of those responsible for the violation of the rights protected by the American Convention." Likewise, the Court has determined that the investigation must be conducted resorting to all legal means available and must be focused on the determination of the truth and the investigation, prosecution, arrest, trial, and conviction of those persons that are responsible for the facts, both as perpetrators and instigators, especially when State agents are or may be involved in such events. In that respect, the Court has pointed out that those resources which, in view of the general conditions of the country or due to the circumstances of the case, turn to be deceptive, cannot be taken into account. I/A Court H.R., *Almonacid Arellano et al. Vs. Chile Case*. Judgment of September 26, 2006. Series C No. 154.

⁶¹ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 11.

⁶² On May 7, 2008, Carlos Mario Jiménez alias "Macaco" was extradited to the United States, and in May 2008, the following AUC leaders were also extradited: Diego Fernando Murillo Bejarano alias "Don Berna", Francisco Javier Zuluaga Lindo alias "Gordo Lindo", Manuel Enrique Torregrosa Castro, Salvatore Mancuso Gómez alias "El Mono" or "Triple Cero", Diego Alberto Ruiz Arroyave, Guillermo Pérez Alzate alias "Pablo Sevillano", Ramiro Vanoy Murillo alias "Cuco Vanoy", Juan Carlos Sierra Ramírez alias "El Tuso", Martín Peñaranda Osorio alias "El Burro", Edwin Mauricio Gómez Luna, Rodrigo Tovar Pupo alias "Jorge 40", Hernán Giraldo Serna alias "El Patrón", Nodier Giraldo Giraldo, and Eduardo Enrique Vengoechea Mola.

⁶³ 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 114, 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, paragraphs 30-38. <http://www.cidh.oas.org/annualrep/2008sp/cap4.Colombia.sp.htm>

government and without taking into account repeated statements by the Colombian and U.S. governments" on the cooperation agreement in the area of judicial proceedings, access to benefits, and seizure of goods.⁶⁴

38. During its 133rd Period of Sessions of the IACHR, a note from the United States Department of State was made public, in which it expressed its interest in facilitating continued participation in the Justice and Peace process of the extradited persons, and invited the Colombian judicial authorities to submit the corresponding requests for cooperation through their domestic legal system and the procedures provided for in international treaties on mutual assistance in criminal matters.⁶⁵

39. In a hearing held in March 2009, during the 134th Period of Sessions of the IACHR, representatives of the Office of the Prosecutor General of the Nation (*Fiscalía General de la Nación*) referred to a timetable of voluntary statements for 2009. The timetable provided for the holding of three voluntary statement proceedings each month. Thus: Guillermo Pérez Alzate from Tampa, Florida on March 24, 25, and 26; April 28, 29, and 30; May 27, 28, and 29; June 24, 25, and 26; July 28, 29, and 30; August 25, 26, and 27; Salvatore Mancuso Gómez from Washington D.C. on April 28, 29, and 30; May 26, 27, and 28; June 23, 24, and 25; July 28, 29, and 30, and August 25, 26, and 27; Ramiro Vanoy Murillo from Miami, Florida on of April 28, and 29; May 27, 28, and 29; June 24, 25, and 26; July 29, 30, and 31, and August 26, 27, and 28.⁶⁶

40. However, various months later the Commission learned of various obstacles to cooperation of extradited paramilitary leaders in the proceedings under the Justice and Peace Law. They included the following restrictions imposed by the United States prison authorities on the extradited prisoners: their ability to receive their legal representatives in the Justice and Peace proceedings; access to the necessary information to ensure that their voluntary statements were based on concrete, complete, and reliable information; suspension of voluntary statement proceedings and/or issuance of charges, due to logistical or other impediments; obstacles to the travel of prosecutors to the U.S. and substitutes for them; and, the scanty number of victims in the rooms where the voluntary statements were transmitted, due to difficulties in access or in receiving notice of the proceedings.

41. Specifically, the State reported in its observations to the Commission that with respect to the timetable for voluntary statements published by the State in March 2009, the only ones held were those scheduled for March and May in the case of Guillermo Pérez Alzate, those of Salvatore Mancuso Gómez scheduled for April. It informed also that those of Ramiro Vanoy Murillo have not taken place.⁶⁷ At a hearing held in November 2009 in the framework of the 137th Regular Session

⁶⁴ Unnumbered note of the Permanent Mission of the Republic of Colombia to the OAS dated May 14, 2008, signed by the Minister of Foreign Affairs at the time, Fernando Araújo Perdomo, in which the government explained the reasons why it rejected the IACHR press release. In a memorandum, the government "regretted that the IACHR is not familiar with the rights of citizens vis-à-vis criminals" and urged it "to understand this measure ... and not compared it to persons who try to avoid their judicial responsibilities through application to the Justice and Peace Law."

⁶⁵ Communication from the United States Department of State dated October 23, 2008, addressed to the Permanent Mission of Colombia to the Organization of American States.

⁶⁶ Hearing on the Rule of Law and the Independence of the Judiciary in Colombia, held during the 134th Regular Session of the Inter-American Commission on Human Rights on March 23, 2009, available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=8>.

⁶⁷ In addition, the State said besides the timeline released in March 2009 since their extradition, there have been nine voluntary statement sessions for Salvatore Mancuso Gómez, two voluntary statement sessions for Ramiro Vanoy Murillo, nine voluntary statement sessions for Guillermo Pérez Alzate, and four voluntary statement sessions for Miguel Ángel Melchor Mejía Múnera. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 11-14.

of the IACHR, the State mentioned that of 11 voluntary statement proceedings programmed for two extradited individuals, three were cancelled and another three were postponed.⁶⁸

42. In that context, the IACHR reiterates 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 has been informed that as of May 2009 the Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General had submitted more than 40 requests for judicial proceedings to the United States authorities and had only received one reply.⁶⁹ The State reports in its observations that a follow-up matrix has been made for requests from the National Human Rights and International Humanitarian Law Unit to judicial authorities in the United States and to date 148 requests have been made, of which nine have been answered.⁷⁰

43. On October 9, 2009, the Commission requested the government, pursuant to the powers and obligations established in Articles 41 and 43 of the American Convention on Human Rights, to provide information on the impact of the extradition of various paramilitary leaders to the United States on efforts to clarify the crimes under the Justice and Peace Law in the Republic of Colombia. Specifically the Commission requested the government to provide information on the following: the access of the legal representatives of the persons extradited under the Justice and Peace process to their clients, and on their ability to prepare the voluntary statements based on concrete, complete, and reliable information; the number of voluntary statements and other effective steps taken with respect to each of the paramilitary leaders extradited under the Justice and Peace Law; the number of suspended proceedings and the reasons for their suspension; the number of voluntary statements and other proceedings in which the victims had fully participated; and, information on the specific agreements on judicial cooperation between the governments of Colombia and the United States regarding steps to be taken in the framework of the Justice and Peace processes.

44. In its response to the request for information, the State said that the U.S. Government, through the State Department and the Department of Justice, “has clearly and repeatedly indicated its willingness to cooperate in specific cases and there has been a high level of dialogue between the authorities”⁷¹ of the two countries. The State added that the high level of

⁶⁸ Hearing on Guarantees for the Exercise of the Rights of Members of the National Movement of Victims of State Crimes, Colombia, held on November 5, 2009 in the framework of the 137th Regular Session of the Inter-American Commission on Human Rights. <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>. For example, Memorandum No. 77 issued by the Supervising Judge of the Superior Court in and for Barranquilla notes the suspension of the indictment hearing of Salvatore Mancuso as “the budgetary constraints have not yet been overcome and, therefore, the Superior Council of the Judicature is unable to take the necessary steps for the indictment within the videoconference requested at the indictment hearing and imposition of pretrial detention on Mr. Salvatore Mancuso Gómez.” That document also mentions the prosecution’s brief of August 6, 2009, which informed the Director of International Affairs of the Office of the Attorney General “of the suspension of the hearing scheduled for [August] 11, 12, and 13, bearing in mind the written statement from Mr. Mancuso’s defense counsel that the transfer of the accused from his place of confinement entailed the seizure of documents and information collected from the cases confessed, as well as the isolation of the defense team [...] which makes it impossible to satisfy the requirements provided in Law 975 of 2005 [...]”. Supervising Judge of the Superior Court in and for Barranquilla, Memorandum No. 77, Preliminary Hearing, Case 11001-60-00253-2006-80008, August 11, 2009.

⁶⁹ Official Letter No. 02264 from the Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General of May 21, 2009, enclosed in the communication from the Colombian Jurists Commission received at the IACHR on November 6, 2009.

⁷⁰ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 14.

⁷¹ DDH Note No. 65464 of November 27, 2009, from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia.

discussion has been reflected in various mechanisms⁷² to provide continuity to the voluntary statements and other phases of the Justice and Peace proceedings. The State also said in its observations that when Justice and Peace prosecutors schedule a voluntary statement proceeding in the United States, they contact the victims, their legal representatives, and other interveners to tell them the date of the proceeding, city and place where the transmission will go. Additionally, the above mention information is posted on the unit's website.⁷³

45. Along these same lines, on October 22, 2009, the Commission requested the government of the United States, pursuant to Article 28 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. The Commission has yet to receive a response to its requests for information.

46. It is important to note that in 2009, the Executive Branch took steps to extradite other paramilitary leaders or persons involved in the justice and peace processes. In March 2009, Miguel Ángel Mejía Múnera, alias "El Mellizo"⁷⁴ and Hebert Veloza, alias "H.H" were extradited to the United States.⁷⁵ In the approval of the extradition of El Mellizo, on December 2, 2008, the Supreme Court stated that "disregard for the rights of the victims by virtue of granting extradition engages the political responsibility of the person who ultimately grants it, namely, the President of the Republic, since, from a functional standpoint, he is the one who directly adopts said decision."⁷⁶

47. In August 2009, the Supreme Court of Justice denied the request to extradite the applicant Luis Edgar Medina Flórez, on the grounds that the extradition violated the spirit of Law 975, disregarded the rights of the victims to the truth, and to justice and reparations, and "traumatized" operation of the Colombian administration of justice. It held more specifically that "extradition of paramilitaries subject to the justice and peace process has dealt a death knell to the objective that

⁷² Among mechanisms cited by the State are "exchange of notes on the subject, appointment of a Legal Attaché at the U.S. Embassy in Bogotá to channel requests immediately to appropriate authorities in the United States, meetings that have taken place between Colombian and U.S. authorities, all in the framework of the Inter-American Convention on Mutual Assistance in Criminal Matters [...] and the terms of the extradition resolutions, which call for, among other things, the spontaneous delivery of evidence by the United States of America, the continuation of proceedings for voluntary statements not yet completed, and that assets surrendered by extradited persons under negotiated agreements with U.S. legal authorities be used for reparation for victims in Colombia." DDH Note No. 65464 of November 27, 2009, from the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia.

⁷³ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 15.

⁷⁴ The order for the arrest for the purpose of extradition of "El Mellizo" was contained in the verbal note No. 1454 of the Embassy of the United States in Colombia, and presented to the Legal Office of the Ministry of Foreign Affairs of the Republic of Colombia on December 15, 2000. The Office of the Prosecutor General of the Nation (*Fiscalía General de la Nación*) approved the extradition request in a resolution issued on February 19, 2001.

⁷⁵ The request for the arrest for purposes of extradition of "HH" was contained in verbal note No. 1925 of the Embassy of the United States in Colombia, and presented to the Legal Office of the Ministry of Foreign Affairs of the Republic of Colombia on July 9, 2007. In verbal note No. 2910 of September 20, 2007, the Embassy of the United States sent a formal request for extradition. The Supreme Court of Justice approved the extradition of "HH" on July 31, 2008. Supreme Court of Justice, Criminal Cassation Chamber, July 31, 2008 (judgment approving the extradition of Hebert Veloza García).

⁷⁶ Supreme Court of Justice, Chamber of Criminal Cassation, December 2, 2008 (judgment approving the extradition of Miguel Ángel Mejía Múnera).

inspired a law intended to engender peace amongst Colombians, and the most reliable proof of the defeat of this government strategy against violence and illegal armed groups."⁷⁷

48. According to information on public record, in October 2009, a commission of members of the Supreme Court of Justice met with State Department officials and federal judges in the United States to discuss the issue of progress in the judicial proceedings of the accused persons extradited under the Justice and Peace Law. The IACHR has been informed that the meeting was simply "a first step toward consolidating objectives."⁷⁸

49. It is important to note that the extradition of these paramilitary leaders also interferes with the government obligation to try civilians and government agents involved in cases in which both the Inter-American Commission and Court have established their responsibility for serious violations of the rights protected by the Inter-American Convention on Human Rights. In this regard, the Inter-American Court of Human Rights has found that:

in decisions on the application of certain criminal procedures to a person, the consideration of charges of serious human rights violations must prevail. The application of procedures such as extradition should not serve as a mechanism for favoring, procuring, or ensuring impunity. Thus, due to the lack of a judicial cooperation agreement between states that have decided on said extradition, it is the responsibility of Colombia to clarify the legal mechanisms, instruments, and elements or definitions that will be applied to ensure that the extradited person cooperates with investigations into the facts of the case in point, and, if appropriate, to ensure his due prosecution.⁷⁹

50. The IACHR reiterates its concern over the impact of the extraditions on the rights of the victims to truth, justice, and reparations, on their direct participation in the search for truth in the crimes committed during the conflict, and access to compensation for the damage caused, and on obstacles to determining the links between government agents and leaders of the AUC and human rights violations in respect of which the international responsibility of the State has already been established in some cases.

C. Participation of witnesses and victims in court proceedings under the Justice and Peace Law

51. By May 2009, over 219,000 victims⁸⁰ had registered under the Justice and Peace process, and almost 27,000 had participated in voluntary statements⁸¹ after issuance of over 3,000 notices to attend hearings.⁸²

⁷⁷ Supreme Court of Justice, Chamber of Criminal Cassation, judgment on the extradition of Luis Édgar Medina Flórez, August 19, 2009.

⁷⁸ Supreme Court Justice, Criminal Cassation Chamber, Response to the Right to Petition CCJDIR-09-0013 formulated by the Colombian Jurists Commission, enclosed in the communication from the Colombian Jurists Commission received at the IACHR on November 6, 2009.

⁷⁹ I/A Court H.R., "*Mapiripán Massacre*" v. *Colombia Case*. Supervision of compliance with judgment. Resolution of July 8, 2009, para. 41.

⁸⁰ Statistics from the tables of the Inter-Institutional Justice and Peace Committee, April 20, 2009. In the Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009.

⁸¹ Figures available in Open Truth: *Four Years After the Justice and Peace Law*, July 24, 2009. <http://www.verdadabierta.com/web3/justicia-y-paz/1447-cuatro-anos-despues-de-la-ley-de-justicia-y-paz>. Decree 315 of 2007 provides that victims are entitled to have personal and direct access, or access through their representatives, to voluntary statement proceedings, to the bringing of charges, and other stages of the process under Law 975 that are related to the facts that caused the damages. Ministry of the Interior and Justice, Decree No. 315 of February 7, 2007, "regulating the participation of victims during the investigation in Justice and Peace proceedings, in accordance with Law 975 of 2005."

52. The IACHR understands that the Prosecutor's Office (*Fiscalía*) and the National Reparation and Reconciliation Commission have organized briefing sessions at municipalities in the Departments of Caldas, Meta, Bolívar, and Vichada. The MAPP/OAS has referred to the creation of two Comprehensive Victim Assistance Centers,⁸³ in the cities of Medellín (Antioquia) and Valledupar (Cesar). It has also reported on implementation of a series of events organized to collect biological samples to strengthen the DNA Bank of victims of forced disappearance in Valle del Cauca⁸⁴ and Nariño.⁸⁵ However, a large number of victims have still not received adequate guidance.⁸⁶ The MAPP/OAS has indicated that guidance to victims needs to be improved in legal procedures related to the trial stage of the process. It also highlighted the need to provide them psychosocial support during the taking of testimony, and to prevent revictimization.⁸⁷ The State reported in its observations that the CNRR intends to work through its regional offices, advising victims before, during, and after their participation in the voluntary statements, accompanying them to arraignment, and throughout the trial. It added that from the victim rooms the CNRR cooperates with the drafting of questions to the applicants and provides them with "psychological and legal" assistance."⁸⁸

53. Moreover, it bears repeating that obstacles to victim participation in proceedings persist.⁸⁹ In the first place, it has been impossible for them, either directly or through their representatives, to question the persons who are hoping to benefit from Law 975 regarding issues of interest to them during the various phases of the oral hearings. The questioning of the victims is limited to the second phase of the oral hearings, but it takes place through an indirect mechanism, since the proposed questions are included in a questionnaire that is given to members of the CTI, who in turn transmit it to the Prosecutor. This indirect mechanism seriously limits the possibility of using questioning of the victim as an appropriate way of getting to the truth of the events. The Prosecutor's Office is also wasting a valuable opportunity to compare the different accounts, and obtain information helpful for verifying compliance with the legal requirements for access to benefits. The State said that this limitation is due to the great number of victims who come to the

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⁸² National Unit of Offices of Justice and Peace Prosecutors, information in the process of consolidation and verification, July 14, 2008.

⁸³ MAPP/OAS has reported that the purpose of these centers is to bring together in one single place all of the government institutions in charge of providing services to victims, such as the Procurator General, the Ombudsman's Office, the Prosecutor's Office, Social Action, and the CNRR, in order to provide comprehensive assistance. In these places, victims can receive psycho-social care, register with the Prosecutor's Office as participants in the Justice and Peace process, receive legal counseling from the Ombudsman's Office, and register as displaced persons with Social Action, among other benefits. Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009

⁸⁴ MAPP/OAS reported that in Tuluá (Valle del Cauca), the Prosecutor's Office assisted over 1,500 victims of forced disappearance. Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009

⁸⁵ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP-OAS), 19 October 2009

⁸⁶ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 19, 2009.

⁸⁷ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 19, 2009.

⁸⁸ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 15.

⁸⁹ See IACHR, 2009 Annual Report, Chapter V: Follow-Up Report: *Women facing Violence and Discrimination as a result of the Armed Conflict in Colombia*, IV. Prospects for Truth, Justice, and Reparations

voluntary statement proceedings, which makes it impossible for each of them to speak; the State adds that it is better for an expert to pose the question, because that facilitates greater accuracy in the search for the truth.⁹⁰ Secondly, the Commission notes that the victims have experienced difficulties in gaining access to legal advice and representation during court proceedings.

54. Another concern is the institutional capacity of public defenders to provide suitable advice to the thousands of victims already registered. Many victims still have no legal representation, which makes it impossible for them to effectively exercise their rights. MAPP/OAS has indicated that public defenders handle on average 400 victims each, and that the number of defenders has not increased in proportion to the number of victims registered. It has been reported that in municipalities in the Departments of Cundinamarca and Vichada, victims cannot register due to the lack or loss of identification papers.⁹¹

55. Of the over 219,000 victims registered, only 27,147—equivalent to 12%—have participated in 1,867 oral hearings. This trend is said to have persisted throughout the three years of the justice and peace proceedings, and remains a challenge to be confronted.⁹² The Supreme Court of Justice has emphasized the collective nature of the right to truth and the State's obligation to conduct a "serious, clear, transparent, and thorough investigation that involves the right of victims to be heard during the process, and efforts to facilitate their active participation in constructing the truth."⁹³

56. In the case of victims actively involved in the process, their security has been seriously compromised or directly affected by the actions of illegal armed groups. MAPP/OAS has identified certain regions—such as southern Córdoba, the Antioquian Urabá, Nariño, Meta, Guaviare, eastern Caldas, eastern Risaralda, and southern Bolívar— where the presence of illegal armed groups and the lack of control on the part of security forces has especially endangered victims of the conflict and their ability to participate in the justice and peace process.⁹⁴ MAPP/OAS has also identified acts of violence and intimidation against Justice and Peace judicial agents in Magdalena Medio⁹⁵.

⁹⁰ The State says that 33,862 victims have attended about 4000 voluntary statements. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 16.

⁹¹ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 19, 2009. See also Hearing on Guarantees for the Exercise of the Rights of Members of the National Movement of Victims of State Crimes, Colombia, held on November 5, 2009 in the framework of the 137th Regular Session of the Inter-American Commission on Human Rights. <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

⁹² Open Truth: *Four Years After the Justice and Peace Law*, July 24, 2009. <http://www.verdadabierta.com/web3/justicia-y-paz/1447-cuatro-anos-despues-de-la-ley-de-justicia-y-paz>.

⁹³ Supreme Court of Justice, Criminal Cassation Chamber, Judge Sigifredo Espinosa Pérez, Appeal, September 21, 2009.

⁹⁴ MAPP/OAS pointed out that in this zone, serious acts were committed against leaders of victims who were participating in land restitution, including murder of leaders Benigno Gil, Jaime Gaviria, Juan Jiménez, and Ana Gómez. MAPP/OAS indicated that the alleged perpetrators were arrested and investigations are ongoing. Thirteen Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 19, 2009. In the State's observations, it reported that the registry of threatened victims in the National Unit of Justice and Peace Prosecutors as of December 3, 2009, showed the following statistics: demobilized persons threatened, 34 applicants threatened, 37 family members of applicants threatened, 10 members of associations, groups, communities, ethnic groups, black groups, etc., 1,406 victims threatened, 20 victims killed, and 15 government employees threatened. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 16-17.

⁹⁵ MAPP/OAS reported the assassination of Larry Churrón, Chief Investigator of Prosecutor's Office 14 in Barranquilla; he was working on investigations of the Córdoba Unit of the former AUC. Thirteen Quarterly Report of the

D. Establishment of reparation mechanisms for damages to victims of the armed conflict

57. In its document on *Principal Guidelines for a Comprehensive Reparations Policy*, published in February 2008.⁹⁶ the IACHR states, inter alia, that a reparation policy should ensure the right of victims to comprehensive reparation for damages caused both by illegal armed groups and by the acts or omissions of state agents, based on measures that offer restitution, indemnification, rehabilitation, and satisfaction. The IACHR further maintains that such policies should be guided by the principle of comprehensiveness and conform to the parameters established by the inter-American system in reparations awarded in similar situations, which have been partially adopted in the recent case law of Colombian administrative review courts [*jurisdicción contencioso administrativa*].

58. At present, victims may pursue their right to reparations either through the reparations process stipulated in the Justice and Peace Law, instituted in 2005, or by availing themselves of Decree 1290/08, adopted on April 22, 2008, which provides for an administrative reparations program to be established for the purpose of granting individual reparations to persons who suffered violations of their basic rights due to the action of armed groups operating outside the law that were demobilized in accordance with the terms of the Justice and Peace Law.⁹⁷ The process stipulated under the Justice and Peace Law has not yet been activated due to procedural delays in the cases brought in this context. The administrative reparations program under Decree 1290/08 only covers victims of demobilized armed groups, and is primarily based on a plan for compensation with established parameters, measured in minimum wages. The State stated in its observations that in March 2010 it will present a CONPES document including non-monetary care and reparation measures for the victims, and the Program for Land Return and the Collective Reparations Institutional Program.⁹⁸

59. As of December 2009, the Administrative Reparations Committee, the implementing agency for Decree 1290, had received more than 275,000 applications for accreditation of victim status.⁹⁹ On July 5, 2009, 2,000 victims of illegal armed groups were the first beneficiaries of the administrative reparations program for individuals; of these, 1,300 were under the Social Action order, and the remaining 700 were a group given priority by the Administrative Reparations Committee "because of their vulnerability and the seriousness of the violations, including victims of sexual crimes, minors who separated from illegal armed groups and are under ICBF protection, and civilian victims of anti-personnel land mines."¹⁰⁰ The reparations were in the form of a lump-sum payment, one of the comprehensive reparation measures provided in Decree 1290 on Administrative

...continuation

Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 19, 2009.

⁹⁶ IACHR, *Principle Guidelines for a Comprehensive Reparations Policy*, OEA/Ser/L/V/II.131 Doc. 1, February 12, 2008:

<http://cidh.org:81/pdf%20files/Lineamientos%20principales%20para%20una%20política%20integral%20de%20reparaciones.pdf>.

⁹⁷ Article 1 of Decree 1290/08 "creating the individual administrative reparations program, for victims of illegal armed groups."

⁹⁸ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 17.

⁹⁹ National Reparation and Reconciliation Commission, first delivery of administrative reparations, July 5, 2009, available at: <http://www.cnrr.visiondirecta.com/09e/spip.php?article1697>.

¹⁰⁰ National Reparation and Reconciliation Commission, first delivery of administrative reparations, July 5, 2009, available at: <http://www.cnrr.visiondirecta.com/09e/spip.php?article1697>.

Reparations. They also include restitution, rehabilitation, measures of satisfaction and guarantees of non-repetition, which, according to official information, will be granted to the victims by execution of a CONPES document that the government will issue in March 2010.¹⁰¹

60. In 2007, a bill was sent to Congress that was intended to address comprehensively the right to reparations of victims of armed conflict. The bill, “that included measures for protection of victims of violence,” was approved by the National Senate after lengthy discussions that covered issues such as the universe of victims, the responsibility of the State, and fiscal restrictions.¹⁰² Days later, following debate, the bill was approved in the First Committee of the Chamber of Representatives, along with a series of substantive amendments, highly criticized by Colombian civil society organizations and by the international community.¹⁰³

61. The IACHR expressed its concern, since the bill excluded victims of human rights violations committed by state agents from the administrative program for reparations, by requiring them first to exhaust judicial remedies, and it established a ceiling on compensation under this reparation mechanism. The Rapporteur for Colombia spoke to the authorities regarding his concern over the difference in treatment between victims of illegal conduct by groups operating outside the law and victims of illegal conduct by state agents, and over how this affected the principle of comprehensive reparations. The Minister of the Interior and Justice¹⁰⁴ responded that the government intended to pressure Congress to amend the bill to eliminate the ceilings on compensation and to institute abbreviated judicial procedures for cases of this type.¹⁰⁵

62. In June 2009, after discussions in the Senate and Chamber of Representatives, a new version of the bill offering victims of crimes by state agents access to reparations was defeated in the Congressional Conciliation Committee by 48 votes against and 24 in favor. The Office of the President of the Republic issued a press release rejecting any compromises affecting the bill that would generate high costs or would make the crimes committed by illegal groups comparable to those committed by state agents. It stated specifically that a cost in excess of 80 billion pesos “would create an irreparable setback to government finance and would make it impossible to offer monetary reparations to victims, and that the final text would turn out to be nothing more than a dead letter that served to quell a temporary public stir.” The government further contended that the compromise text “poses a serious threat to democratic security, since it puts government agents on the same footing as terrorists, without these agents having the benefit of judicial proceedings and a

¹⁰¹ National Reparation and Reconciliation Commission, first delivery of administrative reparations, July 5, 2009, available at: <http://www.cnr.visiondirecta.com/09e/spip.php?article1697>. The State reported in its observations that by December 31, 2009, it will have paid 200 billion pesos, representing more than 10,000 cases. It added that for 2010, the national government has allocated 300 billion pesos for administrative reparations. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 18.

¹⁰² Law 044 of 2008, Cámara 157 of 2007 Senate.

¹⁰³ Press release of the United Nations Office of the High Commissioner for Human Rights, dated November 14, 2008: “The UN Human Rights Office in Colombia deplores a ‘discriminatory’ victims’ bill;” Press release of the *Mesa de Trabajo* on the Victims Bill: “The victims’ bill worsens their legal situation;” Press release of the REINICIAR Corporation dated November 14, 2008: “The government carved up the victims’ bill;” Press release of the National Committee for Victims Belonging to Community-Based Organizations of November 12, 2008: “Denouncing Uribe and his supporters for ‘denaturing’ the victims’ bill;” Press release of the International Justice and Law Center, dated November 14, 2008: “CEJIL deplores Colombian government opposition to recognition of victims’ rights. See also Ciurlizza, Javier “The Risk of Approving a Bad Victims’ Law,” article published in *Revista Semana.com* on November 14, 2008.

¹⁰⁴ Meeting with Interior and Justice Minister Fabio Valencia Cossio on November 19, 2008, during the working visit of the Rapporteur for Colombia, Víctor Abramovich, to Colombia November 18-21, 2008.

¹⁰⁵ See IACHR Press Release 54/08 at <http://www.cidh.org/Comunicados/Spanish/2008/54.08sp.htm>.

final court decision awarding damages to the victims for whom they are allegedly responsible.” Finally, the government pledged to continue with the reparations program under Decree 1290.¹⁰⁶

63. In view of the lack of progress in the parliamentary debate on the bill for victims’ reparations, the Commission reiterates the importance of guaranteeing the right of victims to reparations for damages caused both by illegal armed groups and by the action or omission of state agents, based on measures for restitution, compensation, rehabilitation, and satisfaction, in light of the principle of comprehensiveness. Moreover, implementation of a reparations program established by law should be accompanied by a commitment of social solidarity with the victims of the conflict on the part of Colombian society, a commitment that would be facilitated by mechanisms for consultation, follow-up, and evaluation, to give it stability and enable it to be sustained over time. At a hearing held in October 2009 in the framework of the 137th Regular Session of the IACHR, the State said that it had submitted a new victims’ law to Congress¹⁰⁷. The Commission will continue to monitor progress in adoption of effective measures to ensure comprehensive reparation of injuries to victims of the armed conflict.

II. CONTINUED VIOLENCE AS PART OF THE ARMED CONFLICT

64. The IACHR is still receiving reports of crimes committed by armed groups operating outside the law. In addition to the emerging armed groups referred to in the previous section, FARC and ELN continue to perpetrate acts of violence to terrorize and punish civilians and communities,¹⁰⁸ and to use anti-personnel land mines in violation of the rules of international humanitarian law¹⁰⁹. These violations of human rights and international humanitarian law against the civilian population exacerbate the ongoing problem of internal displacement.

A. Extrajudicial executions

65. With regard to available statistics on deaths in the context of the conflict, the “Observatory of Human Rights and International Humanitarian Law” under the Office of the Vice-President of the Republic—based on its methodology¹¹⁰— indicates that between January and

¹⁰⁶ Office of the President of Colombia, Press Release No. 35, June 18, 2009, available at: <http://web.presidencia.gov.co/comunicados/2009/junio/305.html>.

¹⁰⁷ Hearing on the General Situation of Guarantees for the Exercise of the Rights of Members of the National Movement of Victims of State Crimes, Colombia, held November 5, 2009, at the 137th Regular Period of Sessions of the IACHR. <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>. In its observations the State said two bills are currently awaiting first reading in the Congress:: PL 001/09: First Committee of the House of Representatives, and PL 036/09: First Committee of the House of Representatives. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 18.

¹⁰⁸ See IACHR Press Release 08/09 at: <http://www.cidh.oas.org/Comunicados/Spanish/2009/06-09sp.htm>

¹⁰⁹ In the State’s observations it reported that 27 of the 34 minefields have been cleared. Universal Periodic Review (UPR) Commitment 32 in Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 19.

¹¹⁰ The methodology for statistical studies used by the Observatory of Human Rights and International Humanitarian Law of the Office of Vice-President of the Republic consists in compiling data reported by the national police, and specifically by the Criminal Investigation Center, and as a secondary comparative source to validate Observatory data, its “Bitácora Semanal de Prensa” was developed, the product of a daily review of national and regional newspapers and radio stations consulted by Internet. From these, information on the following topics is extracted: judicial operations referring to human rights and international humanitarian law, arrests of combatants, members of outlaw groups, military operations of the Colombian Armed Forces, actions of “subversive groups” and self-defense units, violations of international humanitarian law, complementary categories, violations by unknown perpetrators, and what is known generically as “acts of peace and manifestations against war.” This source does not publish a list of victims of these acts. See: <http://www.derechoshumanos.gov.co/modules.php?name=informacion&file=article&sid=223>.

August 2009, there were 10,737 homicides.¹¹¹ It further reports that during that same period, there were 20 cases of massacres with 102 victims. CINEP—following its own methodology for compilation¹¹² and presentation of statistics—reports as follows: from January to June 2009, there were 362 extrajudicial executions,¹¹³ 245 voluntary homicides of protected persons, and 18 forced disappearances.¹¹⁴ It indicates that in September 2009, there were two episodes of “false positives” that led to four victims of extrajudicial execution.¹¹⁵ The IACHR believes that both sources should be cited in its report, despite the considerable methodological discrepancies between them, in order to give an idea of the panorama presented by both official and civil society sources,¹¹⁶ as this is consistent with its practices.

66. The reports of extrajudicial executions perpetrated by members of the security forces have been a concern of the IACHR expressed in its 2006, 2007, and 2008 annual reports.¹¹⁷ The IACHR and the international community continue to be keenly interested in clarifying these reports and in following up on the measures adopted by the State to prosecute the responsible parties and to prevent future incidents.

67. As the IACHR has observed in 2008, the high number of extrajudicial executions reported led to the identification of a number of patterns followed when extrajudicial executions are

¹¹¹ The Observatory of the Vice-President of the Nation defines homicides exclusively from the standpoint of international humanitarian law, as follows: “acts that, on the occasion of and during armed conflict, cause the death of protected persons, members of the civilian population, persons who are not participating in the hostilities, and civilians held by the other party to the conflict, wounded, ill, or shipwrecked persons removed from combat, medical or religious personnel on mission or accredited war correspondents, combatants who have laid down their weapons for capture, surrender, or another similar cause, persons who prior to the beginning of the hostilities were considered as having stateless or refugee status.” See: http://www.derechoshumanos.gov.co/observatorio_de_DDHH/default.asp In the State’s observations it said that “the figure of the Observatory taken from the National Police includes all deaths reported to the Police during the given period, including homicides for street fights, slayings from domestic violence, deaths in the framework of the violence, killings by the public forces, etc.” Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 19.

¹¹² Although CINEP has based its statistics on press sources, it has recently indicated in its report that it has had to “...abandon most of the press sources and listen more to live, direct accounts of the victims, their families, their organizations, attorneys, and social environment [...]. We are increasingly more convinced that it is impossible to try to offer statistics of serious human rights violations and IHL violations in Colombia [...]. There are many reasons why a significant, and sometimes huge number of these violations remain in silence or never reach the agencies that could report them. The reasons frequently have to do with fear [...]. Reasons also have to do with resources and limited communications, in a country covering a large expanse of land with enormous poverty [...]. Reasons may have to do with a lack of information and the absence of mediators to process and collect reports. [...] Many acts come to light or are reported months and years after they occur.” See CINEP Data Bank, Noche y Niebla No. 34/35, page 15. For more details, see “Summary of the conceptual framework adopted by the Data Bank” at <http://www.nocheyniebla.org>. Note that this source published the list of victims of the acts covered by its statistics.

¹¹³ This source refers both to “victims of extrajudicial execution due to abuse of authority and social intolerance by direct or indirect state agents (human rights violations)” and too “victims recorded simultaneously as extrajudicial executions perpetrated by direct or indirect agents of the state, for reasons of political persecution (human rights violations) and as voluntary homicides of protected persons (violations of international humanitarian law).” See CINEP Data Bank, Noche y Niebla No. 39, page 54, <http://www.nocheyniebla.org/files/u1/39/03estadisticas.pdf>.

¹¹⁴ See CINEP Data Bank, Noche y Niebla No 39. <http://www.nocheyniebla.org/files/u1/39/03estadisticas.pdf>.

¹¹⁵ CINEP. Data Bank on Human Rights and Political Violence, September 2009: <http://www.cinep.org.co/sites/cinep.cinep.org.co/files/Informe%20Especial%20Cinep-PPP%20Falsos%20Positivos%202009.pdf>.

¹¹⁶ CINEP is one of the few unofficial entities that is collecting data throughout the country from various civil society sources and reporting statistical information related to the armed conflict. The information used in the CINEP report comes from 78 civil society institutions, including human rights, religious, educational, ethnic, and trade union organizations. See CINEP Data Bank, Noche y Niebla No. 34/35.

¹¹⁷ See IACHR, Chapter IV – Colombia, in the 2006 Annual Report of the IACHR; Chapter IV – Colombia in the 2007 IACHR Annual Report, and Chapter IV-Colombia in the 2008 IACHR Annual Report.

committed, in particular the following: extrajudicial executions committed in the course of anti-insurgent military operations, although witnesses state that no combat was involved; in many instances, the victim is unlawfully taken into custody at his home or workplace and taken to the place of execution; persons executed or disappeared are generally *campesinos*, indigenous persons, laborers, youth, disadvantaged persons or community leaders; the military or police report the victims as being insurgents who died in combat; often the victims turn up wearing uniforms and with arms and military equipment of various kinds, even though, according to the testimony, at the time of their disappearance they were wearing their customary attire and unarmed; occasionally the victims are fingered beforehand by anonymous informants wearing hoods, or re-assimilated persons; at other times, the victims are selected at random; the inspection of the body is done by the same military or police force that had previously listed the victims as “fallen in combat”; the crime scene is not preserved nor is any evidence or proof; frequently the body shows signs of torture; they are stripped of personal objects and their identification papers are disposed of; the bodies are taken to places far from where the abduction occurred and there are serious difficulties locating family members to identify the body; bodies are buried as unidentified persons, even when they have been identified by family members or third persons; members of the military and police are given financial and professional incentives and rewards for producing “positives”; from the outset, military criminal courts have jurisdiction over such cases and often the Prosecutor’s Office does not challenge the military court’s jurisdiction; relatives of the victims, witnesses and human rights defenders trying to solve such cases are threatened and intimidated; the percentage of those convicted for such crimes is infinitesimal.¹¹⁸

68. In 2009, the United Nations Rapporteur on Arbitrary Executions, Professor Philip Alston, paid a visit to Colombia to take testimony on extrajudicial executions in the Departments of Antioquia, Arauca, Valle del Cauca, Casanare, Cesar, Córdoba, Huila, Meta, Norte de Santander, Putumayo, Santander, Sucre, and Vichada, and he indicated that, despite evidence to the contrary, based on ballistic and forensic reports and declarations of eye-witnesses, some officials continue to assert that many of the cases that are called executions are actually legitimate guerrilla casualties.¹¹⁹ In his final statements after the visit, the Rapporteur described the following pattern: a “recruiter” tricks the victim and takes him to a remote location, where members of the security forces murder him. The place where the events occur is manipulated to make it look like the person was killed in combat, and the victim is buried in a common grave. The Commission received complaints of acts of intimidation from relatives of victims in Soacha during its visit in November 2008.¹²⁰ The Rapporteur also reported acts of harassment against family members of victims, and the murder of one of the family members of the victims in the case that took place in Soacha in 2008.

69. It should be noted that the number of convictions for extrajudicial execution has been scanty. In this regard, as the Commission had already mentioned in its analysis in 2008,¹²¹

¹¹⁸ Preliminary report of the “International Mission of Observers on Extrajudicial Executions and Impunity in Colombia,” made public in Bogotá on October 10, 2007. See also Human Rights and International Humanitarian Law Observatory of the Colombia–Europe–USA Coordination, “False Positives: Extrajudicial killings directly attributed to the security forces in Colombia, July 2002 to June 2006.” Annual Report 2008, Chapter IV Colombia: <http://www.cidh.oas.org/annualrep/2008eng/Chap4.a.eng.htm>.

¹¹⁹ Statement by Professor Philip Alston, United Nations Special Rapporteur for Extrajudicial Executions, Mission to Colombia June 8-18, 2009, available at: <http://www.hchr.org.co/documentoseinformes/documentos/relatoresespeciales/2009/Colombia%20Press%20statement.pdf>. The Rapporteur pointed out that the expression “false positives” gives a technical aura to what in reality is the cold-blooded, premeditated murder of innocent civilians.

¹²⁰ Annual Report 2008, Chapter IV Colombia: <http://www.cidh.oas.org/annualrep/2008eng/Chap4.a.eng.htm>.

¹²¹ Annual Report 2008, Chapter IV Colombia: <http://www.cidh.oas.org/annualrep/2008eng/Chap4.a.eng.htm>.

the United Nations Rapporteur identified as obstacles to the clarification of these crimes the lack of resources and personnel trained in this area in the Human Rights Unit of the Office of the Prosecutor General of the Nation (*Fiscalía General de la Nación*), and the failure on the part of the military criminal courts in some parts of the country to refer investigations to the ordinary criminal courts.¹²²

70. In its report for 2008, the IACHR expressed its concern over the large number of reports received and the lack of clarification. However, it pointed to the measures adopted by the State to train legal agents,¹²³ the incentives linked to operational results,¹²⁴ the participation of the Technical Investigative Corps (CTI) of the Prosecutor's Office in the initial procedures linked to the events,¹²⁵ the steps taken by the security forces to regulate themselves,¹²⁶ and the call to evaluate the service of a number of officials. MAPP/OAS, for its part, reported that 750 members of the security forces were removed at the discretion of the Executive Branch.

71. As for clarification of judicial reports, the State had a record of 317 cases of homicides allegedly attributed to state agents, but not all of these cases were homicides involving protected persons. Likewise, the Human Rights Unit of the National Office of the Prosecutor General counted 1,230 cases affecting 2,103 victims in the past six years.¹²⁷ In the State's observations, it reported on five special expediting committees used in 2009, which involved 71 officials of the unit. To date, 1,081 members of the Army have been linked to these crimes, and 474 of them had detention orders [*medidas de aseguramiento*]. The Procuraduría General de la Nación is moving forward with disciplinary investigations.

72. The Commission observed that in the first half of 2009, there was a decline in cases of extrajudicial executions, as indicated above. However, during that same period, nine cases of executions committed in previous years came to light. Specifically, 48 cases involving 82 victims were disclosed, primarily in the Departments of Antioquia, Valle del Cauca, and Quindío.¹²⁸ The

¹²² Statement by Professor Philip Alston, United Nations Special Rapporteur for Extrajudicial Executions, Mission to Colombia June 8-18, 2009, available at: <http://www.hchr.org.co/documentoseinformes/documentos/relatoresespeciales/2009/Colombia%20Press%20statement.pdf>. In the State's observations it said that there had been 41 convictions, with 132 persons sentenced, and that in 2009 the Human Rights Unit allocated 13.26% of its budget to deal with this situation, which enabled it to provide a more effective response in the investigations. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 19.

¹²³ The IACHR received a copy of the Protocol for recognition of human rights and IHR violations, with an emphasis on homicide of protected persons, which was published in July 2008. Note from the Ministry of Foreign Affairs, DDH 50992/2420 of September 30, 2008.

¹²⁴ In its report for 2008, the Commission pointed out that the Ministry of Defense reiterated its peremptory order contained in Directive 300-28 that gave preference to demobilizations and captures or arrests as operational results, of greater value than combat casualties for the purpose of assessing the operational performance of military units.

¹²⁵ In its report for 2008, the Commission referred to Directive No. 19 of 2007 that ordered the commanders of military units to "exhaust available resources so that when acts occur that appear to be homicides of allegedly protected persons, the inspection is performed by permanent organs of the judicial police."

¹²⁶ In its report for 2008, the Commission stated that as regards "self-regulatory" measures, on June 6, 2007, the Ministry of Defense issued Directive No. 10 of 2007 in which it reiterated the obligations of law enforcement officials and created a "Committee to Follow Up on Reports of Alleged Homicides of Protected Persons," composed of the Minister himself, the Commander of the Military Forces, and other ministerial and military officials, for purposes related to self diagnosis, self regulation, and prevention. 2008 Annual Report, Chapter IV – Colombia, at: <http://www.cidh.oas.org/annualrep/2008sp/cap4.Colombia.sp.htm>.

¹²⁷ Department of Human Rights and International Humanitarian Law, Advances in Colombian Government Policy, Homicide involving Protected Persons, Note DDH No. 31357/1599 of June 10, 2009 and Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 19.

¹²⁸ CINEP, Special Report, first half of 2009: From "False Positives" to Social Intolerance and Collective Threats, October 2009, available at: www.cinep.org.co.

IACHR considers it necessary to reiterate the importance of conducting speedy investigations, and of taking steps to prevent harassment of and attacks on family members of victims who have reported these crimes.

73. During 2009, an upsurge and exacerbation of acts of social intolerance and collective threats were reported. According to CINEP, in the first half of 2009, there were 95 cases and 180 victims of social intolerance¹²⁹ in 21 departments, with the largest number of victims in Santander Department. The majority of these acts are attributed to paramilitary groups, state agents working in conjunction with paramilitary groups, or “social cleansing”.¹³⁰ In the first half of 2009, there were 82 cases of collective threats, mostly through pamphlets, in 24 departments, primarily attributed to paramilitary groups (98%), and to a lesser extent joint operations of paramilitaries and state agents (2%). In all cases, the main sectors affected are street people, sex workers, drug pushers and users, young people, homosexuals, laborers, and local people in the threatened municipalities and neighborhoods.¹³¹

74. In view of information on a spike in other forms of violence, the IACHR reiterates that the active protection of the right to life and other rights enshrined in the American Convention falls within the context of the state’s duty to guarantee the free and full exercise of the rights of all persons under the jurisdiction of a state, and requires it to adopt the measures required to prosecute and punish the parties responsible for arbitrary deprivation of a person’s life, personal safety, and freedom. It is especially required to prevent the violation of these rights by the state’s’ own security forces.¹³²

B. The situation of human rights defenders, community leaders, and trade unionists

75. In 2009, the work of human rights defenders and community and trade union leaders continued to be affected by threats against their life and personal safety.

76. In its observations, the State cited several measures taken on behalf of human rights defenders. Specifically, it mentioned approval of the follow-up mechanism for the agreements on procedural guarantees; the notice of September 3, 2009, sent to governors and city and district mayors in Colombia, in which the Ministry of Interior and Justice recognized the legitimacy and importance of the work done in the framework of the Constitution and legislation by organizations that defend human rights, and by social and community leaders; it rejected and condemned threats and actions against the social leaders, and requested expeditious and timely investigations to identify and punish the responsible parties.¹³³

¹²⁹ CINEP classifies social intolerance on the basis of the following: executions, torture, wounded persons, threats, disappearances, and detentions. Table: Social Intolerance 2006-2009, available at: <http://www.cinep.org.co/sites/cinep.cinep.org.co/files/Intolerancia%20Social%202006-2009.pdf>.

¹³⁰ CINEP, Special Report, first half of 2009: From “False Positives” to Social Intolerance and Collective Threats, October 2009, available at: www.cinep.org.co.

¹³¹ CINEP, Special Report, first half of 2009: From “False Positives” to Social Intolerance and Collective Threats, October 2009, available at: www.cinep.org.co.

¹³² I/A Court H.R., *Myrna Mack Chang v. Guatemala Case*. Judgment of November 25, 2003. Series C No. 101, para. 153. *Bulacio v. Argentina Case*. Judgment of September 18, 2003. Series C No. 100, para. 111. I/A Court H. R., *Juan Humberto Sánchez v. Honduras Case. Request of Interpretation of the Judgment of Preliminary Objections, Merits and Reparations*. (Art. 67 American Convention on Human Rights). Judgment of November 25, 2003. Series C No. 102, para. 110.

¹³³ The State also reported 10 meetings with representatives of the target population in the Committee on Rules and Risk Assessment (*Comité de Reglamentación y Evaluación de Riesgos –CRER*), which analyzed 362 cases of human rights defenders, providing opportunity for follow-up and dialogue to deal with cases with precautionary measures granted by the Inter-American Commission and provisional measures decreed by the Inter-American Court; four regional roundtables on

77. In 2009, the situation of union members was particularly worrisome. The Observatory of the Presidential Human Rights Program reported 10 homicides of unionized teachers and 13 homicides of union members in other sectors between January and September 2009. A comparative analysis with 2008 shows a 52% decrease in the number of murders of union members.¹³⁴ According to statistics of the Observatory for Protection of Human Rights Defenders (OMTC – FIDH), five union members were murdered in Colombia in the two months of April and May 2009.¹³⁵

78. The State noted in its observations that as of October 2009 there had been 54 convictions for crimes against union members.¹³⁶ In addition, it reported progress in protecting members of trade organizations with congressional approval on June 26, 2009 of Law 1309, amending some articles of the Criminal Code related to “punishable conduct against the legally protected assets of members of a trade organization,”¹³⁷ signature of an agreement with the Labor Section of the Supreme Court of Justice and the Information Center of the International Labor Organization (ILO) and the Department of International Labor Standards, and the signature of an agreement of understanding between the *Procuraduría General de la Nación* [Office of the Attorney General of the Nation] and the Turín Information Center of the Department of International Labor Standards on cooperation and information on international labor standards and coordination and monitoring of decisions of the *Procuraduría* and ILO on labor matters.¹³⁸

79. The IACHR has followed up on threats and acts of violence against organizations devoted to the defense of human rights and against their members. In this context, on March 12, 2009, the Commission issued a press release¹³⁹ in which it condemned the death of Álvaro Miguel Rivera Linares, who was found dead on March 6, 2009 in his apartment in Cali, gagged and handcuffed, with his teeth broken and marks of blows to his body and head. Information received indicated that Álvaro Rivera had gone to Cali to escape the threats and harassment he had suffered in Villavicencio, also has a result of his activism for the rights of the lesbian, gay, bisexual, and transsexual community (LGBT). Furthermore, at a hearing held in March 2009 in the framework of

...continuation

prevention and protection from risks in 2009; meetings with the National Police and representatives of national and regional civil society organizations, in the framework of the ongoing institutional strengthening project for the National Police sponsored by MSD-USAID; roundtables for dialogue and social development with workers; and establishment of the Interagency Commission on Workers’ Human Rights. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 21-22.

¹³⁴ Observatory of Human Rights, Office of the Vice-President of the Republic. Figures on the human rights situation and operational results of the security forces, comparing January-September 2008 and 2009.

¹³⁵ Observatory for the Protection of Human Rights Defenders, “Open Letter to Mr. Álvaro Uribe Vélez, President of the Republic of Colombia: continued murders of trade unionists in Colombia,” July 28, 2009.

¹³⁶ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 21.

¹³⁷ The state indicated that the statute of limitations on homicide of trade unionists was made equivalent to that applied to genocide, forced disappearance, torture, and forced displacement, i.e., 30 years. The qualification for increased punishment was expanded in the case of any member of a labor organization, and the penalty was increased against any person who impedes or disrupts a legal meeting or the exercise of the right to strike, or the right of legitimate association or assembly, with fines ranging from 100 to 300 monthly minimum wages in force or arrest. DDH memorandum No. 33393/1734 of the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs, Republic of Colombia, July 21, 2009.

¹³⁸ Note DDH No. 33393/1734 of the Office of Human Rights and International Humanitarian Law, Ministry of Foreign Affairs of the Republic of Colombia, July 21, 2009.

¹³⁹ IACHR, Press Release No. 11/09, “IACHR condemns murder of human rights defender in Colombia dated March 12, 2009.

the 137th Regular Session of the IACHR, the Commission received information about acts of violence by agents of the National Police, harassment and intimidation against members of the LGBT community. In particular, mention was made of the murders of Alexander Guao Sierra on July 12, 2009, and transgender rights defender Wanda Fox on October 25, 2009.¹⁴⁰

80. On October 17, 2009 Islena Rey Rodríguez, President of the Meta Civic Committee for Human Rights and the beneficiary of provisional measures issued by the Inter-American Court of Human Rights,¹⁴¹ was the victim of an armed attack allegedly perpetrated by the FARC in the municipality of Puerto Rico, Meta Department. The Commission deplores the continued acts of harassment and violence against persons engaged in defense of human rights.

81. On October 23, 2009, the IACHR became aware of threats from a group known as “Águilas Negras Nueva Generación” against the following: the Association for Investigation and Social Action (NOMADESC); the Central Unitaria de Trabajadores (CUT - Valle); Proceso de Comunidades Negras (PCN); Community Council of the District of La Toma; the Indigenous Council [*Cabildo*] of Cerro Tijeras; Licifrey Arara, mining leader of the municipality of Suárez (Cauca); Edwar Villegas, member of the CUT Human Rights Team (Valle); José Goyes, member of the Political Commission of the Indigenous Regional Council of Cauca (CRIC); Diego Escobar, a CUT director (Valle); Plutarco, member of the 21st Century Human Rights Association of Buenos Aires (Cauca); and, Meraldiño Cabiche, councilor of the municipality of Suárez (Cauca). The threat states that these persons and organizations are military targets.¹⁴²

C. Internal Displacement

82. The phenomenon of internal displacement continues to affect the civilian population in Colombia. The Single Displaced Population Registry recorded a total of 3,226,442 internally displaced persons up to September 30, 2009. The Advisory Office for Human Rights and Displacement (CODHES) referred to a total of 4,629,190 internally displaced persons at the end of 2008.¹⁴³

83. The Commission has observed that displacements affect mostly persons and communities located in zones where there are large numbers of armed confrontations. MAPP/OAS reported on the heavy impact of displacement on indigenous communities, especially in the Departments of Chocó and Nariño. More specifically, in Nariño displacements occurred as a result

¹⁴⁰Hearing on the Situation of Lesbians, Gays, Bisexuals and Transgender Persons in Colombia held on November 5 2009, in the framework of the 137th Regular Session of the IACHR. Available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

¹⁴¹ Inter-American Court, provisional measures requested by the Inter-American Commission on Human Rights regarding the Republic of Colombia, Case of Giraldo Cardona, Resolution of the President of the Court on October 28, 1996: “1. Request the Colombian Government to adopt, without delay, as many measures as necessary to protect the life and physical safety of Hermana Noemy Palencia, Islena Rey Rodríguez, Gonzalo Zárate, Mariela de Giraldo, and their two minor daughters Sara and Natalia Giraldo and to prevent irreparable damages to them, in strict compliance with the obligation to respect and guarantee human rights, pursuant to Article 1.1 of the American Convention on Human Rights.” The State says there is no evidence whatsoever that the actions were connected with the human rights defense activity of Ms. Islena Rey, and says that Islena Rey is the beneficiary of several security measures provided by the State. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 22.

¹⁴² Communication sent by the *Proceso de Comunidades Negras* (PCN) on October 23, 2009.

¹⁴³ CODHES, Bulletin 75 of April 22, 2009. http://www.codhes.org/index2.php?option=com_docman&task=doc_view&gid=121&Itemid=50.

of the massacre of the Awá indigenous peoples,¹⁴⁴ (see III A below); and in Chocó, they were due to retaliations by armed groups.¹⁴⁵

84. The Commission also received information about acts of intimidation, harassment, and violence committed by illegal armed groups between April 2008 and April 2009 against residents of the Municipality of Argelia, Cauca Department, which resulted in the forced displacement of at least 23 families during that period, most of them from the town of Popayán. The information indicates that, in view of their precarious situation these families were obliged to return to the Municipality of Argelia and that they continue to receive threats, based on the complaints that they have filed. The Commission is particularly concerned at the humanitarian situation and security of the displaced persons as well as the sustainability of the processes for their return.

85. The State said that between January and August 2009, there were 562 humanitarian missions coordinated by Social Action of the Group of Prevention, Emergency Care, and Repatriation and its territorial units.¹⁴⁶ The State added that the National Prevention Directorate (*Mesa Nacional de Prevención*) made 26 contingency plans and between January and August 2009, there were 161 daily blogs with continuous monitoring of the situation of violence in the country in order to verify the risk conditions for displacement of the population. It also activated mechanisms for prevention and immediate action by the State. It said that between January and August 2009 the National Observatory of Forced Displacement prepared 21 reports that included a quantitative and qualitative analysis of the violence and forced displacement. Finally, it said that during the same period the Early Warning System of the Ombudsman's Office (*Defensoría del Pueblo*) issued 18 risk reports and 18 notes in the framework of the Municipal Committees for Comprehensive Care of the Displaced Population.¹⁴⁷

86. The Constitutional Court of Colombia periodically examines the situation of the population displaced in the context of the armed conflict. In judgment T-025 of 2004, it declared the existence of a state of unconstitutionality due to the effects of forced displacement, and ordered that public policies must effectively protect the rights of displaced persons and correct the unconstitutional state of affairs. These directives became progressively more specific in future follow-up orders or orders of the Constitutional Court. In 2009, the Constitutional Court issued the following orders: 004 on displacement of indigenous peoples; 005 on displacement of the Afro-descendant population; 007 on coordination by territorial entities of public policies to assist displaced persons; 008 on the continued unconstitutional state of affairs with regard to displaced people; 009 on homicide of a family member of the League of Displaced Women; 011 on the system for information on and registration of the displaced population; and 222 on the adoption of urgent precautionary measures to protect the fundamental rights of the Afro-descendant population of Caracolí belonging to the Community Council of the Curvaradó River Basin.¹⁴⁸

¹⁴⁴ IACHR, Press Release 06/09, IACHR Condemns Murder of Indigenous Awá by the FARC, February 20, 2009. <http://www.cidh.oas.org/Comunicados/Spanish/2009/06-09sp.htm>

¹⁴⁵ Thirteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OAS), October 19, 2009.

¹⁴⁶ The State said that of the 562 humanitarian missions, 274 were prevention missions, 149 were for emergencies, and 139 were for repatriation. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 23.

¹⁴⁷ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 23.

¹⁴⁸ The orders or orders of the Constitutional Court of Colombia are available at: <http://www.corteconstitucional.gov.co/relatoria/radicador/RADICADOR%20AUTOS%202009.php>.

87. In Order 008, the Constitutional Court pointed out that “despite the budget efforts by the government, and the progress made in various components of assistance to the displaced population, there is agreement both in the national government and on the part of regulatory agencies, international organizations, and the Follow-Up Commission that conditions are such that the qualification of “state of unconstitutionality” still applies. It pointed out that even though “the government contends that budgeted funds are adequate to protect the effective exercise of the rights of the displaced population, the level of coverage of virtually all components continues to be far from acceptable.”¹⁴⁹

88. Finally, the Court ordered the Director of Social Action, as coordinator of the National System for Comprehensive Care of the Displaced Population, to appear before the Second Review Chamber of the Constitutional Court in July 2010 to demonstrate that the unconstitutional state of affairs had been corrected.¹⁵⁰

89. The Commission will continue to monitor the measures adopted to attend to the situation of the displaced population and compliance with the orders issued by the Constitutional Court within the time limits stipulated by it.

III. THE SITUATION OF ETHNIC GROUPS IN COLOMBIA

90. Colombia is a multi-ethnic and multicultural country, and its own Political Constitution protects the ethnic and cultural diversity by recognizing the right to equality and establishing the obligation of promoting conditions to ensure that said equality is real and effective in terms of the situation of discriminated or marginalized groups.¹⁵¹

91. Despite this legal recognition, ethnic groups are the targets of violence stemming from the armed conflict, both individually and collectively, and this jeopardizes their autonomy and their territorial and cultural rights. In 2009, the IACHR continued to receive information on the situation of violence afflicting especially indigenous peoples and Afro-descendant communities and community councils in certain regions of the country.

¹⁴⁹ Constitutional Court, Order 008 of 2009, Judge Manuel José Cepeda, January 26, 2009, paras. 134-137.

¹⁵⁰ The five criteria that led to declaration of an unconstitutional state of affairs are: “in the first place, the seriousness of the situation of violation of rights faced by the displaced population was specifically acknowledged by the same legislator in defining the ‘displaced’ status, and the massive violation of a variety of rights. In the second place, another element confirms the existence of an unconstitutional state of affairs related to forced displacement, and that is the high and increasing volume of protective legal actions brought by displaced persons to obtain different types of aid. In the third place, the accumulation of proceedings in suits filed for protection confirms this unconstitutional state of affairs, and shows that rights’ violations affect a large part of the displaced population, in many places in the country, and that the authorities have failed to adopt the required corrective measures. In the fourth place, the continued violation of these rights cannot be attributed to a single entity. In the fifth place, the violation of the rights of displaced persons is based on structural factors [...] including the lack of correlation between what the laws provide for and the means to enforce them, which is seen most blatantly in the shortage of resources and institutional capacity to deal with the magnitude of the problem of displacement and to respond to it in a timely and effective way.” Constitutional Court, Judgment T-025 of 2008, Presiding Judge Manuel José Cepeda, January 22, 2004. Likewise, the Court ordered the director of Social Action to submit a progress report, effective October 30, 2009, detailing the measures adopted and implemented to correct the shortcomings identified in judgment T-025 of 2004 and the different follow-up orders/ orders, and on progress achieved in ensuring the effective exercise of rights. Constitutional Court, Order 008 of 2009, Judge Manuel José Cepeda, January 26, 2009, IX. Decision Second.

¹⁵¹ Article 7 of the Colombian Constitution: “The State recognizes and protects the ethnic and cultural diversity of the Colombian nation.”

A. Indigenous peoples

92. So far there is no agreement between the indigenous organizations and the State that would make it possible to say precisely how many indigenous peoples live in Colombian territory; the figures range between 84 and 102.¹⁵² The indigenous peoples are scattered in 32 departments of the national territory, speaking 64 languages and with their own cosmic views, history, and spirituality.¹⁵³ The cultural richness of these peoples is reflected in their diverse life styles, generally linked to the land, and their methods of social organization and different ways of settling conflicts, which have enabled them to maintain their cultural identity.¹⁵⁴ This cultural wealth is threatened by the continued violence in many of the regions where these peoples live. As we have seen in previous years, illegal armed groups are interested in the ancestral lands of indigenous peoples, either for strategic reasons or for cultivation and processing of illegal substances.

93. This situation, together with the exploitation of the natural wealth of these lands, has generated increased violations of the individual and collective human rights of the indigenous peoples. Specifically, according to information provided by the National Indigenous Organization of Colombia (ONIC), between 2002 and 2009, 45,339 indigenous peoples were victims of displacement due to violence.¹⁵⁵

94. ONIC reported that from January to July 2009, 3,059 indigenous people were victims of forced displacement.¹⁵⁶ The Commission observes with special concern the impact of displacement on the relationship between indigenous people and their ancestral territory, the impossibility of access to sacred sites, and the loss of identity, among other things. The Commission reiterates that the State should pay particular attention to displacements of indigenous

¹⁵² Presentation of the National Indigenous Organization (ONIC) to the European Parliament in April 2009. In the State's observations it said that official information in the 2009 Universal Periodic Review (UPR) counts 84 indigenous groups and the police force counts 86. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 24. Another source says that "[i]n the country there are officially 87 indigenous peoples according to the DANE [National Administrative Department of Statistics], and 102 peoples according to statistics of the National Indigenous Organization (ONIC)." http://www.unad.edu.co/boletin/images/documentos/propuesta_seminario_pueblos_indigenas_2009_2.pdf.

¹⁵³ According to the most recent population census (in 2005), 1,378,884 indigenous peoples reside in Colombia, accounting for 3.4% of the country's population. At present there are 710 titled reserves or protected areas located in 27 departments and in 228 municipalities of the Colombian territory. The Commission points out the fact that the most recent population census of 2005 included the criterion of self-identification to establish the percentages of the indigenous peoples in Colombia. See: National Department of Statistics, Office of Census and Demography, Colombia One Multicultural Nation. Its Ethnic diversity, October 2006, available at: http://www.dane.gov.co/censo/files/presentaciones/grupos_eticos.pdf.

¹⁵⁴ National Planning Department, Office of Sustainable Territorial Development: "The indigenous peoples of Colombia at the threshold of the new millennium," Bogota, 2004, page 33. According to the Planning Department, the most numerous peoples have between 149,827 members and 32,899. Other groups range from 14,000 to 26,000 members. There are 39 indigenous peoples with less than 1,000 inhabitants, and four peoples with less than 100; they are: Dujos with 98, Pisamira with 61, Makaguaje with 50, and Taiwano with 22 members. According to the National Indigenous Organization of Colombia (ONIC), 28 indigenous peoples have less than 500 inhabitants, 15 less than 200, and six less than 100. For 2001, the National Planning Department in Colombia estimated an indigenous population of 785,356 persons, a figure that accounts for 1.83% of the country's total population. The Colombian State has established 710 indigenous reserves, with an approximate area of 32 million hectares, about 30% of the national territory, most of them as special conservation areas. See updated information for February 2006, Colombian Rural Development Institute - INCODER and UPR Commitment 81 in Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 24.

¹⁵⁵ ONIC. Status of Human and Collective Rights of the Indigenous Peoples of Colombia: Ethnocide, Ethnic Cleansing, and Banishment. Report of the UN Special Rapporteur for the Rights of Indigenous Peoples, July 2009.

¹⁵⁶ ONIC, Status of Human and Collective Rights of Indigenous Peoples of Colombia: Ethnocide, Ethnic Cleansing, and Banishment. Report of the UN Special Rapporteur for the Rights of Indigenous Peoples, July 2009.

peoples who need assistance adapted to their culture, identity, cosmic vision, language, and traditions. The Constitutional Court stated as follows in February 2009:

the indigenous groups are particularly defenseless and exposed to the armed conflict and its aftermath, especially displacement. They have to face the dangers inherent in the conflict on the basis of pre-existing structural conditions of extreme poverty and institutional neglect, which are catalysts for the serious individual and collective human rights violations entailed by the penetration of the armed conflict into their territories. [...] [T]he indigenous peoples of Colombia [...] are in danger of being exterminated culturally or physically by the internal armed conflict, and they have been victims of egregious individual and collective violations of their human rights and of international humanitarian law, all of which has resulted in their forced individual or collective displacement.¹⁵⁷

The Court further declared that “the Colombian State has the dual obligation to prevent the causes of forced displacement of indigenous peoples and to attend to the displaced indigenous population with the differentiated approach it requires,”¹⁵⁸ and it ordered that a program to guarantee the rights of indigenous peoples affected by displacement be designed and implemented within six months of notification of the order.¹⁵⁹ The State said in its observations that on August 11, 2009, the Constitutional Court received a request for a six-month delay and a progress report on compliance with Order 004 of 2009.¹⁶⁰ The Commission values this decision of the Constitutional Court and will follow up on progress in implementing said program within the time limits set.

95. As regards the food situation of children, in hospital visits by the Indigenous Association of Cauca AIC-EPS-I from January to September 2009, it identified 60 cases of malnutrition, 55% of which (33 cases) corresponded to boys and 45% (27 cases) to girls.¹⁶¹

96. In 2009, the Commission continued to receive information on acts of violence against indigenous peoples. The ONIC reported that from January to May 2009, 56 homicides of indigenous persons were recorded, which represents a 124% change in comparison with the same period in 2008.¹⁶² The State said in its observations that the complaints received had been processed and joint action had begun among government agencies to protect the special rights of

¹⁵⁷ Constitutional Court, Order 004/09, Judgment delivered by Judge Manuel José Cepeda Espinosa, January 26, 2009.

¹⁵⁸ Constitutional Court, Order 004/09, Judgment delivered by Judge Manuel José Cepeda Espinosa, January 26, 2009.

¹⁵⁹ Constitutional Court, Order 004/09, Judge Manuel José Cepeda Espinosa, January 26, 2009. The state reported to the Commission that on March 27, 2009, the Ministry of Justice instituted a permanent consultation mechanism with indigenous communities, for the purpose of complying with Order 004-09. Note VAM.DDH.OEA No. 46989/2268 of the Ministry of Foreign Affairs of Colombia dated September 17, 2009. As regards service to the displaced indigenous population, the State said that as of 2009, the Families in Action Program had benefitted 2,498,000 families, of which 327,000 are displaced families and 7,000 are indigenous families. UPR Commitments 57 and 58 in Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 24.

¹⁶⁰ Report on Order 004 of 2009, Constitutional Court: Protection of the basic rights of persons and indigenous peoples displaced by the armed conflict or at risk of forced displacement, on the design and implementation of a guarantees program. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 24 and Annex.

¹⁶¹ Regional Indigenous Council of Cauca - CRIC/Health Program/Indigenous Association of Cauca AIC-EPS-I. *Analysis of the health situation in 2007, 2008 and January-June 2009*. The municipalities with the largest number of cases identified were Páez and Totoro with 16 cases, respectively. In most cases, these minors arrived with signs of physical abuse. Five deaths were identified or reported among these cases.

¹⁶² ONIC, *Close to the arrival of the United Nations Special Rapporteur for Indigenous Peoples, systematic murders continue*, July 17, 2009. Figures on the human rights situation and operational results of the security forces.

the indigenous peoples. It also said that the National Human Rights and International Humanitarian Law Unit of the Office of the General Attorney (*Fiscalía General de la Nación*) is doing a special follow-up and thus far has assigned 182 investigations, which have led to conviction of 168 persons in 16 verdicts.¹⁶³

97. The Commission expressed its concern over the situation of vulnerability of indigenous peoples in Colombia and the attacks on their leaders, in an attempt to break the unity of these peoples and their ability to defend their rights, and especially the right to autonomy and to their land. Thus, the IACHR has stated that the constant acts of violence against indigenous peoples threatened not only their life and personal safety, but also their very existence as peoples.

98. In 2009 serious acts of violence were committed against the Awá people¹⁶⁴. On February 6, FARC massacred eight indigenous Awá.¹⁶⁵ Moreover, civil society sources informed the IACHR of the assassination of other members of the Awá indigenous people in the protected areas of Tortugaña, Telembí, and El Sande, crimes also attributed to FARC. In a press release, the IACHR repudiated the acts of violence and the serious violations of international humanitarian law perpetrated against the Awá people and urged the state to investigate the acts and prosecute the perpetrators. The IACHR further reiterated its concern over the security situation of indigenous peoples living in zones affected by the armed conflict. It requested the state to take the necessary states to protect them and to refrain from action that could endanger the life and personal safety of indigenous peoples, and in particular of the Awá people.¹⁶⁶ According to newspaper reports, these acts of violence triggered the displacement of hundreds of Awa people from their lands. Available information also indicates that Awa protected areas or reserves are surrounded by anti-personnel land mines, which makes it difficult for the Awa to circulate and for officials and humanitarian organizations to have access to them.¹⁶⁷ The State said in its observations that two investigations at the inquiry stage are underway for the homicide of 11 members of the Awá people.¹⁶⁸

99. In addition, ONIC reported that on July 17, 2009, members of the Alto Palai community of El Gran Rosario protected area, Gonzalo Paí and his wife María Pascal, six months' pregnant, were murdered.¹⁶⁹ Subsequently, in August 26, 2009, a second massacre was

¹⁶³ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 25 and 26.

¹⁶⁴ According to the registered population of the Awá organizations (the Association of Traditional Indigenous Authorities, the Awá Indigenous Councils, the Indigenous Unit of the Awá People-UNIPA, and CAMAWARI, among others) there are more than 27,000 Awá indigenous people in Colombia today. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 31.

¹⁶⁵ In a communiqué dated February 17, 2009, the FARC admitted responsibility for the murders of eight Awá indigenous persons, perpetrated on February 6, 2009.

¹⁶⁶ IACHR, Press Release N° 06/09 of February 20, 2009, "IACHR condemns murder of indigenous Awá by the FARC."

¹⁶⁷ IACHR, Press Release N° 06/09 of February 20, 2009, "IACHR condemns murder of indigenous Awá by the FARC." In addition, ONIC reported that: Floro Paí died on February 10, 2009 after walking on a mined field; Claudio Nastacuás and Ernesto Jiménez García were murdered on February 15, 2009 (after the massacre) the first allegedly by paramilitary groups, and the second by the National Liberation Army (ELN); José Hermes Criollo Guanga died on April 5, 2009 after walking in a mined field; and, Luis Alberto Cuasaluzan Canticuz and Ademelio Servio Bisbicus García were murdered on April 19 and May 11, 2009, respectively. ONIC, *Close to the arrival of the United Nations Special Rapporteur for Indigenous Peoples, the systematic murders persist*, July 17, 2009.

¹⁶⁸ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 26.

¹⁶⁹ ONIC, *Close to the arrival of the United Nations Special Rapporteur for Indigenous Peoples, systematic murders continue*, July 17, 2009.

perpetrated against the Awá indigenous peoples in El Gran Rosario reserve, located in the Department of Nariño. This time an armed group opened fire on one of their homes, causing the death of twelve persons, including seven minors. At least three more persons were wounded.¹⁷⁰ The Commission evaluated and followed up on the situation and these serious acts were condemned by the international community, which demanded an immediate and unequivocal response from the state to ensure respect for the cultural identity and comprehensive and effective protection for indigenous peoples.¹⁷¹

100. In response, the state pledged to have an investigative committee made up of the Human Rights and Humanitarian Law Unit of the National Office of the Prosecutor General, the CTI, and the Judicial Police Department (DIJIN) clarify the facts,¹⁷² along with the assistance of OACNUDH in Colombia.¹⁷³

101. In October 2009, the Defense Ministry reported the arrest of members of 'Los Cucarachos' gang, a criminal organization engaging in drug trafficking and kidnapping, and the alleged perpetrators of the massacre of 12 indigenous Awá. It further reported that said gang and the members arrested are under investigation for other massacres, kidnappings, and extortion in the Department of Nariño.¹⁷⁴ The State also reported to the IACHR that on October 5, 2009, the

¹⁷⁰ United Nations Office of the High Commissioner for Human Rights in Colombia (OACNUDH), "UN expert condemns murders of indigenous people in Colombia," August 31, 2009. Available at: <http://www.hchr.org.co/documentoseinformes/documentos/relatoresespeciales/2009/Comunicado%20Prensa%20Pueblos%20Indigenas%2031%20de%20agosto%202009.pdf>

¹⁷¹ The United Nations Special Rapporteur on the Status of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya, condemned the murders in August 2009. He stated that: "the effective guarantee of the human rights of indigenous peoples is profoundly linked to their collective right to live in peace and security as separate peoples, and not to be subjected to any act of violence. The Rapporteur said that he hoped "that the Colombian authorities will investigate the acts, punish the responsible parties, and compensate the Awá people for the damage caused, in accordance with their international human rights obligations." Moreover, the Colombian Office of the United Nations High Commissioner for Human Rights (OACNUDH), pursuant to its observation mandate, gave special attention to the situation of the Awá people, and particularly to this massacre, and issued a series of recommendations to the state. Office of the United Nations High Commissioner for Human Rights (OACNUDH), *UN expert condemns murders of indigenous peoples in Colombia*. August 31, 2009. Available at: <http://www.hchr.org.co/documentoseinformes/documentos/relatoresespeciales/2009/Comunicado%20Prensa%20Pueblos%20Indigenas%2031%20de%20agosto%202009.pdf>. The OACNUDH Representative in Colombia then reported on his visit to the site of the events. The investigative team headed by the UDH of the Office of the Prosecutor General of the Nation (*Fiscalía General de la Nación*) and made up of prosecutors and investigators from CTI and the DIJIN of the National Police showed a genuine sense of urgency, and interest, competence, and empathy with the family members of the victims, witnesses, and community. Among the 12 victims of the massacre, there were two girls and five boys, including an 8-month old baby. Three persons were also wounded, one of them a minor. The information gathered indicates that the persons were murdered one by one, shot a close distance, without any consideration for women or children. The crime is particularly serious due to the large number of children murdered, and the excessive cruelty shown is evidence of a new dimension of the violence perpetrated against the Awá people. One of the murdered women was a direct witness of the alleged extrajudicial execution of her husband, Gonzalo Rodríguez, committed by members of the Army on May 23, 2009 near the place of the massacre. The investigation into these acts was taken on by the military criminal justice system. The Office made recommendations to the state designed to protect the victims and witnesses and the Awá people as a whole by implementing an Ethnic Protection Plan for the Awá People, in accordance with Constitutional Court's Order 004, psycho-social care, and the need to have the case transferred to the regular court system, among other things. OACNUDH Colombia. *Observations and initial recommendations regarding the massacre of the Awá people*, 2009-09-10. Available at: <http://www.hchr.org.co/publico/comunicados/2009/comunicados2009.php3?cod=23&cat=74>

¹⁷² Note VAM.DDH.OEA No. 46989/2268 of the Ministry of Foreign Affairs of Colombia, September 17, 2009.

¹⁷³ The State reported that the Nariño Governor's Office offered a reward of approximately \$15,000 in addition to the \$50,000 reward offered by the National Defense Ministry to citizens who report information leading to identification of the whereabouts of the responsible parties. Note VAM.DDH.OEA No. 46989/2268 of the Ministry of Foreign Affairs of Colombia, September 17, 2009.

¹⁷⁴ Ministry of Defense, Press release of the Defense Minister on the arrest of the alleged murders of the Awá people, October 6, 2009. Available at: http://www.cancilleria.gov.co/wps/portal/espanol/!ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os3gLuzfLUH9DYwN3d39zAy

Second Criminal Judge of the Municipality of Tumaco, with guarantee control functions, issued detention orders against five persons who had participated in that massacre, who were charged with aggravated homicide, conspiracy to commit a crime, and illegal bearing of arms.¹⁷⁵

102. The state reported that it had taken on the commitment to organize a consultation with the Awá indigenous people, in order to deal specifically with the problems of that community and their current needs. The state also reiterated its commitment to find and adopt measures that would enable the Awá people to exercise and enjoy their rights, and it indicated that it would continue implementing the necessary measures to protect them. In this regard, it indicated that, under the National Human Rights Commission, it was working on a protection plan, measures for individual and collective protection, the risk map, and humanitarian care.¹⁷⁶ At the same time, the state advised that the national government met with Awá leaders to define the immediate steps to be taken in the face of the humanitarian emergency, as well as a proposal for a Plan for the Ethnic Protection of the Awá People.¹⁷⁷ The state also said that on July 9, 2009, the Ministry of Interior and Justice and various authorities signed agreements with the Indigenous Unit of the Awá People (UNIPA) and the Association of Traditional Indigenous Authorities - AWA-CAMAWARI. The state indicated that it hoped that a proposal for an Ethnic Protection Plan would come out of these two agreements, for prior consultation.¹⁷⁸

103. The State also reported that in February 2009 about 500 Awá of the Tortugaña Telembí Reserve were displaced and a second displacement of 146 personas occurred on September 1, 2009, from the Gran Rosario Indigenous Reserve to the community of La Guayacana in Tumaco.¹⁷⁹ At the same time, the state reported that to deal with the problem of the displacement of the Awá community, Social Action had set up a committee of experts for humanitarian emergencies, made up of eight members working in the places receiving the displaced population in the municipalities of Samaniego, Ricaurte, and Barbacoas in the Department of Nariño, and conducting periodic verification missions in the area where the displaced population was concentrated,¹⁸⁰ which made it possible to carry out the protection actions for this population. In addition, the State informed that in the component of prevention and mitigation of forced displacement a contingency plan was approved on January 31, 2009, which was activated when the displacement occurred.

104. With respect to the care provided for the first group of displaced persons, the State said there were 17 follow-up missions to check on the status of each of the comprehensive care components for the displaced persons, which provided them with food, toilet articles, etc. It said

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¹⁷⁵ Note VAM.DDH No. 54970/2579 from the Ministry of Foreign Affairs of Colombia, October 9, 2009. See. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 26.

¹⁷⁶ Note VAM.DDH.OEA No. 46989/2268 from the Ministry of Foreign Affairs of Colombia, September 17, 2009.

¹⁷⁷ Meetings held on 18 February 2009 in Pasto, 5 March 2009 en Barbacoa, Department of Nariño, and 17 March 2009. Note VAM.DDH.OEA No. 46989/2268 from the Ministry of Foreign Affairs of Colombia, September 17, 2009.

¹⁷⁸ Note VAM.DDH.OEA No. 46989/2268 from the Ministry of Foreign Affairs of Colombia, September 17, 2009.

¹⁷⁹ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 31.

¹⁸⁰ Note VAM.DDH.OEA No. 46989/2268 from the Ministry of Foreign Affairs of Colombia, September 17, 2009.

that the food rations were adjusted in accordance with the traditional Awá diet.¹⁸¹ It said that the displaced persons were resettled in the El Verde building in the El Diviso subdivision, Barbacoas, and at UNIPA headquarters, at that organization's request. It said that the entities of the Departmental Committee for Integral Care of the Displaced Population took the necessary actions to provide shelter, which included the construction and installation of kitchens, bathrooms, septic fields, water tanks, and classrooms for the children.¹⁸² It said that these shelters house 120 displaced persons, and mainly the men go out to work each day. It added that there are health brigades for persons housed in the shelters and essential medicines have been given to the hospital serving them, and all displaced persons are receiving mental health and nutrition services. The State also said that the indigenous guard of the displaced community provides security for those housed at the UNIPA administrative headquarters and the national army continuously patrols the street.¹⁸³

105. The State said that the second group of displaced persons is housed at the Indigenous House of the Reserve in La Guayacona district. It said that since the displacement there has been monitoring of the emergency situation and food aid has been provided, along with construction of a place to eat, a well, bathrooms, toilet kits, and ongoing medical care. It added that mental health services have been provided to all displaced persons and there has been a nutritional assessment of the child population. The State says that the security of this displaced population is the responsibility of the National Police and the Carabineros' Mobile Squad, along with the Indigenous Guard.¹⁸⁴

106. On October 28, 2009, the Commission requested the State, in accordance with the powers and obligations set out in Articles 41 and 43 of the American Convention on Human Rights, to provide information on the murders of members of the Awá indigenous people. Specifically, the Commission asked the State for information on the outcome of the investigation carried out by the commission composed of the Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General, the CTI and DIJIN; measures implemented to date under individual and collective protection schemes; the risk and humanitarian assistance map for the Awá people; the status of the investigations opened in response to the murders of members of the Awá indigenous people in February and August 2009; and the status of the investigation of the members of the band known as "Los Cucarachos."

107. In its response of November 23, 2009, the State said that 15 persons have been transferred from the risk zone by the victim and witness protection program of the Office of the Prosecutor General and given security services.¹⁸⁵ The State said in its observations that the Awá indigenous people is experiencing imminent threats and that the action of armed irregular groups in

¹⁸¹ The State says that the Government of Nariño provided a fund of 28 million Colombian pesos to purchase food. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 33 and Note of the Ministry of Foreign Affairs of Colombia DDH.OEA No. 64199/2993 of November 23, 2009.

¹⁸² The State said that all children displaced in the urban case of Samaniego are attending classes normally. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 35 and Note of the Ministry of Foreign Affairs of Colombia DDH.OEA No. 64199/2993 of November 23, 2009.

¹⁸³ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 33-36 and Note of the Ministry of Foreign Affairs of Colombia DDH.OEA No. 64199/2993 of November 23, 2009.

¹⁸⁴ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 38-40 y and Note of the Ministry of Foreign Affairs of Colombia DDH.OEA No. 64199/2993 of November 23, 2009.

¹⁸⁵ Note of the Ministry of Foreign Affairs of Colombia DDH.OEA No. 64199/2993 of November 23, 2009.

the area has a direct effect on their living conditions and the guarantee of this population's human and ancestral rights, and that the Protection Program of the Human Rights Office of the Ministry of Interior and Justice has granted individual and collective protection measures to the Awá, agreed upon with the beneficiaries and leaders.¹⁸⁶ It said that that self-protection systems have been found to be appropriate and viable for reducing this population's risk, so the communities have been given telephones and radios operated by the leaders and indigenous guard, as well as transportation assistance and armor for the Awá organizations' headquarters.¹⁸⁷ The State said that it has agreed with the indigenous peoples that the best protection scheme is the Ethnic Safeguard Plan, a process that will be implemented with the various Awá indigenous organizations in a participatory and mutually acceptable manner.¹⁸⁸

108. The Commission appreciates the efforts made by the government; however, it remains concerned by the serious acts of violence committed against the Awá indigenous people and awaits the results of the investigations initiated into the deaths of the members of the Awá indigenous people. It will follow up on the care provided by the State to displaced persons and the progress made in adopting effective measures to prevent violence.

B. Afro-descendant and Raizal community councils and communities

109. Afro-descendants and mestizos comprise the most extensive minority in Colombia. They live primarily along the Pacific coast and form considerable majorities or minorities in a number of large and medium-sized cities, including Cartagena, Buenaventura, Cali, Turbo, Barranquilla, Medellín, and Quibdó. According to the 2005 census, 10.6% percent of the total population of the country identifies itself as black or Afro-Colombian, including the *Palenquera* and *Raizal*, or 4,311,757 persons.¹⁸⁹ Although programs have been initiated to improve the situation of the Afro-descendant population,¹⁹⁰ the state has recognized¹⁹¹ that the situation of the Afro-Colombian population is more difficult than that for the population on average, and that certain manifestations of racism having to do with cultural aspects persist in the country.

110. This sector of the population is particularly disadvantaged from the standpoint of health infrastructure, roads, and access to education. In its comments, the state emphasized that in

¹⁸⁶ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 31.

¹⁸⁷ Safeguard Plan and Guarantees Program for the Awá people, formalized in Interagency Agreement No 140 of July 9, 2009, between the Ministry of Interior and Justice, UNIPA, and the Association of Indigenous Councils of the Awá People of Putumayo (ACIPAP). Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 26 and 27

¹⁸⁸ The State said that on July 14, 2009 there was a meeting of the National Human Rights Commission and indigenous organizations, which resulted in agreements based on the indigenous peoples' perspective and Cosmo vision. It said that the organizations undertook to evaluate the proposal for construction of the risk map of the indigenous peoples. It said further that the Ministry of Interior and Justice officially contracted with the Delegate of the Indigenous Peoples for participation of the indigenous organizations in the Operational Secretariat of the National Human Rights Commission (CNDDHH). Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 29 and 30. *Compare* Note of the Ministry of Foreign Affairs of Colombia DDH.OEA No. 64199/2993 of November 23, 2009.

¹⁸⁹ Although the 2005 census marks an improvement in estimating the Afro-descendant population, there are challenges remaining in determining with greater clarity the size of the Afro-descendant population in Colombia and their resulting social needs.

¹⁹⁰ See: "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 to the Republic of Colombia," March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66, para. 29.

¹⁹¹ Constitutional Court, Order 005-09, Judge Manuel José Cepeda, January 26, 2009.

2007, it began developing a comprehensive long-term plan for Afro-descendant communities, with the participation of high-level departmental advisory committees and community councils. The plan is designed to “provide inputs for designing and implementing a government policy for positive differentiation, through action for structural change, in the framework of an ethno-development model.” The main components of the plan are inclusion and reparation policies, sectoral ethno-development policies, and territorial and regional policies. In December 2008, it agreed to seek international cooperation resources in order to continue with the process of socialization and territorialization under this plan.¹⁹²

111. In view of their socially disadvantaged situation, Afro-descendant communities have been particularly affected by the conflict. On the one hand, the community councils located in Urabá and along the Atrato River and its tributaries have been targets of violence by armed actors, due to their claims for collective land titles pursuant to Law 70 of 1993¹⁹³ and the rights recognized by the 1991 Constitution. Moreover, urban populations, such as the ones in the city of Buenaventura, a strategic port of exit for drug trafficking, have been afflicted by armed groups disputing control of the region. As a result, these populations have been particularly subjected to violence, forced displacement, and seizure of their land. In 2009, the Commission continued receiving reports of acts of violence and intimidation against these populations.¹⁹⁴

112. In March 2009, the IACHR published the *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*,¹⁹⁵ in which it emphasized that “the disparities between the social and economic conditions of Afro-descendants and the rest of the Colombian population are closely linked to the social exclusion that this segment of the population has suffered for generations” and that “elimination of structural discrimination remains an enormous challenge for this population, which remains invisible through neglect.”¹⁹⁶

113. The Commission refers back to these Preliminary Observations to reiterate that “stigmatization by armed actors, the failure of the security forces to do their duty to protect them, omissions in the provision of assistance in the humanitarian crisis that affects displaced persons, land seizures, impunity, and, in general, racism and racial discrimination all afflict Afro-Colombians, who have been hit particularly hard by the armed conflict.”¹⁹⁷

¹⁹² Note DDH No. 5717/0223 of the Office of Human Rights and International Humanitarian Law of the Ministry of Foreign Affairs of the Republic of Colombia, February 5, 2009, page 45.

¹⁹³ In 1993 Law 70 was approved. It recognizes collective ownership rights of black communities that have been occupying uncultivated land in rural areas near the Pacific basin rivers, the right to education in accordance with the needs of those communities and their cultural aspirations (ethno-education), and the right of the black communities to participate in mechanisms such as Territorial Planning Councils and Executive Councils of Autonomous Regional Corporations.

¹⁹⁴ Hearing on the situation of Afro-Colombian, indigenous, and campesino communities in Norte de Cauca, held on November 5, 2009, during the 137th Regular Session of the IACHR. Available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

¹⁹⁵ 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, OEA/Ser.L/V/II.134 Doc. 66.

¹⁹⁶ “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 to the Republic of Colombia,” March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66.

¹⁹⁷ “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 to the Republic of Colombia,” March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66.

114. Moreover, the Commission has repeatedly expressed its concern over the lack of judicial resolution regarding most of the acts of violence that have affected Afro-descendant communities and caused their displacement in the midst of the armed conflict.¹⁹⁸ Colombia faces the challenges connected with the fact that armed groups and members of the security forces have been found to bear responsibility for the perpetration of multiple crimes in the framework of the conflict, as well as provision of reparation to the victims. The IACHR has stated 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.”¹⁹⁹ It is vital that any peace-building operation include investigation of and reparations for acts of violence, displacement and discrimination suffered by Afro-descendants. The State said in its observations that the National Human Rights and International Humanitarian Law Unit of the Public Prosecutor’s Office has begun follow-up of cases involving victims who belong to the Afro-descendant communities, and to date 73 persons have been implicated in 34 investigations involving a total of 72 victims.²⁰⁰

115. The Commission has further stated that despite the fact that the socioeconomic levels of the Afro-descendant communities that reside in the inter-oceanic corridor between the Urabá zone and the Pacific coast are the lowest in the country, the territories that they inhabit are of enormous strategic value and rich in biodiversity and natural resources. Consequently, not only are they victims of institutional neglect on the part of the State, but they have also suffered particularly cruelly at the hands of armed actors and economic actors, the latter very often in alliance with the former.²⁰¹ The violations of human rights and of international humanitarian law committed against Afro-descendant communities are aimed at inducing terror and displacement, as well as the illegal appropriation of land.²⁰²

116. The Commission has determined that another factor leading to displacement and the seizure of land is the expansion of the biofuel industry through the planting of African oil palm, a single crop well-known for its harmful effect on the soil and biodiversity. Although it is planted in an attempt to stimulate development in Afro-Colombian communities, and has ostensibly received

¹⁹⁸ See Chapter IV of the IACHR Annual Reports for 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007 and 2008. In the cases in which it was possible for organs of the inter-American system to exercise their jurisdiction, the IACHR has processed petitions and cases on the alleged violation of the human rights protected by the American Convention. See, for instance, IACHR Report No. 86/06, Marino López *et al.* (Operation Genesis), 2006 IACHR Annual Report. “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 to the Republic of Colombia,” March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66, para. 101. 101.

¹⁹⁹ Report on the Demobilization Process in Colombia, OEA/Ser.L/V/II.120, Doc. 60, 13 December 2004, pp. 10-20; The IACHR Opines on Approval of the Justice and Peace Law in Colombia, Press Release N. 26/05, 15 July 2005. “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 to the Republic of Colombia,” March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66, para. 101. 101.

²⁰⁰ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 29 and 30.

²⁰¹ Office of the Ombudsman, Defense Resolution No. 39, Human rights violation: cultivation of African Palm in the collective territories of Jiguamiandó y Curvaradó – Chocó, 2 June 2005, available at: <http://pbicolombia.info/Documentos/0506%20Defensoria-Palma.pdf>. “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 to the Republic of Colombia,” March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66, para. 102.

²⁰² “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 to the Republic of Colombia,” March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66, para. 102.

active encouragement from the State with official funding,²⁰³ in many instances this activity has been undertaken without consulting the communities concerned or against their will, through the illegal seizure of collectively owned land. It is alleged that 61% of Afro-Colombians who have received property deeds have been displaced and that they have been unable to return to their homes because of the violence and subsequent hostile takeover of their lands by third parties.²⁰⁴

117. Furthermore, the Commission is still worried about the situation of the Community Councils of Jiguamiandó and Curvaradó, which are under the protection of provisional measures issued by the Inter-American Court of Human Rights. In this regard, the Commission has stated that the lands deeded to those Afro-descendant communities have been seized for the purpose of using them for the lucrative biofuel business. This has had an adverse effect on the biodiversity in this zone and on the resources used by these communities for their daily subsistence.

118. These territories are undergoing a process of legal recovery and material restitution of the seized land, under the guidance of the Ministries of Agriculture and Interior and Justice.²⁰⁵ With regard to this process, on July 17, 2009, the Constitutional Court²⁰⁶ issued Order 222 of 2009 in order to put in place an urgent precautionary measure to protect the fundamental rights of the Afro-Colombian community of Caracolí belonging to the Curvaradó Community affected by internal forced displacement, in the context of efforts to correct the state of unconstitutionality declared in judgment T-025 of 2004 and in Order 005 of 2009 on protection of the fundamental rights of the Afro-descendant population that has been the victim of forced displacement.²⁰⁷ The precautionary measures consist in the immediate and indefinite suspension of the court order of eviction against the members of that community, which had been issued by the *Juzgado Promiscuo* of the Riosucio Circuit, in Chocó Department, and the adoption of protective measures for the Caracolí community, in consultation with the community, within the framework of the provisional measures adopted by the Inter-American Court of Human Rights. The Constitutional Court recognized these communities as subject to enhanced constitutional protection, by mandate of the Colombian Constitution, and the international obligations of the Colombian State in the area of human rights and international humanitarian law.²⁰⁸ The Commission values this decision of the

²⁰³ In February 2009, the Office of the National Controller General issued his "Government Audit Report with a comprehensive approach, regular modality, on the fund for financing the agricultural sector - FINAGRO, 2005-2006 fiscal year, as part of the general audit plan - PGA 2007 - 2008," which shows that the state used resources of the official agrarian financial system to provide 100% financing to companies such as URAPALMA for their oil palm plantations in Curvaradó. The audit report indicates that "FINAGRO approved rediscounts for three companies (...) for a total of \$13.049 billion (...). By way of services in addition to the credit, it backed rediscounts through FAG for \$4.090 billion (...). Moreover, it granted an ICR economic benefit for investment in a new project, consisting in a credit valued at \$2,892 billion." In the specific case of URAPALMA, rediscounts amounted to a total of \$6.235 billion, and \$5.422 billion has been disbursed, with an (ICR) benefit for payment of its credit valued at \$2.892 billion, equivalent to over 50% of the value of the debt to the financial system, a figure that URAPALMA will not have to pay. This, together with the fact that approximately 50% of the debt has a FAG guarantee for \$2.447 billion." 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 to the Republic of Colombia," March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66, párr.103.

²⁰⁴ AFRODES and Global Rights, *Luces y Contraluces sobre la Exclusión: Los Derechos Humanos de las Comunidades Afrocolombianas*, Bogotá, November 2007. "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 to the Republic of Colombia," March 27, 2009, OEA/Ser.L/V/II.134 Doc. 66, párr.104.

²⁰⁵ Information provided by the Ministry of Interior and Justice during a meeting held in its offices in Bogota on November 19, 2008.

²⁰⁶ Special Chamber for Monitoring Judgment T-025 of 2004 and its compliance orders, made up of Judges Luis Ernesto Vargas Silva, Juan Carlos Henao Pérez, and Nilson Pinilla Pinilla.

²⁰⁷ Constitutional Court, Order 222-09, Judge Luis Ernesto Vargas Silva, 17 June 2009.

²⁰⁸ Constitutional Court, Order 222-09, Judge Luis Ernesto Vargas Silva, June 17, 2009.

Constitutional Court and will continue to observe compliance with the provisional measures issued by the Inter-American Court.

119. In judgment T-025 of 2004, the Constitutional Court recognized that the Afro-descendant population qualified as subjects for special constitutional protection, thereby justifying “the adoption of measures for positive differentiation, which are adapted to their situation of special vulnerability and defenselessness, and which, through preferential treatment, are conducive to ensuring the effective exercise of their rights.” Similarly, in January 2009, the Constitutional Court issued order 005-09 for the protection of the fundamental rights of the Afro-descendant population that are victims of forced displacement, within the framework of the unconstitutional state of affairs declared in judgment T-025 of 2004.²⁰⁹ The Commission values the fact that the Constitutional Court conducted an exhaustive analysis of the need for a differentiated approach that takes into account the diversity of the displaced Afro-descendants. In this regard, the Constitutional Court specified that the fundamental rights of the members of Afro-descendant populations have been violated with displacement, as they are “specially protected groups by virtue of the precarious conditions confronted by the persons subject to forced displacement.”²¹⁰

120. In cited case law, the Court has recognized the international commitments²¹¹ of the state in the area of international human rights and humanitarian law, which “require the authorities to adopt a preventive approach to forced displacement that is sufficiently differentiated and specific that it will have an impact on the underlying causes of this phenomenon and its disproportionate effect on Afro-descendant communities and their members.”

121. The Constitutional Court recognized the lack of preferential, differentiated assistance to these people and ordered the various government institutions to implement the relevant policies to ensure that the displaced Afro-descendant population can effectively exercise its fundamental rights.²¹² The Commission values this decision of the Constitutional Court and will follow up on the progress made in implementing its orders within the time periods stipulated by it.²¹³

122. The Commission observes that despite the legislative and jurisprudential efforts made by the state, there are still obstacles to the full, effective exercise of the rights of indigenous peoples and Afro-Colombian communities. The impact of displacement on the Afro-descendant and indigenous populations should be given special attention by the agencies responsible for

²⁰⁹ Constitutional Court, Order 005-09, Judge Manuel José Cepeda, January 26, 2009.

