

CHAPTER I

INTRODUCTION

1. Respect for human rights is one of the foundational principles of the Organization of American States (OAS), as reflected in its Charter. The mandate given to the Inter-American Commission on Human Rights (IACHR) in Article 106 of the Organization's Charter, to "promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters" gives substance to this commitment assumed by the States and has become a reality through the vision and practice of the various actors in the Inter-American Human Rights System (IAHRS): the Member States of the OAS (Member States); civil society understood in the broad sense: victims, organization, and associations, litigants, academics, and other persons and groups of persons involved in the System, as well as the Commission and the Inter-American Court of Human Rights.

2. As established in the American Convention on Human Rights, the Commission is made up of independent experts who do not represent the States. The independence of the Commission's members is a guarantee contained in the very instrument that provided for its creation. Resolution VIII of the Fifth Meeting of Consultation of the Ministers of Foreign Affairs held in Santiago, Chile in 1959 established in section II that the members of the Commission shall be appointed "as individuals."

3. The requirement that the Commission enjoy independence dates back to the preparatory work for the Inter-American Specialized Conference on Human Rights.¹ The preparatory work for that conference recorded the concern that the Organization's General Assembly might insert into the Statute of the Commission "provisions that would substantially modify [its] functions and powers."² For that reason, the Specialized Conference expressly stated that "the Statute [...] shall not contain, in reference to the structure and powers of the Commission on Human Rights, any provisions other than the complementary provisions"³ to the Convention. In exercising that independence, the Convention established that the IACHR "shall prepare its Statute, submit it to the General Assembly for approval, and issue its own Regulations."

4. Since it was created on August 18, 1959, the IACHR has been perfecting its procedures, policies, and practices. That exercise has involved dialogue and broad consultation with the Member States, civil society organizations, victims, and other users of the System.

I. THE LEGACY OF THE IACHR FOR THE INTER-AMERICAN COMMUNITY OF STATES AND THEIR PEOPLES

5. In the instrument creating the Inter-American Commission, the Member States 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 of them."⁴ Constant protection of human rights and the monitoring of the democratic system have been the principal legacies of the IACHR for the inter-American community of States and their peoples.

6. In a context in which various countries were governed by authoritarian regimes, the IACHR was the only alternative whereby thousands of people could obtain some type of response when faced with illegal detentions, torture, executions, and disappearances of their loved ones. On-site visits,

¹ Inter-American Specialized Conference on Human Rights; San José, Costa Rica; November 7-22, 1969; Acts and Documents. OAS/Ser.K/XVI/1.2. General Secretariat of the Organization of American States, Washington D.C. (Re-edition 1978) (hereinafter "preparatory work").

² Preparatory work, p. 336.

³ Preparatory work, p. 337.

⁴ Final Act of the Fifth Meeting of Consultation of Ministers of Foreign Relations held in Santiago, Chile on August 12-18, 1959; Doc. 89 (Spanish) corrected version, August 18, 1959; Original: Spanish, p.5.

press releases, and country reports approved by the Commission between the 1960s and 1980s lent visibility to abuses committed with impunity by military dictatorships, for example. Against the scourge of violence arising from armed internal conflicts, the IACHR reported to the inter-American community on the abuses perpetrated both by law enforcement and illegal armed groups. The centerpiece of various peace agreements that marked the end of these conflicts in Central America was the need to rein in the human rights violations broadly denounced by the IACHR.

7. The IACHR has played an important role in the process of democratic transition in those countries where the imperative of consolidating the bases of the rule of law required the proper clarification of war crimes and crimes against humanity committed by authoritarian regimes. In this regard, the pronouncements of the Commission have contributed to the repeal of amnesty laws and the elimination of other legal or de facto barriers that prevent the victims of serious human rights violations from obtaining justice, truth, and reparations.

8. In this regard, the power to issue precautionary measures has allowed the IACHR to prevent irreparable harm to thousands of people who found themselves in at-risk situations. That mechanism has evolved constantly, as a result of lessons learned and best practices recognized over more than thirty years. It can now be said that this power is one of the IACHR's principal tools for preventing serious human rights violations. Human rights defenders, journalists, persons deprived of freedom, women, indigenous or tribal communities, lesbians, gays, and transsexual, bisexual, and intersex persons (LGTBI), migrants and individuals given the death penalty but who had pending complaints and found themselves in situations of imminent risk, have seen their life, integrity, and other fundamental rights preserved thanks to the adoption of precautionary measures by the Inter-American Commission.

9. Throughout the 1990s, the Commission sought to increase the effectiveness of its human rights follow-up, monitoring, and promotion activities by creating Thematic Rapporteurships. The consolidation of specialized approaches in its various Rapporteurships has allowed the IACHR to identify, study, and issue recommendations to the Member States on the principal themes that make up the regional agenda in the area of human rights. These thematic perspectives have also been very important in advancing some topics that, although they remained invisible in public policies and in the regulatory environment of most States, were affecting a variety of fundamental rights of millions of people in the Americas.

II. THE IACHR'S CONTRIBUTION FOR THE NEW DEMANDS IN THE REGIONAL AGENDA

10. The democracies must be strengthened through a human rights culture in which persons who are under the jurisdiction of the Member States of the Organization are convinced that their rights are not at the pleasure of their governments but rather an obligation that can be demanded of their States through effective access to justice. They must be consolidated through transparent, free, and authentic electoral processes and by strengthening the independence of the different branches of government from political sectors or de facto powers. They must ensure that unmet social demands do not attach themselves to violent solutions but are resolved under the rule of law. It is a fundamental challenge to ensure that humans are aware of their civil, political, economic, social, and cultural rights and may rely on democratic institutions to demand and exercise them. The States established the System precisely so that, in cases where their domestic institutions do not provide an adequate response to human rights violations, the bodies of the IACHR are the ultimate mechanism allowing citizens to obtain justice, truth, and reparations.

11. It is known that these days the human rights agenda presents a variety of themes, for which, among other actions, the IACHR issues thematic reports, decisions on petitions and cases, as well as pronouncements in the context of its monitoring power. In this way, the Commission has covered practically all the themes in the region's new human rights agenda. In addition, its 2011-2015 Strategic Plan emphasized the need for progress in some areas on that agenda, including promoting action plans

for developing standards and increasing the visibility of themes such as the rights of LGTBI communities and economic, social, and cultural rights (ESCR).

12. Based on pronouncements from the IACHR, various States have decided to adopt legislation and public policies directed to eradicating violence against women, amending provisions in their legal systems that unduly restrict freedom of expression, restoring ancestral lands to indigenous or tribal peoples, and adopting measures to resolve the situation of historical discrimination endured by entire sectors of their populations.

13. In addition, the Commission has continued to be vigilant regarding the breakdown of the democratic-constitutional order, the absence of free, periodic elections, the duration of states of emergency, high levels of violence and impunity, among other conditions that compromise the full enjoyment of fundamental rights and guarantees. Through on-site visits, working visits, and country reports, the Commission has specifically called on the States to adopt measures needed to ensure conditions for the effective protection and fulfillment of human rights.

III. THE PRINCIPAL CHALLENGES FOR THE IACHR IN EFFECTIVELY FULFILLING ITS MANDATE

14. In its Strategic Plan, the IACHR established the following objectives for the period 2011-2015:

- a. Promoting full compliance with its decisions and recommendations;
- b. Facilitating victims' access to the Commission and running with optimum efficiency the individual petition system's processes and procedures;
- c. Staying current on the human rights situation in the Member States of the Organization and taking the action that the situation dictates;
- d. Recognizing and including in all its activities the specific needs of groups that have historically been victims of discrimination;
- e. Promoting the observance of human rights, knowledge and understanding of the System , and universal acceptance of the regional human rights instruments;
- f. Publicizing the Commission's work and, in so doing, instilling knowledge of human rights; and
- g. Procuring sufficient resources to discharge its mandate and achieve its other strategic objectives.

15. An essential challenge in the reform process to which the IACHR is committed is to strike a delicate balance. The Commission recognizes its duty to strictly apply existing procedures to ensure not only legal certainty, but equality of arms and due process. At the same time, the situation of many of the victims that turn to the inter-American System makes it necessary to maintain a reasonable degree of flexibility, as thousands of them are in the poorest and most excluded social strata of the hemisphere and do not have any legal counsel available to them. The reforms adopted by the IACHR, particularly as they concern the system of individual petitions, must recognize this level of inequality by building in flexibility and informality in its procedures, in order not to extend to the supranational arena the obstacles to access to justice that are unfortunately prevalent in some countries of the region.

16. For this reason, all the objectives of the Commission are pursued under the principle that governs all its actions: maintaining a balance between the scrupulousness and predictability needed to maintain and underscore a situation of legal certainty and the flexibility to adapt and respond to the needs of the victims of human rights violations.

17. Many of the concerns and recommendations of the System's users could be addressed immediately if the IACHR had the resources indicated in its Strategic Plan. That document contains performance indicators and provides a series of action plans designed to streamline decisions on petitions, cases, and requests for precautionary measures, to expand monitoring capacity and promotion of human rights, to cover new demands from the inter-American community in this area and, thus, to

establish the conditions to allow the IACHR to effectively fulfill the mandate given to it by the Member States.

18. Achieving the objectives provided in the Strategic Plan requires prompt resolution of the following challenges: universality of the System, full access for victims, effective performance of the decisions of the System's bodies, and the availability of resources for those objectives.

Full ratification of the System's instruments

19. To achieve the maximum validity of the regulatory framework in the area of human rights in the Americas, the Member States must ratify all the inter-American instruments. Currently, there is an inter-American System with three levels of adhesion: one, under the American Declaration and the OAS Charter, under the supervision of the Inter-American Commission; a second system for Member States that have ratified the American Convention but have not accepted the jurisdiction of the Court; and a third for those countries that have ratified the Convention and accepted the jurisdiction of the Court. This reality puts millions of people at a disadvantage in terms of the degree of international protection for their rights.

Victims' access

20. *De jure* and *de facto* access to judicial guarantees and protections is essential for reducing human rights violations. The work of the Commission has shown that the hemisphere's populations, particularly those belonging to sectors historically subject to discrimination, frequently do not gain access to suitable and effective judicial remedies for reporting human rights violations. This is particularly true for women, who represent half of the population.⁵

21. In this situation, the inter-American System should be a complementary source for compensating and protecting victims. The cases before the regional system are used to identify challenges and deficiencies at the national level and to prioritize their solution. The concept of access to justice recognizes, however, that the existence of institutions is not sufficient to ensure the effective assertion of rights, since it is also necessary to ensure that procedures are accessible and, when justice is handed down with respect to some claim, that the decision is enforced by the executive branch. All these processes are part of a broad and substantive concept of access to justice.

⁵ See, in general, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OAS/Ser.L/V/II. Doc. 68, January 20, 2007.

Compliance with the System's decisions

22. The efficacy of the System as a mechanism for supranational protection of human rights presupposes that the OAS Member States fully and effectively comply with the decisions of the Court and the Commission. To this end, the States must adopt legislative and other measures needed to ensure that the decisions adopted by the Commission and the Court have a mechanism that allows and facilitates their domestic enforcement. Although significant progress has been made in the implementation of IACHR recommendations and in compliance with the decisions of the Court, it has not yet been possible to achieve a level of compliance that would make it possible to guarantee the effectiveness of the System's decisions.

23. In this regard, it is important to highlight legislative reforms adopted by States in compliance with the Commission's decisions that in terms of both their content and titles are consistent with the standards established by the IACHR through its system of individual cases.

Effectiveness of the System and availability of resources

24. In its Strategic Plan, the Commission made clear its commitment to perform in each of its areas of work. More and better promotion, advances and efficiency in the processing of petitions and cases and in the adoption of precautionary measures are fundamental goals that appeal to all users of the System. However, considerations regarding the effectiveness of the System cannot focus solely on expected results but must also address on a priority basis the means needed to achieve those results.

25. Some indicators are sufficient to illustrate the gap between the demands faced by the Commission and its limited resources. As of December, 2012, the IACHR was responsible for producing the initial study for more than 7,000 petitions; issuing decisions on admissibility in more than 1,300 cases, and on the merits of more than 500 cases, as well as following up the recommendations contained in 182 reports on the merits and agreements signed between States and petitioners corresponding to 100 friendly settlement reports. The IACHR is participating in the proceedings before the Inter-American Court in 132 cases in supervising compliance with the decision, in 31 cases that are in the substantiation phase, and in 36 provisional measures. It receives and adopts decisions involving more than 400 requests for precautionary measures per year and follows up a total of 585 with procedural status of measures in effect and requests to the parties for information. In summary, as of the month of December 2012 the IACHR had to attend diligently and with extreme care and efficiency to more than two thousand matters, including petitions, cases, requests for precautionary measures, and proceedings before the Inter-American Court.

26. The IACHR monitors the human rights situation in the hemisphere; it issues hundreds of press releases every year; it monitors the situation of women; children and adolescents; afro descendants; indigenous peoples, human rights defenders; migrants and their families; persons deprived of freedom; lesbians, gay, and trans, bisexual, and intersex persons; and well as the situation of economic, social, and cultural rights, and freedom of expression. In addition, in 2012 it participated in the process of negotiating 33 resolutions related to human rights for the General Assembly; maintained dialogue with the Member States and civil society; held three regular sessions, 71 public hearings, and 48 working meetings; it made more than 30 working and promotional visits led by Commission members in their capacity as country or thematic Rapporteurs; and conducted various seminars and training courses and a wide range of promotional activities.

27. To handle all these matters, the IACHR has seven members and the support of an Executive Secretariat endowed with OAS funds for hiring 16 attorneys, 11 administrative assistants and five employees in other areas. In this regard, the regular OAS budget only allows for a team of 32 persons plus the Executive Secretary and the Deputy Executive Secretary. Thanks to efforts promoted by the Commission itself to collect external resources, an additional 25 people were hired, who do not have their permanence guaranteed and who must be responsible for specific projects.

28. These indicators demonstrate the need to increase the allocation of permanent resources to allow the Commission to effectively carry out the mission entrusted to it by the States of the region, namely to ensure the promotion and protection of the human rights of the inhabitants of the Americas.

IV. THE REFORM AGENDA OF THE IACHR

29. Since the start of this century, the OAS General Assembly has issued numerous resolutions emphasizing the importance of strengthening and improving the inter-American System.⁶ In addition, at various Summits of the Americas the Heads of State have expressed the importance of strengthening the Commission.⁷

30. On June 29, 2011 the Permanent Council of the OAS created a *Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a View to Strengthening the Inter-American Human Rights System*. On December 13, 2011 the Working Group adopted a final report, which was commented upon by some states and approved by the Permanent Council on January 25, 2012. The report contains 53 recommendations to the Inter-American Commission, 13 recommendations to the OAS Member States, and one recommendation to the Secretary General. The Report from the Special Working Group was approved by the Permanent Council on January 25, 2012⁸ and endorsed by the OAS General Assembly on June 5, 2012.⁹

31. On January 27, 2012 more than 90 organizations signed a press release expressing their opinion regarding the recommendations and emphasized the need to open up a space for dialogue to discuss them in greater detail.

32. At its 144th Period of Sessions held in March 2012, the IACHR decided to undertake an in-depth and careful study of its procedures, policies, and practices and, as a part of this analysis, to carry out consultations with those involved in the inter-American System. On March 28, 2012 it held a hearing on the Process of Strengthening the Inter-American Human Rights System, in which a coalition representing more than 700 civil society organizations expressed their points of view.

33. On April 9, 2012 the IACHR sent the Permanent Council the Position Document on the Process of Strengthening the Inter-American Human Rights System. This document contains a series of preliminary considerations on the recommendations in the report from the Special Working Group.

34. On May 30, 2012 it held a Regional Seminar on the recommendations from the Special Working Group.¹⁰ During its 145th Period of Sessions, the Commission prepared an agenda for reflection and consideration that incorporates the concerns and recommendations presented in the report from the Special Working Group and other observations issued by participants in the IAHRs, and decided to implement a methodology for a reform process. That methodology was communicated to the Member States on August 3, 2012 and published on the same day.¹¹

⁶ In this regard, see for example: AG/RES. 2030 (XXXIV-0/04) approved on June 8, 2004; AG/RES. 1925 (XXXIII-0/03) approved on June 10, 2003; AG/RES. 1890 (XXXII-0/02) approved on June 4, 2002; AG/RES. 1828 (XXI-0/01) approved on June 5, 2001; and AG/RES. 1701 (XXX-0/00) approved on June 5, 2000.

⁷ In this regard, see the Final Declarations and Action Plans from the First (Miami, 1994), Second (Santiago, Chile, 1998), Third (Quebec, 2001), and Fourth Summit of the Americas (Monterrey, 2004).

⁸ See: (AG/doc.5310/12).

⁹ Resolution of the OAS General Assembly approved at the fourth plenary session held on June 5, 2012, AG/RES. 2761 (XLII-O/12), on "Follow-up of the recommendations of the Special Working Group to Reflect on the Workings of the Inter-American Commission on Human Rights with a view to Strengthening the Inter-American Human Rights System."

¹⁰ The audio recordings and presentations from the seminar of May 30, 2012 are available at: <http://www.oas.org/es/cidh/actividades/seminario2012audios.asp>

¹¹ The methodology document is available at <http://www.oas.org/es/cidh/mandato/docs/Metodesp.pdf>

35. In designing the methodology, the Commission paid particular attention to work program of the Permanent Council so as to ensure that its action plan would offer ample opportunity for establishing points of contact between the processes carried out by the IACHR, the Council, and other actors in the IAHR, and emphasized that its process of reform would be based on three basic principles:

- Broad participation by all interested actors in the process of review of rules, practices, and policies implemented by the IACHR;
- Consideration of all inputs submitted by the various actors and the adoption, in an independent and autonomous manner, of decisions conducive to the best performance of its mandate; and
- The importance of making all its activities as effective as possible.

36. On August 25, 2012 the IACHR published four consultation modules on subjects covered in its Rules of Procedure, i.e., individual petitions and cases, precautionary measures, monitoring country situations, promotion and universality. It also published a fifth consultation module on other aspects relating to strengthening the System. Based on this consultation, a total of 11 observations were received from the Member States in addition to observations from about 100 organizations and individuals.

37. As part of its process for obtaining inputs for institutional strengthening, during the months of August and September 2012 the IACHR convened five subregional forums in coordination with actors in the Mesoamerican, Andean, Southern Cone, Caribbean, and North American regions:

- a. August 22-23, 2012, Bogota, Colombia Forum;¹²
- b. September 7, 2012, Santiago, Chile Forum;¹³
- c. September 11, 2012, San Jose, Costa Rica Forum;¹⁴
- d. September 14, 2012, Mexico City Forum;¹⁵ and
- e. September 23, 2012, Port of Spain, Trinidad and Tobago Forum.¹⁶

38. The forums provided broad opportunities for discussion open to all users of the System and parties interested in strengthening it, with the participation of senior officials and Ministers of State. Members of the Commission and its Executive Secretariat attended all of the forums; members of the Inter-American Court of Human Rights attended the forums in Bogotá and San José; a member of the European Court of Human Rights and Fundamental Freedoms participated in the forum in Bogota; and the Director of the Inter-American Institute of Human Rights (IIHR) participated in the forum in San Jose. Speakers at the forums included a total of 122 individual experts and organizations from civil society: 27 in Bogota, 9 in Santiago, 32 in San Jose, 47 in Mexico, and 7 in Port of Spain; added to this are dozens of organizations that attended the forums and events.

39. Parallel to the forum in Mexico, on September 13-14 a meeting was held in Mexico City with the participation of delegates from 21 of the Organization's Member States¹⁷ and 26 representatives from civil society. The purpose of the meeting was to identify trends, proposals, and opinions on strengthening the work of the IACHR.

40. Besides the forums convened by the IACHR, non-state entities have organized activities on strengthening with the participation of members of the IACHR and its Executive Secretariat. For

¹² See information on the Bogota forum at www.oas.org/es/cidh/fortalecimiento/seminarios.asp and www.oas.org/es/cidh/fortalecimiento/foros.asp.

¹³ See information on the Santiago forum at www.oas.org/es/cidh/fortalecimiento/seminarios.asp#tabSantiago.

¹⁴ See information on the San Jose forum at www.oas.org/es/cidh/fortalecimiento/seminarios.asp#tabCR.

¹⁵ See information on the Mexico City forum at www.oas.org/es/cidh/fortalecimiento/seminarios.asp#tabMX.

¹⁶ See information on the Port of Spain forum at www.oas.org/es/cidh/fortalecimiento/seminarios.asp#tabTT.

¹⁷ Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Ecuador, El Salvador, United States, Guatemala, Haiti, Honduras, Jamaica, Panama, Paraguay, Peru, Dominican Republic, Suriname, Uruguay, and Venezuela.

example, a meeting was held on October 15, 2012 in Washington, D.C. on the future of the IAHRs under the auspices of the American University School of Law and 34 law schools. On the following day, the Due Process of Law Foundation, the *Red Latinoamericana y del Caribe para la Democracia*, and the *Instituto de Defensa Legal* organized a meeting on the subject in Lima, Peru.

41. On October 30, 2012 the Commission held two public hearings at OAS headquarters to discuss the subject of strengthening the System.

42. The recommendations and observations of the Special Working Group, the Member States, civil society organizations, victims, and other participants in the IAHRs, as presented at the forums, in open consultations of the IACHR, at meetings organized by other entities or organization, and generally inputs from the inter-American human rights community provided the IACHR with valuable ideas for improving the System. After evaluating them, on October 24, 2012 the Commission presented to the Permanent Council its document "Reply...regarding the recommendations contained in the report of the Special Working Group to Reflect on the Workings of the IACHR with a View to Strengthening the Inter-American Human Rights System" (CP/INF.6541/12 corr. 1). In that document, the Commission outlines the changes in regulatory provisions, policies, and institutional practices that make up its reform agenda for the two-year period 2012-2013.

43. The reform process will continue during the first half of 2013 in the belief that some of the System's procedural institutions require substantial revision, in order to further their development and ensure the attainment of their useful purpose, always with the certainty that the conclusion and results of this exercise will be of benefit to all participants in the System.

44. Finally, the Commission wishes to recognize the Member States, civil society organizations, academia, and other interested parties for the extraordinary energy and resources they have invested to make reform of the IACHR a reality, as well as their willingness to contribute to the protection and promotion of human rights in the Americas.

CHAPTER II

LEGAL BASES AND ACTIVITIES 2012

A. Legal Bases, Functions, and Powers

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

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

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

4. In 1961, the IACHR began a series of visits to several countries for on-site observations of the human rights situation. Since then, the Commission has made more than 106 visits to the Organization’s member States. Based in part on these on-site investigations, to date the Commission has published 95 country reports and thematic reports.

5. In 1965, the IACHR was expressly authorized to examine complaints or petitions related to specific cases of human rights violations. By 2012 the Commission had received thousands of complaints, corresponding to almost 20,000 petitions concerning individual violations. The final reports on individual cases published by the IACHR may be found in the annual reports of the Inter-American Commission. They are also available on the IACHR website under the Petitions and Cases section.

6. The American Convention on Human Rights was adopted in 1969 and came into force in 1978. As of December 2012, a total of 24 member States were parties to the Convention: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela.¹ 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:

¹ The Bolivarian Republic of Venezuela announced its decision to denounce the American Convention on Human Rights on September 10, 2012. Under Article 78 of that treaty, that denunciation shall take effect one year after notice of it was served to the OAS Secretary General.

- (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, LGBTI persons, migrant workers and their families, people deprived of their liberty, human rights defenders, indigenous peoples, and communities of African descent, racial discrimination, and freedom of expression.
- (e) Organizes and carries out visits, conferences, seminars, and meetings with representatives from governments, academic institutions, nongovernmental organizations, and other bodies, to disseminate information and promote a broader understanding of the work of the Inter-American human rights system.
- (f) Makes recommendations to OAS member States for the adoption of measures that will contribute to the protection of human rights in the countries of the Hemisphere.
- (g) Requests that member States adopt "precautionary measures" in accordance with the provisions of Article 25 of its Rules of Procedure, to prevent irreparable harm to human rights in grave and urgent cases. It can also request that the Inter-American Court order the adoption of "provisional measures" in cases of extreme gravity and urgency to prevent irreparable harm to persons, even if the case has not yet been referred to the Court.
- (h) Submits cases to the Inter-American Court of Human Rights and appears in court during litigation.
- (i) Requests advisory opinions from the Inter-American Court in accordance with the provisions of Article 64 of the American Convention.

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

B. Inter-American Commission's Periods of Sessions Held in 2012

9. In the period covered by this report, the Inter-American Commission met on three occasions: March 19 to 30, at its 144th regular session; July 16 to 20, at its 145th regular session; and October 29 to November 16, at its 146th regular session.² In the course of 2012, the Inter-American Commission adopted a total of 42 admissibility reports, 17 inadmissibility reports, 8 friendly settlements, 42 archiving decisions, and 15 reports on merits, one of which it published. It also held 71 hearings and 48 working meetings.

1. 144th Regular Session

10. The Inter-American Commission held its 144th regular session from March 19 to 30, 2012, on which occasion it also elected its officers. Following the election the Commission's leadership was as follows: José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice President; and Felipe González, Second Vice President. The IACHR is also composed of commissioners Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Belle Antoine. The Executive Secretary during this period was Santiago A. Canton and the Assistant Executive Secretary was Elizabeth Abi-Mershed.

11. The Commission noted the historical importance that for the first time in its more than half a century of existence that it convened with a majority of women members.

12. In the course of its sessions, the IACHR held 39 hearings and 23 working meetings. It also adopted 61 reports on individual cases and petitions: 21 on admissibility, 11 on inadmissibility, 3 on friendly settlements, 22 archiving reports, and 4 reports on merits, one of which it decided to publish.

13. The Inter-American Commission held a meeting with a delegation headed by the governor of the state of Chihuahua, Mexico. At the meeting, the delegation referred to the will of the State government to enhance the structures for protection of human rights and presented information about different programs being implemented to that end. For its part, the IACHR welcomed the readiness expressed to engage in dialogue and valued the measures adopted as positive, particularly considering that the IACHR continues to receive troubling reports of human rights violations in the state of Chihuahua.

14. The Commission also received a delegation from the Government of Ecuador headed by the minister of foreign affairs and other high-ranking officials. The delegation presented information regarding the procedure of precautionary measures before the Commission³.

15. In the course of this session, the Inter-American Commission welcomed the impetus given in Mexico to a constitutional reform that would allow federal authorities to investigate and prosecute crimes that "restrict or undermine the right to information or freedom of expression or of the press" as well as a proposed law on protection for human rights defenders and journalists. The IACHR also expressed appreciation for the progress made by Argentina in implementing the recommendations contained in the Commission's report on the merits in case 12.324. In addition, the Inter-American Commission welcomed the international recognition of responsibility made by the president of Uruguay in the forced disappearance of María Claudia García Iruretagoyena de Gelman and the public apology offered to her daughter. Similarly, the IACHR welcomed the acts of recognition of international responsibility, apology, and commemoration made by various States: El Salvador with respect to the massacres at El Mozote and neighboring areas; Guatemala in the case of Juan Jacobo Arbenz Guzmán and in the case of the massacre at the community of Las Dos Erres; and Mexico with respect to Valentina Rosendo Cantú and her daughter.

16. The Commission also expressed concern about information received regarding various problems in the area of human rights that persist in the region. Those problems concern the observance and assurance of the rights to life, humane treatment, a fair trial and judicial protection; the exercise of

² See the following press releases issued by the IACHR the sessions: [Nos. 36/12](#) and [134/12](#).

³ They presented information specially related the precautionary measure and case involving the newspaper *El Universo* (Petition 1436/11 and PM 406/11).

economic, social, and cultural rights; and the situation of the rights of children, migrants, human rights defenders, indigenous peoples, Afro-descendants, women, persons deprived of liberty, and LGBTI persons, among other issues.

17. Specifically, the IACHR received worrying information about the lack of access to justice for adolescent female victims of sexual violence; the impact of extractive industries, particularly on indigenous peoples and Afro-descendant populations; and the situation of threefold discrimination to which indigenous women have historically been subjected on the basis of gender, indigenous identity, and poverty. On its own initiative, the IACHR convened a hearing during this session on the situation of persons deprived of liberty in Honduras in response to a fire that broke out at the National Penitentiary of Comayagua in which 362 people died. Furthermore, the Commission expressed concern about information received with respect to Haiti and Suriname regarding setbacks in efforts to combat impunity for crimes against humanity.

18. In the course of this session, the Inter-American Commission presented its Second Report on the Situation of Human Rights Defenders in the Americas, which suggests that the obstacles identified in the First Report in 2006 as hindering the efforts of human rights defenders not only continue, but in some cases have intensified.

19. The IACHR examined the report of the OAS Permanent Council's Special Working Group to Reflect on the Workings of the IACHR with a View to Strengthening the Inter-American Human Rights System. It also held a hearing on "Strengthening the Inter-American human rights system," which was attended by representatives of an umbrella coalition of some 700 human rights organizations in the Americas.

20. At the close of the session, the Inter-American Commission reiterated that the participation of representatives of States and civil society organizations in hearings and meetings held in the course of IACHR sessions constitutes an important contribution to strengthening efforts to protect human rights in the region. The Commission also expressed its most profound concern, repudiation and condemnation at the fact that some of the individuals who had appeared at IACHR hearings and meetings were subjected by private individuals and, in some cases, high level government officials, to threats and reprisals, and to attempt to discredit them. The IACHR also underscored the importance of the United States Government's granting of visas to enable people to take part in hearings and working meetings.

2. 145th Regular Session

21. The Inter-American Commission held its 145th regular session from July 16 to 20, 2012. Owing to the internal nature of this session, the IACHR held no public hearings or working meetings in the course of it. The Commission adopted eight reports on individual cases and petitions: 4 on admissibility, 3 on the merits, and one friendly settlement.

3. 146th Regular Session

22. The Inter-American Commission held its 146th regular session from October 29 to November 16, 2012. The recently elected Executive Secretary of the IACHR, Emilio Álvarez Icaza Longoria, served at this session.

23. The Commission acknowledged, in particular, the presence of 25 member States, the OAS Secretary General, and the Assistant Secretary General at the hearing held with member States on strengthening the Inter-American human rights system, as well as the participation of 62 speakers at the hearing held with civil society representatives from around the Americas. This strong turnout at both hearings, held on October 31, despite the obstacles posed by Hurricane Sandy, is a sign of confidence that the IACHR welcomes and appreciates.

24. The full Commission attended the special meeting of the OAS Permanent Council held to discuss the Commission's response to the recommendations of the Special Working Group. In addition, the Commission received the OAS Secretary General, José Miguel Insulza, and his chief of staff, Hugo de Zela, for the purpose of continuing and expanding their positive and productive dialogue on the strengthening process. It also met with representatives of OAS observer States. The IACHR considered invaluable the extensive and constructive participation of all the stakeholders of the Inter-American human rights system in the dialogue on strengthening the system.

25. The Inter-American Commission also values and appreciates the \$500,000 increase for the IACHR in the 2013 OAS budget approved by a special session of the OAS General Assembly, especially considering the overall financial position of the Organization.

26. In the course of this session 32 hearings were held,⁴ along with 25 working meetings, with the Commission adopting 51 reports on individual cases and petitions: 16 on admissibility, 6 on inadmissibility, 3 on friendly settlements, 20 archiving reports, and 6 reports on the merits. During these sessions, the IACHR made progress in the discussions on amending its Rules of Procedure and reforming its policies and practices. In addition, the Inter-American Commission decided to create a Unit on Economic, Social, and Cultural Rights, which will be led by Commissioner Rose-Marie Belle Antoine. It also appointed Commissioner Tracy Robinson to head the Unit on the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons. During this session, the Inter-American Commission, represented by its president, signed a memorandum of understanding with Colombia's Supreme Court of Justice, in order to strengthen ties of cooperation between the institutions.

27. Based on information received at the various hearings and meetings held and from its analysis of reports on cases decided in the course of this session, the Inter-American Commission concluded that structural human rights problems persist in the region. Those problems concern the observance of the rights to life, humane treatment, a fair trial and judicial protection; the exercise of economic, social, and cultural rights; and the situation of the rights of children, migrants, human rights defenders, indigenous peoples, Afro-descendants, women, persons deprived of liberty, and LGBTI persons, among other issues.

28. The IACHR expressed particular concern at the deportation of Haitian nationals, particularly those who are deported from the United States to Haiti, bearing in mind the humanitarian

⁴ As a result of Hurricane Sandy, 13 hearings which had been scheduled for this session had to be canceled.

crisis and other difficulties that that country faces in the wake of the earthquake in 2010, such as a lack of access to medical treatment in Haiti to address their health situation. The Inter-American Commission again calls on the United States to suspend deportations to Haiti of persons of Haitian origin who are seriously ill or who have family members in the United States, especially when those family members are children or when those at risk of deportation are the family's primary breadwinners. This suspension should be maintained until Haiti can guarantee that access to medical treatment meets the minimum applicable standards.

29. The IACHR also continued to receive information regarding the failure by States to adopt effective protection measures, and on obstacles to the implementation of precautionary or provisional measures handed down by the bodies of the Inter-American system, particularly the practice by some States of subjecting requests for the adoption of measures to a new risk analysis. In this regard, the Commission reiterates that the State's role in the process associated with a protective measure ordered by the Inter-American system is to implement the measure and monitor it. However, the State is not entitled to assess the factors that prompted the request for protective measures, including determining the degree of risk.

30. The Inter-American Commission insisted on the need that States ensure the integrity of all persons that take part in hearings and working meetings held by the IACHR, and that they adopt all necessary measures to enable these persons to continue to carry out their work in defense of human rights safely. The Commission also spoke out emphatically about the need for participants in its public hearings to conduct themselves with dignity. In the future, the IACHR may request the removal from a hearing of anyone who fails to conduct themselves with a minimum of respect and decorum.