²¹⁰ Constitutional Court, Order 005-09, Judge Manuel José Cepeda, January 26, 2009.

²¹¹ On the subject of applicable international obligations, the Constitutional Court recognizes that [...] iii) the American Convention on Human Rights reiterates the obligation of states parties to undertake “to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color (...), national or social origin, economic status, birth, or any other social condition” (Art. 1) and the right of all persons to “equal protection of the law, without discrimination.” (Art. 24). Constitutional Court, Order 005-09, Judge Manuel José Cepeda, January 26, 2009.

²¹² Constitutional Court, Order 005-09, Judge Manuel José Cepeda, January 26, 2009. On October 30, 2009, the State gave the Constitutional Court a progress report on compliance with Order 005 of 2009. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 41 and Annex.

²¹³ The Constitutional Court ordered the Ministry of the Interior and Justice and the Ministry of Defense to present to the Office of the Ombudsman bimonthly reports on action taken to ensure compliance with the provisional measures issued by the Inter-American Court for the Communities of Jiguamiandó and Curvaradó; these reports should include an objective evaluation of the suitability of the measures adopted, in terms of the results obtained and shortcomings identified in the area of prevention of crimes against the protected persons. Constitutional Court, Order 005-09, Judge Manuel José Cepeda, January 26, 2009.

implementing the programs to assist the displaced population in its efforts to attend to its specific needs.

IV. USE OF INTELLIGENCE TECHNIQUES AGAINST HUMAN RIGHTS DEFENDERS, COMMUNITY LEADERS, AND JOURNALISTS

123. In February 2009, the press disclosed that the Administrative Department for Security (DAS) had intercepted the telephone calls of a large number of public figures, including members of the Executive, Legislative, and Judicial Branches, members of political parties, human rights defenders, and journalists, among others.

124. In response, the IACHR issued Press Release No. 9/09, in which it expressed its concern over intelligence operations in Colombia and urged the authorities to investigate the facts to determine the responsible parties.²¹⁴ Subsequently President Uribe announced his decision that the National Police and not DAS would be responsible for court-ordered wire-tapping.²¹⁵ After the information on intercepted telephone calls was uncovered, the DAS Director of Intelligence resigned.²¹⁶

125. In July 2009 the Commission received information on the creation under DAS of a Special Strategic Intelligence Group, known as "G3," that, *inter alia*, would conduct intelligence operations on activities linked to litigation of international cases and on international contacts of organizations engaged in the defense of human rights. In addition, information was published that, in that context, the G3 had conducted an intelligence operation on the occasion of the visit of an IACHR delegation, headed by former Commissioner Susana Villarán, to the city of Valledupar in 2005 to "determine the cases studied by the Rapporteur and the testimony presented by the NGOs, in addition to the lobbyist group they support to exert pressure for condemnation of the state."

126. On the basis of this information, the IACHR, pursuant to the powers and obligations established in Articles 41 and 43 of the American Convention on Human Rights, requested the state to provide information on intelligence operations by the Administrative Department for Security (DAS) involving IACHR operations related to the Republic of Colombia. In its request, the IACHR indicated that the information, apparently based on steps taken in the context of judicial investigations, is a matter of serious concern to the IACHR, since on the one hand it involves compliance with rules governing on site visits by the IACHR according to which the IACHR should be guaranteed the freedom to conduct private interviews with persons, groups, entities, or institutions, and on the other it has to do with the state's commitment to comply in good faith with the purposes of the American Convention and other treaties of the inter-American system.

127. Specifically, the IACHR requested the government for detailed information on all of the intelligence operations conducted by state agencies regarding members of the IACHR and the staff of its Executive Secretariat, the objectives of the intelligence operations of state agencies regarding the IACHR and the staff of the Executive Secretariat, a description of the destination and use of the report resulting from all intelligence operations conducted by government agencies

²¹⁴ IACHR, "IACHR Concern over Colombian intelligence operations", Press Release No. 09/09, February 26, 2009, <http://www.cidh.oas.org/Comunicados/Spanish/2009/09-09sp.htm>

²¹⁵ Office of the President of the Republic of Colombia, Statement of President Uribe on the DAS, February 26, 2009. <http://web.presidencia.gov.co/sp/2009/febrero/26/01262009.html>

²¹⁶ In a press release, the DAS Director indicated, among other things that "the USB reports and discs that contain some evidence that could be related to this case [of telephone wire-taps] correspond to a matter found in a search [conducted on February 25, 2009], jointly [by] the Technical Unit of the Prosecutor's Office and the DAS, after an investigation conducted by DAS for over two years against illegal armed groups." Press Release of the DAS Director, February 26, 2009: <http://web.presidencia.gov.co/sp/2009/febrero/26/13262009.html>.

regarding members of the IACHR and the staff of its Executive Secretariat, and investigations conducted by the Office of the National Prosecutor General [*Fiscalía General de la Nación*] and the *Procuraduría General de la Nación* on intelligence activities related to IACHR activities involving the Republic of Colombia, including specific information on the proceedings initiated against officials involved and their current status. The Commission made the information available to the OAS Secretary General and the Permanent Council, so that they could adopt relevant measures.²¹⁷

128. In response, the state indicated that “the alleged illegal intelligence activities carried out by persons linked to the Administrative Department for Security are the subject of both criminal and disciplinary judicial proceedings being conducted by organs independent of the Executive Branch with the full backing of the national government.”²¹⁸ It further stated that “to date, among the cases heard that are part of both criminal and disciplinary investigations, there are no cases referring specifically to the Inter-American Commission on Human Rights, and there are no known orders regarding its officials or members,” and it explained that its main objective was to clarify the facts, to identify the responsible parties, and to impose sanctions, in order to guarantee respect for and the continuity of the government policy to comply with its obligations under conventions with different international organizations.²¹⁹

129. Subsequently, the Ministry of Foreign Affairs of the Republic of Colombia issued a press release in the following terms:

1. At the request of the government, the Office of Prosecutor and the *Procuraduría General de la Nación*, completely autonomous entities independent of the Executive, opened criminal and disciplinary investigations on this and other cases of alleged irregular activities of DAS staff members.
2. On this case, the national government has with absolute transparency provided all the necessary cooperation to the Prosecutor’s Office in its investigative processes.
3. At the initiative of the President of the Republic, administrative measures were adopted within the Administrative Department for Security–DAS—and the entity is currently undergoing reorganization.
4. The government rejects and condemns any type of activity by government employees that violate rights and hamper the exercise of the freedoms of persons or organizations, and it expects the investigations to be brought to a prompt conclusion and the responsible individuals to be identified.
5. The government indicates its respect for the work performed by international organizations in its country, and in particular the Inter-American Commission of Human Rights.²²⁰

130. Together with intelligence operations against the IACHR, an issue of special concern to the Commission in 2009 was the use of intelligence mechanisms against human rights defenders, social leaders, and journalists, among others. The IACHR received information describing activities carried out by the “G3,” including “pursuit of organizations and persons in opposition to government policies, with a view to restricting or neutralizing their action.” As indicated above, in its Press Release No. 9/09, the IACHR expressed its concern in this regard and urged the authorities to

²¹⁷Also see IACHR, Press Release 59/09, “IACHR expresses concern over intelligence operations focusing on the activities of the Inter-American Commission in Colombia,” August 13, 2009: <http://www.cidh.oas.org/Comunicados/Spanish/2009/59-09sp.htm>.

²¹⁸Note VAM/DDH/OEA No. 41362/2052 of the Ministry of Foreign Affairs of the Republic of Colombia, dated July 31, 2009.

²¹⁹Note VAM/DDH/OEA No. 41362/2052 of the Ministry of Foreign Affairs of the Republic of Colombia, dated July 31, 2009.

²²⁰ Press Release of the Ministry of Foreign Affairs of the Republic of Colombia, August 13, 2009: http://www.cancilleria.gov.co/wps/portal/espanol!/ut/p/c1/04_SB8K8xLLM9MSSzPy8xBz9CP0os3glUzfLUH9DYwN3d39zAyM3i1CjkEAnL_dAY6B8pF18aFhQmFGwi7GBv2-QqYFRml9ZoJersZGBpxkB3X4e-bmp-gW5EeUAISdLqw!!/dl2/d1/LOIDU0IKSWdrbUEHIS9JRFJBQUipQ2dBek15cXchL1ICSkoXtkExTkk1MC01RncvN184NUY5VU8xMzBHR083MDJGOFUyVFFCSkdUNI9SaVpSYzg1NTkwMDA0/?WCM_PORTLET=PC_7_85F9UO130GG0702F8U2TQBJGT6WCM&WCM_GLOBAL_CONTEXT=/wps/wcm/connect/WCM_PRENSA/prensa/comunicados/comunicado+comision+interamericana

investigate the facts and determine the responsible parties, as well as to impose the corresponding sanctions. According to information that is public knowledge, the Prosecutor's Office partially canceled the investigation into DAS intelligence activities and decreed the release of its former head of intelligence and former director of counter-intelligence, due to procedural errors.²²¹ The IACHR will continue to follow up on measures directed at providing judicial clarification of the facts.

131. At a hearing held in November 2009 in the framework of the 137th Regular Session of the IACHR, civil society organizations reported on the intelligence activities of which members of the "José Alvéar Restrepo" Lawyers' Collective (CAJAR) have been the target. In that context, they said that the DAS intelligence files contained organizational charts with detailed information about the members of CAJAR, including their names, photographs, the positions they held, fingerprints, and résumés. The DAS is also said to have investigated the "private lives, property, psychological profiles, ideological tendencies, weaknesses, strengths, and vices" of the CAJAR members. They said that they and their families have been followed and kept under surveillance in public places and at work by undercover agents, who filmed and photographed them. They claimed to have been the target of acts of sabotage while travelling, given that DAS agents allegedly had detailed information on routes and destinations.²²²

132. During Its 137th Regular Session, the IACHR received information to the effect that the intelligence activities of "G3" reputedly targeting human rights defenders, journalists, and judicial officials were intended to collect strategic intelligence, identify risks and threats to the government and national security, carry out "offensive intelligence and psychological warfare" measures, and prosecute opponents of the government's policies. These measures were part of a pattern of intimidation and harassment designed to neutralize or restrict activities of individuals and organizations with opposition leanings.²²³

133. In that context, the Commission received information that suggests that beneficiaries of precautionary measures granted by the IACHR who are also covered by the Protection Program for Human Rights Defenders were followed by members of the protective escort provided by the DAS. Those agents are said to have used confidential information from the Program to carry out intelligence activities and ordered the tapping of communication equipment.²²⁴ In the

²²¹ El Tiempo, "Due to procedural errors, the investigation into the DAS "chuzadas" dropped by the Prosecutor's Office, September 22, 2009.

²²² Hearing on Case 12.380 – Alirio Uribe Muñoz and other members of the *Colectivo de Abogados José Alvear Restrepo*, Colombia, held in the framework of the 137th Regular Session of the IACHR, November 5, 2009, available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>. At the aforementioned hearing, the "José Alvéar Restrepo" Lawyers' Collective (CAJAR) presented documents from the DAS intelligence files to which it has had access as a civil party in the criminal proceedings underway. The documents are marked "SECRET" or "CONFIDENTIAL" and contain personal data, photographs of members of CAJAR and their families in public places, a complete psychological profile that describes the habits, weaknesses, strengths, likes, hobbies and friendships of one of the members of CAJAR, morphological studies, telephone wiretap orders, monitoring of international travel, and payment vouchers for the lease of properties from where the intelligence activities were carried out

²²³ Hearing on Case 12.380 – Alirio Uribe Muñoz and other members of the *Colectivo de Abogados José Alvear Restrepo*, Colombia, held in the framework of the 137th Regular Session of the IACHR, November 5, 2009, available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>. ²²³ Hearing on Guarantees for the Exercise of the Rights of members of the National Movement of Victims of State Crimes, Colombia, held on November 5, 2009, in the framework of the 137th Regular Session of the Inter-American Commission on Human Rights. <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

²²⁴ Hearing on Case 12.380 – Alirio Uribe Muñoz and other members of the *Colectivo de Abogados José Alvear Restrepo*, Colombia, held in the framework of the 137th Regular Session of the IACHR, November 5, 2009, available at <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>. ²²⁴ Hearing on Guarantees for the Exercise of the Rights of members of the National Movement of Victims of State Crimes, Colombia, held on November 5, 2009, in the framework of the 137th Regular Session of the Inter-American Commission on Human Rights. <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

State's response, it says "the need to report and have information on its protected persons should not be regarded as surveillance, but as the performance of its functions."²²⁵ The Commission is concerned for the security situation of the beneficiaries of its precautionary measures and will follow up on the protection systems offered by the State.

134. The current Director of the DAS, Mr. Felipe Muñoz, was present at the hearings held during the 137th Regular Session of the IACHR and provided information on criminal prosecutions and disciplinary measures instituted to get to the bottom of the illegal intelligence activities conducted by the DAS. He also said that the process has begun of abolishing the entity and creating a new civilian intelligence agency. The IACHR also held a meeting with the Vice President of Colombia, Francisco Santos Calderón, at which it reiterated its concern at the illegal intelligence activities and urged the government to take judicial steps to clear up the facts.

135. According to the information received, in response to the complaints of illegal activities by the DAS the Attorney General ordered a special group to be set up to investigate the facts. This group made a number of visits to the DAS and seized intelligence documents. The State said in its observations that as soon as the information gathered by "G3" was located, the director of DAS personally called the Office of the Attorney General and delivered 104 files.²²⁶ According to publicly known information, a substantial amount of evidence on these activities was illegally removed from the institution some weeks before the visit by representatives of the Office of the Attorney General. The State said in its observations that DAS has always cooperated with the Office of the Attorney General in the investigations prompted by these facts and that there has been significant progress in just 10 months.²²⁷

136. On March 5, 2009, Law 1288 of 2009 took effect. This law contains "provisions to strengthen the legal framework that allows organizations to conduct intelligence and counter-intelligence activities, to fulfill their constitutional and legal mission, as well as other provisions." In its analysis for 2008, the IACHR mentioned the state's reference to the law approved in December 2008, to the effect that its purpose is it "to strengthen and create new guarantees for citizens, keep information confidential, and protect public servants who work in the intelligence-gathering area."²²⁸ The state spoke of this law as a step towards reorganizing the intelligence services.

137. Nevertheless, the Commission has received information establishing the unsuitability of the Intelligence Law (Law 1288 of 2009) "for eradicating the serious risks to human rights defenders and community leaders who are persecuted and harassed by intelligence agencies, [...] not only due to insufficient declarations of principle and the absence of mechanisms to make them effective, but also because [...] it strengthens the same arrangements that gave rise to the excesses and abuses of the security organizations."²²⁹ More specifically, the Commission is concerned over the lack of mechanisms to ensure that persons on whom intelligence is collected have access to it

²²⁵ The State adds that on November 28, 2008, it issued Directive OPLA 016, which banned intelligence work by protection services and established mechanisms for control and follow-up. Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 42 and Annex.

²²⁶ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 42 and annex that includes note DIR. 020846 from the Director of DAS, Felipe Muñoz, to the National Director of CTI in the Attorney General's Office, dated March 19, 2009.

²²⁷ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 42 and 52-53.

²²⁸ Note DDH No. 5717/0223 of the Office of Human Rights and International Humanitarian Law, Ministry of Foreign Affairs, Republic of Colombia, dated February 5, 2009, page 55.

²²⁹ Corporation for the Defense and Promotion of Human Rights (REINICIAR), Document analyzing Colombian Intelligence Law (Law 1288 of 2009), received by the IACHR on September 14, 2009.

and can therefore correct or update it, or, if applicable, remove the information from the intelligence files. Also, the Commission has become aware of clandestine investigations against human rights defenders. It has been pointed out that “two of the distinctive aspects of cases against defenders are the use of false testimony of former combatants and the use of inadmissible intelligence files.”²³⁰

138. In September 2009, the United Nations Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, paid a visit to Colombia. In statements made at the end of her visit, she concluded that “patterns of harassment and persecution of human rights defenders, and frequently of their families persist [...] and it appears that some of these violations are attributed to members of the guerrilla, new illegal armed groups, and paramilitary groups which, according to the human rights defenders, have not been dismantled.” She further reported that “one basic reason for the lack of security of human rights defenders has to do with the fact that they are systematically singled out and stigmatized by government officials.”²³¹

139. In view of this situation, the IACHR reiterates its recommendation contained in its *Report on the Status of Human Rights Defenders in the Americas*²³² that effective measures must be urgently adopted, in consultation with the interested parties, to protect the life and safety of the human rights defenders being threatened. In the State’s observations, it reports the increasing importance assigned by the Human Rights Unit of the Prosecutor General’s Office to cases in which the victims are human rights defenders, and notes that to date 26 investigations have been launched, which have implicated 31 persons, and that in addition there have been 12 convictions of 27 individuals.²³³

140. The IACHR values the high-level treatment that the government has accorded to the illegal activities of the DAS. Having said that, the Commission remains deeply concerned and will continue to monitor the judicial measures to clarify the facts, the creation and mandate given to the new intelligence agency, and the permanent cessation of these illegal activities by all government agencies

V. FREEDOM OF EXPRESSION²³⁴

141. During the year 2009, the IACHR continued receiving information about the exercise of freedom of expression in Colombia. The following section sets forth some the advances and current challenges in this subject area.

A. Advances in the area of freedom of expression

142. The Commission observes with satisfaction the advancement of some judicial investigations of assassinations of journalists. In January 2009, the Office of the Attorney General

²³⁰ Human Rights First, Human Rights Defenders, objects of unfounded accusations—arrested and stigmatized in Colombia, February 2009, available at: <http://www.humanrightsfirst.org/pdf/090211-HRD-colombia-esp.pdf>.

²³¹ Statement of the United Nations Special Rapporteur on the Status of Human Rights Defenders, September 21, 2009.

²³² IACHR, Report on the Status of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124. Doc-5 rev. 1, 7 March 2006, recommendation 6.

²³³ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 43.

²³⁴ The preparation of this report was assigned by the Commission to the Office of the Special Rapporteur for Freedom of Expression.

of the Nation sentenced the former Mayor of Barrancabermeja, Julio César Ardila Torres, and two other former functionaries of the Mayor's Office, to 28 years in prison as the masterminds of the murder of the journalist José Ementerio Rivas, which occurred in 2003. According to the judicial body, Julio César Ardila paid 150 million pesos to paramilitaries in the zone to assassinate the journalist, motivated by the constant accusations made by José Rivas against the former official of having links to the AUC.²³⁵

143. In April of 2009, the Criminal Court of the Specialized Circuit of Quibdó, department of Chocó, sentenced Franklin Isnel Díaz Mosquera, alias "Juancho," to 34 years in prison as the perpetrator of the assassination of the journalist Elacio Murillo Mosquera. The murder was carried out in 2007 and the masterminds have still not been identified. According to the judgment, the journalistic denunciations by Elacio Murillo about the actions of paramilitary groups in the zone motivated the crime.²³⁶

144. The Council of State condemned the Nation for the murder of the journalist Henry Rojas Monje, which occurred in 1991. Henry Rojas, correspondent with the newspaper El Tiempo in Arauca, was murdered by two members of the National Army. According to the judgment of March 24, 2009, the State's responsibility arose from the fact that the soldiers who killed the journalist were public functionaries. However, this decision questioned the impunity for this crime, since the masterminds were not identified.²³⁷

145. In voluntary statement before the Unit on Justice and Peace, the demobilized paramilitary Jorge Enrique Ríos, alias "Sarmiento," confessed to having assassinated the journalist Flavio Iván Bedoya, on April 27, 2001. According to Jorge Enrique Ríos, the order to assassinate Flavio Bedoya arose from an interview the journalist had done with the commander "Marcos," head guerrilla of the FARC.²³⁸ The Commission observes that in this process a definitive decision has not yet been adopted.

146. On the other hand, the Commission emphasizes that in March of 2009, the Constitutional Court reiterated its jurisprudence in the area of rectification, according to which

²³⁵ Fundación para la Libertad de Prensa (FLIP), January 22, 2009. Condenados autores intelectuales de asesinato de periodista en 2003 (Masterminds of 2003 murder of journalist sentenced). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=341>. Diario El Tiempo, January 21, 2009. Como avance contra la impunidad calificó la SIP condena por crimen de periodista en Barrancabermeja (IAPA classifies the conviction for crime against journalist in Barrancabermeja as an advance against impunity). Available in Spanish at: <http://www.eltiempo.com/colombia/justicia/como-avance-contra-la-impunidad-califico-la-sip-condena-por-crimen-de-periodista-en-barrancabermeja-4767898-1>.

²³⁶ FLIP, April 8, 2009. Condenado autor material del asesinato de Elacio Murillo (Perpetrator of assassination of Elacio Murillo convicted). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=355>. El Tiempo, March 18, 2009. Condenan a 34 años de prisión a alias "Juancho" por asesinato del periodista Elacio Murillo (Alias "Juancho" sentenced to 34 years in prison for assassination of journalist Elacio Murillo). Available in Spanish at: http://www.eltiempo.com/colombia/justicia/condenan-a-34-anos-de-prision-a-alias-juancho-por-asesinato-del-periodista-elacio-murillo_4884685-1.

²³⁷ Federación Internacional de Periodistas (FIP), March 27, 2009. Ceso-FIP valora el fin de la impunidad por el asesinato del periodista colombiano Henry Rojas Monje (Ceso-FIP values the end of impunity for the assassination of Colombian journalist Henry Rojas Monje). Available in Spanish at: http://www.p-es.org/index.php?option=com_content&task=view&id=2842&Itemid=62. FLIP, April 8, 2009. Condenada la Nación por asesinato de Henry Rojas Monje (The Nation is convicted of the assassination of Henry Rojas Monje). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=355>.

²³⁸ Portal Verdad Abierta, July 31, 2009. Ex para confiesa asesinato de periodista Flavio Bedoya (Ex "para" confesses to assassination of journalist Flavio Bedoya). Available in Spanish at: <http://www.verdadabierta.com/web3/nunca-mas/76-periodistas/1473-ex-para-confiesa-asesinato-de-periodista#>. FLIP, August 4, 2009. Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=376>.

opinions are not rectifiable, since they are protected by the right to freedom of expression and opinion.²³⁹ Additionally, the Commission notes that the judgment of the Constitutional Court establishes that journalists will not be criminally responsible for information they make public about some persons who are judicially absolved of the acts that are reported. This ruling modifies the previous situation, in which a person accused of defamation could not absolve him- or herself, even if the truth of his or her affirmations was proven, if it involved facts that were the object of a judgment of absolution or closure of the investigations.²⁴⁰

147. In this respect, Principle 10 of the Declaration of Principles indicates that:

[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 communicator 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.

148. The Commission notes that through a decision of the Constitutional Court, constitutional protection of the confidentiality of sources was authorized. Concretely, in response to journalistic denunciations made by the *Diario del Huila*, which linked a Senator of the Republic with alleged irregular activities, the Senator demanded that the media reveal its sources, considering that the information threatened his good name and honor. In this respect, the Court considered that "in principle and while the legislator does not establish a clear, reasonable, necessary, and proportionate disposition to the contrary, the privacy guaranteed by Article 74 of the Constitution is not subject to limitations."²⁴¹

149. In this respect, it should be noted that Principle 8 of the Declaration of Principles on Freedom of Expression states that "[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

150. The Commission takes note of the advances in the area of contracting and assigning official publicity in Colombia. In Cartagena, department of Bolívar, the implementation of the norms issued in 2008 has continued, creating an official committee and establishing a series of criteria for the contracting of official publicity. In the same vein, during 2009, the government of Caldas issued a decree with similar characteristics and has begun its implementation.²⁴² In this respect, it

²³⁹Constitutional Court, Judgment T-219 of 2009. Presiding Judge Mauricio González Cuervo. With this decision, the Court overturned a judgment of the Superior Court of Bogotá against Alejandro Santos, editor of the magazine *Semana*, for a series of articles published about the magistrate of the Superior Council of the Judiciary, José Alfredo Escobar Araújo. Despite having made rectifications on two occasions, the magazine faced a new order of rectification and its editor, a contempt charge for failing to comply with it.

²⁴⁰ Constitutional Court, Judgment C-417 of 2009. Presiding Judge Juan Carlos Henao Pérez. FLIP, July 3, 2009. Corte Constitucional amplía el alcance de la veracidad como defensa en injuria y calumnia (Constitutional Court expands the reach of the veracity defense for defamation crimes). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=371>. Grupo de Interés Público de la Universidad de Los Andes, July 2009. Acción pública de inconstitucionalidad contra el artículo 224 del Código Penal (Public action for unconstitutionality against Article 224 of the Penal Code). Available in Spanish at: <http://gdip.uniandes.edu.co/interno.php?id=6&Menu=10&lang=es>.

²⁴¹ Constitutional Court, Judgment T-298 of 2009. Presiding Judge Luis Ernesto Vargas Silva.

²⁴² FLIP, May 11, 2009. Avanza la política pública sobre publicidad oficial en Cartagena (Public policy on official publicity advances in Cartagena). Available in Spanish at: <http://flip.org.co/veralerta.php?idAlerta=364>. Regarding Cartagena, see also Office of the Mayor of Cartagena, May 13, 2009. La FLIP destaca avances en la regulación de la pauta oficial (FLIP highlights advances in the regulation of official publicity). Available in Spanish at: <http://sigob.cartagena.gov.co/prensa/default.asp?codigo=270&tipo=Comunicados>. In the case of the governorship of Caldas, see FLIP, April 24, 2009. La Gobernación de Caldas expide decreto sobre publicidad oficial (The governorship of

is fitting to recall that Principle 13 of the Declaration of Principles states that the arbitrary and discriminatory assignation of official publicity “with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law.”

151. On the other hand, the Commission recognizes the importance of the continuation of the Program for the Protection of Journalists of the Ministry of the Interior and Justice. Nevertheless, it expresses its concern over possible delays in the implementation of protective measures and judicial orders regarding this point that have been issued against government officials in charge of this public policy.²⁴³

B. Assassinations, attacks, threats, and illegal detentions of journalists

152. The Commission deplores the assassinations of journalists that occurred in 2009. In the municipality of Patía, department of Cauca, José Everardo Aguilar of Radio Súper was assassinated on April 24, 2009, when an unidentified individual entered his residence and shot him several times. José Aguilar was a journalist recognized in his municipality for his criticism and denunciations of corruption at the local and departmental levels.²⁴⁴ Three months later, the Police reported that they had captured the perpetrator of the crime.²⁴⁵ In this regard, in a communication

...continuation

Caldas issues decree on official publicity). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=359>. Governorship of Caldas, March 27, 2009. Gobernación de Caldas expide decreto sobre publicidad oficial (Governorship of Caldas issues decree on official publicity). Available in Spanish at: http://www.gobernaciondecaldas.gov.co/index.php?option=com_content&view=article&id=177:noticias-marzo-27-de-2009&catid=71:notis&Itemid=190. Diario La Patria and Asociación por los Derechos Civiles (ADC), April 2009. Gobernación colombiana regula la distribución de publicidad oficial (Colombian governorship regulates the distribution of official publicity). Available in Spanish at: http://www.censuraindirecta.org.ar/sw_contenido.php?id=492. ADC, April 2009.

²⁴³ Portal La Silla Vacía, October 12, 2009. La otra cara del Programa de Protección del Gobierno (The other face of the Government’s Protection Program). Available in Spanish at: <http://www.lasillavacia.com/historia/4726>. In relation to this issue, the Administrative Tribunal of Cundinamarca declared the Director of Human Rights of the Ministry of the Interior and the Director of the Administrative Department of Security (DAS, by its Spanish acronym) to be in contempt for failing to comply with a 2008 order of the Constitutional Court to adjust the protection plan for journalist Claudia Julieta Duque and to provide her with the information about her found in the files of the intelligence entity. The judgment is available in Spanish at: <http://www.derechos.org/nizkor/colombia/doc/desacato.html>.

²⁴⁴ Reporters without Borders (RSF), April 28, 2009. Radio reporter gunned down in Cauca. Available at: http://www.ifex.org/colombia/2009/04/28/radio_reporter_gunned_down_in_cauca/. FIP, April 27, 2009. La FIP condena firmemente el asesinato de un veterano periodista en Colombia (FIP strongly condemns the assassination of a veteran journalist in Colombia). Available in Spanish at: <http://www.ifj.org/es/articulos/la-fip-condena-firmemente-el-asesinato-de-un-veterano-periodista-en-colombia>. FLIP, April 25, 2009. Asesinato periodista en Patía, Cauca (Journalist assassinated in Patía, Cauca). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=360>.

²⁴⁵ RSF, July 15, 2009. Suspect arrested in the investigation into the murder of a radio journalist. Available at: <http://www.rsf.org/Radio-reporter-gunned-down-in.html>. FLIP, July 12, 2009. Capturado sicario de periodista en el Cauca (Assassin of journalist captured in Cauca). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=372>. After this chapter was sent to the State, the Office of the Special Rapporteur received information that on November 13, 2009, the First Special Judge in Popayán acquitted Arley Manquillo Rivera, allegedly the material author of the assassination. According to the information received, the verdict ignored evidence submitted by the Prosecutor’s Office, based on the testimony of Agnolia Aguilar, the journalist’s daughter, who witnessed the crime. The court considered Agnolia Aguilar’s testimony “disturbed” by the violent scene she witnessed. The Prosecutor’s Office said it would appeal the decision. See Freedom of the Press Foundation (FLIP). November 15, 2009. *Absuelto presunto asesino de periodista*. Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=393>; El Tiempo newspaper. November 16, 2009. *Declaran inocente a presunto asesino de periodista José Everardo Aguilar en el Cauca*. Available in Spanish at http://www.eltiempo.com/colombia/occidente/declaran-inocente-a-presunto-asesino-de-periodista-en-el-cauca_6602868-1; Virtual newspaper of Cauca. November 13, 2009. *Ordenan libertad de alias "El Huracán" señalado de asesinar al periodista J. Everardo Aguilar*. Available in Spanish at: http://www.periodicovirtual.com/index.php?option=com_content&view=article&id=598:ordenan-libertad-de-alias-el-huracan-senalado-de-asesinar-al-periodista-j-everardo-aguilar&catid=1:mi-noticia.

of October 6, 2009, the State informed the Office of the Special Rapporteur for Freedom of Expression that the murder perpetrated against the communicator was strongly repudiated by the National Government and that the competent prosecutor's office had already opened an investigation in which the adoption of special rules was requested given the "particular situation of the victim and the gravity of the acts." Finally, it reported that there was no request for protection on behalf of the murdered journalist found in the database of the Program for the Protection of Journalists and Social Communicators.

153. On September 22, 2009, in the municipality of Supía, department of Caldas, Diego Rojas Velásquez, a reporter with a community channel, was assassinated.²⁴⁶ According to the information received, Diego Rojas was working for the community channel Supía TV when he received a telephone call related to the coverage of a story in the municipality of Caramanta, department of Antioquia. The information adds that the journalist left the channel at around 6:30 p.m. and was intercepted a few blocks away by a group of unknown individuals who fired four shots at him, killing him immediately. According to the information received, the local authorities stated that they did not know of any threats against the life of the community journalist.

154. On December 13, 2009, the State said that according "to statistics as of October 31, 2009, from the Observatory [...] of the Presidential Human Rights Program, Office of the Vice President of the Republic," during that period "there [had] only been the homicide of [José Everardo Aguilar,] who worked for Radio Súper."²⁴⁷

155. The Commission notes with concern that some judicial investigations of assassinations of journalists have been closed without any results or have been paralyzed after some advances.²⁴⁸ The IACHR exhorts the State to investigate these crimes, sanction those responsible proportionately, and make reparations to the victims. The state of impunity for crimes against journalists continues to be especially serious.

156. On this matter, the State said on December 13, 2009, that the National Human Rights Unit had launched 48 investigations into crimes against journalists. According to the State, "these investigations have implicated 38 persons, and there have also been 17 convictions in 13 verdicts."²⁴⁹

²⁴⁶ Inter-American Press Association (IAPA), September 25, 2009. IAPA condemns murders of journalists in Mexico, Colombia. Available at: <http://impunidad.com/index.php?comunicados=detail&idioma=us&id=4265>. Diario La Patria, September 23, 2009. Asesinaron a periodista oriundo de Supía (Journalist from Supía murdered). Available in Spanish at: http://www.lapatria.com/Noticias/ver_noticia.aspx?CODNOT=76570&CODSEC=4. FIP, September 23, 2009. Fecolper condena asesinato de periodista en Caramanta, Antioquia (Fecolper condemns assassination of journalist in Caramanta, Antioquia). Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4136>. FLIP, September 23, 2009. Asesinado periodista en Supía, Caldas (Journalist assassinated in Supía, Caldas). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=383>.

²⁴⁷ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 43.

²⁴⁸ Last October, the Office of the Attorney General of the Nation precluded the investigation of the former president of the assembly of Huila, Carlos Augusto Rojas, for the assassination of the journalist Nelson Carvajal Carvajal, which occurred in Pitalito, Huila on April 16, 1998. In 2008, the Supreme Court had been asked to reopen the case. This petition rejected the request for revision. Inter-American Press Association (IAPA), October 12, 2009. Cierran investigación contra político colombiano por asesinato de Nelson Carvajal (Investigation closed against Colombian politician for assassination of Nelson Carvajal). Available in Spanish at: <http://www.impunidad.com/index.php?shownews=405&idioma=sp>.

²⁴⁹ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 43.

157. In this sense, it recalls that Principle 9 of the Declaration of Principles on Freedom of Expression states that 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.”

158. The Commission was also informed that there were at least 40 cases of journalists threatened for reasons presumably related to their work and that these were concentrated in the departments of Atlántico, Valle del Cauca, Córdoba, and Huila.²⁵⁰

159. According to information received by the Commission, in Barranquilla, department of Atlántico, grave threats against communicators had been presented, by means of a pamphlet presumably created by the illegal armed group “Águilas Negras.”²⁵¹ Subsequently, the reporters José Granados, of the newspaper El Heraldo,²⁵² and Daniel Castro, of the newspaper El Sol, received intimidating telephone calls. Luis Camacho Montaña, of the newspaper La Libertad, was assaulted and threatened by various men who approached him on the street.²⁵³

160. On the other hand, the station Radio Diversia, belonging to the LGBT community of Bogotá, was the victim of a robbery of equipment and later of threats, which were received through email. Carlos Serrano, director of the station, felt it was necessary to leave the country temporarily. Apparently, the threats were made by “social cleansing” groups.²⁵⁴

161. With respect to the *Radio Diversia* case, on December 13, 2009, the State said that “the Office of Indigenous, Minority, and Roma Affairs of the Ministry of Interior and Justice did a technical study on the level of risk and degree of threat posed by the National Police, finding it

²⁵⁰FLIP, August 12, 2009. Informe semestral sobre libertad de prensa en Colombia (Semiannual report on freedom of the press in Colombia), p. 3. Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=378>.

²⁵¹FIP, February 1, 2009. Ceso-FIP y FECOLPER condenan amenazas de muerte contra periodistas en Barranquilla (Ceso-FIP and FECOLPER condemn death threats against journalists in Barranquilla). Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3004>. FLIP, August 12, 2009. Informe semestral sobre libertad de prensa en Colombia (Semiannual report on freedom of the press in Colombia), pages 17 - 19. Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=378>.

²⁵²FIP, April 3, 2009. ASCA rechaza amenazas contra periodista del diario El Heraldo (ASCA rejects threats against journalist from the newspaper El Heraldo). Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3364>. Revista Semana, April 2, 2009. Amenazado periodista de El Heraldo por denunciar irregularidades en la CRA (Journalist from El Heraldo threatened for denouncing irregularities in the CRA). Available in Spanish at: <http://www.semana.com/noticias-medio-ambiente/amenazado-periodista-heraldo-denunciar-irregularidades-cra/122462.aspx>. FLIP, April 3, 2009. Periodista de ‘El Heraldo’ recibe amenazas por denuncias de corrupción (Journalist of ‘El Heraldo’ receives threats for denunciations of corruption). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=353>.

²⁵³FLIP, July 2, 2009. Periodista es asaltado y amenazado en Barranquilla, Atlántico (Journalist is assaulted and threatened in Barranquilla, Atlántico). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=370>. Diario El Tiempo, April 2009. Amenazas a periodistas en Barranquilla pasaron de los panfletos a la intimidación armada (Threats to journalists in Barranquilla went from pamphlets to armed intimidation). Available in Spanish at: <http://www.eltiempo.com/colombia/caribe/amenazas-a-periodistas-en-barranquilla-pasaron-de-los-panfletos-a-la-intimidacion-armada-5573727-1>.

²⁵⁴FLIP, May 26, 2009. Emisora activista de derechos de la comunidad LGBT recibe amenazas (Activist radio station for LGBT rights receives threats). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=367>. RSF, June 5, 2009. Help for threatened community gay radio station. Available at: <http://www.rsf.org/Help-for-threatened-community-gay.html>. El Tiempo, May 8, 2009. Amenaza a director de Radio Diversia prende alarmas en el Distrito por agresiones a sectores LGBT (Threat to director of Radio Diversia causes worry in the District about attacks against LGBT groups). Available in Spanish at: <http://www.eltiempo.com/colombia/bogota/amenaza-a-director-de-radio-diversia-prende-alarmas-en-el-districto-por-agresiones-a-sectores-lgbt-5161068-1>

'normal,' and therefore the case was referred to the Committee for Rules and Risk Assessment–CRER of the Program for Protection of Journalists and Media Workers in the meeting of September 28, 2009, at which it was recommended that four (4) Avanel communication devices be provided for Nicolay Paulina Duque Aricama, Carlos Serrano, Laura Giselle Vargas La Torre, and Liceth del Carmen Rochel Páez.” It also reported that the National Police had been asked to provide “preventive security measures around the station.”²⁵⁵

162. The Office of the Special Rapporteur also learned that the president of the Inter-American Press Association (IAPA), Enrique Santos Calderón, had been warned of a supposed plan to attempt to kill him, which was discovered by Colombian intelligence organs. The attempt was also planned against Juan Manuel Santos, at that time the Minister of Defense.²⁵⁶

163. According to information received, the columnist and writer Gustavo Álvarez Gardeazabal was attacked and threatened by unknown individuals who entered his residence and stole part of his journalistic material. According to Gustavo Álvarez, six armed men entered his house in Tuluá, Valle del Cauca, bound and aimed firearms at the journalist and his maid, searched the journalist’s documents and archives, and took away computers and cellular telephones. It is worth reiterating that Principle 9 of the Declaration of Principles on Freedom of Expression states that intimidation and threats against journalists “violate the fundamental rights of individuals and strongly restrict freedom of expression.”

164. On the other hand, the Commission learned of new acts of aggression against journalists by members of the Police and private individuals. Specifically, in 2009, the following journalists, among others, were attacked in different circumstances: Emilio Castrillón, of the newspaper El Pílon of Valledupar, Cesar,²⁵⁷ Luisa Alario Solano and Hernando Vergara, of the newspapers Q' Hubo and El Heraldo, also in Valledupar,²⁵⁸ and Álvaro Miguel Mina, of Caracol Radio in Cali, Valle del Cauca.²⁵⁹

165. The Commission notes with concern the possible illegal detention of Hollman Morris, director of the program Contravía, and Camilo Raigozo, a collaborator with the weekly Voz, by the National Army. The incidents occurred in February of 2009, when the reporters were returning

²⁵⁵ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 43-46.

²⁵⁶ El Tiempo, March 26, 2009. Guerrilleros que iban a atacar a Presidente de la SIP y MinDefensa estarían preparando secuestros (Guerrillas who were going to attack the President of IAPA and the Defense Ministry were planning abductions). Available in Spanish at: <http://www.eltiempo.com/colombia/justicia/guerrilleros-que-iban-a-atacar-a-presidente-de-la-sip-y-mindefensa-estarian-preparando-secuestros-4901739-1>. FLIP, March 30, 2009. Frustran atentado contra el presidente de la Sociedad Interamericana de Prensa (Attack against the president of the Inter-American Press Association frustrated). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=354>. IAPA, March 30, 2009. IAPA concerned about plot to kill its president, Enrique Santos Calderón). Available at: http://www.ifex.org/colombia/2009/03/30/iapa_concerned_at_plot_to_kill/.

²⁵⁷ FLIP, May 8, 2009. Policía de Valledupar agrede a reportero gráfico (Valledupar Police attack photojournalist). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=363>. FIP, May 7, 2009. Amenazados periodistas en Barranquilla y Miami, y golpeado fotógrafo en Valledupar (Journalist threatened in Barranquilla and Miami, and photographer beaten in Valledupar). Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3566>.

²⁵⁸ FLIP, September, 2009. Periodistas agredidos por guardias penitenciarios en Valledupar, Cesar (Journalists attacked by prison guards in Valledupar, Cesar). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=381>. FIP, September 9, 2009. Guardias del INPEC atropellan a periodistas en Valledupar (Guards of the INPEC attack journalists in Valledupar). Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=4115>.

²⁵⁹ Diario El País, October 6, 2009. Agreden al periodista Álvaro Miguel Mina (Journalist Álvaro Miguel Mina attacked). Available in Spanish at: <http://www.elpais.com.co/paionline/calionline/notas/Octubre062009/alvaromina.html>. FLIP, October 7, 2009. Periodista es agredido en Cali por un desconocido (Journalist is attacked in Cali by an unknown individual). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=387>.

from obtaining images and conducting interviews with several captives of the FARC minutes before they were liberated. The journalists were held for several hours in the municipality of Unión Peneya, department of Caquetá, during which time they were recorded with a video camera by an agent of the Division of the Judicial Police (SIJIN). According to the information received, they were also ordered to hand over their journalistic material, which the communicators refused to do. The journalists were able to leave after mediation by the regional office of the Human Rights Ombudsman.²⁶⁰

166. In relation to the mentioned incident, in addition to other declarations of high-ranking government officials, on February 3, 2009, the President of Colombia, Álvaro Uribe, stated in a press conference that Hollman Morris “[shielded] himself with his condition as a journalist to be a permissive accomplice of terrorism, [...], one thing are those friends of terrorism who function as journalists, and another thing are the journalists.” The President added that Hollman Morris “took advantage [...] of his situation as a journalist, [...] and had a terrorist party in an alternative location to that of the liberation of the soldier and the police officers, last Sunday.”²⁶¹ The President referred to the journalist Jorge Enrique Botero in similar terms. According to the information received, after the declarations by the authorities, Hollman Morris received several threatening calls. On previous occasions, the journalist had to leave the country as a result of serious threats against his life. Hollman Morris has been the beneficiary of precautionary measures from the IACHR since 2000.

167. In this context, the Special Rapporteur for Freedom of Expression and the Rapporteur of the United Nations for Freedom of Opinion and Expression, on February 9, 2009, issued a joint press release in which they expressed their concern over the recent declarations against journalists by high-ranking officials of the Colombian government.²⁶² As stated by the IACHR, this type of

²⁶⁰RSF, February 4, 2009. *Polémica en torno al acoso del ejército a tres periodistas que cubrieron la liberación de unos rehenes de las FARC* (Controversy surrounding persecution by the army of three journalists who were covering the liberation of some FARC hostages). Available in Spanish at: <http://www.rsf.org/Polemica-en-torno-al-acoso-del.html>. FLIP, February 2, 2009. *Ejército retiene a periodistas y les exige la entrega de su material periodístico* (Army detains journalists and orders them to hand over their journalistic material). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=342>.

²⁶¹ Committee to Protect Journalists (CPJ) and Human Rights Watch (HRW), February 6, 2009. CPJ and Human Rights Watch object to President Uribe’s accusations against journalist Hollman Morris. Available at: http://www.ifex.org/colombia/2009/02/06/cpj_and_human_rights_watch_object/. FLIP, February 4, 2009. *La FLIP exhorta al gobierno para que cesen las declaraciones estigmatizadoras contra periodistas* (FLIP exhorts government to cease making stigmatizing declarations against journalists). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=344>. *El Tiempo*, February 11, 2009. *Acusaciones de Uribe contra periodistas generan cascada de reacciones* (Uribe’s accusations against journalists generate a cascade of reactions). Available in Spanish at: http://www.eltiempo.com/colombia/politica/acusaciones-de-uribe-contra-periodistas-generan-cascada-de-reacciones_4808710-1.

²⁶² IACHR, Office of the Special Rapporteur for Freedom of Expression, February 9, 2009. Joint Press Release, R05-09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=738&IID=1>. Fundación para la Libertad de Prensa. February 4, 2009. *La FLIP exhorta al gobierno para que cesen las declaraciones estigmatizadoras contra periodistas* (FLIP exhorts government to stop making declarations stigmatizing journalists). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=344>. Inter-American Press Association. February 10, 2009. *SIP critica calificativos del gobierno colombiano contra periodistas* (IAPA criticizes Colombian government’s epithets against journalists). Available in Spanish at: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4135&idioma=sp. Fundación para la Libertad de Prensa. February 14, 2009. *El periodista Hollman Morris recibe amenazas de muerte* (Journalist Hollman Morris receives death threats). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=347>. Committee to Protect Journalists. February 5, 2009. *CPJ, HRW object to Uribe accusations*. Available at: <http://cpj.org/2009/02/cpj-hrw-object-to-uribes-accusations-against-hollm.php>. Committee to Protect Journalists. February 3, 2009. *FARC declares Colombian media a military target*. Available at: <http://cpj.org/blog/2009/02/farc-declares-colombian-media-a-military-target.php>. Reporters without Borders. February 4, 2009. *Polémica en torno al acoso del ejército a tres periodistas que cubrieron la liberación de unos rehenes de las FARC* (Controversy surrounding persecution by the army of three journalists who were covering the liberation of some FARC hostages). Available in Spanish at: <http://www.rsf.org/Polemica-en-torno-al-acoso-del.html>. Inter-

statements not only increases the risk to those who practice journalism or defend human rights, “but also could suggest that that the acts of violence aimed at silencing them have, in some way, the government’s acquiescence.”²⁶³

168. As the Commission has reiterated, in these cases, the State must not only exercise diligently its duty to guarantee, but also it has to avoid increasing the level of risk to which journalists are exposed. In this connection, the IACHR deems it pertinent to remind the State that the Inter-American Court has consistently held that freedom of expression (which also covers political criticism and social protest) is a fundamental right that should be guaranteed not only with respect to the circulation of information or ideas that are received favorably or considered inoffensive or indifferent, but also to those that offend, shock or disturb the State or any other sector of the population; such are the demands of pluralism, tolerance and the spirit of openness, which are essential in a democratic society.²⁶⁴ Furthermore, in a recent ruling on the scope of the freedom of expression of public officials in the performance of their duties, the court held that it is not an absolute right and, therefore, may be subject to restrictions when it interferes with other rights recognized by the Convention, and particularly with the duties of the State with respect to all of the inhabitants of a particular territory.²⁶⁵ In this case, the Court noted that while on certain occasions state authorities have a duty to make a statement on public-interest matters, “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. Furthermore, they 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”²⁶⁶.

169. In light of the above, when the existence of stigmatizing statements would have increased the level of risk, the authorities must adopt all the necessary measures to decrease it, among which, the explicit and public recognition of the legitimacy of those who exercise a critical and independent journalism. Also, the Commission deems it pertinent to remind the State once more that high ranking officials must refrain from giving public statements that stigmatize critical journalists and generate an environment of intimidation that affects freedom of expression in the country. This obligation is particularly important in a context of polarization and armed conflict like the Colombian.

170. As regards the Hollman Morris case, in a note of December 13, 2009, the State said that “Mr. Morris has received precautionary measures requested by the [IACHR] and despite the extraordinary risk to his life he took an extreme risk, without telling the State from which he demanded protection.” The State adds that the President of the Republic said on February 3, 2009:

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American Press Association. *Colombia Report. Midyear Meeting, Asunción Paraguay*. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=344&idioma=us.

²⁶³ IACHR, Office of the Special Rapporteur for Freedom of Expression, 2004. (OEA/Ser.L/V/II/122. Doc.5 rev.1). Available at: <http://www.cidh.oas.org/annualrep/2004eng/chap.4.htm#COLOMBIA>.

²⁶⁴ See, inter alia I/A Court H. R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107; *Ivcher Bronstein Case*. Judgment of February 6, 2001. Series C No. 74, and “*The Last Temptation of Christ*” *Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73.

²⁶⁵ I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”)* v. Venezuela. Judgment of August 5, 2008. Series C No. 182.

²⁶⁶ I/A Court H.R., *Case of Apitz-Barbera et al. (“First Court of Administrative Disputes”)* v. Venezuela. Judgment of August 5, 2008. Series C No. 182, paragraph 131.

“as the competent authority said this week, journalist Morris did not carry out his obligations as a person protected by the [IACHR]. The Government of Colombia has given him all the protection, and he ignored his duties. For example, he shook his bodyguards. We are required by the [IACHR] to protect journalist Morris, as we have protected so many Colombians, because this security has been democratic. Our effort has been for all Colombians, whether friends or opponents of the government. Journalist Morris did not carry out his obligations. This is a serious matter. It is one of the accusations that must be made against journalist Morris.” Finally, the State said that “Mr. Morris was not detained, ‘and his journalistic materials’ were not confiscated by police agents as the IACHR was erroneously told.”²⁶⁷

C. Illegal interceptions of journalists

171. The Commission notes with concern the public information about illegal interceptions and surveillance of journalists, judges, and opposition politicians by the DAS, an entity dependant of the Presidency of the Republic.

172. As mentioned above, the news of wiretapping was revealed in an article in *Semana* magazine published in February 2009.²⁶⁸ Two years earlier this magazine had denounced the possible infiltration of the intelligence agency by paramilitary groups.

173. In 2008, the Constitutional Court of Colombia had found that DAS security agents assigned as part of the protection measures for a journalist critical of the government had recorded intelligence about her movements.²⁶⁹ In this decision, the Court ordered that the journalist be given all the information on her in the possession of the security agency that was not legally confidential and that the necessary corrective measures be adopted in the program for protection of journalists.

174. Furthermore, other journalists who were beneficiaries of precautionary measures granted by the Commission and who have had access to the judicial investigation underway on these facts have said that the DAS agents assigned to protect them were in charge of following them.²⁷⁰ They have also reported that the intelligence agents were charged with monitoring their telephone calls, e-mails, and movements, in order to know in detail all about their journalistic activities. They said that DAS officials made a note of the contents of their articles and the sources with whom they talked.²⁷¹ They say that according to the investigation carried out by the office of the Attorney General they were regarded as “targets” against whom it was necessary to pursue “offensive intelligence” activities because of their dissident or critical ideas and opinions. By the same token, important organizations that champion freedom of expression have issued statements

²⁶⁷ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 46-48.

²⁶⁸ *Semana* magazine, February 21, 2009. *El Das sigue grabando* [The DAS is still recording]. Available at <http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>

²⁶⁹ Constitutional Court of Colombia. *Judgment T-1037 of 2008*. Judgment delivered by Judge Jaime Córdoba Triviño. The judgment ordered the replacement of the protection arrangements for the journalist Claudia Julieta Duque, who had received threats following investigations into the murder of the reporter Jaime Garzón. The judgment also ordered the adjustment of the protection program for journalists in line with the demands of the practice of the profession of journalism and the rules of due process of law. Finally, the judgment ordered the DAS to deliver to the journalist concerned all of the information that the agency had on her that was not confidential by law.

²⁷⁰ Cfr. Hearing on the Right to Freedom of Expression in Colombia held at the IACHR during its 134th Regular Session. In this connection see Hollman Morris and Daniel Coronell, among others, FLIP, August 12, 2009. Semi-annual report on freedom of the press in Colombia. Available at <http://flip.org.co/veralerta.php?idAlerta=378>

²⁷¹ FLIP, August 12, 2009. Semi-annual report on freedom of the press in Colombia. Available at <http://flip.org.co/veralerta.php?idAlerta=378>

and reports in which they denounce the fact that journalists should have been spied on by the very persons whom the State assigned to protect them.²⁷² In this connection, the magazine that broke the news of the scandal said that the DAS secret agents who leaked the information about the existence of illegal wiretaps told them that the purpose of the surveillance and eavesdropping was to know in detail not only about the investigations that the journalists were pursuing but the information sources on which they relied.²⁷³

175. According to local organizations²⁷⁴ and communications media,²⁷⁵ at least 20 journalists have been victims of systematic interceptions and surveillance and on them there would be annotations in the intelligence archive in which the secret police would have evaluated and qualified their critical opinions or the coverage of relevant news for the government. Also the Commission is concerned that some journalists, like Hollman Morris and Daniel Coronell,²⁷⁶ would have received strong and stigmatizing statements on part of high ranking public officials due to a critical editorial line with respect to the current government. According to the information received, some of the journalists that have been subject to systematic interceptions and surveillance are the following: Hollman Morris, director of the program *Contravía*; Claudia Julieta Duque, of *Radio Nizkor*; Daniel Coronell, Ignacio Gómez, and Juan Luis Martínez, of *Noticias Uno*; Norbey Quevedo, investigations editor of *El Espectador*, and Ramiro Bejarano, a columnist with this newspaper; Alejandro Santos, editor of *Semana*; Eulfo Peña and Jineth Bedoya, journalists with *El Tiempo*, and Salud Hernández, a columnist with this media; Félix de Bedout and Julio Sánchez Cristo, of *W Radio*; Darío Arizmendi, director of 'Caracol Radio' and Fabio Callejas of the same station; Carlos Lozano, editor of the weekly *Voz*; Jenny Arias and Vicky Dávila, of *RCN Radio y Televisión*; Yamid Amat and Marilyn López of the public channel *CM&*.

²⁷² FLIP, August 12, 2009. Semi-annual report on freedom of the press in Colombia. Available at <http://flip.org.co/veralerta.php?idAlerta=378>. Communication from *Centro de Solidaridad Federación Internacional de periodistas Cesó Fip*, sent to the Office of the Special Rapporteur for Freedom of Expression, July 1, 2009. RWB, May 15, 2009. Former intelligence officials leak list of news media and journalists whose phones were tapped. Available at <http://www.rsf.org/Former-intelligence-officials-leak,33166.html>.

²⁷³ *Semana* magazine, February 21, 2009. *El Das sigue grabando* [The DAS is still recording]. Available at <http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>. According to information published by this magazine, a detective from the operations department of the DAS explained to the magazine that the purpose of the wiretaps and surveillance was to control possible "threats" for the government. In the case of the news media and journalists, the interviewee said that [...] it has several objectives, one of which is to keep the government abreast of what is happening in the media, which gives the State room for maneuver in critical situations [...] there is sporadic monitoring of a number of editors or chiefs in order to identify what journalists call the 'editorial line'. However, the main effort centers on journalists who handle 'hard' information and sources. In that way two birds are killed with one stone: it is known what story they are working on and, most important of all, who they are talking to. And another detective added, "the priority is to know the information in possession of those (media) that trouble the government, either because they are harshly critical or because unlike other media they are not under its thumb." *Semana* magazine, February 21, 2009. *El Das sigue grabando* [The DAS is still recording]. Available at <http://www.semana.com/noticias-nacion/das-sigue-grabando/120991.aspx>. This article drew multiple reactions from civil society organizations, including the Inter-American Press Association. Cf. *IAPA warns of negative effects of wiretapping in Colombia*, February 25, 2009. Available at http://www.sipiapa.com/v4/index.php?page=cont_comunicados&seccion=detalles&id=4140&idioma=us

²⁷⁴ Communication from the *Centro de Solidaridad Federación Internacional de periodistas Cesó Fip*, sent to the Office of the Special Rapporteur for Freedom of Expression, July 1, 2009. RWB, May 15, 2009. Former intelligence officials leak list of news media and journalists whose phones were tapped. Available at: <http://www.rsf.org/Former-intelligence-officials-leak,33166.html>.

²⁷⁵ See also *El Espectador*, February 22, 2009. *Revelan lista completa de 'chuzados'* (Complete list of those 'stung' is revealed). Available in Spanish at: <http://www.elespectador.com/impreso/tema-del-dia/articuloimpreso120505-revelan-lista-completa-de-chuzados?page=0,0>.

²⁷⁶ IACHR. Annual Report 2008. Volume II: Annual Report of the Special Rapporteurship on Freedom of Expression. Chapter II, paragraph 77. Available at: <http://www.cidh.oas.org/annualrep/2008sp/INFORME%20ANUAL%20RELE%202008.pdf>.

176. In this sense, it is recalled that Principle 8 of the Declaration of Principles on Freedom of Expression states that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.” For its part, Article 9 recalls that “[t]he 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.” Finally, Principle 13. states that “[t]he means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

177. In consequence, the Commission exhorts the Colombian Government to adopt all the corrective measures necessary to stop illegal interceptions and surveillance of journalists by intelligence bodies; to move forward adequately all the administrative, disciplinary, and penal proceedings aimed at establishing what happened, to identify, and to sanction those responsible; and to adopt all the mechanisms to ensure the rights to privacy and personal integrity of communicators, as well as the confidentiality of sources. In this point the Commission notes that the most important measure to avoid criminal acts on part of State agents is the public recognition of the legitimacy of the activities of critical journalists. In particular this recognition is of fundamental importance with respect to those journalists that, in public statements of high ranking officials of the executive power, have been associated with criminal acts for the simple fact of having a critical editorial line with respect to the government²⁷⁷.

178. With respect to these facts, the State said the following on December 13, 2009:

in general, the Colombian State wishes to respectfully call the Commission’s attention to various aspects in the draft report. In the section of the document dealing with the Department of Administrative Security–DAS–, the primary source of information is media reports that, although of some value, in many cases lack all necessary information for a complete understanding of illegal wiretapping. The main source is the *Revista Semana*, which has dealt with this topic this year. Without minimizing the value of media coverage, it seems that a report by an international organization that is evaluating the situation in a State regarding subjects of great complexity such as this one should also cite official sources that would facilitate balanced treatment of the topic with the necessary depth.²⁷⁸

179. In this regard, the IACHR wishes to note that the primary source of information to report these extremely serious facts was in fact the *Revista Semana*, because it was the magazine that denounced the systematic surveillance and harassment suffered by several journalists.²⁷⁹ The text of this section of the Annual Report was sent for the State’s information before publication, so that it could supplement or if necessary refute the information presented there. In the State’s note

²⁷⁷ Cfr. IACHR. Special Rapporteurship on Freedom of Expression, February 9, 2009. Joint Press Release, R05-09. Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=738&IID=2>

²⁷⁸ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 1-2.

²⁷⁹ On December 12, 2009, after this chapter was sent to the State, the Office of the Special Rapporteur received information that the Prosecutor’s Office had an instruction manual “prepared on paper for DAS’s exclusive use,” which reportedly detailed the procedure to be used to threaten Claudia Julieta Duque, a journalist who said she was a victim of illegal wiretapping by that agency. On this point see: *Semana*. December 12, 2009. Manual para amenazar [Manual for threatening]. Available in Spanish on: <http://semana.com/noticias-nacion/manual-para-amenazar/132562.aspx>; International Federation of Journalists. December 16, 2009. *Denuncian un manual de agentes de inteligencia para amenazar a una periodista en Colombia*. Available in Spanish at: <http://www.ifj.org/es/articulos/denuncian-un-manual-de-agentes-de-inteligencia-para-amenazar-a-una-periodista-en-colombia-afirma-la-ifj>.

of December 13, 2009, it said the acts reported are not part of an “institutional policy” and asked the IACHR to take into account all the measures taken to prevent and punish them.²⁸⁰ As noted above, in the framework of the IACHR’s 137th period of sessions, the current director of DAS reported on criminal and disciplinary cases underway to clarify the illegal intelligence activities carried on by that agency, as well as the start of the process of shutting that agency down and creating a new civil intelligence entity.

180. Finally, with respect to the right of journalists to know the illegal information obtained by the DAS while carrying out its protective duties, the Commission learned that during 2009, the journalist Claudia Julieta Duque had to initiate contempt proceedings as a result of the failure to comply with the judicial order issued by the Constitutional Court, in which it ordered the Government to give her all the information about her contained in intelligence files that were not subject to express legal reservations. The judicial order to supply information was based on the confirmation of the existence of information illegally obtained by members of the journalist’s security detail, belonging to the DAS.²⁸¹ According to information officiously sent by the Director of the DAS to the Special Rapporteurship, no information about the journalist exists in the installations of that institution.

181. On December 13, 2009, the State said that on September 30, 2009, the Council of State issued an order of revocation declaring that “the Director of DAS carried out all orders of protection (*tutela*) judgment T-1037 of 2008 since he assumed office on January 22, 2009, and therefore was not guilty of contempt (*desacato*).”²⁸²

182. The Commission has repeatedly recognized the importance of the Program for the Protection of Journalists and Social Communicators implemented by the Colombian Government. Nevertheless, the Commission expresses its concern regarding the facts mentioned above and calls upon the Ministry of the Interior and Justice to take the corrective measures necessary and to guarantee the effective protection of journalists at risk.

183. The Commission underlines the duty of the states to prevent and investigate actions that limit freedom of expression. In this sense, Principle 5 of the Declaration of Principles establishes that “[p]rior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. 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.”

184. Additionally, Principle 3 of the Declaration of Principles on Freedom of Expression states that “[e]very person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.”

²⁸⁰ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 47.

²⁸¹ Federación Colombiana de Periodistas, July 15, 2009. Desacato de autoridades frente a orden de entregar información sobre periodista (Contempt by authorities facing an order to hand over information about journalist). Available in Spanish at: <http://www.fipcolombia.com/noticiaAmpliar.php?noticia=3929>. See also, FLIP, July 13, 2009. Por incumplir tutela a favor de periodista, tribunal inicia desacato contra miembros del gobierno (For failure to comply with order in favor of journalist, tribunal initiates contempt proceedings against members of the government). Available in Spanish at: <http://flip.org.co/veralerta.php?idAlerta=373>.

²⁸² Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 47.

D. Right to access to information

185. The Commission expresses its concern about some articles of the Intelligence Law (Law 1288 of 2009). On the one hand, Article 21 delegates to the Executive Branch the power to define concretely what information can be subject to reserve. In this respect, the law establishes that “documents, information, and technical elements” of the “organs that carry out intelligence and counterintelligence activities”—which are not defined by the law—have the character of reserved information “according to the degree of classification warranted in each case,” delegating to the Executive Branch to establish this “degree of classification.”²⁸³ The same norm delegates to the Executive Branch the power to define the time periods of reserve within the maximum of 40 years established by the law itself. On this point, the State said on December 13, 2009, that “although the statement is true [...] that information can be declared reserved for up to 40 years, it must be taken into account that said law also prescribes limits on the State’s intelligence and counterintelligence activities for respect of human rights; it provides that these activities must be in strict compliance with the Constitution, legislation, international humanitarian law, and especially respect for the principle of reserved information, which guarantees the protection of rights to reputation, good name, personal and family privacy, and due process.”²⁸⁴

186. In this respect, the Commission permits itself to recall that Principle 4 of the Declaration of Principles on Freedom of Expression states that “[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. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.”

187. Additionally, the Commission expresses its concern about the legal norms that establish the obligation to maintain the absolute confidentiality of information classified as reserved, having as its only exception the duty to denounce “the presumed commission of a crime against humanity by a public servant who carries out intelligence and counterintelligence activities.”²⁸⁵ This exception would require a person with knowledge of grave violations of human rights that cannot be classified as crimes against humanity or that have been committed by persons or functionaries who are not assigned intelligence functions to abstain from denouncing them or reporting them to competent authorities under penalty of being criminally responsible for failing to comply with the duty of confidentiality.

188. In this respect, the Commission permits itself to recall that as it has previously indicated in its 2008 Annual Report, in which it recalled that freedom of expression includes the

²⁸³ Article 21. Reserve. “Due to the nature of the functions carried out by organisms that engage in intelligence and counterintelligence activities, their documents, information, and technical elements shall be supported by a legal reservation for a maximum term of 40 years and shall have the character of reserved information according to the level of classification that is warranted in each case. Paragraph. The public servant who decides to support him- or herself with reserve to avoid providing information must do so setting forth in writing the reasonability and proportionality of his/her decision and basing it on this legal disposition. In any case, these decisions are subject to legal and constitutional remedies and actions.”

²⁸⁴ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 48.

²⁸⁵ Article 23. Exception to the duties of denunciation and declaration. “Public servants of the organs that carry out intelligence and counterintelligence activities are obligated to maintain the confidentiality of all that they see, hear, or learn in the course of the exercise of their duties. In this sense, the public servants referred to in this article are exempt from the duty to denounce and cannot be obligated to testify. In the case that the organism considers it necessary to testify in a proceeding, it may do so through its Director or his or her delegate, in the capacity of proof of reference. The exclusion of the duty of denunciation does not apply in cases in which the public servant has information related to the alleged commission of a crime against humanity by a public servant who carries out intelligence or counterintelligence activities.”

right of public functionaries, including members of the Armed Forces and the Police, to denounce violations of human rights that they become aware of—which also constitutes compliance with a constitutional and legal duty that corresponds to them. The exercise of this manifestation of freedom of expression, which is vital for the preservation of the Rule of Law in the democracies of the continent, cannot be obstructed by the authorities nor can it be the cause of subsequent acts of retaliation against functionaries that made the denunciations. In terms of the Inter-American Commission

[...] the exercise of the right of freedom of thought and expression within a democratic society includes the right to not be prosecuted or harassed for one's opinions or for one's allegations about or criticisms of public officials. [...] This protection is broader, however, when the statements made by a person deal with alleged violations of human rights. In such a case, not only is a person's individual right to transmit or disseminate information being violated, the right of the entire community to receive information is also being undermined.²⁸⁶

189. On the other hand, regarding Article 25²⁸⁷ of the Law, as indicated by the Constitutional Court of Colombia itself,²⁸⁸ the duty to maintain confidentiality is not applicable to those who, in the exercise of their right to freedom of expression, make denunciations publicly or privately before competent authorities, such as communications media or human rights defenders. The responsibility derived from the exercise of this right is always subsequent and must be derived from the existence of certain damage to a legal aim defined by law and necessary in a democratic society.

E. Judicial proceedings against journalists who denounce facts of public interest

190. During 2009, the Commission learned of various cases of journalists and communications media that were judicially charged for disseminating information about issues of great public interest. Some of these proceedings were initiated by a magistrate of the Superior Council of the Judiciary for publications about the alleged relationships of this official with individuals being prosecuted for serious criminal acts. Rodrigo Pardo, editor of the magazine *Cambio*, was nearly taken to prison for alleged disobedience of a protective judgment (*fallo de tutela*) that ordered him to rectify some statements made in a report about the magistrate in the magazine. Other journalists who have been accused by the magistrate are the editor of the magazine *Semana*, Alejandro Santos – whose case gave rise to the Constitutional Court's judgment, mentioned at the beginning of this section--; Daniel Coronell and María Jimena Duzán, columnists with this media; and Mauricio Vargas, a columnist with *El Tiempo*.²⁸⁹

²⁸⁶ IACHR. Report No. 20/99. Case No. 11.317. Rodolfo Robles Espinoza and Sons. Peru. February 23, 1999, para. 148.

²⁸⁷ Article 25. Modification of sentences for the crimes of revelation and use of reserved documents and abusive access to the information system. "With the objective of guaranteeing the legal reserve of intelligence and counterintelligence documents and avoiding their revelation by members of the organs that carry out this type of activities, Articles 194, 195, 418, 419, and 420 of the Penal Code will remain like this: Article 194. Revelation and use of reserved documents. One who, for the benefit of him/herself or others or with prejudice against another, reveals or uses the contents of a document that must be held in reserve, will incur a penalty of five (5) to eight (8) years in prison, if the conduct does not constitute a crime sanctioned with a greater penalty."

²⁸⁸ See, among others, Constitutional Court, Judgments C-038 of 1996 and T-634 of 2001.

²⁸⁹ *El Tiempo*, July 31, 2009. Dejar sin efectos orden de arresto contra Rodrigo Pardo, piden Andiaros, Asomedios y SIP (Dismiss the order for arrest against Rodrigo Pardo, request Andiaros, Asomedios, and IAPA). Available in Spanish at: <http://www.eltiempo.com/colombia/justicia/dejar-sin-efectos-orden-de-arresto-contra-rodrigo-pardo-piden-andiaros-asomedios-y-sip-5743707-1>. FLIP, August 4, 2009. Director de medio nacional enfrenta posible cárcel por orden de juez (Director of national media faces possible imprisonment by judge's order). Available in Spanish at: <http://www.flip.org.co/veralerta.php?idAlerta=375>.

191. In this sense, Principle 10 of the Declaration of Principles is reiterated, stating that

[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 communicator 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.

192. On its part Principle 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."

VI. PRESSURES ON THE JUDICIARY

193. During the final months of 2007, and in 2008 and 2009, a series of incidents that affected the work of high courts, and especially the Criminal Cassation Chamber of the Supreme Court of Justice, came to light. These incidents were accompanied by facts that suggest a situation of risk to justices and deputy justices of the Supreme Court who have been involved in clarifying cases linked to the so-called "*parapolítica*" or "parapolitics scandal"²⁹⁰ [involving politicians suspected of collusion with paramilitaries].

194. In February 2009, accounts were published of DAS intelligence operations against Supreme Court justices (see IV above). Compiled press reports showed how Deputy Justice Judge Iván Velásquez, in charge of investigations of the parapolitics scandal, had around 1,900 calls intercepted, and that the President of the Supreme Court at the time, Francisco Ricaurte, and Justices Sigifredo Espinoza, Jaime Arrubla, María del Rosario González, and César Julio Valencia Copete had also had telephone calls intercepted.²⁹¹ After receiving this information, the IACHR learned that on February 25, 2009, the 23 justices on the Supreme Court met with the directors of the Police and DAS. It was learned that at that meeting, the justices spoke of their distrust in view of the monitoring and interception of their telephone calls.²⁹²

195. At a hearing held during the 134th Session of the IACHR, the petitioning organizations stated that various judges had experienced interception of telephone calls and constant monitoring so that the Executive Branch would know in advance any situation that may

²⁹⁰ The Nuevo Arco Iris Corporation (CNAI) reported on June 20, 2009 that 83 members of Congress were involved in the parapolitics criminal proceedings." A CNAI study concluded that the political movements and parties that benefited from the *parapolítica* had managed to strengthen their electoral power and their position of hegemony in local, regional, and national political power structures. It pointed out that, for instance, if it is assumed that the degree of involvement of a party with paramilitaries is defined as the number of senators investigated by the parapolítica who are elected, the parties aligned with the governing party are the most involved in these investigations. Of the five government parties most involved in *parapolítica*, four increased or maintained their seats (Alas Equipo Colombia, Colombia Democrática, Convergencia Ciudadana y Apertura Liberal), and only one, Colombia Viva, declined considerably in the 2006 and 2007 elections for governors, mayors, and local deputies. Nuevo Arco Iris Corporation, Political Balance of Parapolítica, November 27, 2009: http://www.nuevoarcoiris.org.co/sac/files/arcanos/arcanos_14_diciembre_2008_files/arcanos_14_informe_parapolitica.pdf, page 84, and Corporación Nuevo Arco Iris, List of congressmen involved in parapolitca processes, June 20, 2009, http://www.nuevoarcoiris.org.co/sac/files/oca/analisis/parapolitica_legislativa_JUNIO_2009.pdf.

²⁹¹ Reporting of El Espectador newspaper, "Reveal complete list of '*chuzados*,'" February 22, 2009, <http://www.elespectador.com/impreso/tema-del-dia/articuloimpreso120505-revelan-lista-completa-de-chuzados?page=0,0>

²⁹² El Tiempo newspaper, *Interceptions of telephone calls will be handled by the National Police and not the DAS*, February 26, 2009, http://www.eltiempo.com/colombia/justicia/interceptaciones-telefonicas-legales-seran-realizadas-por-la-policia-nacional-y-no-por-el-das_4844344-1.

compromise it or any of its officials.²⁹³ In its observations the State said that the national government has publicly apologized for the wiretapping of some of the high courts' judges. It also expressed its support for investigations underway by the Prosecutor General's Office to clarify these facts, and said "it has not been government policy to hide these situations, much less to encourage or sponsor them."²⁹⁴

196. The judges responsible for investigating the parapolitical scandal, Iván Velásquez and María del Rosario González, beneficiaries of the Commission's precautionary measures, were victims of death threats and acts of harassment. The Commission continuously monitors the security situation. On May 13, 2009, the IACHR requested the state to provide information on the situation reported by Supreme Court Justice César Julio Valencia Copete. Specifically, the Justice reported that his differences with the President of the Republic had put him "in serious and imminent risk as regards his life and personal safety." The state responded that it had acted diligently in providing protection to the justice and said it was committed to the investigations into the allegedly intercepted telephone calls and monitoring of Valencia Copete.²⁹⁵

197. The State said in its observations that it has effectively satisfied the requirements for security of the Supreme Court Justices by appropriate internal mechanisms for the purpose, complying with obligations in the Constitution and conventions. It also said that the Director of the National Police has provided full guarantees for security and protection of the justices and their families, and has personally met the justices' needs for protection, and they are participating directly in the implementation of the security plan. Finally, it said that the Prosecutor General's Office has demonstrated a willingness and commitment to approve a special mechanism to follow up the protection system implemented for the judges' security, if they so request. It has already been used in the cases of María del Rosario González and Iván Velásquez²⁹⁶.

198. At its 137th Regular Session held in November 2009 the Commission took note of the concern of civil society organizations at the risk to which judicial officials are exposed, which could affect the independence of the judiciary. The State, for its part, says that the discussion before the Commission is primarily political, and is not consistent with the function and nature of the precautionary measures for the judges.²⁹⁷ The Commission will continue to monitor this situation.

199. In September 2009, the Supreme Court of Justice decided to resume the investigations of politicians allegedly linked to paramilitary groups whose trials had been referred to the Office of the National Prosecutor General, in most cases due to rejection of jurisdiction. The Supreme Court stated as follows:

[...] as a rule in all those proceedings referred to the Office of Prosecutor by the Court, this legal entity (with the exceptions related to lack of a link between office and conduct), will

²⁹³ Hearing on the Rule of Law and the Independence of the Judiciary in Colombia, held during the 134th Session of the IACHR on March 23, 2009, available at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=8>

²⁹⁴ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 51.

²⁹⁵ Note DDH/OEA No. 30447/1542 from the Ministry of Foreign Affairs of the Republic of Colombia, June 6, 2009.

²⁹⁶ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, pp. 51-52.

²⁹⁷ Observations of Colombia on the Draft Report of the Inter-American Commission on Human Rights on the Country for 2009, December 13, 2009, p. 52.

reclaim jurisdiction, which it turned down by virtue of an interpretation that was revised as of September 1; however, the [Criminal Cassation] Chamber must in any event attend to the different procedural situations that arise at the time that the file is returned to the Court [...].²⁹⁸

200. Thus the Court explained that the proceedings being conducted by the Prosecutor's Office, such as gathering of evidence, remain fully valid, just like the decisions adopted to date by the different investigative and prosecuting entities, i.e., the Prosecutor's Office and specialized judges, since "they were all executed within the framework of the powers that the Court at one point stipulated as part of its legitimate constitutional duty to interpret the legal system and particularly laws that have to do with criminal procedures."²⁹⁹ Between September and October 2009, the Supreme Court again took up the cases of Álvaro Araújo Noguera, Mario Uribe Escobar, and Rubén Darío Quintero.³⁰⁰

VII. CONCLUSIONS

201. The IACHR has stated that a lasting peace hinges on the non-repetition of crimes of international law, human rights violations, and serious violations of international humanitarian law, hence on clarification and redress of the consequences of violence through mechanisms to establish the truth of what happened, administer justice, and provide reparations for victims of the conflict. Colombia is still facing challenges in dismantling the illegal armed structures and in implementing the legal framework adopted for the purpose of prosecuting the crimes perpetrated during the conflict.

202. The IACHR is still concerned over the existence of non-demobilized holdouts in paramilitary structures, and the rearming and formation of new armed groups, and reiterates the need for the Colombian government to implement effective mechanisms designed to guarantee the dismantling of AUC structures and criminal gangs. The IACHR understands that over and above the established legal system, it is up to the state to play a key role and take on primary responsibility in guaranteeing the victims of crimes against international law effective access on equal terms to measures for comprehensive reparations, granted pursuant to the standards of international human rights law.

203. Moreover, the Commission is still concerned over the impact of violence on the civilian population, and especially on the most vulnerable groups, such as indigenous peoples and Afro-descendant communities, who require differentiated measures of humanitarian assistance. The Commission is also concerned about the attacks on human rights defenders and social leaders by armed groups operating outside the law and guerillas.

204. One issue especially preoccupying the Commission is the use of intelligence mechanisms against human rights defenders, community leaders, journalists, justice operators, international cooperation agencies, and international organizations. The IACHR will continue to follow up on the results of investigations for judicial clarification of the facts.

²⁹⁸ Supreme Court of Justice, Criminal Cassation Chamber, Single 27032, P/Álvaro Araújo Castro, September 15, 2009.

²⁹⁹ Supreme Court of Justice, Criminal Cassation Chamber, Single 27032, P/Álvaro Araújo Castro, September 15, 2009.

³⁰⁰ "Last week three cases were returned to the Court by the judges that had them: the case of Álvaro Araújo Noguera, accused by the Prosecutor's Office of alleged complicity with Rodrigo Tovar Pupo, 'Alias Jorge 40'; the case of Ciro Ramírez, who is under investigation for drug trafficking and *parapolítica*; and, the case of Rubén Darío Quintero, who was recently named by alias 'El Alemán' for having endorsed lists for Congress made up of paramilitaries." The Supreme Court will try all of the congressmen for *parapolítica*, September 15, 2009, available at: <http://www.verdadabierta.com/web3/parapolitica/nacional/1653-corte-suprema-procesara-a-todos-los-congresistas-por-parapolitica>.

205. In view of these considerations, the IACHR recommends that the Colombian state:

1. Strengthen the work of the institutions called on to play a role in implementing the Justice and Peace law, especially units of the Office of the National Prosecutor General that perform a key investigative function, in terms of logistical support and security in order to ensure judicial clarification of the crimes perpetrated against victims of the conflict, and designate prosecutors specializing in sexual crimes or crimes involving children.
2. Strengthen mechanisms designed to protect and guarantee the security of victims of the conflict, witnesses, and human rights defenders who come forward to participate in the process of investigation and prosecution of the persons applying for the benefits of the Justice and Peace Law.
3. Bring the extradition of demobilized individuals under the Justice and Peace Law into line with the standards laid down by the Supreme Court of Justice of Colombia and by the Inter-American Commission and the Inter-American Court of Human Rights.
4. Adopt and implement cooperation agreements designed 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, as well as the rights of the victims to the truth, justice, and reparation.
5. Adopt and implement effective measures for the dismantling of armed structures operating outside the law and prevent emerging groups from gaining strength.
6. Strengthen mechanisms that ensure the prevention and investigation of possible extrajudicial executions and take all cases that may involve extrajudicial executions of civilians out of the military criminal courts and refer them to the regular courts.
7. Design, adopt, and implement effective policies that take into account the specific needs, in terms of land, health, education, and justice, of indigenous peoples and Afro-Colombian communities affected by the armed conflict.
8. Adopt the necessary measures to protect the work of human rights defenders, community and trade union leaders, and journalists, prevent their stigmatization and the undue use of intelligence mechanisms against them, and remove the risks affecting them through judicial investigation of acts of violence, harassment, and threats.
9. Adopt the necessary measures to ensure that judges and judicial operators can administer justice in conditions of security and independence, free from pressures of government entities and agents.

CUBA

I. SITUATION OF HUMAN RIGHTS IN CUBA

206. According to the criteria drawn up by the IACHR in 1997 to identify the States whose human rights practices demand special attention, the situation of human rights in Cuba is reflected in the first and fifth criteria, in that the political rights contained in the American

Declaration are not observed and structural situations that seriously and severely affect the ability to enjoy and exercise the fundamental rights contained in the American Declaration persist.

207. Having observed and evaluated the human rights situation in the State of Cuba during 2009, the IACHR has decided to include in this chapter of its annual report considerations on structural situations that gravely affect the full observance and enjoyment of human rights, especially in relation to political rights, guarantees of due process of law and independence of the Judiciary, deprivation of liberty of political dissidents, restrictions on the right to freedom of residence and travel, restrictions on the freedom of expression, human rights defenders, and the freedom to form and join trade unions. In addition, a consideration is included on the economic and commercial sanctions imposed on the Government of Cuba, reiterating that the embargo should end³⁰¹ in view of the impact of such sanctions on the human rights of the Cuban population. Nonetheless, it also reiterates that the economic embargo does not exempt the State from complying with its international obligations nor does it excuse the violations of the American Declaration described in this report.

208. In order to draw up this report, the Commission has obtained information from international agencies, civil society and the Cuban government through their official websites. It also obtained information at the public hearings held during its 137th regular session, which addressed torture, extrajudicial executions, and violations of the right to freedom of expression³⁰², the right to freedom of movement³⁰³, and the situation of independent union leaders.³⁰⁴

209. On November 27, 2009, the Commission sent this report to the State of Cuba and asked for its observations. The State did not respond.

210. The Commission considers it important to take into account in this report, Resolution AG/RES. 2438 (XXXIX-O/09)³⁰⁵ of the OAS General Assembly of June 3, 2009 annulling the decision taken in 1962 to exclude Cuba from actively participating in the OAS (see paragraphs 9 and 10 *infra*). Said resolution opens up new possibilities of holding a dialogue aimed at reincorporating the country into the OAS.

211. The Commission observes that there is little information available on Cuba's human rights situation, due to the government's policy of restricting the flow of information. This hinders the Commission's work is not consistent with the obligations of the State of Cuba in the international system.

³⁰¹ On October 30, 2007 the UN General Assembly approved Resolution A/RES/62/3 on the "the need to end the economic, commercial and financial embargo imposed by the United States against Cuba." Visit www.un.org

³⁰² See video of public hearing on "Torture, extrajudicial executions, and violations of the right to freedom of expression in Cuba," held November 6, 2009, during the 137th regular period of session of the IACHR at:

<http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

³⁰³ See video of public hearing on "Right to freedom of movement in Cuba," held November 6, 2009, during the 137th regular period of session of the IACHR, at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

³⁰⁴ See video of public hearing on "Situation of independent trade union leaders in Cuba," held November 6, 2009, during the 137th regular period of session of the IACHR, at: <http://www.cidh.oas.org/prensa/publichearings/Hearings.aspx?Lang=ES&Session=117&page=2>.

³⁰⁵ Resolution AG/RES. 2438 (XXXIX-O/09) of the OAS General Assembly, June 3, 2009.

II COMPETENCY OF THE IACHR TO OBSERVE AND EVALUATE THE SITUATION OF HUMAN RIGHTS IN CUBA

212. The Competency of the Inter-American Commission on Human Rights to observe the human rights situation of the member States derives from the terms of the OAS Charter, its Statute and its Rules of Procedure. Pursuant to the Charter, all the member States undertake to respect the fundamental rights of individuals who, in the case of States that are not party to the Convention, are those stipulated in the American Declaration of the Rights and Duties of Man (hereinafter the "American Declaration"), which is a source of international obligations³⁰⁶. The Statute entrusts the Commission to pay 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 to freedom of investigation, opinion, expression and dissemination), XVIII (right to a fair trial), XXV (right of protection from arbitrary arrest) and XXVI (right to due process of law), of the American Declaration, in exercising its jurisdiction over countries that are not party to the American Convention³⁰⁷.

213. On January 31, 1962 the Government of Cuba was excluded from participating in the Inter-American system through 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, 1962³⁰⁸. Thenceforth, the Commission's position was to recognize the Cuban State as "legally responsible before the Inter-American Commission in matters concerning human rights" since "it is party to international instruments initially established within the scope of the American hemisphere with the aim of protecting human rights" and because Resolution VI of the Eighth Meeting of Consultation "excluded the Cuban government, not the Cuban State, from participation in the inter-American system."³⁰⁹. In this regard the IACHR stated:

[...] has also considered that the purpose of the Organization of American States in excluding Cuba from the inter-American system was not to leave the Cuban people without protection. That Government's exclusion from the regional system in no way means that it is no longer bound by its international human rights obligations³¹⁰.

214. Given the foregoing, in exercising its competence, the IACHR has observed and evaluated the human rights situation in Cuba in special reports³¹¹; in Chapter IV of the Annual Report³¹² and through the case system³¹³. On several occasions the IACHR has asked the State of Cuba to take precautionary measures to safeguard the lives and physical safety of Cuban citizens³¹⁴.

³⁰⁶ Inter-American Court of Human Rights, Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the Inter-American Convention on Human Rights . Consultative Opinion OC-10/89, July 14, 1989. Series A No. 10, paragraph 43-46.

³⁰⁷ Statute of the IACHR, Article 20(a).

³⁰⁸ The full text of Resolution VI can be found in the "Eighth Meeting of Consultation of Ministers of Foreign Affairs serving as Organ of Consultation in application of the Inter-American Treaty of Reciprocal Assistance, 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.

³⁰⁹ IACHR, *Annual Report 2002*, Chapter IV, Cuba, paragraphs 3-7. See also IACHR, *Annual Report 2001*, Chapter IV, Cuba, paragraphs 3-7. CIDH, *Seventh Report on the Situation of Human Rights in Cuba*, 1983, paragraphs 16-46.

³¹⁰ IACHR, *Annual Report 2002*, Chapter IV, Cuba, paragraphs 7.a.

³¹¹ See IACHR, Special Reports for the following years: 1962; 1963; 1967; 1970; 1976; 1979; 1983.

³¹² See IACHR, Special Reports for the following years: 1990-1991; 1991; 1992-1993; 1993; 1994; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007, 2008.

³¹³ See in: IACHR, Report N° 47/96, Case 11,436, "13 de marzo" tugboat incident; October 16, 1996; CIDH, Report N° 86/99, Case 11,589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña and Pablo Morales, September 29,

215. The Resolution that excluded the government of Cuba from participation in the OAS was rendered null and void on June 3, 2009 by the General Assembly of the Organization of American States during the VIII Meeting of Consultation of Ministers of Foreign Affairs held in Honduras. The Resolution, approved by acclamation, states that³¹⁵:

Resolution VI, adopted on January 31, 1962, at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, which excluded the Government of Cuba from its participation in the Inter-American system, hereby ceases to have effect in the Organization of American States

216. Further “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.”

217. In response to that decision, on June 8, 2009, the government of Cuba stated that the Resolution issued by the General Assembly “seeks to repair a historic injustice and vindicates the people of Cuba and the peoples of America”³¹⁶.

218. In this context, the Commission reiterates its commitment to work with the Cuban State and calls for a dialogue to help improve and strengthen human rights in that country. In particular it urges the Cuban State to respond to the IACHR’s requirements in order to follow up the issues regarding the situation of the human rights of people in Cuba³¹⁷.

III. STRUCTURAL SITUATIONS THAT SERIOUSLY AFFECT THE FULL ENJOYMENT AND EXERCISE OF HUMAN RIGHTS IN CUBA

219. For decades, the restrictions to political rights, freedom of expression and dissemination of thought have created a permanent and systematic situation whereby the human rights of Cuba’s inhabitants are infringed. The lack of independence of the judiciary has further aggravated this situation.

...continuation

1999; IACHR, Admissibility Report N° 56/04, Petition 12,127, Vladimiro Roca Antúnez *et al.*, October 14, 2004; IACHR Admissibility Report N° 57/04, Petitions 771/03 and 841/03, Oscar Elías Biscet *et al.*, October 14, 2004; IACHR, Admissibility Report N° 58/04, Petition 844/03, Lorenzo Enrique Copello Castillo *et al.*, October 14, 2004; IACHR, Report N° 67/06, Case 12,476, Oscar Elías Biscet *et al.*, October 21, 2006; IACHR, Report N° 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

³¹⁴ When the State of Cuba is informed of a decision reached by the IACHR, it does not respond or even send a note to say that the Inter-American Commission on Human Rights lacks the competency or that the Organization of American State does not have the moral authority to review Cuban issues.

³¹⁵ In its preliminary considerations, the Resolution states that the decision of the General Assembly has been “guided by the purposes and principles established by the Organization of American States contained in the Charter of the Organization and in its other fundamental instruments related to security, democracy, self-determination, non-intervention, human rights and development;,” “taking into account moreover “the openness that characterized the dialogue between the Heads of State and Government at the Fifth Summit of the Americas in Port of Spain.”

³¹⁶ However, the Government of Cuba ratified its decision not to return to the OAS. In a declaration by the Cuban government published in Granma on June 8, 2009, <http://www.granma.cubaweb.cu/2009/06/08/nacional/artic05.html>.

³¹⁷ Cuba has not responded to the communications the Commission sent in relation to its annual reports, handling of cases and precautionary measures; which are the instruments the IACHR has at its disposal to enable it to carry out its function to safeguard human rights.

On May 8, 2009 Fidel Castro criticized Chapter IV on Cuba of the IACHR’s Annual Report for 2008. At http://www.eluniversal.com/2009/05/08/int_ava_fidel-castro-calific_08A2322563.shtml.

a. Political Rights

220. Political rights are human rights of fundamental importance and are intimately associated with an array of other rights that make the democratic possible. The existence of free elections; independent, effective branches of public power and full respect for freedom of expression, among others, are basic characteristics of democracy that cannot be evaluated in isolation. From that perspective, full assurance of human rights is not possible without effective and unrestricted recognition of the right of individuals to form and participate in political groups. The right to vote is one of the *sine qua non* elements for the existence of democracy and one of the ways by which citizens freely express their will and exercise the right to participate in government. This right implies that citizens “may, on an equal footing, directly decide and freely elect those who will represent them in decisions on public affairs.”³¹⁸ The Court also held that participation in government through the exercise of the right to be elected, presupposes that citizens may put themselves forward as candidates on an equal basis and hold elected positions in public office if they receive the necessary amount of votes to do so. In that connection, the Court noted that the American Convention prohibits suspension of this right even in a state of emergency³¹⁹.

221. The Commission has determined that the right to freedom of expression and information is one of the main mechanisms whereby society can exercise democratic control of the people with responsibility for matters of public interest³²⁰. The link between freedom of expression and democracy is so important that, as explained by the Inter-American Commission, the very objective of Article 13 of the American Convention is to strengthen the workings of plural and deliberative democratic systems through the protection and promotion of the free circulation of information, ideas and expressions of every kind³²¹. Full recognition of the freedom of expression is a fundamental guarantee for ensuring the rule of law and democratic institutions³²². The link between democracy and the freedom of expression at this point in history is self evident: it is not possible to sustain the existence of that form of government without genuine and full respect for that right³²³.

222. The State has affirmed that “in Cuba the democratic system is sustained by the principle of ‘government of the people, by the people and for the people,’ added that ‘the Cuban people through its political and civil institutions, and within the framework of its laws, participates

³¹⁸ IACHR, *Annual Report 1990-1991*, page 557; IACHR, *Second Report on the Situation of Human Rights in Peru*, 2000, Chapter IV, Political Rights, A.1. 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.

³¹⁹ Article 27: Suspension of Guarantees, paragraph 2 of the American Convention on Human Rights, states that: “The preceding provision does not authorize the suspension of the human rights determined in the following articles: [...], and 23 (Political Rights), or the judicial guarantees essential for protecting those 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 expression “Laws” in Article 30 of the American Convention on Human Rights*. Consultative Opinion OC-6/86 of May 9, 1986. Series A No. 6, paragraph *Case of Yatama v Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, paragraph 191.

³²⁰ 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*, paragraph 35.

³²¹ IACHR *Annual Report 2008*, Volume III, Chapter III, paragraph 8. IACHR, with reference to the allegations made before the Inter-American Court of Human Rights in the Ivcher Bronstein v Peru case. Transcribed in the judgment of the Inter-American Court of Human Rights of February 6, 2001, Series C No. 74. IACHR. Paragraph 143. d); and to the allegations made 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 judgment of February 5, 2001. Series C No. 73. Paragraph 61. b).

³²² IACHR, *Third Report on the Situation of Human Rights in Paraguay*, 2001, Chapter VI, B.3.

³²³ IACHR, Case against the Republic of Paraguay in the Inter-American Court of Human Rights - Case 12,032, Ricardo Canese, paragraph 31.

in the active exercise and control of the government'³²⁴. It also states that the restrictions imposed by the law to the exercise of some political rights in Cuba, have been the absolute minimum to guarantee protection of the right to free determination, peace and the life by all the people, in response to growing Anti-Cuban aggression on the part of the Empire³²⁵.

223. With regard to the freedom of opinion, of expression and of the press, the Cuban government has expressed that Article 53 of its Constitution states that all citizens have this right and that the material conditions for exercising this right are present due to a high educational and cultural level and because the press, radio, television, cinema and other mass media belong to society. It affirms that there is ample discussion in Cuba about the broadest issues of political, economic, social and cultural rights, both of the nation and of the entire planet³²⁶. As regards the restrictions to the freedom of opinion and expression, it pointed out that these rights are restricted in the case of just a few people, justifying such restrictions in the following terms:

The Cuban government only restricts the "freedom" of opinion and expression of the few people who sell their services as mercenaries of the politics of hostility, aggressions and genocidal blockade by the government of the United States against Cuba. In enforcing such restrictions, Cuba acts by virtue not only of its national legislation, but also by virtue of numerous international human rights instruments and successive resolutions of the UN General Assembly that have demanded respect for the free determination of peoples and an end to the economic, commercial and financial blockade enforced by the US government against Cuba³²⁷.

224. The Commission considers that one of the main criteria for drafting this report is that Cuba fails to hold free elections in line with internationally accepted standards, which violate the right to political participation contained in Article XX of the American Declaration of the Rights and Duties of Man which provides that

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.

225. Article 3 of the Democratic Charter signed in Lima, Peru, on September 11, 2001, defines the elements comprising the government's democratic system in the following terms: 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.

226. The Declaration and the Democratic Charter reflect a broad concept of representative democracy which, as such, is based on the sovereignty of the people in which the functions through which power is exercised are performed by people chosen in free elections that

³²⁴ National report presented by the State of Cuba; UNITED NATIONS HUMAN RIGHTS COUNCIL , Universal Periodic Review Working Group, Fourth session, Geneva, February 2 to 13, 2009 A/HRC/WG.6/4/CUB/1; November 4, 2008, paragraph 8.

³²⁵ See Chapter 9, "While Book 2007," published on the official website of the Ministry of Foreign Affairs of Cuba, cited above.

³²⁶ National report presented by the State of Cuba; UNITED NATIONS HUMAN RIGHTS COUNCIL , Universal Periodic Review Working Group, Fourth session, Geneva, February 2 to 13, 2009 A/HRC/WG.6/4/CUB/1; November 4, 2008, paragraphs 44 and 45.

³²⁷ See Chapter 9, "*Libro Blanco del 2007*," published on the official website of the Ministry of Foreign Affairs of Cuba, cited above.

represent the people's will. In the Commission's opinion, those elements do not exist in the Cuban elections, which are characterized precisely by a lack of plurality and independence and the absence of a framework of free access to different sources of information. In light of the international standards cited, the Commission reiterates that the lack of free and fair elections, based on secret balloting and universal suffrage as the expression of the people's sovereignty³²⁸, infringes the Cuban people's right to political participation.

b. Political Repression

227. During 2009, the IACHR received information indicating that the Cuban government has been using tactics consisting of political repression based on systematic arrests lasting several hours or several days, threats and other forms of harassment against opposition activists³²⁹. Political repression in Cuba has been characterized by the systematic effort to eliminate any possibility of political dissidence or of expressions and actions aimed at fostering the exercise of fundamental human rights. This situation is aggravated in a State that does not allow the institutionalization of the political opposition.

228. On July 9, Darsi Ferrer, Director of the "Juan Bruno Zayas" Center for Health and Human Rights, and his wife Yusnaymi Jorge Soca, were held in their home for twelve hours because they were planning to take part in a peaceful march in Havana. According to the information received, a few hours before the demonstration was to be held, several activists were arrested. Darsi Ferrer is a medical doctor by training but his work is to report on Cuba's present health system and the situation of political prisoners. Subsequently, according to information received, on July 21, 2009, Darsi Ferrer was arrested and taken to the Valle Grande jail in western Havana, accused of "illegally" (according to the authorities) obtaining building material to renovate his house, which is in a poor state of repair³³⁰. According to activist Elizardo Sánchez Santacruz, who chairs the Cuban Human Rights and National Reconciliation Commission, this is "an imprisonment for political reasons, as Ferrer is a known dissident and had been planning a series of activities"³³¹.