C. Visits

Colombia⁵

31. The Inter-American Commission on Human Rights (IACHR) carried out an on-site visit to Colombia from December 3 to 7, 2012, in response to an invitation from the State, in order to observe the human rights situation in the country. The delegation was composed of the President, José de Jesús Orozco Henríquez; the First Vice President, Tracy Robinson; the Second Vice President, Felipe González; and Commissioners Rosa María Ortiz and Rose-Marie Belle Antoine, as well as Executive Secretary Emilio Álvarez Icaza L., Assistant Executive Secretary Elizabeth Abi-Mershed, and staff of the Executive Secretariat. During the visit, various IACHR delegations visited Bogotá (D.C.), Quibdó (Chocó), Medellín (Antioquia), and Popayán (Cauca), where they met with authorities of the State, civil society organizations, victims of human rights violations, and representatives of international agencies.

32. Following the visit, the Commission valued and welcomed the major impetus that the Government of Colombia has given to public policies on human rights and to the strengthening of assistance for victims of human rights violations and the protection of people at risk, as well as the significant investment in both human and financial resources that the State is making in these areas. Indeed, Colombia has adopted important policies to tackle the complex situation in which the country is mired after more than half a century of armed conflict.

33. The IACHR gave particular attention to the impact that the armed conflict continues to have on Colombia's inhabitants, in particular, displaced persons, women, indigenous peoples, Afro-descendant communities, community leaders, human rights defenders, LGBTI persons, children, and people in extreme poverty. These groups require a differentiated response given the multiplicity of factors that undermine their rights. In particular, the Commission expressed concern over the serious humanitarian crisis that affects some of these groups, which have been victims of forced displacement, a situation that was confirmed throughout the visit and that requires a more effective response on the part of the State.

⁵ See IACHR, Press release [No. 144/12](#).

34. Furthermore, the Commission believes that the State should strengthen the work of the institutions that have a role in the functions of investigation and administration of justice, especially in the implementation of the Justice and Peace Law. The construction of peace is inextricably linked to the investigation, prosecution, and reparation of human rights violations, in particular those perpetrated by agents of the State or with their support or acquiescence. Accordingly, the Commission considers it imperative that the State adopt a human rights perspective when making decisions that correspond to the framework of transitional justice in such a way as to guarantee Colombians access to justice in accordance with the international obligations the State has assumed. In this sense, if the draft constitutional reform on military criminal justice is approved as it is currently worded, the Commission considers that several provisions would be incompatible with the American Convention on Human Rights.

35. The IACHR's preliminary observations regarding the human rights situation noted in the course of the on-site visit to Colombia are published as an annex to press release No. 144/12, issued at the conclusion of its activities. Additionally, based on the information it received during the visit and other input, the IACHR will prepare a country report on the human rights situation in Colombia in the context of the conflict and transitional justice. In that report, the IACHR will offer recommendations intended to assist the State in its efforts to fulfill its obligations under the American Convention on Human Rights.

Guatemala⁶

36. Acting in her twin capacity as country rapporteur and rapporteur on the rights of indigenous peoples, Commissioner Dinah Shelton made a working visit to Guatemala from January 7 to 10, 2012. The purpose of the visit was to collect information regarding the observance and guarantee of human rights, with special emphasis on the situation of indigenous peoples. The visit also aimed to learn about the plans and programs that the government proposed to implement in 2012. To that end, Commissioner Shelton and her team met with representatives of the State, international agencies, civil society, and indigenous peoples. During the visit the delegation also held working meetings on petitions and cases pending before the Commission, and gave a training workshop on the Inter-American human rights system.

37. As a result of the activities carried out during the visit, Commissioner Shelton noted that Guatemala had made progress in investigating the gross crimes against humanity that were committed during the armed conflict in Guatemala, and she trusted that the various agencies of the State, particularly the Defense Ministry, would ensure full access to all human rights archives and documents related to the conflict. The rapporteur also acknowledged and commended a series of advances made by the State associated with observance of human rights.

38. However, Commissioner Shelton was deeply concerned by the grave human rights situation affecting indigenous peoples in Guatemala, a situation that is primarily related to the failure of the government to adopt measures to guarantee their rights over their land and natural resources. In that regard, the Rapporteur strenuously condemned the deaths of Antonio Beb Ak', Oscar Reyes, and Margarita Chub Ché, members of the Q'eqchi Maya communities of the Polochic Valley, which were forcibly evicted in March 2011. The Rapporteur also learned of the existence of a large number of complaints regarding attacks, threats, acts of harassment, and even murders of human rights defenders and of indigenous leaders and authorities. During her visit, the Commissioner also received alarming information on the high level of violence in the country and the grave situation regarding the administration of justice. In that connection, the Commissioner was concerned by information received regarding the violence to which justice operators fall victim, and the lack of a government response to the problem.

Haiti

⁶ See IACHR, Press release No. [No. 33/12](#).

39. Commissioner Rosa María Ortiz visited Haiti as rapporteur for the country from February 29 to March 2, 2012. The purpose of the visit was to present the new rapporteur to the country's authorities and to collect information about the human rights situation the country. The delegation met the Vice Minister of Foreign Affairs and the Director of Legal Affairs of the Ministry of Foreign Affairs; international agencies, such as the Human Rights Section of the United Nations Stabilization Mission in Haiti (MINUSTAH), and representatives of UNASUR and CARICOM; and civil society organizations.

D. Thematic and Country Reports

40. In 2012, the Inter-American Commission published the following thematic reports:

- Second Report on the Situation of Human Rights Defenders in the Americas.⁷
- Report on the Human Rights of Persons Deprived of their Liberty in the Americas.⁸
- Access to Justice for Women Victims of Sexual Violence: Education and Health.⁹
- Access to Justice for Women Victims of Sexual Violence in Mesoamerica.¹⁰
- The Death Penalty in the Inter-American Human Rights System: From Restrictions to Abolition.¹¹
- The Situation of People of African Descent in the Americas.¹²
- Access to Information on Reproductive Health from the Human Rights Perspective.¹³
- Legal Standards related to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application.¹⁴
- Women's Work, Education and Resources: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights.¹⁵

41. Also, during 2012 the Inter-American Commission approved and published the Report on the Situation of Human Rights in Jamaica.¹⁶

E. Activities of the Rapporteurs Offices.¹⁷

1. Office of the Rapporteur on the Rights of Indigenous Peoples

⁷ Available at: <http://www.oas.org/en/iachr/defenders/docs/pdf/defenders2011.pdf>

⁸ Available at: <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>

⁹ Available at: <http://www.oas.org/en/iachr/women/docs/pdf/SEXUALVIOLENCEEducHealth.pdf>

¹⁰ Available at: <http://www.oas.org/en/iachr/women/docs/pdf/WOMEN%20MESOAMERICA%20ENG.pdf>

¹¹ Available at: <http://www.oas.org/en/iachr/docs/pdf/deathpenalty.pdf>

¹² Available at: http://www.oas.org/en/iachr/afro-descendants/docs/pdf/AFROS_2011_ENG.pdf

¹³ Available at: <http://www.oas.org/en/iachr/women/docs/pdf/womenaccessinformationreproductivehealth.pdf>

¹⁴ Available at: <http://www.oas.org/en/iachr/women/docs/pdf/REGIONALst.pdf>

¹⁵ Available at: <http://www.oas.org/en/iachr/women/docs/pdf/WomenDESC2011.pdf>

¹⁶ Available at: <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

¹⁷ The activities of the Special Rapporteur for Freedom of Expression are included in volume II of this annual report.

42. In 1990, the Office of the Rapporteur on the Rights of Indigenous Peoples was created, with the aim of focusing attention on those indigenous peoples of the Americas who were especially exposed to human rights violations due to their situation of vulnerability, and to strengthen, promote, and systematize the work of the Inter-American Commission itself in that area. Commissioner Dinah Shelton has served as Rapporteur since the beginning of 2010.

43. From March 7 to 10, 2012, the Office of the Rapporteur made a working visit to Guatemala in order to collect information about the situation of indigenous peoples in that country. Following the visit, the IACHR issued press release No. 33/12: *IACHR Hails Progress against Impunity in Guatemala and Expresses Concern about the Human Rights Situation of Indigenous Peoples and Women*. In the course of the visit, the Office of the Rapporteur held a training workshop for indigenous leaders in Mesoamerica on the Inter-American human rights system. Indigenous leaders and attorneys from Guatemala, El Salvador, Honduras, Panama, Mexico, Costa Rica, and Nicaragua took part in the workshop.

44. On April 2, a delegation of the IACHR accompanied the Inter-American Court of Human Rights on a visit to the territory of the Kichwa people of Sarayaku in the Ecuadorian Amazon region. The purpose of the visit was to conduct "proceedings aimed at obtaining additional information about the situation of the ... victims and places where some of the alleged events took place" in a case before the Inter-American Court. In the course of the visit, the IACHR, through the the office of its rapporteur on the rights of indigenous peoples, reiterated the reasons why it had taken the case to the Court, in particular, the right of indigenous peoples to prior consultation that is free and informed.

45. On October 18, a specialist from the Executive Secretariat took part in a regional forum organized by UN Women in Quito, Ecuador, on "Indigenous Peoples and Women and Their Right to Prior Consultation: Obstacles and Challenges at the Regional Level (Colombia, Ecuador, Peru and Bolivia)." The forum was attended by experts, scholars, lawyers, judges, and representatives of international organizations, including the Programme to Promote ILO Convention No. L69 (PRO 169) in Latin America.

46. On October 25, the coordinator of the Office of the Rapporteur on the Rights of Indigenous Peoples gave a presentation on the rights of indigenous peoples and afro-descendants, as part of the "OAS Briefing Program for the US Department of State International Visitor Leadership Program". The presentation was attended by representatives of Latin American Indigenous and Afro-descendants groups.

47. A specialist from the Office of the Rapporteur participated in an on-site visit conducted by the IACHR to Colombia from December 3 to 7, to collect specific information on the human rights situation of indigenous peoples. During the visit, information was received in the meetings held in Bogota with State authorities, as well as in specific meetings on the situation of indigenous peoples. In addition, a subgroup traveled to Popayan, Cauca, where it met with organizations and indigenous authorities, as well as with regional authorities.

2. Office of the Rapporteur on the Rights of Women

48. Since the inception of the Office of the Rapporteur in 1994, it has played a vital role in the Commission's work to protect women's rights through the publication of thematic studies, assistance in the development of new jurisprudence in this area within the individual case system, and support for the investigation of a range of issues that affect women's rights in specific countries of the region, through on-site visits and country reports. One of the fundamental principles that informs and is constantly reflected in this work is the need to include a gender perspective in public-policy planning and implementation as well as decision-making in all member States. Commissioner Tracy Robinson has been the Rapporteur since January 2011.

49. The Office of the Rapporteur on the Rights of Women continued implementing activities throughout 2012 to disseminate five thematic reports published on 2011, which analyze the main

advances and challenges faced by women in exercising their rights free from discrimination in different spheres across the Americas. These reports were prepared with the financial support of Finland, Canada, Spain, and the United Nations Populations Fund ("UNFPA"). They are the following: "The Road to Substantive Democracy: Women's Political Participation in the Americas"; "Women's Work, Education and Resources: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights"; "Access to Information on Reproductive Health from the Human Rights Perspective"; "A Rights-Based Approach to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application"; and, "Access to Justice for Women Victims of Sexual Violence in Mesoamerica".

50. On June, the Office of the Rapporteur also made public a sixth regional thematic report - "Access to Justice for Women Victims of Sexual Violence: Health and Education", which analyzes this issue and the main barriers confronting women victims in accessing justice in this context. The report collects registries and information originating from the Member States, international organizations, NGO's, press media and universities of the region, and presents a preliminary assessment of the scope of the issue. From the human rights perspective and the obligations undertaken by the States, the report also deals with the way in which sexual violence against women represents an obstacle to the exercise of their rights to education and health, and prompts a discussion about the main barriers confronting women in their access to effective legal measures to solve this problem.

51. Commissioner Tracy Robinson and the staff of the Office of the Rapporteur also participated in different activities linked to the dissemination of the mentioned thematic reports, and other general women's rights issues in the region, traveling to Nicaragua, Guatemala and El Salvador between May 28 and June 1st:

52. On May 28, the Rapporteur participated in meetings with civil society organizations and the President of the Supreme Court of Justice, Alba Luz Ramos in Nicaragua. She also participated as the keynote speaker in the public event – *Challenges to Guarantee the Right to Health of Nicaraguan Women and Girls* – organized by IPAS, CENIDH, the Autonomous Movement of Women, and CEJIL.

53. On May 31st, the Rapporteur also participated in Guatemala in the launching of the report - *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*. This activity had the participation of more than 80 representatives from different sectors which work with the problem of sexual violence, including public officials, members of the judiciary, civil society organizations, and international agencies, in the countries of Barbados, Belice, Colombia, Costa Rica, Ecuador, El, Salvador, United States, Guatemala, Jamaica, Panama, Paraguay, Peru, Suriname and Uruguay.

54. On Friday, June 1st, the Rapporteur also presented the report *Access to Justice for Women Victims of Sexual Violence in Mesoamerica* before Magistrates of the Supreme Court of El Salvador, and held meetings with the Executive Director of the Salvadoran Institute for Women (hereinafter "ISDEMU"), Ms. Yanira Argueta, with United Nations agencies, and civil society organizations, where the results of the report were discussed. All the activities in El Salvador were organized with support from UNFPA.

55. The Office of the Rapporteur also participated between June 28th and July 1st in a course related to the Inter-American System oriented towards indigenous women in Boruca, Costa Rica. This course was organized by Forest Peoples Program and had the participation of approximately 20 women and leaders who form part of the Network of Indigenous Women related to Biodiversity in the Americas. The women stressed the need for the Commission to undertake a regional project to examine closely the main advances and challenges faced by indigenous women in the region and to publish a regional thematic report related to this issue.

56. The Rapporteur and her team traveled to Peru between Thursday, August 23rd and Friday, August 24th, with support from DEMUS, where they held meetings with the Ministry of Women and Vulnerable Populations, with the Attorney General's Office, and with organizations that work in the advancement of women's rights issues in the country. The Rapporteur also offered presentations in two

events with high-level officials from the justice sector on Friday, August 24th, where she addressed the themes of access to justice, sexual violence, due diligence, and the rights of women.

57. On September 6th, the Rapporteur participated in Costa Rica in the International Congress on Access to Justice organized by UN Women, and the Secretary General Campaign on Violence against Women, which had the participation of approximately 400 persons from the administration of justice, university professors, law students, and representatives from women's rights organizations. She offered a presentation in a panel entitled "A Challenge for Justice in the XXI Century: The End to Impunity for Crimes of Violence against Women". The panel had the participation of the following persons: Nadine Gasman, the Director for Latin America and the Caribbean of the Secretary General Campaign on Violence against Women; Marcela Lagarde, Mexican expert on women's rights and prolific writer on the issues of "femicide" and "feminicide"; Teresa Zapeta, Coordinator for Central America for the Indigenous Women Program of UN Women; and Magistrate Zarella Villanueva Monge, President of the Justice System in Costa Rica. On September 7th, she also launched the report *Access to Justice for Women Victims of Sexual Violence in Mesoamerica* in an event organized by UNFPA and the Supreme Court of Costa Rica, which had ample participation from justice officials and civil society.

58. On October 6, the Office of the Rapporteur participated in the First Forum of Indigenous Authorities and the Government of Colombia, which was organized by ONIC in Bogota, Colombia, with the collaboration of the Presidential Council on Gender Equality, the Colombian Institute of the Family Wellbeing, and UNFPA. It had as its main objectives to promote joint actions to eradicate practices which violate the rights of indigenous women pertinent to their health and personal integrity. The event had the participation of indigenous authorities; various entities from the Colombian State; UNFPA and UNDP, among other international organizations.

59. On December 12, the Rapporteur Tracy Robinson participated in a *Caribbean Dialogue on the Rule of Law and Gender-Based Violence* in Miami, Florida sponsored by the United States Department of State, the Secretary's Office of Global Women's Issues, and the Bureau of Western Hemisphere Affairs. In said event, she offered a presentation related to gender-based violence, the rule of law, and the Caribbean legal and policy context.

60. During the Commission's on-site visit to Colombia, between December 3 and 7, the Rapporteur Tracy Robinson met with different civil society and women's rights organizations, receiving information on the impact of the armed conflict on women.