229. On July 11, 2009, the political police arrested independent journalist Pérez Nápoles for organizing a march as a tribute to the victims of the retaliatory action by coastguards³³². On July 15, officers of the National Revolutionary Police took independent journalist David Águila Montero to the Department of Internal Security. During the interrogation his USB, password and several copies of newspapers, such as the US daily newspaper New Herald and the magazine *Disidente* were confiscated.

³²⁸ Article 3 of the Inter-American Democratic Charter provides that essential elements of representative democracy include the holding of periodic, free, and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people; and the pluralistic system of political parties and organizations.

³²⁹ The Cuban Human Rights and National Reconciliation Commission, *The Situation of Human Rights in Cuba after three years of changes at the highest levels of State and Government*, August 10, 2009. The Reporters Without Borders organization has documented the situation, pointing out that the intensification of short detentions, and summons by the *Seguridad del Estado* (State security forces or political police), are now the main form of repression of dissidents since the July 2006 transition. This situation has also been documented by Amnesty International in the report remitted for the United Nations Universal Periodic Review, February 2009, AI AMR 25/002/2008.

³³⁰ Reporters Without Borders, published on July 23, 2009: <http://www.rsf.org/Un-medico-y-periodista-detenido.html>

³³¹ Cubaencuentro, *Opposition medical doctor Darsi Ferrer imprisoned*, published on July 22, 2009: <http://www.cubaencuentro.com/es/cuba/noticias/encarcelan-al-medico-opositor-darsi-ferrer-195847>.

³³² Reporters Without Borders, published on July 23, 2009: <http://www.rsf.org/Un-medico-y-periodista-detenido.html>

230. The IACHR was informed that on September 7, 2009, former political prisoner Jorge Luis García Antúnez was arbitrarily detained from the afternoon on Monday September 7, 2009 to the afternoon of Wednesday, September 9, 2009, along with activist Frank Reyes López³³³. According to its report, both of them were on their way to Havana by bus when they were arbitrarily arrested, searched and kidnapped at the Police Unit of the Aguada bus terminal. They were then taken to the Santa Clara Provincial Police Operations Unit. During the 48 hours they spent there, they were apparently mistreated, intimidated and threatened with reprisals by the authorities and not given any food. Antúnez apparently suffered a hypoglycemic crisis and asthma due to the reprisals against him. When the activists were released, they were warned that they might be subject to further reprisals by the authorities in the future.

231. Belinda Salas Tápanes, president of the Latin American Federation of Rural Women-Cuba (FLAMUR), was held under arrest for more than three hours by political police officers on September 23, 2009 after her home was searched³³⁴. Belinda Salas Tápanes was more than 30 weeks pregnant at the time of her arrest. According to the information, the activist had apparently received a US visa more than a year ago because of political persecution against her, but the government refuses to allow her to leave the country, "without concrete arguments" said her husband Lázaro Alonso Román, a former political prisoner.

232. On October 2, 2009, Cuban activist Iris Tamara Pérez Aguilera, who chairs the Rosa Parks Feminist Movement for Civil Rights was arrested by State agents when she tried to deliver a letter to Radio Placetás asking for help for her brother Mario Alberto Pérez Aguilera who, according to the information received, is fighting for his life at the Guamajal jail³³⁵. The letter, signed by Iris Tamara Pérez, reads as follows: "Mario Alberto Pérez Aguilera is fighting for his life at the Guamajal Prison hospital as a result of a hunger strike he went on to protest against endless acts of maltreatment and cruelty to him by the prison authorities, obviously in retaliation for his ideas and actions against the ideology of the government prevailing in Cuba (...) In the hope that you will take this case into consideration so that justice may be enforced, since otherwise you would be aiding and abetting the crime being committed against him"³³⁶.

233. The IACHR has also received information about how the Cuban Government uses the concept of "*peligrosidad*" ("dangerousness") as well as the "special proclivity of a person to commit crimes" contained in the Criminal Code, as tools for political persecution and social repression.³³⁷ The ambiguity of both terms is a grave matter as it criminalizes any ideological outlook that assails the regime (see paras. 53 to 62 of this report).

- Torture

234. In a hearing before the IACHR held during the 137th regular period of sessions, the IACHR received very serious testimony with respect to allegations of torture of political prisoners and common prisoners.³³⁸ The Consejo de Relatores de Derechos Humanos de Cuba, based in the

³³³ *Directorio Democrático Cubano*, September 9, 2009, http://www.directorio.org/comunicadosdeprensa/note.php?note_id=2537.

³³⁴ Article published on Cubanet by Miguel Iturria Savón: http://www.cubanet.org/print/Sept09/24_sept_C_3.html

³³⁵ *Directorio Democrático Cubano*, October 2, 2009.

³³⁶ *Directorio Democrático Cubano*, October 2, 2009.

³³⁷ IACHR, Annual Report 1998, 16 April 1999.

³³⁸ Public hearing on "Torture, extrajudicial executions, and violations of the right to freedom of expression in Cuba," held November 6, 2009, during the 137th regular period of sessions of the IACHR. Cited above.

city of Havana, reported from January to September 2009 the deaths of 50 prisoners in Cuban prisons, including six at the Ariza prison, six at the provincial prison of Las Tunas, and six at the provincial prison of Holguín as the result of beatings, mistreatment, denial of medical care, and inducing suicide through psychological torture. During 2008, the Consejo de Relatores reported 71 deaths in 21 prisons due to such practices. According to the Consejo, in Cuba 536 prisons and correctional or detention centers are on record.

235. In addition, the IACHR received the testimony of former political prisoner Jordi García Fournier of the Movimiento Cubano de Jóvenes por la Democracia, who in September 2009 reported on the methods of punishment used at the provincial prison of Guantánamo such as “Shakira” and “balancín.” Following is a transcription of part of his testimony³³⁹:

“While on a hunger strike in the area of the dungeons I verified that this is the zone most used by the members of the military for all such forms of physical punishment, beatings. At the provincial prison of Guantánamo any protest that is led by a political prisoner or common prisoner, they are taken to this zone, to those dungeons, three cells one next to the other, and are ferociously, brutally beaten by the soldiers working in the prison. One very common method called Shakira (making reference to the Colombian singer) is used by the soldiers at this prison. Two handcuffs with a long chain are placed around the waist, the hands are alongside the hips, but a chain is placed at the waist and tied to these two handcuffs, which they squeeze so much that it is practically unbearable, it cuts off one’s respiration, so you can’t breathe; it is truly unbearable. If the protest continues then the soldiers move on to a variation of this Shakira: they handcuff the hands behind the back and then take another handcuff, placing it on the feet, and these are attached by means of this chain, the hands and feet are joined behind the back; they call this the Balance Beam (*Balancín*) because the person ends up with the abdominal cavity against the floor, which is the only part of the body that contacts the floor; the hands and feet are pressed against the back by this truly unbearable chain. I saw them apply this method many times to the prisoners, and I fought this.

“Imagine, the prisoners on occasion have had to spend several days with these handcuffs on, having to defecate and urinate on their own body, because this position affords them no other option. I learned of the case of **Yordis Fuentes Pérez**, a member of the Movimiento Cubano de Jóvenes por la Democracia and originally from Baracoa, who spent three days with this method imposed, without eating and without being able to move anything precisely due to a protest against the injustices, and because he shouted anti-government slogans and this method was applied to him, they forced him to stay like that, without ingesting any food. At this time, this young man is in punishment cells. In this dungeon area, when they use this type of method, they bring together the musical group in the prison and they have it play music outside the dungeon area, in the corridor, to play music there, so the shouts aren’t heard, or any of what is happening in this zone, to which there is little access.”

“When I was taken as a punishment to that area, they had the group play so as not to hear the shouts of the persons who are being punished there with this method. The soldiers walk around with the Shakira handcuffs and chains in hand to intimidate the persons there....”

236. According to the information provided in the hearing, the allegations of torture were previously reported to the Cuban authorities.³⁴⁰ In effect, in late 2008, political prisoner Ernesto Durán Rodríguez, held at that same provincial prison of Guantánamo, at pavilion 21 cubicle 1, sent a letter to General Raúl Castro in which he describes the use of these methods of torture by the

³³⁹ Public hearing on “Torture, extrajudicial executions and violations of the right to freedom of expression in Cuba,” held November 6, 2009, during the 137th regular period of sessions of the IACHR. Cited above.

³⁴⁰ Hearing before the IACHR on “Torture, extrajudicial executions, and violations of the right to freedom of expression in Cuba,” held November 6, 2009, during the 137th regular period of sessions of the IACHR. Cited above.

members of the military at that prison, and also attached a list with the names of persons tortured in 2008 using the Shakira method.

2. Guarantees for the Due Legal Process and Independence of the Judiciary

237. During 2009 the Commission continued to receive worrying information about the structural lack of independence and impartiality of the courts; and the absence of judicial guarantees and due process in trying people sentenced to death, as well as people considered to be political-ideological dissidents, a situation that is all the more serious as it involves the use of summary trials.

238. Jurisprudence in the Inter-American System has consistently sustained that all the bodies that exercise functions of a materially jurisdictional nature have a duty to adopt fair decisions based on full respect for the guarantee of due process. The American Declaration stipulates that everyone has the right to a fair trial³⁴¹, the right of protection from arbitrary arrest³⁴² and the right to due process of law³⁴³. These rights form part of what is known as the body of guarantees of due legal process, the minimum guarantees applying to any whom being as far as any kind of judicial process is concerned.

239. The American Declaration also states that every human being has the right to liberty³⁴⁴ and no person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing law³⁴⁵. Pursuant to the American Declaration, every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, or otherwise, to be released³⁴⁶. Additionally, every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws and not to receive cruel, infamous or unusual punishment³⁴⁷.

240. The right to be tried by a competent, independent and impartial court set up pursuant to the law, has been interpreted by the Inter-American Court and the Inter-American Commission as the assurance of certain conditions and standards that must be met by the courts in charge of judging the substantiation of any criminal accusation or the determination of the civil, fiscal, labor or other rights or obligations of persons³⁴⁸.

241. This right to a fair trial is supported by the fundamental concepts of independence and impartiality of justice which, like the principles of criminal law recognized by international law – presumption of innocence, the *non-bis-in-idem* principle and the *nullum crimen sine lege* and *nulla poena sine lege* principles, as well as the precept that no person shall be convicted of a crime in the absence of individual criminal responsibility – are fully considered general principles of international law that are essential for the proper administration of justice and the protection of fundamental

³⁴¹ American Declaration, Article XVIII.

³⁴² American Declaration, Article XXV.

³⁴³ American Declaration, Article XXVI.

³⁴⁴ American Declaration, Article I.

³⁴⁵ American Declaration, Article XXV.

³⁴⁶ American Declaration, Article XXV.

³⁴⁷ American Declaration, Article XXVI.

³⁴⁸ IACHR, Report on Terrorism and Human Rights 2002, paragraph 228.

human rights³⁴⁹. The requisite of independence, in turn, requires that the courts be autonomous from other branches of government, be free of influence, threat or interference from any source or for any reason, and have other characteristics necessary to guarantee appropriate and independent compliance³⁵⁰ of judicial functions, including the stability in office and proper professional training³⁵¹. The impartiality of the courts³⁵² must be evaluated from a subjective and objective point of view to guarantee that there is no real bias on the part of the judge or the court, and that there are sufficient assurances to avoid any legitimate doubt in that respect. These requisites, in turn, require that the judge or the court have no real bias in a particular case, and that the judge or the court not be reasonably perceived as inclined towards such a bias³⁵³.

242. As regards the guarantees of independence and impartiality, note the provisions of Article 121 of the Cuban Constitution which state that

The courts constitute a system of state bodies, established with functional independence from all other systems, and answer only to the National Assembly of People's Power and the Council of State.

243. The Commission noted that the subordination of the courts to the Council of State, chaired by the head of state, means that the judiciary is directly dependent on instructions handed down by the executive branch of government. In the opinion of the Commission, this dependence vis-à-vis the Executive does not make for an independent Judiciary capable of guaranteeing the enjoyment of human rights.

³⁴⁹ Special Rapporteur's Report on the Independence and Impartiality of Justice, presented in accordance with Resolution 1994/41 of the Commission on Human Rights, Commission on Human Rights, 51st Session, February 6, 1995, E/CN.4/1995/39, paragraph 34. IACHR, Report on Terrorism and Human Rights 2002, paragraph 229.

³⁵⁰ Accordingly, the Court on Human Rights indicated that the impartiality of the courts implies that their members have no direct interest, take no position, and have no preference for any one of the parties and not be involved in the controversy. I/A Court H.R., *Case of Palamara Iribarne v Chile*. Judgment of November 22, 2005. Series C No. 135, 146.

³⁵¹ IACHR, *Report on the Situation of Human Rights in Chile*, 1985, Chapter VIII, paragraph 139; *Report on the Situation of Human Rights in Haiti*, 1995, Chapter V, paragraphs 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, paragraphs 393-398. *Report on Terrorism and Human Rights 2002*, paragraph 229.

³⁵² The Inter-American Court has stated out that the right to be judged by an impartial and independent judge or court is a fundamental guarantee of due process. In other words, it is necessary to guarantee that the judge or court exercise maximum objectivity when performing their judging functions during a trial. Additionally, the independence of the judiciary vis-à-vis the other branches of State is essential to exercise the judicial function. I/A Court H.R. *Case of Palamara Iribarne v Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 145; I/A Court H.R., *Case of Herrera Ulloa v Costa Rica*, paragraph 171.

One of the main objectives of the separation of public power is to guarantee the independence of the judges. That autonomous exercise must be guaranteed by the State, both from an institutional perspective, i.e. in relation to the Judiciary, as a system, as well as in connection with its individual perspective, i.e. in relation to the actual judge himself. The objective of the protection lies in preventing the possibility of the judicial system in general and its members in particular from being subject to any undue restrictions to the exercise of their functions by bodies outside the judiciary and even by magistrates who perform review or appeal functions. I/A Court H.R., *Case of Apitz Barbera et al. ("First Contentious-Administrative Court") v Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 131.

Likewise, public officials, and especially the most senior government authorities, must take special care to see that their public declarations do not constitute a form of interference or pressure that might jeopardize judicial independence or induce or suggest actions by other authorities and be detrimental to their independence or adversely affect the freedom of judge. I/A Court H.R., *Case of Apitz Barbera et al. ("First Contentious-Administrative Court") v Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 131.

³⁵³ IACHR, Case 11,139, Report No. 57/96, William Andrews (United States), *Annual Report of the IACHR 1997*, paragraphs 159-161. See analogically, European Court of Human Rights, *Findlay v The United Kingdom*, February 25, 1997, *Reports 1997-I*, page 281, paragraph 73. IACHR, Report on Terrorism and Human Rights 2002, paragraph 229.

244. According to information received in 2009, the Cuban courts have persisted in their use of summary trials, such as the trial and sentencing in 2009 of Alberto Santiago Du Bouchet Hernández, director of the independent Havana-based press agency *Habana Press*, for reportedly documenting social issues³⁵⁴. According to the information received, Du Bouchet Hernández was arrested on April 18, 2009 in retaliation for his work, although the accusations against him were not made public. He underwent a summary trial and was sentenced to three years in prison on May 12, 2009. The information indicates that the journalist had no defense attorney. The judgment was appealed against and the outcome is still pending.

245. The IACHR also received information indicating that Agustín Cervantes, member of the Christian Liberation Movement and coordinator of the Varela Project in Santiago de Cuba, a project that seeks to promote a referendum on civil liberties, was sentenced to two years in prison on September 29, 2009, in a summary trial, for apparently committing the crime of causing injury³⁵⁵. According to the information received, Cervantes was arrested on Monday, September 28, 2009, after he was provoked by a man who went to his house to insult him and attempted to stab him with a knife.

246. The Commission considers extremely serious and condemns the repeated practice of summary trials in Cuba without heed for the guarantees of due process, including the minimum guarantees necessary to allow the accused to exercise his/her right to a proper legal defense.

247. On repeated occasions, the Commission has recommended that the State of Cuba adopt the necessary measures 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.

248. In Report 67/06³⁵⁶ on Case 12,476 (Oscar Elías Biscet et al.) on the crackdown on political dissidents arrested and subjected to summary trial in what is known as "Black Spring" 2003, through the enforcement of Article 91³⁵⁷ of the Cuban Criminal Code as well as Law 88 on the Protection of the National Independence and the Economy of Cuba, the IACHR recommended that the State of Cuba:

2. Adopt the necessary measures to adapt its laws, procedures and practices to international human rights legislation. In particular, the Commission recommends that the State of Cuba repeal Law No. 88 and Article 91 of the Criminal Code as well as to initiate a process to reform its Constitution in order to ensure the independence of the judiciary and the right to participate in government.

³⁵⁴ Published in the Committee for the Protection of Journalists. <http://cpj.org/2009/05/independent-cuban-journalist-sentenced-to-3-years.php>

³⁵⁵ Europa Press, Cuban activist Agustín Cervantes arrested, published on September 29: <http://www.europapress.es/latam/cuba/noticia-cuba-denuncian-detencion-activista-agustin-cervantes-enfrenta-primer-juicio-sumario-2003-20090929190617.html>; Cubaencuentro, Dissident leader sentenced to two years in Santiago de Cuba, published on September 30, 2009: <http://www.cubaencuentro.com/es/cuba/noticias/encarcelan-al-medico-opositor-darsi-ferrer-214521>.

³⁵⁶ Report No. 67/06 approved on October 21, 2006, was notified to the State of Cuba and representatives of the plaintiffs on November 1, 2006. See IACHR, Press Release 40/06, "The IACHR announces two reports on human rights violations in Cuba", November 1, 2006.

³⁵⁷ Article 91 of the Cuban Criminal Code: 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.

249. Moreover, in the Report 68/06 on [Case 12.477](#)³⁵⁸ (Lorenzo Enrique Copello Castillo et al.), in relation to three people who were shot after a summary trial, in breach of the right to defense, impartiality and judicial independence, the IACHR recommended that the State of Cuba:

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.

250. Articles 479 and 480 of the Cuban Law of Criminal Procedure provides for the possibility of holding a summary trial. That same law also states that in the case of a judgment resulting from a summary trial, if deemed necessary by the Court, it may reduce the periods for processing prior proceedings, the oral hearings and the appeal.

Summary Trial

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 competency of any of the courts of justice may be tried through a summary proceeding, except for those that come under the competency of the People's Municipal Courts.

Article 480: In the summary trial, if deemed necessary by the competent court, the periods for processing prior proceedings, the oral hearings and appeals may be reduced.

251. In that respect, the Commission notes that the decision to apply an exceptional procedure shall be determined by the people who impart justice in the specific case; likewise the judge may decide on the terms to be set for all proceedings in the trial, including prior proceedings, the proceedings corresponding to the oral trial and the terms of the appeals³⁵⁹.

252. The Commission has observed that through summary trials in Cuba political dissidents and people who have attempted to flee the island have been tried, and some of them even sentenced to death as a result of such trials that contravene the minimum rules of due process³⁶⁰.

- **Death Penalty**

253. Within this context, where there is a lack of independence, arbitrary action and summary trials, another particular concern of the IACHR is that the death penalty is included as a sanction for a number of crimes. In effect, the Cuban Criminal Code provides for this punishment for crimes against the security of the State; peace and international law; public health; life and physical safety; the normal practice of sexual relations; the normal course of childhood and youth and against equity rights. In the section on crimes against the security of the State, the death penalty is the maximum punishment for the following crimes: Acts against the Independence and Territorial Integrity of the State; Promoting Armed Action against the State; Provision of Armed Services the

³⁵⁸ IACHR, Report No. 68/06, Case 12.477, Lorenzo Enrique Copello Castillo et al., October 21, 2006.

³⁵⁹ IACHR, Report No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo et al., October 21, 2006, paragraph 87-92.

³⁶⁰ IACHR Report No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo et al., October 21, 2006, paragraph 87-92.

Homeland; Acts of Aid to the Enemy; Espionage; Rebellion³⁶¹; Sedition; Usurpation of Political or Military Control; Sabotage; Terrorism; Hostile Acts against a Foreign State; Genocide; Piracy; Association with a Group of Mercenaries, Apartheid³⁶²; and other acts against the security of the State. Moreover, the death penalty is applicable for the following crimes: Production, Sale, Demand, Traffic, Distribution and Illegal Possession of Drugs, Psychotropic Substances and Narcotic Drugs and other substances with similar effects³⁶³; Murder³⁶⁴; Rape³⁶⁵; Violent Pederasty³⁶⁶; Corruption of Minors³⁶⁷; Robbery with Violence or Intimidation of People³⁶⁸.

254. The Commission considers that the application of capital punishment requires the existence of an independent judiciary where the judges exercise a high level of scrutiny and where guarantees of due process are observed. In that regard the Inter-American Court has sustained that:

[C]apital 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 punishment³⁶⁹. First, the imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.³⁷⁰ Second, the sentence must be individualized in conformity with the characteristics of the crime, as well as the participation

³⁶¹ 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.

³⁶² 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 deliberate 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.

³⁶³ Cuban Criminal Code, Article 190.

³⁶⁴ Cuban Criminal Code, Article 263.

³⁶⁵ Cuban Criminal Code, Article 298.

³⁶⁶ Cuban Criminal Code, Article 299.

³⁶⁷ Cuban Criminal Code, Article 310.

³⁶⁸ Cuban Criminal Code, Article 327.

³⁶⁹ *Restrictions to the Death Penalty* (Articles 4.2 and 4.4 American Convention on Human Rights).

³⁷⁰ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. v Trinidad & Tobago. Merits, Reparations and Costs*. Judgment of June 22, 2002. Series C No. 94, paragraph 106; *Case of Raxcacó Reyes*, *supra* note 37, paragraph 68. See also *Restrictions to the Death Penalty* (Articles 4.2 and 4.4 American Convention on Human Rights) *supra* note 7, paragraph 55.

and degree of culpability of the accused³⁷¹. Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must be strictly observed and reviewed³⁷².

255. According to information obtained by the IACHR, the last time the death penalty was applied in Cuba was in 2003, when Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García and Jorge Luis Martínez Isaac were executed³⁷³. However, summary trials will continue to result in application of the death sentence. As stated in Chapter IV of the Annual Report 2008, the IACHR appreciates the decision of the Council of State adopted on April 28, 2008, to commute the death penalty to anyone condemned to such a severe and irreparable punishment, in favor of life imprisonment or 30 years in prison. The IACHR hopes that this commutation will be extended to cover anyone sentenced to death, including anyone condemned for committing of what are presumed to be terrorist acts.

256. The IACHR reiterates its observation that maintaining the death penalty as punishment for a significant number of crimes defined in broad or vague terms³⁷⁴, along with criminal procedures without sufficient guarantees of due process, when carried out in the form of summary trials, without a defense that can be trusted and with juries of doubtful independence and impartiality, violates the international instruments and jurisprudence that have been established in order to safeguard human rights. This may lead to the application of disproportionate punishments and an enormous scope of discretionary action likely to eliminate any possibility of the individual defending himself against the authorities³⁷⁵. 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."

- **Dangerous State**

257. Likewise, Article 72 of the Criminal Code defines dangerousness as "a special inclination on the part of a person to commit crimes, as demonstrated by behavior that is clearly

³⁷¹ I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al. supra* note 42, paragraphs 103, 106 and 108, and *Case of Raxcacó Reyes, supra* note 37, paragraph 81. See also *Restrictions to the Death Penalty* (Articles 4.2 and 4.4 American Convention on Human Rights) *supra* note 7, paragraph 55.

³⁷² I/A Court H.R., *Case of Boyce et al. v Barbados*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 16, also I/A Court H.R. *Case of Fermín Ramírez, supra* note 37, paragraph 79. See also *Restrictions to the Death Penalty* (Articles 4.2 and 4.4 American Convention on Human Rights) *supra* note 7, paragraph 55, and *The Right to Information on Consular Assistance in the Framework of Guarantees of Due Legal Process*. Consultative Opinion OC-16/99 of October 1, 1999. Series A No. 16, paragraph 135.

³⁷³ IACHR, Report No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006.

³⁷⁴ As observed by the Inter-American Court, "the ambiguity in formulating the prescription of such criminal definitions raises doubts and paves the way for the arbitrary exercise of authority, which is all the more undesirable because it establish the criminal liability of individuals and punishes them with penalties that severely affect such fundamental rights as life or liberty." See, for instance, I/A Court H.R., *Case of Castillo Petruzzi et al. v Peru*. Judgment of May 30, 1999, Series C. N° 52, paragraph 121.

³⁷⁵ According to the State of Cuba, the death penalty is only applied in exceptional circumstances and only for the commission of the most severe crimes. The Cuban Criminal Code provides 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.

contrary to the standards of socialist morality." Article 73.1 defines what is meant by "dangerous state": "dangerous state is present when an individual displays some of the following signs of dangerousness:" a) habitual drunkenness and dipsomania; b) drug addiction; c) antisocial behavior. Article 73.2 provides that "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".

258. For its part, Article 75.1 of the Criminal Code states 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 referred in previous reports to the way in which the Government of Cuba uses the legal concepts of "*peligrosidad*" ("dangerousness") as well as "special proclivity of a person to commit crimes" to detain opponents of the regime.³⁷⁶

259. If a person engages in one of the types of dangerousness cited above, he or she is subject to the so-called "security measures" (*medidas de seguridad*) which may be post- or pre-delictive (*post o predelictivas*). Article 78 provides that one found to be in a dangerous state may be subject to pre-delictive security measures, which may be therapeutic, re-educational, or surveillance measures imposed by the organs of the National Revolutionary Police. One of the therapeutic measures, according to Article 79, is to be admitted to a psychiatric, or detoxification center.³⁷⁷ Re-educational measures are applied to antisocial individuals and consist of being admitted to a specialized establishment for work or study, and being transferred to a work collective for monitoring and guidance. Such measures may have a term of one to four years.

260. These provisions of the Criminal Code of Cuba are supplemented by Decree No. 128, of 1991. That decree establishes that the declaration of pre-delictive condition must be decided summarily. In effect, according to said decree, the National Revolutionary Police opens the case with the report of the agent involved, the testimony of neighbors accrediting the conduct of the "dangerous" individual, and it submits it to the municipal prosecutor, who decides whether to present it to the People's Municipal Court (Tribunal Municipal Popular), to take stock of the degree of dangerousness within two working days after the date it receives it. Within this time frame, the Court will decide whether to take any other investigative measures, which it would perform within five working days. If the court considers the file complete, it will set a date for the hearing at which the parties will appear. Twenty-four hours after the hearing is held, the Municipal Court shall hand down a judgment.

261. The Inter-American Commission on Human Rights considers that the criminal law should punish crimes or their frustrated attempts, but never attitudes or presumptions of criminal conduct.³⁷⁸ Dangerousness (*peligrosidad*) is a subjective concept depending on who is judging it, and its vagueness constitutes a factor of juridical insecurity for the population, as it creates the conditions for the authorities to commit arbitrary acts. The Commission also considers it extremely grave that these provisions – in themselves incompatible with the principles established in the American Declaration, are applied by a summary procedure to persons who have not committed any

³⁷⁶ IACHR, Annual, Report of the Inter-American Commission, 1998, April 16, 1999.

³⁷⁷ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

³⁷⁸ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999

crime, but who according to the Cuban authorities are considered *dangerous* to society, and, therefore, deserving of severe security measures entailing deprivation of liberty.³⁷⁹ In these cases, the State intervenes in the life of the citizens without limitations to maintain *la paz social* (social peace) and unhesitatingly violates the right to individual liberty.

262. On applying Article 72 ff. of the Criminal Code the Cuban authorities are also violating the principle of equality before the law enshrined in Article II of the American Declaration of the Rights and Duties of Man, insofar as the State punishes or considers *dangerous* anyone who contradicts "the norms of socialist morality."³⁸⁰

263. By way of illustration as to the application of sanctions to conduct defined in ambiguously worded criminal statutes, the IACHR received information on the situation of Cuban citizen Juan Carlos González Marcos "Pánfilo"³⁸¹, who, drunk, interrupted an interview being filmed on reggaeton music in one of the streets of Havana and shouted into the camera "We want food" ("¡Queremos Jama!", using a popular term for food), "There is a lack of food, there is great hunger here. Film what I'm saying, it's no lie. Great hunger." As a result of the taping, Juan Carlos González Marcos was detained on August 4, 2009 on charges of "pre-delictive social dangerousness" and was sentenced to two years in prison. According to the information received, the main argument of the authorities was that he had been unemployed for ten years.³⁸²

264. The IACHR also received information about the recent use of the legal concept of "pre-delictive dangerousness" ("peligrosidad predelictiva") to convict and sentence six young Cuban homosexuals to prison.³⁸³ According to the information received, the facts were reported by the Fundación LGBT "Reinaldo Arenas" of Cuba. On November 4, 2009, the provincial court of Boyeros convicted René Castell Median along with his partner Damián Arencibia Touriño for working as tailors without government authorization. After being held one month at a police station without their family members being informed of the trial, after the trial they were both sentenced to three years deprivation of liberty. In addition, Eliseo Montalvo, 25 years old, was detained by the Cuban police after three police warnings for "interacting with foreigners" and not working for the Cuban State or having stable work, and has been sentenced to two years in prison. According to the information received, three other homosexuals were also convicted and sentenced to two years of prison, applying the same statute. The Commission has been informed that the law on "Pre-delictive Dangerousness" applied to young homosexuals is often used by the Cuban police, who arrest those youths whose lifestyle strays from the "revolutionary ideal" and who according to them could commit some hypothetical crime in the future due to that lifestyle. The youths are forced to sign a warning, and are threatened with being sent to prison if they don't change and get on track to be a revolutionary patriot.³⁸⁴

³⁷⁹ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

³⁸⁰ Article 72 of the Criminal Code of Cuba: A dangerous state is considered to be the special proclivity of a person to commit crimes, shown by conduct observed that is manifestly in contradiction with the norms of socialist morality. IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999

³⁸¹ Press article: ABC of Spain. Available on the Internet at: <http://www.abc.es/20090815/internacional-iberoamerica/hace-falta-comida-tremenda-200908150638.html>.

³⁸² On Friday, September 18, 2009, Juan Carlos González Marcos "Pánfilo" was said to have been released by the Cuban authorities. According to the information received, he was informed of his release by letter and he was told that he would be sent for 21 days to a psychiatric hospital, and after the stay he would not have to return to the prison.

³⁸³ Press release. *Confederación Española Colegas de Lesbianas, Gays, Bisexuales y Transexuales*, November 4, 2009.

³⁸⁴ Press release. *Confederación Española Colegas de Lesbianas, Gays, Bisexuales y Transexuales*, November 4, 2009.

265. The Commission reiterates that the lack of independent administration of justice in Cuba, together with the absence of guarantees of due process, as well as the use of summary trials and the ambiguity and/or extent of some of the offenses defined as crimes under the country's legislation, affect people's fundamental rights.

266. The Commission calls upon the Government of Cuba to adapt its court procedures to the international standards applicable to due process, so that the people who appear in court to determine their rights and responsibilities have the minimum guarantees necessary to defend themselves. The Commission considers that the existing legal framework does not fulfill Cuba's international obligations on this matter. The full force and effect of the judicial guarantees contained in the American Declaration are dependent on the existence of an independent, autonomous judiciary and the application of clear-cut rules that leave no room for the discretionary abuse of authority.

3. Deprivation of Freedom for Political Dissidents³⁸⁵

267. During 2009 the Commission continued to receive information on new cases of political prisoners, the conditions of deprivation of freedom of political dissidents in Cuba and especially the denigrating treatment by the penitentiary authorities against people singled out as political prisoners.

268. One of the new cases of political prisoners imprisoned during the first half of 2009 that stands out in particular is the arrest of José Díaz Silva, president of "*Por una Nueva República*" (For a New Republic) who has been in the Valle Grande jail since last June 10, and his son Ernesto Díaz Esquivel, who is in the *Combinado del Este* jail³⁸⁶.

269. According to the Cuban Commission for Human Rights and National Reconciliation, the most recent list of people they have documented as having been punished or sentenced for political reasons contains the names of 208 prisoners, some on probation, an increase on the 205 cases documented at the end of January 2009³⁸⁷. This increase suggests a reversal to the gradual downward trend of recent years.

270. On October 21, 2006 the Commission decided to transmit to the State and the representatives of the plaintiffs³⁸⁸ and publish in its Annual Report 67/06 Case 12,476 (Oscar Elías Biscet et al. on the political dissidents arrested and subjected to summary trial in what is known as

³⁸⁵ The Government of Cuba denies the classification of the victims in Case 12,476 as dissidents. The "White Book 2007" report, published on the official website of the Ministry of Foreign Affairs of Cuba, states: "The campaign, which persists to this day and in which several governments that are clients of the Empire have actively participated with cynicism and complicity, has resorted to sophisticated disinformation techniques developed by the Nazi-Fascism services, attributing the justly punished mercenaries, repeatedly and falsely calling them "dissidents," "peaceful political opponents," "human rights defenders" or "journalists, librarians and independent trade unionists." The intention has been to try to make people believe that they were "arbitrarily and unfairly" punished for the simple fact of "peacefully exercising the rights of freedom of expression, opinion and association." See "White Book 2007," cited.

³⁸⁶ Cuban Commission for Human Rights and National Reconciliation, *The Situation of Human Rights in Cuba after three years of changes at the highest level of State and Government*, August 10, 2009.

³⁸⁷ Cuban Commission for Human Rights and National Reconciliation, *The Situation of Human Rights in Cuba after three years of changes at the highest level of State and Government*, August 10, 2009.

After a visit to Cuba in October 2009, Spanish Minister of Foreign Affairs, Miguel Ángel Moratinos, considered it "unacceptable" that there are still over two hundred political prisoners in Cuba. In AFP - 20/10/2009.

³⁸⁸ Report No. 67/06 was notified to the State of Cuba and representatives of the plaintiffs on November 1, 2006. See IACHR, Press Release 40/06, "IACHR announces two reports on human rights violations in Cuba", November 1, 2006.

“Black Spring” 2003, through the enforcement of Article 91³⁸⁹ of the Cuban Criminal Code as well as Law 88 on the Protection of the National Independence and the Economy of Cuba, for events related to the exercise of such fundamental freedoms as freedom of thought, conscience, opinion and expression, as well as the right to peaceful assembly and free association. The prison sentences ranged from 6 months to 28 years.

271. It should be noted that in Report 67/06, the IACHR concluded that the State of Cuba violated several articles of the American Declaration, among them Articles I, II, IV, VI, XX, XXI, XXII, XXV and XXVI in detriment to the victims of the case; Article V related to eight of the victims; violation of Article X in detriment to 14 victims and violation of Article XVIII to the detriment of 73 victims. The Commission concluded that the State had not violated Articles IX, XI and XVII of the American Declaration to the detriment of the victims³⁹⁰.

272. The IACHR also recommended that 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 rights³⁹¹.

273. According to the information received by the IACHR, up to 2008, 21³⁹² victims of Case 12,476 have apparently been released from prison under Cuban “extrapenal licence”³⁹³ mechanism (parole) on the grounds that they were seriously ill³⁹⁴ and Rafael Millet

³⁸⁹ Article 91 of the Cuban Criminal Code: Whoever, in the interest of a foreign State, commits an act with the intent to cause damage 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.

³⁹⁰ See complete report at: <http://www.cidh.org>.

³⁹¹ See complete report at: <http://www.cidh.org>.

³⁹² In 2004 the following were released on probation: Osvaldo Alfonso; Margarito Broche Espinosa; Carmelo Díaz Fernández; Oscar Espinosa Chepe; Orlando Fundadora Álvarez; Edel José García Díaz; Marcelo López Bañobre; Roberto de Miranda; Jorge Olivera Castillo; Raúl Rivero Castañeda; Martha Beatriz Roque Cabello; Julio Valdés Guevara; Miguel Valdés Tamayo (died on January 10, 2007); Manuel Vásquez Portal. In 2005 the following were released on probation: Mario Enrique Mayo Hernández and Héctor Palacio Ruiz. In 2008 the following were released on probation: José Gabriel Ramón Castillo, Pedro Pablo Álvarez, Alejandro González Raga and Omar Pernet. On October 21, 2009 Nelson Alberto Aguiar Ramírez was released from prison.

³⁹³ The Cuban Criminal Code provides as follows: Article 31.2: The sanctioning court may, for justified reasons and subject to request, release a prisoner from probation for as long as considered necessary. The Minister of the Interior may also grant a prisoner probation for extraordinary reasons and shall inform the President of People’s Power of the decision. Article 31.4: The duration of the probation and the prison release permits count towards the duration of the criminal punishment, provided good behavior was observed by the prisoner while on probation. Reductions in punishments granted to the prisoner while serving his or her sentence count towards that term.

Leyva was released on December 19, 2006. The Commission therefore considers that the State has not fully complied with the recommendations formulated in Report 67/06.

274. Pursuant to the provisions of the American Declaration of the Rights and Duties of Man, every individual is entitled to humane treatment while deprived of his or her freedom³⁹⁵. The Commission has referred in several of its reports to the issue of detention conditions in Cuba³⁹⁶. The Commission considers that the State's responsibility as far as the integrity of people in its custody is considered, is not restricted to the negative obligation to refrain from torturing or mistreating those people. Since prison is a place where the State has total control over the life of inmates, its obligations towards them, among others, include the security and control measures necessary to preserve the life and physical integrity of people deprived of their freedom.

275. The testimony of Yordis García Fournier, former political prisoner released in September 2009 from the provincial prison of Guantánamo, is revealing of living conditions in the prisons:

Living conditions there are subhuman, the situation in terms of medical care is chaotic, chaotic because there is a small medical post there but it is like for emergencies, there are never medicines. That is scandalous, first because to get to that medical post one must wage a battle within the prison pavilions with the guards, who on several occasions categorically refuse access, saying: "I'm not going to take you to the medical post and nothing is going to happen about it." Despite so many complaints by the political prisoners and the common ones, we complained but the situation persists and this is known to everyone, both the members of the board of directors of the prison and the institutions that are supposed to oversee such things, here in the streets, independent human rights organizations. Medical care is precarious, there are no drugs; I recall that in the pavilion where I was the last three months I spent there, there was no physician, there was no medical care for the prisoners there.

The other thing is the food, which is chaotic, it's cruel. The food is based on preparations of pork sausages generally if not always it is rotten, raw rice, without any type of cereal grain or porridges. Almost always it is the pork skin and skin of other animals, in bad condition, rotten with a bad flavor. Sometimes they provide juice drinks in poor condition, i.e. the food problems are unbearable, which indeed is the reason behind several protests by prisoners, and not only do the political prisoners protest, but the common ones have also protested a lot about this situation. These same causes lead to the brutal and sometimes lethal aggression against the prisoners by the members of the military. Merely protesting over the food or medical care can bring on harsh repression.

276. According to the information received by the IACHR in 2009, several of the victims of Case 12,476 suffer from health problems that arose or were aggravated at the time of their detention, without being given proper medical care³⁹⁷. The IACHR received information on the

...continuation

³⁹⁴ See video of the public hearing of "Case 12,476 -Oscar Elías Biscet et al. Cuba (Follow-up to recommendations)," held on October 10, 2007, cited above. According to the State of Cuba, for "strictly humanitarian" reasons, 16 people benefited from release on probation. See Chapter 5, "White Book 2007," published on the official website of the Ministry of Foreign Affairs of Cuba, cited above.

³⁹⁵ American Declaration, Article XXV.

³⁹⁶ IACHR, *Annual Report* 1995, Chapter V, paragraph 71; IACHR, *Annual Report* 1994, Chapter IV, paragraph 168; *Annual Report* 2004, Chapter IV, paragraph 59-66; *Annual Report* 2005, Chapter IV, paragraph 76-81. *Annual Report* 2006, Chapter IV, paragraph 65-70.

³⁹⁷ Latin-American Commission for the Rights and Freedoms of Workers and Peoples. Information presented to the IACHR at a public hearing on the "Situation of trade unionists deprived of their freedom in Cuba," held on October 28, 2008.

deteriorating health of Normando Hernández González (victim of case 12,476) sentenced to 25 years in prison. According to the information, Normando Hernández, who is ill and unable to eat normally, was admitted to the Combinado del Este penitentiary hospital on January 8, 2009.³⁹⁸ The Commission received information that Jorge Luís García Paneque (victim of case 12,476), is also seriously ill. According to his mother, Moralinda Paneque, he has lost more than 36 kilos, has amoebas, stomatitis and a throat problem that prevents him from eating. Jorge Luis García Paneque also has malabsorption syndrome, severe malnutrition, colic, back problems due to spina bifida, a cyst on his left kidney and kidney stones on the right one, and he is asthmatic as well³⁹⁹. The IACHR also received information on the health of Ricardo González Alfonso. According to his wife, Alida Viso, González Alfonso suffers constantly from ailments that cause him neck pain, gastritis and high blood pressure, and he needs to have an allergy test every 6 months. His wife also said that the time between family visits has been extended from every 45 days to every two months⁴⁰⁰.

277. It is important to point out that on July 10, 2009, the Inter-American Commission granted precautionary measures to protect the life, personal integrity and health of Ariel Sigler Amaya (one of the victims of case 12.476), whose health was gradually deteriorated as a result of his detention conditions and lack of medical care. On December 2, 2008, he was transferred to the "Carlos J. Finlay" Hospital in Havana where he remained until the end of February 2009; then on June 30, 2009 he had an endoscopy at "Gustavo Aldereguía Lima" Provincial Hospital after being given injections after being unconscious for two hours⁴⁰¹. According to information received, the family last saw him on June 30, 2009. According to his wife, Noelia Pedraza Jiménez, Ariel Sigler is paralyzed in both legs and needs a wheelchair, and his legs have dried and lost muscle tone. He has also the strength in his hands necessary for basic movements, and the glands in his neck are swollen. According to statements made by his brother, Juan Francisco Sigler, Ariel Sigler's health situation is the following⁴⁰²:

Ariel is suffering from the following illnesses: inability to move his lower limbs. The doctors still do not know what is causing this. Their statements are imprecise and inconsistent and they have tried to deceive us and delay giving us information. His legs are cyanotic and completely black. He has serious circulatory problems all over his body. His arms and the back of his thighs bruise. When he was put on a drip, his arms were completely covered with black bruises. His hemoglobin is low and he has bleeding hemorrhoids. Because of his critical state of health he cannot sit in a bath to soothe his hemorrhoids. He has gallstones which have caused a urinary tract infection. He has chronic gastritis, and polyps in his spleen. He has intestinal malabsorption syndrome, and his organism does not assimilate vitamins. He has very low blood pressure, 90 - 60. He has parasites and unidentified bacteria in his throat. The doctors have done three swabs but are unable to determine source of the bacteria. He has not been treated for it. He has advanced osteoporosis. He has pulmonary emphysema but has never smoked or been exposed to chemical gases. He has vomiting, dizzy spells, loss of appetite and does not have the strength to raise his hands. At nightfall he sometimes has high fevers. And he suffers from headaches and total weakness.

³⁹⁸ Reporters Without Borders, United Nations Universal periodic review: 205 political prisoners, including 23 journalists, await release, published February 3, 2009.

³⁹⁹ Payo Libre, Relatives of doctor in Cuban prison worried, published on March 16, 2009: <http://www.payolibre.com/PRESO-%20Jose%20Luis%20Garcia%20Paneque.htm#Preocupa>.

⁴⁰⁰ Payo Libre, Sick prisoner in good spirits, published on May 21, 2009, <http://www.payolibre.com/PRESO-%20Ricardo%20Gonzalez%20Alfonso.htm#PeriodistaEn>.

⁴⁰¹ Request for precautionary measures received at the Executive Secretariat on July 6, 2009.

⁴⁰² Request for precautionary measures received at the Executive Secretariat on July 6, 2009.

278. The IACHR also received information on the constantly deteriorating health of Blas Giraldo Reyes, one of the nine trade unionists⁴⁰³ sentenced in 2003 for taking part in organizations of the independent Cuban workers' movement. According to Blas Giraldo Reyes' wife, he was diagnosed with an advanced polyneuropathy and because of his state of health should not be in prison as he needs to receive better medical care⁴⁰⁴.

279. The IACHR was informed of the serious health situation of Mario Alberto Pérez Aguilera, a member of the Pedro Luis Boitel National Civil Resistance Movement, who is currently serving a ten year sentence at the "El Pre" prison in Villa Clara⁴⁰⁵. Mario Alberto Pérez Aguilera began his protest demanding respect for his rights on September 5 and since September 19, has not even drunk any water.

280. On October 22, 2009 the IACHR decided to grant precautionary measures to Mario Alberto Pérez and requested the State of Cuba to take the necessary steps to guarantee his life and personal integrity, and to report on the actions taken to implement those measures.

281. The Commission has stated its concern before about the number of political prisoners suffering chronic illnesses that affect their sight, kidneys, hearts and lungs, and about the fact that they do not receive proper appropriate medical treatment and the fact that several of them are elderly. It has even been brought to the attention of the IACHR that the penitentiary authorities have prevented the relatives of political dissidents deprived of their freedom from giving them the medication they need to treat their illnesses and which is not provided by the State.

282. The Commission reiterates to the State that it should observe the United Nations Standard Minimum Rules for the Treatment of Prisoners⁴⁰⁶ and the Principles and Best Practices on the Protection of Persons Deprived of their Liberty in the Americas of the Inter-American Commission on Human Rights⁴⁰⁷.

283. Likewise, the Commission reiterates to the State of Cuba the recommendation to release the victims of Case 12,476 immediately.

4. Restrictions to the rights to residence and movement

284. The American Declaration on the Rights and Duties of Man stipulates that: "Everyone has the right to choose his residence in his country, the right to freedom of movement

⁴⁰³ The trade unionists tried and sentenced in 2003 are: Pedro Pablo Álvarez Ramos, Horacio Julio Piña Borrego, Víctor Rolando Arroyo Carmona, Adolfo Fernández Sainz, Alfredo Felipe Fuentes, Luís Milán Fernández, Blas Giraldo Reyes Rodríguez, Carmelo Díaz Fernández and Oscar Espinosa Chepe. Pedro Pablo Álvarez Ramos, Carmelo Díaz Fernández and Oscar Espinosa Chepe were released on probation. See video of public hearing on the "Situation of trade unionists deprived of their freedom in Cuba," held on July 20, 2007.

⁴⁰⁴ Polyneuropathy is an inflammation and irritation of the nerves that leads to loss of movement or sensitivity. Martí Noticias, "Lady in White" appeals for help to release dissident prisoner, published September 1, 2009.

⁴⁰⁵ Directorio Democrático Cubano, Life of hospitalized opponent in danger after three week hunger strike: Activists in Cuba call for an emergency campaign to save him, published on October 1, 2009.

⁴⁰⁶ The Inter-American Commission has pointed out that the United Nations Standards for the Treatment of Prisoners is one of the best references for the international minimum standards for the humane treatment of prisoners, including basic standards on accommodation, hygiene, medical treatment and physical exercise. See IACHR, Report No. 2712, case 12,183, Jamaica, paragraph 133, report No. 47/01, case No. 12,028 Grenada paragraph 127, report No. 48/01 case 12,067, Bahamas paragraph 195; report No. 38/00, case No. 11,743 Grenada, paragraph 136.

⁴⁰⁷ IACHR, RESOLUTION 1/08, Principles and Best Practices on the Protection of Persons Deprived of their Freedom in the Americas.

within the borders of his territory, to move freely within such territory, and not to leave it except by his own will."⁴⁰⁸ Although the American Declaration does not explicitly state that every person has the right to return to his country, the Commission considers that this right is implicitly recognized in this instrument. Likewise, the IACHR has sustained that "The right of every person to live in his own country, to leave it and return to it at will [...]" is an elementary right that "is recognized in all international instruments related to the protection of human rights."⁴⁰⁹ In effect, Article 13 of the Universal Declaration of Human Rights (2) provides that "Anyone has the right to leave any country, including his own, and to return to it."

285. The IACHR indicated earlier that according to the texts quoted, there is a relationship between the right of residence and movement and the right of nationality. The latter is recognized by Article XIX of the American Declaration, and the Commission has referred to its essential applicability, condemning situations in which the right to nationality is violated as a result of the government's action against its political adversaries.⁴¹⁰

286. Likewise the IACHR considers that in with regard to the right to residence and transmit, its exercise can in no way deprive a person from his or her nationality and that this sanction, if imposed for that reason, would be illegitimate; so that in this case, the loss of nationality could not be alleged by any government to prevent a person from returning, in any capacity, to his country of origin.⁴¹¹

287. The Commission observes that in Cuba the right of residence and movement is not covered by the constitution, which is a shortcoming that the commission regrets⁴¹². Moreover, the IACHR notes that Article 216(1) of the Criminal Code of Cuba establishes that those who leave the national territory or engage in acts aimed at leaving the national territory without complying with the legal formalities is subject to a sanction of deprivation of liberty of one to three years or a fine of 1,000 quotas.⁴¹³

288. The IACHR observes that Law No. 989 of December 5, 1961, mandated the nationalization by confiscation in favor of the Cuban State of all the assets, rights, shares, and securities of persons who definitively leave Cuban territory. In addition, by joint resolution of August 22, 1995⁴¹⁴ it was ordered that in those cases in which the dwelling has occupants with a right to it, the inventory shall be taken with the property of the emigrant, mindful of the sworn statement and those assets that have patrimonial value for the State. Accordingly, movable property, equipment, home appliances, objects, and domestic and personal items that have no patrimonial value shall be offered without any payment to the occupant or occupants recognized to have the

⁴⁰⁸ Article VIII of the American Declaration of the Rights and Duties of Man.

⁴⁰⁹ IACHR. *Ten Years of Activities 1971-1981*, Secretariat General of the Organization of American States, Washington, D.C., 1982, page 327.

⁴¹⁰ IACHR. *Ten Years of Activities 1971-1981*, Secretariat General of the Organization of American States, Washington, D.C., 1982, page 330.

⁴¹¹ IACHR, *Annual Report 1983*, Chapter V, Right of Residence and Movement.

⁴¹² IACHR, *Annual Report 1983*, Chapter V, Right of Residence and Movement.

⁴¹³ Article 216 of the Criminal Code of Cuba, Chapter XI, Second Section. Subsection 2 of the same article notes: "If 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."

⁴¹⁴ Joint Resolution INV-MININT-MINJUS of August 22, 1995 "On the execution of investigative steps to implement Law 989 of December 5, 1961".

right to acquire property rights to the real property. The provision also notes 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 will be offered the option to buy them, for the value of the emigrant's share, with a 75% discount on their value. In addition, if the inventory includes assets with patrimonial value and the non-emigrating spouse proves that they were acquired during the marriage, he or she will be offered the option to buy for the value of the emigrant's share without any discount.⁴¹⁵

289. Likewise, the citizens of Cuba require an official permit to leave and enter the country. With regard to entries into the country, citizens must have taken out their passport. This means having a permit to return to Cuba, which, subject to authorization by the migratory authorities, enables the passport holder to travel to the country while his or her passport is in force. As of June 1, 2004, citizens residing permanently abroad who are classified as emigrés, may travel to Cuba with a valid Cuban passport, without the need for an entry permit. However, to validate the passport, a request must be made expressly to the consular office. The IACHR was informed that there is no specific term for granting the authorization, which results in long waits to obtain a validation Cuban citizens who left their country prior to January 1, 1971 and wish to travel to the country on the passport of the country they live, in must request a permit to enter Cuba.

290. According to the migration law, a Cuban passport is valid for two more years, renewable for two more years, twice running⁴¹⁶. The Commission noted that the fee charged when applying for a passport, given the average income in Cuba, is fairly high, approximately US\$ 50, plus the departure payment, which comes to US\$ 150, plus additional costs depending on the reason for the departure⁴¹⁷ and for those Cubans who wish to process their passport abroad, the figures range from US\$ 230 to US\$ 350.

291. Further, anyone who, having held Cuban citizenship, requests to enter the country as a holder of a foreign passport, when applying for an entry visa, must provide documentary proof from a competent authority that his or her that his or her Cuban citizenship has been lost. Without that requisite, the visa to enter Cuba as a foreigner will not be issued. According to the information received, in practice it is very difficult to obtain documentary proof of the loss of Cuban citizenship which means that in practice these people cannot enter the country.

292. According to the migratory police, only women over 60, men over 65 and minors under 16 years of age, who want to and qualify to return Cuba permanently, may apply for permission to do so,⁴¹⁸ which severely restricts the possibility of citizens of other ages returning to the country.

293. As regards international migration, the IACHR received information indicating that the government has been taking more drastic measures against the movement of citizens within Cuba, through more forceful application of Decree 217 of April 22, 1997, which regulates internal migration to Havana.⁴¹⁹ According to the Decree, people from other territories who wish to live in

⁴¹⁵ Resolution No. 328, 1998 Regulation on confiscation of assets. National Housing Institute, Circular No. 2/98.

⁴¹⁶ Decree No. 26 dated July 31, 1976, Article 23.

⁴¹⁷ If the motive of the trip is visa lottery, family reunification, or marriage to a foreigner, one must pay US\$ 400 for a medical exam; if the motive is a visit, one must pay US\$ 150 for a letter of invitation; if the motive of the trip is marriage to a Cuban resident abroad, one must pay US\$ 550 for legalization of the marriage. Figures provided by Juan Antonio Blanco, in a public hearing before the IACHR, 137th regular period of sessions, November 6, 2009. Source Cuba Net.

⁴¹⁸ Ministry of Foreign Affairs of the Cuban Interests Section in Washington, Definitive Return Permit(PE-4)

⁴¹⁹ Decree 217 of April 22, 1997, Internal Migratory Regulations for Havana and contraventions thereof. This situation was also documented by the Human Rights Watch organization, <http://www.hrw.org/en/world-report/2009/cuba>.

Havana must apply to the President of the Council of Municipal Administration of the place they currently live, who will decide whether or not the applicant meets the requisites. Article 8 of the decree provides that anyone who infringes the internal migratory regulations, who or who resides or lives permanently in Havana without having the right to do so, is liable to a fine of 300 pesos and must return immediately to his or place of origin⁴²⁰.

294. 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. On this topic, at the hearing held during the 137th period of sessions, the persons requesting the hearing told the IACHR:

The problem in terms of discrimination is that the people from the eastern provinces are poorer and their social situation is worse than in the west, and most of that population is Afrodescendant. All this migration to other countries generates tension between the population that is doing better, generally white population living in urban areas of the western provinces, and those who are from the poorest provinces, mostly rural, the majority of whom are Afrodescendants. And then this situation is stirring up old prejudices and discrimination connected to Cuba's current reality. One of the mistakes of these 50 years was thinking that one could abolish discrimination by decree alone, it's a deep-rooted cultural phenomenon that was never addressed, and therefore it is returning strongly in many ways, this being one manifestation, connected with all the internal social problems.⁴²¹

In the internal figures..., these are figures from the national statistics office of the Cuban government ... which I take as valid.... If you see in the figure for the western provinces for internal migration shows an increase in those provinces and you see how in the eastern provinces, which Mr. Blanco mentioned, where the population is mostly of Afro-Cuban origin, it is much less, in other words there's an exodus of this population to the capital, and hence implementation of the regulation, I think it is 277 or 107, on that control of movement with a backdrop of racial discrimination. Moreover, in Havana one identifies these immigrants who come from the interior pejoratively, they call them "the Palestinians," that is, when you hear a Cuban talking and he say's "that's a Palestinian" it's someone from the eastern provinces, almost always Black, who has moved to Havana. And why do they come to Havana? Because there are more possibilities and really the treatment they've been given ... nowadays 50 years after the revolution, marginal neighborhoods are cropping up in the city of Havana.⁴²²

295. The decree contains a special provision for reducing to the absolute minimum the temporary or definitive stay in Havana, of people from other parts of the world in relation to activities or tasks connected with other bodies and their dependencies and other subordinated entities. The Ministry of Labor and Social Security and the Ministry of Education will exercise control over the provisions of the decree when a worker in the first case and a student in the second, travels from other parts of the country to Havana.

⁴²⁰ Anyone from another part of the country who is domiciled, resides or lives permanently in Havana, without being registered at the corresponding identity card office, must pay 200 pesos and return immediately to his or her place of origin. Anyone who still lives in Havana after expiry of the term set for registration or the permission from the corresponding Identity Card, authorizing him or her to reside temporarily, shall pay 200 pesos and is required to return immediately to the place of origin.

⁴²¹ Statement by Juan Antonio Blanco Gil, Hearing held before the IACHR, "Right to freedom of movement in Cuba," November 6, 2009.

⁴²² Statement by Siro del Castillo, Hearing held before the IACHR, "Right to freedom of movement in Cuba", November 6, 2009.

296. The Ministry of the Interior and the Council of the Provincial Administration of Havana, as well as the other bodies of the State's Central Administration, are authorized, within the framework of their respective legal attributions, to issue any complementary provisions they consider necessary for the enforcement of the Decree.

5. Restrictions to the Freedom of Expression

297. The situation of freedom of expression in Cuba in 2009 has changed very little in recent years, and is the reason why the Commission has systematically pointed out that Cuba is the only country in the Americas where it can be systematically affirmed that there is no freedom of expression.

298. The following paragraphs indicate some of the problems that occur in Cuba in the exercise of the right to freedom of expression.

a. Detentions

299. As in previous annual reports, the Commission reiterates its concern over the fact that in Cuba there continue to be more than 20 political prisoners⁴²³, most of them detained after the incident known as "Black Spring," which occurred in March 2003, when the government jailed 75 political dissidents. Some of the journalists detained are in poor health due to the conditions in which they are held. According to information received by the Commission, Cuba is the country of the Americas with the largest number of journalists detained, due to the failure to observe the right to freedom of expression.⁴²⁴

300. According to the information received, on March 1, 2009, Roberto de Jesús Pérez Guerra, director of independent press agency *Hablemos Press*, was arrested by security agents when leaving his home. The journalist spent four days in preventive detention, during which time he was interrogated to find out whether he was connected with the appearance of anti-Castro posters in the Old Havana district of Havana⁴²⁵.

301. The IACHR expressed its concern about the three-year prison sentence ordered for Alberto Santiago Du Bouchet, a reporter for the Habana Press news agency, after a summary trial as indicated above, held on May 12, 2009 in Cuba. According to information received, Du Bouchet, who covered social issues for his news agency, was detained on April 18, 2009 in Artemisa, when

⁴²³ Committee to Protect Journalists. 30 April 2009. "10 Worst Countries to be a Blogger". Available at: <http://www.cpj.org/reports/2009/04/10-worst-countries-to-be-a-blogger.php>. Inter-American Press Association. Midyear Meeting March 13-16, 2009, Asuncion, Paraguay. Available at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=22&inford=346&idioma=us. Reporters Without Borders, February 24, 2009. *After a year of Raúl Castro as president, political opening still ignores imprisoned journalists*, available at: http://www.rsf.org/spip.php?page=article&id_article=30382. Reporters Without Borders. February 3, 2009. *As UN conducts universal periodic review, 205 political prisoners, including 23 journalists, await release*. Available at: <http://www.rsf.org/As-UN-conducts-universal-periodic.html>.

⁴²⁴ Reporters Without Borders. October 6, 2009. "2009: 168 periodistas encarcelados". Available at: http://www.rsf.org/es-barometre92-Periodistas_encarcelados.html. Committee for the Protection of Journalists. September 10, 2009. *Special Report: Chronically Cuba, bloggers offer fresh hope*. Available At: <http://cpj.org/reports/2009/09/cuban-bloggers-offer-fresh-hope.php>.

⁴²⁵ Committee for the Protection of Journalists. March 4, 2009. *CUBA: Independent journalist in custody without charges in Havana*. Committee for the Protection of Journalists. March 6, 2006. *Independent Cuban journalist details four-day detention*. Visit: <http://cpj.org/es/2009/03/cuba-periodista-independiente-detenido-sin-cargos.php>. Cuba Repression Blog. March 2, 2009. *Roberto de Jesús Guerra Pérez detained*. Visit: <http://cubarepresion.blogspot.com/2009/03/detenido-roberto-de-jesus-guerra-perez.html>.

visiting relatives. According to information published by NGO's, the police alleged that the reporter was shouting anti-government slogans in the street. On May 12, 2009, in a summary trial in which the journalist was not allowed to be represented by a lawyer, Du Bouchet was sentenced to three years in prison on charges of "disrespect" and distributing "enemy propaganda." The journalist has spent one year in prison for "disrespect for authority" after a summary trial and sentencing in August 2005⁴²⁶.

302. Information was also received that graphic reporter, María Nélica López Báez, from the Hablemos Press Information Center, was arrested on June 16, 2009 by members of the Political Police. Three days later, according to this information, she was freed. The photographer declared that while under arrest she was interrogated several times as to whether she had any connections with adversaries of the regime. The journalist had already been detained on May 1, 2009, accused of having information about the people who had hung banners, according to the information received⁴²⁷.

303. The Inter-American Commission noted that journalist Pablo Pacheco Ávila, detained since 2003 and sentenced 20 years in prison, was granted a 24-hour permit. According to information received, Pacheco Ávila was able to be reunited with her family and friends during this time. The information added that the permit was granted for good conduct⁴²⁸.

304. However, as in previous annual reports, the Commission reiterates its concern about the fact that there are still over 20 journalists in prison in Cuba⁴²⁹, the majority of them arrested after the incident known as "Black Spring," in March 2003, when the government sent 75 political dissidents to jail.

⁴²⁶ Committee for the Protection of Journalists. May 14, 2009. *Cuba: Independent journalist sentenced to three years in prison*. Visit: <http://www.cpj.org/es/2009/05/cuba-periodista-independiente-sentenciado-a-tres-a.php>. Inter-American Press Association (SIP-IAPA). May 15, 2009. *SIP-IAPA condemns sentencing of independent journalists in Cuba*. Visit: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4187&idioma=sp. Writers in Prison Committee, International PEN. May 19, 2009. *Cuba: Independent journalist gets three-year prison sentence*. Alert received at the P.O. Box of the Office of the Special Rapporteur for Freedom of Expression. Cubaencuentro. May 15, 2009. *Journalist Alberto Santiago Du Bouchet sentenced to three years in jail*. Visit: <http://www.cubaencuentro.com/es/cuba/noticias/condenado-a-tres-anos-de-carcel-el-periodista-alberto-santiago-du-bouchet-178717>

⁴²⁷ Reporters Without Borders. June 17, 2009. *Dissident photographer, detained incommunicado, in danger of being sentenced for "pre-crime social dangerous."* Visit: <http://www.rsf.org/Una-fotografa-disidente-detenido.html>. Cuba Net. June 17, 2009. *Graphic reporter from CIHPRESS detained by the Security of State*. http://www.cubanet.org/CNews/y09/junio09/17_N_1.html Miscellaneous Cuba. June 17, 2009. Press release by the Centro de Información Hablemos Press (CIHPRESS) independent news collective: Nélica López Báez arrested. Visit: <http://www.miscelaneasdecuba.net/web/article.asp?artID=21228>. Miscellaneous Cuba. June 19, 2009. *Graphic reporter María Nélica López Báez freed after lengthy interrogations in Villa Marista, Security of State headquarters*. Visit: <http://www.miscelaneasdecuba.net/web/print.asp?artID=21294>.

⁴²⁸ Committee for the Protection of Journalists. March 23, 2009. *Imprisoned Cuban journalist is granted 24 hours at home*. Visit: <http://cpj.org/es/2009/03/imprisoned-cuban-journalist-is-granted-24-hours-at.php> Baracutey Cubano (Blog). March 27, 2009. *Pablo Pacheco Ávila given 24-hour permit*. Visit: <http://baracuteycubano.blogspot.com/2009/03/recibe-permiso-de-24-horas-pablo.html>. Asociación Pro Libertad de Prensa (Blog). March 26, 2009. *24 hours, Pablo Pacheco Ávila*. Available at: <http://prolibertadprensa.blogspot.com/2009/03/24-horas-pablo-pacheco-avila.html>.

⁴²⁹ Committee for the Protection of Journalists. April 30, 2009. *Ten worst countries to be a blogger*. Visit: <http://cpj.org/es/2009/04/los-10-peores-paises-para-ser-blogger.php>. Inter-American Press Association (SIP-IAPA). *Cuba Report.. Semi-annual Meeting, Asuncion, Paraguay*. Visit: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&inforid=346&idioma=sp. Reporters Without Borders. February 24, 2009. *After a year of Raúl Castro as president: political opening still ignores imprisoned journalists*. Visit: http://www.rsf.org/article.php3?id_article=30381. Reporters Without Borders. February 3, 2009. United Nations Universal periodic review: 205 political prisoners, including 23 journalists, await release. Visit: http://www.rsf.org/article.php3?id_article=30186.

305. Article 13 of the American Convention provides that: "Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of international borders, either orally, in writing, in print, in the form of art, or through any medium of one's choice."

306. To that effect, the IACHR recalls the fact that Principle 9 of the Declaration of Principles on Freedom of Expression states that intimidation and threats, among other things, violate the fundamental rights of individuals and "strongly restrict freedom of expression." The IACHR understands that detention and the subsequent restrictions and intimidations to which reporters were subjected are clear forms of restricting journalistic work and, hence, the exercise of freedom of expression.

b. Restrictions to the use of the Internet

307. The restrictions to freedom of access to information continue to give the Commission cause for concern. These restrictions partly affect the ability to obtain information from different and continuous sources on the subject of freedom of expression, and they hamper efforts to record both violations of this right, and any progress that may have been made in guaranteeing its exercise.

308. According to the information received, among other things, these restrictions make it hard for Cubans to have Internet access. According to non-governmental organizations, Cuba continues to be one of the countries where Internet access is difficult for the general population. According to the Committee for the Protection of Journalists (CPJ), "judging only from government figures, Cuba is the country with the lowest rate of Internet access in the Americas"⁴³⁰. According to official reports from the National Office of Statistics, 13% of the Cuban population has Internet access, but independent journalist sustain that the information is exaggerated and really the figure is lower⁴³¹.

309. According to the information received, there are public connections available at government-controlled cybercafés and at hotels, but the cards or passes for using these Internet connections are expensive and can be hard to find⁴³². Bloggers⁴³³ use these public connections or those of foreign institutions, for instance, to publish their blogs. However, according to information received, access to blogs that contain critical or dissident information is usually blocked on the island⁴³⁴.

⁴³⁰ Committee for the Protection of Journalists. September 10, 2009, "Special report: With chronicles on Cuba, bloggers offer a new hope" Visit: <http://cpj.org/reports/2009/09/cuban-bloggers-offer-fresh-hope.php>.

⁴³¹ Committee for the Protection of Journalists. September 10, 2009, "Special report: With chronicles on Cuba, bloggers offer a new hope" Visit: <http://cpj.org/reports/2009/09/cuban-bloggers-offer-fresh-hope.php>.

⁴³² Committee for the Protection of Journalists. April 30, 2009. *Ten worst countries to be a blogger*. Visit: <http://www.cpj.org/reports/2009/04/10-worst-countries-to-be-a-blogger.php>. Inter-American Press Association (SIP-IAPA). *Cuba Report. Semi-annual Meeting, Asuncion, Paraguay*. Visit: http://www.sipiapa.org/v4/index.php?page=det_informe&asamblea=22&inford=346&idioma=sp. Reporters Without Borders. February 24, 2009. *After a year of Raúl Castro as president: political opening still ignores imprisoned journalists*. Visit: http://www.rsf.org/article.php3?id_article=30381

⁴³³ Bloggers are people who periodically publish or update written information, photographs, music or film on an individual or collective website.

⁴³⁴ Committee for the Protection of Journalists. April 30, 2009. *Ten worst countries to be a blogger*. Visit: <http://www.cpj.org/reports/2009/04/10-worst-countries-to-be-a-blogger.php>. Reporters Without Borders. May 20, 2009. CUBA: "Anyone can browse the Internet...unless they are Cuban." Visit: http://www.rsf.org/article.php3?id_article=31383.

310. Despite the legal and technical obstacles in Cuba that prevent people from connecting to the Internet, the number of Cuban bloggers is growing although it continues to be highly scarce. According to information received from independent organizations that have studied the subject, there are now around 25 independent and journalistic blogs in Cuba that are produced by Cuban citizens, plus another 75 independent blogs that focus on news and information of a more personal or a family nature⁴³⁵. They also revealed that the sites of independent bloggers are frequently blocked by Cuban government officials. Additionally there are around 200 blogs that function with the permission of the Havana government and are produced by journalists who work for the Cuban regime, according to the website of the government-controlled Union of Cuban Journalists⁴³⁶.

311. Resolution 179/2008, signed in October 2008, established rules for providers of Internet access services to the public, which are offered in the Internet areas. These are located in hotels, post offices and other entities around the country and offer browsing and national and international e-mail services to individuals⁴³⁷. The IACHR noted in particular that one of the provisions stipulates that providers have the following obligation: "Prevent access to sites where the content is contrary to social interests, morals or good custom, as well as the use of applications that affect the integrity or security of the State." Another point in that provision states that: "Providers must comply with the provisions issued by the country's Defense Bodies in exceptional situations, and take immediate action to ensure the guarantee the defense and security of the State." Article 21 of the Resolution 179/2008 states that the sanction applicable to providers who fail to comply with the rules is suspension or permanent cancellation of the operating licenses, or suspension or permanent cancellation of the services and contracts signed with the Provider of Public Internet Access and Data Transmission Services⁴³⁸.

312. Resolution 55/2009, in force since June 2009, established the same rules for what are known as Public Service Providers of Accommodation, Hosting and Applications⁴³⁹. According to this resolution, the rules apply to Cuban companies that have received a license to operate as Public Internet Access Service Providers, including those that rent space so that a client can set up his or her own computer; companies that provide a site hosting service, applications and information; and companies that provide third party applications services.

313. The IACHR pointed out that the Internet "is a mechanism capable of strengthening the democratic system, contributing towards the economic development of the countries of the region, and strengthening the full exercise of freedom of expression. Internet is an unprecedented

⁴³⁵ Committee for the Protection of Journalists. September 10, 2009, "Special report: With chronicles on Cuba, bloggers offer a new hope" Visit: <http://cpj.org/reports/2009/09/cuban-bloggers-offer-fresh-hope.php>. Reporters Without Borders. September 18, 2009. Authorities block websites, detained 26th journalist. Visit: : <http://www.rsf.org/Bloqueo-de-sitios-y.html>.

⁴³⁶ *Unión de Periodistas de Cuba*. October 6, 2009. "Bloggers Cuba Directory." Visit: http://www.cubaperiodistas.cu/blogueros/directorio_blogs.html#D

⁴³⁷ Ministry of Information and Communications. Resolution 179/2008. Visit: Resolution 55/2009. <http://www.mic.gov.cu/legislacion/R%20179-%202008%20Reglam%20Proveedores%20Serv%20Acceso%20Internet%20al%20Publico.pdf>

⁴³⁸ Article 21 of Resolution 179/2008 states: "Any provider who fails to comply with the provisions of these Rules and the legal provisions applicable, shall be subject to the following measures: a) Suspension or permanent cancellation of the operating licenses granted by the Agency for Control and Supervision of the Ministry of Information and Communications; b) Temporary or permanent suspension or cancellation of the services and contracts signed with the Provider of Public Internet Access and Data Transmission Services, subject to recognition and authorization by the Ministry of Information and Communications."

⁴³⁹ Ministry of Information and Communications. Resolution 55/2009. <http://www.mic.gov.cu/legislacion/R%2055-09%20Proveedores%20Serv%20Publicos%20Aloj%20Hosped%20y%20Aplic.pdf>.

technology in the history of communications that facilitates rapid transmission and access to a multiple and varied universal data network, maximizes the active participation of citizens through Internet use, contributes to the full political social, cultural and economic development of nations, thereby strengthening democratic society. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideals and a very important instrument for activating human rights organizations, since its speed and amplitude allow it to send and receive information immediately, which affects the fundamental rights of individuals in different parts of the world"⁴⁴⁰.

314. Further, information was received which indicates that the government of Cuba refused permission for Cuban blogger Yoani Sánchez to travel to New York to receive the "María Moors Cabot 2009" prize from Columbia University on October 13, 2009. According to the information received, this is the fourth time the Cuban government has refused to allow Sánchez to travel outside Cuba⁴⁴¹.

315. The Commission wishes to stress Principle 4 of the Declaration of Principles on Freedom of Expression, which provides that "access to information held by the State is a fundamental right of every individual. All States have the obligation to guarantee the full exercise of this right."

316. The Commission also pointed out that Principle 5 of the Declaration of Principles on Freedom of Expression provides that: "Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. 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."

c. Aggression and threats

317. The IACHR also received information according to which some journalists who do not support the Cuban government have been threatened and beaten by the State security forces.

318. Journalist Álvaro Yero Felipe, was reportedly beaten by members of the public security forces on April 5, 2009. According to the information received, Yero Felipe was intercepted by political police agents when he was on his way to a meeting in support of political prisoners. The information indicates that the journalist was taken to somewhere in the vicinity of Parque Lenin where he was beaten. The beating caused bruising to his face, mouth injuries and fractured his nose⁴⁴².

⁴⁴⁰ IACHR, *Annual Report 1999*; Annual Report of the Special Rapporteur for Freedom of Expression 1999; Chapter II. Evaluation of the State of Freedom of Expression in the Hemisphere; D. The Internet and Freedom of Expression.

⁴⁴¹ Inter-American Press Association (SIP-IAPA). October 14, 2009. *SIP/IAPA criticizes Cuban government for refusing to allow award-winning blogger to travel abroad..* Visit: http://www.sipiapa.org/v4/index.php?page=cont_comunicados&seccion=detalles&id=4187&idioma=sp. Reporters Without Borders. October 15. *Darsi Ferrer starts hunger strike after 80 days in "preventive detention" as clampdown continues.* Available at:

<http://www.rsf.org/Darsi-Ferrer-empieza-una-huelga-de.html>.

AFP news agency. October 14, 2009. *Blogger Yoani Sánchez says Cuba refused her permission to travel to the United States.* Visit: <http://www.google.com/hostednews/afp/article/ALeqM5gA6cDLjanYMK2o3hS9oWlpCaa9vg>.

⁴⁴² Journalists in Spanish. April 7, 2009. *Cuban journalist Álvaro Yero Felipe beaten by State security forces .* http://www.p-es.org/index.php?option=com_content&task=view&id=2931&Itemid=62. Reporters Without Borders. April 7, 2009. *Cuba: State security forces beat young dissident journalist.*

319. The IACHR received information according to which bloggers Luis Felipe González Rojas and Yosvani Anzardo Hernández, from the Province of Holguín, were severely beaten by the State security forces during a raid on September 10, during which their personal computers and cell phones were confiscated. While González Rojas was freed 4 hours later, Anzardo Hernández remained in custody for 14 days⁴⁴³.

320. The Commission also received information according to which Yoani Sánchez and other bloggers were detained and beaten in Havana by plainclothes members of the security forces on November 6, 2009, as they were on their way to participate in a protest against the violence. According to the information, Sánchez and the bloggers were intercepted by three members of the State Security forces, who had forced them to get into two cars, where – for 20 minutes – they mistreated them “physically and verbally” according to Sánchez herself on her blog, *Generación Y*.⁴⁴⁴

321. The Commission points out that Principle 9 of the Declaration of Principles on Freedom of Expression states that intimidation and threats, among other things, violate the fundamental rights of individuals and “strongly restrict freedom of expression.” The Office of the Special Rapporteur understands that detention and the subsequent restrictions and intimidations to which reporters were subjected are clearly ways of restricting journalistic work and, hence, the exercise of freedom of expression.

322. Celebrity journalist and radio show host Javier Ceriani, of Argentine nationality, reported that he was violently removed from the Peace without Borders concert given by Colombian singer Juanes on September 20 in Havana by agents from Cuba’s state security forces, shortly after unfolding a banner with the word “Freedom.” Ceriani reported that he was taken to a room in the Hotel Vedado by agents who forced him remain there for several hours in isolation until the concert was over⁴⁴⁵.

323. The IACHR also pointed out that Principle 9 of the Declaration of Principles on Freedom of Expression provides that: “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.”

324. The IACHR also pointed out that Principle 1 of the Declaration of Principles on Freedom of Expression states that: “Freedom of expression in all its forms and manifestations is a

⁴⁴³ Reporters Without Borders. September 25, 2009. *Director of digital newspaper Candonga released after 14 days in detention*. Visit: <http://www.rsf.org/Bloqueo-de-sitios-y.html>. *Trinchera Cubana*. April 6, 2009. *Independent journalist beaten*. Visit: <http://www.trincheracubana.net/editoriales2.php?id=29>.

⁴⁴⁴ Blog *Generación Y*. November 8, 2009. *Secuestro estilo camorra*. Available at: <http://www.desdecuba.com/generaciony/?p=2468>. Human Rights Watch. November 7, 2009. *Cuba: Secuestran y golpean a destacada autora de un blog*. Available at: <http://www.hrw.org/es/news/2009/11/07/cuba-secuestran-y-golpean-destacada-autora-de-un-blog>. El País de Madrid. November 7, 2009. *Yoani Sánchez denuncia un "secuestro siciliano" de la policía para impedirle participar en una manifestación crítica*. Available at: http://www.elpais.com/articulo/sociedad/Yoani/Sanchez/denuncia/secuestro/siciliano/policia/impedirle/participar/manifestacion/critica/elpepusoc/20091107elpepusoc_1/Tes.

⁴⁴⁵ *El Nuevo Herald*. September 25, 2009. *Ceriani gives his version of the incident in Havana*, Visit: <http://www.miamiherald.com/1321/story/1250726.html>. Radio Martí. September 22, 2009. *Foreign journalist who attended the Peace without Borders concert held in Cuba*. Visit: <http://www.martinoticias.com/FullStory.aspx?ID=F5984769-485A-4DA6-B94A1E4F11502A0C>.

fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.”

325. While Principle 2 states 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. ”

6. Human Rights Defenders

326. The IACHR has continued to receive information about some acts of harassment against women who belong to the “Ladies in White” collective⁴⁴⁶. According to information received, State Security agents tried to prevent several members of the collective from taking part in an event held on March 8, 2009 in Havana on the occasion of International Women’s Day. During the events, Maritza Castro, Ivonne Mayesa Galano and Neris Castillo were arrested, while other representatives were prevented from leaving their homes to attend the event⁴⁴⁷.

327. According to reports, on February 19, 2009, Maritza Castro and Ivonne Mayesa Galano were arrested at Calzada de Buenos Aires in San Julio y Durege, in the Cerro municipality of Havana⁴⁴⁸. From there they were taken to the Fourth Police nit of the Cerro municipality where they were interrogated for more than three hours. According to the information received, the interrogation was based on the fact that they belonged to a group that accompanied Noelia Peraza Jiménez on February 18, 2009, opposite the “Carlos J. Finlay” Military Hospital, to express solidarity for her husband, prisoner of conscience, Sigler Amaya⁴⁴⁹, who is still in that hospital. The “Ladies in White” also demanded to be given the diagnosis on the activist. On that same day, Maritza Castro and Ivonne Mayesa were forcibly put on a bus and beaten and pushed by agents, who then took them to their homes⁴⁵⁰.

328. According to information received, on February 10, 2009, Adriana Montoya Aguilar, also a member of “Ladies in White,” was visited at her home by an agent of the State Security Department, who forbade her from going to the Church of Santa Rita de Casia, one of the places where this collective often meets⁴⁵¹.

329. The IACHR expresses its concern over the difficult situation faced in Cuba which hampers the ability to report to the international community on the situation of human rights in the

⁴⁴⁶ The organization arose in 2003 in response to various imprisonments of the husbands of these women because of their political dissidence during what is known as “Black Spring.”

⁴⁴⁷ World Organisation against Torture (OMCT). Maritza Castro, Ivonne Mayesa Galano, Neris Castillo and Ariana Montoya Aguilar, March 10, 2009.

⁴⁴⁸ World Organisation against Torture (OMCT). Maritza Castro, Ivonne Mayesa Galano, Neris Castillo and Ariana Montoya Aguilar, March 10, 2009.

⁴⁴⁹ It is important to point out that on July 10, 2009, the Inter-American Commission granted precautionary measures to safeguard the life, personal integrity and health of Ariel Sigler Amaya (one of the victims of case 12.476), whose health deteriorated gradually as a result of his detention conditions and lack of medical care.

⁴⁵⁰ World Organisation against Torture (OMCT).

Maritza Castro, Ivonne Mayesa Galano, Neris Castillo and Ariana Montoya Aguilar, March 10, 2009.

⁴⁵¹ World Organisation against Torture (OMCT). Maritza Castro, Ivonne Mayesa Galano, Neris Castillo and Ariana Montoya Aguilar, March 10, 2009.

country, due among other things, to possible reprisals. Additionally, the IACHR is finding it hard to send communications to Cuban residents due to information denouncing harassment against citizens by government authorities for receiving communications from this body.

330. Therefore the IACHR reiterates the need to take the steps necessary to ensure that State entities are not used for the purpose of harassing people who devote their efforts to defending and promoting human rights, especially those included in the "Report on the situation of human rights defenders in the Americas."

7. Trade Union Freedom

331. According to the American Declaration, everyone has the right to work,⁴⁵² to peaceful assembly⁴⁵³ and to associate with others to promote, exercise and protect their legitimate interests⁴⁵⁴. As regards freedom of association, the Commission reiterates its concern over the existence of a single, officially recognized, trade union center mentioned in Cuba's legislation, which has been cause for the ongoing attention of the International Labour Organization. The Commission agrees with the view of the International Labour Organizations whereby trade union pluralism must be possible in all cases, and the law must not institutionalize a *de facto* monopoly by referring to a specific trade union organization⁴⁵⁵. The Commission wishes to point out that one of the guiding principles of the Constitution of the International Labour Organization, of which Cuba is a signatory, includes the "recognition of the principle of trade union freedom" as an essential condition for the "peace and harmony of the world."

332. According to the information received by the IACHR, trade union workers and leaders in Cuba have been subject to temporary detentions, interrogations and threats. By way of an example, the Commission was informed of the detention of four trade unionists affiliated to the Independent National Workers Confederation of Cuba (CONIC), among them its Secretary General, María Elena Mir Marrero. María Elena Mir Marrero, Justo J. Sánchez, Hanoi Oliva and Daniel Sabatier were summoned to appear at the Headquarters of the National Revolutionary Police on August 4, 2009, in Guanabo, Municipio Habana del Este⁴⁵⁶. Upon their arrival at the police headquarters, they were subjected to a harsh interrogation and threatened with prosecution for their present and planned activities, referring to the walk and the throwing of flowers into the sea, which took place on July 13, in memory of the victims of the "13 de Marzo" tugboat incident and the interviews they had given for the documentary "Under Cuban skies: Workers and Their Rights," which premiered at the nineteenth Conference of the Association for the Study of the Cuban Economy (ASCE)⁴⁵⁷ last July 30. They were also threatened with beatings if they attended a street protest on August 4 when the 15th anniversary of the "Maleconazo" is commemorated⁴⁵⁸.

⁴⁵² American Declaration, Article XIV.

⁴⁵³ *Id.*, Article XXI.

⁴⁵⁴ *Id.*, Article XXII.

⁴⁵⁵ International Labour Conference, 97 Meeting 2008. Report of the Commission of Experts on application of Agreements and Recommendations. General Report and observations on some countries. Cuba: pages 114-117. <http://www.ilo.org/ilolex/gbs/ceacr2008.htm>.

⁴⁵⁶ *Libertad Sindical*, a blog by Pedro Pablo Alvarez, <http://www.libertadsindical.com/sindicales/continua-represion-contra-sindicalismo-independiente-en-cuba/>; International Report on Corporate Social Responsibility in Cuba, Annual Report on Labor Violations committed by the Cuban Government, July 2009.

⁴⁵⁷ Hearing before the IACHR, "Situation of independent trade union leaders in Cuba," held November 6, 2009, during the 137th regular period of sessions of the IACHR. Cited above. Recorded testimony of María Elena Mir Marrero.

⁴⁵⁸ *Libertad Sindical*, a blog by Pedro Pablo Alvarez, <http://www.libertadsindical.com/sindicales/continua-represion-contra-sindicalismo-independiente-en-cuba/>; International Report on Corporate Social Responsibility in Cuba, Annual Report on Labor Violations committed by the Cuban Government, July 2009.

333. According to the information, the agents and another group of police officers, took the fingerprints from the ten fingers of their hand and a print of their palms, scraped their nails, took photos from the front and the side, and as a form of psychological pressure and humiliation, they placed a rag inside their underpants, against their private parts, which they had to keep there for more than 30 minutes, after which it was put in a jar which was then closed with a lid⁴⁵⁹. When they asked about this last procedure, they were told that it was in order to assemble a “smell bank.”

334. During the interrogation process, the repressive agents of the regime warned them that they would not be allowed to allow them to carry out any more activities liable to jeopardize the work of the Cuban Workers Organization (Spanish acronym CTC) and accused them of attempting to discredit the organization by playing the games and following the instructions they received from Miami, and from the International Group for Social Corporate Responsibility in Cuba (Spanish acronym GIRSCC) specifically. They were told that the same would happen to the other trade unionists who took part in the documentary and activities – such as Carmelo Díaz Fernández, Jorge Olivera Castillo, Víctor Manuel Domínguez and Emilio Jerez⁴⁶⁰.

335. In a hearing before the IACHR held during the 137th period of sessions, Aurelio Bachiller, a member of the Movimiento Sindical Independiente Cubano since 1993 and Secretary General of the Confederación Nacional Obrera Independiente de Cuba reported that after several incidents of harassment, detentions, and repudiation in Cuba since 1993 because of his trade union activity, in 2008 he was expelled from Cuba. In his testimony he indicated that since 2004 every time he has spoken on trade union activism in Cuba his son, Macdiel Bachiller Pedroza, has been the victim of reprisals.

“Every time I talk about trade union freedoms in the name of Cuban workers in any forum in the United States, my son is arrested without any motive on the basis of social dangerousness or other crimes invented by them. At this time I tell you that my son has been prisoner for a few days at the prison of Valle Grande in Havana. He has a visa to emigrate to the United States, for family union and he has a departure permit ... but now he’s in prison.”

336. The International Group for Corporate Social Responsibility in Cuba also indicated that Macdiel Bachiller Pedroza was deprived of liberty on four occasions, accusing him of “social dangerousness” in retaliation for the activities of his father, trade union leader Aurelio Bachiller. The IACHR, by communication of November 13, 2009, granted precautionary measures to Macdiel Bachiller Pedroza, who is detained in Cuba without concrete or formal charges in the courts, nor has he been guaranteed his rights to self-defense and due process.

337. Moreover, in the hearing in question reference was made to the defenseless of workers vis-à-vis the state administration, as a worker fired based on political considerations cannot work anywhere, and if fired due to indiscipline, it will take four years to get a new job, during which time he will not have the means to support his family.

⁴⁵⁹ *Libertad Sindical*, a blog by Pedro Pablo Alvarez, <http://www.libertadsindical.com/sindicales/continua-represion-contra-sindicalismo-independiente-en-cuba>; International Report for Corporate Social Responsibility in Cuba, Annual Report on Labor Violations committed by the Cuban Government, July 2009.

⁴⁶⁰ *Libertad Sindical*, Blog de Pedro Pablo Alvarez, <http://www.libertadsindical.com/sindicales/continua-represion-contra-sindicalismo-independiente-en-cuba>

338. The Commission considers that the acts of harassment against trade unionists who try to defend the right to trade union freedom are contrary to human rights⁴⁶¹.

339. Finally, with regard to structural situations that affect the human rights the IACHR has received a series of reports referring to special discrimination against the Afrodescendant population in Cuba. For example, according to the information received, more than 84% of the victims of police operations against "antisocial elements" in recent years are reportedly Afrodescendants ages 17 to 30 years old. In addition, information has been received regarding discrimination in employment. In this respect, the Commission, especially the Rapporteurship on the Rights of Afrodescendants and against Racial Discrimination has a special interest in receiving information on such situations.

IV. ECONOMIC SANCTIONS

340. In previous reports the IACHR has reported on the economic and trade embargo imposed by the United States of America against Cuba since 1961 and the impact of those economic sanctions on the Cuban people's human rights.

341. The Commission received information that on July 15 of this year, president Barack Obama announced to the US Congress the suspension for a period of six months of Section III of the Cuban Liberty and Democratic Solidarity Act, better known as the Helms-Burton Act of 1996, which was intended to reinforce the embargo against Cuba. The Helms-Burton Act consolidated former laws and decrees that led to the US embargo against Cuba in 1960. The objective of Section III of the Act is to halt foreign investment in Cuba and protect the property of US citizens that was expropriated in Cuba.

342. The IACHR also received information indicating that in mid July the US government resumed talks with Cuba on migratory issues that had been suspended since 2003. At the beginning of September, the Treasury Department eliminated the restrictions on visits and remittances by US citizens to close relatives in Cuba. Visits to relatives are now unlimited and they may spend up to US\$ 159 a day, take a maximum of US\$ 3,000 to give to their relatives and send an unlimited amount of remittances as frequently as they wish⁴⁶². According to the new rules, anyone going to the island may do so in the company of people who share the same dwelling on US soil, even if they are not related by blood to Cuban citizens⁴⁶³. The "relatives" category has also been extended to cover parents, children, siblings, grandparents, uncles and aunts, cousins and second cousins.

343. The IACHR was also informed that the Treasury Department authorized US banks to sign agreements with Cuban financial institutions. US telecommunications companies may extend their contracts to Cubans, and are authorized to export technology to set up telephone and Internet satellite and fiber optic links⁴⁶⁴.

⁴⁶¹ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124/Doc. 5 rev.1/7 March 2006, paragraphs 209 to 214.

⁴⁶² BBC World, News published on September 4, 2009. According to the information received, until these provisions came into force, Cuban-Americans could only visit the island once a year and were only allowed to send US\$ 1,200 a year. Under the government of George W. Bush, a person could only travel to Cuba once every three years and that only if they had parents, children, siblings, grandparents and grandchildren there.

⁴⁶³ BBC World, News published on September 4, 2009.

⁴⁶⁴ BBC World, News published on September 4, 2009.

344. Among the examples of the opening, in July of this year American officials turned off an electronic sign displaying anti-Castro messages on the windows of the US Interests Section, the diplomatic complex of the United States in Havana⁴⁶⁵. In return, Cuban officials lowered dozens of black flags put up to block the view of the sign⁴⁶⁶.

345. Despite these gestures indicating an opening by the US government toward Cuba, on September 15, 2009, the president of the United States decided to extend the trade embargo against Cuba for another year.

346. In that respect, the IACHR reiterates its position on the impact of those economic sanctions on the human rights of the Cuban people, insisting that the embargo must end⁴⁶⁷. Notwithstanding the foregoing, the economic embargo against Cuba does not exempt the State from complying with its international obligations, nor does it excuse it for the violations of the American Declaration described in this report.

V. POSITIVE ASPECTS AND GENERAL PROGRESS

347. The IACHR values the international opening expressed by the government of Cuba since 2008. In addition, it values the ratification of the International Convention for the Protection of all Persons from Enforced Disappearance on February 2, 2009. In addition, while the IACHR celebrated the signing by the Government of Cuba of the international covenants on human rights in 2008, it has yet to ratify them, despite having announced officially that it would do so.⁴⁶⁸

348. The Commission also values the gains made in Cuba in relation to the Millennium Development Goals established by the United Nations. The IACHR places special value on the gains made in relation to maternal health. Accordingly, maternal mortality for 2008 was 46.5 per 100,000 live births⁴⁶⁹, 100% of women had at least one pre-natal consultation, and 100% of births were attended by qualified personnel.⁴⁷⁰

⁴⁶⁵ The New York Times, news published on September 30, 2009. <http://www.nytimes.com/2009/09/30/world/americas/30cuba.html? r = 1&scp = 1&sq = U.S.%20Officials%20meets%20with%20Cuban%20Authorities&st = cse>; Reuters, news published on September 30, 2009.

⁴⁶⁶ The New York Times, news published on September 30, 2009. <http://www.nytimes.com/2009/09/30/world/americas/30cuba.html? r = 1&scp = 1&sq = U.S.%20Officials%20meets%20with%20Cuban%20Authorities&st = cse>; Reuters, news published on September 30, 2009.

⁴⁶⁷ On October 30, 2007 the UN General Assembly approved Resolution A/RES/62/3 on the "the need to end the economic, commercial and financial embargo imposed by the United States against Cuba." Visit www.un.org

⁴⁶⁸ The Council welcomes the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and the invitation of UN Special Rapporteur on Torture and looks forward to the fixing of an early date for a visit by UN Special Rapporteur. The Council calls upon Cuban authorities to ratify and implement the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Council of the European Union. Press Release 10939/09 (Presse 174), 2951st Council meeting, General Affairs and External Relations. Luxembourg, 15 and 16 June 2009.

⁴⁶⁹ Oficina Nacional de Estadísticas, Cuba [National Statistics Office of Cuba, 2009 Edition, http://www.one.cu/aec2008/esp/20080618_tabla_cuadro.htm.

⁴⁷⁰ United Nations Children's Fund (Unicef), The State of the World's Children, 2009, Maternal and Newborn Health.

http://www.unicef.org/spanish/publications/files/SOWC_2009_Main_Report_LoRes_PDF_SP_USLetter_03112009.pdf.

349. The IACHR also appreciates the fact that, according to the United Nations Children's Fund (Unicef), the mortality ratio in under-fives in 2007 was 7⁴⁷¹. With respect to the statistics on education the Commission welcomes the fact that according to the information available the 2000-2007 literacy rate among women was 100%⁴⁷².

350. According to information in the daily newspaper Granma, the official organ of the Central Committee of the Cuban Communist Party, "more than three-and-a-half million persons eat every workday at the 24,700 worker kitchens spread throughout the country, which constitutes a severe expense for the State due to the very high prices on the international market and the infinite number of subsidies and gratuities."⁴⁷³ It adds that "the Government will eliminate, as of October 1, on an experimental basis, the workers' kitchen service at the Ministries of Labor and Social Security, Finance and Prices, Domestic Commerce, and Economy and Planning, and will allocate to each worker 15 pesos daily per day worked, a measure that will begin to be applied in those agencies of the Central Administration of the State; after its validation it will gradually be extended to the whole country."⁴⁷⁴

VI. CONCLUSIONS

351. Bearing in mind the foregoing, the Commission states once again that in Cuba there are structural situations that gravely affect the full observance and enjoyment of human rights.

352. The restrictions on political rights and the absence of free elections; the lack of guarantees of due process of law and of independence of the judiciary; the deprivation of liberty of political dissidents; restrictions on the right to freedom of residence and travel; the restrictions on the freedom of expression; the harassment of human rights defenders and independent trade union leaders, together constitute a permanent situation of violation of fundamental rights of Cuban citizens. The Commission urges the State to carry out the necessary reforms in keeping with its international obligations in respect of human rights.

353. Cuban elections are characterized by the lack of plurality and independence and the absence of a framework of free access to diverse sources of information. The Commission reiterates that the lack of free and fair elections, based on universal suffrage and secret ballot as an expression of popular sovereignty, violates the right to political participation of the Cuban people.

354. The Commission reiterates the need for the State to adopt measures of prevention and protection aimed at addressing the human rights violations that continue to be committed to the detriment of political dissidents. In particular, it observes with concern the practice of torture of political prisoners, and urges that it be eradicated immediately. Likewise, it observes that every arbitrary and/or excessive use of force and any impairment of the right to life and physical integrity committed by state agents must be investigated and sanctioned to ensure it not be repeated.

⁴⁷¹ United Nations Children's Fund (Unicef), The State of the World's Children, 2009, Maternal and Newborn Health.

http://www.unicef.org/spanish/publications/files/SOWC_2009_Main_Report_LoRes_PDF_SP_USLetter_03112009.pdf.

⁴⁷² United Nations Children's Fund (Unicef), The State of the World's Children, 2009, Maternal and Newborn Health.

http://www.unicef.org/spanish/publications/files/SOWC_2009_Main_Report_LoRes_PDF_SP_USLetter_03112009.pdf.

⁴⁷³ See at: <http://www.granma.cubaweb.cu/2009/09/25/nacional/artic03.html>

⁴⁷⁴ See at: <http://www.granma.cubaweb.cu/2009/09/25/nacional/artic03.html>

355. The Commission asks the State of Cuba to bring its procedural provisions into line with the applicable international standards on due process so that those who turn to the courts for a determination of their rights and responsibilities can have minimum legal guarantees to exercise their means of defense. In this respect, the Commission considers extremely serious and condemns the repeated use in Cuba of highly summary proceedings without the observance of due process guarantees, including the minimum and necessary guarantees for the accused to exercise his or her right to mount an adequate legal defense. In addition, in this regard, it urges the derogation of criminal statutes such as the "social dangerousness" law, which is often used by the Government of Cuba as a tool of political persecution.

356. Accordingly, the Commission urges the State of Cuba to adopt whatever legislative and other measures are necessary in order to ensure that the death penalty does not violate the principles of due process and a fair trial before a competent, independent and impartial court, established in accordance with the law.

357. The Commission also reiterates to the State of Cuba its recommendation to order the immediate and unconditional release of the victims of Case 12,476, and to declare the sentences against them null and void because they were based on laws that unlawfully restrict their human rights.

358. The Commission has noted that Cuba is the only country in the Americas where one can categorically state that there is no guarantee for exercising the right to freedom of expression. Cuba is the country in the Americas with the largest number of journalists and writers detained for freely expressly their thoughts and ideas. In view of the foregoing, the Commission urges the Cuban State to ensure the right to freedom of expression and to avoid the harassment, threats, intimidation, and/or imprisonment for those who attempt to exercise that right.

359. The Commission urges the Cuban State to adopt whatever measures it considers necessary to prevent and eradicate the different forms of harassment against those who exercise the right of association for humanitarian and trade union purposes and against those who work in favor of the defense and promotion of human rights.

REASONED VOTE

In line with the position that I have kept in regards to the Republic of Cuba, I have expressed that by virtue of the exclusion of the Republic of Cuba from the Organization of American States, the Commission lacks material and territorial competence. 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 American Declaration of the Rights and Duties of Man. Luz Patricia Mejía Guerrero, IACHR President.

HAITI

I. INTRODUCTION

360. The Inter-American Commission on Human Rights ("the IACHR" or the "Inter-American Commission") had decided to include Haiti in Chapter IV of its 2009 Annual Report, on the basis that the situation in that country during the year covered by this report falls within the framework set forth to identify the member states of the OAS whose human rights practices merit special attention. In the case of Haiti, this framework includes structural situations that seriously affect the enjoyment of fundamental rights enshrined in the American Convention on Human Rights (the "American Convention") or the American Declaration of the Rights and Duties of Man (the

“American Declaration”), and more specifically, grave situations of violence that prevent the proper application of the rule of law; serious institutional crises; processes of institutional change which may have negative consequences for human rights; or grave omissions in the adoption of the provisions necessary for the effective exercise of fundamental rights. The IACHR has based its analysis on information obtained during its visit conducted in May 2009; on hearings held during its 137th regular period of sessions in November 2009; on information received from different sectors of the civil society as well as on other reliable publicly available sources. On November 24, 2009 the IACHR transmitted to the State a copy of a draft of the present section of Chapter IV and requested it to submit its observations within thirty days. At the date of the publication of this report, the IACHR has not received observations from the State.

361. As mentioned, a delegation of the IACHR headed by Sir Clare K. Roberts, in his capacity as IACHR Rapporteur for Haiti, conducted an *in loco* visit from May 25 to 29, 2009.⁴⁷⁵ The IACHR expresses its appreciation to the Government and people of Haiti for the full support provided in the conduct of this visit. The main purpose of the visit, conducted jointly with the United Nations Children’s Fund (UNICEF), was to gather information on citizen security as well as on the situation of human rights and juvenile justice, with a view to the preparation of special reports on these issues. In Port-au-Prince the delegation met with a range of actors including representatives of the Ministry of Foreign Affairs, the Ministry of Social Affairs and Labor, the Institute of Social Welfare and Research (IBESR), the Minors Protection Division of the National Police, the Central Direction of the Judiciary Police, the Penitentiary Administration, and the Office of Citizen Protection. The delegation visited the offices of the United Nations Stabilization Mission in Haiti (MINUSTAH), and met with the Tribunal for Children of Port-au-Prince, as well as with local and international non-governmental organizations involved in citizen security and juvenile justice issues in Haiti. Additionally, the delegation held a conference on the IACHR and the inter-American system of protection of human rights at the State University of Port-au-Prince.

362. The delegation conducted visits to the National Penitentiary, the Delmas 33 Police Station, the Delmas 33 Detention Center for Minors, the Pétion-Ville Women’s Prison, and the Le Carrefour Shelter. On May 27, 2009 the delegation travelled to the city of Gonaïves, where it met with the Government Commissioner, the Chief of Police, as well as with representatives and organizations of civil society. Following its visit, the IACHR issued a press release⁴⁷⁶ where it expressed its grave concern for the overcrowding and inhumane situation to which the persons detained at the police station of Gonaïves (Toussaint Louverture) --especially children-- were subjected.⁴⁷⁷

II. PRELIMINARY CONSIDERATIONS

363. In the first place, the Inter-American Commission highlights the Haitian State’s response to its preliminary version of the Report on *The Right of Women to Live Free of Violence and Discrimination in Haiti*.⁴⁷⁸ The observations made by the State to the preliminary version of the

⁴⁷⁵ IACHR Press Release 43/09, June 30, 2009.

⁴⁷⁶ *Idem*.

⁴⁷⁷ The IACHR stresses that although precautionary measures were issued in June 2008 on behalf of all the detainees at the Gonaïves police station, during the visit it noticed that the situation did not reflect any effort by the State to implement the said measures or ameliorate the situation. The facility, with a capacity for seventy five detainees, sheltered more than three hundred; the conditions of detention involved overcrowding, little or no light and ventilation, inadequate sanitation and no access to medical treatment, in addition to the fact that children were held together with adults.

⁴⁷⁸ *The Right of Women to Live Free of Violence and Discrimination in Haiti*, OEA/SER.L/V/II.doc 64, 10 mars 2009, will be further elaborated upon in section C.3.

report were very useful to the analysis of the IACHR, and were incorporated –where pertinent-- in the report, enhancing its substance and allowing a more thorough reflection of the situation.

364. Notwithstanding the foregoing, as it has observed in several reports on admissibility of individual petitions related to Haiti in the pasts,⁴⁷⁹ the IACHR must note that the State generally did not respond to the communications sent by the IACHR in 2009, whether they contain allegations of human rights violations, requests for precautionary measures, or requests for information. The information received by the Inter-American Commission also indicates that the State uniformly ignores its recommendations as well as the judgments of the Inter-American Court of Human Rights. Consequently, members of civil society informed the IACHR that the filing of petition before the inter-American system is seen as a long and fruitless procedure, and therefore is not considered an effective means to obtain justice in Haiti. Likewise, beneficiaries of precautionary measures have informed the Inter-American Commission that the situation of risk to their lives and/or personal security remains after that mechanism is granted by the IACHR.

365. As will be elaborated further in this section, the IACHR recognizes the severe economic conditions within which the Haitian State has to operate. However, the Inter-American Commission stresses the importance of being able to count on official information regarding cases and general matters in order to better perform its functions as a supervisory body, and also to cooperate with member States in their duties to protect human rights. In this regard, the Inter-American Court has affirmed that cooperation by member states represents a fundamental obligation within the international procedural framework established by the inter-American system:

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.⁴⁸⁰

366. Bearing this in mind, the IACHR hopes that the State's response to *The Right of Women to Live Free of Violence and Discrimination in Haiti* might represent a first step toward enhanced collaboration with the organs of the inter-American system of human rights.

367. The Inter-American Commission acknowledges the progress achieved in various sectors in 2009, such as security and police reform, and reiterates its engagement and full support to the State and the people of Haiti with a view to developing and improving the mutual collaboration, for a better fulfillment of Haiti's international human rights obligations towards its inhabitants.

III. OVERALL PROGRESS AND MAIN EVENTS IN HAITI DURING 2009

368. During 2009 the IACHR observed signs of progress in sectors related to human rights in Haiti. The IACHR particularly encourages the Haitian State to maintain its commitment and efforts in reinforcing the rule of law and institutions charged with the administration of justice, such as the Haitian National Police (HNP), the Magistrate School, and the Tribunal for Children. Also, the

⁴⁷⁹ See, IACHR Report N°9/07, P945/05, Admissibility, Johel Dominique (Haiti) February 28, 2007, paras.24-26; IACHR Report n°65/06, P81/06, Admissibility, Jimmy Charles (Haiti) July 20, 2006, paras.23-25; IACHR Report n°64/05, P445/05, Admissibility, Yvon Neptune (Haiti), October 12, 2005; IACHR Report n° 19/04, P975/03, Admissibility, Ephraïm Aristide (Haiti) January 26, 2004; IACHR2001 Annual Report, Report N°129/01, Case N° 12.389, Jean Michel Richardson (Haiti), paras. 11 et seq. IACHR, Report N° 79/03, P139/02, Guy A. François (Haiti), paras. 10 et seq.

⁴⁸⁰ I/A Court H.R., Velásquez Rodríguez Case, Judgment of July 29,1988, Series C, N°4, paras.135 and 136; IACHR, Report n° 28/96, Case 11.297, Juan Hernández (Guatemala), October 16, 1996, para.43.

Inter-American Commission strongly supports the State's efforts to promote national economic and social development and notes that a number of measures were taken to encourage economic investment in Haiti. In order to achieve stability in any country, security needs to be accompanied by social and economic development.

369. On April 14, 2009, the Conference of the Economic and Social Development of Haiti took place in Washington, D.C., with participation by international donors and members of the Haitian government.⁴⁸¹ This conference resulted in an agreement that donors and the government would work together to address poverty reduction, disaster mitigation, and economic growth priorities identified by Haitians. Donors pledged US \$ 353 million in support of this strategy.⁴⁸² Former President of the United States Bill Clinton was appointed United Nations Special Envoy to Haiti and asked donors to honor their commitment in this regard. Moreover, a number of countries, as well as the International Monetary Fund and the World Bank approved important debt relief for Haiti⁴⁸³ in 2009, which will allow the State to concentrate its few financial resources on areas other than the reimbursement of its debts.

370. For its part, the General Assembly of the Organization of American States adopted Resolution AG.RES.2487 (XXXIX-O/09) during its 39th regular session convened on June 2-3, 2009, in San Pedro Sula, Honduras. This Resolution calls for the strengthening of coordinating mechanisms within the OAS and deals mainly with support for socioeconomic development and sustainable political stability in Haiti, with a view to maximizing outcomes through coordinated channels and procedures for the delivery of aid. In this connection, during the Fifth Summit of the Americas that took place in Trinidad and Tobago and at which the heads of government of 34 countries discussed international support for Haiti, the OAS was mandated to coordinate inter-American programming to support Haiti's development.

371. From September 3 to 6, 2009, OAS Assistant Secretary-General, Ambassador Albert Ramdin, headed a high-level mission of inter-American institutions and member state officials to Haiti.⁴⁸⁴ The delegation met with a number of State officials and visited several projects financed or executed by participating institutions to witness firsthand how these projects impact the lives of the Haitian people. Ambassador Ramdin welcomed the "relatively sustained period of political stability and the improved security environment in Haiti" and hoped that "this unique climate can be used to create jobs, generate income and support democratic consolidation".⁴⁸⁵

372. On October 29, 2009, the political stability of Haiti was challenged, when the Senate --after a long and conflictive session-- voted a resolution dismissing Prime Minister Pierre-Louis, for "incoherence in her general politics" and "lack of results". International organizations and observers urged the President to nominate a new Prime Minister as soon as possible, to keep in line the many objectives requiring political stability set during year. However, the following day, President Préval proposed Mr. Jean-Max Bellerive, former Minister of Planning and External

⁴⁸¹ Amongst others, the Haitian Prime Minister Madam Pierre-Louis, the US Secretary of State Hillary Clinton, the Minister of Cooperation of Canada Beverly Oda, UN Secretary General Ban Ki-Moon, Inter-American Development Bank (IDB) President Luis Alberto Moreno, International Monetary Fund Managing Director Dominique Strauss-Kahn and World Bank President Robert Zoellick.

⁴⁸² United States Institute of Peace, Special Report 232, Haiti after the Donor's Conference, A Way Forward, September 2009.

⁴⁸³ International Monetary Fund, *IMF and World Bank Approve US\$1.2 Billion Debt Relief for Haiti*, Press Release No. 09/243, July 1, 2009.

⁴⁸⁴ The delegation was composed of representatives of eight OAS member States as well as senior officials from the IDB, PAHO, IICA and PADF.

⁴⁸⁵ Caribbean News Network, *High level Inter-American Mission to Haiti a Success*, September 10, 2009.

cooperation, for the position of Prime Minister. On November 6, 2009 the Senate unanimously approved this candidacy by resolution; the lower Chamber of Congress approved the candidacy the following day; and Mr. Bellerive presented his Cabinet in the following week, resulting in a new government for the Republic in less than two weeks.⁴⁸⁶ This quick resolution of the situation reflects a commitment to maintain political stability as a foundation to further strengthen the economic development.

IV. CONTINUED CONCERNS OF THE INTER-AMERICAN COMMISSION

A. Citizen security and impunity for human rights violations

373. Information received in 2009 reveals a consensus from every sector of the society on a general improvement in the security situation in Haiti.⁴⁸⁷ In this regard, a number of countries, including Canada and United States, modified their travel advisory, suggesting that their citizens “exercise caution regarding travel to Haiti”, rather than the previous warning to “avoid nonessential travel”.

374. Among other factors, this improvement is due to the positive steps toward the professionalization of the Haitian National Police. The U.N. referred to a public opinion poll showing that 58% of Haitians consider that there has been a positive change in the HNP.⁴⁸⁸ The IACHR acknowledges the concerted efforts of the State, with support of the international community, to strengthen the PNH and reinforce the rule of law. It also stresses the importance of adopting appropriate measures to ensure long-term peace and stability through the establishment of a public security policy, strategy and plan to address the key factors contributing to the persistence of violent crime in Haiti. Civil society expressed its grave concern regarding the fact that no measures were taken to strengthen and stabilize the actual situation, leaving the door open for gangs and related insecurity to grow again.⁴⁸⁹

375. However, in spite of the signs of progress during the year, the security situation in Haiti remains fragile due to institutional weakness, corruption, impunity and the poor quality of living conditions of the majority of the population. Information received by the IACHR raises serious concerns in some particular areas, particularly regarding police violence and corruption, the increase of civil unrest and the according police reaction, as well as drug trafficking.

376. With regard to the HNP, it must be noted that 115 police inspectors graduated in August 2009, and that a new class of 468 police officers graduated, including 153 women. This marked a total of 10,600 HNP agents for the country, which definitely contributes to the improvement of the security situation. The Inter-American Commission acknowledges the State’s endeavor, together with the international community, to build a strong and efficient police force. However, the IACHR must point to the inadequate distribution of police personnel throughout the country. In reality, the broad majority of these 10,600 agents are located in and around Port-au-Prince. On the border zone, a zone greatly in need of police control, the IACHR learned that there are only around 100 police officers in charge of an area more than 360 kilometers wide. The Inter-

⁴⁸⁶ See, *Le Nouvelliste*, « Le choix de Bellerive ratifié », November 6, 2009; and *Miami Herald*, « Bellerive Nominated for Haiti Prime Minister » November 9, 2009.

⁴⁸⁷ See, for example : RNDDH, *Indicateur de Droits Humains* Numéro 15, 2009; and « Report of the Independent Expert on the situation of human rights in Haiti », UN Doc. A/HRC/11/5, March 26, 2009.

⁴⁸⁸ “Report of the Security Council Mission to Haiti”, UN Doc. S/2009/175, April 3, 2009, para.27.

⁴⁸⁹ Meeting with NGOs in Port-au-Prince, May 25, 2009; « Après une longue période d'accalmie, Port-au-Prince semble redevenir le théâtre d'attaques d'individus armés », *Radio Métropole*, October 20, 2009.

American Commission is highly concerned about the increasing climate of insecurity in these zones, characterized by poverty, exploitation, human rights violations, disorder and constant movement of persons as a border area, presence of well organized criminal gangs, and an almost complete absence of police.

377. Similarly, the information available to the IACHR also indicates that in Cité Soleil, the number of police officers was increased from 31 to 64.⁴⁹⁰ Despite this significant improvement of the situation, the number remains obviously insufficient to fully ensure security and enjoyment of human rights for the approximate 500,000 inhabitants of Cité Soleil. In the Delmas 33 Police Station, also responsible for a population of around 500,000 persons, the IACHR was informed that only 2 cars were available during daytime, insufficient to ensure transportation for emergency calls, the patrol, and to bring prisoners to court. In line with the insufficiency of the HNP and the population's lack of confidence in the institution, information received shows that lynching continues to be a widespread practice in some regions, and that in very few cases is there any form of police or judicial action, resulting in impunity for perpetrators.⁴⁹¹ The IACHR understands the difficulties related to the investigation of lynching cases, as it often takes place through the anonymity and support of crowds, but underlines the necessity of doing so in order to send a clear message to the population that the ability to seek justice lies within the State's jurisdiction only. In this line, Inter-American Commission re-emphasizes the importance of guaranteeing police presence in every region of the country, to reflect the state's authority throughout and to send a clear message that no region is under-prioritized.

378. Despite the significant improvements in the professionalization within the HNP, information received in 2009 still indicates that there is an important number of reports of corruption by police officers.⁴⁹² The IACHR observed that arrests are not always carried out in accordance with the law and applicable procedures; that persons often have difficulty in obtaining recourse to a competent court to decide on the lawfulness of their arrest or detention; and that despite release orders, some persons still have to pay for their liberation.⁴⁹³ The Inter-American Commission considers that it is fundamental for the police screening process to continue in order to tackle corruption in the force. Only then will the HNP be able to fulfill its mandated role of law enforcement and avoid further damaging the integrity and credibility of the police as an institution.

379. In this connection, the IACHR was concerned to learn that police officers who discuss the idea of setting up a union within the HNP are subject to serious persecution.⁴⁹⁴ The IACHR was also informed that no State officials are present in the funerals of police officers killed in service, which could be seen as a message of lack of support for its own law enforcement.⁴⁹⁵ Also, it must be noted that the vetting process currently carried out by the United Nations is seen by some sectors as another form of intrusion from the international community in Haitian matters. In

⁴⁹⁰ Information presented during the IACHR hearings held on November 3, 2009, by the NGO Collectif des Notables de Cité Soleil (CONOCS).

⁴⁹¹ For example, see Commission Nationale Justice et Paix (JILAP) « Violence dans la zone métropolitaine de Port-au-Prince, Jiyè – out – sektanm 2009 » October 18, 2009, which identifies at least 18 victims of popular justice only from July until September 2009.

⁴⁹² *Inter alia*: the UN independent expert on the human rights situation in Haiti, Michel Forst, stated that: "Today, police reform is visible, the population witnesses it and starts to show more confidence towards the institution, but cases of corruption still exist within the PNH" Haiti Press Network, September 4, 2009.

⁴⁹³ Meeting with NGOs in Port-au-Prince, May 25, 2009; Penitentiary National Visit and interview with detainees and Guards, May 29, 2009.

⁴⁹⁴ Meeting with NGOs in Port-au-Prince, May 25, 2009.

⁴⁹⁵ Meeting with NGOs in Port-au-Prince, May 25, 2009.

this connection, the Inter-American Commission highlights that the vetting process is conducted at the request of the Haitian State itself, and considers that it is an essential step towards the reinstatement of the population's trust in the HNP. Accordingly, the IACHR considers that the State must prioritize the vetting process and regularly publicize the results achieved.

380. During 2009, the IACHR constantly received information regarding the actions of violent and corrupt police officers, especially in the regions of Les Cayes and Petit-Goâve. According to such information, police officers in these regions allegedly enjoy the latitude to commit serious violent crimes in total impunity. Even worse, the IACHR noticed a constant pattern of persecution following denunciations, which takes various forms that escalate from threats, beatings, arson, up to murder of victims who decide to denounce their aggressors. Furthermore, local prosecutors are allegedly reluctant to process complaints against police officers, by fear of being persecuted themselves. The information indicates that there is total impunity, and that the victims who dare to denounce these acts to the judiciary are ultimately forced to leave their hometown because of serious fear of being murdered, resulting in a profound disillusionment of the Haitian people with the criminal justice system.

381. The IACHR was informed of an increase in police violence against young adults and teenagers, and was concerned to learn of the murder of Daniel Darius, a local rapper also known as Fantom, who was allegedly killed by officers of the Motorized Intervention Brigade (BIM). The IACHR was particularly shocked to learn of the death of student Dalus Hetlong, reportedly killed by police officer Jean Erick Jean Baptiste within the university campus, during incidents that got out of control following a false publication on the Ministry of Education website related to the access to official exams.⁴⁹⁶

382. On April 19 and June 21, 2009, the Senatorial elections took place, delayed by political turmoil and a series of hurricanes.⁴⁹⁷ A vast majority of the population boycotted the elections, mainly because of fear of retaliation from the supporters of the Fanmi Lavalas political party,⁴⁹⁸ to avoid incidents of violence or due to a general lack of confidence in the electoral process. The fact that private vehicles and public transportation were forbidden on election day might have also been a factor to discourage the electorate from concurring to the voting sites. For example, on April 19, less than 2% of the electoral population showed up at the polls in the capital, and a total of around 11% in the country, while the participation rate at the June 21, 2009

⁴⁹⁶ Ministère de l'Éducation nationale et de la Formation Professionnelle (MENFP).

⁴⁹⁷ Within the Senate, the sitting bureau was extended without vote in autumn 2008, after none of the new candidates was able to secure a majority. This contributed to tensions within the Senate, whose functioning has otherwise been seriously hampered by the fact that only 18 of its 30 seats were filled since May 2008. As a result, there were several unsuccessful attempts to convene Senate sessions, since a quorum of 16 senators could not be reached. UN Security Council, Report of the Secretary-General on the United Nations Stabilization Mission in Haiti, S/2009/129, 6 March 2009.

⁴⁹⁸ The CEP launched the registration process for political parties and candidates on November 28, 2008. On January 6, the CEP issued a list of 33 political parties authorized to compete in the elections, including Fanmi Lavalas (former president Aristide's party). On January 23 2009, when the registration of candidates closed, 105 candidates had registered for the elections, including a total of 16 candidates for Fanmi Lavalas, citing authorization by two separate leadership groups within the party. On February 5, the CEP approved 65 of the 105 registered candidates for these partial senatorial elections, while invalidating 40 candidates, including all those presented by the two factions of Fanmi Lavalas, as well as seven of nine candidates that human rights organizations had denounced as lacking the necessary integrity to be considered for office. The CEP justified its decision to exclude all Fanmi Lavalas candidates due to failure to comply with the Electoral Law (obtaining a single consolidated slate of candidates authorized and signed by its formal leader, Jean-Bertrand Aristide, who is in exile in South Africa). Accordingly, Fanmi Lavalas supporters called for a general boycott of the elections.

elections was around 10%.⁴⁹⁹ The Provisional Electoral Council (CEP) and representatives of the international community declared that the elections were carried out normally.⁵⁰⁰

383. Despite a number of measures to enhance security, there were several acts of violence which resulted in many injured persons, at least one death, and serious irregularities, including acts of intimidation and fraud. In the Center Department, the CEP had to postpone the senatorial election in several voting centers because voting materials had been burned by protesters and at least one person was injured by a bullet. Moreover, the IACHR learned that some citizens were not allowed to vote because their names did not appear on any of the voting lists.

384. Following the elections, the senators' validation session was delayed several weeks, due in part to fraud denunciations made by the former Vice President of the CEP, which convinced many senators to miss the sessions; and to the internal rules of procedure of the Senate, which are ambiguous concerning the quorum required for such validation. The validation session finally took place on September 4, 2009.

385. The IACHR recalls that it is essential that the State create optimum conditions and mechanisms to ensure that political rights, as enshrined in Article 23 of the American Convention, can be exercised effectively, respecting the principle of equality and non-discrimination.⁵⁰¹ Although the Inter-American Commission recognizes the efforts made by the State and the international community to conduct these elections in a democratic and transparent manner, the participation rate reflects a serious disinterest in several regions. Also, some of the measures taken, such as the prohibition of transportation, seriously prevented an important portion of the population from exercising their right to vote. All these factors have a direct impact on the population's confidence in their representatives, required in the establishment of the rule of law.

386. Statistics show that civil unrest has increased since 2008. In February 2009 alone, 64 demonstrations were reported in the country, two thirds of which were allegedly motivated by socio-economic concerns.⁵⁰² Turbulent and often violent daily protests in Port-au-Prince made headlines from late April to September, concerning principally the adoption of a law establishing the minimum daily wage at 200 gourdes (U.S.\$ 5) and a reform of the Haitian State University. Protesters were principally composed of students and citizens of popular suburbs of Port-au-Prince. These protests gave rise to many episodes of violence, leading to people injured, many people arrested, and property damage. The media also reported excessive use of teargas and warning shots by the authorities, resulting in more people injured. Many of the arrests were allegedly used by the authorities as a repression tool and denounced by NGOs as arbitrary and violent.⁵⁰³ Following a decision from the Haitian Parliament which rejected the claims of the protesters, the Haitian Industry Association had to shut down some of its industries for some days following violent events where workers and police officers were beat up by demonstrators, and many private and public vehicles were damaged.

⁴⁹⁹ UNV Newsletter, Number 23, May 2009; MINUSTAH Press, "Vers des élections sans violence?" June 22, 2009; Haiti Press Network, « Haïti-Elections: le CEP publie les résultats des sénatoriales », June 29, 2009.

⁵⁰⁰ See, *inter alia*: OAS Press Release E-140, Haiti: "Insulza highlights the effort of the Haitian government and condemns the violent acts" April 21, 2009; and MINUSTAH, Press Release Nr. 391, June 21, 2009.

⁵⁰¹ See, *inter alia*, I/A Court H.R., Case of Yatama, para. 194; I/A Court H.R. Case of Castaneda Gutman v. Mexico, Judgment of August 6, 2008, Ser.C No.184.

⁵⁰² Report of the Security Council Mission to Haiti (11 to 14 march 2009), 3 April 2009, UN Doc S/2009/175.

⁵⁰³ For example, *Le BAI dénonce la multiplication des cas d'arrestations et de détention à l'occasion de manifestation de rues*, AHP, Port-au-Prince, 25 août 2009; « Haiti/Salaire minimum : La mobilisation continue pour libérer deux étudiants » Alter Presse, 25 août 2009.

387. The reaction of the HNP to civil protests in 2009 was heavily criticized by NGOs and the media. In August, the IACHR received information alleging that agents of the HNP fired teargas, used clubs and conducted many arrests in order to disperse protesters, mainly recently fired employees of the Haitian Telecommunications Company (TELECO), the National Port Authority (APN) and the Electricity Company of Haiti (EDH). The city of Lascahobas was also subjected to series of demonstrations related to power cuts and the bad distribution of energy in the Center Department, with a balance of at least one dead person and some ten people injured after MINUSTAH soldiers tried to break barricades and were pelted with stones and later fired at.

388. According to this information, the demonstrations were characterized by acts of violence or intimidation by certain sectors of society opposed to them, which have limited significantly the exercise of the right to freedom of expression or the right of assembly. The IACHR reminds the Haitian State of its obligation to effectively guarantee the free and peaceful exercise of those rights, which can only be limited in accordance with the restrictions expressly provided in the American Convention.

389. Although kidnappings remain a source of preoccupation, as of August 27, 2009, the United Nations Police (UNPOL) registered an average decrease of 74% in kidnappings this year compared to 2008.⁵⁰⁴ The Inter-American Commission was concerned to learn that a Port-au-Prince examining magistrate, in charge of several kidnapping cases, was shot twice near his residence by armed gang members.⁵⁰⁵

390. During 2009 the IACHR was constantly concerned with the problem of drug trafficking, which continues to threaten citizen security. According to media reports, the practice of smuggling drugs by air increased by 53 percent over the two last years.⁵⁰⁶ Drug smugglers corrupt Haiti's police force, judges and politicians, which in turn undermines the efforts of the international and local community to bring security and stability in the country. The IACHR urges the authorities to renew efforts to advance against drug smuggling and lack of control at the border and the inefficient ports.

391. The Inter-American Commission was also made aware that in Port-de-Paix, the Government Commissioner, Jean-Frédéric Bénêche, ordered the arrest of the journalist Kerly Dubréus, director of Radio Kon Lambi, who spread information related to his alleged involvement in drug smuggling.⁵⁰⁷ Information received also indicates that the Commissioner Bénêche shut down a radio station, Radio Idéale FM, for "obstruction of justice", following its diffusion of an interview concerning narco-trafficking involving Port-de-Paix authorities,⁵⁰⁸ because the radio station authorities refused to share their source of information. After ten days, and following massive denunciations by local journalists and international press associations claiming the arbitrariness of

⁵⁰⁴ Haiti Press Network, August 27, 2009.

⁵⁰⁵ United Nations Information Service, « Haïti : La MINUSTAH condamne une attaque armée contre un juge à Port-au-Prince » September 28, 2009.

⁵⁰⁶ "Help Haiti keep Drugs out of the Country" March 7, 2009, Mark Schneider, International Crisis group, online: www.crisisgroup.org/home/index.cfm?id=5982&1=1.

⁵⁰⁷ Haiti Press Network, September 22, 2009; Press Release, *Répressions à l'encontre des journalistes à Port-de-Paix*, CARLI, September 26, 2009; Haiti Progrès, September 28, 2009; Haitian Times, October 2009, Press Freedom Is Improving, Group Says, available online at: [http://www.haitiantimes.com/pages/full_story/push?article-Press+Freedom+Is+Improving+Group+Says-%20&id=4159145&instance=news+special+coverage+right+column](http://www.haitiantimes.com/pages/full_story/push?article-Press+Freedom+Is+Improving+Group+Says-%20&id=4159145&instance=news+special+coverage+right+column;); Agencia Pulsar, September 30, 2009 *AMARC-HAITÍ denuncia detención ilegal de director de radio comunitaria*, online at: http://www.radiobemba.org/index.php/archivos/doc/amarc_haiti_denuncia_detencion_ilegal_de_director_de_radio_comunitaria/

⁵⁰⁸ Radio Idéal was shut down on September 18.

their arrest,⁵⁰⁹ the journalist was released and the radio station reopened, following an intervention from the Justice Minister.⁵¹⁰ In this regard, the Inter-American Court has stated that

when an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to "receive" information and ideas.⁵¹¹

392. The IACHR encourages the Haitian State to adopt all measures necessary in order to guarantee the exercise of this right since "freedom of expression is a cornerstone upon which the very existence of a democratic society rests"⁵¹² and reminds the Haitian State of the Principle 8 of the Declaration of Principles on Freedom of Expression, which indicates that: "Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential."

393. The IACHR also recalls Principle 13 of the Declaration, which stipulates that

The exercise of power and the use of public funds by the state for the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.

394. Moreover, the IACHR received information to the effect that in July 2009, the Hinche residence of Sainlus Augustin, journalist for *The Voice of Americas* and *Radio Kiskeya*, was attacked with fire weapons. The information indicates that Augustin accuses the Deputy and Senate candidate Wilot Joseph, who would have been disturbed by some articles from Augustin.⁵¹³

395. The IACHR calls the Haitian State to bear in mind the Principle 9 of the Declaration of Principles on Freedom of Expression, which indicates that: 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

⁵⁰⁹ AHP, Port-au-Prince, September 21, 2009; Haiti Press Network, September 22, 2009; Press Release, *Répressions à l'encontre des journalistes à Port-de-Paix*, CARLI, September 26, 2009; Haiti Progrès, September 28, 2009.

⁵¹⁰ Radio Metropole Haiti, September 29, 2009; Reporteros Sin Fronteras/IFEX. April 14, 2009. *Government orders reopening of provincial radio station*. Available online at: http://www.ifex.org/haiti/2009/04/16/radio_station_reopened/. Reporteros Sin Fronteras/IFEX. April 9, 2009 *Radio station closed for refusing reveal sources*. Online at: http://www.ifex.org/haiti/2009/04/09/id_ale_fm_radio_station_closed/. Radio Kiskeya, April 13, 2009, *Radio Idéale FM recommence à émettre*, Available Online at : <http://radiokiskeya.com/spip.php?article5824>

⁵¹¹ See, *inter alia*, I/A Court H.R., Ricardo Canese v. Paraguay, August 31, 2004, Ser. C no111, para.77; I/A Court H.R., Herrera Ulloa Case (La Nación) v. Costa Rica, July 2, 2004, Ser. C no107 para.108; I/A court H.R. Ivcher Bronstein v. Peru, February 6, 2001, Merits Decision, Ser. C no74, para.146; I/A Court H.R., Advisory Opinion, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention), November 13, 1985, OC-5/85 Ser. A no5, para.30.

⁵¹² I/A Court H.R., Advisory Opinion, Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 American Convention), November 13, 1985, OC-5/85 Ser. A no5, para. para.70.

⁵¹³ Inter-American Press Society, 65th General Assembly, November 6-10, 2009, Country report for Haiti, *Available online at: http://www.sipiapa.com/v4/index.php?page=det_informe&asamblea=24&inford=378&idioma=sp*; Haitian Times, October 2009, *Press Freedom Is Improving, Group Says*, available at: http://www.haitiantimes.com/pages/full_story/push?article=Press+Freedom+Is+Improving-+Group+Says-%20&id=4159145&instance=news_special_coverage_right_column.

the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

396. Finally, as previously mentioned,⁵¹⁴ the IACHR recognizes that the United Nations Stabilization Mission in Haiti is firmly committed to ensuring conditions of peace and security in the country since its creation in 2004. MINUSTAH has undertaken efforts to improve the public security situation by supporting the HNP in its efforts to prevent crime, and by placing greater emphasis on institution strengthening and reform of the police and the judiciary.

B. Administration of justice

397. The IACHR observes that an institutionally strong, qualified and professional police force, accompanied by an efficient justice system, are essential elements in order to establish and maintain the rule of law in any society. Accordingly, the measures to reform the police force in Haiti must be accompanied by a strengthening of the justice system. During 2009, the IACHR received information that the justice system continues to be characterized by serious deficiencies, such as insufficiency of judges, *ultra vires* decisions, corruption and excessive application of pretrial detention.

398. The IACHR recognizes the efforts made by the Haitian authorities, together with MINUSTAH and international organizations, which led to the re-opening of the school of Magistrates in March of 2009. The training provided by this school will give the judges the elements required to perform their duties more effectively, and it is hoped that it will constitute an important contribution to the independence and institutional strength of the judiciary. The Inter- American Commission considers that this is an important step towards compliance with the legal reform that led to the adoption of a series of laws during 2007.⁵¹⁵

399. The IACHR was pleased to learn that in 2009 there were several “Justice Houses” (*maisons de la justice*) in operation. These are organizations that aim to facilitate citizens’ access to justice by providing information, legal advice, as well as assistance to victims.⁵¹⁶ The Inter- American Commission hopes that these initiatives will receive the support required not only so that they may continue their activities, but also that the necessary efforts will be deployed to create Justice Houses in every region of the country.

400. The Inter-American Commission also acknowledges the measures taken by the Ministry of Justice to fight corruption in the justice system. In this regard, the IACHR learned that from March to May, a number of magistrates were dismissed or suspended for presumption of corruption and/or serious misconduct.⁵¹⁷ However, the suspended magistrates are waiting for a decision of the Superior Council of the Judiciary Power (CSPJ), which is still not appointed, despite being created by law adopted in 2007. The Senate provided the President with a screened list of

⁵¹⁴ IACHR’s Annual Report, Chapter IV, 2007, para.192.

⁵¹⁵ Namely, Loi portant sur le Statut de la Magistrature, Loi sur l’École de la Magistrature et Loi créant le Conseil supérieur du pouvoir judiciaire, December 20, 2007.

⁵¹⁶ Information provided by representatives of the State during the hearings held on November 3, 2009.

⁵¹⁷ In this regard, the IACHR notes the information received concerning the suspension of Judge Fritzner Fils-Aimé, in charge of the murder investigation of the journalist Jean Dominique, for “suspicion of corruption”. Two previous judges were dismissed for similar reasons. Judge Fils-Aimé is the sixth judge to be in charge of the case since Mr. Dominique was murdered in April 2000: Reporteros Sin Fronteras/ IFEX. April 2, 2009, *Haiti: Judge in charge of Jean Dominique Murder case suspended for corruption*, Available online at: http://www.ifex.org/haiti/2009/04/03/judge_in_jean_dominique_murder; Radio Kiskeya, April 10, 2009, *Le juge d’instruction en disponibilité Fritzner Fils-Aimé dénonce un attentat contre sa personne*, available online at : <http://radiokiskeya.com/spip.php?article5819>.

candidates for this position, but the President of Haiti has yet to take action in this regard. According to Haitian law, the President of the CSPJ will also act as the President of the final Court of Appeal (*Cour de Cassation*), a position which has been vacant for almost five years. The Inter-American Commission considers that the prompt nomination of the President of the CSPJ would be a sign of willingness from the authorities to move forward with the legal reform.

401. The IACHR learned that the monthly salary of a judge will pass from 18,000 gourdes (US\$ 450) to 54,000 gourdes (US\$ 1,350) by the end of 2009.⁵¹⁸ However, the IACHR was concerned about the fact that in some cases the judges must personally assume certain costs of the trial, such as the water served to juries or the fuel required for the jury's transportation. Even more worrisome is the information that indicates that some judges request bribes in order to move forward with a case and that in some tribunals clerks even refuse to deliver required documents if they are not given a certain amount of money from the parties. Institutional independence of the courts relates to the structure and organization of the judiciary and its separation from the other branches of government. In this respect, Article 8 of the American Convention provides for the right to be tried by a "competent, independent and impartial tribunal," which in the view of the IACHR requires that courts be autonomous from the other branches of government, free from influence, threats or interference from any source and for any reason, and benefit from other characteristics necessary for ensuring the correct and independent performance of judicial functions, including tenure and appropriate professional training.⁵¹⁹ The IACHR notes that the lack of independence of the Judiciary can lead to corruption, which in turn often leads to impunity. Accordingly, it is important that procedures be put in place to prevent and respond to possible situations of corruption.

402. In this regard, the IACHR welcomes the decision of the Federal Criminal Tribunal of Bern, Switzerland, to distribute funds held by the family of former Haitian dictator Jean Claude Duvalier to the people of Haiti. In its considerations, the Swiss Court found that the so-called foundation owned by the ex-dictator's family could be assimilated to a criminal organization, which used the Chief of State's absolute power in order to impose a climate of terror in Haiti and bring to his members considerable income by the systematic misappropriation of public funds.⁵²⁰ This decision sends a clear message to State authorities in the sense that the practice of misappropriating public funds is a crime and that the chances of impunity are narrowing.

403. Information received indicates that the justice system has serious needs in terms of transportation and communication, as well as more modern and scientific methods of investigation, such as biological or ballistic analyses. The lack of such tools is problematic in terms of collecting and analyzing proof, can undermine confidence in the result of judicial processes, and can contribute to the delay in the administration of justice.

404. The limited capacity of the justice system, the absence of due process in some cases, and the lack of effective legal assistance, are all factors which generate a rise in the prison population. Persons deprived of liberty continue to live in overcrowded conditions that do not respect the minimum universally recognized standards for detention, in violation of their fundamental rights. The IACHR continued to receive information to the effect that approximately 80% of the persons detained in Haiti are still waiting for a trial, and that the average time spent in

⁵¹⁸ See, *supra* note 42.

⁵¹⁹ See, e.g., IACHR, Report on the Situation of Human Rights in Chile, OEA/Ser.L/V/II.66, doc. 17, 1985, Ch. VIII, para. 139; and IACHR, Haiti: Failed Justice of the Rule of Law? Challenges Ahead for Haiti and the International Community, October 26, 2005, para.154.

⁵²⁰ AlterPresse, August 14, 2009; Plate-forme Haïti de Suisse (PFHS), Transparency International Schweiz, Press Release, « Des ONG saluent la dernière décision prise dans le cas Duvalier », August 14, 2009.

pretrial detention is 22 months.⁵²¹ The IACHR learned that legal assistance is not provided to a majority of the inmates during this period, which generates serious juridical uncertainty. As identified by the inter-American Court:

[t]he right of access to justice recognizes that, from the outset, any person who is committed to trial must have the effective possibility of obtaining a final ruling, without undue delays resulting from the lack of diligence and care that the courts of justice must guarantee, as observed in the instant case.⁵²² Otherwise, in light of the right to an effective recourse embodied in Article 25 of the Convention, it is evident that the person prosecuted cannot resort to the guarantees contained in Article 8 of the Convention, which would be useless if it was impossible to begin the proceedings in the first place.^{523 524}

405. As previously identified by the IACHR, these deficiencies undermine the ability of the justice system in Haiti to effectively ensure and protect the fundamental rights and freedoms to which the inhabitants of that country are entitled, resulting in a pattern of impunity for violations committed by both state and non-state actors.⁵²⁵ In this regard, the Inter-American Commission cannot overemphasize its serious concern for the total impunity following violent crimes committed by police officers in some regions of the country and recalls to the authorities the urgency of resolving the systematic failure to prosecute and punish state agents who commit human rights violations, no matter which part of the society the victims are from.

C. Situation of particular persons and groups

1. Persons deprived of liberty

406. For a number of years, the IACHR, local and international organizations, as well as other civil and political actors, condemned the conditions in which people are kept in custody in Haiti. As a result of this concern, reports have been published on the issue, commissions have been formed, and many recommendations formulated.⁵²⁶ Despite all the efforts to denounce and ameliorate the situation, according to the information received in 2009, as well as to the situation as ascertained by the IACHR during this year, the situation of detainees in Haiti did not improve. In fact, it is often said that the penitentiary system is more similar to a school of crime than an institution for the correction or rehabilitation of persons.

407. In 2009, the IACHR continued to receive worrisome information revealing that 80% of the persons in the State's custody are awaiting trial. The Inter-American Commission notes that during this period, which can last several years, the persons waiting for a judgment are held together with convicted criminals and treated as such, in violation of their right to the presumption

⁵²¹ Meeting with MINUSTAH, May 25, 2009.

⁵²² I/A Court H.R., *Palamara Iribarne v. Chile. Merits, reparations and costs*. Judgment of November 22 2005, Ser.C.no118, para. 50.

⁵²³ Likewise, see *Eur Court H.R., Golder v. United Kingdom*, Judgment of 21 February 1975, Ser.A, no18, paras. 28-36; and *Eur Court H.R., Baskiene v. Lithuania*, Judgment, 24 July 1975, paras. 78-79.

⁵²⁴ I/A Court H.R., *Case of Yvon Neptune v. Haiti*, Judgment of May 6, 2008 (Merits, Reparation and Costs), Ser.C no180, para. 83.

⁵²⁵ "Haiti: Failed Justice of the Rule of Law? Challenges ahead for Haiti and the International Community", IACHR, OEA/Ser/L/V/II.123, doc.6 rev 1, 26 October 2005.

⁵²⁶ For example, see Amnesty International, "Haiti: Illegal and arbitrary arrests continue -- Human rights hampered amid political violence," AMR 36/056/2004, October 19, 2004; Human Rights Watch, World Report, Haiti, Events of 2008, online at: <http://www.hrw.org/en/node/792144>; IACHR Annual Report 2007, paras.117-120; and ICRC Annual Report 2007, 295-299, online at: [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/7EUETB/\\$FILE/icrc_ar_07_haiti.pdf?OpenElement](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/7EUETB/$FILE/icrc_ar_07_haiti.pdf?OpenElement) .

of innocence. In addition to the conditions prevailing in the prisons, the IACHR is particularly worried about the situation of those detained in local police stations, sometimes for a period extending to several months. Because these places are not official prisons, no budget is allotted for the food and care of the detainees, and the officers do not receive specific training from the Penitentiary Administration on how to deal with detained persons generally, or with those who have special needs.

408. The Inter-American Commission welcomes the adoption of a law regulating custody, the attributions and functioning of the judge, and legality of the arrest, detention and habeas corpus procedures.⁵²⁷ Among other things, the law provides that persons cannot be placed in custody unless they are caught in *flagrante delicto*, or under very specific circumstances defined therein; that custody exceeding 48 hours which is not authorized expressly by a judge will be assimilated to arbitrary detention; that the violation of a person's rights in the course of his arrest, custody or questioning nullifies the procedure, as well as any testimony rendered in such circumstances; and that a person arrested for an offense must be judged within a one-year period. This period can be lengthened to two years in the cases of serious crimes, otherwise the person ought to be conditionally released subject to appearance for all subsequent phases of the procedure. Finally, the law sets a period of one year after its adoption for the different authorities involved to comply with the provisions and implement the measures therein. In this connection, the IACHR recalls the ruling of the Inter-American Court ruling in the Case of Yvon Neptune:

the Convention stipulates that a detention must be subject to prompt judicial review. The Court has understood that immediate judicial control is a measure intended to avoid arbitrary or unlawful detention, bearing in mind that, under the rule of law, the judge must guarantee the rights of the person detained, authorize the adoption of preventive or coercive measures when this is strictly necessary and, in general, ensure that the accused is treated in a manner consequent with the presumption of innocence.⁵²⁸

409. The IACHR commends the above mentioned initiative, and hopes that the procedural requirements will be facilitated in order for the law regulating custody to enter into force as soon as possible. The efforts the State may adopt to implement this law will be followed closely by the Inter-American Commission, as a step towards complying with Haiti's international obligations with regard to the rights of persons deprived of liberty.

410. In addition to extensive pretrial detention, another issue of concern for the IACHR is that the persons awaiting trial are held together with those convicted. The American Convention, as well as other international instruments, underlines the importance of separating the accused from the convicted.⁵²⁹ In this regard, the inter-American Court noted that:

⁵²⁷ The original title in French is *Loi réglementant la garde à vue, les attributions et le fonctionnement du juge de la légalité de l'arrestation, de la détention et la procédure de l'habeas corpus*.

⁵²⁸ I/A Court H.R., *Case of Yvon Neptune v. Haiti*, Judgment of May 6, 2008 (Merits, Reparation and Costs), Ser.C no180, paras. 105-107.

⁵²⁹ Article 5(4) of the American Convention establishes that "save in exceptional circumstances, accused persons shall, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as persons who have not been convicted"; Article 10, paragraph 2(a), of the *International Covenant on Civil and Political Rights*. Likewise, the eighth principle of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (adopted by the General Assembly in its Resolution 43/173, of 9 December 1988, Principle 8) indicates that: Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons; also, paragraph 8 of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 8, stipulates that: The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus: [...] (b) Untried prisoners shall be kept separate from convicted prisoners.

Article 5(4) of the American Convention imposes on the States the obligation to establish a classification system for prisoners in penitentiary centers, in order to guarantee that accused persons are separated from convicted persons, and receive treatment adapted to their status as unconvicted persons.⁵³⁰ These guarantees can be understood as a corollary of the right of the accused person to be presumed innocent, while he has not been found guilty in accordance with the law, which is stipulated in Article 8(2) of the Convention. The State must demonstrate the existence and functioning of a classification system that respects the guarantees established in Article 5(4) of the Convention, as well as the existence of exceptional circumstances, if it does not separate accused persons from convicted persons.⁵³¹

411. The Inter-American Commission received information indicating that the recently built prison of St. Marc in the Artibonite department represents a very important advance in the field of custody. According to this information, the St. Marc prison contains a section for minors, a section for women and a section for girls; convicted persons are separated from those in remand; and all detainees have access to literacy programs. However, the IACHR notes that the St. Marc prison is the sole custodial establishment separating convicted persons from those in pretrial detention and urges the authorities to endorse this practice, not as an exception but as a rule. In this regard the Inter-American Commission welcomes the construction during 2009, with the support of International Trade Canada's Stabilization and Reconstruction Task Force and various United Nations agencies, of a new detention center in Croix-des-Bouquets, which will accommodate up to 750 inmates, as well as a new building for the HNP Inspectorate General. The IACHR will pay close attention to the developments in this regard.

412. The information available to the Inter-American Commission indicates that the Penitentiary Administration, under the aegis of the PNH, is not receiving adequate priority. This information also reveals that the salary of prison staff is often insufficient; that their sleeping areas are in the same condition as the detainees' cells; and that the food supplied to staff is often prepared by detainees, all of which represent a source of concern.⁵³²

413. A constant concern for the IACHR in 2009 is the degrading and inhumane conditions of the majority of detainees in Haiti.⁵³³ On average, there are 0.62 m² for each detainee in Haiti, whereas the *Standard Minimum Rules for the Treatment of Prisoners* set this space at a minimum of 4.5 m².⁵³⁴ This situation has been depicted in several previous reports,⁵³⁵ and on the basis of the direct observation by the IACHR during its visit to Haiti, as well as on information received, it has

⁵³⁰ The Inter-American Court referred to I/A Court H.R., *Tibi v. Ecuador* (Preliminary objections, merits, reparations and costs) Judgment of September 7, 2004. Ser.C No. 114, para. 158; and I/A Court H.R., *Case of López Álvarez v. Honduras*, (Merits, Reparations and Costs) Judgment of February 1, 2006, Ser.C no141, paras. 111-112; see also, *Case of Montero Aranguren et al. (Catia Detention Center) v. Venezuela*, (Preliminary Objection, Merits, Reparations and Costs) Judgment of July 5, 2006, Ser.C no 150, para. 104.

⁵³¹ I/A Court H.R., *Case of Yvon Neptune v. Haiti*, Judgment of May 6, 2008 (Merits, Reparation and Costs), Ser.C no180, para.146.

⁵³² RNDDH, *Réforme carcérale et Droits des Personnes Incarcérées*, pages 8 and 26; visit to Pétion-Ville Prison, May 26, 2009; and visit to the National Penitentiary, May 29, 2009.

⁵³³ Press Release, *Quand le Ministère de la Justice et de la Sécurité Publique se dédouane des problèmes liés au mauvais fonctionnement du système judiciaire haïtien*, CARLI, Port-au-Prince, June 22, 2009.

⁵³⁴ *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rule 8.

⁵³⁵ See, *inter alia*, "Haiti: Failed Justice of the Rule of Law? Challenges ahead for Haiti and the International Community", IACHR, OEA/Ser/L/V/II.123, doc.6 rev 1, 26 October 2005, paras.205 *et seq.*; IACHR Annual Report 2007, paras.198-201; and IACHR Annual Report 2008, Chap. IV, paras.287-291.

not improved. For example, when the IACHR visited the Pétion-Ville Prison for Women, 312 detainees --7 of whom were pregnant-- were held in 19 cells. Moreover, the detainees informed the IACHR that their health situation was not given serious enough consideration by the authorities. When the Inter-American Commission visited the National Penitentiary, it found that the infirmary comprises 6 mattresses, including one old dentist chair, for a total of 4000 detainees, more than 50 of which are seriously ill. The IACHR noticed that there is not enough space for all the prisoners to sleep at the same time.

414. The Inter-American Court described the Port-au-Prince National Penitentiary in the following terms:

The State did not dispute the (...) allegations, according to which: [t]he extreme overcrowding, unhygienic and unsanitary conditions and poor inmate diet at the National Penitentiary did not even approximate the standards set in the United Nations *Standard Minimum Rules for the Treatment of Prisoners*; and [d]espite repeated outbreaks of violence in the National Penitentiary, the State kept its inadequate structure intact.⁵³⁶

415. The Inter-American Commission was particularly disturbed to learn about the situation of Ronald Dauphin, who was arrested in March 2004 and was still in preventive detention in the National Penitentiary during 2009. Mr. Dauphin suffers from important health problems such as strong headaches and frequent loss of consciousness, on the basis of which two doctors recommended his transfer to a hospital complex.⁵³⁷ The authorities in charge have allegedly denied his transfer without any justification.

416. The conditions of detention in police holding cells are not better. In the Gonaïves police station, with capacity for seventy five detainees, more than three hundred persons are held. They have little or no light or ventilation, inadequate sanitation and no access to medical treatment. The lack of space requires them to take turns to sleep. The information received by the IACHR indicates that the situation is just as inadequate in other regions of the country.⁵³⁸

417. The IACHR was encouraged to learn about the implementation of the Development Strategic Plan 2007-2012 prepared by the direction of the Penitentiary Administration, which includes considerations related to infrastructure, personnel, equipment and material, as well as for the physical and psychological well-being of detainees. The Inter-American Commission encourages the State to invest the necessary resources for the implementation and the success of this strategic plan and recalls that "any person deprived of liberty has the right to live in detention conditions that are compatible with his personal dignity, which must be ensured by the State, because the State occupies the special position of guarantor with regard to such persons, since the penitentiary authorities exercise total control over them."⁵³⁹

⁵³⁶ I/A Court H.R., *Case of Yvon Neptune v. Haiti*, Judgment of May 6, 2008 (Merits, Reparation and Costs), Ser. C no180, para. 137.

⁵³⁷ Press Release, *SOS aux Membres d'Amnesty International, Organisation mondiale contre la torture (OMC), fédération internationale des ligues des droits de l'Homme (FIDH) et Human Rights Watch*, Port-au-Prince, May 21, 2009.

⁵³⁸ See Réseau National de Défense des Droits Humains, "Radiographie des prisons du pays", October 2009; Center for Social Justice, Seton Hall University School of Law, Hastings to Haiti Partnership (HHP) at U.C. Hastings College of the Law, with respect to detention conditions in Jérémie; and UNV News Letter, March 5, 2009, with respect to conditions in Miragoâne.

⁵³⁹ I/A Court H.R., *Neira Alegría et al. v. Peru*, Judgment of January 19, 1995, (Merits) Ser. C no20, para. 60; *The Miguel Castro-Castro Prison v. Peru*, Judgment of November 25, 2006 (Merits, Reparations and Costs), Ser. C no160, para. 315; and *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Judgment of July 5, 2006 (Merits, reparations and costs) Ser. C no150, paras. 85 and 87; and I/A Court H.R., *Case of Yvon Neptune v. Haiti*, Judgment of May 6, 2008 (Merits, Reparation and Costs), Ser. C no180, para.130.

2. Human rights defenders

418. During its 134th sessions of March, 2009, the IACHR ruled on the merits of the case of Lysias Fleury, where it established that the victim was illegally detained on June 24, 2002, in Port of Prince, and subsequently subjected to cruel, inhuman, and degrading treatment by State agents, because, among other things, of his role as a human rights defender and the lack of due diligence in the investigation and the lack of punishment of those responsible. The IACHR concluded that Haiti engaged in the arbitrary detention, torture and inhumane treatment of Mr. Fleury. Also, the Inter-American Commission found that the State did not ensure Mr. Fleury's right to a fair trial and to judicial protection. Accordingly, the IACHR concluded that the Haitian State was responsible for the violations of human rights under Articles 5, 7, 8 and 25 of the American Convention. After having transmitted the report to the State and notified the petitioners, on August 5, 2009, the IACHR filed an application in the case of Mr. Fleury before the Inter-American Court on Human Rights.

419. In the section on Haiti of Chapter IV of its 2008 Annual Report, the Inter-American Commission had reported that fewer complaints were received that year relating to violence and threats made in retaliation against human rights defenders. However, during 2009 the IACHR witnessed a resurgence of such activities, and is specifically concerned about the constant acts of persecution, threats and physical abuse that affect human rights defenders in some regions of the country, ranging from anonymous phone calls to severe beatings.

420. The Inter-American Commission recalls that human rights defenders, from different sectors of civil society, make fundamental contributions to the existence and strengthening of democratic societies. Accordingly, respect for human rights in a democratic state in important part depends on human rights defenders enjoying effective and adequate guarantees so that they may carry out their activities freely.⁵⁴⁰ In this sense, the IACHR reminds the State of its duty to ensure the necessary conditions to facilitate the work of defenders.

421. During 2009, the Inter-American Commission granted precautionary measures for two organizations of human rights defenders.⁵⁴¹ In this regard, the Inter-American Commission expresses its concern for the failure to respond to the requests for information regarding precautionary measures in favor of defenders in Haiti, or to take any action in order to comply with

⁵⁴⁰ IACHR Report « Report on the situation of human rights defenders in the Americas », OEA/Ser.L/VII.124, doc. 5 rev.1, March 7, 2006, para. 20.

⁵⁴¹ PM 5/09 – X, Haiti, On April 17, 2009, the IACHR granted precautionary measures for six persons in Haiti, whose identity is kept under seal at the request of the applicants. The request seeking precautionary measures alleges that these persons have been targets of threats and assaults on the part of State security agents since 2008. It is also alleged that the father of one of the beneficiaries of these measures was killed on March 28, 2009. The Inter-American Commission asked the State of Haiti to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and inform the IACHR about actions taken to investigate through the Judiciary the facts that led to the adoption of precautionary measures; and PM 276-09 – R.S., A.B. and others, Haiti, On October 14, 2009, the IACHR granted precautionary measures for R.S. and her 12-year old child, A.B., as well as five members of a human rights organization in Haiti, whose identity is kept under seal at the request of the applicants. The request seeking precautionary measures alleges that A.B. was raped in January 2009 by a school employee, and that A.B. and her mother are being subjected to threats and violent acts as a result of the complaints they filed. On their part, the five members of the human rights organization mentioned above have also been subjected to telephone threats and harassment in the last few months, as a result of the psychological and legal support offered to A.B and her mother. It is also alleged that on April 25, 2009, R.S.'s residence was set on fire by heavily armed individuals. According to the petitioners, the acts of violence they are being subjected to have been conducted by a local police officer, who allegedly is the brother of the professor they accuse of having raped A.B. The Inter-American Commission asked the State of Haiti to adopt the measures necessary to guarantee the life and physical integrity of the beneficiaries, and inform the IACHR about actions taken to investigate through the Judiciary the facts that led to the adoption of precautionary measures, see <http://www.cidh.oas.org/medidas/2009.eng.htm>.

the measures. It must be emphasized that beneficiaries of precautionary measures who continue to exercise their activities are at extreme risk due to the absence of security measures by the State to ensure their right to life and physical integrity. Accordingly, the IACHR urges the Haitian State to take the steps necessary to prevent and eradicate any form of persecution against persons who dedicate their efforts to the defense and promotion of human rights.

3. Women

422. During 2009, the Inter-American Commission continued to receive information indicating that women remain the target of discrimination, despite a number of recent and specialized State initiatives, particularly those launched by the Ministry of Women, to provide greater protection and services to women victims of violence.⁵⁴² Some steps adopted to address this situation display an understanding of the gravity of the existing problems and the commitment of the State and non-state sectors to consider the specific needs of women in public policies designed to prevent, punish and eradicate acts of discrimination and violence against women. The IACHR reiterates its commitment to collaborate with the Haitian State in the search for solutions to the problems identified.

423. In 2009, to highlight the alarming situation of violence and discrimination against women, as a fundamental human right issue, the IACHR published the *Report on the Right of Women to Live Free of Violence and Discrimination in Haiti*.⁵⁴³ The Report indicates that acts of violence against women are an especially extreme and grave manifestation of the discriminatory treatment women still receive in Haitian society. Discrimination and the resulting acts of violence continue to be tolerated in Haitian society, which in turn perpetuates a climate of impunity towards these acts and their repetition. The recommendations in the report are geared towards the design of a national State policy that takes into account the existing forms of violence and discrimination against women, during times of peace and political unrest, in order to advance in the diagnosis, prevention and response to these problems and the incorporation of the specific needs of women in the public agenda. The Inter-American Commission emphasizes the importance of adopting a multi-disciplinary and inter-sectorial approach to these problems, which seeks to integrate gender equality norms in all sectors of government. The recommendations furthermore call on the Haitian State to adopt urgent measures to eradicate discriminatory socio-cultural patterns based on the concept that women are inferior, as well as to take account of the problem of discrimination and the structural inequalities women experience in the development of public policies with the overall objective of addressing acts of violence perpetrated against women and girls in Haiti.⁵⁴⁴

424. For as long as the IACHR has been evaluating the human rights situation in Haiti, fundamental deficiencies in the Haitian justice system have been identified among the matters of greatest concern. In this trend, the Inter-American Commission notes with particular concern that most cases of violence against women are never formally investigated, prosecuted and punished by the justice system. This pattern of systematic impunity sends the message that forms of violence and discrimination against women are and will be tolerated. The prevalence of discrimination against women in Haitian society constitutes an additional barrier for women victims of violence to access justice.

⁵⁴² As such, the IACHR underlines the creation of the "Concertation nationale contre les violences à l'égard des femmes", a space of coordination that deals with violence towards women and bring together the Ministries of Feminine Condition, Justice and Public health, civil society specialized organizations and pertinent organs of the MINUSTAH and United Nations.

⁵⁴³ *The Right of Women to Live Free of Violence and Discrimination in Haiti*, OEA/SER.L/V/II.doc 64, March 10, 2009.

⁵⁴⁴ To consult the complete report: <http://www.cidh.oas.org/countryrep/Haitimujer2009eng/HaitiWomen09.toc.htm>

425. An especially serious case which reflects this situation motivated a request for provisional measures to the Inter-American Court of Human Rights. The Inter-American Commission was informed that a 17-year old female identified as A.J. was raped by a police officer in Haiti on October 4, 2009 after she refused to have sexual relations with him in exchange for liberating her father, identified as B.J. Subsequent to the rape, A.J.'s family and members of the NGO that represented her were allegedly subjected to several acts of intimidation by the rapist, a local police chief. On March 28, 2009, B.J. was found dead with bullet wounds and lesions, after being kidnapped by five armed men a few days before. After the IACHR granted precautionary measures for the protection of A.J., her family, and the NGO, the home of A.J. was burned down and other serious acts of harassment and threats continued against the beneficiaries of the measures. The IACHR requested provisional measures to the Inter-American Court, which were granted on August 24, 2009. According to the information available, the State has not reported any measures to implement specific measures for the protection of the beneficiaries.

426. The IACHR is particularly troubled by the fact that female victims of violence are disinclined to turn to the justice system. Victims and their families have no confidence in the ability of the justice system to right the wrongs committed, and are often mistreated when attempting to avail themselves of judicial remedies. This combination of factors leaves the victims with a sense of insecurity, defenselessness and mistrust in the administration of justice. The Inter-American Commission cannot overemphasized the importance of strengthening the capacity of institutions to combat the pattern of impunity in cases involving violence against women, through effective criminal investigations that bring cases to trial, thereby ensuring that the crimes are properly punished and that the victims receive adequate reparations.

4. Children

427. During 2009 some 50,000 children lived in Haiti in shelters and orphanages. Only one of them, the shelter of Le Carrefour, is partly financed by the State. Le Carrefour shelters street kids, orphans, children in need of protection, as well as children in conflict with the law, not convicted, but rather placed there by the IBERS (Institute of Social Welfare and Research). This shelter houses 387 children, and approximately the same number is housed in its two annexes, one of which located at Petite Place Cazeau and the other in the Central Plateau. The Petite Place Cazeau Center is used as a reinsertion center for young adults and it provides them with assistance to find a job before they leave. The majority of Le Carrefour's furniture is built by the Petit Place Cazeau's adolescents. The IACHR acknowledges the worth of this initiative, but it must note that during its May visit it was informed that the staff of Le Carrefour did not receive their salary from the State for over eight months, for the second consecutive year. The Inter-American Commission strongly hopes that this situation will be addressed in the budget adopted in autumn of 2009, so that the project may continue effectively.

428. The IACHR has taken note that efforts are made within the Minors' Protection Division (MPD), a specialized unit within the HNP, to deal appropriately with children in conflict with the law and children in need of protection. This unit was created in 2002, with the support of UNICEF, and it comprises some 35 police officers stationed around the capital city. During its meeting with the Chief of the MPD, the Inter-American Commission was informed that programs were set to start in other regions to train police officers. The IACHR strongly supports this initiative and emphasizes the need to station members of this Brigade in all regions of the country so that it may be available to every child, regardless of his or her geographic location.

429. This unit is particularly important considering the alarming information that indicates children are increasingly targeted by criminal gang leaders for abductions: not only as victims, but also as participants, to perform the most exposed acts, such as feeding the victim or collecting the

ransom. This has resulted in the arrest of more children under the charge of kidnapping or gang association (*association de malfaiteurs*).⁵⁴⁵ In 2009, some 350 children in conflict with the law were held in custodial institutions in Haiti, the vast majority of which were in pretrial detention. During its visit to Gonaïves, the Commission was particularly concerned about the situation of minors held together with adults at the Toussaint Louverture Police Station. The Commission had the opportunity to meet with the Government Commissioner to express its concern in this regard. Subsequently, the IACHR was informed that, with important support from the MINUSTAH, a cell especially for boys was built at the Toussaint Louverture Police Station in Gonaïves, ensuring that they are held separately from the adults.⁵⁴⁶ The IACHR wholeheartedly welcomes the construction of this cell.

430. In the Delmas 33 Detention Center for Minors, the only one exclusively for children in conflict with the law in Haiti, overcrowding is severe. During the IACHR's May 2009 visit, the Center, which was built for 72 children, sheltered 174, 13 of whom were convicted, ranging from 10 to 18 years old.⁵⁴⁷

431. The IACHR is encouraged to learn that the MPD is increasingly considering measures alternative to imprisonment, such as the return of stolen items or reaching agreements with the victim of the illegal act in question. Although it is clear that these measures cannot be envisaged following a serious crime, but only minor offenses, the Inter-American Commission considers that these alternative measures are a positive way to contribute to the decongestion of crowded cells and to solve the problem of children held together with adults. The IACHR also acknowledges the project of the Port-au-Prince Bar, together with UNICEF, to finance one attorney entirely dedicated to providing free legal assistance to minors. However, other regions of the country are apparently not covered by such assistance.

432. In addition to the situation of the Delmas 33 Center and Gonaïves, the IACHR received worrisome information concerning the situation of minors detained in Jérémie, revealing that pretrial detention generally lasts up to around 5 months; that detention conditions include overcrowding; and that rain causes hazardous conditions; some juvenile are held together with adults; that food, water, access to clothing and medical care are inadequate; no educational resources are available; legal representation is uneven or non-existent; and some judge persistently do not show up for scheduled hearings or that the case file is not available during the hearing.⁵⁴⁸

433. With regard to the city of Cap Haïtien, the Inter-American Commission was pleased to learn about the opening of the Tribunal for Children and to learn that the judges who will be assigned to this Tribunal will receive specific training from the United Nations Development Program (UNDP), MINUSTAH and UNICEF.⁵⁴⁹ The IACHR considers that the establishment of this tribunal represents an advance in the process of the Haitian judicial system reform and strongly hopes that it will contribute to achieving the advances in this crucial area. However, during a meeting with the

⁵⁴⁵ Meeting with NGOs in Port-au-Prince, May 25 and 28, 2009; meeting with representatives of the Ministry of Social Affairs, May 29, 2009.

⁵⁴⁶ Working meeting with representatives of AGREDAH (Action Gonaïvienne pour le Développement et pour le Respect des Droits Humains), November 4, 2009.

⁵⁴⁷ According to a report from Réseau National de Défense des Droits Humains (RNDDH) "Radiographie des prisons du pays" October 2009, page 9, by October 13, 2009, 190 boys were held at the Delmas 33 Center, representing 0,61 m² for each boy.

⁵⁴⁸ Center for Social Justice, Seton Hall University School of Law, Hastings to Haiti Partnership (HHP) at U.C. Hastings College of the Law.

⁵⁴⁹ According to UNDP Press Release, *Le PNUD et la MINUSTAH : un partenariat solide favorisant la justice des mineurs*, Haïti, Cap-Haïtien, August 7, 2009.

judges of the Port-au-Prince Tribunal for Children, the judges indicated to the IACHR that the institutional resources are not in place in order to allow them to apply the existing law. As an example, according to this law, if the judge convicts a child, he can only send him back to his parents; send him to an education center under surveillance; or place him or her in a psychiatric institution.⁵⁵⁰ However, as such centers do not exist in Haiti; when the judge sentences a child to be remitted to such a center, he knows that the child will ultimately be sent to the Delmas 33 Center, or worse, remain in his current facility.⁵⁵¹ The judges also pointed out that there are a high number of children in prison that are not reported to the judiciary and never brought before the Tribunal for Children.⁵⁵² The Inter-American Commission notes that this situation causes a double illegality to the detriment of minors because on the one hand they are held in prisons for adults, and on the other, they are not transferred to the jurisdiction of the Tribunal for Children.

434. The IACHR continues to be concerned about the situation of thousands of Haitian unpaid child laborers, condemned to living as *restavek* (“live with” in créole). The *restavek* system deprives children of their family environment and subjects them to multiple forms of abuse including economic exploitation, sexual violence and corporal punishment, thereby violating their right to security, education, health and food. Many of these children have been reported as trafficked within and outside the country. The U.N. Special Rapporteur on Contemporary Forms of Slavery described the *restavek* system as a “modern form of slavery”.⁵⁵³

435. The Inter-American Commission is also concerned by the rising number of street children, who organize themselves in bases in order to survive in the violent street environment. The leaders often take advantage of the youngest; sexual violence is frequent, sometimes as an initiation ritual; and children are ready to do anything to maintain their belonging to one of these bases, since the alternative of being alone would likely lead to their death.⁵⁵⁴ The only organizations available to provide support to children in these sectors are local or international NGOs, but there is no long term program in place.⁵⁵⁵ The Inter-American Commission urges the Haitian authorities to take concrete measures to provide an alternative for these children. As the IACHR has noted on previous occasions, children are among the most vulnerable members of society and are entitled to special protection from the State in order to effectively safeguard their rights. Accordingly, the Inter-American Commission urges the State to take the measures necessary to give full effect to the rights of children under Article 19 of the American Convention; to guarantee that effective measures of protection are in place, as required by their condition as minors; and to ensure their full enjoyment of the rights and freedoms provided for under the Convention on the Rights of the Child, ratified by the Haitian State on July 8, 1995.

D. Economic, social and cultural rights

436. Extreme poverty remains one of the most extensive and complex challenges facing Haiti, with consequent effects on human rights. While the socio-economic context generally improved since 2008, reports show that nearly a third of the population is moderately or extremely

⁵⁵⁰ Article 23, original title in French: « Loi du 7 septembre 1961 instituant des tribunaux spéciaux pour enfants ».

⁵⁵¹ Meeting with Judges from Tribunal for Children, Port-au-Prince, May 28, 2009.

⁵⁵² Meeting with Judges from Tribunal for Children, port-au-Prince, May 28, 2009.

⁵⁵³ United Nations Press Release, *UN Expert on Slavery Expresses Concern Over ‘Restavek’ System in Haiti*, June 10, 2009.

⁵⁵⁴ The United Nations Secretary General reported that: “Sexual violence, including gang rapes, against children perpetrated by armed elements in the context of insecurity and impunity continues to be reported”, *Children and armed conflict*, Report of the Secretary-General, UN Doc. A/63/785 S/2009/158, March 26, 2009, para.57.

⁵⁵⁵ Meeting with NGOs in Port-au-Prince, May 28, 2009.

insecure in terms of access to food,⁵⁵⁶ and that health and education are among the areas where the State's capacity to deliver basic services is the weakest.⁵⁵⁷ Organizations report that in the first half of 2009 Haiti felt the impact of the international financial crisis.⁵⁵⁸ Although statistics related to employment are difficult to pin down in Haiti, some estimates put the country's unemployment rate as high as 70 percent.⁵⁵⁹ It must be noted that Haiti has no social safety net, no unemployment insurance, no state-supported health care, and that nationally, only three out of five children attend school and twenty five percent of Haiti's rural district have no school whatsoever.⁵⁶⁰

437. In Cité-Soleil, which has a population of around 500,000 people, the IACHR was informed that the only hospital available has thirty beds. Only 2.8% of the adult population has access to drinking water. While 14% of the families participate in an activity which generates income, 60% of the population eats once a day, 18% twice a day, 3.8% eat three times a day and 19.2% eat only "sometimes".⁵⁶¹

438. Additionally, the IACHR learned that the region of Gonaives still suffers from the devastating consequences related to last year's consecutive hurricanes. The IACHR learned that more than nine months after the hurricanes, around 450 families (representing 1,460 persons) still live in shelters, in inadequate conditions with no mattresses, poor hygiene, and insufficient food. Floods still occur every time it rains and although the country was not yet affected by hurricanes this year, it is still a constant source of preoccupation for the population and for the authorities. In this regard, the Inter-American Commission learned that an important portion of the population left the city of Gonaives to migrate towards the mountains, where they hope to find greater environmental stability.⁵⁶²

439. Haiti was set to ratify in 2009 the International Covenant on Economic, Social and Cultural Rights, but this decision was postponed for unspecified reasons. The Inter-American Commission strongly encourages the State to ratify the ICESCR since it would represent a commitment to prioritize and ameliorate the socioeconomic situation of the country.⁵⁶³ In this regard, the IACHR recalls that the need for security and justice needs to be accompanied by social and economic development in order to achieve durable stability. The State will not be in a position to guarantee the exercise by the Haitian population of its social, economic and cultural rights, without functional institutions and public services.

⁵⁵⁶ Conseil national de la sécurité alimentaire [National Council on Food Security] September 2009.

⁵⁵⁷ UN Security Council, *Report of the Security Council Mission to Haiti*, UN Doc. S/2009/175, April 3, 2009.

⁵⁵⁸ The IMF states that "as the economy begins to recover from last year's hurricanes and the food and fuel price spikes, Haiti is being hit by the global crisis", International Monetary Fund, Haiti, *Fifth Review Under the Three-Year Arrangement Under the Poverty Reduction and Growth Facility, and Requests for Waiver of Performance Criterion, Modification of Performance Criteria, and Extension of the Arrangement*, June 15, 2009.

⁵⁵⁹ United States Institute of Peace, *Haiti after the Donor's Conference, a Way Forward*, Special Report 232, September 2009.

⁵⁶⁰ PNUD Press Release, *In Haiti, a Low-Wage is Better than None*, Corey Flintoff, Port-au-Prince, June 18, 2009; and United States Institute of Peace, "Haiti after the Donor's Conference, a Way Forward" Special Report 232, September 2009.

⁵⁶¹ Information presented during the IACHR hearings held on November 3, 2009, based on a survey conducted by the NGO Collectif des Notables de Cité Soleil (CONOCS).

⁵⁶² AlterPresse, October 5, 2009, referring to data from the Haitian Institute of Statistics and Computing, which indicate that the population of Gonaives went from 318 755 habitants in June 2008 to 263716 habitants in October 2009.

⁵⁶³ In this regard, see *Plaidoyer en vue de la ratification du Pacte international relatif aux droits économiques, sociaux et culturels par Haïti*, Office of the High Commissioner on Human Rights, at: http://minustah.org/pdfs/sdh/PLAIDOYER_PIDESC.pdf.

440. Closely linked to the social and economic environment prevailing in Haiti is the massive number of Haitians who decide to leave the country, despite extremely harsh conditions waiting for them. As in previous years, during 2009, the IACHR was preoccupied to learn about dozens of Haitians, commonly known as “boat people”, who found death on their way out of the country. These persons pay to board extremely insecure boats to try to find a better living elsewhere, usually the United States.

441. Another concern of the Inter-American Commission is the situation of Haitians who are deported back to Haiti. The IACHR first notes that in most cases, the ‘deported’ left Haiti when they were very young, adapted to their welcoming country and often do not speak créole or French. According to information received by the IACHR, the Dominican Republic alone repatriates some 20,000 Haitians yearly.⁵⁶⁴ Regardless of where the Haitian is deported from, no programs of reinsertion exist within the Haitian State. Each repatriated person is welcomed back by the National Immigration Office, which provides him or her between 500 and 1000 gourdes (U.S.\$12 to U.S.\$24) and then left on their own.⁵⁶⁵ Without programs in place to help them to get reaccustomed to Haiti, these persons are in most cases not only poor and unemployed but also stigmatized by the rest of the population, who often associate them with criminality and blame them for the insecurity in the country. Repatriates usually attempt to leave Haiti again as soon as they have an opportunity, even if it is to the Dominican Republic, where they continue to be the target of acts of violence. These acts can be as extreme as the reported May 2, 2009 beheading of Haitian Carlos Nérilus in the city of Buenos Aires in the Dominican Republic, before a crowd applauding in approval and the reported October 22 beheading of Haitian Tony Charlis, in similar circumstances.⁵⁶⁶

442. The IACHR invites the Haitian authorities to be more proactive with respect to this situation; bringing criminal charges against those responsible for transporting boat people when it endangers the lives of persons; negotiating migratory labor agreements with neighboring island countries;⁵⁶⁷ and implementing programs of reinsertion for repatriated Haitians.

V. CONCLUDING OBSERVATIONS

443. First of all, the IACHR notes that 2009 was characterized by relative stability in Haiti, a general improvement in the security situation and an important commitment from the international community to engage in numerous social and economic development projects. These achievements remain fragile and the Inter-American Commission, while recognizing them, will continue to closely monitor the situation of human rights in Haiti.

444. Despite the specific advances identified, the IACHR must also note that many of the problems it observed in Haiti during 2009 arise from the same unsolved situations of the past,

⁵⁶⁴ Meeting with NGO in Port-au-Prince, May 25, 2009, Information provided by the « Groupe d'Appui aux Rapatriés & Réfugiés ».

⁵⁶⁵ Meeting with NGOs, Port-au-Prince, May 25, 2009.

⁵⁶⁶ See, « Lettre ouverte aux autorités haïtiennes autour de la campagne haineuse perpétrée contre les Haïtiens/nes et leur pays en République Dominicaine », GARR Press Release, October 21, 2009 ; « Un ressortissant haïtien décapité en République Dominicaine », Le Nouvelliste, October 22, 2009; see also « L'ambassadeur dominicain condamne l'assassinat de 4 ressortissants haïtiens », Radio Métropole, October 23, 2009.; « Les autorités haïtiennes et dominicaines doivent agir pour prévenir de nouveaux assassinats contre les migrants/es haïtiens », GARR Press Release, October 28, 2009.

⁵⁶⁷ Such as Turcos and Caïques, where reports indicate that some 13,000 Haitians live, but only 3,000 of them in regular situation, Press Release, *Les migrants/es haïtiens en difficulté aux îles Turques et Caïques*, GARR, 2 septembre 2009.

which have been identified in its previous reports regarding this country. In effect, the Inter-American Commission has previously expressed concern about public security, administration of justice, impunity and the situation of particular persons and groups (women, children, human rights defenders and journalists) in Haiti. These concerns remain present, and Haiti continues to suffer from structural and institutional deficiencies requiring reforms and long-term assistance. The failure of the system to effectively and promptly administer justice, the prevalence of corruption and important lack of financial and human resources all contribute to create an environment of general impunity affecting the State's capacity to guarantee and respect the fundamental rights of the inhabitants of Haiti.

445. The Inter-American Commission must again emphasize the importance of developing a long term strategy and policy of reform to address structural and legislative weaknesses in these areas. In this connection, the IACHR reiterates the importance of the international community's role in providing critical financial and technical assistance to Haiti's mission to address longstanding issues and to achieve long-term change and stability, and in particular the need to develop programs in collaboration and coordination with the Haitian government and other key stakeholders.

446. On the basis of the information and analysis of this report, In light of its conclusions, the Commission recommends that the Republic of Haiti take the following measures:

1. To implement the series of laws adopted in 2007 on the independence of the judiciary, such as nominating the President of the Superior Council of the Judiciary Power.

2. To ensure that the courts are capable of fulfilling their role, especially the duty to investigate, prosecute and punish persons responsible for human rights violations.

3. To fully and promptly engage in the implementation of the Penitentiary Administration Development Strategic Plan and the recently adopted Law regulating custody.

4. To continue the HNP vetting process, with the full support of the State.

5. To ensure adequate prevention and punishment of violent crimes, and to reinforce accountability mechanisms in order to effectively hold perpetrators accountable for their crimes.

447. In the resolution of the problems identified in this report, the IACHR reiterates its commitment to collaborate with the Haitian State and offers its assistance to the government and people of Haiti in their endeavor to address these deficiencies.

HONDURAS

I. HUMAN RIGHTS SITUATION IN HONDURAS

448. The 1997 Annual Report of the IACHR laid out the five criteria that the Commission takes into account to identify the OAS Member States whose human rights practices merited special attention and consequently should be included in the corresponding chapter of the Annual Report.

449. As its paramount mission is "to promote the observance and defense of human rights" in the hemisphere, the Commission has been particularly attentive in following the human rights situation in Honduras, and through its reports has reviewed a series of structural issues in the areas of justice, security, marginalization, and discrimination that for decades have taken a toll on the human rights of its inhabitants.

450. On June 28, 2009, the democratically elected President of Honduras was deposed, and the democratic and constitutional order was interrupted. The IACHR decided to incorporate the State of Honduras in Chapter IV of its Annual Report for 2009, in accordance with Article 59.1.h of its Rules of Procedure,⁵⁶⁸ because it believes the situation in Honduras since the June 2009 coup d'état falls within the following criteria:

First criterion: This has to do with those cases in which States are ruled by governments that have not been chosen by secret ballot in honest, periodic, and free popular elections in accordance with accepted international standards and principles. The Commission has repeatedly pointed out the centrality of representative democracy and its mechanisms in achieving the rule of law and respect for human rights. With respect to States in which the political rights set forth in the American Convention and Declaration are not respected, the Commission complies with its duty to inform other OAS member states regarding the human rights situation of its inhabitants.

Second criterion: This concerns States in which the free exercise of the rights contained in the American Convention or the American Declaration has been effectively suspended, in whole or part, by virtue of the imposition of exceptional measures, such as a state of emergency, suspension of guarantees, state of siege, prompt exceptional security measures, and the like.

Third criterion: This applies when convincing evidence exists that a State is engaging in mass and gross violations of human rights guaranteed in the American Convention and/or Declaration or other applicable human rights instruments. Of particular concern here are violations of non-derogable fundamental rights, such as extrajudicial executions, torture, and forced disappearance. Thus, where 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 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.

451. On November 27, 2009, the Commission sent the present report to the *de facto* government of Honduras. The response was received on December 31, 2009.

452. Whereas the Commission approved its report "HONDURAS: HUMAN RIGHTS AND THE *COUP D'ÉTAT*," which covers the human rights situation since June 28, 2009, the Executive Summary of that report follows.

II. EXECUTIVE SUMMARY

453. At 5:00 a.m. on June 28, 2009, Honduran Army troopers, acting on orders of the Head of the Joint Chiefs of Staff, stormed the presidential residence, took President José Manuel Zelaya Rosales into custody and flew him by military aircraft to Costa Rica. With that, the democratically elected President of Honduras was ousted and democratic and constitutional order in Honduras was interrupted.

⁵⁶⁸ Article 59 of the IACHR Rules of Procedure establishes the following: "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."

454. That same day, the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission”, “IACHR” or “Commission”) issued its first press release on the situation in Honduras, in which it strongly condemned the coup d’état, made an urgent call to restore democratic order in Honduras and to respect human rights, and demanded that the situation of the Foreign Minister and other cabinet members be clarified immediately, as their whereabouts at the time were unknown. On June 30, the Commission asked to conduct an urgent visit to Honduras. Also, in furtherance of its duties to promote and protect human rights and given the hundreds of complaints it had received on June 28 and thereafter alleging grave human rights violations, the IACHR granted precautionary measures, requested information on the danger that certain persons faced as a consequence of the coup d’état, and 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. It also issued a number of press releases.

455. The international community’s condemnation of the coup d’état in Honduras has been unanimous. The *de facto* authorities have not been recognized. International forums have condemned the interruption of democratic order in Honduras and have called for President Zelaya to be restored to office. The American States have responded to the political crisis in Honduras by invoking mechanisms recognized in the Inter-American Democratic Charter, which stipulates that “[t]he peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it.” Thus, at a special session held on July 4, 2009, the General Assembly of the Organization of American States (hereinafter “OAS”) resolved to suspend the Honduran state from the exercise of its right to participate in the Organization. It further 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.”⁵⁶⁹

456. On July 13, the IACHR received a communication from the President of the Supreme Court of Justice of Honduras, in which he agreed to the Commission’s visit. The IACHR’s on-site visit to Honduras was from August 17 to 21, 2009. .

457. 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 the deaths of at least 7 persons, an arbitrary declaration of a state of exception, repression of public demonstrations through disproportionate use of force, 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 serious arbitrary restrictions on the right to freedom of expression. The Commission also established that judicial remedies were ineffective in protecting human rights.

458. From the day on which the *coup d’état* occurred, the state of exception that the *de facto* authorities illegitimately decreed and that the security forces enforced was used as means to control the citizenry. First, the Commission observes that the *de facto* government does not have the constitutional legitimacy to declare a state of exception; furthermore, under Article 27 of the American Convention, the scope of the suspensions must be that strictly necessary to relieve an emergency situation, and this implies limiting the scope of time and space, and the rights that are suspended.

⁵⁶⁹ OAS, Thirty-seventh Special Session of the General Assembly, Resolution AG/RES. 2 (XXXVII-E/09) rev. 1, July 4, 2009, operative paragraphs 1 and 2. Available at: <http://www.oas.org/CONSEJO/SP/AG/37SGA.asp#docs>.

459. 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.

460. 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, were not read their rights, and were held *incommunicado*. The majority of those detained were released in less than 24 hours. No records were made of the arrests, which in many cases obstructed execution of the writs of *habeas corpus*.

461. The weaponry, methods and strategies used by the Army, the Police and the Cobra Command strike force reveal a disproportionate use of force. This, combined with the conditions in which the detained persons were incarcerated, meant that thousands of persons endured inhuman, cruel and degrading treatment. 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 foreigners were the target of discriminatory practices.

462. The Commission also received testimony about acts of harassment committed against persons who publicly demonstrated their political support of President Zelaya. Those governors, congressmen, mayors and social leaders who demanded that the constitutional president be returned to office, have reported that they were targets of, *inter alia*, reprisals, threats, acts of violence and budgetary cuts, and that the public offices where they work were occupied by military troops. The family of President Zelaya in particular reported the harassment and smear campaign being waged against everyone in the family.

463. The IACHR confirmed that control of information has been implemented through the temporary shutdown of some media outlets; a ban on the transmission of signals of certain cable television stations that were reporting on the coup d'état; the selective use of power outages to affect broadcasting by audiovisual media covering the coup, and attacks and threats against journalists from media outlets with editorial positions opposed to the coup d'état.

464. 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 behaviors prohibited under the existing laws. These measures represent a complete, arbitrary, unnecessary and disproportionate suppression 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 exception, must be ordered by a legitimate government and must be proportionate and strictly necessary to protect the existence of the democratic system of government.

465. Violations of the rights to life, humane treatment, freedom of association, personal liberty, judicial guarantees, freedom of expression, the rights of women and the rights of minority groups were exacerbated by the absence of a legitimate government that can process complaints, investigate the facts, punish those responsible, and make reparations to the victims. All sectors of Honduran society with which the Commission has spoken have expressed a fear of reprisals on the part of security agents, or simply a distrust of those institutions that have not vigorously condemned the interruption of democratic government and have done nothing in response to public outcries.

466. Under the American Convention on Human Rights, which the State ratified in 1977, Honduras has 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. It is that passiveness or tolerance that enables these violations to be perpetrated repeatedly with impunity.

467. Time and time again the organs of the inter-American system for the protection of human rights have held that the democratic system of government is the best guarantee of 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 constitutional order. The Commission therefore considers the conditions necessary for effective protection and observance of the human rights of all inhabitants of Honduras will only be possible when democratic government is fully restored in Honduras.

VENEZUELA

468. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) has decided to include the Bolivarian Republic of Venezuela (hereinafter “Venezuela” or “the State”) in Chapter IV of its 2009 Annual Report in compliance with Article 57(1)(h) of its Rules of Procedure.⁵⁷⁰ In its 1997 Annual Report, the Commission spelled out the five criteria it uses to identify the member states of the OAS whose practices in the field of human rights warrant special attention. The Commission believes that the situation in Venezuela fits the fifth of those criteria, which covers:

[...] 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.

Since the Commission has adopted its report *Democracy and Human Rights in Venezuela*, the executive summary of that report is included below.

469. The report *Democracy and Human Rights in Venezuela* is produced in compliance with the mandate of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission”, or the “IACHR”) to promote the observance and defense of human rights in the Member States of the Organization of American States (OAS). The Commission believes that the refusal of the Bolivarian Republic of Venezuela (hereinafter

⁵⁷⁰ Article 57 of the IACHR’s Rules of Procedure provides as follows: “1. The Annual Report presented by the Commission to the OAS General Assembly shall include the following: [...] h. any general or special report the Commission considers necessary with regard to the situation of human rights in the Member States, and, as the case may be, follow-up reports noting the progress achieved and the difficulties that have existed with respect to the effective observance of human rights; [...] 2. For the preparation and adoption of the reports provided for in paragraph 1(h) of this article, the Commission shall gather information from all the sources it deems necessary for the protection of human rights. Prior to its publication in the Annual Report, the Commission shall provide a copy of said report to the 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 sole competence of the Commission.” Rules of Procedure of the Inter-American Commission on Human Rights (adopted by the Commission at its 109th special session held on December 4 to 8, 2000, as amended at its 116th regular session of October 7 to 25, 2002, and at its 118th regular session of October 6 to 24, 2003.)

“Venezuela” or “the State”) to allow the Commission to conduct an on-site visit to the country does not preclude the IACHR from analyzing the situation of human rights in Venezuela.

470. The Commission’s last visit to Venezuela took place in May 2002, following the institutional breakdown that occurred in April of that year. Following that visit, in December 2003 the Commission published the *Report on the Situation of Human Rights in Venezuela*, in which it set out a series of recommendations. Since then, in order to follow up on those recommendations and to gather first-hand information on the current human rights situation in Venezuela, the Commission has pursued various formalities in order to secure the State’s permission to conduct an observation visit. To date, the State has refused to allow the IACHR to visit Venezuela, not only undermining the powers assigned to the Commission as the OAS’s principal body for the promotion and protection of human rights, but also seriously weakening the protection system created by the Organization’s Member States.

471. In the report *Democracy and Human Rights in Venezuela*, the Commission analyzes the evolution of human rights in the State based on the information it has received over recent years from its various protection mechanisms, such as processing petitions through the case system, holding hearings, adopting precautionary measures, asking the Court to issue provisional measures, including the country in Chapter IV of its annual reports, and issuing press releases. The Commission also bases its analysis on information submitted by the State of Venezuela in response to requests made by the Commission, on the State’s reply to the questionnaire about the human rights situation in Venezuela received in August 2009, on information given to the Commission by the State at hearings, and on the available public information.

472. In this report, the Commission identifies issues that restrict full enjoyment of the human rights enshrined in the American Convention on Human Rights. Among other issues, the IACHR analyzes a series of conditions that indicate the absence of due separation and independence between the branches of government in Venezuela. The Commission also finds that in Venezuela, not all persons are ensured full enjoyment of their rights irrespective of the positions they hold vis-à-vis the government’s policies. The Commission also finds that the State’s punitive power is being used to intimidate or punish people on account of their political opinions. The Commission’s report establishes that Venezuela lacks the conditions necessary for human rights defenders and journalists to carry out their work freely. The IACHR also detects the existence of a pattern of impunity in cases of violence, which particularly affects media workers, human rights defenders, trade unionists, participants in public demonstrations, people held in custody, *campesinos* (small-scale and subsistence farmers), indigenous peoples, and women.

473. The Commission begins by analyzing how the effective enjoyment of political rights in Venezuela – rights that by their very nature promote strengthened democracy and political pluralism – has been hampered. The IACHR’s report indicates that mechanisms have been created in Venezuela that restrict the possibilities of candidates opposed to the government for securing access to power. That has taken place through administrative resolutions of the Office of the Comptroller General of the Republic, whereby 260 individuals, mostly opposed to the government, were disqualified from standing for election. The Commission notes that these disqualifications from holding public office were not the result of criminal convictions and were ordered in the absence of prior proceedings, in contravention of the American Convention’s standards.

474. In its report, the Commission also notes how the State has taken action to limit some powers of popularly-elected authorities in order to reduce the scope of public functions in the hands of members of the opposition. In its observations to the present report, the State indicated that the modifications made to the instruments governing the powers and scope of authority of governors and mayors would have been made regardless of who was elected in 2008 and that they also apply to authorities of the government’s party. Nevertheless, the IACHR has noticed that a

series of legal reforms have left opposition authorities with limited powers, preventing them from legitimately exercising the mandates for which they were elected.

475. In this report, the IACHR also notes a troubling trend of punishments, intimidation, and attacks on individuals in reprisal for expressing their dissent with official policy. This trend affects both opposition authorities and citizens exercising their right to express their disagreement with the policies pursued by the government. These reprisals are carried out through both state actions, including harassment, and acts of violence perpetrated by civilians acting outside the law as violent groups. The Commission notes with concern that, in some extreme cases, criminal proceedings have been brought against dissidents, accusing them of common crimes in order to deny them their freedom on account of their political positions.

476. Similarly, the Commission notes a trend toward the use of criminal charges to punish people exercising their right to demonstrate or protest against government policies. Information received by the Commission indicates that over the past five years, criminal charges have been brought against more than 2,200 people in connection with their involvement in public demonstrations. Thus, the IACHR considers that the right to demonstrate in Venezuela is being restricted through the imposition of sanctions contained in provisions enacted by President Chávez's government, whereby demonstrators are accused of crimes such as blocking public highways, resisting the authorities, damage to public property, active obstruction of legally-established institutions, offenses to public officials, criminal instigation and criminal association, public incitement to lawbreaking, conspiracy, restricting freedom of employment, and breaches of the special secure zones regime, among others. In its report, the Commission describes cases of people facing criminal charges for which they could be sentenced to prison terms of over twenty years in connection with their participation in antigovernment demonstrations. In its observations on the present report, the State affirms that any time opposition sectors attempt to alter the public order in violation of the laws of the Republic, they will be subject to prosecution, without this being considered a restriction of the exercise of the right to peaceful demonstration, nor a criminalization of legitimate mobilization and social protest. In the Commission's view, this practice constitutes a restriction of the rights of assembly and freedom of expression guaranteed in the American Convention, the free exercise of which is necessary for the correct functioning of a democratic system that includes all sectors of society.

477. At the same time, the IACHR notes that exercising the right of peaceful demonstration in Venezuela frequently leads to violations of the rights to life and humane treatment, which in many cases are the consequence of excessive use of state force or the actions of violent groups. According to information received by the Commission, between January and August 2009 alone, six people were killed during public demonstrations, four of them through the actions of the State's security forces. This situation is of particular concern to the IACHR in that repression and the excessive use of criminal sanctions to criminalize protest has the effect of dissuading those wishing to use that form of participation in public life to assert their rights. In its observations on the present report, the State expressed that the increase in the number of demonstrations suppressed was due to a higher number of illegal demonstrations.

478. The Commission's report also refers to issues that affect the independence and impartiality of the judiciary in Venezuela. The IACHR reiterates what it has said on previous occasions: that the rules for the appointment, removal, and suspension of justices set out in the Organic Law of the Supreme Court of Justice lack the safeguards necessary to prevent other branches of government from undermining the Supreme Court's independence and to keep narrow or temporary majorities from determining its composition.

479. The Commission also notes with concern the failure to organize public competitions for selecting judges and prosecutors, and so those judicial officials are still appointed in a

discretionary fashion without being subject to competition. Since they are not appointed through public competitions, judges and prosecutors are freely appointed and removable, which seriously affects their independence in making decisions. The IACHR also observes that through the Special Program for the Regularization of Tenured Status, judges originally appointed on a provisional basis have been given tenured status, all without participating in a public competitive process.

480. In addition to the shortcomings in the appointments process, the Commission observes that in Venezuela judges and prosecutors do not enjoy the guaranteed tenure necessary to ensure their independence following changes in policies or government. Also, in addition to being freely appointed and removable, a series of provisions have been enacted that allow a high level of subjectivity in judging judicial officials' actions during disciplinary proceedings. Even the Code of Ethics of Venezuelan Judges, adopted in August 2009, contains provisions that, by reason of their breadth or vagueness, allow disciplinary agencies broad discretion in judging the actions of judges.

481. Furthermore, even though the 1999 Constitution states that legislation governing the judicial system is to be enacted within the first year following the installation of the National Assembly, a decade later the Transitional Government Regime, created to allow the Constitution to come into immediate effect, remains in force. Under that transitional regime, the Commission for the Functioning and Restructuring of the Judicial System was created, and this body has ever since had the disciplinary authority to remove members of the judiciary. This Commission, in addition to being a special, temporary entity, does not afford due guarantees for ensuring the independence of its decisions, since its members may also be appointed or removed at the sole discretion of the Constitutional Chamber of the Supreme Court of Justice, without previously establishing either the grounds or the procedure for such formalities.

482. Another issue of concern to the Commission regarding the autonomy and independence of the judiciary is the provisional status of most of Venezuela's judges. According to information provided to the Commission by the Venezuelan State, in August 2009 there were a total of 1,896 judges, of whom only 936 were regular judges. That means that more than 50% of judges in Venezuela do not enjoy tenure in their positions and can be easily removed when they make decisions that could affect government interests. A similar problem with provisional status also affects the prosecutors of the Attorney General's Office, since all prosecutors in Venezuela are freely appointed and removable.

483. In its report, the Commission also describes how large numbers of judges have been removed or their appointments voided without the applicable administrative proceedings. After examining the resolutions that voided the appointments of various judges, the IACHR notes that they contain no reference to the reasons why the appointments were canceled, and it cannot be inferred that they were adopted through administrative proceedings in which the judges were given the possibility of presenting a defense. The Commission notes with concern that in some cases, judges were removed almost immediately after adopting judicial decisions in cases with a major political impact. The lack of judicial independence and autonomy vis-à-vis political power is, in the IACHR's opinion, one of the weakest points in Venezuelan democracy.