61. The Office of the Rapporteur also continued supporting the work of the IACHR in the processing of individual case petitions, precautionary measures, and in the litigation of cases before the Inter-American Court of Human Rights. Between September 5th and 6th, it participated in the Court hearing related to the case of *Gretel Artavia Murillo et al. (In Vitro Fertilization)* against Costa Rica, in the context of which the Commission asked the Court to rule that the State of Costa Rica violated its human rights obligations to protect the rights to privacy, to the family, and to equal protection of the law under the American Convention of several couples by means of a Supreme Court judgment prohibiting the practice of in vitro fertilization in the country. On November 28, the Inter-American Court issued its judgment, in which it declared the State of Costa Rica responsible internationally for violating the rights to privacy, to the family, and to personal integrity, in relation to the general obligation to respect and ensure all rights contained in the American Convention free from all forms of discrimination, to the detriment of the mentioned couples. This is the first judgment of the Inter-American Court which addresses reproductive rights issues comprehensively.

62. Moreover, the Inter-American Court also issued its first ruling on the issue of discrimination on the basis of sexual orientation and gender identify on February 24, in the case of *Karen Atala and her daughters against Chile*. The petitioners in this case alleged before the Commission since the onset that the State of Chile had committed a number of human rights violations in the context of a custody proceeding in detriment of Karen Atala – a Chilean judge - and her daughters M., V., and R. They claimed that said proceeding – initiated by Karen Atala's former husband - ended in a ruling by the

Supreme Court of Justice of Chile which revoked Mrs. Karen Atala's custody of her three daughters - aged 5, 6, and 10 at the time of the events - based exclusively on discriminatory prejudices related to her sexual orientation. In its judgment, the Court found a number of violations under the American Convention to the detriment of Karen Atala and her daughters M., V., and R. elaborating on the content of the obligations not to discriminate, to guarantee equality, to safeguard the rights of the child, and the rights to a private and family life. The Office of the Rapporteur had participated in the Court hearing related to this case on August 23-24, 2011.

3. Office of the Rapporteur on the Rights of the Child

63. The Inter-American Commission decided to create the Office of the Rapporteur on the Rights of the Child at its 100th regular session on October 13, 1998, for the purpose of bolstering respect for the human rights of children and adolescents in the Americas. In 2012, the Office of the Rapporteur on the Rights of the Child. Continued its promotion activities as well as publishing reports aimed at addressing the different forms of violence faced by children and adolescents in the Americas. Commissioner Rosa María Ortiz has been the Rapporteur since January 2012.

64. The was invited to participate in the event titled *Children and the Administration of Justice in Latin America: A Regional Perspective*, held on March 8th in Geneva, Switzerland, during the annual meeting of the Human Rights Council of the United Nations on the rights of children. In attendance at this event, on behalf of the Rapporteur, was an attorney of the Rapporteur of Persons Deprived of Liberty, who presented an IACHR report on Juvenile Justice and Human Rights in the Americas.

65. In addition, on March 27 and 28, the Rapporteur participated in a mission to Haiti alongside representatives of UNICEF and the Chair of the United Nations Committee on the Rights of the Child. In the context of the visit, which centered on the issue of international adoptions, the Rapporteur met the Minister for Social Affairs and Labor, the Chief of Staff of the Minister of Justice and Public Security, a judge of the Court of First Instance, and a group of senators. There were also meetings with representatives of the Office of the High Commissioner for Human Rights, the Institute of Social Security and Research (IBSR) and ambassadors representing the Montréal Group (Brazil, Canada, Chile, Colombia, France, and United States, among others). The delegation also visited a home for children who have been put up for international adoption. It is worth noting that following this visit, the Haitian Parliament ratified the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.¹⁸

66. On April 16 and 17, the Rapporteur conducted a working visit in Panama in which she met different officials and representatives of civil society organizations. UNICEF-Panama assisted in the coordination of these activities. Specifically, the rapporteur met representatives from the the following authorities: Ministry for the Child and Family; Superior Juvenile Court; Institute for Interdisciplinary Studies; General Secretariat of the Ministry of Foreign Affairs; Office of the Ombudsman. The Rapporteur also met representatives from a number of civil society organizations that work in the area of children's rights and a workshop on access to the Inter-American human rights system was imparted. On April 18 and 19, also in Panama, the Rapporteur took part in a meeting at the invitation of the Latin American and Caribbean Chapter of the Global Movement for Children and UNICEF.

67. From June 14 to 15, the Rapporteur on the Rights of the Child attended a meeting in Kingston, Jamaica, on violence against children in Caribbean countries. The event was organized by Jamaica, Global Movement for Children in Latin America and the Caribbean, the Office of the Special Representative of the United Nations Secretary-General on Violence against Children, and the Caribbean Community (CARICOM). Taking part in the meeting were authorities responsible for children's matters, representatives of civil society organizations, independent experts, and child and adolescent delegates. At the event, the Rapporteur presented two thematic reports of the IACHR concerned with violence against children and youth; namely, the "Report on Corporal Punishment and Human Rights of Children

¹⁸ See IACHR, press release No. [75/12](#).

and Adolescents” and “Juvenile Justice and Human Rights in the Americas.” After the event the Rapporteur held informal meetings on a variety of issues connected with her office’s activities.

68. From June 22 to 24, at the invitation of Brazil's National Agency for the Rights of the Child, the Rapporteur on the Rights of the Child participated in an event held in Brasilia, entitled "The Media, Social Agenda, and Adolescents in Conflict with the Law." The event was organized in coordination with the Human Rights Secretariat of the Office of the President. At the event, on June 23, the Rapporteur delivered a presentation on "Vulnerability Factors." After the event, the Rapporteur attended a meeting with officials from the Human Rights Secretariat of the Office of the President to discuss matters concerning Brazil-Haiti cooperation in the area of human rights, particularly with regard to children's rights.

69. From June 13 to 15, the Rapporteur on the Rights of the Child participated in a consultation of international experts held in Addis Ababa, Ethiopia, to address the problem of harmful practices against children, with a particular emphasis on the interaction between religious and cultural norms and practices on one hand, and the right of children to protection against violence on the other. The event was organized by Plan International, the Office of the Special Representative of the United Nations Secretary-General on Violence against Children, and the African Committee of Experts on the Rights and Welfare of the Child.

70. The Rapporteur on the Rights of the Child visited La Paz, Bolivia, from July 10 to 12, to participate in a seminar on "Public Policies and Human Rights of Children and Adolescents in the Construction of the Plurinational State of Bolivia," at the invitation of the Office of the Ombudsman. At the event, the Rapporteur gave a presentation on international systems for the protection of human rights, with an emphasis on the Inter-American system. The Rapporteur also grasped the opportunity to meet with government officials and civil society organizations that work in or are responsible for matters concerning children. She also took part in the inauguration of the Roundtable against Trafficking in Persons in Santa Cruz.

71. On July 13 and 14, the Rapporteur was in Brasilia for the Ninth National Conference on the Rights of Children and Adolescents organized by the Human Rights Secretariat of the Office of the President. In addition to participating in the event, she met the Minister for Human Rights of the Office of the President and the Undersecretary for Children. The Commissioner also held a discussion with civil society organizations that attended the event.

72. On July 22 and 25, the Rapporteur was in Tegucigalpa, Honduras, to take part in the Forum on Juvenile Criminal Justice organized by UNICEF. The Rapporteur took the opportunity to present the report of the IACHR entitled “Juvenile Justice and Human Rights in the Americas” as well as the “Report on Citizen Security and Human Rights.” And the rapporteur also held a series of meetings with officials and stakeholders in the area of juvenile criminal justice, and gave particular attention to the situation at the Renaciendo juvenile correctional facility.

73. From July 30 to August 4, the Rapporteur on the Rights of the Child traveled to Haiti for a joint working visit with the Office of the Rapporteur for Freedom of Expression. The Rapporteur took the opportunity to meet local officials and NGOs.

74. On August 22, the Rapporteur on the Rights of the Child was in São Paulo, Brazil, taking part in the presentation of a report on the Global Campaign for the Right to Early Childhood Education prepared by Mr. Vernor Muñoz, former United Nations Rapporteur on the Right to Education. The Rapporteur also met civil society actors in these matters.

75. On September 3 and 4, the Rapporteur on the Rights of the Child was in Porto Alegre, Brazil, to take part in the meeting of the *Niñosur* permanent group which brings together senior officials responsible for childhood matters in South American countries. The Rapporteur described the mandate of the Office of the Rapporteur on the Rights of the Child and its current priorities and working

methodologies. Among the themes of common interest are juvenile justice, the ban on corporal punishment, and the situation of children in care and protection institutions.

76. On October 24 and 25, the Rapporteur on the Rights of the Child took part in the meeting of the Network of Ombudsmen for Children within the framework of the Network of Ibero-American Ombudsmen (FIO), held in San Jose, Costa Rica. The Rapporteur described in depth the various mechanisms offered by the Inter-American system to promote and protect respect and observance of children's rights, with the aim of highlighting parallels between the Inter-American system and the work of ombudsmen for children. At this meeting, on October 25, a seminar was held on violence against children at which the rapporteur presented the "Report on Corporal Punishment and Human Rights of Children and Adolescents" of the IACHR.

77. During 2012, the Rapporteur offered a scholarship for young professionals, which is supported by the international NGO Save the Children Sweden. Each year, the scholarship allows a young professional who specializes in the area of the human rights of children to be integrated into the team of the Rapporteur to collaborate in the analysis of issues related to this group and the exercise of their rights.

4. Office of the Rapporteur on the Rights of Persons Deprived of Liberty

78. Given the importance it has always placed on respect for the rights of persons deprived of liberty, the Inter-American Commission established, during its 85th and 86th sessions, a working group to examine detention conditions in the Americas. This could be considered the immediate forerunner of the current Office of the Rapporteur. Subsequently, during its 119th session, in March 2004, the Inter-American Commission formally established the Office of the Rapporteur on the Rights of Persons Deprived of Liberty in the Americas. Commissioner Rodrigo Alonso Escobar Gil has been the Rapporteur since January 2010.

79. In February 1 and 2, the Office of the Rapporteur took part in a roundtable organized by the Association for the Prevention of Torture (APT) in the state of Oaxaca, Mexico, to follow up on implementation of recommendations made by the United Nations Subcommittee on Prevention of Torture in the wake of its mission to Mexico in 2008. This event was also attended by Oaxaca state government officials, representatives of the SPT, and civil society organizations.

80. From April 23 to 27, the Office of the Rapporteur made a monitoring visit to Honduras as part of follow-up by the IACHR on the serious situation that exists in the country's prisons, which led to the tragedy that occurred on February 14, 2012, as a result of a fire that broke out at the National Penitentiary of Comayagua in which 362 people died. Preliminary observations on this visit were issued in press release No. 43/12.

81. On May 10, the Office of the Rapporteur formally issued its Report on the Human Rights of Persons Deprived of Liberty in the Americas by press release No. 45/12, which received extensive press coverage by various media outlets in the region. This was the first comprehensive thematic report issued by the Inter-American Commission on the situation of human rights of persons deprived of their liberty in the Americas. The report examines the main problems affecting the region's correctional systems, highlights applicable international standards, and makes concrete recommendations to states. With this report, the IACHR fulfills a mandate contained in OAS General Assembly resolution AG/RES. 2668 (XLI-O/11) and previous resolutions.

82. On June 13, staff from the Office of the Rapporteur took part in a discussion panel entitled "A Look at the Recent Political Work of the Inter-American Commission on Human Rights," organized by American University's Academy on Human Rights and Humanitarian Law.

83. The Rapporteur on the Rights of Persons Deprived of Liberty, Rodrigo Escobar Gil, took part as a speaker at the Fourth International Symposium on Prison Law and Human Rights, which was

held in Cartagena de Indias, Colombia, from July 4 to 6. Other speakers at this event included Luigi Ferrajolli, Manuel Ventura Robles, Elías Carranza and Juan Carlos Esguerra.

84. On July 5, staff from the Office of the Rapporteur took part in a forum organized by the Institute for Comparative Studies in Criminal Sciences of Guatemala (ICCPG) at which they gave a formal presentation of the Report on the Human Rights of Persons Deprived of Liberty in the Americas. This activity was also attended by representatives of the Office of the United Nations High Commissioner in Guatemala.

85. From July 9 to 10, staff from the Office of the Rapporteur attended a regional meeting for Latin America on pretrial justice, organized in Lima, Peru, by *Open Society/Justice Initiative*. The purpose of this meeting was to follow up on recommendations put forward at the first regional meeting of the Global Campaign for Pretrial Justice, held in Cocoyoc, Mexico.

86. On September 17 and 18, a team from the Office of the Rapporteur, accompanied by the Executive Secretary of the IACHR, Emilio Álvarez Icaza L., took part in the Third Meeting of Authorities Responsible for Penitentiary and Prison Policies. This meeting was convened in response to resolution AG/RES. 2657 (XLI-0/11) and held in the framework of the process of meetings of Ministers of Justice or of Ministers and Attorneys General of the Americas (REMJA).

87. On October 9 and 10, the staff attorney of the Office of the Rapporteur took part in a series of promotional events in Mexico organized by the Mexico City Human Rights Commission and the Institute of Criminal Justice. These activities included a formal presentation of the IACHR's Report on the Human Rights of Persons Deprived of Liberty in the Americas, a roundtable discussion with more than half a score of civil society organizations on the use of pretrial detention in Mexico, and a visit to Reclusorio Norte prison in Mexico City.

88. The Office of the Rapporteur on the Rights of Persons Deprived of Liberty engaged in promotion and monitoring activities in the framework of the on-site visit to Colombia carried out by the IACHR from December 3 to 7. In that context, staff from the Office of the Rapporteur visited Escuela de Trabajo El Redentor, a work center for juveniles; La Picota prison in Bogotá; and the Bogotá Model Prison. They also took part in high-level meetings with national prison authorities and led a workshop for staff of the National Corrections Institute (INPEC).

89. Subsequently, the coordinator of the Office of the Rapporteur on the Rights of Persons Deprived of Liberty and IACHR focal point to the United Nations system, María Claudia Pulido, participated in an international workshop entitled "*Enhancing Cooperation between United Nations and Regional Mechanisms for the Promotion and Protection of Human Rights*," held in Geneva, Switzerland, from December 12 to 14. Dr. Pulido spoke at the first meeting on a panel on "*How to improve information sharing between UN and regional human rights human rights mechanisms, using mandates and activities on torture prevention as an example*." Also participating in this event were Commissioner Dinah Shelton and the Executive Secretary of the IACHR, Emilio Álvarez Icaza.

90. The Office of the Rapporteur on the Rights of Persons Deprived of Liberty is planning the preparation of a report on pre-trial detention for 2013 as part of the process of documenting this study. In the meantime, the IACHR published a questionnaire on this topic on its website on August 31 and sent it to each of the member states of the Organization.

91. The Office of the Rapporteur is also in the process of drafting a report on its visit to Honduras in 2012. On December 7, in keeping with Article 60 of its Rules of Procedure, the IACHR forwarded the draft report to Honduras for its comments.

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

92. At its 122nd session, held from February 23 to March 11, 2005, the Inter-American Commission created the Office of the Rapporteur on the Rights of Afro-Descendants and against Racial Discrimination. The Office of the Rapporteur was charged with dedicating itself to activities of stimulating, systematizing, reinforcing and consolidating the action of the Inter-American Commission on the rights of people of African descent and racial discrimination. Commissioner Rose-Marie Belle Antoine has been the Rapporteur since January 2012.

93. On January 18, 2012, the Inter-American Commission on Human Rights published a report entitled "The Situation of People of African Descent in the Americas," prepared as part of the activities carried out by the IACHR in 2011 to mark the International Year for People of African Descent. The report presents an initial evaluation with respect to the situation of Afro-descendant persons in the Americas and makes recommendations to the States to advance the protection of their human rights.

94. The Office of the Rapporteur was invited to take part in the eleventh session of the Working Group of Experts on People of African Descent. The event was held in Geneva from April 30 to May 4. On May 1, the Rapporteur offered a presentation on the event's agenda on the draft Programme of Action for the Decade for People of African Descent.

95. On July 6, during the thirty-third meeting of the CARICOM Heads of Government, in Saint Lucia, the Rapporteurship on the Rights of People of African Descent and against Racial Discrimination organized an event in which the thematic report on "The Situation of People of African Descent in the Americas" was officially launched. The event was co-hosted by the CARICOM Secretariat and leading the IACHR team were José de Jesús de Orozco, President of the IACHR and Rapporteur on the Rights of Human Rights Defenders, and Commissioner Rose-Marie Belle Antoine, Rapporteur on the Rights of People of African Descent and against Racial Discrimination. The Prime Minister of Saint Kitts and Nevis gave a presentation and representatives of NGO's, government officials and also, the Prime Minister of Saint Vincent and the Grenadines, the Premier of Anguilla, the Secretary General of CARICOM and the Prime Minister of Saint Lucia attended the event.

96. On September 27, Commissioner Rose-Marie Belle Antoine gave the opening address at the National Forum: Afro-Descendant Populations in Mexico, 2012. The event was held in Mexico City with the aim of opening a national dialogue on the rights, recognition, and social inclusion of black Mexicans. Participants included Afro-Mexican community groups, government officials, and scholars.

97. On October 15 and 16, 2012, the Staff of the Rapporteur on the Rights of Afro-Descendants and against Racial Discrimination participated in the tenth session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, held in Geneva, Switzerland. A specialist from the Office of the Rapporteur delivered a presentation on the topic "The enhancement of international and regional cooperation with regard to the implementation of the DDPA."

98. In 2012, the Office of the Rapporteur took part in meetings of the Working Group to Prepare the Draft Legally-Binding Inter-American Instruments against Racism and Racial Discrimination and against all Forms of Discrimination and Intolerance held on October 23; November 6, 12, and 29; and December 11.

99. In addition, on December 3, in the course of the on-site visit of the IACHR to Colombia, the Rapporteur met with several Afro-descendant organizations and gave a presentation on the report "The Situation of People of African Descent in the Americas."

6. Office of the Special Rapporteur on Migrant Workers and Their Families

100. The Inter-American Commission on Human Rights established the Office of the Special Rapporteur on Migrant Workers and Their Families (hereinafter "Office of the Special Rapporteur") at its ninety-second special session, held from April 29 to May 3, 1996. The creation of the Office of the Special

Rapporteur reflected the interest of the OAS member States to give special attention to a group recognized for its extreme vulnerability, a fact that left it particularly exposed to human rights violations. Subsequently, at its 144th session, held on March 30, 2012, the IACHR amended the mandate of the Office of the Special Rapporteur in response to the multiple challenges posed by human mobility in the region. The new mandate focuses on the observance and guarantee of the rights of migrants and their families, asylum seekers, refugees, stateless persons, victims of human trafficking, internally displaced persons and other vulnerable groups within the context of human mobility. Commissioner Felipe González has been the Rapporteur since January 2008.

101. On February 16, 2012, the Rapporteur presented the annual report on the activities of the Office of the Rapporteur in 2011 at a joint meeting of the OAS Committee on Juridical and Political Affairs (CAJP) and Special Committee on Migration Issues (CEAM), held to discuss implementation of the Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, Including Migrant Workers and Their Families. The report was prepared in accordance with the guidelines established by the General Assembly in resolution AG/RES. 2669 (XLI-O/11).

102. On February 17, the Inter-American Commission submitted to the Inter-American Court a brief containing its observations on the request for an advisory opinion regarding the legal obligations of States with respect to child migrants. The Office of the at Rapporteur on Migrants worked on these observations jointly with the Office of the Rapporteur on the Rights of the Child and the Court Group.

103. On February 20, the Rapporteur presented an overview of the current situation of human rights of migrants in Mexico at a conference on the "Current Situation of Human Rights in Mexico." This activity took place at the Consejo General de la Abogacía Española (CGAE).

104. On March 28, the Office of the Rapporteur gave a presentation via teleconference entitled "The Human and Labor Rights of Migrants in the Inter-American System" as part of a course on social security in globalization organized by the Inter-American Center for Social Security Studies (CIESS).

105. On June 30, the Office of the Special Rapporteur gave a presentation on the main challenges in protection of the human rights of migrants in the framework of a seminar on human rights and international humanitarian law organized by the Inter-American Defense College in Washington, D.C., the seminar was attended by 62 course participants, composed of armed forces personnel, police officers, and civilian officials from 16 countries in the Americas.

106. On June 11, as part of the Advanced Human Rights Studies Program organized by the American University, the Office of the Special Rapporteur gave a presentation on the Office's activities for the protection of human rights in the context of human mobility and on how to use the various mechanisms offered by the IACHR.

107. The Commission, through the Office of the Special Rapporteur on Migrant Workers, took part as an international observer organization in the Seventeenth Regional Conference on Migration (CRM), held in Panama City, Panama, from June 19 to 22, the core theme of which was "Security in the Context of Human Rights and Mixed Migration Flows." The Office of the Rapporteur was present at the meetings of the Regional Consultation Group on Migration (RCGM) and delivered a presentation as an international observer organization.

108. The Rapporteur on Migrant Workers, whose remit also covers the situation of internally displaced persons, represented the Inter-American Commission at a public hearing in the case of the *Massacre of Santo Domingo vs. Colombia*, which was held at the seat of the Inter-American Court at San Jose, Costa Rica, on June 27 and 28.

109. A lawyer from the IACHR Executive Secretariat took part and moderated a panel on migration policy in Cuba in the context of the 22nd Annual Meeting of the Association for the Study of the Cuban Economy (ASCE), held in Miami, Florida from August 2 to 4.

110. At the invitation of the Office of the United Nations High Commissioner for Refugees (UNHCR), the Office of the Special Rapporteur on Migrant Workers of the IACHR took part in the Tenth Regional Course on International Refugee Law. The theme of the event, which was held in Lima, Peru, from September 24 to 28, was "Contemporary Challenges for International Protection." The representative of the Rapporteurship gave a presentation entitled "Protection of Children and Adolescents in Mixed Migration Flows".

111. Throughout the 2012, the Office of the Rapporteur continued working on the preparation of the report on the situation of migrants and other persons in the context of human mobility in Mexico. It has also worked on a report on human rights standards for migrants.

112. In addition, on December 14, at the invitation of the civil society organization *Sin Fronteras IAP*, a lawyer from the Office of the Special Rapporteur took part in the second meeting held in Mexico City of the Advisory Council to the Supreme Court of Justice of Mexico for the preparation of the "Protocol for Imparters of Justice in Cases That Concern Migrants and Persons Entitled to International Protection (Asylum Seekers, Refugees, Persons Entitled to Complementary Protection, and Stateless Persons)." The plan is for this protocol to be used by members of the judiciary in Mexico and that it be presented at the Ibero-American Judicial Summit in 2013.

7. Office of the Rapporteur on Human Rights Defenders

113. The Inter-American Commission on Human Rights created the Office of the Rapporteur on Human Rights Defenders at its 141st regular session, held in March 2011. Its predecessor was the Unit for Human Rights Defenders, which was established in December 2001. Commissioner José de Jesús Orozco Enriquez has been the Rapporteur since January 2010.

114. The Office of the Rapporteur on Human Rights Defenders continues to monitor the situation of human rights defenders in the region. The Second Report on the Situation of Human Rights Defenders in the Americas was adopted by the IACHR on December 31, 2011. The report presents updated information on the situation of human rights defenders in the region and on the standards of international law in this area. It also follows up on recommendations made in the *Report on the Situation of Human Rights Defenders in the Americas*, which the IACHR published on March 7, 2006.

115. The report was released on March 6, 2012, in Geneva, in the framework of the session of the United Nations Human Rights Council. During the visit, the Rapporteur on Human Rights Defenders, Commissioner José de Jesús Orozco, and the then-Executive Secretary of the IACHR, Santiago A. Canton, participated in a seminar which also included the participation of the UN Rapporteur, Margaret Sekaggya. That seminar was organized by the International Service for Human Rights (ISHR).

116. On March 8 and 9, the Office of the Rapporteur participated in the Fourth "Inter-Mechanisms" Meeting on the Protection of Human Rights Defenders, which took place in Geneva and included discussions on issues related to undue restrictions to civil society organizations' freedom of association. Commissioner José de Jesús Orozco and Executive Secretary Santiago A. Canton participated on behalf of the IACHR.

117. On March 14, 2012, the IACHR Rapporteur on Human Rights Defenders, along with the rapporteurs on human rights defenders from the United Nations and the African Commission on Human and Peoples' Rights (African Commission) issued a joint statement expressing their concern over acts of reprisals against individuals and groups seeking to cooperate with the regional and UN human rights systems.

118. On March 28th, 2012, the Rapporteur presented the Second Report on the Situation of Human Rights Defenders in the Americas, in the context of the 144th Period of Sessions of the IACHR.

119. On May 17 and 18, 2012, the Rapporteur, accompanied by an attorney from the rapporteur's office, took part in the Forum "Challenges in Protecting Human Rights Defenders in Mesoamerica," organized in Guatemala City, Guatemala, by the Office of the United Nations High Commissioner for Human Rights in Guatemala, Protection International, the Human Rights Defenders Protection Unit in Guatemala (UDEFEGUA), and the Center for Justice and International Law (CEJIL). In connection with that presentation, Rapporteur Orozco explained the mechanisms for protecting defenders provided by the Inter-American system and then formally presented in Guatemala the Second Report on the Situation of Human Rights Defenders in the Americas.

120. On May 22, 2012, Commissioner Orozco presented the Second Report at the Institute of Legal Research of the National Autonomous University of Mexico (UNAM). On that same day two specialists of the Commission held a workshop on mechanisms for protecting human rights defenders. Several civil society organizations and human rights defenders from various parts of the country.

121. From May 28 to 30, 2012, staff from the IACHR Executive Secretariat participated in the public hearing and the international academic seminar on "The Situation of Human Rights Defenders of the Peasant Communities of Bajo Aguan," which took place in Tocoa, Colon, Honduras. The IACHR human rights specialists attended the public hearing and made presentations on the Inter-American human rights system and on the precautionary measures mechanism.

122. On June 13, 2012, an attorney from the Office of the Rapporteur took part in an academic panel discussion in Washington, D.C., entitled "A Look at the Recent Political Work of the Inter-American Commission on Human Rights," organized by American University's Academy on Human Rights and Humanitarian Law. He took the opportunity to present the contents of the Second Report on the Situation of Human Rights Defenders. Also participating in this panel were the Assistant Executive Secretary of the IACHR and other attorneys from the IACHR Executive Secretariat.

123. On June 25, the Rapporteur on Human Rights Defenders took part in the twentieth session of the Human Rights Council as a member of the panel on women human rights defenders.

124. The Rapporteur presented the Second Report at an event co-organized by the IACHR, the Colombian Jurists Committee and the Universidad Externado de Colombia in Bogotá, Colombia. As part of the visit, the Office of the Rapporteur assisted in the organization of the forum "Dialogue with Colombian Civil Society in the Process for Strengthening the Inter-American Human Rights System," held on August 23. The Rapporteur also met informally with the President of the Supreme Court of Colombia as well as the President of the country's Constitutional Court.

125. In addition, a specialist from the Office of the Rapporteur presented the "Second Report" in Lima, Peru, on August 27, in the framework of the Peruvian Human Rights Congress "Human Rights and Criminalization of Social Protest" organized by the Federated Center for Law and Political Science of Universidad Nacional Mayor de San Marcos, *Asociación Pro Derechos Humanos* (APRODEH), and the National Human Rights Coordinator. At the Congress, the specialist from the Office of the Rapporteur gave a conference on the criminalization of human rights defenders.

126. As part of the Office's promotion activities, on August 16, the Rapporteur on Human Rights Defenders, José de Jesús Orozco Henríquez, took part in the Fifth Inter-American Congress of Public Defenders Offices, held in Fortaleza, Brazil. At the Congress, the Rapporteur held a conference on the activities of public defenders in the Inter-American system.

127. In addition, on September 26, Rapporteur Orozco participated in the International Human Rights Symposium organized in Acapulco, Mexico, by the Government of the state of Guerrero, the Office of the Attorney General of the Republic, the Office of the Attorney General of the state of Guerrero, and

the Ministry of Foreign Affairs. The symposium was intended for government attorneys and the Rapporteur led a workshop on protection mechanisms available in the Inter-American human rights system.

128. On September 14 and 15, staff from the Office of the Rapporteur on Human Rights Defenders assisted in the organization of the Mexico City Forum on Strengthening of the Inter-American Human Rights System held by the Ministry of Foreign Affairs in Mexico City.

129. On November 28 and 29, the Rapporteur participated in the subregional consultation of experts organized by Ms. Gabriela Knaul, the United Nations Special Rapporteur on the Independence of Judges and Lawyers. At the meeting, the IACHR Rapporteur on Human Rights Defenders explained the standards that have evolved on these matters within the Inter-American system.

130. On December 7, in the framework of the on-site visit to Colombia, the Office of the Rapporteur on Human Rights Defenders organized a training workshop in Bogotá for human rights defenders on the use and workings of the protection mechanisms on which the IACHR can call to protect defenders' human rights.

131. In addition, on December 5, the Rapporteur held a presentation in Columbia on the "Second Report on the Situation of Human Rights Defenders in the Americas." At the presentation were Jorge Armando Otálora, Ombudsman of Colombia; Andrés Villamizar, Director General of the National Protection Unit; Tatiana Rincón, a professor from Universidad del Rosario, and Luz Marina Monzón, a human rights defender.

8. Unit for the Rights of Lesbian, Gay, Trans, Bisexual, and Intersex Persons

132. At its 141st session in March 2011, the IACHR decided to give special thematic emphasis to the rights of lesbian, gay, bisexual, trans and intersex persons (LGTBI) as it was “deeply concerned at the information it has received in recent years on the *de jure* and *de facto* discrimination against these persons, the effects of this discrimination on every aspect of their lives, and, in particular, the intolerable levels of violence to which they are subject in the countries of the Hemisphere.” In November 2011, in the context of its 143rd session, the IACHR created a specialized unit on these matters within its Executive Secretariat. Subsequently, in the course of its 146th regular session, and the IACHR appointed Commissioner Tracy Robinson to lead the Unit.

133. On February 24 and 25, 2012, the IACHR held a meeting of experts on violence and impunity under the auspices of UNAIDS and with the collaboration of the Pan American Health Organization. The meeting was chaired by Commissioner Tracy Robinson and attended by more than 20 experts, who supplied information about sexual orientation and gender identity and the prevailing impunity that exists with regard to violence in this area.

134. By resolution AG/RES. 2721 (XLII-O/12), "Human Rights, Sexual Orientation, and Gender Identity," the OAS General Assembly requested that the IACHR prepare: (i) a hemispheric study on the subject; and (ii) “a study on legislation and provisions in force in the OAS member States restricting the human rights of individuals by reason of their sexual orientation or gender identity, and to prepare, based on that study, guidelines aimed at promoting the decriminalization of homosexuality.” Both studies are underway.

135. On June 17, in order to mark the International Day Against Homophobia and Transphobia, the IACHR published a special section on its website that includes the standards and background of the IACHR on these matters, as well as information about promotional activities.

136. On July 23, 2012, the IACHR, through its Unit of the Rights of LGTBI co-organized with UNAIDS and the Art Museum of the Americas the panel/AIDS Quilt Exhibition Challenges on the Protection of Human Rights of Persons Living with HIV in Latin America and the Caribbean, with a keynote speech given by the Commissioner Rose-Marie Belle Antoine focusing on non-discrimination and stigma associated with HIV. This panel was organized in the context of the XIX International AIDS Conference that took place in Washington DC July 22-27, 2012.

137. In keeping with these efforts, the LGTBI Unit has advised the US Department of State on its strategy for strengthening defenders of the human rights of LGTBI persons in the region, which included an activity in September with the participation of LGTBI activists from the Americas region as a whole; and, in October, an event held for LGTBI activists in Ecuador in the framework of the international leaders program. The Unit also participated in the Tenth Regional Course on International Refugee Law in Latin America, held in Lima, Peru, and attended by representatives from 19 Latin American countries (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela) and officials from the Office of the United Nations High Commissioner For Refugees (UNHCR), who had the opportunity to explore the need for international protection with regard to recognition of refugee status to persons who are persecuted based on their sexual orientation and/or gender identity.

138. The IACHR held a regional meeting of independent experts on the "Right to Work of Lesbian, Gay, Trans, Bisexual and Intersex Persons in the Americas," on October 11-12 in Bridgetown, Barbados. Fifteen experts from 12 countries assisted to the meeting. The meeting was chaired by Commissioner Rose-Marie Belle Antoine. It was organized by the IACHR through its Unit on the Rights of LGTBI Persons, in the information gathering process for the Hemispheric Report. On October 11, 2012, a panel on "Stigma and Discrimination Based on Sexual Orientation and Gender Identity" was held at the West Indies University Law School, Cave Hill Campus, which was jointly organized by the IACHR and the

University. Commissioner Rose-Marie Belle Antoine was the keynote speaker and the panelists debated the challenges faced by LGTBI persons in the countries of the Caribbean Commonwealth.

139. In the period covered by this report, the Unit has continued to monitor the situation of the rights of LGTBI persons in the region and issued a number of press releases calling on States to investigate murders of trans individuals.¹⁹

140. A discussion panel on “Experiences of Political Participation by LGTBI Persons in Latin America” was held in Bogotá on November 19. The opening remarks were given by Commissioner Rodrigo Escobar Gil, who stressed the importance of the participation of LGTBI persons in the public and political life of States as a mean to build more diverse, inclusive, and just societies.

9. Unit on Economic, Social, and Cultural Rights

141. At the 146th regular session, held from October 29 to November 16, 2012, the Inter-American Commission on Human Rights, in accordance with its commitment to strengthening its work to protect and promote economic, social, and cultural rights, and in response to suggestions made by the States and by civil society, decided to create a Unit on Economic, Social, and Cultural Rights (ESCR), headed by Commissioner Rose-Marie Belle Antoine.