484. In its report, the Commission analyzes with concern the situation of freedom of thought and expression in Venezuela. In the IACHR's opinion, the numerous violent acts of intimidation carried out by private groups against journalists and media outlets, together with the discrediting declarations made by high-ranking public officials against the media and journalists on account of their editorial lines and the systematic opening of administrative proceedings based on legal provisions that allow a high level of discretion in their application and enable drastic sanctions to be imposed, along with other elements, make for a climate of restriction that hampers the free exercise of freedom of expression as a prerequisite for a vigorous democracy based on pluralism and public debate.

485. The Commission observes with particular concern that there have been very serious violations of the rights to life and humane treatment in Venezuela as a result of the victims' exercise of free expression. In this report, the IACHR describes two murders of journalists in 2008 and 2009, carried out by persons unknown, together with serious physical attacks and threats against reporters and owners of media outlets. In the Commission's view, these incidents demonstrate the serious climate of polarization and intimidation within which journalists must work in Venezuela.

486. The IACHR notes that recent months have seen an increase in administrative proceedings sanctioning media that criticize the government. It is of particular concern to the Commission that in several of these cases, the investigations and administrative procedures began after the highest authorities of the State called on public agencies to take action against *Globovisión* and other media outlets that are independent and critical of the government.

487. The Commission has also verified the existence of cases of prior censorship as a prototype of extreme and radical violations of freedom of expression in Venezuela. As an example of this, this report analyzes the ban placed on the advertising produced by Cedice and Asoesfuerzo against a proposed law of interest to the government.

488. The report also analyzes the impact on the right of free expression of the proceedings initiated in July 2009 toward the possible cancellation of 240 radio stations' broadcasting concessions, and of the decision to order 32 stations to cease transmissions. The IACHR finds it notable that after several years of total inaction, and at a time of tension between the private media and the government, the authorities announced massive closures of radio stations, using language that made constant reference to the editorial lines followed by the private media outlets that stood to be affected by the measure. Similarly, the Commission observes with concern the statements made by the Minister of Popular Power for Public Works and Housing suggesting that these media outlets' editorial lines could be one of the reasons for deciding to suspend their licenses or ordering their closure, irrespective of the technical reasons cited in the corresponding administrative resolutions.

489. The Commission calls the attention of the Venezuelan State to the incompatibility between the current legal framework governing freedom of expression and its obligations under the American Convention. The IACHR again states that because of their extreme vagueness, the severity of the associated punishments, and the fact that their enforcement is the responsibility of a body that depends directly on the executive branch, the provisions of the Law on Social Responsibility in Radio and Television dealing with accusations of incitement may lead to arbitrary decisions that censor or impose a subsequent disproportionate penalty on citizens or the media for simply expressing criticisms or dissent that may be disturbing to public officials temporarily holding office in the enforcement agency.

490. The Commission also stresses that the offenses of *desacato* (disrespect) and *vilipendio* (contempt) contained in the amendments to the Penal Code in force since 2005 are incompatible with the American Convention in that they restrict the possibilities of free, open, plural, and uninhibited discussion on matters of public importance. In its report, the Commission again states that bringing criminal charges against individuals who criticize public officials constitutes the subsequent imposition of liability for the exercise of freedom of expression that is unnecessary in a democratic society and is disproportionate in its serious impact on the person making such criticisms and on the free flow of information in society.

491. Similarly, the Commission states that the criminal sanction provided for in the Organic Code of Military Justice for anyone who insults, offends, or denigrates the National Armed Forces is in breach of the international standards that govern freedom of expression, since it is not a

restriction that is necessary in a democratic society and, in addition, it is drafted in such vague terms that it is impossible to identify the actions that could lead to criminal sanctions. The Commission views with concern that both the Penal Code and the Organic Code of Military Justice contain provisions that constitute a way to silence unpopular ideas and opinions and that have the effect of dissuading criticism through the fear of prosecution, criminal sanctions, and fines.

492. The present report also examines the use of presidential blanket broadcasts. In its observations on the present report, the State asserted that the use of informative blanket radio and television broadcasts by the national government is part of the constitutional obligation of the State to keep its citizens informed. For its part, the IACHR finds that the lack of clarity in the terms of the Law on Social Responsibility and the Organic Telecommunications Law that place limits on the use of presidential blanket broadcasts could undermine the informational balance that the highest authorities of the State are obliged to uphold. As described in this report, the President of the Republic has made use of the powers granted by those laws to broadcast his speeches simultaneously across the media, with no time constraints. In addition, the duration and frequency of these presidential blanket broadcasts could be considered abusive on account of the information they contain, which might not always be serving the public interest.

493. The IACHR's report also studies the recently enacted Organic Education Law and calls the State's attention to several of its provisions. Among others, the IACHR points out that the provisions establishing that the media, including private media outlets, are public services, could be used to restrict the right of free expression. The Commission also finds that some of this law's provisions contain grounds for restricting free expression that differ from those set out in Article 13 of the American Convention, such as the one that prohibits the transmission of information that promotes "the deformation of the language" or that affronts "values."

494. The Commission notes with concern that the Organic Education Law defers for subsequent legislation the regulation and implementation of several of its precepts, which have been set down in that law in terms that are exceedingly broad, imprecise, and vague. Moreover, the IACHR believes that this law gives state agencies a broad margin for control over the implementation of the principles and values that should guide education. Thus, the Organic Education Law allows, through subsequent laws or their enforcement by the competent authorities, for restrictions to be placed on several of the rights guaranteed by the Convention, such as the right to education, freedom of expression, teachers' and students' freedom of conscience, and others. Moreover, the Commission notes with extreme concern that until laws regulating the terms of the Organic Education Law are enacted, its transitory provisions give the authorities the power to close down private educational institutions. Similarly, the IACHR is also concerned that the law empowers the educational authorities to disqualify owners, principals, or teachers found guilty of such offenses from holding teaching or administrative positions for up to ten years.

495. In this report, the Commission also deals with the major obstacles faced by human rights defenders in their work in Venezuela. The IACHR observes that in Venezuela, human rights defenders suffer attacks, threats, harassment, and even killings. Information received by the Commission refers to six cases of violations of the right to life of human rights defenders between 1997 and 2007. It also notes with concern that witnesses and relatives of the victims of human rights violations are frequently targeted by threats, harassment, and intimidation for denouncing violations, organizing committees for victims' families, and investigating abuses by state authorities. In addition, in recent years, the Commission has seen an escalation in attacks on defenders who take cases to the inter-American system for the protection of human rights.

496. The report also describes a series of state actions and statements by high-ranking public officials aimed at undermining the legitimacy of defenders and of the domestic and international human rights nongovernmental organizations (NGOs) working in Venezuela. In addition,

the Commission identifies a trend of opening unfounded judicial investigations or criminal proceedings against human rights defenders in order to intimidate them, particularly when they have been critical of the government. The report describes cases in which judicial proceedings have been brought against NGOs and human rights defenders for the alleged commission of offenses such as conspiracy to destroy the republican form of government, criminal association, and defamation, among others.

497. According to the State's observations on the present report, the IACHR is attempting to establish a cloak of immunity around human rights defenders. It added that if it confirms that there is cooperation between coup-seeking Venezuelan human rights organizations or that such organizations receive funding from agencies of the United States Department of State, it has an obligation to denounce this. In the Commission's view, the violence, discrediting, and criminalization faced by human rights defenders in Venezuela have a cumulative impact that affects the currency of human rights in general, since only when defenders enjoy due protection for their rights can they seek to protect the rights of other people.

498. Also in connection with human rights defenders, the IACHR reiterates its concern about the provisions of the International Cooperation Bill. The Commission points out in its report that the vague language used for some of this draft law's provisions and the broad margin of discretion it gives to the authorities responsible for regulating it pose the danger of its being interpreted restrictively to limit rights including freedom of association, freedom of expression, political participation, and equality, and that it could therefore seriously affect the functioning of nongovernmental organizations. The Commission also notes that the bill places limits on NGO funding that could hamper freedom of association in a way that is incompatible with the American Convention's standards.

499. The IACHR also finds that inadequate access to public information has hindered the work of defending human rights in Venezuela. According to information received by the Commission, one human rights organization has been denied public information on account of the authorities' view of its political position, which, in the Commission's opinion, constitutes an undue restriction of its right of access to information and an impediment to the effective pursuit of its work in defending human rights. Furthermore, the lack of access to information in Venezuela hinders the emergence of informed democratic debate on matters of public interest between the government and civil society. In its observations on the present report, the State asserted that it is doing the impossible to overcome the problem of the lack of information from public entities, particularly statistical information.

500. One of the issues relating to human rights in Venezuela of gravest concern to the Inter-American Commission is that of public insecurity. In the report, the Commission analyzes and applauds the State's efforts to implement policies to ensure the safety of the Venezuelan people from common crime and the actions of organized criminal groups, as well as from possible abuses of force by state agencies. Nevertheless, the Commission notes that in many cases, the State's response to public insecurity has been inadequate and, on occasions, incompatible with respect for human rights, and this has seriously affected the rights to life and humane treatment of Venezuela's citizens.

501. The IACHR's report identifies certain provisions in the Venezuelan legal framework that are incompatible with a democratic approach to the defense and security of the State. Among other provisions, the Commission calls the State's attention to those that allow the military to participate in upholding law and order in Venezuela. In its observations on the present report, the State indicated that the public safety entities are civil in nature and that the participation of the Armed Forces in public order is limited to situations of national emergency or national security. It added that all the components of the Armed Forces have special training and courses on human

rights so that they know how to treat citizens. The IACHR again states that a democratic society demands a clear and precise separation between domestic security, as a function of the police, and national defense, as a function of the armed forces, since the two agencies have substantial differences in the purposes for which they were created and in their training and skills.

502. In connection with this, the Commission has taken note of the creation of the Bolivarian National Militia as a special force, established by the Venezuelan State to help ensure its independence and sovereignty. According to information provided by the State, citizens receive military training through the Bolivarian National Militia and then may assist in upholding domestic law and order. In the Commission's view, citizens who receive military training should not be involved in domestic defense. In addition, the IACHR notes with concern the vague language used to define the structure, functions, and oversight of these militias.

503. In connection with making excessive use of state force, the Commission received with concern the figures collected by the Office of the Human Rights Ombudsman of Venezuela. During 2008, the Ombudsman's Office recorded a total of 134 complaints involving arbitrary killings arising from the alleged actions of officers from different state security agencies. It also recorded a total of 2,197 complaints related to violations of humane treatment by state security officials. In addition, it reports receiving 87 allegations of torture and claims it is following up on 33 cases of alleged forced disappearances reported during 2008 and 34 reported during 2007.

504. Homicides, kidnappings, contract killings, and rural violence are the phenomena that most frequently affect the security of Venezuela's citizens. In its observations on the present report, the State rejected the statistics produced by nongovernmental organizations, but recognized that kidnappings and contract killings had increased. According to the State, these crimes have had as their victims not only *campesinos*, but also human rights defenders, and it affirmed that it has redoubled its efforts to investigate and punish these crimes as a result.

505. In spite of the difficulties faced by the Commission in obtaining official figures on violence in Venezuela and the State's refusal to provide it with statistics, information made available to the Commission indicates that in 2008, there were a total of 13,780 homicides in Venezuela, which averages out to 1,148 murders a month and 38 every day. The victims of these killings include an alarming number of children and adolescents. According to figures from the United Nations Children's Fund (UNICEF), homicides are the main cause of death of male adolescents aged between 15 and 19 in Venezuela. In 2007 alone, 5,379 children and adolescents met violent deaths, and a third of those were murder victims. As for kidnappings, various organizations agree that between 2005 and 2007 there were more than 200 abductions per year in Venezuela, whereas in 2008, more than 300 cases were reported.

506. Also of concern is the persistence of contract killings in Venezuela, a phenomenon that particularly affects trade unionists and *campesinos*. The IACHR notes with concern the continued increase in the number of union leaders who are victims of attacks and threats to their lives and persons. Between 1997 and 2009, information received by the Commission indicates that 86 union leaders and 87 workers were killed in the context of trade union violence, with contract killings being the most common method for attacking union leaders. In its report, the IACHR describes some of these cases and indicates with concern that most of them remain unpunished.

507. At the same time, the IACHR was informed that the struggle for the right to land and to benefit from the national government's agrarian reform process has posed risks to the lives and persons of *campesinos*, particularly agrarian leaders. *Campesino* organizations have reported the deaths of more than 200 people in the context of land-related conflicts since the enactment of the Land and Agrarian Development Law.

508. Conflicts related to land ownership have also claimed victims among indigenous peoples, as a consequence of the State's failure to demarcate ancestral indigenous lands. Delays with the State's obligation of demarcating ancestral lands are such that, according to information received by the IACHR, between 2005 and the end of 2008, only 34 ownership deeds were issued; in other words, 1.6% of the total number of communities had benefited from the land demarcation process in Venezuela. As a result, indigenous peoples have faced constant harassment at the hands of people seeking to expel them from the ancestral lands over which they have been regaining control, and on some occasions their assailants act with the support of state agents.

509. The Commission's report also notes with extreme concern that in Venezuela, violent groups such as the Movimiento Tupamaro, Colectivo La Piedrita, Colectivo Alexis Vive, Unidad Popular Venezolana, and Grupo Carapaica are perpetrating acts of violence with the involvement or acquiescence of state agents. These groups have similar training to that of the police or the military, and they have taken control of underprivileged urban areas. The IACHR has received alarming information indicating that these violent groups maintain close relations with police forces and, on occasion, make use of police resources. The State has informed the Commission that irregular groups do exist on both sides in Venezuela. In the Commission's view, the fact that the agencies responsible for preventing, investigating, and punishing such acts have failed to respond appropriately has created a situation of impunity surrounding violations of rights protected by the American Convention.

510. In this report, the Commission also continues with its observations on the alarmingly violent conditions within Venezuelan prisons. The Commission approves of certain legislative amendments made by the State to tackle overcrowding through provisions that promise to speed up criminal proceedings. In addition, the IACHR applauds the implementation of specific actions and policies that have had an immediate impact on the risks facing people deprived of their liberty in Venezuela, in particular since the implementation of the Prison System Humanization Plan in 2005.

511. These rules and policies, however, have been insufficient to prevent continued acts of violence in Venezuelan prisons, which in recent years have claimed the lives of thousands of people and left thousands of others with injuries. According to information received by the Commission, between 1999 and 2008, a total of 3,664 people were killed and 11,401 were injured at detention facilities in Venezuela. In November 2009 alone, the Commission requested provisional measures from the Inter-American Court in relation to two cases of alleged forced disappearances of persons who were held in state custody, deprived of their liberty. In spite of the provisional measures issued by the Court, as of the date of this report, their whereabouts are unknown. Also at the request of the IACHR, the Inter-American Court has adopted provisional measures in favor of four penitentiaries in Venezuela, calling on the State to implement measures to avoid irreparable damages to persons deprived of liberty in those centers after violent incidents occurred in which hundreds of persons lost their lives and hundreds more were injured. The Commission notes with extreme concern that in spite of the provisional measures ordered by the Inter-American Court with respect to several Venezuelan prisons, those facilities continue to report acts of violence in which human lives are lost and personal injuries are suffered.

512. In addition to violations of the rights to life and humane treatment of people held in state custody, the Commission notes that the main problems affecting the more than 22,000 prison inmates in Venezuela include delays at trial, overcrowding, the lack of basic services in prisons, the failure to separate convicts from remand prisoners, and the presence of weapons within detention centers. In addition, since preventive custody is the most severe measure that can be taken against a person charged with a crime, the Commission observes with concern that more than 65% of Venezuela's prison inmates have not yet been convicted.

513. The report also indicates that although Venezuela has made progress with the legal recognition of equal rights between men and women and with women's political participation in public affairs, the laws and policies pursued by the State have not been effective in guaranteeing the rights of women, particularly their right to a life free of violence. The Commission notes that the Penal Code still contains provisions that affect the equal rights of women and that allow violent crimes committed against them to remain unpunished as long as the assailant contracts marriage with the victim. Additionally, information received by the Commission indicates that some 100 cases of gender violence take place every day in Venezuela. The IACHR was also told that almost 70% of women who try to combat impunity are met with harassment and threats. Official information on the problem is not available, and the figures submitted by the State in 2009 in response to the Commission's request dated from 2002.

514. The Commission notes in its report that impunity is a common characteristic that equally affects cases of reprisals against dissent, attacks on human rights defenders and on journalists, excessive use of force in response to peaceful protests, abuses of state force, common and organized crime, violence in prisons, violence against women, and other serious human rights violations.

515. On the other hand, in this report the Commission highlights the Venezuelan State's major achievements in the fields of economic, social, and cultural rights, through legally recognizing the enforceability of the rights to education, to health, to housing, to universal social security, and other rights, as well as by implementing policies and measures aimed at remedying the shortcomings that affect vast sectors of the Venezuelan population. The Commission emphasizes that the State has succeeded in ensuring the majority of its population is literate, reducing poverty and extreme poverty, expanding health coverage among the most vulnerable sectors, reducing unemployment, reducing the infant mortality rate, and increasing the Venezuelan people's access to basic public services.

516. The IACHR also congratulates Venezuela on being one of the countries that has made most progress toward attaining the Millennium Development Goals. It has also brought about a major reduction in the disparity between the groups at the extremes of income distribution, to the point that the country now reports the lowest Gini coefficient in Latin America, according to the Economic Commission for Latin America and the Caribbean (ECLAC). In addition, according to the United Nations Development Programme (UNDP), Venezuela moved from having a medium level of human development in 2008 to join the group of countries with a high level of human development in 2009. In the IACHR's opinion, the priority the State has given to economic, social, and cultural rights is fundamental in ensuring the decent existence of the population and is an important foundation for the maintenance of democratic stability.

517. The IACHR notes that the Missions have succeeded in improving the poverty situation and access to education and health among the traditionally-excluded sectors of Venezuela's population. Nevertheless, the Commission expresses concern at certain issues relating to the Missions as an axis of the government's social policies. For example, the Commission notes that clear information is lacking on the guidelines used to determine how the Missions' benefits are allocated. The absence of public information on those guidelines gives the impression that benefits are awarded at the executive branch's discretion, which could lead to a situation in which certain individuals are denied benefits on account of their political position vis-à-vis the government. The Commission also believes it is vitally important that corrective measures be taken so that economic, social, and cultural rights are guaranteed through public policies that will continue over the long term instead of depending on the will of one government or another. In addition, the Commission notes that the Missions, as a social policy, appear to be welfare-oriented in nature, which does not necessarily imply the recognition of rights.

518. One issue relating to economic, social, and cultural rights is that of free association within trade unions. In this regard, the Commission notes that Venezuela is still characterized by constant intervention in the functioning of its trade unions, through actions of the State that hinder the activities of union leaders and that point to political control over the organized labor movement, as well as through rules that allow government agencies to interfere in the election of union leaders. The Commission observes with concern that in Venezuela, trade-union membership is subject to pressure related to the political position or ideology of the particular union. In fact, the government recently announced that it will not discuss the collective contract of the oil sector with any trade union that is opposed to the ideology of President Chávez.

519. Another situation affecting the right of free labor association is the growing criminalization of union activities through the bringing of criminal charges against individuals who defend labor rights. This is due to the use of provisions that restrict peaceful demonstration and the right to strike in connection with employment demands, particularly through the enforcement of provisions contained in the Criminal Code, in the Organic National Security Law, and in the Special Law of Popular Defense against Stockpiling, Speculation, and Boycotts. Information received by the Commission indicates that some 120 workers are affected by measures requiring them to report regularly to the courts for having exercised their right of protest. In addition, the Commission notes that the State of Venezuela has enforced the legislation for protecting minimum services in such a general fashion that the effect has been to curtail the right to strike when an essential public service would be affected. The Commission again states that strikes and boycotts are peaceful forms of labor protest, and so punishing them with custodial sentences or exorbitant fines constitutes a restriction of the rights enshrined in the American Convention.

520. In order to better guarantee those rights, the Commission once again urges the State to complete its 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), through which the States Parties undertake to adopt the measures necessary, to the extent allowed by their available resources and taking into account their degree of development, for the purpose of progressively achieving the full observance of economic, social, and cultural rights, pursuant to their domestic laws.

521. The Commission emphasizes that human rights are an indivisible whole and so the realization of economic, social, and cultural rights in Venezuela does not justify sacrificing the currency of other basic rights. In that the effective exercise of democracy demands full enjoyment of citizens' fundamental rights and freedoms, the IACHR again points out to the State its duty of meeting the international human rights obligations it freely assumed under the American Convention and other applicable legal instruments.

522. The Inter-American Commission reiterates its offer to work with the government, and with Venezuelan society as a whole, to effectively comply with the recommendations contained in this report and thereby to contribute to strengthening the defense and protection of human rights within a democratic context in Venezuela.

CHAPTER V

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

INTRODUCTION

The IACHR's practice of following up on its reports on the human rights situation in member states is aimed at evaluating the measures adopted by the states to comply with the recommendations made by the IACHR in its reports. This practice is based on the functions of the IACHR, the principal organ of the OAS responsible for the protection and promotion of human rights, contemplated in Articles 41(c) and d of the American Convention, in concordance with Articles 18.c and d of the Statute and Article 57(h) of the Rules of Procedure of the Commission.¹

The initiative of evaluating compliance with the recommendations contained in such reports in a separate chapter of the IACHR's Annual Report dates back to 1998 and the Report on the Situation of Human Rights in Ecuador (1997). Subsequently, in its 1999 Annual Report, the IACHR included follow-up reports on compliance with its recommendations contained in the reports on Brazil (1997), Mexico (1998), and Colombia (1999). In its 2001 Annual Report, the IACHR included the follow-up report on compliance with the recommendations contained in the reports on Paraguay (2001), Peru (2000) and the Dominican Republic (1999). In 2002 the Commission included a follow-up on compliance with the recommendations contained in its report on Guatemala (2001). Finally, in 2004 the IACHR included its follow-up reports on compliance with the recommendations contained in its reports on Guatemala and Venezuela.

The reports included in this Chapter have the objective of evaluating the measures taken to comply with the recommendations put forward by the IACHR both in its report [Access to Justice and Social Inclusion: the Road towards Strengthening Democracy in Bolivia](#) (2007) and in its report [Violence and Discrimination against Women in the Armed Conflict in Colombia](#) (2006). To that end, the States of Bolivia and Colombia were asked to provide all the information they considered pertinent, in accordance with the above-mentioned provisions. Apart from the official information received or obtained from sources accessible to the public, the Commission also used documents and reports from global organs for the protection of human rights, as well as information from civil society organizations and the media.

¹ Currently Article 59 (h) of the Rules of procedure of the IACHR.

CHAPTER V

FOLLOW-UP REPORT - ACCESS TO JUSTICE AND SOCIAL INCLUSION: THE ROAD TOWARDS STRENGTHENING DEMOCRACY IN BOLIVIA

I. INTRODUCTION

1. The purpose of this report is to follow up on the recommendations made by the Commission in the report *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia* (hereinafter also "*Access to Justice and Social Inclusion*" or "the Report of the IACHR") of June 28, 2007. Since that report was published the Commission has continued closely to monitor the matters identified as priorities with respect to the situation of human rights in that country.

2. In a communication dated September 25, 2008, the IACHR requested the State for information and its observations regarding implementation of the recommendations contained in the aforementioned report. In a note of February 19, 2009, the Bolivian State requested an extension of the time for presenting information. On February 26, 2009, the IACHR notified the State that it could have one additional month. On March 20, 2009, the Commission reiterated to the State its communication of February 26, 2009, granting the one-month extension. On March 26, 2009, the State submitted a supplementary report on compliance with the recommendations. The State transmitted an additional supplementary report with its note of May 1, 2009.

3. Furthermore, in keeping with the powers recognized in the Charter of the Organization of American States and the American Convention, a delegation of the Commission conducted a visit to Bolivia from June 9 to 13, 2008, in order to gather information on indigenous families and peasant farmers living in a state of bondage analogous to slavery. The Commission also issued press releases on various acts of violence recorded in different parts of the country. During the 133rd and 134th periods of sessions there were public hearings on the human rights situation in Bolivia. The first was held at the Commission's initiative, and the second was requested by the Women's Legal Office [Oficina Jurídica de la Mujer] and the La Paz Bar Association. In addition, the Bolivian State was asked to provide information on several facts that could constitute a threat to the full exercise of human rights.

4. This report has been prepared based on the information collected through the endeavors mentioned in the preceding paragraph and bearing in mind incidents that have had public repercussions, are closely connected with the political climate in Bolivia, and, in specific contexts, have had an impact on the observance of the human rights of the Bolivian people.

5. The Commission's analysis follows the same sequence as that of *Access to Justice and Social Inclusion*. First there is a description of positive developments, a brief overview of the political context, the main conflicts that have arisen and how they relate to the duty of the State to observe and ensure the human rights of all persons under its jurisdiction. Next, the report reviews the issues of administration of justice, rights of persons deprived of liberty, rights of indigenous peoples and peasant communities, women's rights, children's rights, and rights of refugees or asylum seekers. Each section indicates the implementation status of the recommendations, whether or not measures had been adopted in that regard and, if so, the results of those measures and present challenges.

II. POSITIVE ASPECTS AND OVERALL PROGRESS

6. The Commission notes that, generally speaking, the current government has continued to give priority to public policies and programs that reflect a political will to move forward with a human rights agenda in Bolivia.

7. The Commission regards as positive a number of legislative and administrative initiatives that, combined with adequate and effective steps for their implementation, could become important instruments for improving the human rights situation in Bolivia.

8. For example, the Commission was informed that the government designed the National Plan of Action on Human Rights (2009-2013) enacted by Supreme Decree No. 29851 of December 10, 2008. It is a government policy instrument whereby the State undertakes to observe, ensure, and advance the exercise of human rights at the national, departmental, regional, and municipal level, as well as for indigenous communities.¹ The Commission hails the extensive societal participation in the Plan's design. In March and April 2008, the Office of the Vice Minister of Justice and Human Rights presented for the consideration of civil society, civic, and youth organizations in all nine departments in the country, a draft of the document in order to gather inputs. Subsequently a second phase of the process was held in which six panels were set up on specific issues: children and adolescents; gender and equity; economic, social and cultural rights; indigenous peoples; migration; and education and protection of human rights.²

9. According to information supplied by the State, the Plan includes the pertinent national and international standards; recommendations made to the Bolivian State by international human rights organizations; the objectives and results desired; problems in exercising rights subject to protection in the domestic jurisdiction; the government organs responsible for implementation; and the budget assigned.³

10. The Commission also notes that, in keeping with the recommendations contained in the Report of the IACHR, human rights training programs were carried out in 2007 and 2008.⁴ The Commission was informed that the government provided training to various state authorities in this area. According to the Ombudsman, "in the country as a whole training was given to 1,145 members of the Armed Forces and 2,803 police operatives. As regards (...) civil servants, 1,871 officials received training. Groups were set up in different state institutions to replicate the training in human rights."⁵

11. The State reported that in 2008 the following human rights training courses were offered: i) training course for citizen and family conciliation units, March 13-April 30, 2008; ii) human rights and gender awareness course for trainers of police cadets and students of the professional training institutes, March 3-7, 2008; iii) human rights and gender course for police in

¹ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, pp. 1 and 2; Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

² Bolivian Chapter of Human Rights. Public communiqué. "*Plan de Acción de DDHH*" [Plan of Action on Human Rights].

³ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁴ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser.V/II. Doc. 34. June 28, 2007, para. 45.

⁵ Report of the Ombudsman to Congress 2007. September 29, 2008, p. 40.

the operational units in La Paz and El Alto; iv) lectures for the command and senior staff course, July 9-12, 2008, called “The Bolivian Police as a Guarantor of Human Rights and Conflict Resolution”; v) human rights and women cycle, September 22-October 11, 2008; and vi) crosscutting human rights program with gender focus to consider the governing regulations of the Bolivian police, through workshops to review domestic and comparative legislation, and to draft regulatory proposals⁶.

12. The State added that the Bolivian police, together with civil society and the ombudsman, developed an annual operations plan for 2009 that includes human rights activities. In this regard, the Commission considers it a positive step that curricula on human rights and international humanitarian law are now required in the armed forces training institutes.⁷ The Commission is also pleased to note the police initiatives in connection with the awareness campaigns on violence against women, human rights in performance of official duties, and the rights of children.⁸

13. The Commission draws attention to the progress in terms of the creation of Integrated Justice Centers, the results of which are detailed below in the section on Administration of Justice and Judicial Coverage.

14. The Commission also welcomes the efforts of the Ministry of Justice and the Prosecutor’s Office [*Ministerio Público*] with regard to protection programs for victims and witnesses in cases involving human rights violations. These aspects are analyzed in greater depth in the section on impunity in cases of human rights violations.

15. The executive branch presented to the Congress a bill entitled “Law on Respect for Differences: against all forms of discrimination.”⁹ The Commission hopes that the relevant authorities will initiate the process of discussion and approval of this bill, which could be a fundamental instrument for preventing discrimination in the exercise and enjoyment of rights.

16. The Commission takes a favorable view of the fact that, in keeping with one of the recommendations contained in *Access to Justice and Social Inclusion*, the new Constitution provides for the elevation to constitutional rank of all international human rights treaties, which, as that report mentions, could increase the effectiveness of judicial mechanisms for the protection of human rights.¹⁰

17. In general terms, the Commission takes a positive view of the fact that the new Constitution approved by referendum and promulgated on February 7, 2009, contains a broad catalogue of civil, political, economic, social, and cultural rights, including collective ones. Recognition of these rights comes with constitutional protection mechanisms such as habeas

⁶ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

⁷ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. May 1, 2009.

⁸ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. May 1, 2009.

⁹ Annual Report. First Half of 2008. Ministry of Justice. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 11; See also: <http://www.bolpress.com/art.php?Cod=2007040502>. Available at November 15, 2008.

¹⁰ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 36, p.8.

corpus, suit for constitutional protection, suit for protection of privacy, suit for unconstitutionality, suit for compliance, and peoples' suit. The Commission also notes with satisfaction that Article 14 of the new Constitution expressly prohibits discrimination based on sexual orientation and gender identity.

18. The Commission acknowledges the efforts of the government to achieve a high percentage of literacy in the country which culminated in its declaration as an "illiteracy-free territory" by UNESCO on December 20, 2008. The Commission has also taken note of other important measures in this regard, such as the Juancito Pinto Bonus and Dignity Plan [*Renta Dignidad*], designed to advance economic, social and cultural rights, and to improve quality of life for the Bolivian people.¹¹ The Commission also welcomes the development of the Equal Opportunity Plan by the current Vice Minister for Equal Opportunity, enacted in Supreme Decree No. 29850 of 2008.¹²

19. The Commission encourages the Bolivian State, in keeping with its constitutional and legal powers, to continue efforts to ensure the highest possible standard in the exercise of economic, social and cultural rights, which are indivisible from civil and political rights.

III. POLITICAL CONTEXT AND SOCIAL UNREST

20. During its visit to Bolivia in June 2008, the Commission increased its store of information on the ongoing situation of conflict between different power groups that dispute decision-making authority on political, economic, and social matters. This confrontation continued to give rise to serious violence and acts of discrimination that endanger the lives and safety of Bolivians, as well as constituting a threat to the stability of democratic institutions.

21. In this context, the Commission has noted the establishment of "shock groups" that have contributed to the polarization of society and exacerbated the climate of violence. According to observations by the Bolivian Office of the United Nations High Commissioner for Human Rights (hereinafter the "Office of the UN High Commissioner"), although most of these groups support opposition sectors that advocate departmental autonomy, there are also some defending the national government.¹³ The Commission is concerned about information received that these groups enjoy the protection of important political or economic power groups that influence judicial authorities in their communities.¹⁴

22. A great many acts of violence occurred in the second half of 2007 and throughout 2008 and were connected with issues such as the draft Constitution, full "capitalhood",¹⁵ the regional autonomy statutes,¹⁶ implementation of the agrarian reform,¹⁷ and the recall referendum¹⁸.

¹¹ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, para. 3; Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 9.

¹² Informe del Estado de Bolivia sobre el seguimiento de recomendaciones – Acceso a la Justicia e Inclusión Social: El Camino hacia el fortalecimiento de la democracia en Bolivia. 27 de febrero de 2009.

¹³ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. 9 March 2009, para. 13.

¹⁴ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. 9 March 2009, para. 16.

¹⁵ The issue as to whether the administrative and political capital of Bolivia is the city of Sucre or La Paz. The population of the city of Sucre, which is where the judicial branch has its headquarters, has been claiming full "capitalhood" of the Bolivian state for that city.

A. Major conflicts since the second half of 2007

23. From July to December 2007, the Constituent Assembly continued to be the scene of political tension and debate. On November 24, 2007, the general guidelines were approved that would govern the discussions on the details of the provisions in the draft constitution that would subsequently be put to a referendum. The text approved initially –in broad terms– made no reference to the issue of political and administrative “capitalhood” of the Bolivian state. This omission led to conflicts between government and opposition supporters, which resulted in three deaths, a high number of injuries in police ranks, and the withdrawal of the police from Sucre because it was believed that it was not possible to keep the peace and maintain law and order.¹⁹

24. On December 9, 2007, in Oruro, the text was approved “in detail”. Subsequently, and as a result of the opposition’s disagreement with the way the Constitution treated regional autonomy, the indigenous question, “capitalhood”, and distribution of the hydrocarbons tax, among other matters, a number of regional authorities submitted autonomy statutes for the regions of Santa Cruz, Tarija, Beni and Pando to a referendum. Government authorities and the Ombudsman have indicated that the statutes lack any constitutional or legal footing. In the words of the Ombudsman, “the aforesaid statutes were drawn up by ‘ad hoc committees’ composed of members of those elites, with virtually no involvement of civil society or indigenous-peasant organizations, the chief purpose of which is to keep a series of powers exclusively at the departmental government level in order to consolidate control of forums that ensure the perpetuation of the economic and political power of the elites.”²⁰

25. While the discussions on the autonomy statutes were going ahead, on the eve of a visit by the President of the Republic to the city of Sucre on May 24, 2008, a group of indigenous peasants was prevented from entering the stadium where the President was due to be received, owing to the fact that it was surrounded by university students belonging to the *Unión Juvenil Cruceñista*, an opposition organization. During their visit to Bolivia in June 2008, the Rapporteur for the country, Commissioner Luz Patricia Mejía, and the IACHR Rapporteur on the Rights of Indigenous Peoples, Commissioner Víctor Abramovich, received testimony that the youths were carrying firearms, stones, dynamite, and gasoline as they hurled racist insults. The information received suggests that on this occasion indigenous persons and peasants were victims of acts of violence and humiliation, forced to kneel, remove their shirts, and shout slogans in support of full

...continuation

¹⁶ The departments of Santa Cruz, Tarija, Beni and Pando, drew up and put to a referendum statutes on their autonomy as regional entities with regard to the administrative issues, such as distribution of taxes. This state of affairs came about as a result of their discrepancy over the way in which a number of issues that are particularly sensitive for the regions were treated in the first draft Constitution.

¹⁷ As described in the section on access to land and territory for indigenous peoples and peasant communities, the National Institute of Agrarian Reform has been implementing Law 3545 on Renewal of the Agrarian Reform to ensure regularization of land titles, *inter alia*, through verification of their use for the appropriate economic and social purposes.

¹⁸ As a result of the approval of the autonomy statutes, a referendum was called on the revocation of the posts of President and Vice President of the Republic and eight departmental governors.

¹⁹ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 60.

²⁰ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 5

“capitalhood” and against President Morales.²¹ As a result of these acts, more than 30 indigenous persons and peasants were wounded.²²

26. Following approval of the autonomy statutes in Santa Cruz, Beni, Pando, and Tarija, a dialogue was opened between the parties to make the contents of the statutes compatible with the draft constitution. The President of the Republic proposed three subjects for the dialogue: i) an autonomous constitutional pact; ii) a fiscal pact to redistribute the direct tax on hydrocarbons; and iii) an institutional pact to simplify appointment of officials of the judicial branch and the National Electoral Court.²³

27. This dialogue did not bear fruit, so the executive branch proposed a recall referendum for the posts of President and Vice President of the Republic, and eight departmental governorships. At that stage, political tensions and discussions centered on the legality of the autonomy statutes and on the call for a referendum. The referendum was held on August 10, 2008, and drew a turnout of 84% of the electorate. The result was a massive show of popular support for the president’s administration, with 67.4% of the vote. As regards the governors, six were ratified (four belonging to the opposition and two to the ruling party), while the mandates of the Governors of La Paz and Cochabamba were revoked.²⁴

28. In mid-August 2008, the dialogue broke down and tensions increased. In this context, civic committees in the regions called for the implementation of the autonomy statutes to be speeded up, called a strike, and prohibited government authorities from visiting their departments. The measures adopted included, *inter alia*, a blockade of roads, the suspension of food shipments to the west of the country, and blockades in Villamontes and Yacuiba, the border regions with Argentina and Paraguay where the gas supply valves are located.²⁵

29. These measures were maintained as a means of pressure to prevent the referendum on the Constitution from being held. In response, the National Electoral Court suspended the referendum. In spite of that, in the first fortnight of September 2008 the Santa Cruz offices of several state institutions were violently seized and looted, including the National Institute of Agrarian Reform, National Tax Service, *Empresa Nacional de Telecomunicaciones*, *Canal 7*, Department of Immigration, and others.²⁶

30. Around that time similar acts were carried out against the Center for Legal Studies and Social Research (CEJIS), the offices of the Indigenous Peoples Confederation of Bolivia (CIDOB), the Coordinator of Ethnic Communities of Santa Cruz, and the Center of the Investigation and Promotion of the Rural Farmer (CIPCA). These acts were accompanied by threats to the physical integrity of the leaders of these organizations and resulted in injuries to tens of civilians.²⁷

²¹ Information received by the IACHR in the course of the visit to Bolivia in June 2008.

²² UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 18.

²³ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁴ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, pp. 3 and 4.

²⁵ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 4.

²⁶ United Nations High Commissioner for Human Rights. Office in Bolivia. Press Release, 11 September 2008.

²⁷ United Nations High Commissioner for Human Rights. Office in Bolivia. Press Release, 11 September 2008.

31. In response to what was called a “civil-mayoral coup d’etat,” the government ordered State security authorities to protect public installations and repeatedly urged the people to defend democracy, the national institutions, and the socio-political process.²⁸

²⁸ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 9.

B. The events that occurred in Pando Department on September 11, 2008²⁹

32. As a result of these blockades and the aforementioned occupations of buildings, the Peasant Farmers Federation invited all of its member organizations to a “Department-wide emergency meeting to analyze the political climate, defense of the land, and protection of natural resources.” This meeting was scheduled for September 11, 2008.³⁰

33. According to available information, on the night of September 10, 2008, officials from the Departmental Roads Service, which takes its orders from the Governor’s Office, and members of the Civic Committee, using heavy machinery, mobilized to head off the peasants marching to the meeting scheduled for the following day. To that end, they dug two deep ditches in the Puerto Rico to Porvenir road in Pando, in the area known as *Tres Barracas*, to block the peasants’ advance.³¹

34. On September 11, 2008, the events occurred that left at least 11 persons dead, among them two officials from the Office of the Governor of the Department of Pando;³² 50 injured, and tens of people displaced to the countryside and the city of La Paz.³³ The Commission also received information about discriminatory treatment of injured indigenous persons and peasants when they sought assistance at health centers.³⁴ Some media organizations in the area portrayed the events as a “confrontation”³⁵, but the testimonies received by agencies such as the Ombudsman and the Office of the UN High Commissioner led these institutions to conclude that the incident was a massacre with participation of persons linked to the Office of the Governor.³⁶

35. The Report of the Ombudsman on these events says that the circumstances surrounding the deaths indicate the direct involvement of human and material resources belonging to the Office of the Governor of Pando. In particular, the report found that “the fact that the ditches at Cachuelita and Tres Barracas were dug with SEDCAM machinery,³⁷ that vehicles belonging to the Office of the Governor were used to transport personnel, civic committee members, and other persons in order to block the advance of the peasants; that unconventional

²⁹ On these events, the Commission is studying a complaint in the framework of the individual petition system, and wishes to clarify that this report in no way prejudices that case.

³⁰ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 7.

³¹ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, pp. 8 and 9.

³² UNASUR, UNASUR Committee for clarification of the events in Pando, Report of the UNASUR Committee on the events in Pando, *Hacia un alba de Justicia para Bolivia* [Toward a New Dawn of Justice for Bolivia], November 2008, Conclusion No. 9.

³³ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 17; Union of South American Nations. Report of the UNASUR Committee for clarification of the events in Pando, November 2008, Conclusion No. 2.

³⁴ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 30.

³⁵ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

³⁶ Ombudsman. Ombudsman’s Report on the Violent Events in September 2008 in Pando Department. La Paz. Nov. 27, 2008; UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. 9 March 2009, para. 10.

³⁷ Departmental Roads Service.

firearms were used in the area; and that steps were taken that exceeded its authority, meant that this institution was involved directly, and in some cases indirectly, in the deaths (...) people.”³⁸

36. According to the report of the Office of the UN High Commissioner, that agency received testimony that there were indiscriminate gunshots against the peasants’ meeting in El Porvenir. It is said that some of the victims, well-known indigenous leaders, were intentionally targeted and killed.³⁹

37. Furthermore, according to witnesses, 15 persons were abducted in the attack and taken to the offices of the Pando Civic Committee, where they were allegedly tortured and threatened with being killed unless admitted to being the perpetrators of the acts of violence and to accepting payment in return for attending the peasant meeting. These persons were taken to the Prosecutor’s Office, which contradictorily is said to have opened a criminal investigation against them, despite the fact that they were victims in the massacre.⁴⁰ Information has also been received that six supporters of the Office of the Governor were captured, beaten, and then released by the peasants after police intervention.⁴¹

38. The Commission notes that in response to these events, on September 24, 2008, the government approved and implemented a decree to provide medical and social assistance to those injured in Pando, financial assistance to the next-of-kin of the victims killed, and humanitarian aid to communities affected by the violence.⁴² However, the Commission is perturbed by complaints about the inability of the security forces to carry out their duty to prevent human rights violations.⁴³

39. For its part, the General Secretariat of the OAS has played a fundamental role in support of democratic institutions by dispatching electoral observation missions to monitor the country’s elections and democratic consultation processes, including the recall referendum. The OAS also attended and mediated in the dialogue processes in the city of Cochabamba and the National Congress, which resulted in the calling of the constitutional referendum to be held on January 25, 2009. For its part, the Permanent Council adopted on May 3, 2008, a resolution entitled “Support for the Process of Dialogue, Peace, and for Democratic Institutions in Bolivia”, and on November 19 of that year, held a protocolary meeting to receive the President of the Republic, Evo Morales Ayma.

40. As it stated in the press release issued in the wake of these events⁴⁴, the Commission vigorously deplores and repudiates these acts, which reflect a total disregard for human life. The Commission considers particularly serious the allegations that local authorities were

³⁸ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 17.

³⁹ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 22.

⁴⁰ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, pp. 10-12; Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 25.

⁴¹ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 22.

⁴² UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 29.

⁴³ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, paras. 42, 43, and 44.

⁴⁴ IACHR. Press Release 41/08. *CIDH Condena violencia en Bolivia*. September 15, 2008.

involved in planning some of these acts. The Commission urges the Bolivian State to take steps to prevent the repetition of acts of this nature through the creation and implementation of a system with sufficient capacity to ensure that control measures are compatible with the international obligations adopted by Bolivia. Such measures of non repetition also include the National Police, which, in strict observance of human rights, have a constitutional obligation to use reasonable and proportionate means to prevent situations of violence of the kind described.

41. The State must also do its duty to ensure that the events are investigated and those responsible punished. The Commission urges the State to carry out the necessary investigations in an effective manner, in strict compliance with the guarantees of due process.

C. The State of Siege in the Department of Pando

42. As a result of the events of September 11, 2008, in Pando, on September 12, 2008, Decree 29.705 was passed declaring a state of siege throughout the territorial jurisdiction of that department, in accordance with Article 111 of the Constitution then in force.

43. The Decree introduced a prohibition that made it illegal: to carry firearms; to organize any political meetings, demonstrations, strikes, or blockades that might disrupt the normal development of activities; for more than three people to travel together between the hours of midnight and 6 a.m.; to hold any social gathering without the permission of the national police; for government- and privately owned vehicles to circulate between the hours of midnight and 6 a.m. without permission from the Traffic Authority; to travel in the country without a safe-conduct, and for any premises that engaged in night-time activities to operate between the hours of midnight and 6 a.m.⁴⁵

44. The Decree also provided that any persons or departmental, municipal, and provincial authorities involved in acts that violate public order, life, security, the peace, and the rule of law would be liable to application of the provisions contained in paragraphs 3 and 4 of Article 112 of the Constitution.⁴⁶

45. Under these provisions,

The declaration of a state of siege produces the following effects:

(...)

3. The rights and guarantees granted by this Constitution shall not be suspended ipso facto and in general by the mere declaration of a state of siege; but they may be with respect to specified persons charged upon good grounds with conspiring against the public order, in accordance with the provisions set forth in the following paragraphs.

4. The legitimate authority may issue summonses or arrest warrants against the accused, who must be brought before the competent judge within forty-eight hours, together with the documents substantiating the arrest. If the preservation of public order necessitates the removal of the accused, they may be ordered confined to a departmental or provincial capital that is not unhealthful. Banishment for political reasons is prohibited, but a person confined, sought or under arrest on such grounds, who requests a passport to leave the country, may not be denied it for any reason whatever and the authorities must grant him the guarantees necessary for that purpose.

⁴⁵ Decree 29.705 of September 12, 2008, Art. 2.

⁴⁶ Decree 29.705 of September 12, 2008, Art. 2.

(...)

46. Although the Decree did not set a time limit on the state of siege in Pando, under Article 111 of the Constitution such a measure may not last longer than 90 days.⁴⁷ The state of siege was lifted at midnight on November 24, 2008.

47. It came to the Commission's attention that on September 12, 2008, in the operation to retake control of Cobija airport, shots were fired that resulted in the deaths of two persons: a conscript named Ramiro Tinini Alvarado and a Mr. Luís Antonio Rivera.⁴⁸

48. The Commission has also been informed that between September 15, 2008 and the lifting of the state of siege, a group of between 25 and 38 persons were arrested and taken as internal exiles to the military base of the "Bolívar" regiment located in the city of Viacha, which is situated 20 km from the government headquarters in the city of La Paz.⁴⁹ According to testimony from the exiles and information from their next of kin gathered by the Office of the Ombudsman and the Office of the UN High Commissioner, the searches of the homes to make some of the arrests were conducted in nighttime operations in private residences, without an arrest warrant or any information on the reasons for the arrest or detention. The military personnel who took part in the operation reportedly broke into doors, fired in the air outside the houses of the people they were going to arrest, and even wounded one of them with a pellet in the neck. The reports said several persons were kicked and beaten with rifle butts, had their hair pulled, were insulted and threatened, and a weapon was pointed at one person in bed.⁵⁰

49. According to its international obligations, even in a state of siege, the Bolivian state is required to ensure that any measures connected with the use of force or, in general, to ensure security, is carried out within the limits imposed by respect for the life and safety of persons and by fundamental judicial guarantees not subject to suspension.

50. In addition, the State recognized that except for ExGovernor of Pando Leopoldo Fernández, none of the detainees was brought before a judge, because the constitutional provision on confinement provides that upon arrest there are two options: to be confined to preserve public order or to be brought before a competent judge for allegedly committing a crime. The State said that the authorities did not consider it appropriate to present the detainees to a judicial authority.⁵¹ In the Bolivian State's view, the arrests were not the result of a policy decision, but were carried

⁴⁷ Constitution of Bolivia. Promulgated on February 2, 1967, and reformed in February and August 2004. Article 111: (...) IV. The executive branch may not extend the state of siege for longer than 90 days, nor declare another within the same year without the approval of Congress. To that end, as appropriate, special sessions of Congress shall be called should its houses be in recess.

⁴⁸ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 5.

⁴⁹ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 18.

⁵⁰ UN High Commissioner for Human Rights. Office in Bolivia. Public report on the violent events in Pando in September 2008. La Paz, March 2009, para. 86; Defensor del Pueblo. Informe Defensorial de los Hechos de Violencia Suscitados en Septiembre de 2008 en el Departamento de Pando. La Paz. 27 de noviembre de 2008, pág. 54.

⁵¹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

out in the framework of current constitutional provisions, and in accordance with the “substantive and procedural guarantees provided in Article 27.2 of the American Convention.”⁵²

51. Although the available information indicates that except for the use of force in the arrests, the persons confined received humane treatment and were given food and medical care,⁵³ the Commission is also concerned by the fact that their “exile” status is the result of a political decision and not the decision of a judicial authority able to confirm their detention, as required by the Constitution and in accordance with the case law of the Constitutional Court of Bolivia. This Court has held that “a state of siege is an extraordinary measure provided for in Article 111 of the Constitution that suspends a number of basic rights for certain individuals; nevertheless, it is necessary in respect of said individuals to observe the conditions set forth at Article 112 (3) and (4) of the Constitution.”⁵⁴

52. In the Commission’s opinion, the alleged arbitrary raids, mistreatment during detention and transport, and being held incommunicado, as well as the way in which the device of exile was used, namely on the pretext of the need for “political protection by the state of public order”, without a court order or judicial review,⁵⁵ and without the persons concerned being promptly charged with the commission of crimes while the state of siege was in force, is incompatible with the substantive and procedural guarantees provided in Article 27(2) of the American Convention precisely as protection mechanisms against abusive measures in states of emergency. Without these guarantees, persons in the custody of the State are left completely vulnerable and defenseless.

53. Accordingly, the Commission hopes to receive more-detailed information from the State on these alleged human rights violations during the state of siege, including measures taken to investigate the actions of the respective security officials.

D. Other violent acts against state institutions, political leaders or former leaders, and the media

54. The Commission was informed of attacks against state institutions,⁵⁶ at the workplaces and even the homes of senior officials belonging to both the ruling party and the

⁵² Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁵³ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 27.

⁵⁴ Constitutional Court of Bolivia. Constitutional Judgment 439/2000 – R.

⁵⁵ Ombudsman. Report of the Ombudsman on the Acts of Violence in September 2008 in the Department of Pando. La Paz, November 27, 2008, p. 53.

⁵⁶ On December 5, 2007, an explosive device was detonated on the sixth floor of the Court of Justice.

In Tarija, hooded individuals linked to the office of the governor of that department and supposedly led by the president of the Civic Committee seized the offices of the National Tax Service and physically assaulted the regional manager.

In early September 2008 the buildings of a number of public institutions were taken over by force and looted. These included those of the National Tax Service, the National Institute of Agrarian Reform, *Empresa Nacional de Telecomunicaciones*, the Customs and the bus terminal.

On September 5, in Pando the media decided to suspend their broadcasts owing to attacks and threats to journalists. Cobija airport was occupied by officials of the governor’s office and civic leaders. They seized a military light aircraft, apprehended two colonels and a captain, and appropriated military supplies.

Continued...

opposition;⁵⁷ on the offices of media outlets, as well as on journalists and media workers;⁵⁸ and, in general, among groups that support the positions of the opposing political, economic and social actors.

...continuation

On these events, see: Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008; and Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR.

⁵⁷ According to various sources:

On November 24, 2007, the home of the Governor of Sucre, David Sánchez, was burnt down.

On November 29, 2007, in Pando a group of persons burnt down the house of alternate senator Abraham Cuéllar, whom the opposition accused of selling out to President Morales' party.

On December 10, 2007, grenades were thrown at the home of MAS councillor Oswaldo Peredo.

On December 22, 2007, in Santa Cruz, radical pro-autonomy groups burnt down part of the home of the Constituent Assembly member, Carlos Romero.

On these incidents, see: Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008.

⁵⁸ According to various sources:

On August 28, 2007, during the strike in Santa Cruz, trade unionists smashed the windscreen of a *Red Uno* vehicle and prevented their coverage. Supporters of *Plan Tres Mil*, in Santa Cruz refused to allow *Red Unitel* reporters to cover their protest because the network says in its reports that the citizens who support the Plan "are MAS supporters." In Santa Cruz, *Canal 7* reporters were also assaulted by citizens who supported the strike, telling them, "We don't want any MAS supporters."

On January 19 and 25, 2008, the offices of the *Periodistas Asociados Televisión* and *ATB* networks were stoned by unknown persons. The La Paz Journalists Association requested measures to guarantee their safety in the practice of their profession.

On February 26, 2008, reporter Limberth Sánchez and cameraman Edson Jiménez of *Red Bolivisión* were attacked by a mob of demonstrators in Epizama to stop them from filming the mob torturing three policemen. The reporters were beaten, struck by stones, and had their equipment taken away from them. The three policemen died. The journalists were trying to record images of what was happening.

On March 25, 2008, demonstrators took over the offices of *Canal 7 Televisión Boliviana* and *Radio Patria Nueva*, cutting off the broadcast of these state-run media outlets for a number of hours as part of a fierce protest against the acting Governor of the Department of Chuquisaca. According to information received, the demonstrators entered the offices of both media outlets, smashed windows, and cut the power to the equipment.

On March 29, 2008, journalist Carlos Quispe died as a result of the beating he had received two days earlier at *Radio Municipal de Pucarani*. The journalist had been working at the radio station when it was attacked by demonstrators allegedly opposed to the Mayor of Pucarani, Alejandro Mamani. They beat him unconscious and he died days later in hospital. His assailants had attacked the municipal headquarters before moving on to the *Radio Municipal* facilities. The trial for this killing began on June 18, 2008, and six individuals were charged with "homicide" and "conspiracy to commit crime," including the city council members Edwin Huampo Espinoza, Basilio Poma Poma, Rufina Zerna Flores, and Nicolaza Cruz Quispe; as well the leaders of the Pucarani Municipal Oversight Committee, Julio Quisberth Quispe and Efraín Ticonipa.

On August 3, 2008, photojournalist Carlos Hugo Vaca, who was working for Reuters international news agency, was attacked by a group of presumed supporters of the governing party, *Movimiento al Socialismo* (MAS) [Movement toward Socialism], in the city of Santa Cruz. Vaca was covering a MAS march in support of the Bolivian President, Evo Morales, in the recall referendum. Vaca said that one of the demonstrators came up to him to let the air out of the tires of his motorcycle in order to stop him following the caravan. Then, four individuals struck him on the arms, accusing him of favoring the opposition. Ricardo Montero, of *El Deber* newspaper reported that other reporters were also threatened during the march.

On September 9, 2009, *La Razón* newspaper based in La Paz reported that opposition activists in the city of Santa Cruz de la Sierra staged a petrol-bomb attack on the offices of the state-run radio station *Nueva Patria*. In the course of two weeks of anti-government protests, opposition supporters also occupied the offices of *Canal 7*, another state run media outlet, where they stole equipment and burned furniture. Although no injuries were reported, the offices of both media outlets sustained extensive damage and have suspended their programming.

On these incidents, see, respectively: Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008; La Prensa: "*Desconocidos lanzan piedras contra ATB*"

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55. The Commission finds it particularly disturbing that on March 7, 2009, a group of neighbors attacked the home of Former Vice President Víctor Hugo Cárdenas in the community of Sank'a Jawira some 70 km from La Paz.⁵⁹ According to newspaper reports, the intimidation began around 8 a.m. when about a dozen persons gathered a few meters from the property.⁶⁰ The former vice president's wife reportedly called the police but got no response, apparently on orders of the town's mayor.⁶¹ According to available information, the assailants violently entered the house, broke windows and stole belongings, all in an extremely violent manner. The media reported that Cárdenas family members said they were beaten, pushed, kicked, insulted, forced to go into the yard and were whipped and stoned as they left.⁶² The women at home were said to have been brutally struck. The house was painted with slogans like "from the people to the people," "senior citizens' house," and "reclaimed for the people, dammit."⁶³ It was also reported that reporters trying to cover the incident were prohibited from taking photos and were chased "with whips."⁶⁴ After the incident, some news media reported statements by senior government officials, including

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[Unknown persons throw stones at ATB]. Article published on January 27, 2008, available at: http://www.laprensa.com.bo/noticias/27-01-08/27_01_08_seg1.php // Opinion: "Gobierno condena agresión a periodista y ataque a medios" [Government condemns attacks on journalist and media facilities]. Article published on January 29, 2008. Available at: <http://www.opinion.com.bo/Portal.html?CodNot=17002&CodSec=6>; RWB: "Two journalists narrowly escape lynching in Cochabamba". February 28, 2008, available at: http://www.rsf.org/article.php3?id_article=25947 // El Diario: "Jornada sangrienta en Cochabamba deja 3 policías linchados en Epizana" [Bloody day in Cochabamba leaves three policemen lynched in Epizana]. Article published on February 27, 2008, available at: http://www.eldiario.net/noticias/nt080227/5_06nal.php; La Razón: "Cívicos de Sucre toman la Prefectura" [Civic Committee supporters in Sucre take over Governor's office]. Article published on March 26, 2008, available at: http://www.la-razon.com/versiones/20080326_006223/nota_247_567594.htm // Red Erbol: "Un grupo de vándalos atenta contra los medios estatales en Sucre" [Vandals attack State media offices in Sucre]. Article published on March 25, 2008, available at: <http://www.erbol.com.bo/noticia.php?identificador=4407&id=1> // RWB: "Anger as rioters stone studios of public TV and radio stations during a demonstration in Sucre". March 27, 2008, available at: http://www.rsf.org/article.php3?id_article=26356; Special Rapporteur for Freedom of Expression: Press Release 189/08, "The Office of the Special Rapporteur for Freedom of Expression deplores the murder of Bolivian reporter Carlos Quispe Quispe, and urges the authorities of Bolivia to investigate the crime." April 9, 2008, available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=728&IID=1>; IPYS/IFEX: "Canal universitario suspende transmisiones tras amenazas [University TV station suspends broadcasts following threats]; partidarios de presidente Morales agreden a reportero de agencia Reuters" [Supporters of President Morales attack Reuters reporter]. August 7, 2008, available at: <http://www.ifex.org/es/content/view/full/95958> // IPYS: "Partidarios de Evo Morales agreden a reportero de Reuters". [Supporters of Evo Morales Attack Reuters Reporter]. August 6, 2008, available at: <http://www.ipys.org/alertas/atentado.php?id=1563>; and Latin American Observatory for Freedom of Expression: "CPJ Condena agresiones a medios de comunicación en Santa Cruz" [CPJ condemns attacks on media in Santa Cruz]. Alert received at the Office of the Special Rapporteur on September 11, 2008. SIP: "Preocupación por agresiones contra medios bolivianos" [Concern over attacks against Bolivia media outlets]. Received at the Office of the Special Rapporteur on September 11, 2008. // CPJ: "Activistas opositores atacan dos medios estatales" [Opposition activists attack two media outlets]. September 10, available at: http://www.cpj.org/news/2008/americas/bolivia10sep08na_sp.html // RSF: "Reporters Without Borders urges president and opposition prefects to restore calm after ten days of severe violence." Received at the Office of the Special Rapporteur on September 15, 2008. Available at: http://www.rsf.org/article.php3?id_article=28550.

⁵⁹ Newspaper article. Los Tiempos. March 9, 2009. *Cárdenas will file suit against assailants*. Available at: <http://agorabolivia.com/2009/03/09/esta-es-la-democracia-del-mas/>.

⁶⁰ Newspaper article. La Razón. March 9, 2009. *Mob acted violently and without premeditation in Huatajata*. Available at: http://www.la-razon.com/versiones/20090309_006661/nota_249_774523.htm.

⁶¹ Newspaper article. La Razón. March 9, 2009. *Cárdenas says he asked for help and did not get it*. Available at: http://www.la-razon.com/versiones/20090309_006661/nota_249_774524.htm.

⁶² Newspaper article. La Razón. March 9, 2009. *Mob acted with fury in Huatajata*. Available at: http://www.la-razon.com/versiones/20090309_006661/nota_249_774523.htm.

⁶³ Newspaper article. La Razón. March 8, 2009. *People linked to Evo attack Cárdenas's family and house*. Available at: http://www.la-razon.com/versiones/20090308_006660/nota_262_774300.htm.

⁶⁴ Newspaper article. La Razón. March 9, 2009. *Media curbed*. Available at: http://www.la-razon.com/versiones/20090309_006661/nota_249_774527.htm.

the President and Vice Presidents of the Republic and the Vice Minister of Community Justice, who denied government participation in the events, but justified them on the basis of pending issues Mr. Cárdenas had with the community.⁶⁵

56. A similar event occurred on March 3, 2009, against the former deputy of the *Movimiento al Socialismo*, who was reportedly attacked near her house by a group of persons with strong blows that left her covered with bruises. Some newspaper reports carried the victim's statement in the following terms: "a man pushed me with a stick to force me down on the ground while the women threw stones at me and lashed me with a whip." The available information indicates that Ms. Pareces was expelled from the political party in 2003 for speaking out against the current president, Evo Morales, and recently published the book *Del gonismo al evismo* [a reference to former president Gonzalo Sánchez de Lozada and the current president].⁶⁶

57. The Commission strongly repudiates the acts described in this section and expresses its deep concern over the increase in events of this sort allegedly occurring along with the progressively greater political polarization noted in Bolivia. The Commission is especially alarmed by the statements of senior government officials that could imply or be interpreted as a justification for these deplorable acts of violence. The Commission urges the Bolivian State to take the necessary steps to prevent the recurrence of similar acts, including the public and unequivocal condemnation of them, and to start and carry out a serious and diligent investigation to clarify what occurred, in order to identify the responsible parties and punish them accordingly.

IV. ADMINISTRATION OF JUSTICE

58. In the *Access to Justice and Social Inclusion*, the Commission examined the obstacles traditionally faced by certain, particularly vulnerable sectors of society. The Commission centered on coverage and distribution of justice services; guarantees of independence, impartiality, transparency, and suitability; implementation of the accusatorial criminal prosecution procedure, and factors of impunity in cases of gross violations of human rights committed during the military dictatorships and in the framework of social unrest.⁶⁷

A. Coverage and distribution of justice services

59. The Commission expresses its deep concern at the continued minimal coverage of justice services in the country. According to the Commission's findings on its report, only 55% of municipalities have a judge, 22% a prosecutor, and 3% a public defender.

⁶⁵ Newspaper article. La Razón. March 10, 2009. *Government Justifies Actions against Cárdenas*. http://www.la-razon.com/versiones/20090310_006662/nota_249_775230.htm. Among the statements, the note cites: "The truth hurts sometimes...when (Cárdenas) meets with the middle class, he says this new Constitution is indigenist, and when he meets with some indigenous brothers he says: Evo is excluding them, leaving them out, discriminating against the Indians. What kind of talk is this?"; "if he wants to have his property respected, he has to settle (his problems) with his community, with his province, with his city hall, and if he cannot convince them, it's the family's problem"; "Víctor Hugo Cárdenas should ask himself what harm he must have done to his neighbors, to the residents, the people of his community and province, that caused these residents to repudiate him and feel estranged from him and criticize him. This is a matter that Víctor Hugo Cárdenas has to explain to history"; "history has penalized him, history has punished him, and the repercussions of these damaging acts against Bolivia have repercussions up to today"; "We would be ingenuous to make him out to be a victim...we are not so naive or stupid to make a victim of one who is not, one who victimized the people by destroying the State 10 years ago."

⁶⁶ Newspaper article. El Deber. March 12, 2009. *Former masista deputy denounces another attack*. Available at: <http://www.eldeber.com.bo/2009/2009-03-12/vernotaahora.php?id=090312003810>.

⁶⁷ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007. pars. 46-174.

60. Although the State reported that the Attorney General of the Republic is implementing a project called the Prosecutors' Map [Mapa Fiscal] to achieve a broader and more even distribution of prosecutors in the national territory, the available information indicates that thus far, the lack of coverage of justice services continues to affect people who live in extremely poor rural areas, inhabited for the most part by indigenous peoples and peasant communities⁶⁸.

61. The Commission reiterates that the lack of judicial coverage perpetuates the exclusion of certain sectors of society from access to justice. This situation also fosters impunity in human rights violations and encourages their repetition, as has happened, for instance, in the cases of mob lynching described hereinbelow. The Commission reminds the Bolivian State that, pursuant to Article 25 of the American Convention, all persons under its jurisdiction must have the possibility of recourse to the courts, and must be able to obtain a response to their demand within the guarantees of due process. The exercise of these rights presupposes that there is a judicial system that covers the entire national territory.

62. The Commission urges the State to adopt forthwith measures to increase the presence of judicial authorities, prosecutors, and public defenders throughout the country. If it does not, the guarantee of the right to judicial protection for persons subject to Bolivian jurisdiction will continue to be illusory.

63. The Commission has also been informed of the creation of Integrated Justice Centers as forums "of and for the local community, implemented in order to improve access to justice for vulnerable sectors of the Bolivian population." These centers began to operate in 2004 and were later recognized by Executive Decree 28.586 of January 17, 2006, as part of the National Program on Access to Justice. Their function is to provide free information services, legal advice, and conciliation services, as well as processing birth certificates and providing neighborhood training on matters connected with the exercise of citizen rights. They also have courts of first instance with jurisdiction over certain disputes in civil, criminal, and family-law matters.⁶⁹

64. According to available information, at present there are 11 such centers in the country: six are located in the city of El Alto; one in Santa Cruz de la Sierra; one in La Paz, one in Chimoré, Cochabamba; one in Coroico, Yungas, and one in Yapacaní, Santa Cruz. As of December 2007, 55,000 cases had been heard.⁷⁰ During 2008 32,380 cases were heard⁷¹ and as of June 2008, 16,259 individuals had received free comprehensive assistance at the centers. There are plans to strengthen and create new Integrated Justice Centers in coordination with municipal governments, the judiciary, the Prosecutor's Office, and universities.⁷²

⁶⁸ *Oficina Jurídica de la Mujer de Cochabamba. Follow-Up Report on the Recommendations of Access to Justice and Social Inclusion.*

⁶⁹ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR. paras. 55 and 56.

⁷⁰ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR. paras. 55 and 56.

⁷¹ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

⁷² Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 20.

65. The Commission values the efforts to extend and strengthen alternative dispute settlement mechanisms, which have proved effective at reducing procedural delays and congestion in the courts, as well as offering viable alternatives to people who, for a variety of reasons, are unable to access the official justice system. In this regard, the IACHR hopes that the problems to do with allocation of sufficient funding to ensure that these centers can operate adequately properly on a permanent basis are overcome. The foregoing notwithstanding, the Commission considers that these measures are not sufficient to ensure access to justice, particularly for the inhabitants of the more remote rural areas. The presence of Integrated Justice Centers should not be regarded as a substitute for institutions such as the Prosecutor's Office and public defenders in rural parts of the country.

B. The status of the Constitutional Court

66. On May 17, 2007, the Constitutional Court warned that democracy, the rule of law and state institutions were in danger as a result of the government's intention to institute proceedings for misfeasance in office against the five members of the Court who announced that the term for which certain justices of the Supreme Court had been appointed had expired. The Commission received reports that the charges of misfeasance in office were permanently dropped; however, two of the accused justices decided to tender their irrevocable resignation in response to what they saw as harassment and a systematic attack on their independence and impartiality,⁷³ owing to the public exposure and politicization of the trial.⁷⁴

67. The Commission has been informed that since December 13, 2007, when a judge on that court resigned, this body has lacked the necessary quorum to convene and adopt decisions.

68. The Commission was subsequently informed that on May 26, 2009, the only female justice still serving on the Constitutional Court resigned, which means that all seats on the tribunal have been vacated. On June 23, 2009, the Commission formally asked the government to provide information on the current status of the Constitutional Court, inquiring specifically about the possibility that its members could be appointed soon by the Congress and measures that will be taken to address the backlog of cases due to the delay in the appointments. As of the date of approval of this report, the Commission had not received a reply to this request.

69. Available information indicates that the problem of the Constitutional Court vacancies will be resolved with the election of the members of the new Plurinational Constitutional Court.⁷⁵ However, the Commission notes that the new constitutional text indicates the need for several preliminary steps before justices can be named to that institution through universal suffrage as called for in the new Constitution. Among those steps is the election of the new Plurinational Legislative Assembly scheduled for December 6, 2009. After the legislative organ is installed, it has 180 days to enact legislation for the electoral system, the judicial organ, and the Plurinational Constitutional Court, all of which are needed to proceed with the elections for the Court. According

⁷³ Communication of the Constitutional Court of Bolivia to the IACHR. Received on November 6, 2007.

⁷⁴ The Inter-American Court of Human Rights recently developed case law on the relationship that exists between fair trial guarantees in the framework of disciplinary proceedings against judges and the principle of judicial independence. In this regard, see I/A Court H.R. *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes")*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182.

⁷⁵ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

to the timeline of the new Constitution, the new Plurinational Constitutional Court will not be elected until at least the second half of 2010.⁷⁶

70. The Commission understands that the current Constitutional Court continues to exist in Bolivia's present political and juridical system, just as there is continued operation of the other State institutions such as the Congress, which will be replaced by the Plurinational Legislative Assembly once it is chosen under the new Constitution. The status of the Constitutional Court is that its seats are vacant, but this does not mean the institution has ceased to exist nor that its functions of constitutional control and protection of basic rights have disappeared from the Bolivian government structure.

71. According to statistics published by the Constitutional Court Secretariat, this lack of justices has paralyzed 4,489 constitutional cases, affecting an estimated 29,069 persons.⁷⁷ Since by its very nature the role of the Constitutional Court is to defend the Constitution and guarantee basic rights, the Commission is alarmed that a year and a half has gone by with no progress in appointment of the justices. The Commission considers that this situation seriously jeopardizes citizens' right to proper administration of justice and upsets the system of Constitutional checks and balances, thereby threatening the country's democratic institutions.

72. In this regard, the Commission urges the Bolivian State to name justices to the Constitutional Court immediately for the term remaining until that institution is replaced by the Plurinational Constitutional Court. The Commission feels it is essential for this appointment to ensure the guarantees of independence for the justices and the necessary resources for them to carry out their functions.

C. Guarantees of independence, impartiality, transparency, and suitability

73. In *Access to Justice and Social Inclusion* the IACHR analyzed the irregularities in the appointment processes for judges and prosecutors, as well as in enforcement of the disciplinary system of the judiciary and the Prosecutor's Office. The report also referred to the perceptions of some sectors of society regarding interference by the executive branch in the judiciary and complaints about the lack of transparency in these selection processes. In a similar sense to what was described *supra*, one aspect that the IACHR has found troubling is the high number of vacancies lasting months in top posts of different branches of government and the present provisional status of the position of Attorney General.

74. The problem of provisional appointments continues to plague the Prosecutor's Office. According to information received by the IACHR during its visit to Bolivia in June 2008, Mr. Mario Uribe continues to occupy the post of Attorney General on a *pro tem* basis as Congress has not taken the necessary steps to appoint his successor.

75. The foregoing notwithstanding, the Commission notes the information supplied by the State on the implementation of a prosecutor career through a system of public competitions with monitoring and participation of civil society through the Network for Participation and Justice, to guarantee transparency. The Commission continues to receive information on the results of this initiative to implement the prosecutor career definitively and permanently in accordance with the internal rules of procedure of the Prosecutor's Office, which establishes procedures for the

⁷⁶ See: Articles 198 and transitory provisions first, second, and fourth of the new Constitution.

⁷⁷ See: www.tribunalconstitucional.gov.bo Available on July 28, 2009.

appointment of prosecutors with a prosecutor career based on merit competition and progressive accreditation of knowledge.⁷⁸

76. The Commission also welcomes information supplied by the State concerning some undertakings aimed at overcoming the problems and barriers for the proper implementation of the judicial career. These initiatives include directive CJ-GRH-022/08 of September 29, 2008, to human resources chiefs of all judicial districts, which orders that all jobs be posted on the official website.⁷⁹ The State also reported that there will be reforms in the whole system for selection and discipline of the judicial branch.⁸⁰ The State said that under the new Constitution, the Magistrates' Council will pre-select candidates for the departmental courts, who will be appointed by the Supreme Court, and select the district examining magistrates [*jueces de partido e instrucción*] through merit competition. It added that under the new Constitution, the Plurinational Legislative Assembly will nominate candidates for the Plurinational Constitutional Court, the Supreme Court, the Agro-environmental Court, and the Magistrate's Council, who will then be elected by universal suffrage under Article 158 of the new Constitution.⁸¹

77. The Commission trusts that the State will continue to provide information on the consolidation of the judicial career in the framework of the new Constitution and the institutions to be established under it. The IACHR reminds the State of the need for it to effectively implement the judicial and prosecutorial careers systems in strict accordance with the rules that govern them and in keeping with international standards in such matters. In that regard, the Commission reiterates that the Basic Principles of the United Nations on the Independence of the Judiciary establish that there is a direct relationship between guarantees of independence and impartiality in the administration of justice, as a precondition for meeting the standards of due process, and the creation and strengthening of transparent mechanisms for the appointment and promotion of judges on the basis of their qualifications, and not for other, improper motives.

D. Accusatorial Criminal Prosecution Procedure and Public Defenders

78. In *Access to Justice and Social Inclusion* the Commission identified a series of obstacles and problems in the effective implementation of the accusatorial criminal prosecution system.

79. In this respect, the Commission was informed that the National Public Defenders Service embarked on redesign of its functions, which resulted in a Defender's Handbook and the Regulations of the National Public Defenders Service Training Institute, which documents detail the activities that public defenders are required to carry out.⁸² The Commission regards as positive the

⁷⁸ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁷⁹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸⁰ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸¹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸² Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 27.

implementation of a computerized data system that will make it possible to follow up electronically on every case taken up by public defenders.⁸³

80. In spite of the foregoing, efforts to improve the coverage of the Public Defenders Service have not been sufficient.⁸⁴ There is still a shortage of public defenders, particularly in rural areas, since what few public defenders there are provide their services in departmental capitals and a number of intermediate cities.⁸⁵ In addition, there are no studies on the caseload of public defenders from which to make a determination as to the geographic coverage needed.⁸⁶

81. The Commission reiterates the crucial role that public defenders perform in guaranteeing the right to a fair trial for persons in positions of great vulnerability, and it reminds the State of the need to adopt measures to increase the number of active defenders and ensure the quality of their work.

82. The Commission takes note that measures have been adopted and/or continued to cope with the processing backlog for criminal cases. These measures include the Early Solution Unit, which is a filter or screening mechanism for cases that warrant the start of criminal proceedings.⁸⁷ In addition, the State reports that studies have been completed and manuals have been published for the application of alternative vehicles.⁸⁸ The State also mentioned that the guidelines for coordination at the police, prosecutor, and court levels have been implemented with software for databases that show the status of the proceedings with an indication of the dates and subjects involved, which makes it possible to follow up on the deadlines for the proceedings.⁸⁹ The State adds that the National Plan of Action on Human Rights contains a comprehensive diagnostic of the weaknesses in implementation of the Penal Procedure Code and other penal system legislation, taking into account the IACHR's recommendations. This action is to be taken between 2009 and 2013 with the goal of reducing the country's case backlog.⁹⁰

83. Nevertheless, the State emphasized that there are two major weaknesses in the current penal procedures. The first is the problem in forming the courts with citizen judges, for lack of candidates, which has caused delays and stays in the trials. The second refers to the "excessive

⁸³ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 27.

⁸⁴ Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 20.

⁸⁵ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR, para. 39.

⁸⁶ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR, para. 39; Ombudsman. Report to Congress. 2007. September 29, 2008, pp. 21 and 22.

⁸⁷ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸⁸ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁸⁹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁹⁰ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

guaranteeism” on behalf of the defendants, who use a series of delaying tactics and then claim that the statute of limitation for the proceeding has expired.⁹¹

84. The Commission welcomes the State’s efforts to implement the accusatorial criminal prosecution system. However, available information indicates that the case backlog continues to be the major problem of criminal justice. In this regard, the Commission urges the State to continue striving to do whatever is needed to overcome these problems. The Commission stresses that the design of these efforts must achieve a fair balance between the need to resolve cases expeditiously and to provide judicial guarantees for the defendants.

85. Finally, the Commission was informed that the preliminary draft of a proposed Law on Comprehensive Protection and Assistance for Victims of Violent Crime was prepared in coordination with the Prosecutor’s Office. Furthermore, the Ministry of Justice intends to implement the National Legal Protection Service on behalf of violence victims.⁹² The Commission also received reports that the Ministry of Finance granted an additional appropriation to the Prosecutor’s Office in order to implement the Victim and Witness Protection Program through the creation of new budget items for prosecutors and to hire part-time staff, such as paralegals, psychologists, and social workers.⁹³ The Commission values these government initiatives to improve assistance to victims of human rights violations and hopes to receive further information on their implementation and results.

E. Factors of impunity in cases of gross violations of human rights

1. Facts that occurred during the military dictatorships

86. As regards human rights violations that occurred during the military dictatorships, the Commission received reports of some progress with respect to the search for and identification of the remains of disappeared persons. The Commission was informed that the Interagency Council for the Clarification of Forced Disappearances submitted a project proposal for the exhumation, identification, return, and investigation of disappeared persons, which provides for the participation of the Argentine Unit of Forensic Anthropology, thanks to the support of the Argentine government. The intention is that the project would be financed in large measure with international cooperation funds.⁹⁴

87. Information provided by the State indicates that the Ministry of Justice signed a memorandum of understanding on technical cooperation with Argentina on November 5, 2007, based on a project for investigation and clarification of cases of forced disappearance during the dictatorship periods (1964-1981). The project includes: i) recovery of the remains of the disappeared persons, to be returned to their families; ii) gathering of evidence for clarification of the forced disappearances; iii) establishment of communication with and provision of social and psychological assistance to the families; iv) establishment of the national archive of the history of forced disappearances and martyrs for national freedom; and v) development of a collective

⁹¹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁹² Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 6.

⁹³ *Oficina Jurídica de la Mujer de Cochabamba*. Follow-Up Report on the Recommendations of *Access to Justice and Social Inclusion*. p.3.

⁹⁴ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, pp. 40-41.

conscience against dictatorships and in favor of democratic development. The project is to be carried out in 36 calendar months and there has already been progress in identification and delivery of some remains.⁹⁵

88. The Commission received information about the exhumation of the remains of 17 victims of forced disappearance found in the tomb of the Association of Next of Kin of the Disappeared Detainees and Martyrs for National Liberation. At present, the process of identifying the remains is said to be underway.⁹⁶

89. The Commission was also told about the presentation of a draft Executive Decree on appropriate operational practices in connection with the treatment of human remains and information about the disappeared person.⁹⁷

90. As regards reparations, the Commission has monitored the steps taken by the National Commission for Redress of Victims of Political Violence (hereinafter also "CONREVIP"), which is in the process of assessing victims of the dictatorships, in particular those of forced disappearance, torture, murder, exile, arbitrary arrest and imprisonment, and political and trade union persecution.⁹⁸ According to government sources, as of June 2008, 6,221 applications had been received and disaggregated as follows: 63 for disappearance; 233 for murder; 1,477 for exile; 3,521 for detention; 816 for persecution, and 17 for torture. It is estimated that the assessment of all 6,221 applications will be completed in the near term and an Executive Decree issued containing a list of the victims and beneficiaries of redress.⁹⁹

91. The State added that the Ministry of Justice has made several efforts to obtain financing for 80% of the material compensation for beneficiaries of Law 2640 that established CONREVIP. The project is reported on the negotiation table of the Vice Minister for Public Investment and External Financing to press for funding for the external cooperation. It says that the current Ministry of Finance has granted 20%, so that is assured.¹⁰⁰

92. The Commission takes note of these efforts, which are evidence of political will to grant reparations to the next of kin of victims. However, the Commission notes that difficulties persist in the clarification of the facts because the investigations and judicial proceedings continue to make slow progress. Military secrecy continues to be one of the main obstacles in the progress of trials. The Commission was informed that the Permanent Assembly of Human Rights recently reiterated its request to complete the procedures for declassification of the files of the Second Army Department and other documents to enable investigations to continue in order to ascertain the whereabouts of the remains of several persons who disappeared under the military dictatorship of

⁹⁵ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

⁹⁶ Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 26.

⁹⁷ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 41.

⁹⁸ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 41.

⁹⁹ Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 22.

¹⁰⁰ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

Luis García Meza.¹⁰¹ The Commission underscores the importance of access to the files for bringing full reparation and clarification of past human rights violations.

93. Moreover, the Commission welcomes the efforts the State is making to obtain funds for the location and identification of the remains of victims of the dictatorships, and to pay reparations to the victims found still living and/or their families. However, the Commission wishes to recall that these obligations must be satisfied by the Bolivian State in the framework of its international obligations assumed with the ratification of the American Convention and other human rights treaties. The Commission hopes that if overtures to obtain external funding are not successful,¹⁰² the State will take the necessary budgeting steps to give continuity to the above-mentioned programs for identification of remains and for reparations.

2. Social conflicts in the last decade

94. With regard to social conflicts in the past years, the Commission received reports that progress in the investigations connected with the suppression of the mobilizations of February 2003 continues to be delayed by the failure of four accused servicemen to appear before the judicial authorities.¹⁰³ Nevertheless, the Commission welcomes the promulgation of Law No. 3955 in November 2008, which establishes reparations to victims of violence in February, September, and October 2003.¹⁰⁴ The Commission hopes that the State will continue to report on the implementation of this law and its concrete results.

95. With respect to the events that took place in Sucre in May 2008, described *supra*, the Commission took note that eight cases were under investigation in the Chuquisaca District Prosecutors' Office. According to the annual report of the Office of the UN High Commissioner, there have been indictments in three of the eight cases, while the Prosecutors' Office rejected the other five. That office said some victims were probably reluctant to testify for fear of reprisals by the Civic Committee of the zone.¹⁰⁵

96. As for the events that occurred in Pando Department on September 11, 2008, described *supra*, three investigations are said to be underway.¹⁰⁶ According to information supplied by the State, the first was opened by the Public Prosecutor's Office for the deaths of three persons. In this investigation, the Fifth Examining Magistrate for criminal cases reportedly ordered the preventive arrest of Former Pando Governor Leopoldo Fernández. The second investigation was opened by the Minister of Justice on September 24, 2008, and the alleged perpetrators are Former Pando Governor Leopoldo Fernández, leaders of the Civic Committee, officials of the Office of the

¹⁰¹ Permanent Assembly of Human Rights of Bolivia. Press Release of June 17, 2008.

¹⁰² On this matter, the Office of the UN High Commissioner for Human Rights in Bolivia said there have been problems with the processing of the requests and payment of damages to more than 6,000 persons who sought compensation under Law No. 2640. Lack of funds is one of the major obstacles because the law stipulates that 80% of the required financial resources must be sought by the government from international cooperation agencies, and many donors consider that the State is solely responsible for the payments. See: UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 36.

¹⁰³ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 28.

¹⁰⁴ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 35.

¹⁰⁵ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 20.

¹⁰⁶ UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 25.

Governor, and others. The accusations are: forced disappearance of persons, attempted assassination, harassment, torture, deprivation of liberty, and very serious, serious, and light wounds. The third investigation was opened with the formation of a Special Multiparty Committee of the House of Deputies, with that chamber assuming the role of the Public Prosecutor's Office in cases of national significance.¹⁰⁷

97. The State also informed the Commission that the national government sent directives and requests to various officials in the Prosecutor's Office, asking that investigations be opened *ex officio* regarding the looting and violent attacks on the state institutions and human rights organizations occurred in September, 2008 and mentioned above in the section dealing with the political context and social unrest. A National Prosecutorial Commission with nationwide jurisdiction and based in the city of La Paz was set up for that purpose.¹⁰⁸

98. The Commission hopes to continue receiving progress reports on these proceedings and urges the State to adopt measures to overcome the difficulties that have hampered clarification of human rights violations committed in the past as well as those that continue to occur in the present. In particular, the Commission urges the State to intensify its efforts to identify the culprits and impose appropriate penalties, given that the prospect of obtaining justice and ensuring that those responsible are punished dwindles as time passes.

3. Cases of "street lynching"

99. The Commission has also received information through press reports collected by the Office of the Ombudsman and other sources regarding repeated cases of lynching characterized by acts of mob violence perpetrated with cruelty. Generally speaking, the victims are captured on suspicion of having committed a crime and are beaten, mutilated, stoned, or burned, more often than not leading to their death. These acts are usually committed "in the name of justice" and are justified by the perpetrators as "justice by their own hand" in the absence of state protection. Cases of lynching are not properly investigated by the Prosecutor's Office or the courts because there are no judges or prosecutors present in the areas where this practice mostly occurs.¹⁰⁹ An aggravated fact in the "pact" or "silent agreement" between actors to ensure impunity¹¹⁰.

100. Although this is a problem that goes back decades, media reports suggest that there has been an upswing in recent years. According to journalistic sources, there were seven cases in 2005, 10 in 2006, and in 2007, 57 cases.¹¹¹ The Office of the UN High Commissioner said that at

¹⁰⁷ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009; and Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 25.

¹⁰⁸ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 22.

¹⁰⁹ *Oficina Jurídica de la Mujer de Cochabamba*. Follow-Up Report on the Recommendations of *Access to Justice and Social Inclusion*, p. 3.

¹¹⁰ Defensoría del Pueblo. Publicación denominada: *Monitoreo sobre la Cobertura Noticiosa de los Casos de Linchamiento en Bolivia durante 2007 y primer trimestre de 2008*. Disponible en: <http://www.defensor.gov.bo/defensor/userfiles/file/Linchamientos%20Monitoreo%20noticioso.pdf>.

¹¹¹ Defensoría del Pueblo. Publicación denominada: *Monitoreo sobre la Cobertura Noticiosa de los Casos de Linchamiento en Bolivia durante 2007 y primer trimestre de 2008*. Disponible en: <http://www.defensor.gov.bo/defensor/userfiles/file/Linchamientos%20Monitoreo%20noticioso.pdf>.

A título de ejemplo, cabe mencionar el caso de once personas que supuestamente habían cometido un robo en la localidad de Achacachi. Según la información difundida por la prensa, estas personas fueron golpeadas, quemadas, colgadas y maltratadas con látigos. El saldo de estos lamentables hechos fue la muerte de dos personas y graves afectaciones a la

least 23 lynching attempts were reported by the media in 2008, resulting in 20 persons killed and 23 wounded.¹¹²

101. The Commission vigorously condemns these acts of violence and assault that constitute gross violations of the rights to life and integrity of the person, as well as denoting the weakness of the rule of law, since they are recurring and increasing to the detriment of people who are utterly bereft of any protection from the State. The Commission finds it unacceptable that lynchings should continue to occur without the Bolivian State having taken immediate steps to put a permanent stop to this practice.

102. The Commission urges the State of Bolivia to adopt these measures as a matter of priority and to immediately initiate investigations into these incidents in order to identify and punish those responsible. In view of the nature of violations of this type, inaction on the part of the State in investigating them could encourage their repetition and be interpreted as a kind of legitimization or acquiescence since, as mentioned in the preceding paragraph, these acts are usually justified by their perpetrators as a form of justice.¹¹³ Accordingly, the IACHR reminds the Bolivian State that in ratifying the American Convention it undertook to ensure the rights of all persons subject to its jurisdiction, which includes the duty to prosecute and punish those who commit human rights violations, regardless of whether they are agents of the state or private individuals.¹¹⁴

V. PRISON CONDITIONS AND RIGHTS OF PERSONS DEPRIVED OF LIBERTY

103. The prison population in Bolivia remains in a state of vulnerability and no significant progress has been made in that regard.¹¹⁵ Civil society organizations have taken on most of the State's responsibilities, such as, for example, providing skills development and vocational training courses for persons deprived of liberty; training for custodial staff; and support for improvements in the area of building infrastructure, health, food, legal assistance, etc.¹¹⁶ The Bolivian State has recognized that budgetary constraints have precluded substantive improvements in the infrastructure of all penitentiary centers.¹¹⁷

104. The Commission also notes that preventive custody remains one of the most widespread factors in the violation of prisoners' rights. Available information indicates that more

...continuation

integridad física en el caso de los demás. Sobre estos hechos, Ver: Nota de prensa. Agencia Boliviana de Noticias. 17 de noviembre de 2008. Disponible a 1 de diciembre de 2008 en http://abi.bo/index.php?i=noticias_texto_paleta&j=20081117200729&k=. Ver también La Razón. 19 de noviembre de 2008. Disponible a 1 de diciembre de 2008 en http://www.la-razon.com/versiones/20081119_006461/nota_249_713356.htm.

¹¹² UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 45.

¹¹³ In a similar vein, see IACHR. *Justice and Social Inclusion: the Challenges of Democracy in Guatemala*. 2003, para. 140.

¹¹⁴ See, *inter alia*, I/A Court H.R., *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140.

¹¹⁵ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 2. See also Report of the Ombudsman to Congress 2007. September 29, 2008, p. 21.

¹¹⁶ *Idem*.

¹¹⁷ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

than 75% of the inmates are in preventive detention.¹¹⁸ The Commission has been informed that this situation has to do not only with a failure to comply with statutory deadlines and domestic and international standards on such matters, but also with acts of corruption by a number of justice operators, who allegedly do not attend scheduled hearings or give these cases proper attention.¹¹⁹

105. Accordingly, the IACHR reiterates to the State its recommendations that it adopt the measures necessary to ensure that judicial authorities apply preventive detention reasonably and strictly observing the maximum legal duration¹²⁰ in conformity with international standards; that all accused have at their disposal an effective judicial remedy to challenge excessive periods in preventive detention; and that the necessary judicial, legislative and other measures be adopted to correct the excessive application of preventive detention and the procedural delays that persist in the administration of justice.

106. On the other hand, the IACHR has received information that suggests that the new constitution would introduce a number of significant advances with regard to the situation of persons deprived of liberty. This would signify the beginning of a process of alignment with the standards in force and adoption of new public policies consistent with international rules and treaties.¹²¹ The IACHR has also been informed that civil society organizations, with the backing of the National Directorate of Prisons, have presented to Congress a bill amending Law 2298 with respect to the benefit of a reduction in sentence (a benefit not available to convicts sentenced for the crimes of rape of a minor, terrorism, or offenses recognized by Law 1008 that are punishable by more than 15 years of imprisonment, which makes them ineligible for a pardon). The bill, which is said to have passed its first reading in the House of Deputies, would provide all convicted persons with the opportunity to apply for a reduced sentence on grounds of study or work, assuming they have served two-fifths of their sentence and meet other additional requirements.

107. The IACHR will continue to monitor the passage and adoption of the aforesaid legislation, appraise its results, and evaluate other measures of different types adopted to correct excessive use of preventive custody and the persistent procedural delays in the administration of justice, as well as, in general, to ensure protection of the rights of persons deprived of liberty.

108. The overcrowding in a number of Bolivian prisons is directly linked to the excessive use of preventive detention.¹²² The information supplied indicates that population in San Pedro Prison in La Paz exceeds its holding capacity by more than 400% and that a similar situation

¹¹⁸ Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo; Comentarios y Seguimiento al Cumplimiento de Recomendaciones de la Comisión Interamericana de Derechos Humanos contenidas en el Documento "Acceso a la Justicia e Inclusión Social: El Camino hacia el Fortalecimiento de la Democracia en Bolivia". La Paz, Bolivia, Octubre de 2008, pág. 2, citando a información proporcionada por la ONG Capacitación y Derechos Ciudadanos; and UN High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 30.

¹¹⁹ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 2.

¹²⁰ According to information provided by the State in its Supplementary Report of March 26, 2009, Bolivia's Penal Procedure Code stipulates in Article 239 (1) (2) that preventive detention shall end when its duration exceeds the minimum sentence established for the offense, and when its duration exceeds 18 months without a verdict or 24 months without becoming *res judicata*.

¹²¹ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 3.

¹²² Report of the Ombudsman to Congress 2007. September 29, 2008, p. 21.

exists in other prisons in the country.¹²³ The Annual Report of the Ombudsman to Congress states that there are around 7,000 persons deprived of liberty in Bolivia (6,000 of them men and 1,000 women) while the combined holding capacity of all the prisons is only 4,700.¹²⁴

109. The State reported on a series of measures that could contribute to reducing the prison population. These measures include application of alternative sentencing or “opportunity criteria.”¹²⁵ Also the “Manual for Litigation in Precautionary Measures Hearings” was approved to provide tools for the best use of precautionary measures hearings by justice authorities and defense attorneys. According to government sources, this measure has been disseminated to the departmental offices of the penitentiary system, criminal examining magistrates, prosecutors, defenders of the National Public Defenders’ Service, and private trial lawyers.¹²⁶

110. The IACHR considers that these initiatives could be the genesis of a more comprehensive policy for overcoming the crisis of overcrowding in the jails. The Commission hopes to continue receiving information on the concrete results of the efforts described by the State and additional supplementary judicial, legislative, or other measures.

111. The Commission has also identified other problems that are of particular concern, such as a failure to separate persons held in preventive detention from convicted prisoners; the absence of a system of classification of prisoners according to the seriousness of their crimes; children living with their parents in prisons; and an absence of policies and specialized centers for juveniles in conflict with the law.

112. Indeed, the Commission expressed its grave concern that remand prisoners were housed together with convicts and, even worse, juveniles under the age of 18 were held with adult convicts and remand prisoners. As was noted, the age of criminal liability in Bolivia is 16, which means that juveniles between 16 and 18 years old are subject to the ordinary Criminal Code and held in prisons for adults. While in prison, moreover, those juveniles do not receive any differentiated treatment to meet their specific problems and needs.

113. The Commission is encouraged by the fact that from October 13 to 17, 2008, a feasibility study was done on reorganization of the prison infrastructure, which resulted in the identification of some detention centers to be used only for convicted persons.¹²⁷ The Commission hopes that the State will continue reporting on specific steps to follow up on this diagnostic, and the results anticipated in the short, medium, and long term.

114. As regards imprisonment of persons under 18 together with adult remand and convicted prisoners, the Commission has received information that a series of initiatives are being prepared with the participation of the State, though it would seem that they have yet to translate

¹²³Ombudsman. Report on the Follow-Up Report on *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, para. 17, December 5, 2008.

¹²⁴ *Idem*.

¹²⁵ Report of the Bolivian State on follow-up on the recommendations – *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*. February 27, 2009.

¹²⁶ Supplementary Report of the Bolivian State on follow-up on the recommendations – *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*. March 26, 2009.

¹²⁷ Supplementary Report of the Bolivian State on follow-up on the recommendations – *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*. March 26, 2009.

into concrete results.¹²⁸ The IACHR urges the States to make every effort immediately to eliminate the practice of housing juvenile (that is, under 18) remand and convicted prisoners together with adult remand and convicted prisoners even when the detention is only temporary.¹²⁹

115. It is a priority to establish effective systems to ensure that persons in pre-trial detention are segregated from those who had been convicted, and to create classification mechanisms for persons deprived of liberty according to sex, age, reason for detention, special needs, and applicable treatment.

116. Another of the problems that the IACHR identified in its report had to do with prison security and control. In that respect, the report found that prison administrative staff do not work exclusively as professional prison officers, that the police personnel in charge of the prisons receive inadequate training, and that in many detention centers internal security is generally in the hands of the inmates themselves.¹³⁰

117. In this regard, the IACHR has received reports that the lack of capacity and resources to control security in prisons has led to the existence of internal control systems overseen by the inmates, who, in some cases, manage illegal operations with contacts outside the prison.¹³¹ Other security problems in prisons concern the entry of alcohol and drugs as well as outbreaks of violence among prisoners, in some cases with the involvement of the guards. As yet there are no mechanisms in place for tackling these problems.¹³²

118. Consequently, the IACHR expresses its concern and reminds the State of its recommendation to adopt the necessary measures to immediately regain control of internal areas of prisons in the country.

119. It is also a priority to establish special recruitment and training programs for all personnel in charge of the administration, supervision, operation and security of prisons and other places of deprivation of liberty, which must include education on international human rights standards related to prison security, the proportionate use of force, and the humane treatment of persons deprived of liberty.¹³³

120. In this connection, the IACHR has received information about a training initiative for prison officials that could be taken as an encouraging sign. According to the information, the *Universidad Pública y Autónoma de la Ciudad de El Alto de La Paz* (UPEA) is organizing a Diploma

¹²⁸ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 4.

¹²⁹ IACHR. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Document approved by the Commission at its 131st Regular Session, held from March 3 to 14, 2008, Principle XIX.

¹³⁰ IACHR, *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II., July 28, 2007, p.58.

¹³¹ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 21.

¹³² Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 5.

¹³³ IACHR. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Document approved by the Commission at its 131st Regular Session, held from March 3 to 14, 2008, Principle XX.

Course on Restorative Justice as part of a Masters Degree in Prison Administration. The objectives of this initiative are, *inter alia*, to replace the police with specialized staff and meet international standards in this area in the sense of “de-policing” or “civilianizing” prisons.¹³⁴ In the same vein, the State has reported plans in coordination with civil society to prepare and offer a distance course titled: “Expert in Legal Psychology, its applications in the penitentiary system,” for personnel in that system at the national level. It has also been working on a “curriculum framework” for the operation of what would be the Prison Personnel Training Institute.¹³⁵

121. The IACHR hopes that the executive branch supports this endeavor by allocating the necessary funds to accomplish positive results in recruitment and training.

122. Furthermore, prison facilities remain precarious and inmates are inadequately fed.¹³⁶ According to available information, none of 2007 budget for the General Directorate of Prisons for reconditioning jails [*carceletas*] –where the Ombudsman of Bolivia confirmed “the awful conditions in which persons deprived of liberty in these facilities are kept”- and making improvements at the main prisons in the departments was use for that purpose, and therefore no progress was possible in terms of the condition of infrastructure.¹³⁷

123. The IACHR also reiterates to the State its recommendation that it adopt measures with a view to improving infrastructure in those prisons where conditions are precarious and do not meet the minimum requirements with respect to drinking water, sanitary facilities, personal hygiene, floor space, light and ventilation; sufficient and adequate food; and adequate bedding.¹³⁸

124. With respect to medical care in the penitentiaries, the Commission underscores the information supplied by the State on the signing of interagency agreements for second- and third-level care to benefit the prison population in La Paz, Cochabamba, and Santa Cruz.¹³⁹ The Commission also notes that according to the State, basic health services including a general practitioner and a dentist are available in all detention centers.¹⁴⁰

125. Although the information received states that healthcare facilities in prisons are deficient,¹⁴¹ that there is no health care whatsoever available in provincial jails [*carceletas*], and

¹³⁴ *Idem*.

¹³⁵ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹³⁶ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 21.

¹³⁷ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in “*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*”. La Paz, Bolivia, October 2008, p. 5.

¹³⁸ IACHR. Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas. Document approved by the Commission at its 131st Regular Session, held from March 3 to 14, 2008, Principles XI and XII.

¹³⁹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

¹⁴⁰ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹⁴¹ Report of the Ombudsman to Congress 2007. September 29, 2008, p. 21.

that, in general, there is an urgent need for specialist medical care according to the need of the inmates.¹⁴²

126. The Commission welcomes information received to the effect that on February 27, 2009, the Ministry of Government issued Resolution No. 014/2009 the daily food allowance for prisoners in the district and provincial penitentiaries from 4.50 Bolivianos to 5.50 Bolivianos as of March 1, 2009.¹⁴³ In light of the concerns expressed in the preceding paragraphs, the Commission hopes that the state will continue to report on specific effects of this measure on conditions in Bolivian jails.

127. Consequently, given the precarious conditions of infrastructure, hygiene and safety indicated above, and the lack of internal control and security by the State, the Commission expressed its particular concern over the physical, mental and moral integrity of children living with their parents in prisons.

128. In this connection, the IACHR notes from the information received that in June 2007 the General Directorate of Prisons adopted a resolution which stated that children would no longer be admitted to prisons unless they met the legal requirements, which provide that they must be under six years old and that the parents have custody of them. Thus far, the authorities have not complied with this resolution. The Commission was also informed of a private scheme introduced in Achocalla by the *Efel Ciapa* Foundation under which the children are taken to a nearby academic center on a daily basis.¹⁴⁴

129. The Commission also received information from the State on agreements between governors' offices and civil society organizations for scholarships for children in this situation. As examples, it mentioned the departments of Oruro and La Paz, in which the agreements provide for food, education, and transportation worth 9 Bolivianos in Oruro and 5 in La Paz. Another example cited by the State is the school and food support given children between 0 and 5 years in the prison centers in the departments of Tarija and Santa Cruz.¹⁴⁵

130. Although the Commission salutes these efforts, it considers it essential for the State to adopt comprehensive, ongoing measures of general application to ensure that when children are lodged in detention centers together with their father or mother deprived of liberty, the best interests of the child are taken into account upon establishing pertinent policies, and particularly that they have access to special protection, food, health and educational services necessary for their proper development. The State should also take steps to guarantee, in the same terms, the best interest of children not living in prison with the parent deprived of liberty who has custody of the child. In this context, the State should carry out serious and diligent investigations whenever there is a complaint of sexual abuse to the detriment of persons that live in prisons.

¹⁴² Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*", La Paz, Bolivia, October 2008, p. 5.

¹⁴³ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹⁴⁴ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 6.

¹⁴⁵ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

131. The Commission reiterates that the State should make available adequate and effective remedies of individual and collective nature for judicial control of overcrowding and violence inside penitentiaries. Those remedies must be accessible to persons deprived of liberty, their relatives, their private or public defenders, NGOs, the Ombudsman and other competent institutions.

132. The IACHR urges the State to take steps to provide and facilitate educational and working opportunities for persons deprived of liberty with a view to assisting in their reform, social readaptation, and personal rehabilitation.

VI. RIGHTS OF INDIGENOUS PEOPLES AND PEASANT COMMUNITIES

133. The Commission has devoted particular attention to this issue, which involves the majority of the Bolivian population. The main aspects examined by the Commission in *Access to Justice and Social Inclusion* may be summarized as access to land and territory; natural resources and participation in development projects; situation of forced labour and bondage analogous to slavery; difficulties in access to the official justice system, and recognition of indigenous justice.

134. Some progress has been made as regards legislation. The Commission values the fact that the Bolivian State elevated the United Nations Declaration on the Rights of Indigenous Peoples to the rank of law.¹⁴⁶ The Commission also notes that the new Constitution incorporates numerous provisions on the collective rights of indigenous peoples, including the principle of indigenous autonomy.¹⁴⁷ The Commission hopes to receive information on the implementation of these initiatives, in particular on the aforesaid Declaration, which is now part of the Bolivian legal system.

135. The Commission was also informed of the creation of an interagency commission composed of the Vice Ministry of Justice and Human Rights, Vice Ministry of Community Justice, Office of the UN High Commissioner for Human Rights, Ombudsman, Committee for Indigenous Affairs of the House of Deputies, and *Universidad Cordillera*. According to available information, this commission prepared a draft antidiscrimination bill which would include in Bolivia's Criminal Code a chapter titled "Crimes against Human Dignity", which covers discrimination, dissemination and incitement of discrimination, and discriminatory associations. The bill is currently before Congress for the approval process.¹⁴⁸

136. The aforementioned progress notwithstanding, indigenous peoples and peasant communities continue, in practice, to face a series of abuses that obstruct their full inclusion in decision-making and the full exercise of their human rights,¹⁴⁹ in particular economic, social and

¹⁴⁶ Law 3760 on the Rights of Indigenous Peoples.

¹⁴⁷ The Commission notes that the Special Rapporteur for the situation of human rights and basic freedoms of indigenous peoples said that the new Constitution incorporates novel forms of recognition of the rights of autonomy and jurisdiction; rights to land, territory, and natural resources; and rights to cultural identity and intercultural education. Special Rapporteur for the situation of human rights and basic freedoms of indigenous peoples. Rodolfo Stavenhagen. Preliminary note on the mission to Bolivia from November 25 to December 7, 2007. A/HRC/6/15/Add.2. December 11, 2007, page. 2; and Final Report of the Mission to Bolivia from November 25 to December 7, 2007, paras. 16 and 17.

¹⁴⁸ Report submitted by the State of Bolivia at the public hearing convened on October 23, 2008, during the 133rd Regular Session of the IACHR, p. 15.

¹⁴⁹ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008. See also Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 57; Report of the Ombudsman to Congress 2007, p. 25.

cultural rights. It should be noted that despite some governmental efforts such as the establishment of three indigenous universities by Supreme Decree No. 29664 of August 2008,¹⁵⁰ the lack of access to education and health continues mainly to affect the indigenous population, especially children, women, and the elderly.¹⁵¹ Access to public services, such as safe drinking water, is a matter of concern; in all, 43% of the rural population has no access to this service.¹⁵²

137. The Commission sees with concern that in 2007 and 2008, there were a number of incidents of violence of a discriminatory bent against persons who identify themselves as belonging to an indigenous people. These incidents, which manifest themselves in the form of assault and verbal attacks, have targeted both private citizens and state authorities.¹⁵³ Violence of this type also affects indigenous leaders and human rights defenders and occurs, in many cases, with the support of economic actors and local authorities.¹⁵⁴

138. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people visited Bolivia toward the end of 2007 and concluded in a preliminary note on his findings that discrimination and racism were “still manifested in the behaviour of public officials at the national and subnational levels and in the attitudes of political parties and pressure groups, which sometimes incite violence against persons based on their indigenous status.” The note also states that “expressions of anti-indigenous racism frequently occur in some media.”¹⁵⁵

139. As an example of the foregoing, incidents were recorded in which several members of the Constituent Assembly belonging to the ruling party, the Movement Towards Socialism [*Movimiento al Socialismo*] (hereinafter also “MAS”), were assaulted and insulted because of their social status. It is worth mentioning that during her tenure as Speaker of the Constituent Assembly, Silvia Lazarte was insulted by private individuals, who shouted “Dumb chola” [*chola ignorante*] and burned a rag doll while chanting, “Burn, *chola*.”¹⁵⁶

140. In the city of Sucre, in November 2007, during the demonstrations for full “capitalhood”, similar discriminatory expressions were used against indigenous persons, who, in addition to having been victims of physical violence were referred to as “llama faced indians” [*“indios cara de llama”*], “stinking” [*“hediondos”*], and “fucking indians” [*“indias de mierda”*]. There

¹⁵⁰ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹⁵¹ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, para. 14. g).

¹⁵² Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HRC/7/5/Add.2. 30 January 2008, para. 16. Citing: Unidad de Análisis de Políticas Sociales y Económicas (UDAPE), Naciones Unidas, Organización Internacional del Trabajo, *Indigenous peoples originarios y objetivos de desarrollo del Milenio* (2006). UDAPE y otros, 2006.

¹⁵³ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition. La Paz, Bolivia, January 2008, p. 57.

¹⁵⁴ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008. See also Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, p. 3.

¹⁵⁵ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, pp. 2 and 3.

¹⁵⁶ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008. See also Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 35.

were also reports that medical assistance was later refused to the indigenous persons injured in these incidents.¹⁵⁷

141. During its visit to the country, the IACHR received troubling reports that discriminatory rhetoric had even penetrated some provisions of the autonomy statutes proposed by a number of regions in the country, given that there were aims to establish specific regimes for indigenous peoples in the regions, in disavowal of their rights and guarantees recognized in the Constitution and international instruments ratified by Bolivia. Specifically, concern was expressed over the text of Article 161 of the Autonomy Statute of Santa Cruz,¹⁵⁸ which states, “In keeping with ILO Convention 169 and the United Nations Convention on Indigenous Peoples, the people of Santa Cruz proudly recognize their mostly mixed racial condition and, to that extent, their obligation to preserve the culture and promote the comprehensive and autonomous development of the five indigenous peoples in the department: Chiquitano, Guaraní, Guarayo, Ayoreo, and Mojeño, pursuant to the provisions set forth in the Statute.”

142. As will be seen in the rest of this section, among the factors that have so far prevented government policies from achieving any visible results or being effectively implemented are the institutional crisis and the tensions that have arisen in recent years between national and subnational authorities and between different branches of government, in particular, between the executive and the judicial branch. In this regard, the Commission calls for dialogue and engagement to overcome the tensions which have not only caused social strife resulting in tragic losses of life and injuries, but have also prevented the adoption of measures for ensuring full exercise of rights for indigenous peoples and peasant communities in keeping with their worldview, distinct culture, and development priorities.

A. Access to land and territory

143. According to the most recent population census, 60% of the Bolivian population is indigenous. This population is composed of more than 36 groups, the largest ones being, in descending order, the Quechua, Aymara, Guaraní, Chiquitano, and Mojeño.¹⁵⁹ According to publicly available figures, 70% of the land is owned by just 7% of the population, with a marked discrepancy where indigenous peoples are concerned.¹⁶⁰ This state of affairs stems from historical events that have shaped the current land ownership situation in Bolivia. The first stage, which extends from the founding of the Republic in 1825 to 1952, was noted for the creation of large estates, or *haciendas*, and exploitation of indigenous labor. The second stage began in 1952 with the agrarian reform, the purpose of which was the award and titling of lands. At present, a third stage is in progress, which aims to put an end to the historic inequalities in land distribution. This

¹⁵⁷ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008. See also, Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 35.

¹⁵⁸ UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of the Indigenous People. Press Release of 10 April 2008; Report of the Ombudsman to Congress 2007, September 29, 2008, p. 223.

¹⁵⁹ According to figures from the National Institute of Statistics. Available at <http://www.ine.gov.bo>.

¹⁶⁰ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, para. 23; For a breakdown of data by regions, see: Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, para. 14. Citing: Out of 8 million hectares classified as productive for agriculture, only 2.5 million hectares are currently exploited, World Bank, 2007; FAO, *Perfiles nutricionales por países: Bolivia* (2001). The overall Gini coefficient for land inequality stood at 0.768 in 1989 (Klasen et al., 2004); World Bank, *Bolivia: Towards a new social contract: Options for the Constituent Assembly* (2006), available at <http://go.worldbank.org/QO0BB5FXX0>.

stage began with the adoption of law 1715 of the National Agrarian Reform Service¹⁶¹ and Law 3545 on Renewal of the Agrarian Reform,¹⁶² which broaden the scope of the first agrarian reform. The Commission values the initiatives of the State to overcome the historical inequalities detrimental to indigenous peoples.

144. As the State indicated to the IACHR,¹⁶³ Law 3545 defines state policy on redistribution in Bolivia through implementation of processes of land regularization, reversion to the State, and expropriation.

145. Under the aforesaid law, regularization is the stage before land titling and consists of “the transitory technical and legal procedure to regularize and perfect agrarian property rights which is carried out sua sponte or on request.”¹⁶⁴ The regularization process must be completed nationwide within 10 years.¹⁶⁵ Its purposes are, *inter alia*, to prepare an official property register of agrarian land, titling of ongoing agrarian property proceedings, settlement of disputes over ownership of agrarian land, and annulment of irregular titles.¹⁶⁶ Under Law 3545, regularization is done by the National Institute of Agrarian Reform (INRA), “the body that directs, coordinates, and carries out agrarian policy,”¹⁶⁷ and which, according to the Law, verifies that lands are used in accordance with their “Social and Economic Purpose” [*Función Económico Social*] (FES)¹⁶⁸ and “Social Purpose” [*Función Social*] (FS).¹⁶⁹

146. One regularization mechanism has to do with land recognized as the natural habitat of indigenous and aboriginal peoples and communities, or Aboriginal Community Lands [*Tierras Comunitarias de Origen*] (TCO), to which they have traditionally had access and where they maintain and develop their own forms of economic, social, and cultural organization, thereby ensuring their survival and development.¹⁷⁰ These lands are also “inalienable, indivisible, immune from reversion to the State, collective, immune from seizure, and indefeasible.”¹⁷¹ This regularization mechanism is known as Aboriginal Community Land Regularization [*Saneamiento de Tierras Comunitarias de Origen*] (SAN-TCO) and Law 3545 guarantees the participation of indigenous peoples in the execution of this process.¹⁷²

¹⁶¹ Law 1715 (National Agrarian Reform Service Law) of October 18, 1996, available at <http://www.congreso.gov.bo>.

¹⁶² Law 1715 (National Agrarian Reform Service Law) of October 18, 1996, as amended by Law 3545 (Law on Renewal of the Agrarian Reform) of November 28, 2006, available at <http://www.congreso.gov.bo>.

¹⁶³ Information supplied by the Minister of Rural Development, Agriculture and Environment during the visit of the IACHR from June 9 to 13, 2008.

¹⁶⁴ Law 3545, Art. 64.

¹⁶⁵ Law 3545, Art. 65.

¹⁶⁶ Law 3545, Art. 66.

¹⁶⁷ Law 3545, Art. 17.

¹⁶⁸ The Economic and Social Purpose consists of “sustainable use of the land in the pursuit of farming, forestry, and other productive activities, as well as conservation and protection of biodiversity, research, and ecotourism... for the benefit of society, the common interest, and its owner.” Law 3545, Art. 2.II.

¹⁶⁹ The Social Purpose consists of “using the land to ensure the well-being and economic advancement of the owners and their families, or indigenous, peasant and aboriginal peoples and communities”, Law 3545, Art. 2.I.

¹⁷⁰ Law 3545 (Law on Renewal of the Agrarian Reform) of November 28, 2006, Art.41.I.5.

¹⁷¹ Law 3545, Art. 41.I.5.

¹⁷² Law 3545, Art. 69.

147. Once regularization has been carried out, it must be determined whether the land should revert to the State or be expropriated. Reversion is the process whereby or all part of the surface of a piece of land reverts to the ownership of the State because the use to which its owner puts it does not comply with its economic and social purpose or is harmful to the common interest.¹⁷³ According to information received by the IACHR during its visit to Bolivia in June 2008, the use of bondage or forced labor on a property constitutes “harmful” use. As part of the Aboriginal Community Land Regularization process, Law 3545 provides that any property that reverts to the State shall be granted to the relevant aboriginal community.¹⁷⁴ The Law also provides that, to be valid, reversion must be carried out within two years after a property has undergone the regularization process.¹⁷⁵

148. For its part, land expropriation is applicable for reasons of public utility.¹⁷⁶ The concept of public utility covers, *inter alia*, redistribution of land in favor of indigenous peoples whose lands are not sufficient in quantity or quality or suitably geographically located to ensure their physical subsistence and ethnic reproduction as a result of the regularization or reversion processes.¹⁷⁷

149. Having clarified the preceding concepts and their relationship to the exercise of indigenous peoples’ right to collective property, as well as the situation of bondage in which many families find themselves, the IACHR notes the efforts of the State to recognize the property rights of indigenous peoples through the adoption of Law 3545 and Executive Decree 29.215, which contains the implementing regulations for said law.¹⁷⁸ The Commission also notes the adoption of Executive Decree 29.292, which creates the 2007-2008 Interministerial Transition Plan for the Guaraní People. One of the objectives of this Plan is to initiate the territorial reconstitution of the Guaraní people through land regularization and implementation of the current agrarian policy.¹⁷⁹ The Commission hopes that these initiatives contribute to the demarcation and titling of indigenous peoples’ lands and ancestral territories and that their results are quantifiable in the short term.

150. The Commission observes that according to official sources, by 2007 the land regularization process in Bolivia had been carried out in 32.61% of the national territory.¹⁸⁰ However, the Commission finds that in spite of the government’s intentions to implement the agrarian laws, the measures have been severely hampered by groups of landowners, timber companies, and industrialists, sometimes supported by departmental and local authorities.¹⁸¹

¹⁷³ Law 3545, Art. 52.

¹⁷⁴ Law 3545, Art. 72.

¹⁷⁵ Law 3545, Art. 57.II.

¹⁷⁶ Law 3545, Art. 59.II. Article. 60 of Law 3545 provides that the amount of compensation for expropriation will be based on the market value of the lands, improvements, and investments, or investments in conservation of the property in question.

¹⁷⁷ Law 3545, Art. 59.II.

¹⁷⁸ Executive Decree 29215 - August 2, 2007.- Implementing Regulations of Law 1715 on the National Agrarian Reform Service, as amended by Law 3545 on Renewal of the Agrarian Reform.

¹⁷⁹ Executive Decree 29292, published in Official Gazette No. 3030, October 3, 2007, creates the Inter-Ministerial Council for the Eradication of Bondage, Forced Labor, and Analogous Forms of Labor, as well as approving and setting in motion the 2007-2008 Interministerial Transition Plan for the Guaraní People (Art. 6).

¹⁸⁰ Ministry of Rural Development, Agriculture and Environment, 2007 report on the land process in the country. Available at: <http://www.agrobolivia.gov.bo/index.php?cpo=tierras>.

¹⁸¹ Testimony received during the visit of the IACHR from June 9 to 13 2008.

151. During its visit, the IACHR was also informed that in regions where captive communities or families exist, the owners have resisted government inspections as part of the regularization process, confronting and threatening government employees as they went about their work in those areas. An example concerns the process initiated by a land regularization application made by the Guaraní People's Assembly to the INRA for an area covering 157,000 hectares in the Alto Parapetí region.¹⁸² In this context an incident occurred in which "armed groups of landowners" and the *Unión Juvenil Cruceñista* opposed to the aforesaid regularization process surrounded a delegation composed of INRA staff, the Vice Minister of Land, policemen, and indigenous persons, obstructing their free circulation, as well as physically assaulting and verbally abusing them.¹⁸³

152. During the Commission's visit it learned that the Guaraní lawyer who was with the aforementioned delegation was taken by force to the square by members of the landowners' organizations, whipped, and then tied to a post, where he remained for two hours. During that time, the lawyer was allegedly the butt of racist insults and was told that because of his activities he would be "flogged with a belt" to teach him manners.¹⁸⁴ The lawyer identified one of the local landowners as the person responsible for the whipping he received and as the ringleader of the organizations that carried out the aforesaid attacks.¹⁸⁵ It should be noted that the information received shows that on the same day a female journalist was pulled from the vehicle in which she was traveling, threatened with physical and sexual violence, and then tied to a post. The journalist was taken to a hotel where she remained incommunicado and later told the Mayor of Cuevo that "she had been well treated and that she was in a hotel, not a cell."¹⁸⁶ With respect to these events, the IACHR is concerned by the acts of racism and violence that accompany the steps taken to resist implementation of the State's agrarian policies.

153. The Commission is troubled that the Government's attempts to overcome and remedy a situation of historic discrimination and exclusion should have triggered conflicts that have led, in turn, to deplorable acts of violence.

154. Furthermore, the land regularization process and verification of bondage in one particular property is hampered by a lack of figures or data on the exact number and location of the families that find themselves in such a plight.¹⁸⁷ The Commission has also been informed about the displacement of these communities "because the estate owners evict them to avoid any problems when they learn of the arrival of government officials to inspect the properties" where bondage is

¹⁸² 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, para. 5.

¹⁸³ 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, par. 5; UN Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of the Indigenous People. Press Release of 10 April 2008.

¹⁸⁴ Visit of the IACHR to Bolivia in June 2008, Documents presented during a meeting with the Minister of Rural Development, Agriculture and Environment, the Vice Minister of Land, and the Director for Land Matters.

¹⁸⁵ Information received during the visit of the IACHR to Bolivia from June 9 to 13, 2008, See also "*Cordilleranos exigen retirada de Almaraz y marchan por la tierra*" [Highlanders demand Almaraz's withdrawal and march for land], *El Deber*, April 16, 2008.

¹⁸⁶ *Idem*.

¹⁸⁷ Information presented to the IACHR by the Vice Minister of Land at the meeting held in the city of La Paz on June 11, 2008. The agency in charge of gathering information on salaried workers, their respective contacts, and payrolls at estates is the National Institute of Agrarian Reform.

alleged to exist.¹⁸⁸ The Commission has also heard that landowners take reprisals against Guaraní who offer testimony or statements about their plight.¹⁸⁹

155. The initiative to do with the titling of Aboriginal Community Lands has not achieved the most favorable results. In several cases the IACHR was informed that the regularization process failed to meet indigenous peoples' expectations for the reconstitution of their territory due to the fact that some INRA procedures are beset with irregularities. The Commission underlines the importance that the State ensure that said institution act in strict accordance with the law governing regularization.¹⁹⁰

156. The Commission reiterates that the case law of the inter-American system for protection of human rights has maintained that Article 21 of the American Convention recognizes the right to property of members of indigenous communities within the framework of communal property, which includes recognition of "the close ties the members of indigenous communities have with their traditional lands and the natural resources associated with their culture thereof, as well as the incorporeal elements deriving therefrom."¹⁹¹ The Commission also reminds the parties involved in the conflict that all expropriation procedures must be carried out in accordance with international standards on such matters and in the framework of due process.¹⁹²

B. Natural resources and participation in development projects

157. On this point, in *Access to Justice and Social Inclusion* the Commission made recommendations designed to ensure that indigenous peoples and other affected communities be involved in the processes of design, implementation, and evaluation of development projects carried out on their lands and ancestral territories. Specifically, the Commission drew attention to the importance that the State ensure that indigenous peoples be consulted on any matters that might affect them, noting that the purpose of such consultations should be to obtain their free and informed consent, as prescribed in ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples.

158. By and large, the Commission continued to receive information about violations of human rights committed by companies in the mining, lumber, and petroleum industries to the detriment of indigenous peoples and communities in the vicinity of the areas where the respective projects are carried out. In particular, mention was made of adverse effects on health and production systems; changes in domestic migration patterns; a decline in the quantity and quality of water sources; impoverishment of soils for farming; a reduction in fishing, animal life, plant life, and biodiversity in general, and disruption of the balance that forms the basis of ethnic and cultural reproduction.¹⁹³

¹⁸⁸ Information presented to the IACHR by the Vice Minister of Land at the meeting held in the city of La Paz on June 11, 2008, in the course of the visit of the IACHR to Bolivia in June 2008.

¹⁸⁹ *Idem*.

¹⁹⁰ Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, para. 14.

¹⁹¹ I/A Court H.R., *The Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C No. 79, para. 148; I/A Court H. R., *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 137; I/A Court H. R., *Case of the Indigenous Community Sawhoyamaxa*. Judgment of March 29, 2006. Series C No. 146, para. 118.

¹⁹² IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007. paras. 241 and 242.

¹⁹³ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 57.

159. The Commission welcomes some important progress in the legislation area. On May 9, 2007, Supreme Decree No. 29.124 was approved to implement Supreme Decree No. 29.033 of February 16, 2007, which establishes provisions and procedures for consultation and participation of native indigenous peoples and peasant communities when there are plans for hydrocarbon activities on their community lands, common property, and lands reserved for their occupation and access.¹⁹⁴ Also approved were the Regulations for Socio-Environmental Monitoring of hydrocarbon activities on the land of native indigenous peoples and peasant communities (Supreme Decree No. 29.103).¹⁹⁵ Later, on August 31, 2007, the Law for Sustainable Development of Hydrocarbons was approved.¹⁹⁶ The latest advance was the establishment of the constitutional right to prior and informed consultation in Article 403 of the new Constitution.¹⁹⁷

160. The Commission is appreciative of the adoption of a broad concept of indigenous land and territories, wherein the latter category includes not only physically occupy spaces but also those used for their cultural or subsistence activities, such as routes of access. The Commission finds this approach to be compatible with the cultural reality of indigenous peoples and their special relationship with the land and territory, as well as with natural resources and the environment in general. The Commission hopes to obtain information on the implementation mechanisms for this legal framework and on their results in effectively safeguarding the right to prior consultation.

161. In spite of the foregoing, the Commission continued to receive information about cases in which development projects allegedly have a profound and serious adverse impact on indigenous communities. Thus, for example, it received reports that the pollution brought about by the resumption of mining¹⁹⁸ and hydrocarbons extraction in the departments of Oruro,¹⁹⁹ Potosí and La Paz, has caused considerable environmental damage.

162. The Commission had already highlighted the contamination of the River Pilcomayo and the serious ill effects on health caused by extractive activities in the area. The Commission laments that there is no record of any efforts to improve the situation. According to the most recent reports, the contamination of the River Pilcomayo watershed by extractive industries has harmed some 100 indigenous communities in the departments of Potosí, Chuquisaca and Tarija. According to estimates, this pollution has brought about the loss of 80% of crops, 60% of livestock, and 90% of fish life.²⁰⁰

¹⁹⁴ Observatorio de Derechos Humanos y Políticas Sociales. Documento de Trabajo. Los Derechos Humanos en la Bolivia del 2007. Primera Edición. La Paz, Bolivia. Enero de 2008, pág. 63.

¹⁹⁵ Special Rapporteur for the situation of human rights and basic freedoms of indigenous peoples. Rodolfo Stavenhagen. Mission to Bolivia from November 25 to December 7, 2007. A/HRC/11/11. January 9, 2009, para. 18.

¹⁹⁶ Observatorio de Derechos Humanos y Políticas Sociales. Documento de Trabajo. Los Derechos Humanos en la Bolivia del 2007. Primera Edición. La Paz, Bolivia. Enero de 2008, pág. 62.

¹⁹⁷ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

¹⁹⁸ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 57.

¹⁹⁹ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, p. 3.

²⁰⁰ Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 55.

163. Attention should also be drawn to the mercury contamination of the River Beni, which is harmful for all the inhabitants of that zone, but in particular the members of the Ese Ejja indigenous people. According to a recent report from the Ombudsman "all 923 members of this extremely vulnerable indigenous people have mercury levels in their body that are four times over the limit established by the World Health Organization."²⁰¹

164. One problem connected with this issue is the shortage of housing and the attendant increase in forcible evictions of peasant farmers and indigenous persons to make way for mining and lumber concessions, particularly in Bolivia's Chaco region.²⁰²

165. The very limited information on these isolated cases precludes a complete follow-up on measures that the Bolivian State could adopt to tackle this situation. The Commission hopes to receive detailed information in this respect and reiterates its recommendations regarding the need to minimize the adverse effects of development projects on indigenous peoples; eliminate any threat to their lives, safety and cultural integrity; and ensure, through clear consultation procedures, that their free and informed prior consent is obtained in order to carry out said projects.

C. Situation of forced labour and bondage analogous to slavery

166. The Commission has given special attention to this issue since 2005, when it held a hearing at which it was informed of the appalling living conditions of a high number of indigenous families that live on large estates, or *haciendas*, where they have to work for a tiny wage.²⁰³ This means that in order to meet their basic needs they have to go into debt with their employers, thereby cementing a deplorable situation of debt bondage analogous to slavery. International human rights law vigorously outlaws and requires states to adopt immediate measures for their permanent elimination.²⁰⁴

167. The Commission continued to monitor this situation by means of the visit conducted from November 12 to 17, 2006, the report *Access to Justice and Social Inclusion*, several press releases,²⁰⁵ and the recent visit exclusively to examine this issue from June 9 to 13, 2008. On this last occasion, the Commission received valuable information from government sources and civil society organizations. It also had the opportunity to visit a number of estates, where it gathered testimony from witnesses.

168. During that visit, the Commission was informed that in the last 20 years a number of Guaraní communities have formed, which are considered free after managing to escape from their situation of bondage and settling on properties near the estates -in some cases purchased by Catholic Church or nongovernmental organizations- or to non-productive lands located on the private estates. However, many of their members have to go back to working as laborers on the estates in

²⁰¹ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 32.

²⁰² Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, par. 14. h).

²⁰³ It should be mentioned that at the 131st Regular Session of the IACHR, the State indicated that there were approximately 449 captive families in the municipalities of Cuevo and Lagunillas in the Department of Santa Cruz and 600 captive families in the municipalities of Huacareta and Muyupampa in the Department of Chuquisaca.

²⁰⁴ American Convention on Human Rights. Article 6; United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

²⁰⁵ IACHR. Press Release 17/08, April 25, 2008. IACHR Deplores Situation of Captive Communities in Bolivia.

order get by, given the scant amount that they manage to produce on their smallholdings, or *chacos*.²⁰⁶

169. The testimony collected on the visits in 2006 and 2008 continued to report physical mistreatment of Guaraní people, such as being lashed with whips or having their crops burned and their animals killed as punishment for “disobedience” or for wanting to end their bondage. This situation has been corroborated by the responses of a number of landowners who were questioned in that regard, who said that Guaranís have no initiative for anything and that it is necessary to “sting them” into work.²⁰⁷ During the visit to the community of Ytacuatia, situated in the aboriginal territory of Alto Parapetí, the Commission noted that the public roads that cross through one estate are kept closed on the orders of the owner. In response, the landowners argued that the road belongs to them because it is private property that they built. Furthermore, testimony received from members of Guaraní communities mention that they are not permitted to move from one place to another because the only roads in the area by which to reach the public highway are “blocked with padlocked barriers or gates” by the owners. They also reported that they are forbidden to organize and that if they attend community meetings they are then refused admittance to the estate, whether to access their properties or to visit family members who still work for the landowner.

170. The Commission was informed that the State has also been prevented from travelling along estate roads by the above-mentioned measures of estate owners. This has made it impossible for state officials to perform their functions and carry out regularization processes and inspections of the working conditions of members of indigenous peoples on the estates. As a result of this situation, various rights of indigenous peoples have been severely curbed. In this connection, the Commission calls on the State take the necessary steps to ensure freedom of movement on estates for members of indigenous peoples and for government authorities so that the latter can carry out their duties as normal.

171. In addition, with respect to the efforts of the Bolivian State since publication of *Access to Justice and Social Inclusion*, the Commission notes that on November 28, 2007, the government decreed the need to expropriate 180,000 hectares of land in the Provinces of Luis Calvo and Hernando Siles, Department of Chuquisaca, in order to turn them over to the more than 12,000 Guaraní persons in the area.²⁰⁸

172. The Commission also notes that the government managed to obtain compensation for more than 150 Guaraní indigenous persons who never received any pay for their work on estates.²⁰⁹

173. The Commission was also informed of Executive Decree 29.292, which was issued on October 9, 2007, creating the Inter-Ministerial Council for the Eradication of Bondage, Forced Labor, and Analogous Forms of Labor.²¹⁰

²⁰⁶ Bolivian Chapter of Human Rights, Democracy and Development. Situation of the Guaraní Communities in Bolivia. Summary of the 1998-2001 Review.

²⁰⁷ IACHR, *op. cit.* Special Report, par. 263, video testimony prepared by the Yambae Ombudsman *Quiero ser libre sin dueño* [I want to be free, with no owner].

²⁰⁸ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 54.

²⁰⁹ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 54; 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, par. 12.

174. The above Decree created the 2007-2008 Interministerial Transition Plan for the Guaraní People, the purposes of which are to lay the foundations for creating fit living conditions for registered Guaraní families in the Bolivian Chaco region, eradicate forced labor, and stimulate social, cultural, and economic development in the region as part of the National Development Plan. The Interministerial Plan has five components: i) restore the exercise of human rights in the Bolivian Chaco region; ii) move forward with regularization processes and the redesign of the system of ownership of agrarian land, so as to benefit not only indigenous communities but also small and medium-sized landowners; iii) implement a contingency plan to ensure fit living conditions for liberated families until the resettlement process is completed; iv) carry out productive, infrastructure, and environmental programs and projects for liberated families; and, v) create an execution, follow-up, and evaluation mechanism.²¹¹ On December 19, 2007, Executive Decree 29.388 was passed, approving an appropriation of US\$ 2 million to put the Interministerial Plan into effect.²¹²

175. The Commission reiterates that it deplores the situation of the families and communities subjected to contemporary forms of slavery, such as debt bondage. It also notes that various international agencies have confirmed, as the Commission has, that this practice continues and that it is not confined to the estates in the Bolivian Chaco zone,²¹³ but also occurs in other parts of the country, including the Norte de Amazonico in the context of mining, chestnut production, flower production and livestock slaughtering.²¹⁴

176. The Commission notes the efforts of the Bolivian State to eradicate this unfortunate situation, as well as the multitude of obstacles that government authorities have encountered, in particular the refusal of estate owners -in some cases with the encouragement of local authorities- to recognize the existence of debt bondage on their properties; the acts of violence against indigenous leaders, human rights defenders, and state officials who have sought to take steps to resolve the situation; the blocking of official inspections in the areas concerned;²¹⁵ and the lack of access to justice in rural areas. All of the foregoing increases the state of defenselessness and vulnerability in which these families find themselves. A complete analysis of these issues will be included in the report on the visit made from June 9-13, 2008.

D. Access to justice

177. In *Access to Justice and Social Inclusion*, the IACHR examines the issue of access to justice for indigenous peoples from two perspectives: a) access to the official justice system; and, b) recognition of indigenous law and justice.

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²¹⁰ 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, pars. 12 – 14.

²¹¹ 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008, par. 3.

²¹² 2007-2008 Interministerial Transition Plan for the Guaraní People. La Paz, Bolivia, April 2008. Annex, Slides.

²¹³ Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Preliminary Note on the Mission to Bolivia, 25 November to 7 December 2007. A/HRC/6/15/Add.2. 11 December 2007, p. 3; Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 13.

²¹⁴ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, par. 14. e).

²¹⁵ Committee for Economic, Social and Cultural Rights. Concluding observations. Bolivia. E/C.12/BOL/CO/2. 16 May 2008, par. 14. e).

178. With regard to the first perspective, the Commission observed difficulties in access to justice in order to press claims relating to ownership of land and territories; access to basic services; recognition of the legal personality of indigenous peoples and communities; enforcement of labor rights for persons who work on large estates; and claims for environmental damages occasioned by projects for development of natural resources.

179. The Commission is concerned that although the Bolivian Criminal Code penalizes “the forcing of persons into slavery or a similar state,”²¹⁶ in practice, the law is not enforced, among other reasons, because of the insufficient coverage of the Prosecutor’s Office and criminal courts, as well as ignorance of the law by the persons affected.²¹⁷ Another aspect worth highlighting is the lack of court interpreters,²¹⁸ despite the fact that Article 10 of the Code of Criminal Procedure requires the judge hearing a case to provide an official translator free of charge for persons who do not speak Spanish. In this connection, the Commission notes that the new Constitution stipulates at Article 235(7) that it is a requirement for all public servants to speak at least two of the official languages, which category includes all the languages of the indigenous and aboriginal nations and peoples and peasant communities.²¹⁹

180. The Commission continued to receive information about other obstacles that indigenous peoples face in accessing justice to protect their rights. During its visit to Bolivia in June 2008, the IACHR received expressions of a lack of confidence in jurisdictional institutions, which are seen as biased toward the interests of the landowners.

181. However, the IACHR considers that the National Agrarian Court is an important judicial mechanism in the Bolivian judicial system given that its jurisdiction covers one of the main issues affecting the human rights situation in the country, namely agrarian land ownership. On its visit to Bolivia in June 2008, the IACHR was informed that the National Agrarian Court is composed of 10 judges, including its president, with expertise in agrarian matters. The Court is divided into three chambers, each of which has three judges pursuant to law 3545. The seat of the Court is in the city of Sucre.²²⁰

182. Specifically, the information states that the Agrarian Court, whose decisions are unappealable, has jurisdiction to hear petitions for nullity and nullification of agrarian property titles that might have served as the basis for issuing titles, processed by the National Council for Agrarian Reform, the National Institute of Colonization and the National Institute of Agrarian Reform. It also presides over contentious administrative proceedings on agrarian matters, *inter alia*, those concerning challenges to decisions adopted by the INRA, as well as on forest- and water-related

²¹⁶ Criminal Code, Article 291.

²¹⁷ Information received during the visit of the IACHR from June 9 to 13, 2008.

²¹⁸ Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 33.

²¹⁹ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR, par. 32. The languages mentioned in this provision are Aymara, Araona, Baure, Bésiro, Canichana, Caviteño, Cayuvava, Chácobo, Chimán, Ese Eja, Guaraní, Guarasu’we, Guarayu, Itonama, Leco, Machajuyai-Kallawaya, Machineri, Maropa, Mojeño-Trinitario, Mojeño-Ignaciano, Moré, Mometén, Movina, Pacawara, Puquina, Quechua, Sirionó, Tacana, Toromona, Uru-Chipaya, Weenhayek, Yaminawa, Yuki, Yuracaré and Zamuco.

²²⁰ Information gathered by the IACHR in the course of the visit to Bolivia from July 9 to 13, 2008. See also, Judicial Branch of Bolivia. Agrarian Courts: Powers, Duties and Composition of the Agrarian Courts. Information available at <http://tan.poderjudicial.gov.bo/>.

matters.²²¹ In this connection, during the visit of the IACHR it was explained that the Court only controls legality, particularly in regularization processes, and that its functions include neither any involvement in shaping land policy, nor settlement of disputes concerning the existence of relationships of bondage between landowners and peasants. Accordingly, it would be unable to hear complaints presented by captive communities.²²² In other words, its jurisdiction to covers disputes over possession and ownership of land from the point of view of their legality. Nevertheless, the IACHR was informed that complaints lodged by captive communities could possibly fall indirectly within its jurisdiction in certain cases where questions of ownership were at issue.²²³ According to information received by the Commission during the visit of June 2008, at present the Agrarian Court has before it for review two resolutions adopted by the INRA ordering the reversion to the State of lands because it was found that persons were working in servitude there.²²⁴

183. In that regard, the IACHR values the functions that the aforesaid Court performs and mentions to the State the need for it to continue to support and strengthen the agrarian justice system with the necessary material and human resources.

184. The IACHR regards as positive the strengthening of “justice of the peace” or alternative dispute settlement mechanisms as a means to attempt to offset the lack of judicial coverage in a worryingly high number of the country’s municipalities chiefly inhabited by indigenous people. For example, the Commission notes the good reception had by the Integrated Justice Centers and state efforts to improve their coverage. As is mentioned in the section on Administration of Justice, the Commission finds that while these initiatives may help to reduce procedural delays and deliver justice in remote areas where the judiciary has no presence, they should be regarded as supplementary mechanisms and cannot replace the official justice system, whose absence continues to harm the most vulnerable groups. The Commission reiterates that the State should take steps to improve the alarming coverage figures mentioned above.

185. As to the second perspective, namely, recognition of indigenous law and justice, in *Access to Justice and Social Inclusion* the Commission recommended that the Bolivian State adopt measures to ensure in practice recognition for indigenous justice, regardless of the coverage indicators of the official justice system. The Commission also recommended the introduction of guidelines for coordinating official justice with community justice and drew attention to the importance of creating public policies and designing campaigns to raise public awareness about the scope of indigenous justice and its necessary distinction with criminal acts such as lynchings, as examined hereinabove.

186. The Commission notes the efforts of the Vice Ministry of Community Justice -which reports to Ministry of Justice and Human Rights- in the drafting and presentation to Congress of a bill in this respect.²²⁵ The Commission also notes that the new Constitution²²⁶ includes progressive

²²¹ Information gathered by the IACHR in the course of the visit to Bolivia from July 9 to 13, 2008. See also, Judicial Branch of Bolivia. Agrarian Courts: Powers, Duties and Composition of the Agrarian Courts. Information available at <http://tan.poderjudicial.gov.bo/>.

²²² Information gathered by the IACHR at the meeting with the members of the Agrarian Court of Bolivia during its visit to Bolivia from July 9 to 13, 2008,.

²²³ *Idem*.

²²⁴ *Idem*.

²²⁵ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 61; Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 9.

provisions in terms of recognition of the autonomy of indigenous justice and recognizes the need to develop through legal channels guidelines for coordination between the two systems of justice.²²⁷ The Commission also notes that the new Constitution expressly provides that indigenous justice is limited by the right to life and the rest of the constitutional rights and international human rights standards.²²⁸

187. The Commission was also informed that the Ministry of Justice undertook a specific project on community justice, which resulted in a nine-volume publication on the different forms of justice and cultural traditions that exist in Bolivia, together with a tenth volume that completed the research carried out with a concrete proposed law on coordination of jurisdictions. The Commission regards this as a positive step that could contribute to discussions on coordination guidelines and help to remedy the stigmatization that has plagued indigenous justice. However, the Commission was informed that this text was not considered by the Legislative Branch with a view to discussion and approval.²²⁹

188. The Commission expects to receive information regarding this issues, specially with respect to the advancement of the Separate Jurisdictions Law project, undertaken by the Ministry of Justice and the Judiciary. According to information provided by the State, the scope of the project is the determination of material, personal and territorial jurisdiction, seeking the coordination and support of ordinary jurisdiction.²³⁰

189. As mentioned, the Commission continued to receive reports that numerous incidents of lynching or “taking justice into one’s own hands” continue to occur.²³¹ According to available information, some sectors of society persist in confusing these deplorable acts with forms of enforcement of indigenous justice. The media, in particular, have portrayed these criminal acts as expressions of community justice.

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²²⁶ Article 190 of the new Constitution states: “I. Native peasant indigenous nations and peoples shall exercise jurisdiction and competence through their authorities, and shall apply their own principles, cultural values, regulations, and procedures. Native peasant indigenous jurisdiction respects the right to life, the right to defense, and the other rights and guarantees established in this Constitution.”

²²⁷ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR, par. 21. The draft Constitution, which will be submitted to a referendum, has left open the possibility of exercising indigenous jurisdiction, which it regulates under the title Judicial Organ and Plurinational Constitutional Court. Although Article 191.II seeks to move forward by recognizing indigenous jurisdiction on personal, material, and territorial matters, it continues in paragraph 2 with a reference to a “Separate Jurisdictions Law”. Furthermore, Article 192 provides at Part III that, “The State will promote and strengthen aboriginal indigenous peasant justice. The Separate Jurisdictions Law shall determine the mechanisms for coordination and cooperation between the aboriginal indigenous peasant jurisdiction and the regular jurisdiction, agrarian and environmental jurisdiction, and all constitutionally recognized jurisdictions.” Annual Report. First Half of 2008. Ministry of Justice. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 9.

²²⁸ Similar comments were made by the Special Rapporteur for the situation of human rights and basic freedoms of indigenous peoples. Rodolfo Stavenhagen. Mission to Bolivia from November 25 to December 7, 2007. A/HRC/11/11. January 9, 2009, para. 26.

²²⁹ Instituto de Defensa Legal. Centro de Estudios sobre Justicia y Participación. Due Process of Law Foundation. Center for Human Rights in the Americas of DePaul University, Chicago. Centro de Derechos Humanos y Asesoría a Pueblos Indígenas. Document: Barriers to equal access to justice in Latin America. Presented at a public hearing during the 133rd Regular Session of the IACHR Par. 21.

²³⁰ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

²³¹ Report of the Ombudsman to Congress 2007. September 29, 2008.

190. The Commission appreciates a number of awareness-raising and training measures adopted by the Ministry of Justice²³² and the Office of the Ombudsman to inform the public about the nature, practices, and scope of indigenous justice, and its conceptual differences with “mob justice” or lynching. The Commission draws attention to the efforts of the Ombudsman in circulating, in December 2007, a pamphlet clarifying those differences²³³ and underscoring that none of the systems of indigenous justice in the country recognizes the death penalty as a punishment.²³⁴

191. As the IACHR noted in *Access to Justice and Social Inclusion*, acts of this kind constitute gross violations of human rights, must be investigated and punished by the State, and usually occur in areas without a judicial presence.²³⁵ Such acts should not be understood as indigenous justice in the constitutional and internationally recognized sense, given that the fundamental premise for its recognition is respect for human rights.

VII. WOMEN’S RIGHTS

192. The section on Women’s Rights in *Access to Justice and Social Inclusion* noted the progressive consolidation of a legal framework for protection of women’s rights in Bolivia, following the ratification of international instruments in this area and also given the approval of various domestic laws designed to ensure political participation for women, safeguard equality of opportunities, and prevent and punish domestic violence, among other aspects. Consequently, the IACHR finds that the State of Bolivia has made significant strides in the definition and adoption of a legal and institutional framework designed to remedy historic forms of discrimination and violence against women.

193. Indeed, the Commission acknowledges the ratification by the State of international treaties such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter also “the Convention of Belem do Pará), as well as the adoption of laws to fight violence against women in the home (Law 1674 of 1995) and sexual violence (Law 2033 of 1999). It also recognizes legislative initiatives to eradicate different forms of discrimination against women in different spheres, such as Law 1674 of 1995 on family or domestic violence, the objective of which is to prevent and eradicate violence against women in the public and private spaces; Law 2033 of 1999 on the protection of victims of crimes against sexual freedom, which defines certain crimes and establishes interdisciplinary teams to cooperate in investigations and the establishment of centers of care and support for victims; Law of 1997 on quotas in the electoral system, establishing minimum percentages that must be filled by women in popularly elected bodies; among others.

194. In spite of the foregoing, the IACHR finds that despite the recommendations contained in its report, a twin problem persists with respect to the aforesaid legal framework. Indeed, the IACHR notes that they have not yet been effectively implemented owing to the lack of

²³² Ministry of Justice. Annual Report. First Half of 2008. [http://www.justicia.gov.bo/pdf/Informe%201er%20Sem\[1\].%202008.pdf](http://www.justicia.gov.bo/pdf/Informe%201er%20Sem[1].%202008.pdf). Available at November 6, 2008, p. 8.

²³³ Ombudsman. Pamphlet on the Legal System of Indigenous and Aboriginal Peoples and Peasant communities, December 2007.

²³⁴ Report of the Ombudsman to Congress 2007. September 29, 2008, pp. 20 and 21.

²³⁵ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 25; Report of the Ombudsman to Congress 2007. September 29, 2008.

resources and institutions necessary for that purpose. Furthermore, the provisions that promote gender equity do not extend beyond the declaratory realm, giving rise to a number of restrictions for women, from education to the right to land ownership, access to employment, and equal pay.²³⁶ Furthermore, it has been brought to the Commission's attention that the provisions identified as contrary to international standards on women's rights have not been amended or abolished. Accordingly, it expresses its concern, given that discriminatory provisions still remain, particularly in the country's criminal and civil law. In this regard, particular mention should be made of Article 317 of the Criminal Code, which in cases of rape and other abuses allows culprits to evade punishment by marrying their victims.²³⁷

195. The Commission reiterates that provisions of this type are discriminatory and run contrary to international standards in this area, in particular the Convention of Belém do Pará, which the Bolivian state ratified in 1994.

196. Accordingly, the Commission reiterates to the State of Bolivia the need to adopt measures to implement the aforesaid legal framework for protection of women's rights together with policies to protect women against acts of violence and discrimination, and their political, economic and social consequences, as well as allocating sufficient funding to enforce them effectively throughout the country. The IACHR also draws attention to the need to adopt measures to introduce the necessary legislative reforms to eliminate cases of *de jure* discrimination, such as those mentioned above, which are recognized as discriminatory at the international and domestic levels. The foregoing is all the more necessary given the added consideration that such changes should include efforts to eradicate practices and conduct that give rise to and perpetuate the notion that women are socially inferior.

197. One serious problem affecting women in Bolivia, which the IACHR identified in its report, it is the high levels of violence against them, in particular in cases of homicide and of family/domestic and sexual violence. The IACHR has underlined its concern in this regard, noting an absence of comprehensive prevention policies and effective access to justice to remedy them, which leads to impunity in these cases.

198. The Commission expresses its concern that, according to the information gathered, the various forms of violence against women persist with impunity in the country, noting, in particular, that, on average, seven out of 10 women are victims of violence both in the home and in other spheres of society.²³⁸ In this regard, although Bolivia has adopted a series of legislative and political initiatives to reduce violence against women, in particular violence in the family and sexual violence, the problem remains as widespread as ever.²³⁹ The IACHR was also informed about the

²³⁶ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 25.

²³⁷ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 7. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>. See Article 130 of the Family Code.

²³⁸ Ombudsman Report to the National Congress. 2007, September 29, 2008, p. 25.

²³⁹ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 24. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>. In this regard, the IACHR has also received information that the Ombudsman and institutions involved in prevention and care for victims of family violence have come up with initiatives to address the problem of family violence, and that groups of experts have been created to propose reforms to Law 1674 on family and domestic violence (see Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia"; La Paz, Bolivia, October 2008; p.).

lack of budget funding and human resources to implement the legal provisions adopted,²⁴⁰ as well as shortcomings in certain rules and regulations for adequately addressing the problem.

199. In particular, the IACHR received information about flaws in Law 1674 on family or domestic violence and in Law 2033 on protection of victims of sexual violence, especially because of the priority given to reconciliation and family integrity, and to what several sources describe as the practice of some judicial officials of persuading women victims not to press their claims for justice and convincing them that conciliation is the best option.²⁴¹

200. The IACHR also reiterates that Law 1674 is not a criminal statute and that the penalties it provides are exclusively administrative or financial in nature. In this regard, it is important to draw attention to the fact that Bolivia's criminal laws do not recognize the crime of family or domestic violence and that the only means to seek a criminal punishment for such acts is to subsume them under criminal attacks on personal integrity such as injuries or threats.²⁴² According to the foregoing, victims of family violence may pursue the case through the family courts or through the criminal courts, which two channels are mutually exclusive. Legally, only the victim can decide which channel to follow. However, in practice, judicial officials do not advise victims of the fact that two different channels are available to them, or of the consequences of choosing one route over the other, so that they can make a conscious and informed decision.²⁴³

201. The Commission reiterates that conciliation presupposes that the parties involved are negotiating under conditions of equality, and this is not true in family violence cases. Indeed it has been found in many cases that agreements reached through mediation increase women's physical and emotional risk, because of the unequal power relationships between the parties. Moreover, such agreements are generally not respected by the aggressor, and they do not address the causes and consequences of violence.²⁴⁴ The Commission urges the Bolivian State to ensure that women who are victims of violence are not pressured into taking part in conciliation processes. Furthermore, the State must ensure that the use of these mechanisms is accompanied by the necessary guarantees so that victims are sufficiently well advised and have the necessary of information to make free and informed decisions.

202. The Commission is encouraged by two initiatives of the Ombudsman of Bolivia to address family or domestic violence. It has received information about the spread of so-called

²⁴⁰ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 11.

²⁴¹ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 24. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁴² USAID. Participation and Justice Network. CIDEM. JSCA. Partners of the Americas. Gender and the Reform of Criminal Procedure. Treatment of crimes against sexual integrity and family and/or domestic violence by Bolivian criminal justice. 2006, p. 35.

²⁴³ Participation and Justice Network. Diagnostic study on the situation of justice in Bolivia. Unpaginated document received by the delegation of the IACHR during a meeting with civil society organizations on November 13, 2006.

²⁴⁴ IACHR. *Violence and discrimination against women in the armed conflict in Colombia*, October 18, 2006, par. 209, citing: Pan-American Health Organization (PAHO) in collaboration with the United Nations Population Fund (UNFPA), United Nations Development Fund for Women (UNIFEM), Inter-American Commission of Women of the Organization of American States (CIM/OAS), Inter-American Parliamentary Group on Population and Development (GPI), Center for Reproductive Rights (CRR), IPAS, ISIS International, Latin American and Caribbean Committee on the Defense of the Rights of Women (CLADEM), Washington, D.C., April 2004, Model Laws and Policies on Domestic Violence against Women, April 2004, p. 20.

"Family Protection Brigades",²⁴⁵ which has come about as a result of the distribution of kits consisting of a handbook and a poster. The book contains information on family protection brigades and the text of Law 1674, while the poster is designed to encourage victims to report cases of domestic or family violence to the Brigades. In both cases the aim is to inform women about the functions of Family Protection Brigades and provide them with access to the police in charge of raising awareness about these materials to ensure that the law is properly enforced. In addition, an inter-agency team of experts under the Office of the Ombudsman, created to review Law 1674 on family violence and the decree containing its regulations, has reportedly completed a review that includes proposals submitted by different sectors from all over the country on the aforesaid law, and prepared a bill of amendment.²⁴⁶

203. However, the IACHR has been informed that the Family Protection Brigades and comprehensive legal services lack the necessary budget and infrastructure to carry out their protective and advisory functions properly.²⁴⁷ Therefore, the IACHR urges the State to make the necessary efforts to provide them with the resources they need to carry out their functions.

204. The IACHR expresses its concern at information that a series of shortcomings continue to plague investigations into cases of violence against women and that matters are made worse when the victim lacks the necessary wherewithal or information to follow up and ensure that the authorities responsible perform their legal obligations.²⁴⁸ Concretely, the IACHR was informed that a series of obstacles continued to hinder access to adequate and effective judicial protection mechanisms, including a shortage of justice operators and the lack of independence and suitability of a number of them; high illiteracy rates among women, in particular indigenous women and those who live in poverty and in rural areas; lack of information about their rights; lack of legal assistance adequate to their needs; delays in judicial proceedings and the costs associated therewith; absence of institutionalized training programs for justice administration officials and the police, and lack of statistical data, among other difficulties.²⁴⁹

205. In the light of the foregoing, it is up to the State to rekindle its efforts to train its employees -particularly those involved in processing cases of violence against women- in women's rights and their corresponding obligations to safeguard the dignity of and respect for victims and their next of kin. The State should also design protocols to facilitate and encourage the effective, uniform, and transparent investigation of acts of physical, sexual, and psychological violence.

²⁴⁵ The function of the Family Protection Brigade is to enforce the law and provide the necessary immediate assistance to the victim. Its legal basis is found in the Constitution, the Code of Criminal Procedure, the Organic Law of the Police, Law 1674, and others.

²⁴⁶ Report of the Ombudsman to Congress 2007, September 29, 2008, p. 30.

²⁴⁷ *Oficina Jurídica de la Mujer de Cochabamba*. Follow-Up Report on the Recommendations of *Access to Justice and Social Inclusion*. p. 19.

²⁴⁸ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in *"Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia"*. La Paz, Bolivia, October 2008, pp.. 11 and 12.

²⁴⁹ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, pars 16 and 17. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>. See also Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in *"Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia"*. La Paz, Bolivia, October 2008, p. 12.

206. The IACHR has also received troubling information that reveals that since the new Code of Criminal Procedure came into force the rate of cases closed, rejected, or dismissed has risen to more than 70% of complaints received.²⁵⁰ Of that proportion, 40% reportedly corresponds to sex offenses.²⁵¹ It should be stressed that the legal basis for accepting the withdrawal of complaints by victims is provided by Article 317 of the Criminal Code.²⁵²

207. In sum, under domestic and international law the State has a duty to act with due diligence in investigating and clarifying violations of fundamental rights. In particular, the Convention of Belém do Pará establishes that the due diligence obligation has a special connotation in cases of violence against women. This Convention reflects a shared hemispheric concern over the gravity of the problem of violence against women, the relationship between that problem and the discrimination that women have historically endured, and the need to adopt comprehensive strategies to prevent, punish and eradicate violence against women.²⁵³ Consequently, the Commission urges the State to redouble its efforts to effectively ensure due diligence in the investigation, prosecution, and punishment of violations of women's rights, and to give priority attention to designing a comprehensive and coordinated policy aimed at eliminating the *de jure* and *de facto* barriers that prevent women from having access to effective remedies and mechanisms for judicial protection, especially where violence against women is concerned.

208. Accordingly, the IACHR reiterates the recommendations to the State that it adopt additional measures to strengthen and institutionalize coordination and the exchange of information among the authorities responsible for investigating acts of violence and discrimination against women; and that it strengthen the institutional capacity of judicial bodies, such as the Prosecutors' Office, the police, the courts and the tribunals, and the forensic medical services, in terms of both human and financial resources, to combat the pattern of impunity in cases of violence against women, through effective criminal investigations followed by appropriate judicial action, thus guaranteeing proper punishment and reparations.

209. As regards participation of women in public affairs, the Commission has said that it welcomes the legal framework consisting of the Elections Code, the 1997 30% Quotas Law, and the 1999 Law on Political Parties. Furthermore, information received on the appointment of a large number of women to leadership positions in the government is an encouraging sign.²⁵⁴ However, the IACHR has been informed that the quotas law has not yet been effectively implemented and that

²⁵⁰ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, p. 12.

²⁵¹ *Idem*.

²⁵² *Idem*, (citing the document *Preocupaciones de instituciones de la sociedad civil respecto a políticas públicas de género en Bolivia* sent to CEDAW in 2008. Coordinadora de la Mujer (Women's Coordinator) Católicas por el Derecho a Decidir (Catholics for a Free Choice) Oficina Jurídica de la Mujer (Women's Legal Department)

CLADEM Bolivia, Ayni Suyo. Article 317 of the Bolivian Criminal Code includes the following provision on the crime of rape: "There shall be no punishment when the perpetrators, in each case and provided there is no impediment for them to do so, marry the victims before the sentence become final.

²⁵³ IACHR. *Access to Justice for Women Victims of Violence in the Americas*, par. 32; Convention of Belém do Pará. Article 7.

²⁵⁴ Naciones Unidas, Comité para la Eliminación de la Discriminación en contra de la Mujer; Observaciones finales del Comité para la Eliminación de la Discriminación en contra de la Mujer para Bolivia; CEDAW /C/BOL/CO/4; 40 período de sesiones, 14 de enero al 1 de enero de 2008, párr. 30. Versión en español disponible en la WEB <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain/opensocpdf.pdf?reldoc=y&docid=48e36e012>.

women are underrepresented in positions of responsibility in many spheres of professional and public life,²⁵⁵ such as, for example, the judiciary, especially at the highest levels. In addition, the data available shows that in the legislative branch, of the 130 persons that comprise the House of Deputies, 106 (82%) are men and only 24 (18%) are women; that the Senate only one principal senator is a woman; that there are no women working in the Governor's offices, whose incumbents were for the first time elected by popular ballot; that at municipal government level, of a total of 314 municipalities, 287 (91.40%) are administered by mayors and 27 (8.50%) by mayoresses; and that of a total of 1,804 municipal councilors, only 336 (18.6%) are women.²⁵⁶

210. Moreover, the IACHR has taken note of reports that legislation against gender-based harassment and political violence has been promoted and was to be approved by the House of Deputies.²⁵⁷ The Commission received information that the bill was rejected because of opposition from some lawmakers.²⁵⁸ However, the Commission is encouraged by information from the State that the bill is still pending in the House of Deputies.²⁵⁹ The Commission hopes that processing will be expedited and that when the legislation is approved the necessary steps will be taken for its implementation.

211. Finally, with respect to this issue, it has come to the attention of the IACHR that a high number of women, in particular indigenous women in rural areas, older women, and women with disabilities, do not have identity documents and cannot, therefore, exercise their political rights, gain access to public institutions, and obtain the services and social benefits to which they are entitled.²⁶⁰

212. Based on the foregoing, the IACHR calls on the States to strengthen women's participation and representation in elected office and other decision-making forums. The Commission also reiterates its recommendation that the State ensure the enforcement of laws that guarantee women's participation in public affairs; that it take the necessary steps to prevent and punish any act of discrimination against women who accede to public office, in all circumstances; and that it make the necessary efforts to move forward with the process of registration of women, in particular indigenous women in rural areas, older women, and women with disabilities, in order to provide them with the necessary documents to enable them to exercise their rights in full.

213. The IACHR has received information about the persistence of high levels of poverty and social exclusion among Bolivian women, particularly among women living in rural areas,

²⁵⁵ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁵⁶ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in "*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*". La Paz, Bolivia, October 2008, page. 12.

²⁵⁷ Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo; Comentarios y Seguimiento al Cumplimiento de Recomendaciones de la Comisión Interamericana de Derechos Humanos contenidas en el Documento "*Acceso a la Justicia e Inclusión Social: El Camino hacia el Fortalecimiento de la Democracia en Bolivia*". La Paz, Bolivia, Octubre de 2008, pág. 13.

²⁵⁸ *Oficina Jurídica de la Mujer de Cochabamba*. Follow up report on Recommendations on Access to Justice and Social Inclusion, p. 19.

²⁵⁹ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

²⁶⁰ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 18 .Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

indigenous women, older women and women with disabilities, and their insufficient access to land, housing and basic social services. The poverty conditions of women are reflected in their high illiteracy rates, low school enrolment and completion rates, and poor access to health care, including sexual and reproductive health, leading to high rates of maternal mortality.²⁶¹ Indeed, the lack of a gender perspective in the delivery of health services constitutes an obstacle for women of child-bearing age. The IACHR is concerned at the high rates of mortality in the State, caused mainly by pregnancy-related problems and the lack of appropriate medical care, particularly in the rural areas.²⁶²

214. The information also indicates that poverty continues to cause large migration flows abroad. It has reportedly been confirmed that most migrants are women who, in addition to facing the dangers of trafficking in persons, are very often forced to leave their families.²⁶³

215. Furthermore, the information indicates that rural and indigenous women and girls continue to be at a serious disadvantage in terms of access to and quality of education, as well as the number of years they attend school, basically owing to the lack of infrastructure, distance, the risk of violence, the cost of transport and language.²⁶⁴ The Commission has also been informed about the persistence of limited employment opportunities for women and the existence of a huge gap in men's and women's wages, clear-cut job segregation and poor working conditions.²⁶⁵

216. Finally, the IACHR has received information about the lack of statistical data disaggregated by sex, age, rural and urban area and ethnicity, which makes it difficult to accurately assess the real situation of women. This also impedes the State's own efforts to design and implement specific policies and programs, and to evaluate their effectiveness.²⁶⁶ The Commission, therefore, reiterates its recommendation that the State create and strengthen systems for recording statistical and qualitative information on incidents of violence against women within the systems for the administration of justice. Strengthen the recording of cases of violence against women to guarantee that such records are uniform, accurate and transparent. The IACHR also reiterates that the State should develop educational programs for citizens, starting at a young age, to promote respect for women as equals and to recognize their particular needs as women, and to respect their right not to suffer violence and discrimination.

VIII. CHILDREN'S RIGHTS

²⁶¹ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 11. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶² United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 42. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶³ Report of the Ombudsman to Congress 2007. September 29, 2008, p. 26.

²⁶⁴ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 32. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶⁵ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 34. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

²⁶⁶ United Nations, Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination against Women, Bolivia; CEDAW /C/BOL/CO/4; Fortieth Session, 14 January-1 February 2008, par. 46. Available at <http://www2.ohchr.org/english/bodies/cedaw/cedaws40.htm>.

217. In *Access to Justice and Social Inclusion*, the Commission took a positive view of the legal framework for the rights of the child and noted that Bolivia was a party to the United Nations Convention on the Rights of the Child. It also observed that the Constitution established (Article 199) that the State had the duty to protect the physical and mental health of children and to defend their rights to a home and to education, provisions that were regulated by the Juvenile Code [*Código del Niño, Niña y Adolescente*] of 1999.

218. Despite the foregoing, the Commission found that a high proportion of children in Bolivia continued to be victims of human rights violations, affecting their civil and political rights as well as economic, social and cultural rights.

219. First, as regards children's education in Bolivia, the IACHR has received information that in March 2006 the government launched the National Literacy Plan, setting the goal of eradicating illiteracy -which, according to the 2001 National Population and Housing Census, affected 13.3% of the Bolivian population (approximately 1.2 million people)- within 30 months.²⁶⁷ In that respect, it was reported that the Ministry of Education carried out a "census" in mid-2007 to determine how many illiterate persons there were and found, as a result, that the number had declined to approximately 700,000.²⁶⁸ The Commission regards it as a distinctly positive sign that a significant reduction has been achieved since the findings of the above-mentioned 2001 census.

220. The Commission has also received information about an important initiative to boost child attendance in primary education called the "Juancito Pinto Bonus," a school attachment subsidy of 200 bolivianos.²⁶⁹ The subsidy is granted to all children enrolled in state primary schools from first to eighth grade, making a total of 1.2 million children nationwide.²⁷⁰ The aim of the Juancito Pinto program is to provide support to low-income families by enabling them to supplement their limited budgets and purchase more food.²⁷¹ As a result of this initiative, according to figures supplied by the Ministry of Education, school enrolment rose by 9.54%.²⁷² In absolute terms, the information indicates that in 2007 the program benefited more than one million children in more than 13,000 schools.²⁷³ The Commission welcomes this information and urges the State to continue its efforts in this regard.

²⁶⁷ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in *"Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia"*. La Paz, Bolivia, October 2008, p. 13.

²⁶⁸ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in *"Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia"*. La Paz, Bolivia, October 2008; p. 14.

²⁶⁹ Approximately US\$26.

²⁷⁰ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in *"Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia"*, La Paz, Bolivia, October 2008, p. 13. See also United Nations, Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 36.

²⁷¹ United Nations, Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, par. 36.

²⁷² Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in *"Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia"*. La Paz, Bolivia, October 2008, p. 14.

²⁷³ United Nations, Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, para. 36.

221. The foregoing notwithstanding, it should be noted that one comment made about the aforementioned subsidy by a number of civil society organizations is that the benefit is confined to primary education when the school dropout rate starts to increase in secondary schools.²⁷⁴

222. Another problem identified in the Report of the IACHR concerns child labor. The conditions of poverty and extreme poverty in Bolivia are such that many children under the age of 14 find themselves in the labor market,²⁷⁵ working in unacceptable conditions. In this connection, the Juvenile Code sets the minimum working age at 14 years and expressly prohibits children under that age from working, in particular in cotton, nut and sugarcane harvesting.

223. The information received is cause for concern since, according to data supplied by the Department of Employment [*Dirección General de Empleo*], there are approximately 38,000 cane harvesters in Santa Cruz and Tarija combined, of whom 9,860 are said to be children and adolescent day workers. Traditional small-scale gold mining, which is confined largely to seven municipalities in Oruro, Potosí and La Paz, is thought to employ more than 38,000 persons, 3,800 of whom are reported to be children and adolescents. The IACHR has also been told that according to a recent study by CEDLA and UNICEF, around 17,800 people work as nut harvesters, including 4,600 children and adolescents.²⁷⁶

224. In this respect, the Commission has been informed that in recent years the Bolivian government has been carrying out a series of initiatives through the Commission for Progressive Eradication of the Worst Forms of Child Exploitation, with the participation of the Ministry of Labour and support provided by the ILO and UNICEF. The measures proposed include, for example, construction of schools, improvement of workplace infrastructure, and student breakfasts programs at cane stockpiling centers. However, these measures have been marked as insufficient as they do not address the core problem, which is exploitation of family labor as a cumulative mechanism used by sugar companies, where children are employed in the form of indirect labor as “assistants of household heads”.²⁷⁷

225. For its part, in the nut industry, child labor is widely used throughout the production chain under the guise of family labor and justified by entrepreneurs who describe child labor as a “cultural feature” of the employment strategies of families in the Amazon region.²⁷⁸

226. Furthermore, in June 2008, as the IACHR was travelling to the community of Itacuatía, situated in the department of Santa Cruz, it received a number of testimonies regarding the work done by children on estates in the Bolivian Chaco region and witnessed firsthand the abject poverty in which children live and that they perform a variety of farm labors.

²⁷⁴ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in “*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*”, La Paz, Bolivia, October 2008, p. 14.

²⁷⁵ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in “*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*”, La Paz, Bolivia, October 2008, p. 15.

²⁷⁶ *Idem*.

²⁷⁷ Bolivian Chapter of Human Rights, Democracy and Development. Comments and Follow-Up on Implementation of the Recommendations of the Inter-American Commission on Human Rights contained in “*Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*”, La Paz, Bolivia, October 2008, p. 15.

²⁷⁸ *Idem*.

227. In particular, the testimonies state that, *inter alia*, the work consists of feeding animals, carrying water to houses on the estates, fetching firewood, and helping in the harvest. Girls are made to work from a very young age, helping with household chores and cooking without receiving any pay whatsoever and without being permitted or having the possibility to go to school. The Commission was also told that it is common for them to be taken to the homes of the estate owners in cities to work as unpaid domestic servants. In general, the IACHR was informed that children who work alongside their parents received no pay because employers regard the work they do as helping their parents to complete their allotted tasks.²⁷⁹

228. Consequently, the IACHR emphatically reiterates to the State the need to design policies to eradicate rural and urban labor for children in slavery-like conditions.

229. Another serious problem identified in the report concerns sexual exploitation of children. According to information received by the Commission a comprehensive bill against the sale and trafficking of persons has been presented to Congress. The bill is currently before the House of Deputies for review and approval.²⁸⁰

230. According to the information supplied, there are 1,119 children, including newborn infants,²⁸¹ living in Bolivian prisons. For its part, the Office of the Ombudsman reported that in Bolivia's 54 prisons and nine police jails, there is a considerable number of persons deprived of liberty who live with children of both sexes.²⁸² According to the figures provided by that entity, children in this situation make up 18% of the prison population, living in unsuitable conditions, given their inadequacies in terms of infrastructure, education facilities, and staff.²⁸³ In view of these circumstances, the Commission considers it apt to reiterate to the State the need for it to ensure that deprivation of liberty is imposed only as a last resort, and that the necessary measures are taken to create establishments for the reeducation of children in this situation.

231. The IACHR also reiterates to the State that it should adopt the necessary measures to ensure that when children are lodged in detention centers together with their father or mother deprived of liberty, the best interest of the child is taken into account upon establishing pertinent policies, and particularly that they have access to special protection, food, health and educational services necessary for their proper development. The Commission draws attention to the fact that states have the obligation to ensure that children are not exposed to abuse and to investigate any complaint in that respect. By the same token, the State is required to adopt measures to safeguard the best interests of children who are in the custody of persons deprived of liberty but do not live in prison with them.

232. Another matter of particular concern has been brought to the Commission's attention. The IACHR has been informed that chronic malnutrition affects more than one in four Bolivian children and that this problem has the following characteristics: the highest levels of malnutrition are amongst Bolivians living in rural areas; children in the poorest households have

²⁷⁹ Testimony offered by an indigenous Guaraní in Alto Parapetí, during the on-site visit of the Commission to the community of Itacuatiá on June 11, 2008.

²⁸⁰ Report of the Ombudsman to Congress 2007. September 29, 2008, p. 21.

²⁸¹ *Oficina Jurídica de la Mujer de Cochabamba*, Follow up on implementation of the recommendations contained in the Report of the IACHR *Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, p. 14.

²⁸² *Idem*.

²⁸³ *Idem*.

levels of malnutrition six times that of children born into the richest 20% of households; families of indigenous Quechua, Aymara, Guaraní and other peoples are far more affected by chronic malnutrition (28%) than non-indigenous children (16%); many of Bolivia's minorities, such as *afro-bolivianos*, are also particularly affected by high levels of malnutrition; More than half of Bolivian children suffer from micronutrient deficiencies, particularly of iron, iodine and Vitamin A, and 80% of children between 6 and 23 months suffer from anemia. According to information, child mortality remains high, although there are great disparities among different regions, depending on the level of wealth in each zone.²⁸⁴

233. The Commission applauds the launching of the Zero Malnutrition program in mid-2008,²⁸⁵ and the approval of Supreme Decree No. 0066 of April 3, 2009, which established an incentive for safe maternity and comprehensive development of the child population 0-2 years of age. This initiative has been named the Juana Azurduy Mother's and Children's Grant; it seeks to reduce maternal and child mortality and chronic malnutrition of children in their first two years.²⁸⁶ The Commission hopes to continue receiving information on these programs' effect on the malnutrition statistics provided previously.

IX. RIGHTS OF REFUGEES AND ASYLUM SEEKERS

234. In *Access to Justice and Social Inclusion* the Commission noted a number of shortcomings with respect to due process guarantees for persons seeking asylum, in particular, irregularities in the composition of the National Refugees Commission (hereinafter CONARE); decisions taken without a hearing or interview, and irregularities in the notification and adoption of decisions contrary to the guarantee against forced return.

235. The Commission welcomes the steps taken by the Bolivian State that have improved the situation of refugees and persons seeking refugee status. In particular, the Commission underscores that the new Constitution contains an explicit ban on deportation of persons with refugee status.²⁸⁷

236. Given the high number of persons in this situation in Bolivia,²⁸⁸ -in particular Peruvian nationals- the Commission welcomes the signing in La Paz on May 4, 2007, of a Mutual Cooperation Agreement between CONARE and the Office of the United Nations High Commissioner for Refugees. The IACHR was informed that training workshops were held for CONARE officials under this agreement.²⁸⁹

²⁸⁴ United Nations, Report of the Special Rapporteur on the right to food, Jean Ziegler, Addendum, Mission to Bolivia. A/HCR/7/5/Add.2. 30 January 2008, para. 6.

²⁸⁵ High Commissioner for Human Rights. Office in Bolivia. Annual Report A/HRC/10/31/Add.2. March 9, 2009, para. 60.

²⁸⁶ Supplementary Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. March 26, 2009.

²⁸⁷ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁸⁸ Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Bolivia. CMW/C/BOL/CO/1. 2 May 2008, para. 3.

²⁸⁹ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 41. De acuerdo a la información aportada por el Estado, la CONARE se encuentra actualmente compuesta por los siguientes niveles: i) nivel ejecutivo, conformado por el Ministerio de Relaciones Exteriores, el Ministerio de Justicia y el Ministerio de Gobierno a través del Servicio Nacional de Migraciones; ii) nivel consultivo, a cargo de la Oficina Regional para el Sur de América Latina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR);

237. The Commission also hails important improvements in the operations of CONARE, particularly the implementation of new administrative documents, the establishment of appropriate physical space,²⁹⁰ training for personnel in the area of international refugee law, diligence in processing of applications for refugee status, respect for the principle of non-deportation, and continuity in the staff of the technical secretariat.²⁹¹

238. With respect to difficulties reported in obtaining documents, the Commission welcomes the issuance of Ministerial Resolution No. 731/2008 of November 26, 2008, which exempts refugees from document legalization fees.²⁹² In addition, the Commission takes note of information provided by the State on the joint work of institutions involved in the process of documentation for the refugees. The State said that there have been meetings with the Ministry of Government and National Police to work on simplification of requirements for delivery of the refugee identity card.²⁹³ The Commission hopes that these efforts will lead to a substantive improvement in the processing of identity documents.

239. In spite of the foregoing, the Commission continued to receive reports of stigmatization and discrimination against refugees, in some cases by state authorities, coupled with an absence of programs to provide them and their families with opportunities for advancement and integration.²⁹⁴

240. The Commission considers that the State should continue taking all steps necessary to eliminate the obstacles facing asylum seekers in Bolivia, in particular the difficulties in obtaining identity documents, whether provisional or permanent.²⁹⁵

241. As to due process guarantees for asylum seekers, the Commission was informed that significant strides have been made as regards the "right to an interview". However, according to information received this right is not as stringently observed where family groups are concerned.²⁹⁶

...continuation

y nivel operativo conformado por la agencia de implementación de la Convención sobre el Estatuto de Refugiados de 1951 en la actualidad ejercido por la Pastoral de Movilidad Humana

²⁹⁰ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia". October 30, 2008, pp. 1 and 2.

²⁹¹ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁹² Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁹³ Report of the Bolivian State on follow-up on the recommendations – Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia. February 27, 2009.

²⁹⁴ Observatory on Human Rights and Social Policy. Working Paper. Human Rights in Bolivia in 2007. First Edition, La Paz, Bolivia, January 2008, p. 41; Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Bolivia. CMW/C/BOL/CO/1. 2 May 2008, para. 21.

²⁹⁵ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser.LV/II. Doc. 34. June 28, 2007, para. 410. 1.

²⁹⁶ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia". October 30, 2008, p. 3.

242. There has been no change as regards guarantee of the right to challenge decisions refusing refugee status. According to the information available, Executive Decree 28.329 remains in force on this point and the only guarantee it provides is a petition for administrative reconsideration to the same body that initially adopted the decision.²⁹⁷

243. The Commission reminds the Bolivian State that procedures relating to applications for refugee status should be carried out in strict compliance with due process guarantees, in which the right "to be heard" in an interview or a hearing is paramount, as is the possibility of appeal against the respective decisions.²⁹⁸ To that end, it is essential that the State adopt measures to overcome the difficulties reported with respect to notification of decisions lest they prevent the timely presentation of appeals.²⁹⁹

244. A number of civil society organizations expressed concern to the Commission regarding legal restrictions on the right to seek asylum, in particular, due to strict observance of Article 23 of Executive Decree 28.329, which provides, "Anyone who enters Bolivian territory seeking refugee status is required to present themselves within not more than 30 days to the Secretariat of CONARE in order to submit their application. Failure to do so shall make them ordinary immigrants and subject to statutory penalties."³⁰⁰ The Commission hopes to obtain more information about the enforcement of this provision and its effects on the possibility of applying for refugee status.

245. Finally, the Commission received with satisfaction information about measures adopted to ensure the guarantee against forced return. Specifically, the Commission draws attention to a number of decisions of the Supreme Court of Justice that voided arrest warrants for extradition purposes because the person concerned had refugee status. The Commission was also informed of extradition requests which were rejected based on said status.³⁰¹

246. With regard to this point, the Commission reiterates that based on the rule against forced return, the Bolivian State may not deport or extradite individuals who have been recognized as refugees until a procedure has been carried out to assess the risk in their country of origin or any other requesting country, which procedure shall include all the guarantees of due process, including the possibility of review of decisions.³⁰²

X. RECOMMENDATIONS

247. Based on the information and observations contained in this report, the Commission reiterates to the State of Bolivia the need to continue its efforts to implement the recommendations

²⁹⁷ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia". October 30, 2008, p. 4.

²⁹⁸ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 410. 2.

²⁹⁹ IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 410. 3.

³⁰⁰ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia". October 30, 2008, p. 2.

³⁰¹ Pastoral de Movilidad Humana. Report on Implementation of the Recommendations Contained in the Report "Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia". October 30, 2008, p. 4.

³⁰² IACHR. *Access to Justice and Social Inclusion*. The Road towards Strengthening Democracy in Bolivia. OEA/Ser./V/II. Doc. 34. June 28, 2007, para. 410. 4.

contained in the report *Access to Justice and Social Inclusion* - which are transcribed below - and to maintain the results achieved to date.

Administration of justice

1. Increase the mechanisms of publicity and dissemination for the rights of the citizens and the judicial actions established in the Constitution as an instrument for giving effect to them, as well as the procedures and requirements for accessing them.
2. Adopt the necessary measures to achieve the fullest possible coverage of judges, prosecutors and public defenders, using criteria based on a diagnosis of the real needs in the different areas of the country, both in terms of population and jurisdictions. These measures must include budgetary and human resources so that the respective authority will have not only a physical presence but also permanent and stable personnel.
3. Immediately appoint the judges of the Constitutional Court, the Supreme Court of Justice, and the Attorney General, in keeping with the appropriate constitutional and legal procedures. In the case of the Constitutional Court, the State should design and implement a mechanism to deal with the procedural delays caused by the fact that it has been inoperative for more than one year.
4. Comply strictly with the procedures for appointing judges and prosecutors, established as a guarantee of independence and impartiality both in the Constitution, in the case of members of the high courts, the district Superior Tribunals, the Attorney General and the district prosecutors, and in the laws and regulations governing the judicial and prosecutorial careers in the case of other judicial authorities and the prosecutors.
5. Effectively implement the judicial and prosecutorial careers systems, and eliminate all provisions relating to hierarchy and promotion for these authorities that could increase levels of corruption in the judiciary and in the Prosecutors' Office. In particular, ensure that entry and promotion in those careers is done through public competitions and selection based on exclusively technical criteria.
6. Strengthen the disciplinary system for judges and create coordination mechanisms with the criminal jurisdiction to fill the gaps in the law that have so far prevented effective disciplinary or criminal punishment of judicial authorities who commit acts of corruption, who contribute to procedural delay, who take decisions manifestly contrary to law, or who in general obstruct access to justice.
7. Take the necessary steps to implement the evaluations and other legal mechanisms of internal and external control, with respect to both the performance and the suitability of judicial authorities and the Prosecutors' Office.
8. Conduct a clear analysis of the shortcomings in implementation of the 1999 Code of Criminal Procedure and institute comprehensive measures that include, at least, adequate training; the distinction of investigative functions;

decongestion and settlement of cases at the investigation stage; guidelines for cooperation between all authorities involved in all instances, whether police, prosecutors or judges; mechanisms to comply with procedural deadlines, notifications and the holding of public hearings within legal parameters; and implementation of measures for participation by victims and their relatives.

9. Take steps to eliminate the legal uncertainty surrounding the statute of limitations for criminal cases, and establish clearly, in accordance with international standards, that its applicability cannot be determined on the basis of whether the affected person availed himself of the remedies and mechanisms of defense that criminal procedural law provides.
10. Strengthen the National Public Defender System with particular attention to the coverage and quality of service, and to the mechanisms for the hiring and tenure of public defenders.
11. Step up investigations of forced disappearances, police and military repression of public demonstrations, and other violations of human rights, using all the means at its disposal to overcome the obstacles that have to date prevented the establishment of the truth, the identification of the material and intellectual authors of the events, imposition of the corresponding sanctions, and determination of reparations for victims and their relatives.
12. Ensure that investigations of cases of lynching are initiated *sua sponte* and carried out by the appropriate authorities with due diligence in the identification and punishment those responsible.
13. Initiate the necessary investigations to determine the truth of allegations of abuses committed by the police and military during the state of siege in the Department of Pando from September 12, 2008 to November 24, 2008. Furthermore, move forward with the necessary investigations of the officials who, in abuse of their powers under the decree instituting the state of siege, refused to recognize inalienable rights under Article 27(2) of the American Convention and disregarded judicial decisions adopted in the framework of *habeas corpus* proceedings.

Prison conditions and rights of persons deprived of liberty

14. Ensure that the judicial authorities apply preventive detention reasonably and in conformity with the international standards mentioned in the relevant section of this report, and that all accused have access to a judicial remedy to question excessive time in preventive detention.
15. Take the necessary judicial, legislative and other measures to correct the excessive application of preventive detention and the procedural delays that persist in the administration of justice. Among other measures that the State may deem pertinent, these should include the release of all detainees who have not been sentenced within a reasonable time without prejudice to the continuation of the proceedings against them.

16. Take judicial, legislative and other measures with a view to reducing overcrowding and improving living conditions in Bolivian prisons, while ensuring that prisoners are treated with the respect due to the inherent dignity of human beings.
17. Establish effective systems to ensure that accused persons are segregated from those who have been convicted, and create mechanisms for classifying persons deprived of liberty according to sex, age, reason for detention, special needs, and applicable treatment.
18. Put an immediate halt to the practice of keeping minors under the age of 18 years, accused or convicted, in prison together with accused or convicted adults, even temporarily.
19. Adopt the necessary measures to immediately regain control of internal areas of prisons in the country, and monitor – also through serious investigations – cases of corruption observed. Also, establish special recruitment and training programs for all personnel in charge of the administration, supervision, operation and security of prisons and other places of deprivation of liberty, which must include education on international human rights standards related to prison security, the proportionate use of force, and the humane treatment of persons deprived of liberty.
20. Adopt measures with a view to improving infrastructure in those prisons where conditions are precarious and do not meet the minimum requirements with respect to drinking water, sanitary facilities, personal hygiene, floor space, light and ventilation; sufficient and adequate food; and adequate bedding.
21. Take the necessary steps to ensure that persons deprived of liberty have access to adequate medical attention, which requires the presence of a medical team sufficient in relation to the number of inmates, with the capacity to respond to medical emergencies, and the availability of medications; in particular, for immediate attention to the elderly, the sick and children living in prisons.
22. Take steps to provide and facilitate educational and working opportunities for persons deprived of liberty with a view to assisting in their reform, social readaptation, and personal rehabilitation.
23. Take the necessary measures to ensure that when children are lodged in detention centers together with their father or mother deprived of liberty, the best interest of the child is taken into account upon establishing pertinent policies, and particularly that they have access to special protection, food, health and educational services necessary for their proper development. Also, take measures to guarantee, in the same terms, the best interest of children not living in prison with the parent deprived of liberty who has custody of the child. In this context, the State shall carry out serious and diligent investigations whenever there is a complaint of sexual abuse to the detriment of persons that live in prisons.

24. Ensure that detention conditions are effectively controlled by criminal enforcement judges in the case of convicted persons, and by the respective judges in cases of persons under preventive detention.
25. Make available adequate and effective remedies of an individual and collective nature for judicial control of overcrowding and violence in prisons. Those remedies must be accessible to persons deprived of liberty, their relatives, their private or public defenders, NGOs, the Ombudsman and other competent institutions.

Rights of indigenous peoples and peasant communities

26. Take all necessary steps to eradicate any kind of discrimination based on the indigenous and/or peasant status of persons subject to its jurisdiction, particularly in access to justice, education and health, and to the benefits of other state policies intended to increase the coverage of economic, social and cultural rights.
27. Ensure that all measures taken in connection with the right to education and health for indigenous peoples are compatible with their particular worldview and the maintenance and strengthening of their cultural identity, and that they in no way imply a form of assimilation of indigenous peoples into the non-indigenous culture.
28. Guarantee effective enforcement of the new law relating to agrarian reform, adopting the necessary measures to eliminate the obstacles cited by the Commission that have prevented access to land and territory for all sectors of Bolivian society. As part of this process, it is essential that the State bear in mind the particular relationship that indigenous peoples have with the land and that consequently, in the process of land titling, it must give priority to recognizing their ancestral lands and territories as essential for the survival of their cultural identity.
29. Ensure that all judicial proceedings concerning such matters before the National Agrarian Tribunal comply strictly with due process guarantees and, in particular, that they be disposed of within a reasonable time.
30. Incorporate the provisions of ILO Convention 169 on this issue in Bolivia's domestic legislation on development projects, and adopt measures for their effective enforcement.
31. Consistent with its international obligations, guarantee the participation of indigenous peoples and communities concerned in projects for exploration and exploitation of natural resources, through prior and informed consultations designed to obtain their free consent in the design, execution and evaluation of such projects, as well as in determining benefits and compensation for damages, according to their own development priorities.
32. In the context of projects underway, implement participatory mechanisms to determine the environmental damage they may be causing and their effects on the basic subsistence activities of indigenous peoples and peasant communities living in the vicinity of such projects. If their lives or personal integrity are threatened, such projects should be immediately suspended and

the appropriate administrative and criminal penalties imposed. If the projects continue, the State must guarantee that the persons concerned share in the benefits from those projects, and it must determine and enforce compensation for such damage.

33. Guarantee access to an adequate and effective judicial remedy to enable collective challenges against environmental damages, so that, in addition to criminal action, there is also a judicial mechanism available to seek an immediate response in circumstances where irreparable damage is being caused to groups of persons.
34. Give priority to measures for eradicating forced labor and bondage, and take immediate steps to strengthen the recognition and regularization of property for persons affected by this situation, and to prevent any weakening of labor and social rights for persons working in the rural sector.
35. Conduct an immediate analysis of the situation of bondage analogous to slavery and/or forced labor in various parts of Bolivia, including data on all families and persons subjected to this form of life, the related social, cultural and psychological factors, and the various private and State players involved, particularly weaknesses in the various administrative and judicial bodies.
36. Adopt necessary measures to guarantee that recognition of community justice does not depend on the coverage or procedural workload of official justice, but stems from the pluricultural nature of the Bolivian State and from respect for the autonomy of indigenous peoples.
37. Establish, in the short term, guidelines for coordinating official justice with community justice, taking into account as a minimum the parameters set out in the respective section of this report.

Women's rights

38. Enforce existing national legislation and policies to protect women against acts of violence and discrimination, and their political, economic and social consequences, and allocate sufficient funding to enforce them effectively throughout the country.
39. Design a comprehensive and coordinated policy, with sufficient public funding to permit continuity, to ensure that the victims of violence have full access to adequate judicial protection to remedy their suffering and to prevent, investigate, punish and provide reparations for acts of violence.
40. Implement public awareness measures and campaigns on the duty to respect women's civil, political, economic, social, cultural, sexual and reproductive rights; on the judicial services and remedies available for women whose rights have been violated; and on the legal consequences for the perpetrators.
41. Develop educational programs for citizens, starting at a young age, to promote respect for women as equals and to recognize their particular needs as women, and to respect their right not to suffer violence and discrimination.

42. Identify and institutionalize new forms of training for public employees in all sectors (justice, security, health and education) that include a comprehensive approach to women's right to live free of violence and discrimination, and the need for public servants to respect women's physical and psychological integrity, in the exercise of their functions.
43. Ensure effective enforcement of laws that guarantee women's participation in public affairs, and take the steps necessary to prevent and punish any act of discrimination against women who accede to public office, in all circumstances.
44. Create and strengthen systems for recording statistical and qualitative information on incidents of violence against women within the systems for the administration of justice. Strengthen the recording of cases of violence against women to guarantee that such records are uniform, accurate and transparent.
45. Strengthen the institutional capacity of judicial bodies, such as the Prosecutors' Office, the police, the courts and the tribunals, and the forensic medical services, in terms of both human and financial resources, to combat the pattern of impunity in cases of violence against women, through effective criminal investigations followed by appropriate judicial action, thus guaranteeing proper punishment and reparations. This will involve the purchase of the necessary technical equipment to conduct chemical and forensic tests, as well as all the evidence required to clarify the facts investigated.
46. Take immediate steps to provide effective training on women's rights to all public officials involved in handling cases of violence against women (including prosecutors, police officers, judges, court-appointed lawyers, administrative officials and forensic medical professionals) so that domestic and international standards can be applied for prosecuting these crimes, and so that the integrity and dignity of victims and their relatives will be respected when they complain of such events and during their participation in the judicial process.
47. Take steps to institutionalize cooperation and information sharing among the authorities responsible for investigating acts of violence and discrimination, in particular between the Prosecutors' Office and the police.
48. Design protocols to facilitate and promote effective, uniform and transparent investigation of acts of physical, sexual and psychological violence, including a description of the complexity of the evidence, and a detail of the minimum proof that must be compiled to substantiate charges, including scientific, psychological, material and testimonial evidence. It is important to encourage multidisciplinary investigation of such crimes.

Children's rights

49. Give priority to implementing policies for preventing the situations described in this section and others that constitute gross violations of the human rights of Bolivian children, through a clear analysis of the situation that afflicts this sector of society.
50. Guarantee access to the civil registry free of charge, as established in the Constitution, and take steps to identify all children who have been prevented by various means from obtaining an identity document.
51. Take all steps necessary to expand the coverage of public education as far as possible, both in terms of access and in terms of educational continuity and quality.
52. Adopt measures to expand the coverage of the Juvenile Defenders' Offices and other institutions provided for in the legislation, both for protection and for the prevention, investigation and punishment of crimes of all kinds committed against children.
53. Adopt all necessary measures to ensure that children are protected from all forms of violence, making certain that national norms do not include any ambiguous wording, for example, "abuse of corrective measures" or "discipline" or "disciplinary," since such terms raise doubts about the criteria used to determine when corrective measures are excessive and harmful to children. In their place, it must be established clearly that corporal punishment of children is prohibited.
54. Design policies to eradicate labor in rural and urban areas for children under the age of 14, and to ensure strict compliance with the rules according to which the employment of persons under 18 years is allowed, in terms of their social rights and restrictions on working hours and activities performed.
55. Take immediate steps to prevent and eradicate all forms of sexual exploitation of children, and to investigate and punish such conduct. To that end it is essential to take steps for the effective enforcement of existing legislation.
56. Ensure that, in applying the so-called "social responsibility" or criminal liability of juveniles, deprivation of liberty is imposed only as a last resort, and that the necessary measures are taken to create establishments for the reeducation of children in this situation.
57. Take steps necessary to grant special guarantees of due process enshrined in domestic legislation in accordance with international standards, and in particular the effective implementation, with the widest possible coverage, of specialized courts for determining the criminal liability of children.
58. Repeal the provisions of the Juvenile Code that establish "public threat" as grounds for preventive detention of children. The State must guarantee that this measure is used only exceptionally and for exclusively procedural purposes.

Rights of asylum seekers

59. Take all steps necessary to eliminate the obstacles facing persons who apply for refugee status in Bolivia, and facilitate the processing of applications and the obtaining of identity documents, whether provisional, in the case of persons whose applications are being processed, or permanent, in the case of persons already recognized as refugees.
60. Ensure strict compliance with due process in administrative procedures relating to application for refugee status or its revocation. In this respect, the State must establish mechanisms whereby the applicant may submit all the evidence he deems pertinent and present arguments in favor of recognition.
61. Ensure that decisions denying or revoking refugee status are adopted through due process, with sufficient substantiation and in full observance of the notification and publicity mechanisms that allow the interested party to present an appeal within the legally established time limits.
62. Refrain from returning a person to his country of origin, by any means, if that person has valid refugee status in Bolivia, and in all cases ensure that before any decision on his deportation or extradition is taken there is an adequate assessment of the situation of risk facing the person, using the legally established procedure for this purpose that allows the person to participate and defend himself and to file an appeal with suspensive effect.

CHAPTER V

FOLLOW-UP REPORT – VIOLENCE AND DISCRIMINATION AGAINST WOMEN IN THE ARMED CONFLICT IN COLOMBIA

I. INTRODUCTION

1. The purpose of this report is to follow up on the recommendations that the Inter-American Commission on Human Rights made in the report titled *Violence and Discrimination against Women in the Armed Conflict in Colombia*, published on October 18, 2006 (hereinafter “the 2006 Report”). In that report, the Commission examined the principal manifestations of violence that especially affect women within the armed conflict¹ in Colombia, and the toll they have taken on those women’s lives and health. The report also expressed concern over the types of discrimination that Afro-Colombian and indigenous women experience, and the particular way in which the armed conflict has affected them. The 2006 Report analyzed the progress that the Colombian State had made in responding to the impact of the armed conflict on women and the challenges it still faced; it included a series of recommendations to help craft a comprehensive state policy that tackled these problems and better protected women’s human rights. The recommendations made in the 2006 Report were of two kinds: general recommendations and recommendations by type of attention and response, which included legislation, public policies, state institutions and programs, diagnosis and prevention, public services for displaced women, administration of justice, civil and political participation, and truth, justice and reparation.