142. The Unit on Economic, Social and Cultural Rights has a mandate to cooperate in the analysis and evaluation of the situation of these rights in the Americas; provide advice to the IACHR in the processing of individual petitions, cases, and requests for precautionary and provisional measures in connection with these rights; undertake working visits to OAS member States; and prepare studies and reports. It should be noted that the IACHR has worked relentlessly on ESCR, both in the framework of the individual petitions system and as part of its activities in monitoring and promoting ESCR as a crosscutting theme of its thematic reports and its country reports. Indeed, in analyzing the situation of human rights in different countries in the region, the IACHR has included a study on the situation of economic, social and cultural rights. It has also published thematic studies, such as, for example, a report entitled “Access to Justice As a Guarantee of Economic, Social, and Cultural Rights.”

143. The IACHR is also part of the Special Working Group to Examine the National Reports Envisioned in the Protocol of San Salvador, a body that was established by the General Assembly in 2007 and has been operational since 2010. Commissioners Rose-Marie Belle Antoine and Rosa María Ortiz had been designated as lead and alternative member, respectively, of the Special Working Group.

144. In that capacity, in December 2012, Commissioner Antoine assisted in a the Regional Training Course on the Use of Indicators of Economic, Social and Cultural rights as a Tool for an Effective Social Policy, organized by the Executive Secretariat for Integral Development of the Organization of American States (OAS) and the Training Center of the Spanish Cooperation Agency (AECID) in Montevideo, with the support of the Ministry of Social Development of Uruguay, the Inter-American Commission on Human Rights, and the Inter-American Institute of Human Rights. Commissioner Rose-Marie Belle Antoine gave a presentation on the “Guidelines for Preparation of Progress Indicators in the Area of Economic, Social and Cultural Rights”. The object of the course was to support the OAS Member States in the monitoring of the instruments of economic, social, and cultural rights of the Inter-American system as key elements of an effective social policy. The workshop placed particular emphasis on the Protocol of San Salvador, the monitoring process for which is currently underway and for which the States Parties must submit reports over the next two years pursuant to Article 19 of that instrument.

145. With the creation of the ESCR Unit, the IACHR will push ahead with and redouble its efforts to strengthen its capacity for ensuring that the analysis of ESCR is a crosscutting component of all relevant thematic reports, in addition to preparing new specific reports on those rights. These will make it

¹⁹ For an up-to-date list of IACHR press releases concerned with the situation of the rights of LGTBI persons, see: http://www.oas.org/en/iachr/lgtbi/press_releases/

possible to continue strengthening the development of standards on enforceability and compliance by States with their obligations where economic social and cultural rights are concerned.

F. Other Events and Activities

1. Inter-American Treaties on Human Rights

146. On January 27, 2012, the Dominican Republic deposited its instrument of accession to the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

2. Scholarships and Internships

147. In 2012, the Commission continued its Romulo Gallegos Scholarship Program. The Program offers training on the Inter-American system for the promotion and protection of human rights to young lawyers from OAS member States, who are selected annually in a hard-fought competition in which they must demonstrate their commitment to human rights as well as solid academic credentials.

2011-2012	Catherine Lafontaine, Brian Tittmore Scholarship	Canada
	Patricia Tarre, Notre Dame Scholarship	Venezuela
2012	Christian Augusto Slomp Perrone de Oliveira, Romulo Gallegos Scholarship	Brazil
	Indiana Josefina Jimenez Guerrero, Romulo Gallegos Scholarship	Dominican Republic
	Federico Carlos Jose Sersale di Cerisano, Romulo Gallegos Scholarship	Argentina
	Roger Mauricio Noguera Rojas, Scholarship from the LGTBI Unit Carolina Casotti Duque de Bárbara, Scholarship from the Office of the Rapporteur on the Rights of the Child	Colombia
2012-2013	Ursula Indachochea, Scholarship from the Office of the Rapporteur on Human Rights Defenders	Brazil
		Peru

148. In addition to its scholarship program, the Commission continued and expanded its internship program. These internships, which are administered in cooperation with the OAS Student Intern Program, are intended for university undergraduates and graduates, as well as for young professionals, in order to allow them to acquire practical experience in the Inter-American system in their chosen field of study. The goal of the internships is to offer law students and recent graduates of law school or of other related disciplines, the opportunity to learn about the work of the Commission. It also offers professionals an opportunity to acquire practical training in the human rights area and to work with the attorneys in the Executive Secretariat in the different activities carried out by the IACHR. In 2012, the Commission received a total of 38 interns. Additional information on IACHR scholarships and internship programs is available on the Commission's website: www.cidh.org.

3. Cooperation activities with other human rights institutions

149. On February 29, a delegation from the European Court of Human Rights visited the IACHR and held a productive dialogue with Commissioner Dinah Shelton and Commissioner José de Jesús Orozco, the then-President and Vice President of the IACHR, respectively. Also present at the event were the Executive Secretary and staff from the Executive Secretariat.

150. Similarly, on March 5, a delegation from the African Court on Human and Peoples' Rights visited the IACHR with the aim of exchanging information on different aspects of the work of the two organs. IACHR lawyers provided information about the activities, structure, and organization of the Inter-American system, the IACHR, the rapporteur's offices, and the system of individual petitions and precautionary measures, among other topics. This visit was conducted in the framework of the ongoing cooperation that exists between the two regional human rights systems.

151. On April 26, the IACHR signed a cooperation agreement with the International Criminal Court, which envisages the possibility of sharing information about decisions, rulings, judgments, reports, and documents that might prove useful to them in processing cases and performing their respective mandates.²⁰

152. On June 18, the then-Executive Secretary took part in the twentieth session of the United Nations Human Rights Council, which addressed past cooperation between the Inter-American Commission and the United Nations' human rights mechanisms.

153. On October 10, the Executive Secretary received the United Nations High Commissioner for Human Rights, Navanethem Pillay, who expressed her willingness to assist the Commission in its strengthening process and discussed the possibility of holding a meeting in Washington on that process with other international human rights agencies.

154. In the second week of October, the Assistant Executive Secretary, Elizabeth Abi-Mershed, represented the Commission at the 52nd Ordinary Session of the African Commission on Human and Peoples' Rights, held in Ivory Coast.

155. From December 12 to 14, Commissioner Dinah Shelton, Executive Secretary of the IACHR, and Maria Claudia Pulido, one of the Commission's lawyers, took part in an international workshop on "*Enhancing Cooperation between United Nations and Regional Mechanisms for the Promotion and Protection of Human Rights*," organized in Geneva, Switzerland, by the Office of the United Nations High Commissioner for Human Rights. This event was organized in follow-up to a previous workshop held in 2010 under resolution 18/14 of the United Nations Human Rights Council.

4. Other promotional activities

156. From April 20 to 23, 2012, the Executive Secretary took part in the Mid-year Meeting of the Inter-American Press Association, held in Cadiz, Spain.

157. On April 26, Rosa Celorio, a lawyer with the Office of the Rapporteur on the Rights of Women, participated in the Hemispheric Forum with civil society, organized in Washington, D.C., by the OAS Department of External Relations. The purpose of the event was to encourage civil society participation in dialogue sessions on food security, the core topic of the OAS General Assembly in 2012.

158. On May 11, 18, and 25, 10 lawyers from the Executive Secretariat together with a number of attorneys from the Inter-American Court of Human Rights took part in the itinerant workshops "Impact of the constitutional reforms of *amparo*" and "Human rights in jurisdictional work" in Mexico. The workshops were the second stage of a larger program organized by the Mexican Supreme Court of Justice. On this occasion, it was envisaged that the workshops would entail 36 debate and analysis roundtables with experts on the Inter-American human rights system, with the aim of discussing with judges from the country's circuit and district courts a possible mechanism for the compliance of the Convention through case study reviews.

159. The Executive Secretary took part in the General Assembly of the World Organisation against Torture (OMCT), held from June 4 to 6, and gave a presentation on accountability in torture cases.

160. On June 11 and 12, the IACHR Media Center Press and Information Office organized a journalists' course on the Inter-American human rights system, in which 17 professional journalists from different countries in the region took part. The course was imparted by the Media Center with the participation of lawyers from the Executive Secretariat.

²⁰ See IACHR, Press release [No. 39/12](#).

161. On June 14 and 15, Commissioner José de Jesús Orozco, President of the IACHR, participated in the XLVII Lecture Series of the Americas at the invitation of the OAS Secretary General. The President of the IACHR gave a paper on defense and protection of human rights at the OAS.

162. On June 22 and 23, the Executive Secretary participated in a conference entitled "Prevention of Torture and Cruel, Inhuman or Degrading Treatment in Uruguay." Participating in the event were United Nations officials, senior officials from the Uruguayan government, European Union representatives, representatives of the Ludwig Boltzmann Institute of Human Rights, and members of the Peace and Justice Service of Uruguay.

163. To mark the XIX International AIDS Conference held in Washington, D.C., on July 25, the IACHR organized an event to encourage the efforts of the region's countries in the area of the rights of people with HIV/AIDS. The event was attended by OAS Secretary General, José Miguel Insulza, and Commissioner Rose-Marie Belle Antoine.

164. On August 30, the Executive Secretary gave a conference at the First Regional Meeting on Plans of Action in Human Rights, held in Rio de Janeiro. That same day, he traveled to Brasilia to meet the Minister for Human Rights of the Ministry of Foreign Affairs.

165. On August 30 and 31, lawyers from the Office of the Rapporteur on the Rights of Persons Deprived of Liberty, the Office of the Rapporteur on the Rights of the Child, and the LGTBI Unit took part in the "Meeting on Social Integration and Drugs in Latin America," held at OAS headquarters in Washington, D.C. The meeting was part of the efforts of the Inter-American Drug Abuse Control Commission (CICAD) to contribute to the development of member States' drug policies by defining a frame of reference for public policies on social integration and drugs.

166. In early September, the Executive Secretary, Assistant Executive Secretary, and specialists from the Executive Secretariat gave talks at the Thirtieth Interdisciplinary Course in Human Rights of the IIHR, in San Jose, Costa Rica.

167. On September 7, in coordination with the OAS Department of International Affairs, the Assistant Executive Secretary, Elizabeth Abi-Mershed gave a presentation to a group of representatives of the United States Government on the work of the Inter-American Commission on Human Rights.

168. On September 26, Commissioner Dinah Shelton received approximately 20 lawyers from the Supreme Court of Mexico, who were visiting Washington, D.C. in the framework of a specialization program on protection of environmental rights organized by the United States Supreme Court and the Environmental Law Institute (ELI). Accompanied by specialists from the Executive Secretariat, Commissioner Shelton gave a number of talks about the work of the Commission and about petitions and precautionary measures in connection with environmental rights.

169. On September 28, principal specialist Mario López Garelli offered a presentation on the Inter-American human rights system to the LII Class of the Inter-American Defense College, composed of 58 students and 22 advisers. This activity was carried out as part of an orientation program organized by the OAS Secretariat for External Relations.

170. On September 28, specialist Nerea Aparicio, took part in the Conference for Officers of the High Command Course of the Army of Peru organized by the OAS Secretariat for Multidimensional Security with the aim of explaining the mandate and responsibilities of the IACHR.

171. On October 11, the Executive Secretary participated in a panel organized by the Permanent Observer Mission of France to the OAS to mark the World Day against the Death Penalty, which was held in the Hall of the Americas. Also taking part in this panel were the French Ambassador,

Pierre Henri Guignard; Dr. Susan L. Karamanian, professor at George Washington University Law school; and Jean Michel Arrighi, OAS Secretary for Legal Affairs

172. On October 16, Commissioner José de Jesús Orozco, President of the Commission, and the Executive Secretary took part in an international conference entitled “The Challenges of the Current IACHR Reform”, organized by Fundación para el Debido Proceso Legal and Instituto de Defensa Legal in Lima, Peru. They also held a number of meetings with Peruvian government officials.

173. On October 18, the Executive Secretary gave a conference in Mexico City in the framework of the 20th anniversary of the Gender Studies Program of Mexico's Universidad Nacional Autónoma.

174. On October 23, specialist Fanny Gómez participated in a conference organized by the Open Society Foundation on Article 19 of the United Nations Convention on the Rights of Persons with Disabilities, concerning the right to live independently and be included in the community. Specifically, she offered a presentation in the framework of a panel on the possibility of using national, regional, and international human rights mechanisms for the enforcement and interpretation of the rights of all persons with disabilities to be included in the community.

175. On November 15 and 16, the Inter-American Commission organized a training workshop for more than 70 lawyers from 17 OAS member States. This activity was part of a program aimed at involving legal professionals from the private sector, who act on a pro bono basis, in the work of the IACHR. Presentations were given by the OAS Secretary General, the President of the IACHR, the Executive Secretary and Assistant Executive Secretary of the IACHR, the United Nations Rapporteur on Torture, and United States Government representatives, among others. This activity was organized by the Cyrus R. Vance Center for International Justice of the New York City Bar and Fundación Pro Bono Chile. Assistance was also provided by the American University School of Law and the ACE Rule of Law Fund.

G. Financial contributions

176. The Inter-American Commission on Human Rights receives financing from the Regular Fund of the OAS through a contribution approved each year by the General Assembly of the Organization as well as voluntary contributions from donors.

177. The IACHR is especially grateful for the important financial contributions from countries in and outside the region, and from international agencies and organizations, foundations, and other entities. These donations make it possible for the IACHR to carry out much of its activities under the mandates issued by the political organs of the Organization.

178. In particular, the IACHR would like to thank the following governments of OAS member States for their contributions in 2012: Argentina, Chile, Colombia, Costa Rica, Mexico, Paraguay, and United States. It would also like to extend its gratitude to the observer countries that support the activities of the Inter-American Commission: Spain, Finland, France, Holland, Ireland, and Switzerland. The Inter-American Commission also greatly appreciates the contributions received from the European Commission, the International Group for Indigenous Affairs (IWGIA), Plan International, the Joint United Nations Programme on HIV/AIDS (UNAIDS), Save the Children Sweden, and the University of Notre Dame.

179. All these contributions help specifically to strengthen the Inter-American human rights system in the Hemisphere.

Strategic Plan of the IACHR 2011-2015

180. The IACHR adopted its Strategic Plan 2011-2015 with the aim of promoting greater coordination among donors, improving their efficiency levels, and demonstrating the results achieved in a transparent manner, using measurable and realistic indicators. To that end, a workshop on results-based management was held to review the array of indicators contained in the Strategic Plan.

181. The Strategic Plan includes all the Commission's activities across eight programs and their respective plans of action, laying the foundations for a new mechanism of medium- and long-term programmatic cooperation, in which potential donors can contribute to a common fund and receive a consolidated annual report that offers them a clear and transparent overview of the IACHR's management.

182. Given that the Strategic Plan was only presented to contributors in March 2011, the IACHR is still in a process of transition between specific ongoing projects and the new programmatic plan. The number of specific projects will diminish as contributions to the Strategic Plan increase. The IACHR also received voluntary contributions prior to the adoption of the Strategic Plan. Those contributions are still under execution, given that the deadline for that purpose is open-ended.

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

183. In 2012 the Commission continued to carry out its treaty-based and statutory mandates before the Inter-American Court. The following is a detailed description of the Commission's activities before the Court in the following order: (i) referral of contentious cases; (ii) requests for provisional measures; (iii) appearance and participation in public and private hearings; (iv) presentation of written observations on State reports in cases of supervision of compliance with judgments; and (v) presentation of written observations on State reports on the implementation of provisional measures.