2. Since publication of the 2006 Report, the Commission has continued to closely monitor the issues identified as the priorities with respect to the violence and discrimination that women suffer in the context of the armed conflict in the country. The Commission has held issues-related hearings and has received updated information from a variety of sectors, among them the government, civil society organizations and networks, international agencies and others. On October 23, 2008, the Commission held a hearing titled “Discrimination and violence against women as a result of the armed conflict in Colombia” to follow up on the recommendations made in the 2006 Report. In attendance were women’s organizations, civil society organizations and

¹ In its observations to the present draft report, the State of Colombia states that the concept of “armed conflict” is not applicable to the case of Colombia because:

“It cannot be stated that in Colombia there is a dictatorship or a constitutional limit that challenges the exercise of key rights, since the Political Constitution of 1991 is centered in the defense of individual liberties and the citizen guarantees”;

“Colombia is a Republic founded in democracy, where there are separate powers and their balancing, key respect for the freedom of the press and the granting of full guarantees to the opposition”;

“The terrorist actions of some illegal armed groups that are financed through sources such as drug trafficking and the kidnapping of members of the civil population as well as other criminal activities, have threatened and weakened the national democracy. This terrorist threat is to blame for multiple forms of conduct that have been very prejudicial to those inhabitants of the Colombian territory, such as the displacement of civilians for fear of their actions or the use of anti-person mines”;

“The Colombian state in multiple occasions has manifested publically, reiterating its total rejection of this type of terrorist conduct.”

Therefore, “in summary, these groups which have terrorist and self-profitting motives are illegal and illegitimate, and therefore their actions cannot be characterized as part of an “armed conflict”. See, Observations from the State of Colombia to the Draft Follow-Up Report on the Implementation of the Recommendations in the report “Violence and Discrimination against Women in the Armed Conflict in Colombia”, Note DDH No. 70141/3300, Ministry of Foreign Affairs, December 23, 2009, p. 8 (hereinafter “Observations from the State of Colombia to this report”).

representatives of the State.² On July 18, 2007, during the Commission's 128th session, a public hearing was held on the situation of children and teens involved in Colombia's internal armed conflict, where information was supplied indicating that young girls and teenage girls continued to be associated with unlawful armed groups.³

3. By a communication dated August 28, 2009, the Commission requested information from the State and the following civil society organizations and networks in Colombia: the *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict],⁴ the *Mesa de Seguimiento del Auto 092 – justicia en violencia sexual* [Working Group to Monitor Compliance with Order 092 – Justice and sexual violence]⁵ and the *Mesa de Seguimiento del Auto 092 sobre los programas y políticas públicas* [Working Group to Monitor Compliance with Order 092 – Public Policies and Programs],⁶ concerning compliance with the recommendations set forth in the 2006

² The following civil society organizations participated in the hearing: *Ruta Pacífica de las Mujeres* [Women's Path to Peace]; *Casa de la Mujer* [Foundation for the Protection of Women]; *Mesa de Trabajo Mujer y Conflicto* [Working Group on Women and Armed Conflict] and the Center for Justice and International Law (CEJIL). Present for the State were the Ambassador of Colombia to the OAS; the National Director of the Public Prosecution Offices; the National Director of the Technical Investigations Corps and the Director of the Presidential Program on Human Rights and International Humanitarian Law.

³ The hearing was requested by the *Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado en Colombia (Acción Colectiva de Objetores y Objetoras de Conciencia en Bogotá)* [Coalition against the involvement of children and youth in the armed conflict in Colombia (Collective Action of Conscientious Objectors in Bogota)]; *Benposta Nación de Muchachos*; *Comité Andino de Servicios* [Andean Services Committee]; the Growing Together Foundation; the Two Worlds Foundation; the Foundation for Education and Development (FED); *JUSTAPAZ*; the Jesuit Refugee Service ; *Taller de Vida*; *Terre des Hommes Deutschland*, and the Center for Justice and International Law. The Coalition and CEJIL participated in the hearing.

⁴ The *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict] is composed of the following organizations: Asociación Nacional de Mujeres Campesinas, Negras e Indígenas de Colombia (ANMUIC) [National Association of *Campesino*, Black and Indigenous Women of Colombia]; the *Campesino* Women's Program of the Asociación Nacional de Usuarios Campesinos-Unidad y Reconstrucción (ANUC-UR) [National Association of *Campesino* Users- Unity and Reconstruction], *Colectivo de Mujeres Excombatientes* [Organization of Former Women Combatants], *Colectivo Mujeres al Derecho* [Women for Rights]; *Comisión Colombiana de Juristas* (CCJ) [Colombian Commission of Jurists], *Corporación Casa de la Mujer* [Foundation for the Protection of Women]; *Corporación Casa Amazonia* [Amazonia House Foundation]; *Corporación de Apoyo a Comunidades Populares* (CODACOP) [Grassroots Communities Support Foundation]; *Corporación Humanas Centro Regional de Derechos Humanos y Justicia de Género* [Humanas Foundation Regional Center for Human Rights and Gender Justice]; *Corporación Opción Legal* [Legal Option Foundation]; *Corporación para la Vida "Mujeres que Crean [Women Who Create]"* ["Women Who Create" Foundation for Education and Development (FED)]; *Corporación Sisma Mujer*; *Fundación Mujer y Futuro*; the Latin American Institute for Alternative Legal Services (ILSA); the Women's International League for Peace and Freedom (WILPF); *Liga de Mujeres Desplazadas* [League of Displaced Women]; the *Organización Femenina Popular* (OFP) [Grassroots Women's Organization]; Women and Culture Program of the *Organización Nacional Indígena Colombiana* (ONIC) [National Indigenous Organization of Colombia] ; *Grupo de Mujeres AFRODES* [AFRODES Women's Group] and the *Ruta Pacífica de las Mujeres* [Women's Path to Peace].

⁵ The *Mesa de Seguimiento del Auto 092 –justicia en violencia sexual* [Working Group to Monitor Compliance with Order 092 – Justice and sexual violence] is composed of the following organizations: the *Consultoría para los Derechos Humanos y el Desplazamiento* (CODHES) [Human Rights and Displacement Office]; *Corporación Casa de la Mujer* [Foundation for the Protection of Women]; *Comisión Colombiana de Juristas* [Colombian Commission of Jurists]; *Iniciativa de Mujeres por la Paz* [Colombian Women's Pro-Peace Initiative]; Centro de Estudios Derechos, Justicia y Sociedad [Center for Studies in the Law, Justice and Society]; *Colectivo de Abogados José Alvear Restrepo* [José Alvear Restrepo Lawyers' Group]; the *Liga de Mujeres Desplazadas* [League of Displaced Women]; *Ruta Pacífica de las Mujeres* [Women's Path to Peace]; *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict] ; and the *Corporación Sisma Mujer*.

⁶ The *Mesa de Seguimiento del Auto 092 –programas y políticas públicas* [Working Group to Monitor Compliance with Order 092 – public policy and programs] is composed of the following: the *Grupo de Mujeres AFRODES* [AFRODES Women's Group]; *Corporación Casa de la Mujer* [Foundation for the Protection of Women]; *Corporación de Investigación y Acción Social y Económica* (CIASE) [Social and Economic Research and Action Foundation]; the Latin American and the Caribbean Committee for the Defense of Women's Rights (CLADEM); *Consultoría para los Derechos Humanos y el Desplazamiento* (CODHES) [Human Rights and Displacement Office]; *Corporación Sisma Mujer- Observatorio para los Derechos Humanos en Colombia* [Observatory for Human Rights in Colombia]; *Coordinación Nacional de Desplazados* [National Office of Displaced Persons]; *Iniciativa de Mujeres por la Paz* (IMP) [Colombian Women's Pro-Peace Initiative]; *Liga de las Mujeres Desplazadas* [League of Displaced Women]; *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on

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Report. This report was prepared on the basis of the information compiled in the thematic hearings and through the requests for information to follow up on the 2006 Report, information received via the other mechanisms that the Commission uses in the case of Colombia, and public information available from international agencies and organizations that have documented and analyzed the situation of women's human rights in Colombia over the last three years.

4. This Follow-up Report is divided into four sections devoted to the measures that the State has taken since 2006 to deal with the challenges posed by violence and discrimination against women, challenges compounded by the armed conflict. The Report begins with a brief analysis of the impact that the Colombian armed conflict has had on women during the period under study, starting with the recommendations that the Commission issued in its previous report. It also examines the current situation with regard to the manifestations of violence that the 2006 Report examined. It looks at the various types of discrimination that indigenous and Afro-Colombian women continue to experience, all in light of the Commission's recommendations on this subject and the situation in Colombia today.

5. This Follow-up Report also examines what the State has done since October 2006 to configure and implement laws and public policies to protect women's human rights from the violence and discrimination wrought by the armed conflict; the administration of justice; and humanitarian assistance and support services to victims of forced displacement. It also looks at the progress the State has made and the obstacles that still stand in the way of women's right to truth, justice and reparation. The conclusions capture the principal obstacles and advances with regard to the State's compliance with its obligations to protect women's human rights and to adopt a comprehensive State policy that offers a satisfactory response to the acts of violence and discrimination that women experience in the armed conflict.

6. The structure of this report is the one the Commission used in the 2006 Report. Each section makes reference to the pertinent recommendations that the Commission made in the 2006 report. The final chapter sets out all the recommendations that the Commission made in the 2006 Report and underscores how important it is that the Colombian State fully complies with and carries out those recommendations.

II. THE ARMED CONFLICT IN COLOMBIA AND ITS IMPACT ON WOMEN

7. In its 2006 Report, the Commission found that the armed conflict in Colombia affects men and women differently, because it has aggravated the discrimination and violence that Colombian women have always experienced.⁷ There the Commission wrote that all the factors that had historically exposed women to discrimination and inferior treatment, above all their bodily differences and their reproductive capacity, were exploited and manipulated by the actors in the armed conflict.⁸ In that report, the Commission also examined the various manifestations of violence caused by the armed conflict –forms of physical, psychological and sexual violence-, the disproportionate impact that forced displacement has on women, the forced recruitment of women and girls by lawless groups, and the fact that the actors in the conflict were dictating standards of

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Women and Armed Conflict]; *Organización Nacional Indígena Colombiana* (ONIC) [National Indigenous Organization of Colombia]; *Corporación Opción Legal* [Legal Option Foundation]; *Red Nacional de Mujeres Desplazadas* [National Network of Displaced Women], and *Ruta Pacífica de las Mujeres* [Women's Path to Peace].

⁷ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 45.

⁸ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 46.

conduct that were more demanding of women. The heavier toll that the violence has taken on women takes various forms, among them unwanted pregnancies, forced abortions, the spread of sexually transmitted diseases, and the community's rejection and stigmatization of the victim.⁹ The Commission also examined the multi-faceted discrimination that indigenous and Afro-Colombian women experience by reason of their sex, race and ethnicity, a situation that is perpetuated and aggravated by the variables of the armed conflict.

8. In its 2006 Report, the Commission also examined the State's response to the violence and discrimination against women produced by the armed conflict and recognized that advances had been made in the adoption of national legislation and public policies calculated to protect women's human rights in the face of the armed conflict. However, it concluded that a comprehensive State policy and coordinated and multi-disciplinary programs to address the specific impact of the armed conflict on women were missing. It found that one of the major problems was with the analysis and prevention of the consequences that the armed conflict has for women. It also found that the perspective on women as the target audience and beneficiaries of State protection and services was homogenous, and failed to consider the particular needs of different groups of women. The Commission also detected gaps in the humanitarian assistance and support services for women victims of forced displacement; obstacles that women victims of violence and discrimination encounter in terms of access to the justice system; a need to protect and legitimize the work that defenders of women's human rights do; and deficiencies in the proceedings conducted under the Justice and Peace Law to protect women's rights in the context of the armed conflict.¹⁰

9. The Commission therefore made the following general recommendations to the State: 1) To adopt an integral State policy to address the specific impact of the armed conflict on women in the areas of justice, health and education, among others; 2) To implement and strengthen measures to comply with the duty to act with due diligence to prevent, sanction and eradicate violence and discrimination against women, exacerbated by the armed conflict; 3) To implement measures to eradicate discriminatory socio-cultural patterns based on sex, race, and ethnic background, and to take these differences and conditions of vulnerability into account when developing public policies to mitigate the pernicious effect of the armed conflict on Colombian women; 4) To publicly recognize that the different manifestations of gender-based violence and discrimination are closely related to the human rights and humanitarian crisis that Colombia is experiencing; and 5) To duly apply the recommendations previously issued by the Inter-American Commission on Human Rights, and United Nations follow-up mechanisms (recommendations 1 to 5). It also made a number of specific recommendations with a view to enhancing the State's response on the protection of women's human rights in law and public policy; the services to displaced women; the analysis and prevention of violence; the issue of indigenous and Afro-Colombian women; the administration of justice; women's participation in civic and political matters; and the proceedings conducted under the Truth and Justice Law, to protect women's right to truth, justice and reparation (Recommendations 6 to 65).

10. In this report, which is a follow-up to those recommendations and covers the period since October 2006, the Commission highlights the efforts of the State to adopt legislative measures and public policies to protect the rights of women against the impact of violence and discrimination caused by the armed conflict. It also recognizes the central role that Colombia's Constitutional Court continues to play in delivering landmark decisions upholding the rights of

⁹ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 58-60.

¹⁰ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 149-236.

women affected by the armed conflict. However, based on the information supplied by a variety of sources and sectors,¹¹ the Commission considers that the violence practiced by all the actors in the armed conflict continues to exact a heavier toll on Colombian women, thereby exacerbating the discrimination that they have historically suffered. The Commission notes with concern that the principal manifestations of violence against women identified in the 2006 report –physical, sexual and psychological violence; forced recruitment of women and girls; the social patterns of conduct imposed upon them, and forced displacement– continue to plague women of all ages, races and ethnic backgrounds in Colombia. The armed conflict also continues to take a particularly heavy toll on indigenous and Afro-Colombian women because of the multi-faceted discrimination that they have historically suffered.

11. The Commission observes that significant challenges remain if the recommendations it made in the 2006 Report are to be fully carried out. Based on the information received from various sources,¹² the Commission believes that one of the main challenges is to adopt a State policy that offers comprehensive and differentiated assistance to women victims of the armed conflict, in order to ensure that their rights are protected and restored¹³. This information indicates

¹¹ *Centro de Estudios de Derecho, Justicia y Sociedad (DeJusticia)* [Center for Studies in Law, Justice and Society], CODHES, the José Alvear Restrepo Lawyers Group, the Colombian Commission of Jurists, the *Corporación Sisma Mujer*, the *Iniciativa de Mujeres Colombianas por la Paz* (IMP) [Colombian Women's Pro Peace Initiative], the *Liga de Mujeres Desplazadas* [League of Displaced Women], the *Mesa Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], and the *Ruta Pacífica de las Mujeres* [Women's Path to Peace] which form the *Mesa de Seguimiento al cumplimiento de las órdenes emitidas por la Corte Constitucional en el Auto 092* [Working Group to Monitor Compliance with the directives given in Constitutional Court Order 092] (hereinafter the Working Group to Monitor Compliance with Constitutional Court Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009); *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009; Comisión Colombiana de Juristas [Colombian Commission of Jurists], *Camino al Despojo y a la Impunidad* [Path to Predation and Impunity], Bogotá, Colombia, 2007; *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], Informe de Seguimiento a las Recomendaciones contenidas en el Informe "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia" de la Comisión Interamericana de Derechos Humanos [Follow-up Report on the Recommendations Contained in the Report on "Violence and Discrimination against Women in the Armed Conflict in Colombia" prepared by the IACHR], September 18, 2009; *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009; Cecilia Barraza and Diana Ester Guzmán, "Proceso de reparación para las mujeres víctimas de violencia en el marco del conflicto armado colombiano" ["Reparations process for women victims of violence in the context of the Colombian armed conflict], *Sin Tregua*, 2008; Report by Oxfam International, *Sexual violence in Colombia, instrument of war*, September 9, 2009; Committee for the Elimination of Discrimination against Women. *Concluding comments of the Committee on the Elimination of Discrimination against Women: Colombia*, CEDAW/C/COL/CO.6, 37th session (2007); United Nations, Human Rights Council, *Annual Report of the United Nations High Commission for Human Rights, Report of the United Nations High Commission for Human Rights on the situation of human rights in Colombia*. Tenth Session, A/HRC/10/032 (2009); Ministry of Foreign Affairs of Colombia, *Report in connection with the hearing titled "Discrimination and violence against women caused by the armed conflict*, received at the Commission on October 27, 2008 [hereinafter the State's First Report]; Ministry of Foreign Affairs of Colombia, *Report on the Follow-up to the recommendations in the report "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* received at the IACHR on September 23, 2009 [hereinafter the State's Second Report]; *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women's Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia's armed conflict, 2003-2007], document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia. IACHR. 133rd session, October 23, 2008.

¹² See note 10, *supra*.

¹³ The State establishes in its observations to the present report that "this affirmation fails to acknowledge the efforts and advances regarding this issue and reiterates that like no other country in the Americas, it has adopted an important number of public policies oriented towards confronting all forms of violence that affect women either in public or private spaces or that are provoked by illegal armed actors, state forces or civilians." The State, for example, mentions policies such as the Policy for Democratic Security; the Human Rights Policy of the Ministry of National Defense; the National Strategy to Erradicate Trafficking against Persons; the National Policy to Offer an Integral Attention to the Displaced

a series of problems with the configuration and implementation of a state policy that both prevents and punishes violence against women, while at the same time taking into account the particular risks and vulnerabilities that an armed conflict creates¹⁴. Similarly, in a number of its decisions the Constitutional Court of Colombia has called attention to the lack of differentiated approaches in national public policies that concern women affected by the conflict, displaced women in particular.¹⁵

12. The Commission acknowledges as advances the laws enacted to prevent and punish violence against women, such as Law 1275 of 2008 and Decree 1290 of 2008, which created a government program of reparations for victims of illegal armed groups. However, the Commission observes that there are still serious obstacles that make it difficult for women to have access to justice. It also finds critical shortcomings in the comprehensive assistance provided to victims and their effective protection from threats and the violence practiced by the actors in the armed conflict.¹⁶ The Commission is disturbed by the lack of resources and the inability of key institutions, such as the Office of the Attorney General of the Nation, to act with due diligence in prosecuting the investigating cases of gender and sexual violence perpetrated by actors in the armed conflict. The Commission has also learned that, despite the considerable advances in the statistical data systems and records, those systems still do not accurately depict the situation of violence against women nationwide and locally, especially the scale of problems like sexual violence perpetrated by actors in the conflict¹⁷.

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Population and the Affirmative Policy for Women Builders of the Peace and Development, among others. The State refers to these policies as "public policies with the goal of eradicating different types of violence against women independent of the space in which it is produced with serious effects at the individual and social level". See, Observations from the State of Colombia to this report, pp. 9-11.

¹⁴ Regarding this statement, the State observes that "Law 1257 of 2008, which provides for actions related to the training, prevention and sanction of different forms of violence and discrimination against women is also a policy of integral attention to women, that seeks to prevent all forms of violence against women, including victims of the violence aggravated and generated by illegal armed groups." Observations from the State of Colombia to this report, p. 11.

¹⁵ Constitutional Court of Colombia, Orders 092 of 2008 and 237 of 2008. Regarding this observation from the IACHR, the State responds that "throughout this report the Commission tends to exclude the Constitutional Court as part of the Colombian state and describes it as remote from the efforts that as a State are implemented from different sectors to solve the problem of violence against women in general and those who have been displaced as a result or not of the violence exacerbated and worsened by illegal armed groups. The sentences of the Constitutional Court of Colombia about the unconstitutional state of things should be interpreted as State efforts to recognize this situation and act accordingly." Observations from the State of Colombia to this report, p. 12.

¹⁶ Regarding this statement from the IACHR, the State notes with concern "that it does not take into consideration the advances in regards to the institutional offer to obtain an adequate access to justice for victims of violence against women through the Family Commissions, Prosecutor's Offices, Justice Houses (64 houses at the national level), Centers for the Integral Attention of Victims of Domestic Violence (CAVIF), Centers for the Integral Attention of Victims of Sexual Violence (CAIVAS), free legal aid, special jurisdiction for the family, among others". The State also reiterates that "specific programs have been designed to eliminate the obstacles and barriers that women face to access justice, truth and reparation, specific programs to offer an integral attention to victims which include education, housing, the generation of income, psychosocial attention, etc., and specific programs for the effective protection of women in relation to the threats posed by the violence exercised by illegal armed actors, all designed in the framework of the policy for the integral attention of the displaced population." Observations from the State of Colombia to this report, p. 12.

¹⁷ Regarding this affirmation, the State observes that the "National Institute for Legal Medicine and Forensic Sciences (hereinafter "INMLCF"), in collaboration with the CINEP is undertaking an investigation to verify whether sexual violence is a common practice of war in Colombia. However, the results will not be obtained until 2010. Additionally, in regards to the INMLCF during the year 2009, it has worked in the revision of the SIVELCE (System of Epidemiology Monitoring of External Wounds) and the design of indicators that increase the awareness of gender-based violence, especially the one faced by displaced women." See, Observations from the State of Colombia to this report, p. 13.

13. As for the public services to address the needs of displaced women, the Commission points to Orders 092 and 237, issued by the Constitutional Court of Colombia in 2008 to protect the human rights of displaced women. However, the Commission has learned that there are problems in designing and implementing the thirteen programs that Colombia's Constitutional Court ordered to protect these women's rights, especially the fact that there are no measures to guarantee the involvement of civil society organizations¹⁸.

14. The Commission also recognizes the State's efforts to promote indigenous and Afro-Colombian women's participation in civic and political affairs. Nevertheless, the Commission continues to observe the homogenous perspective inherent in public policies toward indigenous and Afro-Colombian women, among whom forced displacement and sexual violence take a disproportionately heavy toll. Therefore, it constitutes a challenge the adoption of integral public policies by the State to guarantee the rights of indigenous and Afro-Colombian women access to justice and the safeguard of their territories, when they are victims of acts of violence and dispossession by the actors of the armed conflict¹⁹.

15. Although programs and measures have been taken to protect victims of and witnesses to the violence caused by the armed conflict, the Commission is troubled by the danger and vulnerability to which defenders of women's human rights and civil society organizations that address women's human rights are exposed²⁰. The Commission observes that the domestic laws and State policies devised for such protection do not yet ensure that these human rights defenders and civil society organizations are effectively protected and thus able to carry on their daily mission. As for the truth, justice and reparation proceedings, the Commission acknowledges the creation and implementation of the Victim and Witness Protection Program in 2007 to enable enforcement of the Justice and Peace Law. However, the Commission continues to receive complaints to the effect that this program does not take account of the specific problems that women victims of violence encounter in the armed conflict. It also continues to receive complaints to the effect that in many cases of violence against women investigated in these proceedings, no one is ever punished. Therefore, in this follow-up report, the Commission is underscoring the recommendations it made to the State in the Commission's 2006 Report.

III. MANIFESTATIONS OF VIOLENCE AGAINST WOMEN AGGRAVATED BY THE ARMED CONFLICT

¹⁸ About this paragraph, "the State expresses concern over the fact that the Commission only highlights the challenges that the national government has faced to design the programs established by Order 092 of the Colombia Constitutional Court, and does not recognize the important advances that the government has achieved in the design and implementation of the 13 programs; in the incorporation of a gender-specific focus throughout all of the integral policy of attention of those displaced; and the existence of a directive to offer an integral attention to the displaced population with a gender-specific focus". See, Observations from the State of Colombia to this report, p. 14

¹⁹ Regarding this paragraph, the State of Colombia is grateful to the Commission "for recognizing and promoting the civil and political participation of women, especially indigenous and afrocolombian women, taking into account the great ethnic diversity in our country. However, it is important that the Commission highlights that this participation has specific results, such as the adoption of actions to design policies sensitive from an ethnic perspective, such as: *Specific Plan for the Prevention, Protection and Attention to Afrocolombian communities; the Ethnic Route for the protection of Land; Plans to Safeguard and Life Plans of the Indigenous Peoples*, among others". See, Observations from the State of Colombia to this report, p. 19.

²⁰ Regarding the protection of human rights defenders, the government of Colombia states that "it has been verified with the statistics that have surfaced in the follow-up to the Democratic Security Policy regarding the protection of life and personal integrity and the increase of persons linked with the Protection Program, that more protection guarantees exist for this population, which have decreased the number of victims, specially, female victims". See, Observations from the State of Colombia to this report, p. 15.

16. In its 2006 Report, the Commission identified and examined four main manifestations of violence that especially affect women in the armed conflict: a) physical, psychological and sexual violence to “wound the enemy” with the objective of advancing their control of territories and resources; b) violence intended to forcibly displace women from their territory and thereby drive them from their homes, daily lives, community and family; c) sexual violence involved in the forced recruitment of women, intended to have them render sexual services to certain members of the guerrilla or paramilitary forces; and d) violence intended to constantly subject women to measures of social control imposed by the illegal armed groups in communities or territories under the control of these groups.²¹ The Commission will now examine how these manifestations of violence have evolved during the period covered in this follow-up report and the State’s fulfillment of the recommendations made back in 2006 to prevent, punish and redress these serious violations of women’s rights.

A. Physical, psychological and sexual violence

17. In its 2006 Report, the Commission recommended that the State “adopt the necessary measures to prevent, sanction and eradicate acts of rape, sexual abuse and other forms of violence, torture and inhumane treatment by all combatants in the armed conflict” (*Recommendation 47*). However, the Commission is disturbed by the upsurge in violence against women in Colombia perpetrated by the actors in the armed conflict. The Commission continues to receive complaints of women being murdered by combatants in the armed conflict on both sides: the security forces and illegal armed groups.²² Based on the figures of the *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Sciences] (INMLCF), the Commission observes that from 2007 to 2008, the number of women killed in violence against discredited or fringe groups has increased.²³ The INMLCF studies for 2007 concluded that “with increasing frequency, women in urban and rural areas are being victimized by rival armed groups.”²⁴ Likewise, according to the figures of the INMLCF there has been a significant increase in the percentage of women’s deaths caused by the violence due to the armed conflict between the years 2006 and 2007, since 22% of women died in rural zones because of the violence due to the armed conflict and domestic violence in 2007, as opposed to 7% in 2006.²⁵ Furthermore, the civil society

²¹ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, paragraph 48.

²² *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women’s Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia’s armed conflict, 2003-2007] (2008); Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008.

²³ The records show that in 2007 150 women died as a result of sociopolitical violence; of these 72 were listed as having been killed in military action, 25 in guerrilla action, 30 as a result of an armed encounter; 15 in paramilitary actions; 7 murders were blamed on discredited or fringe groups. The figures for 2008 list 100 women having died as a result of the sociopolitical violence, the principal causes being: military action (43); armed encounter (29); paramilitary actions (2), guerrilla action (10) and discredited or fringe groups (9). See *Instituto de Medicina Legal y Forense* [National Institute of Legal and Forensic Sciences], *Forensis, Data for Life. 2007*, Colombia, p. 81; *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Sciences], *Forensis, Data for Life, 2008*, Colombia, p.33.

²⁴ *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Medicine], *Forensis, Data for Life, 2007*, Colombia p. 84.

²⁵ *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Sciences], *Forensis, Data for Life, Colombia, 2007*, p. 83. Regarding the statistics from this National Institute, the State claims that “regardless of whether the numbers are disaggregated as urban or rural, violence against women in the context of the armed unrest increased during the year 2007, with absolute numbers it increased from 103 to 150 cases, however, this stands in contrast with the reduction of the homicides of women, since in that period there were 26 less.” See, Observations from the State of Colombia to this report, p. 17.

organizations report that since October 2006, the number of women murdered by armed assailants in Colombia has increased; the bodies show evidence of torture.²⁶

18. The surge in violence committed against women in Colombia by those involved in the armed conflict in rural areas of the country during the period under study, is a disturbing trend. The INMLCF's statistical studies on crime in Colombia in 2007 found that "rural women are getting caught up in the fight that illegal agents and actors are waging against military forces: on the one hand, they are victims of the instrumental violence [violence waged to achieve an end], both by the security forces and by outlaw forces; on the other hand, they continue to be victims of domestic violence."²⁷ The Committee on the Elimination of Discrimination against Women has also voiced its concern to the State over the persistently high levels of poverty among women in rural areas and their persistent vulnerability to armed conflict.²⁸

19. Another trend that is troubling to the Commission is the rate of sexual violence in the context of the armed conflict, as girls are the principal victims. According to the figures from the *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Sciences] (INMLCF), in 2008 a total of 21,202 reports were prepared on medical examinations done on victims of sexual crimes in Colombia²⁹, which was 929 cases more than in 2007 (4.3%).³⁰ The INMLCF also reported that in 2008, 87% of the medical examinations were done on minors, mainly girls from 10 to 14 years of age (31.5% of the total).³¹ According to the reports prepared by civil society organizations, "in 2007 and 2008, 126 medical examinations were done on victims of sexual crimes in which the alleged aggressor was an armed actor."³² In most cases, however, no information is available on the circumstances under which the events occurred.³³ From the information supplied by State and non-State agents in the period from 2007 to

²⁶ IACHR, Hearing on Discrimination and violence against women as a result of the armed conflict in Colombia, 133rd session, October 23, 2008.

²⁷ See, *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Sciences], *Forensis, Data for Life, 2007*, Colombia p. 83.

²⁸ Committee on the Elimination of Discrimination against Women: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Colombia*, CEDAW/C/COL/CO.6, 37th session (2007), paragraph 30.

²⁹ With respect to this statistic, the State claims that "the same corresponds to the total number of forensic evaluations, which include the cases of sexual abuse and assault, and not only to the cases within the framework of the armed conflict". See, Observations from the State of Colombia to this report, p. 18.

³⁰ *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Medicine], *Delitos Sexuales en Colombia, 2008* [Sexual Crimes in Colombia, 2008], p.158.

³¹ *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Medicine], *Delitos Sexuales en Colombia. 2008* [Sexual Crimes in Colombia, 2008], p.159.

³² *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia"*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p.5.

³³ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia"*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p. 5. Regarding this statement from the Commission, the State observes that "according to the information available, the National Institute of Legal and Forensic Sciences (hereinafter "INMLCF"), during the period 2007 and 2008, the number of sexual violence cases (regardless of the victim's gender) that has as an aggressor a member of the armed forces, the police or an illegal group is of 115 cases. It is important to clarify that the expression "In most cases, however, no information is available on the circumstances under which the events occurred", does not refer only to cases of presumed sexual violence in the context of the "armed conflict". This is a generalization that should be made regarding all medical examinations done on victims of sexual crimes in Colombia". The State observes as well: "in conformity with the analysis of the INMLCF regarding sexual violence cases in Colombia, most of the sexual violence cases are a domestic problem – of the same or more importance and impact- and not the result of the actions from the military and police forces. Even though they report cases as responsible, they do not represent the main proportion". See, Observations from the State of Colombia to this report, p. 18.

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2009, the Commission observes that the principal perpetrators of the sexual violence are the police, the military forces and the illegal actors in the armed conflict (guerrillas and paramilitary groups).³⁴ From this information, it can also be noted that sexual violence is for the most part committed during the course of military actions, armed clashes and guerrilla actions.

20. Similarly, as the Commission pointed out in its 2006 Report, cases of violence against women in Colombia's armed conflict are underreported, and the official statistics available still do not capture the scale of the problem.³⁵ Based on the information received from civil society organizations and international agencies³⁶, the Commission observes that in the cases of sexual violence the underreporting continues. The *Corporación Sisma Mujer* has documented over 70

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³⁴ *Instituto Nacional de Medicina Legal y Ciencias Forenses* [National Institute of Legal and Forensic Sciences], *Forensis, Data for Life, 2008*, p.160; *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009. *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia" de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on "Violence and Discrimination against Women in the Armed Conflict in Colombia" prepared by the Inter-American Commission on Human Rights], September 18, 2009; *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe "Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia"* [Follow-up on fulfillment of the recommendations contained in the report on "Violence and Discrimination against Women in the Armed Conflict in Colombia"], September 18, 2009. Regarding this observation, the State claims that "the Magazine Forensis 2008 of the INMLCF highlights that during the year 2008, 21.202 medical examinations were practiced on sexual violence victims, being the presumed aggressors: i. Unknown aggressor, 3,652 cases; ii. Neighbors, 1,925 cases; iii. Stepfathers, 1,780 cases; iv. Known without any acquaintance: 1,766 cases; v. Friends, 1,638 cases; Father, 1,537 cases; uncle/aunt 931 cases, etc. On the other hand, the registered cases by the police were 31, by armed forces 16, other guerrillas 8; FARC 6; paramilitaries 5; ELN 1 cases registered". Therefore, "all of the above evidences that it does not correspond to the reality of the problem to target the Colombia armed forces as the main perpetrators of the sexual violence, when the reported cases that involve the public forces represent 0.2% of the registered statistic". See, Observations from the State of Colombia to this report, p. 18.

³⁵ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, paragraph 63. Regarding this statement, the State observes that "regarding the INMLCF it reiterates that during the year 2009 the State has worked in the revision of the SIVELCE (System of Epidemiologic Vigilance of External Wounds) and the design of indicators, to highlight gender-based violence and specially cases of displaced women. The training of experts of the Institute in 2010 will have a special emphasis in the recognition of the gender-based violence and the displacement and its awareness to be addressed from a forensic standpoint." See, Observations from the State of Colombia to this report, p. 20.

³⁶ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe "Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia"* [Follow-up on fulfillment of the recommendations contained in the report on "Violence and Discrimination against Women in the Armed Conflict in Colombia"], September 18, 2009; *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009; Working Group to Monitor Compliance with Constitutional Court Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009); *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women's Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia's armed conflict, 2003-2007]; Mesa de Trabajo Mujer y Conflicto Armado [Working Group on Women and Armed Conflict] and the Center for Justice and International Law (CEJIL), *Follow-up to the Report on Discrimination and Violence against Women in the Armed Conflict in Colombia*, Documents presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd Session, October 23, 2008; *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009; United Nations, Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, Tenth Session, A/HRC/10/032 (2009).

cases of sexual violence committed against women by armed combatants or against displaced women by civilian perpetrators between 2006 and 2009.³⁷ These cases have not been registered in the official statistics and in most of these cases it has been possible to verify that sexual violence “has a terrible impact and irreversibly scars its female victims and their communities.”³⁸ Hence, in the majority of the cases the women have suffered physical and psychological aftereffects of the sexual assaults, such as torture, threats, traumatic experiences (witnessing murders, other rapes, and sexual assaults), as well as unwanted pregnancies. The Office of the United Nations High Commissioner for Human Rights continues to report cases of sexual violence against women and girls in Colombia, attributed to illegal armed groups, such as the case of the sexual assault of a 14-year old girl, who had been recruited by the FARC-EP in Palmira (Valle del Cauca).³⁹

21. The reports of international human rights organizations also recount how sexual violence continues to be used by actors in the conflict as a weapon of war.⁴⁰ According to Amnesty International: “Women and girls are targeted by all parties to the conflict – to sow terror within communities and so make it easier for military control to be imposed; to force whole families to flee their homes and allow land to be appropriated; to wreak revenge on adversaries.”⁴¹ The reports from civil society organizations also point out that all the actors in the armed conflict continue to engage in crimes of sexual, physical and psychological violence, following the patterns that the Commission identified in its 2006 Report.⁴² After reviewing the cases reported between January 2006 and December 2007, the Colombian Commission of Jurists (CCJ) noted that:

³⁷ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia,”* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009, p.4.

³⁸ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia,”* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009, p.4

³⁹ United Nations, Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, Tenth Session, A/HRC/10/O32 (2009), para. 33.

⁴⁰ Report by Oxfam International, *Sexual violence in Colombia, instrument of war*, September 9, 2009, p.2.

⁴¹ Amnesty International, *‘Leave Us in Peace!’ Targeting Civilians in Colombia’s Internal Armed Conflict*, 2008, p. 45.

⁴² *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009; *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women’s Path to Peace], *Follow-up to the Report of the IACHR “Violence and Discrimination against Women in the Armed Conflict in Colombia,”* Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009; Working Group to Monitor Compliance with Constitutional Court Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009); *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women’s Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia’s armed conflict, 2003-2007]; Mesa de Trabajo Mujer y Conflicto Armado [Working Group on Women and Armed Conflict] and the Center for Justice and International Law (CEJIL), *Follow-up to the Report on Discrimination and Violence against Women in the Armed Conflict in Colombia*, Documents presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd Session, October 23, 2008; *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009.

- a) Guerrilla and paramilitary groups committed acts of sexual violence as a strategy for war, and to sow terror in communities in the departments of Putumayo, Antioquia, Cauca and Arauca;
- b) Paramilitary groups committed acts of sexual violence against women leaders of *campesino* organizations and organizations of displaced persons in the department of Santander;
- c) Members of the military and police committed acts of sexual violence as an abuse of authority in the departments of Antioquia and Cauca;
- d) In Valle de Cauca, members of the military and police committed acts of sexual violence as a means of extracting information, while accusing the victim of having romantic relations with a member of the guerrilla movement.
- e) In some cases, the sexual violence was inflicted simultaneously with other human rights violations; for example, the victim was raped and then murdered, or was tortured, kidnapped and forcibly disappeared.⁴³

22. Those reports also recount how paramilitary groups have continued to engage in sexual violence even during the demobilization processes, which means that the perpetrators continue to exercise control over the lives and physical person of the women affected by the armed conflict.⁴⁴ For its part, Colombia's Constitutional Court acknowledged that "sexual violence against women is routine, widespread and systematic practice in Colombia's armed conflict" and that this form of violence "goes virtually completely unpunished."⁴⁵ The Constitutional Court of Colombia underscored the fact that "cases of sexual crimes committed within the context of the armed conflict where the victims are minors represent a disproportionately high percentage of the total number of known victims."⁴⁶ However, based on the information received from state actors and civil society organizations, the Commission has established that between 2006 and 2009, women of all ages, races and ethnic backgrounds continued to be the victims of sexual violence.⁴⁷

⁴³ *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict] and the Center for Justice and International Law (CEJIL), *Follow-up to the Report on Discrimination and Violence against Women in the Armed Conflict in Colombia*, Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p. 8-9. Regarding this observation, the State claims that "it is important to highlight that the INMLCF has implemented trainings and dissemination activities to its expert doctors on the Istanbul Protocol since the year 2007, where emphasis is placed on aspects related to the search for sexual violence and torture signs, independent and related. Additionally, the IMMLCF is also entrusted in training the experts that perform the medico-legal autopsies, which is included in the training plans for 2010". See, Observations from the State of Colombia to this report, p. 20.

⁴⁴ *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women's Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia's armed conflict, 2003-2007] (2008), document presented to the IACHR at Hearing No.16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008; *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe "Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia,"* [Follow-up on fulfillment of the recommendations contained in the report on "Violence and Discrimination against Women in the Armed Conflict in Colombia"], September 18, 2009; Working Group to Monitor Compliance with Constitutional Court Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009).

⁴⁵ Constitutional Court of Colombia, Order 092 of 2008, 1.1.1.

⁴⁶ Constitutional Court of Colombia, Order 092 of 2008, III.1.1.4.

⁴⁷ *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women's Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia's armed conflict, 2003-2007], Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd sesión, October 23, 2008; *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe "Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia,"* September 18, 2009; Working Group to Monitor Compliance

23. The Commission is also disturbed by the physical and sexual violence in certain regions of the country. In its Annual Report, published in 2009, the Office of the High Commissioner for Human Rights wrote that: "In Chocó and Cauca, OHCHR Colombia received reports of cruel and degrading treatment against several women and girls by members of the army, who in some occasions resorted to sexual violence."⁴⁸ The Commission, for its part, has received reports of particularly alarming acts of sexual violence committed against women and girls in Medellín.⁴⁹ Sexual exploitation, harassment and abuse of boys and girls have been reported, especially in communes 6 and 8 and in the San Pedro district; there are also reports of teenage girls being left pregnant or youths being forcibly displaced for refusing to have sexual relations with police in Commune 3 of La Cruz.⁵⁰

24. The Commission therefore urgently reiterates its recommendation to the State to ensure that due diligence is practiced in the investigation, punishment and prevention of sexual violence against women as a result of the armed conflict. (*Recommendation 48*).⁵¹ The State for its part has informed the IACHR that "violence against women as a social phenomenon of a multi-causal nature has prompted much analysis from the legal and sociological point of view in Colombia and all continents, to know the value of women as subjects of human rights in society; to be valued in the same sense by justice officials and the effective treatment to address the problem", and has undertaken a series of actions to prevent that these acts remain in impunity, including the adoption of a "Strategic Plan for the Defense of the Rights of Women", among other actions⁵².

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with Constitutional Court Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009).

⁴⁸ United Nations, Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, Tenth Session, A/HRC/10/032 (2009), para. 19.

⁴⁹ *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women's Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia's armed conflict, 2003-2007], Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p.26.

⁵⁰ *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women's Path to Peace] and *Vamos Mujer. Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia's armed conflict, 2003-2007], Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, pp. 28-29.

⁵¹ Regarding this statement, the State highlights that "the INMLCF, in the training workshops related to violence against women, offered to the forensic doctors at the institute, has trained them on due diligence. It will also insist regarding this aspect during the trainings planned at the national level for 2010". See, Observations from the State of Colombia to this report, p. 21.

⁵² See, Observations from the State of Colombia to this report, p. 19. The State also informs that "the most prevalent form of violence is the one that occurs in the domestic sphere, intimate-partner violence, a tendency that has persisted for the last 7 years despite the increase in the population and the increase in state services; the same occurs with the sexual violence perpetrated within the family and in other spaces, in which 84% of the victims are women. From this, it can be concluded that violence against women is decreasing, but the complaints are increasing, due to more knowledge among women of their rights and major trust in the institutions, the approval of laws that support policies against violence, the increase in sanctions, and the organization of inter-institutional tables to eradicate violence against women in nine departments, among others. See, Observations from the State of Colombia to this report, p. 20.

25. Similarly, the Commission has received notice of threats and others forms of physical, sexual and psychological violence against homosexual persons committed by the actors of the armed conflict. The Commission has known through the organization Colombia Diversa of the case of a couple of lesbian women in Tolima who, since 2006, have suffered threats against their lives and damages in their property by the paramilitary group AUC because of their sexual orientation.⁵³ The Commission is disturbed by these facts and urges the State to act with due diligence to prevent, sanction and eradicate violence and discrimination against women affected by the armed conflict (*Recommendation 2*) committed on the grounds of their sexual orientation.

B. Forced displacement, the humanitarian crisis and female heads of household

26. The Commission has learned that since October 2006, forced displacement caused by the armed conflict continues to take a heavy toll on women, who still represent approximately half the displaced population.⁵⁴ State and non-State agencies alike have expressed concern over the increase in forced displacements in 2007 and 2008 and over the disproportionately heavy impact on women.⁵⁵ According to the Single Registry of Displaced Persons (RUPD), from 2006 to 2009 the number of displaced women was higher than the number of displaced men: at 648,295 women and 610,213 men.⁵⁶

27. The Commission is troubled by the fact that a large percentage of households that have been forcibly displaced are still headed by women. According to the Single Registry of Displaced Persons (RUPD), as of August 31, 2009, the percentage of households registered as displaced and headed by women has gotten even higher.⁵⁷ For its part, the Office of the United

⁵³ Colombia Diversa, *Situation of human rights of lesbian, gay, bisexual and transgenerists in Colombia*, October 23, 2006, received in the Inter-American Commission on November 5, 2006.

⁵⁴ The Commission to Monitor Public Policy on Forced Displacement (CODHES, for its initials in Spanish) points out that “of the total displaced population listed in the Single Registry of Displaced Persons (RUPD), 54% are women and 46% are men,” cited by the Working Group on Women and Armed Conflict and the Center for Justice and International Law (CEJIL), *Follow-up to the Report on Discrimination and Violence against Women in the Armed Conflict in Colombia*, Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p. 4. The National Survey for Verification of the Rights of Displaced Persons, which CODHES conducted in 2008, found that women account for 52.4% of the total number of displaced persons. See Commission to Monitor Public Policy on Forced Displacement (CODHES), Seventh report to verify observance of the rights of displaced persons, October 30, 2008, available [in Spanish] at: <http://www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52>, consulted on September 29, 2009.

Regarding the number of displaced women, the State claims that “it is important to clarify that the larger number of displaced women as opposed to the number of men is due, among other reasons, because the main fatal victims of violence perpetrated by illegal armed groups, as well as from other delinquency groups, are men”. See, Observations from the State of Colombia to this report, p. 21.

⁵⁵ *Ombudsman’s Office, Promoción y Monitoreo de los Derechos Sexuales y Reproductivos de Mujeres Víctimas de Desplazamiento Forzado con Énfasis en Violencias Intrafamiliar y Sexual [Promotion and Monitoring of Sexual and Reproductive Rights of Women Victims of Forced Displacement, with Emphasis on Domestic and Sexual Violence]*, Bogotá, Colombia, 2008; Constitutional Court, Order 092 of 2008, April 14, 2008; UNHCR, *Global Report 2007*, Colombia Situation, available at <http://www.unhcr.org/484923382.html>, consulted on September 14, 2009; Amnesty International, *Everything Left Behind: Internal Displacement in Colombia*, AMR 23/015/2009, June 2009; United Nations, Human Rights Council, *Annual Report of the Office of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*. Tenth Session, A/HRC/10/032 (2009), para. 84.

⁵⁶ *Acción Social*, Single Registry of Displaced Persons, Tabulated Nationwide, available [in Spanish] at <http://www.accionsocial.gov.co/Estadisticas/publicacion%20agosto%2031%20%20de%202009.htm>, consulted on September 29, 2009.

⁵⁷ In 2009, 29608 women and 25455 declared themselves to be heads of displaced households. *Acción Social*, Single Registry of Displaced Persons, Tabulated Nationwide, available [in Spanish] at
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Nations High Commissioner for Refugees (UNHCR) observes that “More than 200,000 newly displaced people were registered by the Government in 2007 alone. Rural communities, ethnic minorities, households headed by women, older persons and youth have been hardest hit.”⁵⁸ The Committee on the Elimination of Discrimination against Women has also told the State of its concern with regard to the situation of displaced women, “especially female heads of household [who] continue to be disadvantaged and vulnerable in regard to access to health, education, social services, employment and other economic opportunities, as well as at risk of all forms of violence.”⁵⁹

28. As the Commission indicated in the 2006 Report, the Constitutional Court of Colombia has delivered a number of landmark rulings on the protection of displaced persons in Colombia, including women.⁶⁰ This trend continued into the period from 2007 to 2009 with the Court’s issuance of judgment C-278 of 2007, with respect to a demand filed by two citizens challenging the constitutionality of Law 387 of 1997 regarding the prevention and provision of services of displaced enforcement, as well as follow-up orders of Judgment T-025 of 2004: Orders 092, 237 and 251 in 2008 and Orders 004, 005 and 006 in 2009.⁶¹ Following up on Judgment T-025 of 2004,⁶² in 2008 the Constitutional Court of Colombia issued Order 092 to protect the basic rights of women displaced by the armed conflict. In that ruling, the Constitutional Court held that forced displacement takes a disproportionate toll on women because of the severe gender risks cited as causes of displacement.⁶³

29. This order of the Constitutional Court is of paramount importance in preventing the disproportionate impact that forced displacement has on women and in providing services to and protecting women who are victims of forced displacement. On the first point, the Court identified ten risks that women face as a result of the armed conflict, salient among them is the risk of sexual violence because that form of violence is so widespread and severe.⁶⁴ The Constitutional Court

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<http://www.accionsocial.gov.co/Estadisticas/publicacion%20agosto%2031%20%20de%202009.htm>, consulted on September 29, 2009.

⁵⁸ UNHCR, *Global Report 2007, Colombia Situation*, p. 453, available at <http://www.unhcr.org/484923382.html>, consulted on September 14, 2009.

⁵⁹ Committee on the Elimination of Discrimination against Women: *Colombia, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Colombia*. CEDAW/C/COL/CO.6, 37th session (2007), para. 12.

⁶⁰ See, Constitutional Court of Colombia, Judgment T-025 of 2004.

⁶¹ In those rulings, the Constitutional Court of Colombia underscored the need to have a state policy to prevent and deal with forced displacement and to introduce in public policies a differential approach that guarantees the basic rights of women, children, adolescents, the disabled, and indigenous and Afro-descendent persons.

⁶² The ruling identified the minimum protection that the State must provide to the displaced, which included a number of rights that are important for women, such as: the right to be registered, the right to special protection, the right to immediate assistance for a period of 3 months, the right to have documents to show they are registered with health institutions, a risk that becomes even more serious when the head of household is female; (iv) the risks posed by contact with or having family members or acquaintances that have contacts with members of the illegal armed groups operating in the country or with members of the security forces; (v) the risks that come with membership in women’s organizations or leadership and promotion of human rights in areas affected by the armed conflict; (vi) the risk of persecution and murder as part of the coercive control strategies employed by illegal armed groups; (vii) the risk that their economic provider will be murdered or disappeared, or that their family group and networks of material and social support will be broken up; (viii) the

⁶³ Constitutional Court, Order 092 of 2008, Conclusion Paragraph One.

⁶⁴ The risks the Court identified were as follows: (i) the risk of becoming the victim of sexual violence perpetrated by actors in the armed conflict; (ii) the risk of labor exploitation and enslavement to perform domestic work the and roles traditionally assigned to women in a patriarchal society;(iii) the risk that their sons and daughters will be forcibly recruited by armed actors, a risk that becomes even more serious when the head of household is female; (iv) the risks posed by contact with or having family members or acquaintances that have contacts with members of the illegal armed groups operating in the country or with members of the security forces; (v) the risks that come with membership in women’s organizations or leadership and promotion of human rights in areas affected by the armed conflict; (vi) the risk of persecution and murder as part of the coercive control strategies employed by illegal armed groups; (vii) the risk that their economic provider will be murdered or disappeared, or that their family group and networks of material and social support will be broken up; (viii) the

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identified 18 “gender facets” of forced displacement that take a heavier toll on women. These facets include patterns of violence and discrimination, as well as specific problems unique to displaced women because forced displacement makes them all the more vulnerable.⁶⁵ The Constitutional Court held that displaced women were at greater risk of being exposed to physical and sexual violence. According to the figures cited in the order, “[o]n the question of physical violence, 44% of displaced women who are married or have a partner have experienced some type of physical violence at the hands of their husband or partner, a figure that is higher than the national average of 39%.”⁶⁶ Furthermore, 8.1% of displaced women reported having been raped by persons other than their husband or partner; 27% of these women were forced to have sexual relations with strangers.⁶⁷

30. The Court therefore held that the authorities had a duty to prevent the disproportionate impact that forced displacement has on women and to guarantee the fundamental rights of displaced women.⁶⁸ It held that displaced women were entitled to the constitutional presumptions of heightened vulnerability and automatic extension of emergency humanitarian assistance. The presumption of heightened vulnerability means that officials with the National Displaced Persons Assistance System [*Sistema Nacional de Atención a la Población Desplazada* (SNAIPD)] are to assume that displaced women are in a vulnerable and defenseless predicament. These officials are to undertake, on their own initiative, an assessment to determine whether a displaced woman’s human rights have been violated; they are not to make unnecessary administrative or evidentiary demands of displaced women and are to provide, at their own initiative, the guidance and services needed so that these displaced women have access to the protection programs created on their behalf.⁶⁹ The presumption involving the automatic extension of emergency humanitarian relief “means that the relief must be comprehensive and must be provided in full and on a sustained basis, without the need to schedule or conduct verification visits; the presumption is that the heightened vulnerability of these persons justifies the extension until such time as the authorities verify that each woman, taken individually, has achieved full self-sufficiency and lives in decent conditions. It is then that the extension can be suspended, based on a reasoned decision.”⁷⁰

31. The Constitutional Court also ordered that 13 programs be devised and implemented to protect the rights of displaced women. Those programs are described in Chapter V of this report. Finally, the Constitutional Court issued individual orders of protection for 600 displaced women in

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risk of being more easily dispossessed of their land and assets by illegal armed groups, given their historical position vis-à-vis property, especially rural land holdings; (ix) the risks that the heightened discrimination against indigenous and Afro-descendent women pose, and (x) the risk that one’s partner or economic provider will be lost or leave during the displacement process. See Constitutional Court, Order 092 of 2008.

⁶⁵ In the first category, the Court singled out the heightened risks that displaced women will become victims of structural patterns of violence such as: sexual violence; domestic violence; a role reversal in the family dynamic; more serious obstacles in gaining access to the educational and economic systems and job and business opportunities; violence against women leaders, and women’s lack of knowledge of their rights as victims of the conflict, to truth, justice and reparations. In the second category the Court listed displaced women’s special need for psychosocial assistance and guidance; the specific problems that women have with the displaced persons registration system and getting assistance services; the fact that personnel are not trained to deal with displaced women’s specific needs and the reticence on the part of the relief services to give women humanitarian assistance. Constitutional Court of Colombia, Order 092 of 2008.

⁶⁶ Constitutional Court of Colombia, Order 092 of 2008, IV.B.1.2.

⁶⁷ Constitutional Court of Colombia, Order 092 of 2008, IV.B.1.1.

⁶⁸ Constitutional Court of Colombia, Order 092 of 2008.

⁶⁹ Constitutional Court of Colombia, Order 092 of 2008, V. C.

⁷⁰ Constitutional Court of Colombia, Order 092 of 2008, V. C.

the country and referred 183 cases of sexual crimes committed against women within the context of the armed conflict to the Attorney General's Office for immediate investigation.⁷¹ While this decision represented meaningful progress in the protection of displaced women's human rights, the Commission has learned of various problems with its implementation, which are described *infra* in Chapter V of this report which concerns the State's response to the armed conflict's impact on Colombian women.

32. Furthermore, in its 2006 Report the Commission said that the battle being waged by the combatants in the armed conflict to control or keep control over territory was one of the causes of women's forced displacement.⁷² The Commission observes that the armed conflict continues to exacerbate the discrimination that Colombian women have historically endured in terms of property ownership. For example, if the man of the family dies or disappears, his wife or partner faces an increased risk of being dispossessed of her land. According to organizations like *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], one of the main problems is that as a rule women do not have information regarding the borders of their property lie, do not have property titles or are unable to produce any other paperwork to support their property rights. They thus have no proof of ownership of those lands. Some women are uninformed about what the land and its products can mean in economic terms and thus face a greater threat of "losing their land when the various actors –armed and otherwise– try to create situations that will cause the women to be stripped of their land or driven off."⁷³ The Commission has no knowledge of any measures taken that would represent a satisfactory State response to this problem.

C. Forced and voluntary recruitment of women and girls and the imposition of rules of conduct

33. Based on the information supplied by civil society organizations, the Commission observes that the actors in the armed conflict continue to engage in recruitment practices and impose rules of social conduct that violate women's rights, but with disturbing twists⁷⁴. It has been reported that paramilitary groups are still exerting power over the population.⁷⁵ Specifically, in the territories where they live, the demobilized elements ("desmovilizados") have become the "first instance" for conflict resolution; these include disputes among "family members, neighbors and communities, and even disputes that come under the jurisdiction of the police, prosecutors and the courts."⁷⁶ Similarly, from the information received, the Commission notes that the acts of violence

⁷¹ Constitutional Court of Colombia, Order 092 of 2008, p. 1-2.

⁷² IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 72.

⁷³ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, pp.8-9.

⁷⁴ Regarding this statement, the State claims that: "the actions described are committed by emerging bands of previous self-defense groups [*bandas emergentes de las antiguas autodefensas*], that are persecuted by the military, and are not currently considered paramilitary groups since they were demobilized and their heads are jailed and prosecuted. See, Observations from the State of Colombia to this report, p. 22.

⁷⁵ See United Nations, *Universal Periodic Review, Report on Colombia*, September 1, 2008, available [in Spanish] at < http://www.semana.com/documents/Doc-1777_2008129.pdf >, consulted on September 11, 2009.

⁷⁶ *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women's Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia's armed conflict, 2003-2007], Document presented to the IACHR at Hearing No. No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p.7.

committed by demobilized elements against women continue. The reports of civil society organizations establish that these acts take the form of “threats, forced displacement, rapes of women and girls, use and recruitment of children for criminal activities, sale, eviction and robbery of homes; imposition of rules of conduct and control of public areas by demanding protection money [*vacunas*] from street vendors and persons who engage in prostitution.”⁷⁷

34. From the information gathered by Colombian civil society organizations in 2008 through observation missions and conversations with displaced women, the Commission was able to see that the process of demobilizing the paramilitary groups continues to exact a particularly heavy toll on women.⁷⁸ In addition to the various manifestations of violence against women which the Commission identified in its 2006 Report, civil society reports highlight new recruitment methods that these agents use to seduce young women, bring them into their organizations and get information from them⁷⁹. Among these new recruitment “voluntary” methods are: offers of employment in surveillance services, on good terms; gifts such as articles that young people aspire to have (like brand-name clothing), and the chance to “fall in love with them of their own volition”.⁸⁰

35. According to reports, new practices are being used to exercise sexual and social control of women, such as the “daily cut” charged by the paramilitary groups, which exploit women’s poverty and alienation so as to control their bodies and lives.⁸¹ According to the women’s testimony the “daily cut” is charged by the demobilized paramilitary who, taking advantage of women’s poverty, lend large sums of money in camps for displaced persons and then charge a daily percentage. If the women are unable to repay their debt, they are required to hand over their daughters in exchange for the payment; women have even been murdered for refusing to hand over their daughters.⁸² Because of these practices, women are forced to move elsewhere; the family is broken up; women become the head of household and have to protect themselves and their families. The Commission has also learned that in some regions of the country, paramilitary groups continue to murder women who work in prostitution because they consider them to be “undesirables”. According to Amnesty International, “[a]t least five women sex workers were killed, reportedly by paramilitaries, in Putumayo Department in 2007.”⁸³

36. The civil society organizations also told the Commission that boys, girls and youth are being impressed, against their will, into joining armed groups. This type of impressment is being practiced by new paramilitary groups that were not party to the negotiations with the Government,

⁷⁷ *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women’s Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia’s armed conflict, 2003-2007], Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p. 8.

⁷⁸ *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 141.

⁷⁹ The State claims that it has “a program to prevent the illegal recruitment of minor and adolescent children and that other forms of recruitment are typified as a crime and the perpetrators are being pursued”. See, Observations from the State of Colombia to this report, p. 22.

⁸⁰ *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 160.

⁸¹ *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 160.

⁸² *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 162.

⁸³ Amnesty International, ‘Leave Us in Peace!’ Targeting Civilians in Colombia’s Internal Armed Conflict, 2008, p. 47.

by groups of paramilitaries who have taken up arms again, and by guerrillas.⁸⁴ The Office of the United Nations High Commissioner for Human Rights in Colombia wrote in its latest report that illegal actors in the armed conflict continue to recruit children and commit crimes of sexual violence against women and girls.⁸⁵ Amnesty International has reported that paramilitary groups, “together with criminal gangs, have abducted and raped women and girls in various parts of Colombia [and] subsequently forced these women and girls to work as prostitutes.”⁸⁶ The Commission has no knowledge of effective measures implemented by the State to prevent, investigate and punish these acts of violence against Colombian women, adolescents and girls. Hence, the Commission is reasserting the recommendations it made to the State to the effect that it adopt an integral State policy to address the specific impact of the armed conflict on women and that it implement and strengthen measures to comply with the duty to act with due diligence to prevent, sanction and eradicate these acts of violence against women (*Recommendations 1 and 2*).

37. To confront the problem of trafficking against persons, the State highlights the implementation of the National Strategy to Confront Trafficking against Persons (Law 985 of 2005 – Act 4786 of 2008), through which the State implements a series of “measures of prevention; protection and support to victims; the strengthening of the judicial investigation and police action; and of international cooperation.”⁸⁷

IV. MULTIPLE DISCRIMINATION AGAINST AFRO-COLOMBIAN AND INDIGENOUS WOMEN

38. In its 2006 Report, the Commission found that the situation of indigenous and Afro-Colombian women was particularly dire because of the multi-faceted discrimination that they experience by reason of their sex, race, ethnic background and economic condition. This situation is becoming all the worse amid the armed conflict.⁸⁸ The Commission is troubled by the fact that at the present time, indigenous and Afro-Colombian women continue to be particularly prone to acts of violence and discrimination in the context of Colombia’s armed conflict. Here, Oxfam International has written that: “Within sectors of the population, Afro-Colombian and indigenous women are most vulnerable to sexual violence given the triple discrimination that they suffer due to their gender, their ethnicity and the poverty in which they live.”⁸⁹

39. The international agencies that are part of the United Nations system have also expressed concern over the particularly serious situation of indigenous and Afro-Colombian women. On his visit to Colombia in July 2009, the United Nations Special Rapporteur on Indigenous Peoples said that he was concerned over the situation of indigenous women affected by the armed conflict and had urged the Government to strengthen its assistance services programs to more effectively answer these needs.⁹⁰

⁸⁴ IACHR, Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, 133rd session, October 23, 2008.

⁸⁵ United Nations, Human Rights Council, Annual Report of the Office of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, Tenth Session, A/HRC/10/032 (2009), p.2.

⁸⁶ Amnesty International, ‘Leave Us in Peace!’ Targeting Civilians in Colombia’s Internal Armed Conflict, 2008, p. 63.

⁸⁷ See, Observations from the State of Colombia to this report, p. 23.

⁸⁸ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, paragraph 102.

⁸⁹ Report by Oxfam International, *Sexual violence in Colombia, instrument of war*, Bogotá, Colombia, 2008, p.3.

⁹⁰ See, United Nations Special Rapporteur on indigenous peoples wraps up visit to Colombia [*El Relator Especial de Naciones Unidas sobre pueblos indígenas concluye visita a Colombia*], July 27, 2009, available (in Spanish) at [Continued...](#)

40. The Commission observes that the armed conflict continues to compound the multi-faceted discrimination that indigenous women suffer –the discrimination suffered because they are indigenous and the discrimination they suffer because they are women-. A report prepared by the National Indigenous Organization of Colombia (ONIC) on the human rights of indigenous women states the following: “The truth is that indigenous women in Colombia are doubly impacted by the conflict and by the systematic violation of human rights; being at once both indigenous and female means that the effects and use of women in the war inflicts differentiated harm upon their personal life and their community life.”⁹¹ According to ONIC’s figures, between 2002 and 2009, more than 1,000 indigenous people were murdered. The peoples most affected were the Nasa, Wayúu, Kankuamo, Awá and Embera Chamí. Roughly 15% (151 victims) were women and children.⁹² It was also reported that during that same period, 187 indigenous women were the victims of sexual violence and torture.⁹³

41. The Commission is disturbed by the fact that the sexual violence in the context of the armed conflict is taking a particularly heavy toll on indigenous women. As the Constitutional Court of Colombia wrote, the impact of the sexual violence deriving from the armed conflict is compounded in the case of indigenous women.⁹⁴ In Order 004 of 2009, which the Constitutional Court issued to protect the rights of indigenous persons and peoples displaced by the armed conflict, it observed that forced prostitution and sexual violence of indigenous women and teens are tactics of war used mainly by illegal armed groups and that in many of the cases of sexual violence that the Court reported to the competent authorities, the victims were indigenous women, girls, and teenage girls nationwide.⁹⁵ According to the information received from the civil society organizations, “by 2006 the number of cases of sexual abuse of indigenous girls by men belonging to the *Batallones de Alta Montaña*, the Counterinsurgency Police and other military and police units had increased.”⁹⁶ The Commission is also disturbed by the fact the sexual violence being perpetrated against indigenous women by actors in the armed conflict continues to be “an unspoken

...continuation

<http://www.hchr.org.co/documentoseinformes/documentos/relatoresespeciales/2009/relatores.php3?cat=80>, consulted on September 30, 2009.

⁹¹ *Organización Indígena de Colombia* [National Indigenous Organization of Colombia] (ONIC), *Informe sobre Derechos Humanos de las Mujeres Indígenas presentado al Relator Especial de Naciones Unidas sobre Pueblos Indígenas* [Report on the Human Rights of Indigenous Women, presented to the United Nations Special Rapporteur on Indigenous Peoples], July 2009, available (in Spanish) at: http://www.colombiassh.org/reh/spip.php?article471&id_document=543#documents_portfolio, consulted on September 30, 2009.

⁹² *Organización Indígena de Colombia* (ONIC) [National Indigenous Organization of Colombia], *Elementos sobre la situación de derechos civiles y políticos de los pueblos indígenas en Colombia, 2009* [Information on the situation of the civil and political rights of indigenous peoples in Colombia, 2009] available [in Spanish] at: < <http://www.verdadabierta.com/web3/justicia-y-paz/1457-violencia-contra-indigenas-ha-empeorado-relator-de-la-onu> > consulted on September 30, 2009.

⁹³ *Organización Indígena de Colombia* (ONIC) [National Indigenous Organization of Colombia], *Elementos sobre la situación de derechos civiles y políticos de los pueblos indígenas en Colombia, 2009* [Information on the situation of the civil and political rights of indigenous peoples in Colombia, 2009], available [in Spanish] available at: < <http://www.verdadabierta.com/web3/justicia-y-paz/1457-violencia-contra-indigenas-ha-empeorado-relator-de-la-onu> > consulted on September 30, 2009.

⁹⁴ Constitutional Court of Colombia, Order 092 of 2008, III.1.1.3.

⁹⁵ Constitutional Court of Colombia, Order 004 of 2009,

⁹⁶ *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe “Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia” de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on “Violence and Discrimination against Women in the Armed Conflict in Colombia” prepared by the Inter-American Commission on Human Rights], September 18, 2009.

truth”, as the women do not report the crimes for fear of being stigmatized and rejected in their own communities.⁹⁷ Therefore, the Commission is again recommending to the State that it devise and adopt policies in the area of justice that take into account the situation of indigenous women (*Recommendation 37*).

42. The Commission also notes that since 2006, indigenous and Afro-Colombian women have been particularly hard hit by forced displacement. The Committee on the Elimination of Racial Discrimination recently expressed its concern to the State that “women and children of Afro-Colombian and indigenous communities are particularly vulnerable among the displaced population and lack effective and differentiated assistance and protection.”⁹⁸ Similarly, in Order 092 of 2008, the Constitutional Court of Colombia wrote that “indigenous and Afro-descendent women are, among displaced women, that segment of the population that has been hardest hit by the crimes, the injustices and the inequities inherent in the armed violence and forced displacement.”⁹⁹ The Commission would therefore underscore its recommendation that the State “design and adopt culturally relevant policies, with the participation of indigenous and Afro-Colombian women, to protect displaced women from these groups” (*Recommendation 41*).

43. As the Commission wrote in its 2006 Report, forced displacement is one of the worst effects that the conflict has on Afro-Colombian and indigenous women because of the relationship that they have with their land and their communities.¹⁰⁰ The Commission observes that Afro-Colombian and indigenous women continue to be particularly hard hit by forced displacement, as they are dispossessed of their ancestral lands and separated from their communities. The reports from civil society organizations indicate that when the actors in the armed conflict displace indigenous women, “the impact the latter suffer is disproportionately severe [...]; they are exposed to sexual abuse and exploitation, are reduced to begging, and are subjected to exploitation in jobs such as domestic work and the like, not to speak of the subhuman conditions in which they live in the slums surrounding the cities.”¹⁰¹ The Commission is therefore reminding the State of the recommendation it made to the effect that the State must respect and protect effectively the ancestral lands of its peoples (*Recommendation 44*).

V. THE RESPONSE OF THE COLOMBIAN STATE TO THE IMPACT OF THE ARMED CONFLICT ON WOMEN

⁹⁷Organización Indígena de Colombia (ONIC) [National Indigenous Organization of Colombia], *Informe sobre Derechos Humanos de las Mujeres Indígenas presentado al Relator Especial de Naciones Unidas sobre Pueblos Indígenas [Report on the Human Rights of Indigenous Women, presented to the United Nations Special Rapporteur on Indigenous Peoples]*, July 2009, available [in Spanish] at: http://www.colombiassh.org/reh/spip.php?article471&id_document=543#documents_portfolio, consulted on September 30, 2009.

⁹⁸ Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention, concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, CERD/C/COL./CO/14, August 28, 2009, para. 16.

⁹⁹ Constitutional Court of Colombia, Order 092 of 2008, III.1.9.

¹⁰⁰ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 115.

¹⁰¹ Organización Indígena de Colombia (ONIC) [National Indigenous Organization of Colombia], *Informe sobre Derechos Humanos de las Mujeres Indígenas presentado al Relator Especial de Naciones Unidas sobre Pueblos Indígenas [Report on the Human Rights of Indigenous Women, presented to the United Nations Special Rapporteur on Indigenous Peoples]*, July 2009, available [in Spanish] at: http://www.colombiassh.org/reh/spip.php?article471&id_document=543#documents_portfolio, consulted on September 30, 2009.

A. Advances in the development of a legislative and public policy framework, and State programs to protect the rights of women

44. In the 2006 Report the Commission acknowledged the State's efforts to adopt legislation and public policy to protect the rights of women affected by the armed conflict.¹⁰² However, it also expressed concern at the lack of a comprehensive State policy addressing the specific impact that the armed conflict has on women's human rights; the State's homogenous perspective on women as a target group of public policy and as victims of the armed conflict; and the failure to legitimize and protect the work that the defenders of women's rights do.

45. The Commission therefore recommended to the Colombian State that it adopt a series of measures geared toward better enforcement of existing laws and improved implementation of existing public policies designed to protect women from acts of violence and discrimination in the context of the armed conflict. These measures include allocating sufficient resources so that these laws and public policies can be enforced and implemented nationwide and locally; undertaking initiatives to disseminate women's human rights; building up institutional capacity with a view to training public servants in all sectors; instituting mechanisms to enable programs to coordinate; creating inter-institutional work teams; and developing indicators and monitoring systems to mitigate the armed conflict's impact on women (*Recommendations 6-19*).

46. One step in the right direction occurred on January 23, 2007 when, in furtherance of the Commission's Recommendations (*Recommendation 19*), Colombia ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAR). It entered into force for Colombia that same day. The Commission also recognizes the efforts the State has made to enact laws and public policies aimed at protecting and ensuring the human rights of the women affected by the armed conflict. In the period from October 2006 to February 2009, the following laws were enacted to protect women's right to live free of violence and discrimination:¹⁰³

- Law 1142 of 2007, which partially amends the Penal Code (Law 599 of 2000) and the Code of Criminal Procedure (Law 600 and 906 of 2000). The litigious nature of the crime of domestic violence was eliminated to enable investigations to move forward at the State's own initiative, without a complaint from a civil party being required.
- Law 1142 of 2007, which creates the inter-institutional advisory committee for the prevention of sexual violence and for comprehensive assistance to sexually abused boys, girls, and adolescents.
- Law 1232 of 2008, which amends Law 82 of 1993 on Female Heads of Household and establishes the State's obligation to provide special protection and take proactive measures to enable female heads of household to have access to education, housing, business development and development of skills to earn income.
- Law 1257 of 2008 which orders measures to raise awareness of, prevent and punish forms of violence and discrimination against women, amends the penal code and the code of criminal procedure, law 294 of 1996 and other provisions.
- Decree 1290 of 2008, which creates a government program of reparations for the victims of illegal armed groups.

¹⁰² IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 150 and 151.

¹⁰³ The State's Second Report (2009) p.18.

47. These laws substantially enhance Colombia's system of laws that recognize and protect the individual's human rights in the face of acts of violence and discrimination. The Commission would remind the State that under Law 1232 of 2008¹⁰⁴ the national government, the departments, the districts and the municipalities all have a duty to afford preferential treatment to female heads of household who have been forcibly displaced. However, the Commission is troubled by the fact that most of these laws contain no specific provisions to guarantee the rights of women affected by the armed conflict, and is therefore reminding the State of the IACHR's previous recommendation that it adopt and amend existing legislation, pursuant to the recommendations of national and international bodies and with a view to protecting women in the context of the armed conflict (*Recommendation 8*).¹⁰⁵

48. Law 1257 of 2008 establishes measures to raise awareness of and prevent and protect the rights of women victims of the violence caused by the armed conflict. These measures include the State's obligation to heighten the profile of State institutions in those geographic areas affected by the armed conflict; to develop programs in prevention, protection and assistance for displaced women; and to take measures to investigate and punish acts of violence that actors in the armed conflict commit against women and girls.¹⁰⁶ Nevertheless, the Commission has received reports that public officials know little about the appropriation and application of this law and that its governing regulations [implementing legislation] are not yet ready.¹⁰⁷ According to reports received from the *Corporación Casa de la Mujer* and the *Ruta Pacífica de las Mujeres*, most of the country's departments have not been able to answer the organizations' questions about the measures that Law 1257 mandates to raise awareness.¹⁰⁸ Contrary to the new legislation, the issue of violence against women has not been added (or has been inadequately addressed) in the agendas of the Social Policy Councils and the Development Plans of the territorial entities, as the

¹⁰⁴ Official Gazette of Colombia, No. 47.053, Law 1232 of 2008 which amends Law 82 of 1993, the Female Head of Household, and enacts other provisions, July 17, 2008, Article 15.

¹⁰⁵ Regarding this statement, the State clarifies that "all the actions and programs of the national government are oriented towards promoting the respect and guarantee of the human rights of all Colombian women, including those that are part and victims of the armed confrontation. It is pertinent to remind the Commission that the issues of forced displacement, forced and voluntary recruitment, reparations and access to justice, are all themes related to the armed confrontation, in response to which the State has adopted measures and policies of action to favor the rights of women." See, Observations from the State of Colombia to this report, p. 29.

¹⁰⁶ See Law 1257 of 2008, Article 9.6, 9.7 and 9.8 (December 4, 2008).

¹⁰⁷ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia"*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p.11-12. Regarding the knowledge of public officials of Law 1257 of 2008, the State clarifies that in the sphere of regulation, it has implemented a series of actions, among others: the organization of roundtable meetings with the purpose of "articulating actions and reviewing the dispositions to regulate" of such law; the *Consejería Presidencial para la Equidad de la Mujer* (Counselling Office of the Presidency for Women's Equity) has promoted its dissemination and analysis with public officers of different entities in charge of the prevention, attention and sanction of gender-based violence in several cities of Colombia "through more than 80 regional events between December 2008 and December 2009"; and the Ministry of Interior and Justice "promotes literacy journeys for state officials in the Houses of Justice, the Family Commissions and other justice institutions involved in the attention of women victims of violence." The State also highlights that article 9 of the Law 1257 of 2008, contains clear dispositions so that the government adopts awareness-raising and protection measures regarding women victims of violence by armed groups and in a situation of displacement". See, Observations from the State of Colombia to this report, p. 24-25.

¹⁰⁸ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia"*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p.11-12.

new law requires.¹⁰⁹ The Commission would therefore remind the State of its recommendation that it adequately enforce the national legislation designed to protect women from acts of violence (*Recommendation 6*).

49. Regarding Law 1257 of 2008, the State indicates that it entered into force on December of 2008 and recognizes the need to regulate some articles for their “full application”, and for that “it is adopting the necessary measures to advance an inter-institutional process coordinated and responsible to create a space for the advancement in this matter.”¹¹⁰

50. As for national policies, the Office of the Presidential Advisor for Women’s Equality (CPEM) is implementing a number of plans and programs to protect women’s right to live free of discrimination and violence. Figuring prominently among these is the Strategic Plan for Defending Women’s Rights in the Justice System, which started in August 2008 and features a group of projects for displaced, rural and marginalized women.¹¹¹ Another important plan is the “Comprehensive Strategy for Preventing and Eradicating All Forms of Gender Violence in Colombia and for Providing Assistance in Cases of Gender Violence,” which features measures to prevent violence against women and to assist women victims of violence. The Strategy also implements a comprehensive model of treatment and assistance to women victims of violence in four territories of the country.¹¹² The Commission is also pleased that an agreement has been signed for a Project to Prevent Domestic Violence in Families with Demobilized Persons. The project’s objectives are to prevent and address domestic violence in demobilized families or families whose members include persons who belonged to demobilized armed groups.¹¹³ The State as well presents information on the creation of Inter-institutional Department Roundtables to Eradicate Violence against Women which will “allow efforts for the articulation, coordination and cooperation between the competent authorities on the subject, with the goal of achieving a differential integral attention, accessible and of quality to women victims of violence and to impact the regional systems.”¹¹⁴

51. These efforts notwithstanding, the Commission is concerned that the programs and projects that the Office of the Presidential Advisor for Women’s Equality is implementing in connection with gender violence and justice do not feature specific measures to address the violence that women suffer and that is aggravated by the armed conflict, and the needs that all such affected women have. Hence, the Commission is reiterating its recommendation that the State adopt a comprehensive State policy that addresses the specific impact that the armed conflict has on women (*Recommendation 1*). The Commission is still disturbed by the fact that the Office of the Presidential Advisor for Women’s Equality does not have sufficient resources to effectively coordinate the gender strategy in all sectors of government.¹¹⁵ So, it is also repeating the recommendation that the State strengthen that Office’s human and financial resources (*Recommendation 13*).

¹⁰⁹ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women’s Path to Peace], *Follow-up to the Report of the IACHR “Violence and Discrimination against Women in the Armed Conflict in Colombia”*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p.12.

¹¹⁰ See, Observations from the State of Colombia to this report, p. 22.

¹¹¹ The State’s Second Report (2009), p. 4.

¹¹² The State’s First Report (2008), p. 16.

¹¹³ The State’s First Report (2008), p. 13; the State’s Second Report (2009), p.5.

¹¹⁴ See, Observations from the State of Colombia to this report, p. 25.

¹¹⁵ Committee on the Elimination of Discrimination against Women: *Concluding Comments of the Committee on the Elimination of Discrimination against Women: Colombia*, CEDAW/C/COL/CO.6, 37th session (2007), para. 14.

52. The State also reported that it has an Early Warning System to prevent human rights violations. The system includes a mechanism for compiling information, processing it, and producing risk reports; that mechanism is being used to take measures to protect the rights of women affected by the armed conflict.¹¹⁶ The Commission is pleased that this Early Warning System has been introduced and, according to the information provided by the State, “coordinates with other entities such as the Prosecutor’s Office, the National Commission of Reparations, the Ombudsman’s Office, local governments and private organizations to adopt urgent measures to protect and attend the needs of displaced women and girls in zones of risk.”¹¹⁷ Therefore, the Commission urges the State to strengthen its mechanisms to enable coordination and communication among the institutions charged with its implementation to protect the rights of women in the context of the armed conflict (*Recommendation 12*).

53. The Commission is gratified by the campaigns the mass media has conducted to raise awareness of gender violence and sexist stereotypes. The “Women’s Rights Literacy” program has been introduced nationwide, to prevent domestic violence against women.¹¹⁸ The Commission therefore urges the State to continue its efforts to publicize women’s human rights (*Recommendation 9*). The Commission also applauds the fact that the Ministry of Social Protection is conducting training programs and workshops to educate health sector personnel about gender violence. The Ministry of Defense is also providing training in and promoting women’s human rights in the armed forces.¹¹⁹ (*Recommendation 10*) However, the Commission has little information about training and workshops that specifically address violence against women as a result of the armed conflict.¹²⁰

54. The IACHR observes that the State is also making efforts to promote women’s involvement in civic and political affairs through the Women’s Community Councils and the Women Coffee Workers Participation Boards, which include representatives of displaced women, Afro-Colombian women, indigenous women and female heads of household.¹²¹ The Commission urges the State to continue to take measures to increase women’s involvement in the country’s social, political and economic life at the national and local levels (*Recommendation 59*).

55. These advances notwithstanding, the Commission observes that national policies like the Democratic Security Defense Policy (2007-2010) have not been implemented properly, in a way that would protect women from acts of violence and discrimination (*Recommendation 6*). Based on

¹¹⁶ The State’s Second Report (2009), p. 22.

¹¹⁷ The State’s Second Report (2009), p. 22.

¹¹⁸ Presentation of the Office of the Presidential Advisor for Women’s Equality, Follow up to the IACHR’s Recommendations at the Thematic Hearing on ‘Discrimination and violence against Women in the Armed Conflict in Colombia,’ Bogotá, June 2, 2009. Permanent Mission of Colombia to the Organization of American States, Attachments to Note DDH. GOI No. 37853/1907, received on August 11, 2009; the State’s Report, p. 9.

¹¹⁹ The State’s First Report (2008), pp. 30 and 32.

¹²⁰ The State in its observations to the present draft report “does not accept such statement, considering the reports submitted in which it highlighted that the development of trainings and workshops directed to public officials and the population in general, in special, women, gives visibility to all forms of violence against women, including those derived from the violence aggravated by illegal armed groups. However, given the specific needs of women victims of violence perpetrated by illegal armed groups, the Colombian state has undertaken trainings and workshops directed to public officials and women collectives about Gender and Displacement.” The State affirms as well, that “as follow-up to the international instruments ratified by Colombia and the recommendations issued by different international mechanisms for the protection of human rights, the State trains and raises the awareness of its public officials for the full implementation of the human rights provisions protecting the rights of women.” See, Observations from the State of Colombia to this report, p. 26.

¹²¹ The State’s First Report (2008), p. 93.

the information received by a variety of sources¹²², the Commission notes that the implementation of coordinated and articulated programs and public policies, with enough economic and human resources, to protect, guarantee and fulfill rights of women continues to be a challenge. Thus, the Commission is reiterating its recommendation to the State that public policies in the area of citizen protection should also address the specific needs of women affected by the armed conflict, such as the risks of experiencing sexual violence, the impact of forced displacement, the negative consequences that violence has on women's reproductive life, and others effects (*Recommendation 19*).

B. The State's homogenous perspective and view of women affected by the armed conflict

56. In its 2006 Report, the Commission expressed concern over the State's homogenous perspective and view of women as a target group and beneficiary of public policy, which in practice has meant that its response to women does not factor in the particular needs of various groups of women, such as indigenous women and Afro-Colombian women.¹²³ It therefore recommending that state polices be crafted and adopted to take into account the specific needs of indigenous and Afro-Colombian women within the armed conflict and that measures be adopted to ensure their rights, such as: increase social investment in the areas of justice, health and education in order to mitigate the impact of the armed conflict; strengthen their leadership; respect and protect their ancestral territories; develop projects to compile information and statistics on their unique situation, and promote their rights through dissemination campaigns (*Recommendations 37 to 45*).

57. In this connection, the State reported that the Comprehensive Project to Prevent Gender-Based Violence "devotes particular attention to the various forms of violence that indigenous and Afro-Colombian women suffer."¹²⁴ It also said that under the Program to Support the Colombian Peace Process being conducted in partnership with the European Union, "Peace Laboratories" have been started to encourage peace initiatives and local development in some conflict areas in the country. These "peace laboratories" have benefited women and ethnic groups.¹²⁵ The Commission was also informed that the Embera Wera program is underway to promote the human rights of the Emberá women. The immediate beneficiaries of this project are some 300 indigenous Emberá women. The project's objectives are to sensitize them to practices

¹²² See, Working Group to Monitor Compliance with the orders issued by the Constitutional Court in Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009); *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009; *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia" de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on "Violence and Discrimination against Women in the Armed Conflict in Colombia" prepared by the IACHR], September 18, 2009; *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe "Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia"* [Follow-up on fulfillment of the recommendations contained in the report on "Violence and Discrimination against Women in the Armed Conflict in Colombia"], September 18, 2009; Cecilia Barraza and Diana Ester Guzmán, "*Proceso de reparación para las mujeres víctimas de violencia en el marco del conflicto armado colombiano*" ["Reparations process for women victims of violence in the context of the Colombian armed conflict], *Sin Tregua*, 2008, p. 110; Report by Oxfam International, *Sexual violence in Colombia, instrument of war*, September 9, 2009; Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties under Article 9 of the Convention, concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia*, CERD/C/COL./CO/14, August 28, 2009.

¹²³ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para.183.

¹²⁴ The State's Second Report (2009), p. 58.

¹²⁵ The State's Second Report (2009), p. 58.

(like ablation) that violate their reproductive rights; to strengthen their leadership and to apprise them of their human rights, especially their right to sexual and reproductive health.¹²⁶ While the Commission applauds the implementation of these programs, it notes that current public policies do not feature specific measures to ensure the rights of indigenous and Afro-Colombian women affected by the armed conflict. It is therefore reiterating its recommendation that the State should design and adopt public policies that take account of the needs of indigenous and Afro-Colombian women (*Recommendation 37*).

58. The State informed the Commission of a project titled “Indigenous Women, the Armed Conflict and the Environment in Colombia,” whose purpose is to strengthen the indigenous organizations of the Arhuaco, Wiwa, Kankuamo, Pastos, Uitoto and Ticuna peoples so that they better able to cope with the toll that the armed conflict takes on their access to and use, control and ownership of natural resources.¹²⁷ However, the Commission is concerned that the State may not have the financial and human resources needed to actually carry out this Project or mechanisms to enable the institutions responsible for implementing the Project to coordinate and communicate among them. It is therefore reiterating its recommendation to reinforce social investment in indigenous women in the areas of health, justice and education with a view to mitigating the effects of the armed conflict (*Recommendation 38*).

59. The State also informed the Commission of the Project titled “Public policies, Afro-Colombian and Indigenous women: the challenge of mainstreaming them into local development.” The idea of the Project was to build “the operating skills of the Guambiana, Arhuaco, Wiwa, and Kankuamo indigenous women and peoples and Afro-Colombian women (Villa Rica – Cauca) so that their needs are taken into consideration in the development processes, with risk and displacement factored in.”¹²⁸ However, from the State’s most recent report, the Commission notes that this Project was only carried out for indigenous women of the Pastos community in the municipality of Tumbal and Pastas (Nariño Department) and no specific measures were taken for women of other indigenous groups or for Afro-Colombian women affected by the armed conflict.

60. The Commission observes that in Order 092 of 2008, the Constitutional Court of Colombia, following up Judgment T-025 of 2004 to protect the rights of displaced persons, held that displaced indigenous and Afro-Colombian women “suffer discrimination on three fronts: first because they are women; second, because they are displaced; and third, because they belong to ethnic groups.”¹²⁹ The Court also wrote that “no government measures are in place to expose these terrible risks and vulnerabilities or to help others understand the specific role that indigenous or Afro-descendent women play in their respective communities and how forced displacement affects that role.”¹³⁰ The Constitutional Court of Colombia therefore ordered the Director of Acción Social to design and implement the program to protect the Rights of Displaced Indigenous Women and the Program to Protect the Rights of Displaced Afro-descendent Women.¹³¹ Under the Court’s order, both programs were to adopt an approach that differentiated for gender and ethnic background, and within that a sub-approach that differentiated for age and disability.¹³²

¹²⁶ The State’s Second Report (2009), pp. 58-59.

¹²⁷ The State’s Second Report (2009), p. 62.

¹²⁸ First State Report (2009), p. 87.

¹²⁹ Constitutional Court of Colombia, Order 092 of 2008, IV.B.1.9.1.

¹³⁰ Constitutional Court of Colombia, Order 092 of 2008, IV.B.1.9.2.

¹³¹ Constitutional Court of Colombia, Order 092 of 2008, V.B.8.2. y V.B.9.2.

¹³² Constitutional Court of Colombia, Order 092 of 2008, V.B.8.2. y V.B.9.2.

61. In connection with the Program to Protect the Rights of Displaced Indigenous Women, the State reported that it is in the process of publicizing Constitutional Court Order 092 of 2008. In partnership with the indigenous organizations, it is also in the process of identifying proposals for the program's design. To that end, a workshop was held in 2009 with the National Indigenous Organization of Colombia (ONIC).¹³³ The State also reported that the program has a threefold strategy: prevention, protection, and assistance in connection with indigenous women's forced displacement.¹³⁴ As for the Program to Protect the Rights of Displaced Afro-descendent Women, the State reported that working sessions have been held with the Ministry of Environment, Housing and Development of the Territories to ensure that displaced Afro-Colombian women are given preferential access to the housing subsidies.¹³⁵ The Commission appreciates the State's efforts to design the programs ordered by Colombia's Constitutional Court, with the participation of the indigenous and Afro-Colombian women themselves (Recommendation 41). However, the Commission notes that the State has not take sufficient steps to fully implement them, in accordance with the mandate from Colombia's Constitutional Court. It is therefore reiterating its recommendations that the State effectively implement Judgment T-025 of 2004 (Recommendation 30), as well as the recommendations made by the Committee on the Elimination of Racial Discrimination that the State allocate additional financial and human resources to comply with that judgment and the orders issued in furtherance of it (Order 092 of 2008 and orders 004 and 005 of 2009).¹³⁶

62. The Commission has also learned that the government's public policies to address indigenous displacement do not take account of the many manifestations of violence and discrimination that the communities experience, particularly their women. Nor do they guarantee the differentiated assistance that displaced indigenous women require. That assistance includes, inter alia, translators and interpreters, medical treatment and guidance tailored to their cultural traditions.¹³⁷ Here, the human rights organization CODHES has observed that "the government's current programs are products of "assistentialism" and do not take into account the needs of indigenous women."¹³⁸ Therefore, the Commission urges the State "[t]o design and adopt culturally relevant policies, with the participation of indigenous and Afro-Colombian women, to protect displaced women who are members of these groups" (Recommendation 41).

63. The Commission also notes that the State has not adopted sufficient measures to give indigenous women access to the justice system (Recommendation 37). The Commission has

¹³³ Second Report from State (2009), p. 43.

¹³⁴ Second Report from State (2009), p. 43.

¹³⁵ Second Report from State (2009), p. 44.

¹³⁶ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia, CERD/C/COL./CO/14, August 28, 2009, para. 16.

¹³⁷ See, *Annex, Guidelines for an Integral Plan of Prevention and Protection of the Disproportionate and Differential Impact of Forced Displacement on Colombian Women*, Document Presented to the IACHR in the Hearing No. 16, Discrimination and Violence against Women Derived from the Armed Conflict in Colombia, IACHR, 133^o Period of Sessions, October 23, 2008, p. 93.

¹³⁸ CODHES, *Boletín No. 11, Conflicto Armado, Movilidad Humana y Construcción de Paz de las Mujeres* [Newsletter No. 11, Armed Conflict, Human Mobility and Peace-Building through Women], Colombia, July-August 2009, available at <http://www.codhes.org/>, consulted on September 14, 2009.

received information to the effect that the court authorities are still not according women treatment that is differentiated to take into account their age, ethnic background, disability and forced displacement.¹³⁹ For example, the Corporación Sisma Mujer has asserted that “the court authorities do not give consideration to their vision of the cosmos, and there are no experts able to describe the particular effects that sexual violence has on indigenous women.”¹⁴⁰ It is disturbing that this homogenous treatment of women should result in still further episodes of discrimination that affect the right to justice.

64. As for the Afro-Colombian women, the Commission observes that the country’s current policies continue to ignore the terrible predicament of forced displacement that these women face. The Committee on the Elimination of Racial Discrimination (CERD) expressed its concern to the Colombian State “that women and children of Afro-Colombian and indigenous communities are particularly vulnerable among the displaced population and lack effective and differentiated assistance and protection.”¹⁴¹ The Commission would remind the State that the national policies intended to advance the rights of all women should address the specific needs of Afro-Colombian women (Recommendation 37).

65. According to the information supplied by civil society organizations, displaced Afro-Colombian women believe that state policies should emphasize prevention of and protection from this manifestation of violence against women [forced displacement] caused by the armed conflict.¹⁴² The Commission observes that protecting the rights of Afro-Colombian women displaced by the armed conflict is a challenge that has yet to be conquered, specifically when it comes to the defense of their territory, decent housing, access to and delivery of health services -especially sexual and reproductive health care, education, and protection from abuse, harassment and sexual violence. The Commission also finds that the State has not taken sufficient measures to ensure that actions to promote and strengthen leadership and political participation on the part of Afro-Colombian women in the context of the armed conflict, especially displaced women, become an integral part of public policy (Recommendation 43).

C. Assessment and Prevention of Violence

¹³⁹ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009, p. 31.

¹⁴⁰ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009, p. 31.

¹⁴¹ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia, CERD/C/COL./CO/14, August 28, 2009, para. 16.

¹⁴² See, *Annex, Guidelines for an Integral Plan of Prevention and Protection of the Disproportionate and Differential Impact of Forced Displacement on Colombian Women*, Document Presented to the IACHR in the Hearing No. 16, Discrimination and Violence against Women Derived from the Armed Conflict in Colombia, IACHR, 133^o Period of Sessions, October 23, 2008, p. 96.

66. In its 2006 Report, the Commission recommended to the State the creation and improvement of systems and records of statistics and qualitative data on incidents of violence and discrimination against women; that it standardize reporting and information systems; that it take steps to ensure that the information systems properly reflect the discrimination and violence associated with the armed conflict, both nationwide and locally; that it break down the statistical data to reflect the variables of sex, race, age, and ethnic background; that it keep reliable and current statistics; that it incorporate the problem of sexual violence into existing statistics; that it ensure that the information compiled by state agencies is processed to be gender specific; and that it promote the use of a standard form for compiling information and documenting incidents of violence and discrimination (*Recommendations 20 to 27*).

67. The State reported that the Office of the Presidential Advisor for Women's Equality (CPEM) is in the process of studying, designing and reformulating gender indicators, including gender violence, to ensure that they are up to international standards.¹⁴³ To that end, it partnered with the National Police and the National Institute of Legal and Forensic Medicine to form an inter-institutional working group. Likewise, the State observes that through Law 1009 of 2006, the permanent creation of the Observatory of Gender Issues was approved, as a tool of the *Consejería Presidencia para la Equidad de la Mujer* to "investigate, document, systematize, review and raise awareness of the situation of women and gender equality in Colombia, with the objective of formulating recommendations in the realm of policies, plans, programs and norms, that contribute to close the breach of gender equality in the country."¹⁴⁴ The Commission appreciates the efforts that the State is making to ensure that the information compiled by state agencies is processed from a gender perspective (*Recommendation 27*).

68. The Commission also applauds the 31 gender indicators developed by the Ombudsman's Office to monitor the armed conflict and its effect on women.¹⁴⁵ The indicators were developed to be built into the Ombudsman Office's early warning system, taking into account the vulnerability, threats, and specific protection and prevention that women require in the armed conflict.¹⁴⁶ The Commission is urging the State to continue to disseminate and implement these indicators.

69. The Commission recognizes the progress made in the official statistics; since 2007, the practice of the Institute of Legal and Forensic Sciences when recording statistics on violence and homicide has been to specify the actors in the armed conflict who committed the acts (*Recommendation 24*).¹⁴⁷ The State also reported that the Indirect Statistical Information System (SINEI) went into operation on January 1, 2009, enabling "access to data in different regions of the country, including conflict areas, thereby improving the information on victims of violence who are

¹⁴³ The State's Second Report (2009), p. 25.

¹⁴⁴ See, Observations of the State of Colombia to the present draft report, p. 30.

¹⁴⁵ Ombudsman's Office, *Porque el conflicto golpea...pero golpea distinto*. Herramientas para la apropiación de los indicadores de género del sistema de alertas tempranas de la Defensoría del Pueblo para el monitoreo del conflicto armado [*Why the conflict hits hard... but hits hard differently*]. [Tools for using the gender indicators in the Ombudsman's early warning system to monitor the armed conflict], Bogotá, Colombia, 2007.

¹⁴⁶ Ombudsman's Office, *Porque el conflicto golpea...pero golpea distinto*. Herramientas para la apropiación de los indicadores de género del sistema de alertas tempranas de la Defensoría del Pueblo para el monitoreo del conflicto armado [*Why the conflict hits hard... but hits hard differently*]. [Tools for using the gender indicators in the Ombudsman's early warning system to monitor the armed conflict], Bogotá, Colombia, 2007.

¹⁴⁷ See, *Instituto Nacional de Medicina Legal y Forense* [National Institute of Legal and Forensic Medicine], *Forenses. Diagramas. Colombia. 2007*; Germán Alberto de La Hoz Bohórquez and María Consuelo Vélez Rodríguez, *Homicidio, Colombia. 2008* [*Homicide, Colombia 2008*]; Raúl Inuasty Moa, *Delitos Sexuales en Colombia* [*Sexual Crimes in Colombia*], 2008.

treated by the legal medical system.”¹⁴⁸ Given the progress achieved, the Commission believes it is important for the State to take steps to break down its official figures on violence and discrimination by race and ethnic background (*Recommendation 23*).

70. The Commission also recognizes the efforts the State has made to record the incidence of sexual violence by preparing a form to systematically document cases of sexual violence within the context of the armed conflict.¹⁴⁹ Accordingly, it urges the State to devise forms that can be used for other manifestations of violence and discrimination against women and by all sectors (*Recommendation 27*). However, the Commission is troubled by the fact that the measures thus far taken have not been sufficient to solve the problem of official under-reporting and under-recording that attends investigations of sexual violence in crimes like homicide or torture, and why these crimes tend not to be investigated.¹⁵⁰ According to the information supplied by civil society organizations, “public institutions do not yet have data or classification systems in place that make it possible to draw a connection between acts of sexual violence and the armed conflict and displacement.”¹⁵¹

71. The Commission has also received information to the effect that the National Institute of Legal and Forensic Medicine, which conducts the legal medical examinations on persons who are victims of sexual violence with a view to building cases and taking those cases to trial, covers only 65% of the population.¹⁵² In some 68% of the 2007 murder cases where the victims were women and some 70% of those in 2008, no data were recorded about the circumstances under which the events occurred.¹⁵³ Thus, the Commission reiterates its recommendation that measures should be taken to ensure that the statistics adequately reflect the situation at the national and local levels (*Recommendation 22*).

72. The Commission is of the view that establishing and enhancing the systems and records of statistics and qualitative data on incidents of violence (*Recommendation 20*) remains a

¹⁴⁸ The State’s Second Report (2009), p. 26.

¹⁴⁹ National Reparations and Conciliation Commission, Forms used to document and classify cases of sexual violence/life stories, the State’s Second Report (2009), Annexes, available at http://www.cnrr.visiondirecta.com/09e/spip.php?rubrique55&var_mode=calcul. Regarding the mentioned form and manual, the State highlights as an important advance the incorporation of these two instruments in the Inter-institutional Model of Attention to Victims (MIAV), “for the integral and coordinated attention of women victims of the armed confrontation in Colombia”. Additionally, there is currently a process of “revision, updates and adaptation according to the legislative and jurisprudential advances at the national and international levels, as well as with the protocols that have been designed in this issue”, which is being implemented in the framework of the project “Cooperation with the Integral Program against Gender-Based Violence of the United Nations Fund for the Achievement of the Millenium Development Goals”. See, Observations from the State of Colombia to this report, p. 30.

¹⁵⁰ Working Group to Monitor Compliance with the Constitutional Court’s Order 092, Second Follow-up Report on Compliance with the Constitutional Court’s directives in Orders 092 and 036 of 2008 and 036 of 2009, in connection with the confidential appendix on 183 cases of sexual violence.

¹⁵¹ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women’s Path to Peace], *Follow-up to the Report of the IACHR “Violence and Discrimination against Women in the Armed Conflict in Colombia”*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p. 10.

¹⁵² *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe “Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia” de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on “Violence and Discrimination against Women in the Armed Conflict in Colombia” prepared by the IACHR], September 18, 2009.

¹⁵³ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women’s Path to Peace], *Follow-up to the Report of the IACHR “Violence and Discrimination against Women in the Armed Conflict in Colombia”*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p. 4.

challenge. The civil society organizations have observed that: “Institutions that provide services to women victims of sexual violence do not have proper systems for detecting and documenting the crime, nor do they have staff trained in how to use such systems.”¹⁵⁴ According to the Office of the Inspector General of the Nation, “46 percent of the territorial units said that they had not done diagnostic work in cases of domestic violence, while 50 percent claimed not to have done diagnostic work in cases of sexual violence.”¹⁵⁵ The Inspector General’s Office also reported that “the Secretariats of Health do not have records on treatment administered to victims of this type of violence; the inference here is that the epidemiological surveillance system for this type of violence is either dysfunctional or functioning poorly.”¹⁵⁶ The Commission is therefore reiterating its recommendation that problems like sexual violence, which are already reflected in existing statistics, should be taken into consideration when devising public policies intended to mitigate the armed conflict’s effects on women (*Recommendation 25*).

D. Administration of Justice

73. In its 2006 Report, the Commission recommended the following to the State as means to ensure that women have adequate access to justice: design a comprehensive, coordinated, and properly resourced State policy so that acts of violence can be duly punished and redressed; adopt the measures necessary to prevent, punish and eradicate such acts and to build up the institutions that are instrumental in administering justice to ensure that the guilty are punished; and guarantee due diligence in the investigating, prosecuting, punishing and redressing those acts of violence committed against women in the context of the armed conflict (*Recommendations 46-56*).

74. Regarding the recommendations of the IACHR in the area of the administration of justice, the State highlights that the INMLCF is applying such recommendations in the framework of its institutional program with the goal of: “increasing awareness to the problem of violence against women with a special focus on forced displacement and to sensitize public officials about its recognition and specialized treatment”¹⁵⁷.

75. On this matter, the State reported that the Eurosocial Project on Access to Justice was launched to set up coordination and communication among institutions instrumental in preventing violence against women and providing them with comprehensive assistance.¹⁵⁸ The Commission would underscore the Victims and Witness Assistance Program run by the Office of the Attorney General and the Human Rights Protection Program of the Ministry of the Interior and

¹⁵⁴ *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women’s Path to Peace] and *Vamos Mujer, Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia’s armed conflict, 2003-2007], (2008); Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p. 24.

¹⁵⁵ Office of the Attorney General of the Nation, Attorney General’s office reveals the disturbing problem of domestic violence and sexual violence in Colombia, available [in Spanish] at http://www.procuraduria.gov.co/html/noticias_2009/noticias_358.html, consulted on October 2, 2009.

¹⁵⁶ Office of the Attorney General of the Nation, Attorney General’s office reveals the disturbing problem of domestic violence and sexual violence in Colombia, available [in Spanish] at http://www.procuraduria.gov.co/html/noticias_2009/noticias_358.html, consulted on October 2, 2009.

¹⁵⁷ See, Observations of the State of Colombia to the present draft report, p. 30.

¹⁵⁸ Presentation by the Office of the Presidential Advisor for Women’s Equality, Follow-up on the IACHR’s Recommendations, prepared for the Thematic Hearing on “Discrimination and Violence against Women in the Armed Conflict,” Bogotá, June 2, 2009.

Justice, aimed at improving protection of victims and witnesses in criminal cases.¹⁵⁹ The Commission also applauds the enhanced resourcing of the justice system and the fact that 2,166 new positions have been added to the justice sector since January 2008.¹⁶⁰

76. The State reported that the Office of the Attorney General of the Nation had adopted the following strategies¹⁶¹ to combat violence against women in the context of the armed conflict: 1) Implementation of interdisciplinary and inter-institutional models for providing comprehensive assistance to victims. The purpose of the model is to match the institutions' competencies with responsibilities so as to wipe out sexual violence, while using human and economic resources to maximum advantage to avoid institutional mistreatment and abuse, mainly of women, girls and teens; 2) a differentiated method of investigating cases of aggravated sexual violence committed by groups operating outside the law. Tools have been crafted to make investigations proceed more efficiently by using the psychosocial approach in interviewing and observing suspects. 3) Workshops on the issue of sexual violence in the context of the armed conflict. Workshops have been held for district prosecutors and investigators on strategies for investigating crimes of sexual violence committed in the context of the armed conflict. 4) Humanitarian Affairs Units have been created to investigate and punish conduct that is contemptuous of women's dignity. 5) Technical Juridical Assessment Committees have been established, composed of district directors and prosecutors who meet monthly to identify problems with investigations and come up with procedural solutions.

77. The Commission applauds these measures and the specific strategies undertaken by the Attorney General's Office in investigating cases of sexual violence, such as: establishing a record of victims of sexual violence; analyzing the juridical feasibility of reopening investigations in cases that have been closed; designation of a prosecutor to conduct the inquiries; assigning special investigations to the National Human Rights and international Humanitarian Law Unit; creating opportunities for dialogue with civil society; adopting the *Guía de investigación de delitos de violencia sexual en el contexto del conflicto armado [Guide to investigate crimes of sexual violence in the context of the armed conflict]*, put together by the Office of the United Nations High Commissioner for Human Rights in Colombia.¹⁶² The State informed that the General Office of the Prosecutor has also a *Protocol for the prevention, protection and promotion of the rights of women victims of sexual violence in the context of the armed conflict* that "brings strategies of mid and long term preventive action that allows different institutions to define routes of action to conduct the proper monitoring and follow-up, according to the particular situation of each victim, and each region."¹⁶³

78. These advances notwithstanding, the Commission has received reports from a variety of sources¹⁶⁴ to the effect that the State does not now have a comprehensive and

¹⁵⁹ See United Nations, *Universal Periodic Review, Report on Colombia*, September 1, 2008, available [in Spanish] at < http://www.semana.com/documents/Doc-1777_2008129.pdf >, consulted on September 11, 2009.

¹⁶⁰ See United Nations, *Universal Periodic Review, Report on Colombia*, September 1, 2008, available [in Spanish] at < http://www.semana.com/documents/Doc-1777_2008129.pdf >, consulted on September 11, 2009.

¹⁶¹ See the State's Second Report (2009), pp. 13-14; Memorandum DDH.G01 16109/0760 from Colombia's Ministry of Foreign Affairs, March 31, 2009, received at the IACHR on April 3, 2009; the State's Second Report (2009) p. 7-12.

¹⁶² Memorandum DDH.G01 16109/0760 from Colombia's Ministry of Foreign Affairs, March 31, 2009, received at the IACHR on April 3, 2009; the State's Second Report (2009) p. 13.

¹⁶³ See, Observations of the State of Colombia to the present draft report, p. 28.

¹⁶⁴ See, Cecilia Barraza and Diana Ester Guzmán, "*Proceso de reparación para las mujeres víctimas de violencia en el marco del conflicto armado colombiano*" ["Reparations process for women victims of violence in the context of the Colombian armed conflict], *Sin Tregua*, 2008, p. 110; Report by Oxfam International, *Sexual violence in Colombia*,

coordinated State policy that ensures victims of the armed conflict access to justice and restores their rights (*Recommendation 46*). Because no such policy exists, “the State has made no headway in investigating recorded cases involving gender violence in the context of the armed conflict.”¹⁶⁵ From the information supplied by those sources, the Commission observes that the existing programs are limited in terms of their ability to provide comprehensive and differentiated assistance to women victims of the conflict and to protect victims and witnesses. The following are among the limitations: the lack of measures to ensure that victims and witnesses remain onboard for the duration of the judicial proceedings; the absence of the conditions needed to provide security to and protect victims and witnesses and guarantee their access to justice; and a lack of coordination between and among programs, and limitations with respect to their coverage. These limitations have meant that victims are referred from one program to another, and in various cases have never secured real protection. International organizations have found that the absence of a comprehensive State policy is to a large extent “because not even the women’s organisations have been able to participate in the design and formulation of these policies.”¹⁶⁶ The Commission is concerned that the State has not developed the means by which to hear the voices of women and civil society organizations when crafting and implementing the programs to address gender violence, as the Commission had recommended (*Recommendation 60*).

79. The Commission also notes that obstacles still make it difficult for women victims of violence and discrimination to have proper access to justice. In its 2009 report, the Office of the United Nations High Commissioner for Human Rights wrote that: “Among the victims, women have faced the most obstacles and stigmatization in the pursuit of justice, and have suffered most severely from displacement due to fear of reprisals and threats.”¹⁶⁷ According to the information supplied by civil society organizations, women encounter various problems in their pursuit of justice: “problems created by the absence of rules and regulations, the lack of procedural guarantees, weak and inadequate mechanisms to ensure the safety of victims and witnesses, corruption, and fear of

...continuation

instrument of war, September 9, 2009, p. 3; Working Group to Monitor Compliance with the orders issued by the Constitutional Court in Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009), p. 5-6. *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women’s Path to Peace], *Follow-up to the Report of the IACHR “Violence and Discrimination against Women in the Armed Conflict in Colombia,”* Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009; *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe “Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia” de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on “Violence and Discrimination against Women in the Armed Conflict in Colombia” prepared by the IACHR], September 18, 2009; *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia”* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009. *Plan Integral de Protección a Víctimas y Testigos de graves violaciones a derechos humanos e infracciones a derecho internacional humanitario, con enfoque diferencial de género, Documento de Recomendaciones [Comprehensive Program to protect Victims and Witnesses from gross violations of human rights and violations of international humanitarian law, with a gender-differentiated approach, Document containing recommendations]*, Mesa de Trabajo por un Plan Integral de Protección a Víctimas y Testigos de graves violaciones a derechos humanos e infracciones a derecho internacional humanitario, con enfoque diferencial de género [Working Group for a Comprehensive Program to protect Victims and Witnesses from gross violations of human rights and violations of international humanitarian law, with a gender-differentiated approach], November 25, 2008, p. 11; Report by Oxfam International, *Sexual violence in Colombia, instrument of war*, September 9, 2009.

¹⁶⁵ Cecilia Barraza and Diana Ester Guzmán, “Proceso de reparación para las mujeres víctimas de violencia en el marco del conflicto armado colombiano” [“Reparations process for women victims of violence in the context of the Colombian armed conflict], *Sin Tregua*, 2008, p. 110.

¹⁶⁶ Report by Oxfam International, *Sexual violence in Colombia, instrument of war*, September 9, 2009, p. 22

¹⁶⁷ United Nations, Human Rights Council, *Annual Report of the United Nations High Commission for Human Rights, Report of the United Nations High Commission for Human Rights on the situation of human rights in Colombia*. Tenth Session. A/HRC/10/032 (2009), paragraph 63.

reprisals from paramilitary groups.”¹⁶⁸ Scholarly research has uncovered other obstacles as well, such as: the persistence of the armed conflict itself, state institutions’ lack of legitimacy, socio-cultural patterns that discriminate against women, and the economic circumstances of the victims of the conflict.¹⁶⁹ The obstacles associated with the traditional view of women’s place in society continue to obstruct their pursuit of justice, especially in cases of sexual violence. That traditional view of a woman’s place in society includes the following: the fact that women are not recognized as subjects of law; refusal to allow a complaint to be filed for fear that the family’s reputation would suffer; the notion that a woman invite the violent acts, which justifies the assailant’s conduct; reversal of the burden of proof, with the result that the authorities never investigate the facts and that the victims of the sexual violence are themselves judged and punished by society.¹⁷⁰

80. The Commission also observes that the State’s policies with respect to assisting women victims of sexual violence in the context of the armed conflict continue to be inadequate and re-victimize the women.¹⁷¹ Colombian civil society organizations have learned of cases “in which the authorities have compiled information on sexual crimes and have then gone to the communities to find the women, in order to get them to file a complaint, without considering whether they want to file a complaint, whether their families and communities are aware of the facts and whether the complaint might traumatize the victim and her nuclear family even further.”¹⁷² The extradition of the leaders of paramilitary groups to the United States has added a new complication that further re-victimizes the victims, “as they are now no longer able to get at even a partial version of the truth of the crimes committed.”¹⁷³ Hence, the Commission has repeatedly expressed its concern regarding the impact of the extradition of these leaders for the investigation of serious crimes perpetrated during the armed conflict and the substantial obstacles that it poses to realize the rights to justice, truth and reparation of victims.¹⁷⁴ Furthermore, women are still mistrustful of the justice system, especially the victims of the sexual violence perpetrated by the actors in the conflict. According to the *Corporación Sisma Mujer*, “in those cases where the assaults were committed by agents of the State or paramilitary groups, women have less trust in

¹⁶⁸ *Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia’s armed conflict, 2003-2007], *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women’s Path to Peace] and *Vamos Mujer* (2008); Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p. 16.

¹⁶⁹ Cecilia Barraza and Diana Ester Guzmán, “Proceso de reparación para las mujeres víctimas de violencia en el marco del conflicto armado colombiano” [“Reparations process for women victims of violence in the context of the Colombian armed conflict], *Sin Tregua*, 2008, p. 122.

¹⁷⁰ *Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia’s armed conflict, 2003-2007], *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women’s Path to Peace] and *Vamos Mujer* (2008); Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p. 16.

¹⁷¹ Report by Oxfam International, *Sexual violence in Colombia, instrument of war*, September 9, 2009, p. 22.

¹⁷² Working Group to Monitor Compliance with the orders issued by the Constitutional Court in Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009).

¹⁷³ *Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia’s armed conflict, 2003-2007], *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women’s Path to Peace] and *Vamos Mujer* (2008); Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p. 2.

¹⁷⁴ See, IACHR Chapter IV, Colombia, Annual Report of 2008, OEA/Ser.L/V/II.134 Doc. 5 rev. 1, February 25, 2009, para. 34; IACHR, Chapter IV, Colombia, Annual Report of 2009, para. 26.

the government protection programs; in some cases, women prefer not to file a complaint rather than confide in government institutions."¹⁷⁵

81. The Commission also observes that the State has not fully complied with Order 092 of 2008 to protect and guarantee the rights of women victims of sexual violence. In that ruling, the Constitutional Court recognized the gravity of the sexual violence committed in the context of the armed conflict and underscored the risks that this type of violence poses for women.¹⁷⁶ Given the absence of an adequate State policy to address this problem, the Court held that one of the top priorities on the government agenda of the Nation should continue to be its response to "the phenomenon of sexual violence to which Colombian women have been and are being exposed in the context of the armed conflict."¹⁷⁷ The Court also referred 183 cases of sexual violence to the Attorney General's Office for investigation and ordered that "particularly strict oversight of the investigative proceedings and of the restitution of fundamental rights"¹⁷⁸ be guaranteed. Regarding the work of the Prosecutor's Office in cases of sexual violence, the State informs that it has created "models of special investigation and integral attention to victims of sexual and intrafamily violence, through the Centers for Attention to Victims of Intrafamily Violence (CAVIF) and the Centers for the Integral Attention to Victims of Sexual Violence (CAIVAS), oriented towards the articulation of competencies through which a legal and constitutional mandate several state entities meet committed to the defense of the rights of women, children and adolescents."¹⁷⁹

82. Based on the information supplied by civil society organizations and in the State's reports,¹⁸⁰ the Commission observes that the State has not adopted a comprehensive policy on crime and has not made the problem of sexual violence one of its top priorities, contrary to what the Constitutional Court ordered. It is disturbing that sexual violence against women, committed in the course of massacres, murders, group assaults on communities by the actors in the armed conflict, is not investigated. According to the reports received from civil society organizations, even when the victims of sexual violence file complaints, the authorities do not investigate the crimes because "they don't consider them important."¹⁸¹

83. The Commission also observes that the specialized psychosocial assistance that women victims of sexual violence receive is still deficient. Reports are that the institutions in the justice system do not have the staff to provide the psychosocial assistance that victims need at the various stages of the criminal proceedings, and that the existing staff is not properly trained to

¹⁷⁵ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe "Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia"* [Follow-up on fulfillment of the recommendations contained in the report on "Violence and Discrimination against Women in the Armed Conflict in Colombia"], September 18, 2009, p.17.

¹⁷⁶ Constitutional Court, Order 092 of 2008, Conclusion Paragraph One.

¹⁷⁷ Constitutional Court, Order 092 of 2008, III.1.1.1.

¹⁷⁸ Constitutional Court, Order 092 of 2008, Conclusion Paragraph One.

¹⁷⁹ See, Observations of the State of Colombia to the present draft report, p. 31.

¹⁸⁰ Memorandum DDH.GO1 16109/0760 from the Ministry of Foreign Affairs of Colombia, dated March 31, 2009, received at the IACHR on April 3, 2009; Working Group to Monitor Compliance with the orders issued by the Constitutional Court in Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009), p. 5-6.

¹⁸¹ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe "Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia"* [Follow-up on fulfillment of the recommendations contained in the report on "Violence and Discrimination against Women in the Armed Conflict in Colombia"], September 18, 2009, p.28.

provide psychosocial assistance.¹⁸² It has been established that the strategy of the Office of the Attorney General does not guarantee victims of sexual violence complete protection during the criminal proceedings. Measures have not been taken to a) overcome the security risks that women victims of sexual violence face and that makes them reluctant or afraid to file complaints; b) provide proper counsel and adequate protection to women who file complaints; and c) improve coordination and communication between the institutions that provide protective services and the Office of the Attorney General.¹⁸³ The civil society organizations have also reported that “the Office of the Attorney General does not generally provide the victim with information on the procedure that will be followed in the case, her rights within the case, the evidence that will be compiled, and so on.”¹⁸⁴ The Commission is therefore reiterating its recommendation that the State take adequate measures to ensure that women victims of violence know their rights within the justice system (*Recommendation 52*).

84. The Commission continues to receive information to the effect that the lack of adequate and efficient mechanisms to ensure that women victims of sexual violence will be safe and protected is still one of the main reasons why complaints of sexual violence are not filed and the crimes go unpunished.¹⁸⁵ The Working Group on Women and Armed Conflict has documented cases in which “paramilitary assailants have made their way into the offices of the programs that provide women victims with protection; these paramilitaries belonged to the very same groups that sexually victimized the women. The protection system is thus penetrated and the women are re-victimized.”¹⁸⁶ A series of weaknesses have been discovered and documented in the state’s programs to protect victims of sexual violence perpetrated by actors in the armed conflict. These include: the delay between the application seeking protection and the actual issuance of the protective order, which gives the aggressor time to make good on his threats; the fact that the authorities frequently do little more than instruct women in how to protect themselves and police assistance is weak; members of paramilitary groups responsible for sexual assaults go to the very places where the victims are located; re-victimization of the women in the risk assessment because the risk is classified as merely routine; persistence of patterns of gender discrimination on the part of public officials (mistrust of what the victim is saying, the notion that violence against women is normal and at most a misdemeanor).¹⁸⁷ Regarding the programs of protection managed by the Human Rights Direction of the Ministry of Interior and Justice, the State claims that “notwithstanding that access to the same should meet with minimum requirements, these are

¹⁸² Working Group to Monitor Compliance with Constitutional Court Order 092, Follow-up on Order 092 of 2008, June 11, 2009.

¹⁸³ Working Group to Monitor Compliance with the orders issued by the Constitutional Court in Order 092, Follow-up on Order 092 of 2008, p. 60.

¹⁸⁴ Working Group to Monitor Compliance with Constitutional Court Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009), p.20.

¹⁸⁵ *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe “Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia” de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on “Violence and Discrimination against Women in the Armed Conflict in Colombia” prepared by the IACHR], September 18, 2009.

¹⁸⁶ *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe “Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia” de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on “Violence and Discrimination against Women in the Armed Conflict in Colombia” prepared by the IACHR], September 18, 2009.

¹⁸⁷ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia”* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009, pp. 19-21.

designed in a way that could activate emergency protection mechanisms when there is knowledge of an imminent risk that could violate the rights to life, integrity, and safety of the potential beneficiaries of such measures.”¹⁸⁸

85. As for the 183 cases of sexual violence that the Constitutional Court referred to the Attorney General’s Office, the Commission is troubled by the fact that 117 cases of sexual violence were referred to district prosecution offices.¹⁸⁹ The Commission observes that conducting investigations of cases of sexual violence in the very same place where the events were said to have occurred could pose risks for the women victims of the crime, since the actors in the armed conflict are still in control of the areas where the crimes were committed and have the women in those areas under their surveillance.¹⁹⁰ Furthermore, the Commission has not received information indicating that the State has implemented investigative strategies to determine whether the events are a commonplace and widespread practice.. The Commission is therefore reiterating its recommendation that the State should adopt effective guarantees so that victims feel safe in reporting acts of violence, and effective protection measures for the complainants, survivors and witnesses (*Recommendation 54*).

86. The Commission is also troubled by the fact that the State is still dealing with structural problems that make investigation of sexual violence and gender violence difficult. In its most recent report, the Office of the United Nations High Commissioner for Human Rights in Colombia stated that: “In investigating these crimes, as is the case with other crimes, the Attorney General’s Office faces structural problems, including insufficient resources, weak data consolidation capacity, lack of appropriate investigative frameworks and coordination difficulties.”¹⁹¹ Finally, the Commission notes that building up the capacity of the institutions involved in the administration of justice so they undertake effective investigations to stop the pattern of impunity that attends cases of violence against women is still a challenge for the State(*Recommendation 49*).

E. Humanitarian assistance and support services for victims of forced displacement

87. In its 2006 Report, the Commission recommended to the State that it strengthen public services to displaced women to give effect to their rights to health, access to justice, education and economic opportunity. Among the specific measures that the Commission recommended were the following: design and implement a policy involving positive measures; include the specific needs of displaced women in public policies and state programs; carry out the Constitutional Court’s Ruling T-025; design indicators that can gauge the impact of forced displacement; strengthen data systems and improve the gathering of official statistics on and from the displaced population; create effective security measures so that women are able to register for and obtain health and sexual and reproductive health services; adopt positive measures to give displaced women greater access to education, and develop training programs for displaced indigenous and Afro-Colombian women (*Recommendations 28-36*).

¹⁸⁸ Observations of the State of Colombia to the present draft report, p. 32.

¹⁸⁹ Memorandum DDH.GO1 16109/0760 from the Ministry of Foreign Affairs of Colombia, dated march 31, 2009, received at the IACHR on April 3, 2009.

¹⁹⁰ IACHR, Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008.

¹⁹¹ United Nations, Human Rights Council, Annual Report of the United Nations High Commission for Human Rights, Report of the United Nations High Commission for Human Rights on the situation of human rights in Colombia. Tenth Session. A/HRC/10/032 (2009), para. 62.

88. The Constitutional Court of Colombia issued Order 092 of 2008, to follow up on Judgment T-025 of 2004. In that order, the Court established the minimum basic needs and the necessity of adopting a differentiated approach in the 13 programs to serve displaced women.¹⁹² It also held that the State has a duty to ensure that civil society organizations play a role in designing and implementing the programs.¹⁹³ The Constitutional Court of Colombia reminded the State of that obligation in its Order 237 of 2008.¹⁹⁴ The Commission recognizes the efforts the State has made to comply with the Court's ruling, to target programs and resources to help displaced persons as they are "subjects deserving special constitutional protection" for the period 2006-2010.¹⁹⁵ The Commission also applauds the fact that the policy on the displaced population figures high on the government agenda, and the fact that 880 billion from the General Budget has been earmarked to address the situation.¹⁹⁶ The Commission draws attention to the fact that a *Directriz de atención integral a la población desplazada con enfoque de género [Handbook to a Gender-based Approach to Comprehensive Assistance to the Displaced Population]* has been developed to incorporate the differentiated approach into policies and programs in prevention and assistance for the displaced.¹⁹⁷ The State reported that, following the guidelines set forth in this handbook, plans of action were crafted in 2008 and in 2009 to mitigate the impact and the risks of displacement, and training on gender and displacement was provided to public officials, women's groups and the displaced in 2007-2008.¹⁹⁸ The Commission also acknowledges the enactment by the Ministry of National Defense of the Permanent Circular No. 630134, a state policy for the observance and respect of human rights of women "for the prevention of extraordinary risks of women in situation of displacement, including sexual violence."¹⁹⁹

89. The State reported that the following measures have been taken to design and implement the 13 programs ordered by the Constitutional Court:²⁰⁰

- Installation and start-up of the Inter-Institutional Communications Committee mandated in Order 092, under the lead of the Office of the Presidential Advisor for Women's Equality, the Ministry of Communications and *Acción Social*.

¹⁹² The programs whose implementation the Court ordered are as follows: Program to Prevent Displacement from Having a Disproportionate Impact in terms of Gender by Thwarting the Gender-specific Risks that the Armed Conflict Poses; Program on Prevention of Sexual Violence against Displaced Women and Comprehensive Assistance for Victims; Program on Prevention of Domestic and Community Violence against Displaced Women and Comprehensive Assistance for Victims; Program on Health Promotion for Displaced Women; Program of Support for Displaced Female Heads of Household, Facilitation of Access to Work and Income Opportunities, and Prevention of Domestic and Labor Exploitation of Displaced Women; Educational Support Program for Displaced Women over the Age of 15; Program to Facilitate Access to Land Ownership by Displaced Women; Program on Protection of the Rights of Displaced Indigenous Women; Program on Protection of the Rights of Displaced Afro-Colombian Women; Program on Promotion of Participation for Displaced Women and on Prevention of Violence against Women Leaders or Women Who Come to Public Prominence through Social, Civic, or Human-Rights Advancement Activities; Program to Ensure the Rights of Displaced Women As Victims of the Armed Conflict to Justice, the Truth, Reparation, and Non- Repetition; Psychosocial Counseling Program for Displaced Women; Program on the Elimination of Barriers to the Displaced Women's Protection.

¹⁹³ Constitutional Court of Colombia, Order 092 of 2008. Conclusion Paragraph Two.

¹⁹⁴ Constitutional Court of Colombia, Order 092 of 2008, September 19, 2008.

¹⁹⁵ The State's First Report (2008), p. 8.

¹⁹⁶ The State's First Report (2008), p. 54.

¹⁹⁷ The State's First Report (2008), p. 54.

¹⁹⁸ The State's First Report (2008), p. 55-56.

¹⁹⁹ Observations of the State of Colombia to the present draft report, p. 28

²⁰⁰ The State's Second Report (2009), p. 38.

- Review of the budgetary parameters of the 13 programs specifically for displaced women, in order to determine the amount of the investment; this activity is headed by the National Planning Department, with the support of *Acción Social*.
- Conclusion of an agreement between *Acción Social* and the Comprehensive Program against Gender-based Violence in Colombia, for (i) putting together twelve (12) operations manuals for twelve (12) programs specifically for displaced women; (ii) five inter-institutional working groups, with women's organizations, to agree upon and make adjustments to the operations manuals for the twelve (12) programs; (iii) publication of 5000 copies of the operations manuals; (iv) one (1) national workshop on the application of the twelve (12) operations manuals; (v) putting together a monitoring and evaluation system which *Acción Social* will use to gauge and coordinate implementation of the programs specifically for displaced women; and (vi) comprehensive assessment of 157 women in Cartagena for purposes of application of the constitutional presumption of heightened vulnerability of displaced women.
- Design of the training plan for civil servants on the differentiated approach to preventing the disproportionate impact of violence committed against displaced women.

90. The Commission appreciates the State's efforts to design and implement the programs ordered by the Constitutional Court. However, it notes that time and time again the State has failed to meet the deadlines that Orders 092 and 237 of 2008 set for the adoption of a comprehensive State policy that ensures the rights of displaced women. Furthermore, the Commission has received reports that many people, especially in rural areas of the country, are completely unaware of the rights of displaced women that the Constitutional Court upheld in Order 092 of 2008.²⁰¹ The result is that the constitutional presumption of heightened vulnerability is not being applied, which in turn means that the extension of emergency humanitarian assistance is not being granted in the case of a number of displaced women. The Commission has learned that in January 2009, 276 displaced women filed a contempt motion against the director of *Acción Social*, demanding compliance with the extension.²⁰² There are also reports that the conditions being dictated to qualify for the emergency humanitarian assistance and the bureaucratic red tape to obtain it are excessive.²⁰³ Therefore, the Commission is reiterating its recommendation to the State that it take measures to disseminate women's human rights (*Recommendation 9*).

²⁰¹ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* received at the IACHR on September 18, 2009, p. 10.

²⁰² *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* Bogota, received at the IACHR on September 18, 2009, p.18.

²⁰³ *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia" de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on "Violence and Discrimination against Women in the Armed Conflict in Colombia" prepared by the IACHR], September 18, 2009.

91. Based on the information supplied by the civil society organizations,²⁰⁴ the Commission considers that the lack of nationwide coverage is one of the chief problems with the SNAIPD's initial implementation of these 13 programs, since pilot programs have been run in only certain parts of the country or only on behalf of women who have obtained individual protective orders from Colombia's Constitutional Court. Based on those reports, the Commission observes that questions remain as to how effective the programs will be in guaranteeing the rights of displaced women; most of the State's proposals do not have clear objectives, timetables, budgets and performance indicators.

92. One problem common to all the programs is an absence of concrete measures to effectively guarantee displaced women's rights.²⁰⁵ The Working Group on Women and Armed Conflict observed the following: "Although some small measure of progress has been made, specifically in the areas of planning and institution building, concrete measures to protect displaced women's fundamental rights still seem a long way off."²⁰⁶ For example in the case of the program on generating income, it was reported that the strategies introduced were the same strategies used in previous programs, "which have been shown to leave women in poverty."²⁰⁷ As for the program to ensure access to land ownership and the program to ensure access to the truth, justice and reparation, measures have been identified to help avoid eviction and to restore property to its rightful owner, which will be particularly helpful to displaced women.²⁰⁸ The Commission is therefore reiterating its recommendations to effectively carry out ruling T-025 of 2004 (*Recommendation 30*) and the recommendations made by the Committee on the Elimination of Racial Discrimination to provide additional human and financial resources for executing the judgment and the orders issued in furtherance of it (Order 092 of 2008 and orders 004 and 005 of 2009).²⁰⁹

²⁰⁴ Working Group to Monitor Compliance with the orders issued by the Constitutional Court in Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009); *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia"* de la Comisión Interamericana de Derechos Humanos [Follow-up Report on the Recommendations Contained in the Report on "Violence and Discrimination against Women in the Armed Conflict in Colombia" prepared by the IACHR], September 18, 2009; *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* received at the IACHR on September 18, 2009; CODHES, *Boletín No. 11, Conflicto Armado, Movilidad Humana y Construcción de Paz de las Mujeres* [Newsletter No. 11, Armed Conflict, Human Mobility and Peace-Building through Women], Colombia, July-August 2009, available at <http://www.codhes.org/>, consulted on September 13, 2009.

²⁰⁵ The Colombian state "does not accept such statement, since in the development of programs it has adopted concrete measures to make the rights of women a reality; specially in the realm of disproportionate gender impact, sexual violence, health, education, labor opportunities, lands and psychosocial attention." See, Observations from the State of Colombia to the present draft report, p. 32.

²⁰⁶ *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia"* de la Comisión Interamericana de Derechos Humanos [Follow-up Report on the Recommendations Contained in the Report on "Violence and Discrimination against Women in the Armed Conflict in Colombia" prepared by the IACHR], September 18, 2009.

²⁰⁷ CODHES, *Boletín No. 11, Conflicto Armado, Movilidad Humana y Construcción de Paz de las Mujeres* [Newsletter No. 11, Armed Conflict, Human Mobility and Peace-Building through Women], Colombia, July-August 2009, available [in Spanish] at <http://www.codhes.org/>, consulted on September 13, 2009.

²⁰⁸ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* received at the IACHR on September 18, 2009, p.16.

²⁰⁹ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia, CERD/C/COL./CO/14, August 28, 2009, para. 16.

93. Given the information supplied by the civil society organizations and international agencies,²¹⁰ the Commission is troubled by the fact that too little effort has been made to involve the civil society organizations and their proposals in the design and implementation of those programs, as the Constitutional Court directed in Orders 092 and 237 of 2008. The Commission is therefore reiterating the recommendations it made to the State that it should take the measures necessary to ensure that women's organizations are involved in the periodic follow-up on compliance with Judgment T-025 (*Recommendation 30*), as well as Orders 092 and 237 of 2008 following-up that Judgment; and that it should include the input of women's organizations when designing public policy (*Recommendation 7*).

94. On the other hand, the Commission recognizes the progress the State has made in undertaking positive measures for displaced women in the area of education, health, and economic livelihood (*Recommendation 28*) with implementation of the following public policies and programs in the period from 2006 to 2008:²¹¹

- The Project to Assist the Population Affected by the Armed Conflict, carried out in coordination with UNESCO in the departments of Sucre and Chocó, to enable displaced persons to continue their basic, secondary and higher education. Some 60% of the persons assisted between 2007 and 2008 were women.
- The "Comprehensive Nationwide Plan of Action for the Population Displaced by Violence" carried in furtherance of judgment T-025 of 2004 for the purpose of training displaced persons for work and to provide advisory services for development of revenue-producing projects. A total of 109,038 displaced women were trained between 2002 and July 2008.
- The "Families in Action" Program to provide training to members of indigent families. This program has helped displaced women who have become female heads of household.
- The Program to prevent the disproportionate impact that violence has on women, which features, *inter alia*, components on sexual violence, and on how girls, teens and minors become involved in the violence of illegal armed groups.
- Program to Assist the Displaced Population, which has taken measures in the area of health, education, family reunification, emergency humanitarian relief to protect the basic rights of 597 displaced women, 498 of whom have sought humanitarian assistance.

95. The Commission applauds these actions taken by the State, and the measures it took to promote the sexual and reproductive rights of displaced women (*Recommendation 29*). It draws particular attention to the "Project to promote and monitor the sexual and reproductive rights of women victims of forced displacement, with emphasis on domestic and sexual violence," which

²¹⁰ UNHCR, *Introducción, Conclusión y Recomendaciones del Balance de la política pública de atención integral a la población desplazada por la violencia 2004-2006, 2007*, p.27; Working Group to Monitor Compliance with Constitutional Court Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix on 183 acts of sexual violence* (2009); *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia" de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on "Violence and Discrimination against Women in the Armed Conflict in Colombia" prepared by the IACHR], September 18, 2009; *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women's Path to Peace], *Follow-up to the Report of the IACHR "Violence and Discrimination against Women in the Armed Conflict in Colombia,"* received at the IACHR on September 18, 2009.

²¹¹ The State's First Report (2008), pp. 74-78; 82, 86.

was implemented by the Ombudsman's Office.²¹² This Project was conducted in the municipalities of Cali, Medellín, Pasto and Cúcuta and educated displaced women and public servants about sexual and reproductive rights. Avenues were also cultivated to assist displaced victims of domestic and sexual violence, and indicators were developed to monitor sexual and reproductive rights within the context of the armed conflict, which have been built into the early warning system used by the Ombudsman's Office.²¹³

96. The Commission has also learned of the issuance of Decision No. 08 of 2007 which instructed the agencies of the National Displaced Population Assistance System (SNAIPD) to take measures to show and expand application of differential actions within the public policy on assistance to the displaced population.²¹⁴ The Commission also applauds the enactment of Law 1190 of 2008, in which 2008 was declared to be the year for promoting the rights of persons displaced by the violence; departmental and municipal authorities were urged to design and implement strategies to guarantee the rights of displaced persons and to adopt Comprehensive Plans on this subject.²¹⁵ The law also establishes mechanisms to monitor these plans and to coordinate them with the institutions of the National Displaced Population Assistance System (SNAIPD) and encourages the private sector's participation.

97. However, the Commission is troubled by the fact that the strategies and programs that the SNAIPD is to follow do not prioritize assistance to and protection of the rights of displaced women. For example, in the reports that the governors are to submit on the actions taken to assist the displaced population, they are not required to provide information on the measures taken to assist women displaced by the armed conflict (Article 4). Projects that address the particular problems of displaced women were not a priority either (Article 6). The Commission is therefore reiterating its recommendation that the State should adopt public policies that ensure the human rights of displaced women (*Recommendation 29*).

98. From the reports prepared by international agencies and civil society organizations,²¹⁶ the Commission has learned that while the SNAIPD has cultivated the gender approach, the measures taken to prevent displacement and provide emergency humanitarian assistance do not take into account the dangers that specific types of violence like sexual violence pose and their aftermaths (unwanted pregnancies, the spread of sexually transmitted diseases,

²¹² The results of the Project were published in 2008. See, Ombudsman's Office, *Promoción y monitoreo de los derechos sexuales y reproductivos de mujeres víctimas de desplazamiento forzado*, con énfasis en violencia intrafamiliar y sexual [*Promotion and monitoring of the sexual and reproductive rights of women victims of forced displacement, with emphasis on domestic and sexual violence*], June 2008.

²¹³ Ombudsman's Office, *Promoción y monitoreo de los derechos sexuales y reproductivos de mujeres víctimas de desplazamiento forzado*, con énfasis en violencia intrafamiliar y sexual [*Promotion and monitoring of the sexual and reproductive rights of women victims of forced displacement, with emphasis on domestic and sexual violence*], June 2008, p. 17.

²¹⁴ Consejo Nacional de Atención Integral para la Población Desplazada [National Council for Comprehensive Assistance for the Displaced Population], Agreement No. 08 of 2007, available at <<http://www.acnur.org/biblioteca/pdf/5599.pdf>>

²¹⁵ UNHCR, Colombia, Country Operations Profile, available at <<http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e492ad6>>

²¹⁶ UNHCR, *Conclusión y Recomendaciones del Balance de la política pública de atención integral a la población desplazada por la violencia 2004-2006, Colombia* (2007); *Mesa de Trabajo Mujer y Conflicto Armado* [Working Group on Women and Armed Conflict], *Informe de Seguimiento a las Recomendaciones contenidas en el Informe "Las Mujeres frente a la violencia y la discriminación derivadas del conflicto armado en Colombia" de la Comisión Interamericana de Derechos Humanos* [Follow-up Report on the Recommendations Contained in the Report on "Violence and Discrimination against Women in the Armed Conflict in Colombia" prepared by the IACHR], September 18, 2009; Colombian Commission of Jurists, *Camino al Despojo y a la Impunidad* [*Path to Predation and Impunity*], Bogotá, Colombia, 2007, pp.131-132.

etc.), the changes in the family dynamic, the new role that women have had to undertake as head of household, being dispossessed of one's land, and displaced women's exposure to unrelenting violence perpetrated by the actors in the armed conflict. Nor does it take into consideration the particular circumstances of individual women such as age, race and ethnic background.

99. The Commission also finds that ensuring the sexual and reproductive rights of displaced women, adolescents and girls (*Recommendation 29*) still poses a challenge. In 2008, the Ombudsman's Office identified a number of reasons why, among them the following: difficulties with institutional coordination of the services to be provided to displaced women; the failure to document the services provided; the institutions charged with providing assistance and prosecuting cases of domestic and sexual violence are not documenting acts of sexual violence, forced prostitution, or sexual slavery; and the lack of gender-specific data that would show what the impact of this type of violence is.²¹⁷ A study published by the United Nations Development Fund for Women (UNIFEM) finds that "the humanitarian agenda for addressing the displaced population has always focused on relief; it does not promote sexual and reproductive rights."²¹⁸

100. The Commission also observes that conditions have not been created to enable displaced women to register for and obtain the services provided by the national health system (*Recommendation 33*). The Office of the United Nations High Commissioner for Human Rights in Colombia observed that "*Acción Social*, the Government entity in charge of assisting IDPs [internally displaced persons], sometimes agrees to register IDPs only under pressure of legal actions (*acciones de tutela*). IDPs suffering this restriction of their rights are normally those who claimed to have been forcibly displaced by illegal armed groups or the counter-insurgency actions of security forces."²¹⁹

F. The need to protect and legitimize the work of defenders of women's rights

101. In its 2006 Report, the Commission recommended to the State that it legitimize and effectively protect the work of organizations involved in the protection of women's rights and ensure that they play an active role in formulating the programs and services intended to protect women and their rights (*Recommendations 58-61*). The Commission has also reminded the State of the need to provide mechanisms to protect and guarantee the safety of victims, witnesses, and human rights defenders in the investigation and trial of those seeking benefits under the Justice and Peace Law.²²⁰

102. The Commission regards Judgment T-496, delivered by the Constitutional Court of Colombia in 2008, as a step forward in protecting and legitimizing the work that women's organizations are doing against the backdrop of the armed conflict²²¹. This ruling protects the rights

²¹⁷ Ombudsman's Office, *Promoción y monitoreo de los derechos sexuales y reproductivos de mujeres víctimas de desplazamiento forzado*, con énfasis en violencia intrafamiliar y sexual [*Promotion and monitoring of the sexual and reproductive rights of women victims of forced displacement, with emphasis on domestic and sexual violence*], June 2008. p.267

²¹⁸ María Cristina Hurtado Sáenz, "*El Análisis de Género del Desplazamiento Forzado*" [An Analysis of Gender in Forced Displacement], *Justicia Desigual?, Género y derechos de las víctimas en Colombia* [Unequal Justice?, Gender and Victims' Rights in Colombia], UNIFEM, Bogotá, Colombia, p. 267

²¹⁹ United Nations, Human Rights Council, *Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, Tenth Session, A/HRC/10/032 (2009), paragraph 85.

²²⁰ IACHR, Follow-up on the Demobilization Process of the AUC in Colombia - Digest of published documents (2004-2007), OEA/Ser.L/V/11.CIDH/INF.2/07, 2007, para. 110, numbers 4 and 5.

²²¹ Regarding such sentence, the State informs that the Ministry of Interior and Justice and the Prosecutor's Office presented before the Constitutional Court a "proposal for the adjustment of the Protection Program for Victims and

to life, to security, to liberty, to physical integrity and to access to justice of a number of women engaged in the defense of human rights. It ordered the Ministry of the Interior and Justice and the Office of the Attorney General to conduct an assessment of the dangers that the defenders of women's rights face and to take measures to protect them properly.²²² The Court held that "the strategy for protecting victims and witnesses in proceedings conducted under the Justice and Peace Law flagrantly disregards multiple essential obligations that the Colombian State has under the Constitution and international law, particularly as regards prevention of discrimination and violence against women, and most especially women victims of the armed conflict."²²³

103. The Court held that the State's program for victim and witness protection made no provision for gender or other factors (such as age, ethnic background, health, and so), which are determinative in preventing the violence against women derived from the armed conflict. It also wrote that because of their gender, women who defend women's human rights "are exposed to specific risks and are uniquely vulnerable in many aspects of their lives in the context of the armed conflict. In their complaint they demonstrated that they are surviving victims of acts of violence that have placed severe and unexpected material and psychological burdens on them."²²⁴ The Court therefore ordered the authorities to do a thorough review of the Victim and Witness Protection Program established by the Justice and Peace Law in order to make it more effective and bring it in line with international standards of human rights.

104. Nevertheless, the Commission continues to receive complaints to the effect that the response to the Court ruling has not been sufficient to guarantee the rights to security and protection in the case of women victims and women defenders of human rights. Various civil society organizations have reported that the threats, harassment and murders of victims and women human rights defenders have not abated at all; quite the contrary, they have gotten worse.²²⁵ Furthermore, the Office of the United Nations High Commissioner for Human Rights in Colombia (OHCHR Colombia) documented a significant number of attacks in 2008 against human rights defenders and trade union members, principally in Antioquia, Arauca, Bogotá, Nariño, Putumayo and Valle del Cauca.²²⁶ The attacks "involved murders, as well as damage to property, break-ins, theft

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Witnesses of the Law of Justice and the Peace", including three main strategies: "in the first place, guarantee that the structure, procedures, and institutional roles are assumed, assimilated and effectively managed by the group of entities and at different levels, and is in plain functioning in a short time span; in second place, to guarantee that several norms, criteria, principles and values are incorporated and guarantee a dignified treatment, from a human rights perspective and a differential focus, especially in relation to women and ethnic groups; in the third place, to progress on budget management and the institutional reforms necessary for the program to be viable and capable of responding to the challenges that need to be met." Observations of the State of Colombia to the present draft project, p. 33.

²²² Constitutional Court of Colombia, judgment T-496 of 2008 (Case File T-1783291), Conclusion Paragraph Three.

²²³ Constitutional Court of Colombia, Judgment T-496 of 2008 (Case File T-1783291), para. 10.4.

²²³ Constitutional Court of Colombia, Judgment T-496 of 2008 (Case File T-1783291), para.10.4.

²²⁴ Constitutional Court of Colombia, Judgment T-496 of 2008 (Case File T-1783291), para.10.4.

²²⁵ Working Group on the Plan to Provide Comprehensive Protection to Victims of and Witnesses to Gross Violations of Human Rights and Violations of International Humanitarian Law, with a Differentiated Gender Approach, *Observations on the Official Response to Judgment T-496 of 2008*, June 2009; *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009; Mesa de Trabajo Mujer y Conflicto Armado [Working Group on Women and Armed Conflict] and the Center for Justice and International Law (CEJIL), *Follow-up to the Report on Discrimination and Violence against Women in the Armed Conflict in Colombia*, 2008, reports presented at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008.

of information and threats, and the worrying practice by some senior Government officials of publicly stigmatizing human rights defenders and trade union members, as biased and sympathetic to guerrilla groups.”²²⁷

105. The Commission is, therefore, concerned at the fact that women victims of violence and their defenders are no safer today, and in some cases are in even greater danger. According to the reports from civil society organizations, threats have intensified against the women who are both victims and leaders and who are among the women protected by the Constitutional Court’s ruling.²²⁸ Reportedly, “of the 13 women protected by the Court’s ruling, 4 have received death threats, which have forced them to move elsewhere and have necessitated heightened measures of protection.”²²⁹ It has also been reported that in 2009, threats have continued against some women’s organizations and human rights organizations that counsel and legally represent women victims of sexual violence in the context of the armed conflict. Specifically, the directors, leadership and other members of the *Liga de Mujeres Desplazadas* [League of Displaced Women] and the *Alianza Iniciativa de Mujeres Colombianas por la Paz* [Colombian Women’s Pro-Peace Initiative] have been systematically persecuted.²³⁰

106. The Commission has also learned that the demobilization process has increased the risks to which women leaders and human rights defenders are exposed.²³¹ The testimonies underscore the control to which women community leaders are subjected because of the information networks that have been introduced since illegal armed groups such as the Black Eagles (“Aguilas Negras”) or emerging armed groups moved in and settled in the very same areas where the displaced women are located. According to *Corporación Sisma Mujer*, the women are saying that the fact that they are leaders “makes us much more vulnerable, subject to greater scrutiny because we are leaders, but also threatened because we are the most active.”²³² However, without effective measures of protection by the State, these women leaders have to devise their own strategies for security, one of which is to move away or “keep a low profile”.²³³ The Commission is

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²²⁶ United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, Tenth Session, A/HRC/10/032 (2009), para. 75.

²²⁷ United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, Tenth Session, A/HRC/10/032 (2009), para. 75.

²²⁸ Working Group on the Plan to Provide Comprehensive Protection to Victims of and Witnesses to Gross Violations of Human Rights and Violations of International Humanitarian Law, with a Differentiated Gender Approach, *Observations on the Official Response to Judgment T-496 of 2008*, June 2009.

²²⁹ Working Group on the Plan to Provide Comprehensive Protection to Victims of and Witnesses to Gross Violations of Human Rights and Violations of International Humanitarian law, with a Differentiated Gender Approach, *Observations on the Official Response to Judgment T-496 of 2008*, June 2009.

²³⁰ *Mesa de Seguimiento al cumplimiento de las órdenes emitidas por la Corte Constitucional en el Auto 092* [Working Group to monitor compliance with Constitutional Court Order 092]. , *Segundo Informe de Seguimiento al Auto 092, y 036 de 2009 en relación con el anexo reservado de 183 hechos de violencia sexual* [Second Follow-up Report to Orders 092 and 036 of 2009 in connection with the confidential appendix on 183 cases of sexual violence], (2009).

²³¹ *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 164.

²³² *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 165.

²³³ *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 166.

also disturbed by the fact that some of the demobilized are rearming and continue to control the areas where the paramilitaries operate, thereby compromising the participation of victims and human rights defenders in the proceedings conducted under the Justice and Peace Law.²³⁴ The Commission has received information to the effect that victims of sexual violence who have filed complaints with the Attorney General's Office "have withdrawn their complaints because of threats received from the perpetrators, who are generally demobilized elements of the *Héroes de los Montes de María* who have returned to a life of crime."²³⁵

107. Apart from the complaints that actors in the armed conflict are engaging in obstruction of justice, the Commission is alarmed by the assassinations of human rights defenders and community leaders also blamed on actors in the armed conflict. Specifically, in 2007, complaints were filed in connection with the assassinations of Yolanda Izquierdo Berrío (January 31, 2007), Carmen Cecilia Santana Romana (February 7, 2007), Martha Cecilia Obando Ramos (June 29, 2007), Osiris Jacqueline Amaya Beltrán (March 14, 2007) and Judith Vergara Correa (April 23, 2007), all prominent human rights defenders.²³⁶ The Commission is already on record as having denounced these assassinations.²³⁷ The Commission also denounced the August 31, 2009 assassination in Cartagena of Jair Pantoja Berrío, a young man 20 years old and the son of Doris Berrío, the historic leader of the *Liga de Mujeres Desplazadas* [League of Displaced Women].²³⁸ Jair was one of the founders of the "Youth League" of the League of Displaced Women. Its mission is to draw attention to the rights of displaced youth.²³⁹

108. This series of assassinations shows how fragile the system for protecting victims and witnesses is; but it also increases women's mistrust of State institutions. In the case of the assassination of Yolanda Izquierdo, an observation is made in the Tenth Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia to the effect that the assassination "intensified their fears and showed that victims have no assurances of being able to participate actively in the process or claiming their rights. This had immediate negative

²³⁴ Permanent Council. Tenth Report of the Secretary General to the Permanent Council on the MAPP/OAS Mission, OEA/Ser.GCP/doc. 4249/07, October 31, 2007, paragraph 56.

²³⁵ Working Group to Monitor Compliance with the orders issued by the Constitutional Court in Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009), p. 39.

²³⁶ Working Group to Monitor Compliance with Constitutional Court Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 cases of sexual violence* (2009), p. 38; *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 167-168.

²³⁷ IACHR, Follow-up on the Demobilization Process of the AUC in Colombia - Digest of published documents (2004-2007), OEA/Ser.L/V/11.CIDH/INF.2/07, 2007, paragraphs 88-90.

²³⁸ Press release energetically repudiating the assassination of Jair Pantoja Berrío, son of Mrs. Doris Berrío Palomino, historic leader of the *Liga de Mujeres Desplazadas* [League of Displaced Women], signed by the *Campaña Mis Derechos No se Negocian* [My Rights Are Not Negotiable Campaign], *Iniciativa de Mujeres Por la Paz* (IMP) [Colombian Women's Pro-Peace Initiative], *Mesa de Trabajo "Mujer y Conflicto Armado"* [Working Group on Women and Armed Conflict]; *Red de Empoderamiento de Mujeres de Cartagena y Bolívar* [Women's Empowerment Network of Cartagena and Bolívar]; *Red de Empoderamiento de Mujeres Chocoanas*; *Red Nacional de Mujeres*; *Tribunal Mujeres* and DESC; CAJAR; CIASE; CODHES; *Contigo Mujer*; *Corporación Sisma Mujer*; *Génica Fundación HEMERA*; ILSA; *Synergia*; *Viva la Ciudadanía*; *Programa Mujeres y violencias* [Women and Violence Program], received at the Commission on September 8, 2009.

²³⁹ See Justice and Peace Commission, Press Release, Assassination of Jair Pantoja Berrío, son of the historic leader of the *Liga de Mujeres Desplazadas* [League of Displaced Women], September 1, 2009, available at <<http://justiciapazcolombia.com/Asesinato-de-Jair-Pantoja-Berrio>>, consulted on October 14, 2009.

repercussions since it intensified their fears and showed the limited capacity of the government to offer protection in certain areas."²⁴⁰

109. The Commission therefore considers that the State has failed to adequately and effectively guarantee protection to women victims and women who defend human rights. The following are among the weaknesses in the Victim and Witness Protection Program: technical problems with the equipment used for protection, such as cell phones and "Avantel" alarm devices; the increased danger created by the police patrols; the fact that the risks are regarded as "routine"; bureaucratic procedures that delay the implementation of the measures, and inadequate psychosocial counseling.²⁴¹ Women believe, therefore, that the protective measures provided are inadequate and "expose not only the limitations attributable to the severity of the problem but also the lack of any sensitivity to the real plight of the very persons whom these measures are supposed to protect."²⁴²

110. The State has informed that Commission that in compliance with Law 975 of 2005, the Decree 3570 of 2007 was adopted. The Decree created the Program to Protect Victims and Witnesses, which has as its goal "to safeguard life, integrity, liberty and the security of the population that faces a risk or security situation as a direct consequence of its participation as a victim or witness within the Justice and Peace Process." The State as well informs of the Protocol to Protect Victims and Witnesses in the framework of Law 975 of 2005, which was "elaborated jointly by the entities that conform the Technical Group of Risk Assessment and approved by the Interinstitutional Committee of Justice and the Peace", and "outlines the procedure for the attention of persons that request inclusion to the program according to what is ordered in Decree 3570 of 2007, clarifying that the criteria are not different than those contained in the Decree that regulates the program and are mandatory by the Technical Groups to Assess Risk."²⁴³

VI. PERSPECTIVES ON TRUTH, JUSTICE AND REPARATION

111. In its 2006 Report, the Commission wrote that "for Colombian women truth, justice and reparations are indispensable prerequisites for any negotiation process destined to resolve the Colombian armed conflict."²⁴⁴ It therefore recommended that the State adopt, under the legal framework governing negotiations with the illegal armed groups, measures to guarantee the rights of women who have been victims of violence and discrimination, to truth, justice and reparations; that it create spaces for victims to be actively involved in and influence the ways in which their rights to truth, justice and reparations are fulfilled and protected by the State; and that it ensure that the legal framework and the demobilization programs are compatible with the international principles and norms about the rights of victims to truth, justice and reparation and, as such, address the specific needs of women. (*Recommendations 62 to 65*)

²⁴⁰ Permanent Council. Tenth Report of the Secretary General to the Permanent Council on the MAPP/OAS Mission, OEA/Ser.GCP/doc. 4249/07, October 31, 2007, para. 57.

²⁴¹ Working Group on the Plan to Provide Comprehensive Protection to Victims of and Witnesses to Gross Violations of Human Rights and Violations of International Humanitarian law, with a Differentiated Gender Approach, Observations to the Official Response to Judgment T-496 of 2008, June 2009.

²⁴² *Corporación Sisma Mujer, Mujeres en Conflicto: Violencia Sexual y Paramilitarismo* [Women in Conflict, Sexual Violence and Paramilitarism], Bogotá, Colombia, 2009, p. 169.

²⁴³ See, Observations of the State of Colombia to the present draft report, p. 39.

²⁴⁴ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 234.

112. In its Report of 2006, the Commission made several comments regarding the application of “the principle of opportunity” in the investigation of cases of violence against women.²⁴⁵ In July 9 of 2009, Law 1312 of 2009 was issued and established that the principle of opportunity applied, amongst others, to

[...]someone demobilized from an irregular armed group who, under the terms of the laws and regulations currently in force, has demonstrated, by means of unequivocal behavior, his intention to rejoin society, provided the National Government has not named him as a candidate for the benefits and procedures established under Law 975 of 2005 and provided he is not being investigated for crimes committed prior to or subsequent to his demobilization, the exception being membership in the criminal organization. For purpose of this law, this includes the unlawful use of uniforms and insignia and the unlawful possession of arms and ammunition.

[...]

For the application of this provision, the person demobilized has to sign a declaration under a serious oath that affirms there has been no commission of a crime different to the ones established in this provision, at the risk of losing the benefits provided in this article according to the Criminal Code if otherwise.

113. The Commission has expressed its concerns regarding the ambiguity of the provisions of the Law since it is doubtful regarding the investigation and sanction of crimes committed by demobilized persons and, consequently, could become a tool for impunity.²⁴⁶ The State for its part highlights that Article 2 of Law 1312 of 2009, regulates the principle of opportunity expressly and considers “clear that with the application of the principle of opportunity the objective is not to leave in impunity serious crimes related to international humanitarian law, crimes against humanity, crimes against war or genocide.”²⁴⁷

114. In this context, the Commission reaffirms that the possible application of the principle of opportunity to demobilized elements that have participated or have knowledge of crimes of sexual violence produces obstacles for women to access justice since it hinders the clarification

²⁴⁵ IACHR, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, OEA/Ser.L/V/II. Doc. 67, 2006, para. 206. Regarding the principle of opportunity, the State highlights what was established by the MAPP-OAS: “The Mission manifested the need to search for legal alternatives to define the juridical “limbo” in which the demobilized from the *autodefensas* (self-defense groups) were that had not committed serious crimes. The approval by Congress of the principle of opportunity represents progress in this sense”. See, Observations of the State to the present draft report, p. 40.

²⁴⁶ See, IACHR, Chapter IV, Colombia, Annual Report of 2009, para. 25. In this sense, the Inter-American Court of Human Rights has considered that: “110. The 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. 111. Crimes against humanity give rise to the violation of a series of undeniable rights that are recognized by the American Convention, which violation cannot remain unpunished. The Court has stated on several occasions that the State has the duty to prevent and combat impunity, which the Court has defined as “the lack of investigation, prosecution, arrest, trial, and conviction of those responsible for the violation of the rights protected by the American Convention.” See Inter-American Court on Human Rights, Case Alomonacid Arellano and others. Judgment, September 26, 2009. Serie C No. 154.

²⁴⁷ Observations from the State of Colombia to the present draft report, p. 40.

of facts, the investigation and sanction of the perpetrators and produces a risk for the cases to remain unpunished.²⁴⁸

115. The Commission recognizes as an advancement the enactment of Decree 3570 of 2007, which created the Victim and Witness Protection and Assistance Program to protect the lives, integrity, liberty and security of those who are threatened or endangered because they are victims or witnesses in the proceedings conducted under the Justice and Peace Law, does represent progress.²⁴⁹ Under this program measures and mechanisms have been introduced to identify risk, including the preparation and updating of risk maps and protection measures for victims and witnesses.²⁵⁰ The protection measures introduced under the Program include municipal prevention mechanisms handled by the National Police, and individual assistance mechanisms when the risks are extreme or extraordinary. In such cases the assistance begins with food, medical care and housing assistance; the risks are assessed and additional protection measures are taken (soft self-protection measures, mobile setups and relocation).²⁵¹

116. But these measures have not been sufficient to ensure that women victims and witnesses are properly protected. According to information supplied by civil society organizations,²⁵² the Justice and Peace Units of the Public Prosecutor's Office require that women who apply for protection under the program first prove that they are victims, which delays any protection that the State might eventually provide; the units are dubious about the risk or dangers that the women report; they do not properly document and organize the information that the women provide, with the result that there are duplicated records, while others are lost or in some way altered; bureaucratic requirements cause delays in bringing the dangers to the attention of the National Police (like the standardized form for reporting the facts). It is also said that criteria used in applying assistance measures related to food, hygiene, housing and transportation are not gender sensitive, nor are the criteria used to assess risk and implement protective measures.²⁵³

117. The Commission is also concerned at the fact that the protective measures established under the Justice and Peace Law and the Victim and Witness Protection Program created by that law, are not adequate to ensure the right to justice in the case of women victims of violence in the armed conflict. The Commission has learned that "in the judicial proceedings conducted against the perpetrators, the victims' access to justice and the truth has been littered with obstacles [...] especially in regard to the right to non-repetition, as criminal acts and violence

²⁴⁸ *Cfr.*, IACHR, Chapter IV, Colombia, Annual Report of 2009.

²⁴⁹ Ministry of the Interior and Justice, Decree 3570 of 2007 which creates the Victim and Witness Protection and Assistance Program of Law 975 of 2005, September 17, 2008, Article 1.

²⁵⁰ The Program has an Office of the Executive Director, a Technical Risk Assessment Group, and a Victim and Witness Protection Subcommittee for its direction, execution, evaluation and monitoring. See, Ministry of the Interior and Justice, Decree 3570 of 2007 which creates the Victims and Witness Protection and Assistance Program of Law 975 of 2005, September 17, 2008, articles 5 to 10.

²⁵¹ Ministry of the Interior and Justice, Decree 3570 of 2007 which creates the Victims and Witness Protection and Assistance Program of Law 975 of 2005, September 17, 2008.

²⁵² Working Group on the Plan to Provide Comprehensive Protection to Victims of and Witnesses to Gross Violations of Human Rights and Violations of International Humanitarian Law, with a Differentiated Gender Approach [composed of the Colombian Women's Pro Peace Initiative, the *Corporación Sisma Mujer*, the Colombian Commission of Jurists, and the Center for Studies in the Law, Justice and Society], June 2009, pp. 24-26.

²⁵³ Working Group on the Plan to Provide Comprehensive Protection to Victims of and Witnesses to Gross Violations of Human Rights and Violations of International Humanitarian Law, with a Differentiated Gender Approach [composed of the Colombian Women's Pro Peace Initiative, the *Corporación Sisma Mujer*, the Colombian Commission of Jurists, and the Center for Studies in the Law, Justice and Society], June 2009, pp. 26-28.

continue to be committed against the victims.”²⁵⁴ The reports received from civil society organizations recount how the paramilitaries’ version of the facts in their voluntary depositions “does not take into account those cases in which women were victims of domestic slavery, forced to provide services or help of any kind to paramilitary groups (washing clothes, preparing foods, giving them shelter, etc.), and the judges and prosecutors disregard crimes of this type.”²⁵⁵

118. Furthermore, the State reported that one of the strategies of the National Reparation and Reconciliation Commission (CNRR) created under Law 975 of 2005 to protect the rights that persons victimized by outlaw groups have to the truth, justice and reparation has been to prioritize assistance to victims at greatest risk, which includes women.²⁵⁶ The Commission applauds the efforts the State has made to that end, such as the CNRR’s preparation of a manual for dealing with sexual and gender violence as a tool to sensitize state institutions to these issues and train their staff, and a booklet on preventing gender violence that examines the question of sexual violence in the context of the armed conflict.²⁵⁷ The Commission also welcomes the following measures taken by the CNRR in 2007: release of a documentary and radio series that featured chapters on women victims and their rights to justice and reparations; preparation of a booklet classifying cases of gender and sexual violence, in which 46 cases were documented; and training sessions on gender issues conducted for the prosecutors attached to the Justice and Peace Units.²⁵⁸

119. Regarding the CNRR, the State claims that “it is an entity created to guarantee the rights to truth, justice and reparation of the victims of the armed conflict, especially the victims of the groups demobilized. Therefore, it does not correspond to the CNRR judicial competences; however, the CNRR is concerned about adequately addressing the cases that specially affect women, with a particular emphasis in the violation of their sexual and reproductive rights.” The State observes as well that “the CNRR has documented cases of sexual violence and trained its public officials of other institutions. Regarding this issue, it has also recommended in reiterated occasions, as well as control organisms, the adequate investigation, as well as the probative assessment, and the form that the interrogatories are performed in this topic (questions and cross-examination)”²⁵⁹, among other actions”. Finally, the State highlights that the CNRR has launched initiatives that link women pertaining to ethnic, afrocolombian and indigenous groups, “as well as their work with traditional authorities in the training regarding the Law of Justice and Peace and the right to truth, justice and reparation.”²⁶⁰

120. However, the Commission observes that the State’s measures have not been sufficient to ensure that women victims of sexual violence will get justice in proceedings conducted under the Justice and Peace Law.²⁶¹ According to *Corporación Sisma Mujer*, “In the application of

²⁵⁴ IACHR, Record of Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, 133rd session, October 23, 2008.

²⁵⁵ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women’s Path to Peace], *Follow-up to the Report of the IACHR “Violence and Discrimination against Women in the Armed Conflict in Colombia”*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p. 13.

²⁵⁶ The State’s Second Report (2009), p. 14.

²⁵⁷ The State’s Second Report (2009), p. 14; National Reparations and Reconciliation Commission, *Gender Violence, Colombia, 2009*.

²⁵⁸ The State’s First Report (2009), p. 98.

²⁵⁹ Observations of the State of Colombia to the present draft report, p. 40-41.

²⁶⁰ Observations of the State of Colombia to the present draft report, p. 41-42.

²⁶¹ *Informe de la violencia sexual y los feminicidios en el contexto del conflicto armado colombiano, 2003-2007* [Report on sexual violence and femicide in Colombia’s armed conflict, 2003-2007], *Corporación Casa de la Mujer* [Foundation for the Protection of Women], *Mujeres que Crean* [Women Who Create], *Ruta Pacífica de las Mujeres* [Women’s

Law 975 of 2005, the chances of obtaining justice in cases of sexual violence have been seriously diminished by a number of factors, among them the failure to investigate these crimes, the denial of the facts, the latitude allowed in defense of paramilitarism, the difficulty that victims have in participating in the proceedings, and the extraditions.²⁶² The Office of the United Nations High Commissioner for Human Rights in Colombia has also said that: “Crimes of sexual violence in the context of the armed conflict remain characterized by a high level of impunity. For example, in the context of the “voluntary depositions” of the Justice and Peace Law, 15 cases of sexual violence have been mentioned, of which only four have been confessed.”²⁶³ The Commission has no knowledge of effective measures being implemented by the State to investigate and punish cases of sexual violence that the Office of the High Commissioner itself brought to the government’s attention.

121. The Commission considers that fostering spaces of participation to enable victims to be actively involved in the proceedings conducted under the Justice and Peace Law is a challenge that must be met if their rights to justice, the truth and reparations are to be respected and ensured (*Recommendation 63*). The Commission observes that obstacles prevail for the participation of victims in the Peace and Justice process.²⁶⁴ Specifically, the Commission has received information that the Program of Witness and Victims does not guarantee the right to information and to the legal advisory services that victims require in order to actively participate in the proceedings.²⁶⁵ The information received points out that: “Although 80% of the victims in justice and peace proceedings are women, many of them are from rural areas with resources amounting to less than the minimum legal wage. They know nothing about the legal proceedings being conducted in the country against paramilitaries and have no legal advisory services from the Colombian State.”²⁶⁶ It has also been established that the Public Prosecutor’s Office does not provide “these women with clear reports that they can understand and that can steer them as to how the proceedings will go and supply them with the information provided by the parties applying for the benefits of the Justice and Peace

...continuation

Path to Peace] and *Vamos Mujer* (2008); Document presented to the IACHR at Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, IACHR, 133rd session, October 23, 2008, p. 16.

²⁶² *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia”* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia], September 18, 2009, p. 35.

²⁶³ United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, Tenth Session, A/HRC/10/032 (2009), paragraph 60.

²⁶⁴ See, IACHR, Chapter IV, Colombia, Annual Report of 2008, OEA/Ser.L/V/II.134 Doc. 5 rev. 1, February 25, 2009, para. 40.

²⁶⁵ Working Group on the Plan to Provide Comprehensive Protection to Victims of and Witnesses to Gross Violations of Human Rights and Violations of International Humanitarian Law, with a Differentiated Gender Approach [composed of the Colombian Women’s Pro Peace Initiative, the *Corporación Sisma Mujer*, the Colombian Commission of Jurists, and the Center for Studies in the Law, Justice and Society], June 2009.

²⁶⁶ Cecilia Barraza and Diana Ester Guzmán, “Proceso de reparación para las mujeres víctimas de violencia en el marco del conflicto armado colombiano” [“Reparations process for women victims of violence in the context of the Colombian armed conflict], *Sin Tregua*, 2008, p. 127; *Corporación Humanas, Acceso de las Mujeres a la Justicia en el Marco del Conflicto Armado* [Women’s Access to Justice in the Context of the Armed Conflict], December de 2007.

Law.”²⁶⁷ As a result, these women have no way of knowing how the case is progressing, the avenues to pursue for legal counsel, and their rights to reparations²⁶⁸.

122. Discriminatory socio-cultural patterns obstruct women’s exercise of their rights to the truth, to justice and to reparation. According to scholarly studies, “women are afraid of being re-victimized in the justice systems, because the judicial proceedings and the agents of the justice system operate on the basis of patriarchal codes that cause bias.”²⁶⁹ Prosecutors and the judges presiding over the voluntary deposition hearings do not object when deponents make statements based on biased gender stereotypes that are demeaning to the victims’ dignity. Assailants accuse women victims of violence of being “women with dubious pasts” or of “having ties to terrorism or not being good citizens.”²⁷⁰

123. The Commission continues to receive complaints to the effect that in the vast majority of the voluntary depositions given by candidates applying for the benefits of the Justice and Peace Law, the Prosecution refrains from interrogating them about acts of sexual violence; if it does have knowledge of these facts “it doesn’t investigate, or even expose the practice.”²⁷¹ Civil society organizations have reported that although there has been some questioning about sexual violence, “[i]n the voluntary deposition hearings, there is no questioning or interrogation that would require the accused to elaborate upon his version of the facts.”²⁷² The Commission is also troubled by the fact that the voluntary deposition hearings the privacy of the victims of sexual violence is not preserved. Therefore, the re-victimization and stigmatization of women victims prevails in the process of Justice and Peace. According to the reports received from civil society organizations, “in some voluntary deposition hearings, the victims [of sexual violence] have been forced to face their assailants and even their families and communities, where the hearings are being broadcast live. This is what happened in the case of the voluntary deposition hearing held in October 2008 in the case of Marco Tulio Guzmán, alias “El Oso”, a demobilized member of the Montes de Maria Block of the A.C.C.U.”²⁷³ The Commission is therefore reiterating its recommendation to the State that it should guarantee due diligence in the investigation, prosecution, punishment and prevention of cases of sexual violence against women in the context of the armed conflict (*Recommendation 48*).

124. The Commission also observes that the State has not taken sufficient steps to ensure that the laws and programs on demobilization are compatible with international law and the rights of victims to the truth, justice and reparation (*Recommendation 64*). Women victims of

²⁶⁷ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women’s Path to Peace], *Follow-up to the Report of the IACHR “Violence and Discrimination against Women in the Armed Conflict in Colombia”*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p.13.

²⁶⁸ Cfr. CIDH, Capítulo IV Colombia, Informe Annual 2009.

²⁶⁹ Cecilia Barraza and Diana Ester Guzmán, “Proceso de reparación para las mujeres víctimas de violencia en el marco del conflicto armado colombiano” [“Reparations process for women victims of violence in the context of the Colombian armed conflict”], *Sin Tregua*, 2008.

²⁷⁰ *Corporación Casa de la Mujer* [Foundation for the Protection of Women] and *Ruta Pacífica de las Mujeres* [Women’s Path to Peace], *Follow-up to the Report of the IACHR “Violence and Discrimination against Women in the Armed Conflict in Colombia”*, Bogota, Colombia, September 2009. Received at the IACHR on September 18, 2009, p. 13.

²⁷¹ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia”* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009, p. 36.

²⁷² IACHR, Report of Hearing No. 16, Discrimination and violence against women as a result of the armed conflict in Colombia, 133rd session, October 23, 2008.

²⁷³ Working Group to Monitor Compliance with the orders issued by the Constitutional Court in Order 092, *Second Follow-up Report on Orders 092 and 036 of 2009 in connection with the confidential appendix of 183 acts of sexual violence* (2009), p. 44.

violence carry enormous procedural burdens, especially in criminal cases prosecuted against the demobilized actors. In these cases, women have to “follow relatively rigid procedural rules and the evidentiary burdens are particularly complex.”²⁷⁴ For example, it has been established that if the confessions made by those giving voluntary depositions are incomplete, imprecise or false, it is the women who have to prove that; the Prosecution’s Justice and Peace Unit, which is in charge of directing the voluntary deposition hearings, does nothing in those hearings to inquire into the violence committed against the women.²⁷⁵ It has also been said that the current Justice and Peace laws have no mechanisms by which to provide women with proper psychosocial counseling.²⁷⁶ The Commission is also troubled by the “glaring absence of measures to avoid reprisals against victims who turn to the courts, the failure to investigate the source of the dangers and the extent to which they are somehow related to the judicial process; and the failure to guarantee the continuity of the victims’ participation in these proceedings and the actual realization of their right to justice.”²⁷⁷

125. The Commission also makes note of the issuance of Decree 1290 of 2008 which creates a government-run program of individual reparations for victims of illegal armed groups. The Commission recognizes the measures established in that decree to fulfill the right of reparation that victims of the armed conflict have. Those measures include: the creation of a reparations fund for victims; State compensation in cases of forced disappearance, torture, crimes against personal integrity and sexual freedom, recruitment of minors and forced displacement; restoring the victim to his or her situation prior to the commission of the crime; rehabilitation in cases of physical and psychological trauma; measures of satisfaction (public acknowledgements and tributes to the victims) and guarantees of non-repetition of the criminal behaviors.²⁷⁸ However, as the Commission has already noted, the administrative program of reparations of Decree 1290 of 2008 only applies to victims of demobilized armed groups and it is mainly sustained in a plan of indemnizations with fixed parameters measured in minimum salaries.²⁷⁹

126. Similarly, the Commission expresses its concern regarding the exclusion of victims of violations committed by State agents from the administrative program of reparations established in Decree 1290/08. Thus, women victims of violence and discrimination committed by State actors are also excluded. Hence, the Office of the United Nations High Commissioner for Human Rights in Colombia observed that “[t]he Decree [...] does not apply to victims of State agents and therefore

²⁷⁴ Cecilia Barraza and Diana Ester Guzmán, “Proceso de reparación para las mujeres víctimas de violencia en el marco del conflicto armado colombiano” [“Reparations process for women victims of violence in the context of the Colombian armed conflict], *Sin Tregua*, 2008.

²⁷⁵ *Corporación Humanas, Acceso de las Mujeres a la Justicia en el Marco del Conflicto Armado* [Women’s Access to Justice in the Context of the Armed Conflict], December de 2007.

²⁷⁶ Mesa de Trabajo Mujer y Conflicto Armado [Working Group on Women and Armed Conflict], *VIII Informe sobre violencia sociopolítica contra mujeres y niñas en Colombia* [VIII Report on Sociopolitical violence against women and children in Colombia], 2008.

²⁷⁷ Working Group on the Plan to Provide Comprehensive Protection to Victims of and Witnesses to Gross Violations of Human Rights and Violations of International Humanitarian Law, with a Differentiated Gender Approach, [composed of the Colombian Women’s Pro-Peace Initiative, the *Corporación Sisma Mujer*, the Colombian Commission of Jurists and the Center for Studies in Law, Justice and Society], *Observations on the Official Response to Judgment T-496 de 2008*, June 2009, p. 29.

²⁷⁸ Ministry of the Interior and Justice, Decree 1290 of 2008, which creates the program of individual reparations through administrative proceedings for victims of organized armed groups operating outside the law, Chapter Two, April 12, 2008, Articles 4 to 10.

²⁷⁹ See, IACHR, Chapter IV, Colombia, Annual Report of 2008, OEA/Ser.L/V/II.134 Doc. 5 rev. 1, February 25, 2009; IACHR, Chapter IV, Colombia, Annual Report of 2009 and IACHR, *Principal Guidelines for an Integral Policy of Reparations*, OEA/Ser.L/V/II.131 Doc. 1, February 19, 2009.

requires other mechanisms to provide benefits to all victims without discrimination.”²⁸⁰ So, the Commission is concerned at the fact that this decree is applied on a discriminatory basis.

127. In this sense, the Commission noted the existence of a bill known as “The Statute of Victims” which purpose was to realize the rights of victims of the armed conflict to integral reparation, and that finally was not approved by the Senate in 2009. Taking into account the absence of legislative measures, the Commission reaffirms that the policy of reparation should guarantee the right of the victims to an integral reparation for the damage caused by illegal armed forces as well as by the actions or omissions of state actors, based on measures of restitution, indemnization, rehabilitation and satisfaction.²⁸¹ Hence, this policy should be guided by the principal of integrality and accompanied by the commitment of social solidarity of the society to the victims of the armed conflict, through mechanisms of consultation, follow-up and evaluation to achieve stability and sustainability through time.²⁸²

128. On the other hand, the Commission is also troubled by the fact that the differential approach is not applied to the State’s compensation and the situation of Afro-Colombian and indigenous women is not taken into account. The Committee on the Elimination of Racial Discrimination expressed regret at the fact that insufficient information is available on how this right has been implemented in relation to Afro-Colombian and indigenous victims and therefore recommended that their situation be taken into account and that special attention be paid to women and girls.²⁸³

129. Likewise, the Commission observes that the State has not implemented the measures necessary for just and adequate reparations to the women victims of sexual violence perpetrated by actors in the armed conflict. According to *Corporación Sisma Mujer*, “there are no mechanisms that guarantee victims full and effective reparations proportional to the severity of the violation suffered because compensation is the only form of reparation included.”²⁸⁴ It is also troubling that there are no judicial mechanisms for ensuring payment of compensatory damages and no guarantees of non-repetition. Therefore, the Commission is reiterating its recommendations that juridical measures be undertaken to guarantee the right of women victims of violence and discrimination to truth, justice and reparation (*Recommendation 62*).

VII. CONCLUSIONS

130. The Commission is grateful to the State for its cooperation in the follow-up process and takes note of its assertions concerning compliance with the recommendations set out in the 2006 Report. From the information supplied by the State and by various other sources in

²⁸⁰ United Nations, Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and of the Secretary General, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, Tenth Session, A/HRC/10/032 (2009), para. 64.

²⁸¹ IACHR, *Principal Guidelines for an Integral Policy of Reparations*, OEA/Ser.L/V/II.131 Doc. 1, February 19, 2009.

²⁸² IACHR, *Principal Guidelines for an Integral Policy of Reparations*, OEA/Ser.L/V/II.131 Doc. 1, February 19, 2009.

²⁸³ Committee on the Elimination of Racial Discrimination, Consideration of Reports Submitted by States Parties under Article 9 of the Convention, concluding observations of the Committee on the Elimination of Racial Discrimination: Colombia, CERD/C/COL./CO/14, August 28, 2009, para. 17.

²⁸⁴ *Corporación Sisma Mujer, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Las Mujeres frente a la violencia y discriminación derivadas del conflicto armado en Colombia”* [Follow-up on fulfillment of the recommendations contained in the report on “Violence and Discrimination against Women in the Armed Conflict in Colombia”], September 18, 2009, p. 37.

connection with the violence and discrimination that women suffer in the context of Colombia's armed conflict, the Commission recognizes that since October 2006 the State has made significant progress in adopting laws and public policies conducive to improving the State's response and the public services provided to women affected by the violence and discrimination. The Commission also notes that landmark court rulings were delivered in the period from 2006 to 2009 that were vital for protecting the human rights of women, especially women displaced by the armed conflict. The Government of Colombia in its observations to this draft report reiterates "its firm commitment with the protection, guarantee and exercise of the human rights of all of its citizens that live in its national territory, particularly related to the rights of women and with the achievement of gender equality, which is evidenced through the different State actions, efforts and institutions that act within the framework of the Constitution, respecting the rule of law."²⁸⁵

131. However, the Commission is deeply concerned by the fact that all actors in the conflict continue to engage in multiple forms of violence against women. It is especially troubled by the incidence of sexual violence in the armed conflict. The physical, psychological and sexual forms of violence perpetrated by the Armed Forces and the police, demobilized combatants, and outlaw groups continue to control the physical persons and lives of women. Indigenous and Afro-Colombian women and girls are the main victims of this brand of violence. However, they are also the women who encounter the greatest obstacles in getting justice, with the result that these crimes go unpunished. Thus, designing and implementing a comprehensive, coordinated and adequately resourced strategy to guarantee effective investigation, prosecution, punishment and reparation of these crimes remains a challenge.

132. In its 2006 Report, the Commission recommended to the State that it strengthen public services and humanitarian assistance for displaced women, as they represented approximately half of the displaced population. The Commission welcomes the positive measures undertaken by the State since October 2006 to address the needs of the displaced. However, the information received from State and non-State agents alike shows that women continue to face specific, gender-related risks caused by the forced displacement. The principal risks include sexual violence, changes in family household, and dispossession of their lands, which also have differentiated consequences on their lives. The Commission is therefore reiterating its recommendations to the State to ensure that public policies and State programs address the specific needs and rights of displaced women, especially displaced indigenous and Afro-Colombian women. The Commission also urges the State to comply with and effectively carry out Judgment T-025 of 2004, delivered by the Constitutional Court of Colombia and the orders that Court issued in furtherance of that judgment (Orders 092 and 237 of 2008).

133. Although funding for public policies, programs and institutions to address the needs of victims of violence and discrimination has increased, the Commission is concerned that the public institutions involved here have neither the institutional capacity nor the human and economic resources they need to protect the rights of women affected by the armed conflict. The Commission notes further that there are no mechanisms for coordinating the various programs and public policies intended to protect the rights of victims, witnesses and human rights defenders. The State must also guarantee that women and the organizations that represent them will play an active role in designing and implementing the programs to protect these women.

²⁸⁵ Observations of the State of Colombia to the present draft report, p. 1.

134. The Commission again underscores the work done by human rights defenders and women's organizations in their struggle against the adversity and violence caused by the armed conflict. The organizing experiences of Colombian women and their ability to influence State policies is a key factor in continuing to ensure respect for the human rights of Colombian women. However, based on the information forthcoming from a variety of sources, the Commission feels compelled to communicate its concern over the constant risks and threats that women's organizations and defenders of women's human rights encounter because of the work they do and as victims of and witnesses to the violence caused by the armed conflict. Therefore, the Commission is reaffirming its recommendations to the State that it should effectively protect and legitimize the work of the organizations and defenders of women's human rights.

135. The fact that State programs are being implemented to protect and make reparation to victims of and witnesses to violence committed by actors in the armed conflict under the Justice and Peace Law represents progress. However, the Commission is concerned that obstacles still stand in the way of the realization of women's right to the truth, justice and reparation. The Justice and Peace Law and the victim and witness protection programs have not guaranteed effective access to justice and protection to women victims of violence perpetrated by actors in the conflict, especially in the case of victims of sexual violence. Then, too, discriminatory socio-cultural attitudes toward women among those in the justice system have the effect of re-victimizing women, making them reluctant to file complaints and participate in court proceedings. Therefore, the Commission is again calling upon the State to adopt a policy, with sufficient human and financial resources to provide comprehensive and differentiated services during these cases to women victims of the internal conflict.

136. Finally, the Commission would like to draw attention to the legislative, judicial and public policy measures adopted since 2006 to deal with the differentiated impact of the armed conflict on women. These measures demonstrate a commitment on the part of the State and non-State sectors alike, to consider the specific needs of women when designing and adopting a comprehensive State policy to prevent, punish and eradicate acts of violence and discrimination against women in the context of the armed conflict. As it has in the past, the Commission is reasserting its commitment to cooperating with the State in implementing solutions to overcome the severe violence and discrimination that persists and undermines the rights of Colombian women.

VIII. RECOMMENDATIONS

Based on the observations and information set forth in this report, the Commission would remind the State of Colombia of the need to deploy efforts to comply with the recommendations made in the report on *Violence and Discrimination against Women in the Armed Conflict in Colombia* (2006), which are listed below, and to keep up the work thus far achieved.²⁸⁶ With respect to the following recommendations, the State considers important that the IACHR promotes its continuous advancement "in the implementation of those measures that are praised, to strengthen and improve them, which would mark a positive path in the commitment of Colombia regarding this theme"²⁸⁷.

General recommendations

²⁸⁶ The State considers that "not all the recommendations of the Report of 2006 deserve to be reiterated literally, since in many of them significant actions have been implemented that deserve to be noted in this chapter in particular." See, Observations of the State of Colombia to the present draft report, p. 42.

²⁸⁷ See, Observations from the State of Colombia to the present draft report, p. 43.

1. To adopt an integral State policy to address the specific impact of the armed conflict on women in the areas of justice, health and education, among others. These policies should be guided by the logic of protecting the rights of women and should tend to guarantee their autonomy.
2. To implement and strengthen measures to comply with the duty to act with due diligence to prevent, sanction and eradicate violence and discrimination against women, exacerbated by the armed conflict, including concrete efforts to fulfill its four obligations: prevention, investigation, sanction and reparation of the human rights violations of women.
3. To implement measures to eradicate discriminatory socio-cultural patterns based on sex, race, and ethnic background, and to take these differences and conditions of vulnerability into account in the development of public policies to mitigate the pernicious effect of the armed conflict on Colombian women.
4. To publicly recognize that the different manifestations of gender-based violence and discrimination are closely related to the human rights and humanitarian crisis that Colombia is facing, that they are serious violations of international and national law, and that it is necessary to assign adequate State resources to achieve their prevention, eradication and sanction.
5. To duly apply the recommendations previously issued by the Inter-American Commission on Human Rights, and United Nations follow-up mechanisms, such as the United Nations Rapporteurs, the United Nations Committee on the Elimination of Discrimination against Women, the Committee Against Torture, the Human Rights Committee, and the High Commissioner for Human Rights.

Specific recommendations

Legislation, public policies, State institutions and programs

6. To adequately enforce the national legislation and the existing public policies designed to protect women from acts of violence and discrimination and their consequences in civil, political, economic, social and health matters, and to allocate sufficient resources to make this enforcement effective at the national and local level.
7. To incorporate the voices and specific needs of women affected by the armed conflict and the organizations representing them in the design of legislation and public policies geared toward ameliorating the impact of the consequences of the armed conflict on them.
8. To adopt and amend existing legislation in order to ensure compliance with decisions and recommendations by supra-national bodies designed to protect the rights of women within the internal armed conflict.
9. To implement dissemination measures and campaigns for the general public regarding the duty to respect the civil, political, economic, social, cultural, sexual and reproductive rights of women; the available services and resources for women who have experienced violations of their rights; and the judicial consequences for perpetrators.

10. To identify and institutionalize new forms of capacity-building for public servants in all sectors (justice, security, health and education) with an integral approach that addresses the right of women to live free from violence and discrimination, and to respect their physical and psychological well-being when they receive public services.
11. To identify and create indicators and inter-institutional monitoring systems on the implementation of legislation and policies destined to mitigate the impact of the armed conflict on Colombian women.
12. To create coordination and communication mechanisms among national and local programs and services for women who are victims of violence and discrimination aggravated by the armed conflict. These mechanisms must favor coordination among all programs at the national level and among programs implemented on the national and local levels.
13. To strengthen and institutionalize the work of the Presidential Office on Gender Equality as the coordinating entity for public policies for women, with adequate financial and human resources.
14. To implement a greater number of State resources allocated to entities responsible for providing services and implementing programs to mitigate the effects of the armed conflict on women.
15. To implement measures to address the violence and discrimination suffered by women in zones occupied by the actors of the armed conflict.
16. To set up inter-institutional teams to determine the exact dimension of the problem and identify comprehensive strategies to address it in these zones.
17. To create spaces where inter-institutional dialogue and greater collaboration can occur to mitigate the effects of the armed conflict on women.
18. To design public policies in the area of citizen protection which incorporate the specific needs of women.
19. To adopt the steps required to complete the ratification and implementation of the Protocol of the Convention on the Elimination of All Forms of Discrimination against Women.

Assessment and Prevention

20. To create and improve statistical and qualitative information systems and records on incidents of violence and discrimination against women.
21. To create mechanisms to achieve uniformity among these information systems.
22. To implement measures in order for these information systems to adequately reflect the national and local situation, including incidents of violence and discrimination taking place in zones occupied by the actors of the armed conflict.
23. To adopt measures in order for these and future programs to disaggregate information by sex, age, race, ethnic group among other factors.

24. To maintain reliable and updated statistics including the armed actors as possible aggressors.
25. To incorporate problems such as sexual violence, already reflected in existing official statistics, in the design of public policies destined to mitigate the effects of the armed conflict on women.
26. To promote that the information collected by State entities about incidents of violence and discrimination is processed with a gender perspective.
27. To launch the design of a single questionnaire to collect information about incidents of violence and discrimination that can be used by all sectors – government, administration of justice, health, international agencies, the academic sector and civil society – among others, and to promote pilot experiences to evaluate its effectiveness.

Public Services for Displaced Women

28. To design and implement a policy including positive actions to recognize and make effective the rights of women in terms of an integral and multidisciplinary attention and support in the areas of health, justice, education and economy of the displaced women, that adequately address their needs in the short and long-term.
29. To address in public policies and State programs, the specific needs of displaced women and their civil, political, economic, social and cultural rights. Especially, to adopt measures to guarantee the protection of their sexual and reproductive rights.
30. To effectively implement the principles included in the Sentence of the Constitutional Court T-025 in regards to the participation of women in the formulation of public policies and the adoption of an adequate level of protection of the civil, political, economic, social and cultural rights of displaced women heads of household, in the short and long-term. Furthermore, to adopt the necessary measures to give participation to organizations of women in the periodic follow-up of this Sentence.
31. To design impact indicators to measure the effectiveness and scope of State support measures and services to mitigate the impact of forced displacement on women of different races, ethnic backgrounds and ages.
32. To strengthen official statistics collection systems on the displaced population and to disaggregate information by race, ethnicity, and sex, among other conditions of vulnerability.
33. To create the conditions and eliminate bureaucratic, inefficient obstacles in order to facilitate the access of displaced women to the registry and the national health system. To create effective safety measures so that women can register and obtain health-care services.
34. To adopt measures to ensure that State entities, particularly those providing services to displaced women, respect and protect their rights and health needs, including those within the sphere of reproductive health, and adequate services and information are granted.

35. In the sphere of access to education, to grant school spaces and offer technical training programs for women and girl children who are displaced so that they can have more opportunities to re-establish themselves socio-economically after the displacement.
36. To develop training programs so that indigenous and Afro-Colombian women can offer psycho-social support to displacement victims belonging to their same race and ethnic groups.

Afro-Colombian and Indigenous Women

37. To design and adopt policies taking into account the specific needs of indigenous and Afro-Colombian women within the armed conflict in regard to health, education, justice and livelihoods. National policies designed to promote the rights of all women must consider the specific needs of indigenous and Afro-Colombian women and have an integral vision of how to address important issues such as health, education, and justice. National policies geared toward improving the situation of indigenous and Afro-Colombian groups must also include the specific needs of women.
38. To reinforce the social investment in indigenous and Afro-Colombian women in the justice, health and education sectors to mitigate the effects of the armed conflict and to render effective the rights of displaced women and heads of household.
39. To adopt measures and dissemination campaigns targeting indigenous and Afro-Colombian communities, the State and society at large, regarding the problems that these women confront, especially displaced women, in order to generate action commitments to solve them and achieve complete respect for their human rights.
40. To develop initiatives to collect information, statistics, research and studies reflecting the specific situation of indigenous and Afro-Colombian women that will provide the foundation to develop public policies geared toward prevention, punishment and eradication of acts of violence and discrimination perpetrated against them.
41. To design and adopt culturally relevant policies, with the participation of indigenous and Afro-Colombian women, to protect displaced women from these groups.
42. To design and adopt policies, with the participation of indigenous and Afro-Colombian women, considering respect for their culture, with the purpose of ameliorating the effects of the armed conflict. In particular, to carry out actions to reduce the negative effects in terms of health, education, and justice caused by the armed conflict.
43. To create mechanisms and spaces to strengthen the leadership, organization and citizen participation of indigenous and Afro-Colombian women in order to incorporate their role and voice in decision-making, according to their own culture and traditions.
44. To achieve the full respect of the rights of indigenous women to live free from violence, discrimination and the forced displacement worsened by the armed conflict, it is essential for the State to respect and protect effectively the ancestral lands of their peoples, from both military and economic interests.

45. To design and implement policies to promote and protect the human rights of indigenous women, including special directives for the armed forces and the National Police in order to facilitate the respect of their right to live free from sexual violence and other forms of discrimination.

Administration of Justice

46. To design an integral, coordinated State policy, supported by adequate public resources, to guarantee that victims of violence and discrimination adequately access justice and that acts of violence are adequately investigated, sanctioned and repaired.
47. To adopt the necessary measures to prevent, sanction and eradicate acts of rape, sexual abuse and other forms of violence, torture and inhumane treatment by all combatants in the armed conflict.
48. To ensure that due diligence is exercised to guarantee that gender-based violence cases are promptly, completely and impartially investigated, those responsible are adequately punished and victims receive reparations.
49. To strengthen the institutional capacity to confront the pattern of impunity for cases of violence against women through effective criminal investigations, with consistent judicial follow-up, in order to guarantee adequate sanction and reparations.
50. To implement measures to reinforce the resources and capacity for investigation processes, in order for violations of human rights with gender-specific causes and their consequences to be investigated and sanctioned according to their gravity.
51. To increase access to legal representation free of charge for victims of violence and discrimination against women.
52. To prepare and disseminate information to ensure that victims of violence and discrimination against women know their rights within the judicial system.
53. To gather and systematize decisions by regional and international bodies designed to protect the rights of women and to make this information accessible to public officials at the national and local level.
54. To adopt effective guarantees to facilitate that victims denounce acts of violence, such as the adoption of effective measures to protect those filing complaints, survivors and witnesses.
55. To adopt immediate measures to guarantee effective training in women's rights for officials responsible for processing crimes, administering justice and supervising the actions of public officials, in order for them to adequately apply national and international norms to bring sexual crimes to justice.
56. To create conditions so that the INML continues training and increasing the awareness of judicial authorities who handle cases of different types of violence so they can adequately and thoroughly evaluate all available evidence in resolving cases of sexual violence, including the legal-medical examination, physical and psychological findings, and laboratory tests, among others. It is important to encourage the multi-disciplinary investigation of such crimes.

Civic and political participation

57. To apply United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security, which requires women to be involved in the decision-making in order to resolve Colombia's armed conflict and mitigate its consequences. The Colombian State should take this Resolution as a guideline and ensure the right of women to participate in all levels of decision-making related to the conflict and its consequences in their daily lives.
58. To legitimize and effectively protect the work of women's human rights defenders and their organizations throughout the national territory.
59. To continue implementing measures to increase the participation of women in the country's social, political and economic life, nationally and locally.
60. To ensure that organizations defending the human rights of women and their members actively participate in formulating programs, services and instruments destined to protect them.
61. To create spaces for coordination and collaboration between non-governmental organizations and State agencies entrusted with providing services to victims of violence.

Truth, justice and reparations

62. To adopt, under the legal framework governing negotiations with the illegal armed groups, measures to guarantee the rights of women who have been victims of violence and discrimination, to truth, justice and reparations. The State must take particular account of the measures set forth by the Convention of Belém do Pará, United Nations Security Council Resolution 1325 and the Rome Statute.
63. The State should create spaces for victims to be actively involved in and influence the ways in which their rights to truth, justice and reparations are fulfilled and protected by the State. The enforcement of these rights should reflect the perspective and specific needs of victims and granted in a non-discriminatory fashion.
64. To ensure that the legal framework and the demobilization programs are compatible with the international principles and norms about the rights of victims to truth, justice and reparation and, as such, address the specific needs of women.
65. To guarantee that women directly affected by the conflict and its consequences are incorporated in the decision-making bodies working towards the resolution of the causes and consequences of the conflict.