1. Referral of contentious cases

184. In 2012, the Commission referred 23 cases to the jurisdiction of the Inter-American Court pursuant to Article 51 of the American Convention and Article 45 of its Rules of Procedure.

a. "J" v. Peru (submitted on January 4, 2012)

185. The case refers to the illegal and arbitrary detention of J and the home searches conducted on April 13, 1992 by State agents, who committed acts of torture and cruel, inhumane and degrading treatment, including rape of the victim. Following those acts, J was taken to the National Counter-Terrorism Directorate (DINCOTE) and deprived of her liberty in that place for 17 days, without judicial oversight and in inhuman detention conditions. Furthermore, the case relates to a series of violations of due process and of the principle of legality and non-retroactivity in connection with the criminal proceedings against the victim on account of alleged crimes of terrorism when Decree Law 25475 was in force. In June 1993, J was acquitted, after which she left Peru. On December 27, 1993, the anonymous ("faceless") Supreme Court of Justice annulled the acquittal without explanation of its reasons for doing so and ordered a retrial. To this day, proceedings against J remain pending in Peru, with an international warrant for her arrest.

b. Liakat Ali Alibux v. Suriname (submitted on January 20, 2012)

186. The case refers to the investigation and criminal process against Liakat Ali Alibux, former Minister of Finance and former Minister of Natural Resources of Suriname, who was sentenced on November 5, 2003, for the crime of forgery, in accordance with the procedures provide for in the Indictment of Political Officials Act. In its report on merits, the Commission found that the State of Suriname was internationally responsible for violating the rights to a fair trial, to judicial protection, to freedom from ex post facto laws, and to freedom of movement and residence recognized at Articles 8, 25, 9, and 22 of the American Convention on Human Rights. Specifically, the Commission concluded that Liakat Ali Alibux did not have a remedy to appeal his conviction; that he did not have access to the

courts to challenge the constitutionality of the Act under which he was tried; that said Act was applied *ex post facto*; and that the restriction on his ability to leave the country was disproportionate.

c. Melba del Carmen Suarez Peralta v. Ecuador (submitted on January 26, 2012)

187. The case deals with the lack of judicial guarantees and judicial protection in criminal proceedings against persons allegedly responsible for a case of medical malpractice denounced by Melba del Carmen Suárez Peralta. In July 2000, Melba del Carmen Suárez Peralta had surgery for appendicitis at the Minchala private clinic, which caused her severe and permanent after-effects. The criminal proceedings opened in connection with these facts concluded without a result when lack of due diligence in taking the proceedings forward led them to be declared lapsed in 2005, more than five years after the order to institute proceedings had been given. The Commission found that the criminal proceedings were characterized by the failure to pursue matters on an *ex officio* basis and an absence of minimal guarantees of due diligence for the victim. The passive role played by the Prosecutor's Office in the criminal proceedings and the delay in pursuing the case meant that those possibly responsible went unpunished, when the statute of limitations was applied to the claims in 2005. Furthermore, the Commission concluded that the failure to provide a reasoned response to the request for a fine on the judicial authority on the ground that the suit had lapsed because of a lack of timely dispatch, constituted a violation of the right to a fair trial.

d. Rodríguez Vera et al. (Palace of Justice) v. Colombia (submitted on February 9, 2012)

188. The facts in the case are related with the taking and retaking of the Palace of Justice, in Bogota, on November 6 and 7, 1985. In particular, the case concerns the forced disappearance of Carlos Augusto Rodríguez Vera, Cristina del Pilar Guarín Cortés, David Suspes Celis, Bernardo Beltrán Hernández, Héctor Jaime Beltrán Fuentes, Gloria Stella Lizarazo, Luz Mary Portela León, Norma Constanza Esquerro, Lucy Amparo Oviedo de Arias, Gloria Anzola de Lanao, Ana Rosa Castiblanco Torres, and Irma Franco Pineda during the operation to retake the building. It also relates to the disappearance and subsequent execution of judge Carlos Horacio Urán Rojas, as well as to the detention and torture of Yolanda Ernestina Santodomingo Albericci, Eduardo Matson Ospino, Orlando Quijano, and José Vicente Rubiano Galvis.

189. In addition, the case deals with the failure of the judiciary to clarify the facts and punish all those responsible. In this connection, criminal proceedings were instituted in the military and the regular jurisdictions, as were disciplinary and contentious administrative proceedings. Following the events surrounding the taking of the Palace of Justice, relatives of the disappeared victims embarked on a search for their loved ones and filed criminal complaints as part of their quest for the truth, justice, and redress. In addition, the surviving victims sought to obtain justice for the acts connected with the detention and torture they suffered.

e. Pacheco Tineo Family v. Bolivia (submitted on February 21, 2012)

190. The case refers to the return of the Pacheco Tineo family to Peru on February 24, 2001, as a consequence of the rejection of their request for recognition of refugee status in Bolivia. The Pacheco Tineo family, composed of Rumaldo Juan Pacheco Osco, his wife, Fredesvinda Tineo Godos, and their three children, entered Bolivia on February 19, 2001. The immigration authorities took note of their irregular situation and initiated actions directed toward their expulsion to Peru. This prompted Rumaldo Juan Pacheco Osco to request that the State of Bolivia recognize refugee status to him and his family. The request was summarily rejected in a matter of hours, in violation of several due process guarantees. As a result, the Pacheco Tineo family was expelled to Peru on February 24, 2001. In its report on merits, the IACHR concluded that the State of Bolivia is internationally responsible for violating the right to mental integrity, the right to seek and be granted asylum, the principle of *non refoulement*, and the right to a fair trial and judicial protection, to the detriment of the Tineo Pacheco family. Moreover, the IACHR concluded that the State of Bolivia violated its special obligations in relation to the protection of the three children.

f. Brewer Carias v. Venezuela (submitted on March 7, 2012)

191. The case relates to the lack of judicial guarantees and judicial protection in the proceedings brought against constitutional attorney Allan R. Brewer Carías for the crime of conspiring to change the Constitution through violent means in connection with the events of April 11 and 13, 2002, in which he was alleged to have participated in the drafting of the so-called “Carmona Decree” ordering the dissolution of the public authorities and the establishment of a “democratic transition government.”

192. In its report on merits, the Commission concluded that in this particular case the fact that three temporary judges were responsible for hearing the preliminary stage of the criminal proceedings brought against Allan Brewer Carías in itself constituted a violation of judicial guarantees. Moreover, the Commission considered that the fact that one of the temporary judges was suspended and replaced two days after having filed a complaint for failure to comply with an order he had issued requiring that the accused be given access to the complete file on his case, together with the rules and practices in Venezuela regarding the appointment, dismissal and provisional tenure of judges, constituted violations of the guarantees of judicial independence and impartiality and contravened the right to judicial protection. Finally, the Commission considered that not being able to make photocopies of the file and to access it in its entirety violated the victim’s right to have adequate means for preparing his defense.

g. Véliz Franco et al. v. Guatemala (submitted on May 3, 2012)

193. The facts of this case deal with the lack of an effective response by the Guatemalan State to a missing person’s report made by Rosa Elvira Franco Sandoval to the Public Ministry on December 17, 2001, to notify the disappearance of her 15-year-old daughter, María Isabel Véliz Franco, as well as subsequent failings in the investigation of the facts. In that report, Mrs. Franco Sandoval said that on December 16, 2001, her daughter had left home at 8:00 a.m. and was supposed to return that evening, but she had not done so. There is no record of any efforts having been made to find the victim between the time the report was filed and the time the body was found at 2:00 p.m. on December 18, 2001.

194. The case also concerns a series of irregularities that occurred during the investigation into the disappearance and subsequent death of María Isabel Véliz Franco; these include the failure to take appropriate steps when she was reported missing, flaws in the preservation of the crime scene when her body was discovered, and deficiencies in the handling and analysis of the evidence that was gathered. While the case was being processed by the IACHR, the State accepted its responsibility for the lack of due diligence in the investigation process with respect to the death of María Isabel Véliz Franco, specifically for the failure to conduct certain forensic tests on her body; the delay in the investigation, caused by a conflict over territorial jurisdiction; and for its not having established an effective precautionary measure to ensure that the murder suspect would appear in court.

h. Arguelles et al. v. Argentina (submitted on May 29, 2012)

195. The case refers to the violation of the right to personal liberty and the right to a fair trial in the domestic proceedings of a military court against military officers for the crime of military fraud, pursuant to the provisions of the Code of Military Justice of Argentina then in force. Specifically, the facts that gave rise to the proceedings with which this case is concerned occurred in the period from 1978 to 1980 and resulted in the detention and holding incommunicado of approximately 50 military officers who were in charge of funds at different Argentine Air Force bases, 21 of whom are victims in this case.

196. In its report on merits, the Commission concluded that the State had violated the right of the victims to technical assistance in the preparation of their defense, inasmuch as Article 87 of the Code did not grant persons on trial the right to an attorney but, rather, allowed them to be defended by an active or retired military officer; the right to be defended by an attorney was only recognized once the accused had submitted a plea to the tribunal (Code of Military Justice of Argentina, Article 252). In

addition, the Commission found that the victims had been held incommunicado for a length of time that exceeded the limit permitted under the Code; that the Code did not set a time limit within which the military tribunal had to decide on the case of a detainee; and, furthermore, that the victims were held in pre-trial custody for between seven and eight years, without the State having justified their prolonged detention. In addition, the Commission concluded that the Code of Military Justice included certain provisions that prima facie constituted an infringement of the right to a fair trial and to access to justice, a fact that the State recognized when it repealed the Code but did not lead to reparations for the victims. It should be noted that the State repealed the Code in the framework of the friendly settlement in the Correa Belisle case, in which similar questions of due process arose, albeit in a different context. Finally, the commission concluded that the length of the proceeding exceeded the limits of reasonableness envisaged in the American Convention.

i. Jeremías Osorio Rivera *et al.* v. Peru (submitted on June 10, 2012)

197. The case refers to the forced disappearance of Jeremías Osorio Rivera, who was detained by a Peruvian army patrol on April 28, 1991, in the province of Cajatambo, Department of Lima, without his whereabouts having been determined and without the persons responsible having been sanctioned to date. Mr. Osorio Rivera was detained by members of the Counter-Subversive Base of Cajatambo in a context of armed conflict, in which forced disappearance was used systematically by members of the State's security forces. The IACHR also concluded that Jeremías Osorio Rivera was subjected to torture during his transfer by army personnel on April 30, 1991 and that members of the military concealed information about the victim's whereabouts and then released false information.

198. Although the victim's family members lodged a complaint against the commander of the patrol that detained him, Juan Carlos Tello Delgado, and participated actively in the criminal proceedings instituted in May 1991, the case was referred to the military jurisdiction and dismissed in February 1996. After the restoration of democracy and the repeal of the Amnesty Laws that impeded an investigation into the crimes committed by agents of the Peruvian State in the context of the so-called "struggle against terrorism," the investigations into the disappearance of Jeremías Osorio were reopened and are currently before the Supreme Court of Justice. The Commission concluded that more than 20 years after the victim's forced disappearance and with the entire truth of the incident still not known, the domestic criminal proceedings have not constituted an effective remedy for determining the fate of the victim or for ensuring the rights of access to justice and to the truth through the investigation and punishment of those responsible.

j. Landaeta Mejía Brothers v. Venezuela (submitted on July 10, 2012)

199. The facts of this case refer to the extrajudicial execution of the brothers Igmar Alexander Landaeta Mejías and Eduardo José Landaeta Mejías, 18 and 17 years of age respectively, by members of the Security and Public Order Corps (Cuerpo de Seguridad y Orden Público) of the state of Aragua. After threats and harassment against them, on November 17, 1996, Igmar Alexander Landaeta Mejías was extrajudicially executed. One month and a half later, on December 30, 1996, his brother, the adolescent Eduardo José Landaeta Mejías, was illegally and arbitrarily deprived of his liberty, and the next day, in the context of a supposed transfer, he was extrajudicially executed. These acts occurred within a broader context of extrajudicial executions in Venezuela, that were especially rife in the state of Aragua. The two brothers' deaths remain in impunity. In the case of Igmar Alexander Landaeta Mejías, the criminal proceedings against the police authorities culminated in dismissal, whereas the criminal proceeding in the case of Eduardo José Landaeta Mejías continues, 16 years after his death.

k. Benito Tide Méndez *et al.* v. Dominican Republic (submitted on July 12, 2012)

200. The case refers to the arbitrary detention and summary expulsion from the Dominican Republic of Benito Tide Méndez, William Medina Ferreras, Lilia Jean Pierre, Jeanty Fils-Aime, Janise Midi, Ana Virginia Nolasco, Andrea Alezy, Rafaelito Pérez Charles, Víctor Jean, Marlene Mesidor, and the children Wilda Medina, Luis Ney Medina, Carolina Isabel Medina, Nene Fils-Aime, Antonio Fils-Aime,

Diane Fils-Aime, Marilobi Fils-Aime, Endry Fils-Aime, Andren Fils-Aime, Juan Fils-Aime, Ana Lidia Sensión, Reyita Antonia Sensión, Berson Gelin, McKenson Jean, Victoria Jean, Miguel Jean, and Nathalie Jean. In its report on merits, the Commission concluded that the summary expulsions occurred in a tense context of collective and mass expulsions of individuals, affecting Dominicans and foreigners, both documented and undocumented, who had their permanent residence in the country and strong employment and familial ties within the Dominican Republic. In this regard, the Commission considered that phenotypical characteristics and skin color were decisive factors when individuals were selected for detention and subsequent expulsion, indicating a pattern of discrimination regarding these persons.

201. In addition, the Commission noted that, in this case, the State failed to submit information demonstrating that the repatriation procedure in effect at the time of these events had effectively been applied to the victims and noted, in particular, that there was no order of arrest from a competent authority or administrative or judicial proceedings opened regarding these persons; that the agents of the State did not individually identify the victims when detaining them; that the victims were not informed of the charges leading to their detention nor were they presented with information regarding the questioning of their legal status in the country. Similarly, the Commission stated that the victims did not have time or adequate means to prove their nationality or legal status in the Dominican Republic, were not provided with legal assistance, and did not have the opportunity to appeal the decision, nor was there any order from a competent, independent, and impartial authority ruling on their deportation. Moreover, the Commission noted that the State did not indicate a specific remedy the victims could have accessed to protect their rights but that additionally, in this case, there were significant obstacles impeding their access to justice, and that the State did not initiate a serious, impartial and effective investigation to establish the facts and to determine the possible perpetrators.

202. In addition, based on the context, legislation, and practices of the Dominican State at the time of the events, the Commission concluded that there was a series of impediments preventing the Haitian migrants from regularizing their legal situation in the country and registering their children born in Dominican territory. Thus, the Commission considered that the existing impediments to granting citizenship to persons born in Dominican territory, despite the fact that the State accepts the principle of *jus soli*, constituted an arbitrary deprivation of citizenship that fostered the detention and possible deportation of nationals and placed the victims in a situation of extreme risk and vulnerability.

203. In addition, the Commission established that during their detention, the victims did not receive water, food, or medical assistance, and their expulsion led to the uprooting and breakdown of family structures and affected the normal development of familial relations, even for new family members. The Commission emphasized that in some cases families were reunited after a few days while in other cases the separation continued for several years, and that the victims have expressed well-founded fear of returning to the Dominican Republic for fear of being deported again. In addition, the Commission felt that family members who remained in the Dominican Republic suffered a great deal because they did not know the whereabouts of the family member who had been expelled. Finally, the Commission concluded that the victims' expulsion entailed the automatic and de facto loss of everything they left in Dominican territory, which constituted an illegal deprivation of their property for which, furthermore, they did not receive adequate compensation.

I. Gudiel Ramos *et al.* v. Guatemala (submitted on July 17, 2012)

204. The facts in this case refer to the failure to prevent the assassination of human rights defender Florentín Gudiel Ramos on December 20, 2004. The assassination of Florentín Gudiel Ramos remains in impunity as a result of the irregularities committed at the outset of the investigation and the lack of a diligent investigation into the hypotheses related to the motive behind the assassination. In addition, the investigation was not carried out in a reasonable time, and was compromised by the lack of protection for persons who participated actively in the process. The lack of any protection for the family members led to their displacement, in violation of the right to freedom of movement and residence. The Commission also concluded that the facts constituted a violation of the duty to guarantee political rights, by virtue of the public office that Florentín Gudiel Ramos held and the impossibility of his daughter, Makrina Gudiel Álvarez, to continue to exercise her political rights.

2. Requests for provisional measures

a. Wong Ho Wing - Peru

205. On March 2, 2012, the Inter-American Commission requested the Court to reactivate the provisional measures in this matter that required the Peruvian State to abstain from extraditing Mr. Wong Ho Wing to the People's Republic of China until the organs of the Inter-American system had issued a final decision on the petition lodged with the Inter-American Commission under Article 44 of the American Convention.

206. Since the Inter-American Court issued an order on October 10, 2011, lifting the provisional measures, new facts have presented themselves that void the premise on which the Court ordered those measures to be lifted. Specifically, new developments have emerged that raise doubts about strict compliance with the judgments of the Constitutional Court ordering the executive branch to abstain from extraditing Mr. Wong Ho Wing.

207. On June 26, 2012, the Inter-American Court again ordered the adoption of provisional measures, which are currently in force.

b. Marianela Sánchez Ortiz - Venezuela

208. On July 5, the IACHR requested the Inter-American Court to order the Venezuelan State to adopt provisional measures in favor of the human rights defender Marianela Sánchez Ortiz and her family circle in order to protect their lives and well-being. This request for provisional measures was based on information received by the Commission regarding recent acts that constituted a threat to the lives and physical integrity of Marianela Sánchez Ortiz and her family and that placed them in a situation of extreme risk in the context of her work for the organization *Observatorio Venezolano de Prisiones*. The Commission requested the Court to order protection for Ms. Sánchez Ortiz and her family by instructing the extension to them of the provisional measures already in force with regard to certain prisons in Venezuela and the human rights defender and director of the aforesaid organization, Humberto Prado.

209. These measures are currently in force.

c. Andean Region Prison [*Centro Penitenciario de la Región Andina*] (CEPRA)

206. On August 10, the Commission requested the Inter-American Court to order the Venezuelan State to adopt provisional measures to protect the lives and well-being of persons deprived of liberty and other individuals present at the Andean Region Prison (*Centro Penitenciario de la Región Andina*)—also known by its initials, CEPRA— located in the Municipality of Sucre, state of Mérida. The Commission founded this request for provisional measures on information received regarding the steadily mounting numbers of inmates who have been killed or very seriously injured at the prison. According to available information, the factors that contribute to this situation include, *inter alia*, lack of effective control inside the prison, trafficking in firearms despite periodic searches, and the highly overcrowded conditions.

207. On September 6, the Inter-American Court granted the provisional measures requested and ordered that the matter be joined with the proceeding on provisional measures with regard to certain prisons in Venezuela.

208. These measures are currently in force.

d. Luz Estela Castro Rodríguez

208. On November 30, the Commission requested that the Inter-American Court order the State of Mexico to adopt provisional measures to protect the life and well-being of the human rights defender Luz Estela Castro Rodríguez, also known as “Lucha Castro.” This request for provisional measures was founded on the extreme risk that Ms. Luz Estela Castro Rodríguez reportedly faces in her work as a human rights defender in the state of Chihuahua, Mexico. According to information supplied to the IACHR, the risk to Luz Estela Castro has been increasing in recent months.

209. A pronouncement on the part of the Inter-American Court on this request for provisional measures was pending at the time of adoption of this annual report.

3. Appearance and participation in public and private hearings

210. From February 20 to March 2, 2012, the Commission participated in the hearings of the Court's 94th regular session held in San José, Costa Rica. During those sessions, public hearings were held in the following cases: Vélez Restrepo *et al.* (Colombia), Furlán *et al.* (Argentina), Pacheco Teruel *et al.* (Honduras), Palma Mendoza *et al.* (Ecuador), and Castillo González *et al.* (Venezuela). The Commission also participated in the following public hearings on provisional measures: LM (Paraguay), Gladys Lanza Ochoa (Honduras), and Juan Almonte Herrera (Dominican Republic); and in the following hearings on supervision of compliance: Castañeda Gutman (Mexico) and Pueblo Bello (Colombia), as well as nine Colombian cases involving supervision of compliance with measures.

211. On April 21, the Commission took part in a visit to the Sarayaku territory, a measure ordered by the Inter-American Court in the context of the case of the *Sarayaku Indigenous People and its members v. Ecuador*.

212. From April 23 to 28, the Commission participated in the hearings held in the framework of the 45th special session of the Inter-American Court held in Guayaquil, Ecuador. During that session, public hearings were held in the following cases: Massacres of El Mozote and neighboring locations (El Salvador), Edgar Fernando García (Guatemala), Gudiel Álvarez *et al.* (Military Journal) (Guatemala).

213. From June 18 to 29, the Commission participated in the hearings held in the framework of the 95th regular session of the Inter-American Court held in San Jose, Costa Rica. During that session, public hearings were held in the following cases: Río Negro Massacres (Guatemala), Mohamed (Argentina), Nadege Dorzema *et al.* (Dominican Republic), and Massacre of Santo Domingo (Colombia). The Commission also took part in hearings on supervision of compliance in the cases of Radilla Pacheco (Mexico) and Moiwana (Suriname).

214. From August 27 to September 7, the Commission participated in the hearings held in the framework of the 96th regular session of the Inter-American Court held in San Jose, Costa Rica. During that session, public hearings were held in the following cases: *Mendoza et al.* – (Juveniles sentenced to life imprisonment) (Argentina) and *Artavia Murillo et al.* (In vitro fertilization) (Costa Rica). The Commission also took part in a hearing on supervision of compliance with judgment in the case of Barrios Altos (Peru).

4. Presentation of written observations to State reports in cases under supervision of compliance

215. In compliance with the mandate established in Article 57 of the American Convention and the provisions contained in Article 69 of the Rules of Procedure of the Court, and in the exercise of its role of defense of the Inter-American public order, in 2012 the Commission continued to submit information and observations on State reports on compliance with judgments. In performance of this function, the Commission submitted 105 briefs to the Inter-American Court

5. Presentation of written observations to State reports on implementation of provisional measures

216. In compliance with the mandate established in Article 63(2) of the American Convention and the provisions contained in Article 27(7) of the Rules of Procedure of the Court, and in the exercise of its role of defense of the inter-American public order, in 2012 the Commission continued to submit information and observations on State reports on implementation of provisional measures. In performance of this function, the Commission submitted 92 briefs to the Inter-American Court.

I. Forty-second regular session of the OAS General Assembly

217. At the forty-second regular session of the General Assembly of the Organization of American States, held in Cochabamba, Bolivia, from June 3 to 5, 2012, the Commission was represented by its President, Commissioner José de Jesús Orozco Henríquez, and its then-Executive Secretary, Santiago A. Canton. The President addressed the General Assembly on the situation of human rights in OAS member States and officially presented the 2011 Annual Report. In his speech, he also mentioned that the Inter-American human rights system was at a critical juncture and, therefore, so was the defense and protection of human rights in the Americas.²¹

218. The General Assembly adopted several resolutions regarding human rights; those are available on the OAS website at: <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resoluciones-Declaraciones.asp>. Given their importance for the observance and defense of human rights in the Americas and the strengthening of the Inter-American system, they are listed below:

Resolutions concerning the organs of the Inter-American human rights system

AG/RES. 2759 (XLII-O/12)

OBSERVATIONS AND RECOMMENDATIONS ON THE ANNUAL REPORT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

²¹ In this regard, see IACHR press release [No. 58/12](#).

AG/RES. 2761 (XLII-O/12) FOLLOW-UP ON THE RECOMMENDATIONS CONTAINED IN THE "REPORT OF THE SPECIAL WORKING GROUP TO REFLECT ON THE WORKINGS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH A VIEW TO STRENGTHENING THE INTER-AMERICAN HUMAN RIGHTS SYSTEM"

Resolutions containing requests to the IACHR

AG/RES. 2711 (XLII-O/12) 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"

AG/RES. 2715 (XLII-O/12) HUMAN RIGHTS DEFENDERS: SUPPORT FOR INDIVIDUALS, GROUPS, AND ORGANIZATIONS OF CIVIL SOCIETY WORKING TO PROMOTE AND PROTECT HUMAN RIGHTS IN THE AMERICAS

AG/RES. 2718 (XLII-O/12) DRAFT LEGALLY BINDING INTER-AMERICAN INSTRUMENTS AGAINST RACISM AND RACIAL DISCRIMINATION AND AGAINST ALL FORMS OF DISCRIMINATION AND INTOLERANCE .

AG/RES. 2721 (XLII-O/12) HUMAN RIGHTS, SEXUAL ORIENTATION, AND GENDER IDENTITY

AG/RES. 2725 (XLII-O/12) RIGHT TO THE TRUTH

Other resolutions concerning human rights (without specific requests)

AG/RES. 2707 (XLII-O/12) PREVENTION AND ERADICATION OF SEXUAL EXPLOITATION AND SMUGGLING OF AND TRAFFICKING IN MINORS

AG/RES. 2708 (XLII-O/12) RECOGNITION AND PROMOTION OF THE RIGHTS OF PEOPLE OF AFRICAN DESCENT IN THE AMERICAS

AG/RES. 2709 /XLII-O/12) PROMOTION OF WOMEN'S HUMAN RIGHTS AND GENDER EQUITY AND EQUALITY

AG/RES. 2713 (XLII-O/12) ADOPTION OF PROGRESS INDICATORS FOR MEASURING RIGHTS UNDER THE PROTOCOL OF SAN SALVADOR

AG/RES. 2714 (XLII-O/12) OFFICIAL PUBLIC DEFENDERS AS A GUARANTEE OF ACCESS TO JUSTICE FOR PERSONS IN SITUATIONS OF VULNERABILITY

AG/RES. 2716 (XLII-O/12) INTERNALLY DISPLACED PERSONS

AG/RES. 2717 (XLII-O/12)	PERSONS WHO HAVE DISAPPEARED AND ASSISTANCE TO MEMBERS OF THEIR FAMILIES
AG/RES. 2724 (XLII-O/12)	DRAFT AMERICAN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES
AG/RES. 2726 (XLII-O/12)	PROTECTING THE HUMAN RIGHTS OF OLDER PERSONS
AG/RES. 2729 (XLII-O/12)	THE HUMAN RIGHTS OF MIGRANTS, INCLUDING MIGRANT WORKERS AND THEIR FAMILIES
AG/RES. 2732 (XLII-O/12)	HUMAN RIGHTS EDUCATION IN FORMAL EDUCATION IN THE AMERICAS
AG/RES. 2758 (XLII-O/12)	PROTECTION OF ASYLUM SEEKERS AND REFUGEES IN THE AMERICAS

CHAPTER III

THE PETITION AND CASE SYSTEM

A. Introduction

1. This chapter refers to the work of the Inter-American Commission on Human Rights in 2012 in relation to the petition and case system.

2. Section B includes statistical information to provide a general overview of the different activities carried out by the Inter-American Commission on Human Rights. First it presents data concerning the cases and petitions being processed. These comprise the greater volume of the Commission's work. "Cases" is taken as meaning all those petitions declared admissible by means of a report on admissibility. "Petitions" is taken as meaning all those complaints that have been transmitted to the state involved but in which no report on admissibility has been issued. This report includes the statistics of the total number of petitions received by the Commission in 2012, indicating the number of petitions received by country, as well as a comparison of the number of petitions received in 2012 in relation to each of the last fourteen 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 2012, 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 2012. 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 2012.

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 2012, 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.

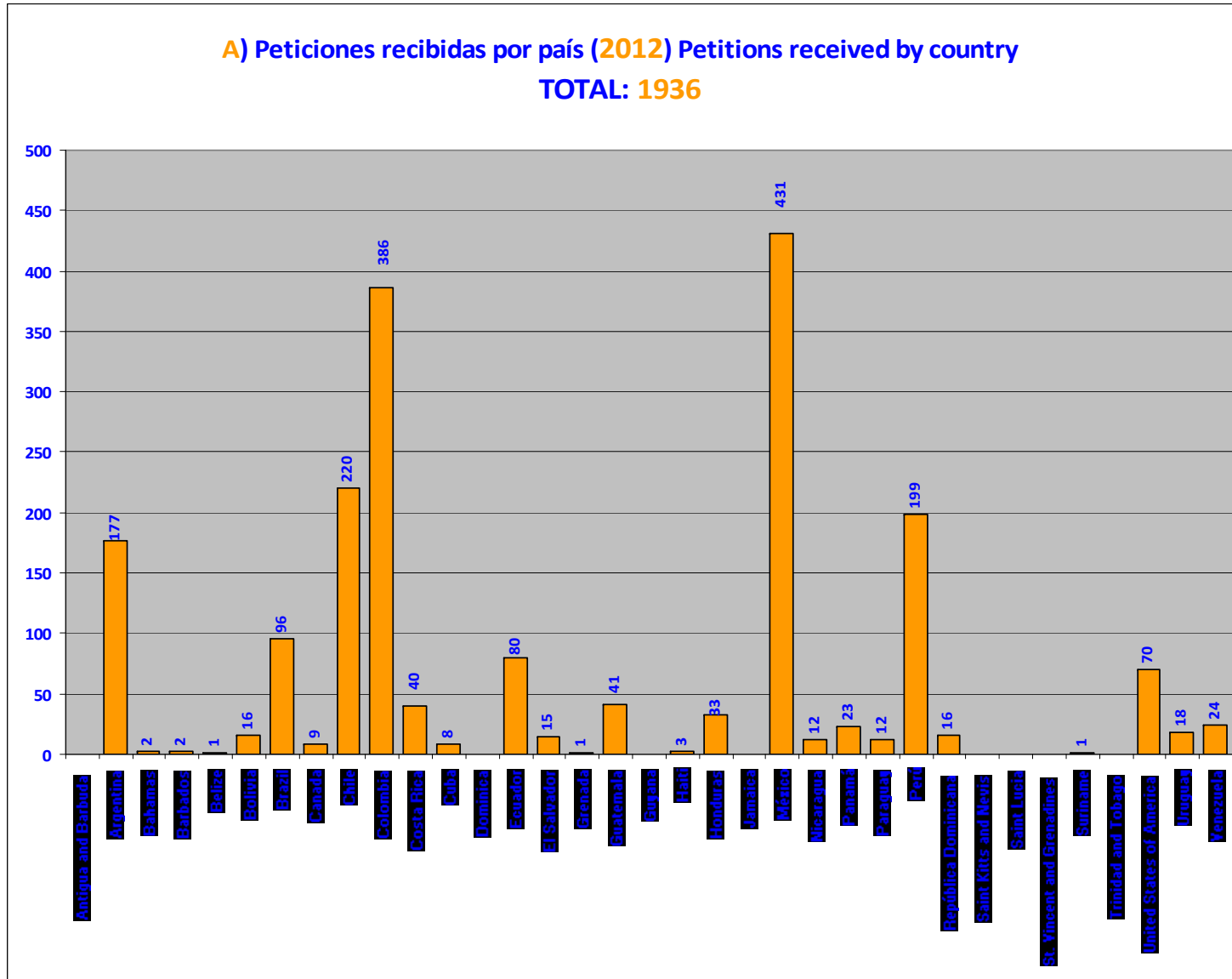
4. The second part, section C.2, includes all the reports on which the Commission adopted a decision on admissibility, inadmissibility, the merits, friendly settlement or archive during the period covered by this report. This section contains a total of 125 reports that include 42 cases found admissible; 17 reports on petitions found inadmissible; 8 reports on friendly settlements; 42 decisions to archive, and 16 reports on the merits.

5. Section D includes an analysis of compliance by the States with the recommendations contained in the reports on individual cases published in the Annual Reports since 2000, in keeping with Article 47 of the Commission's Rules of Procedure.

CHAPTER III

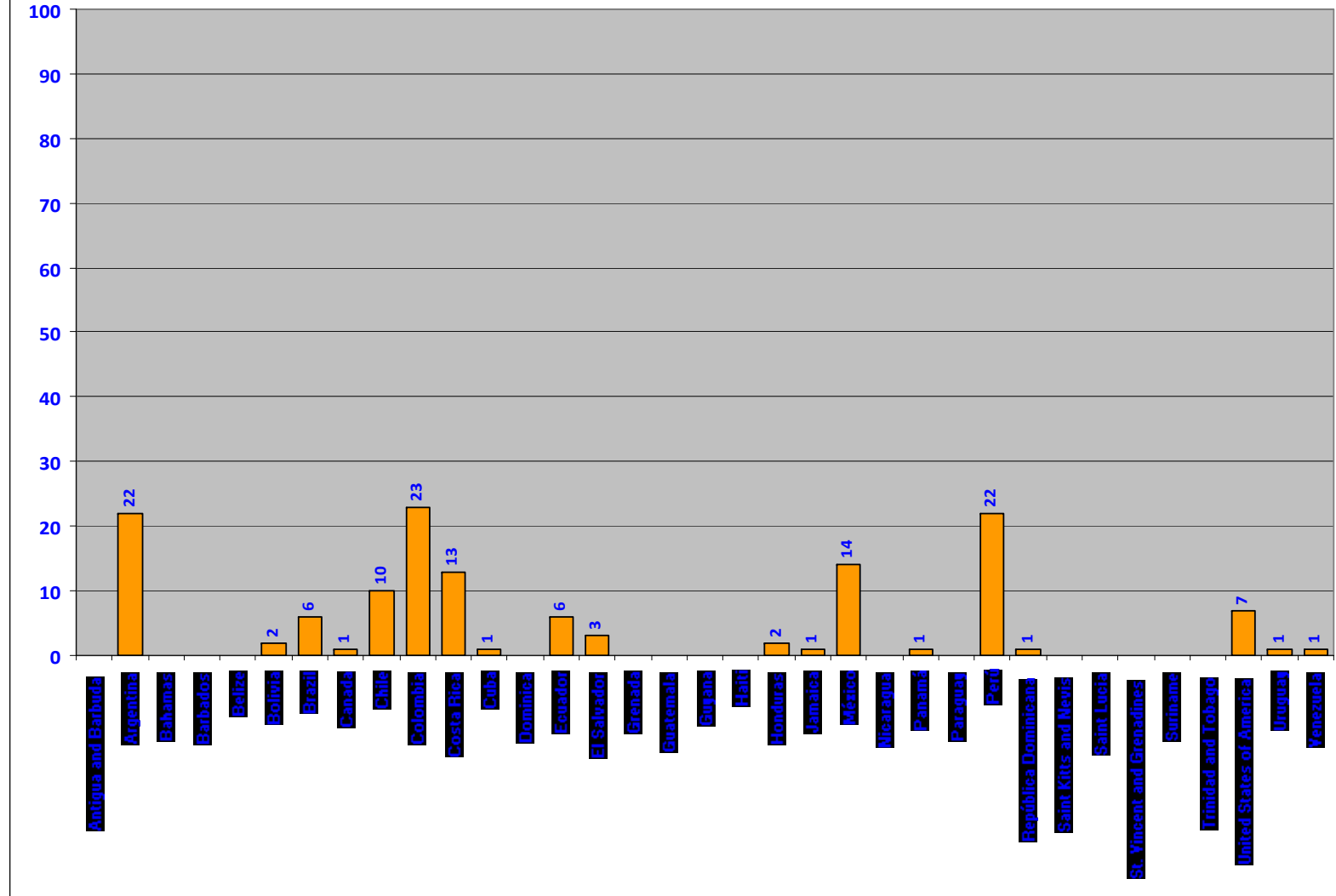
THE PETITION AND CASE SYSTEM

B. STATISTICS



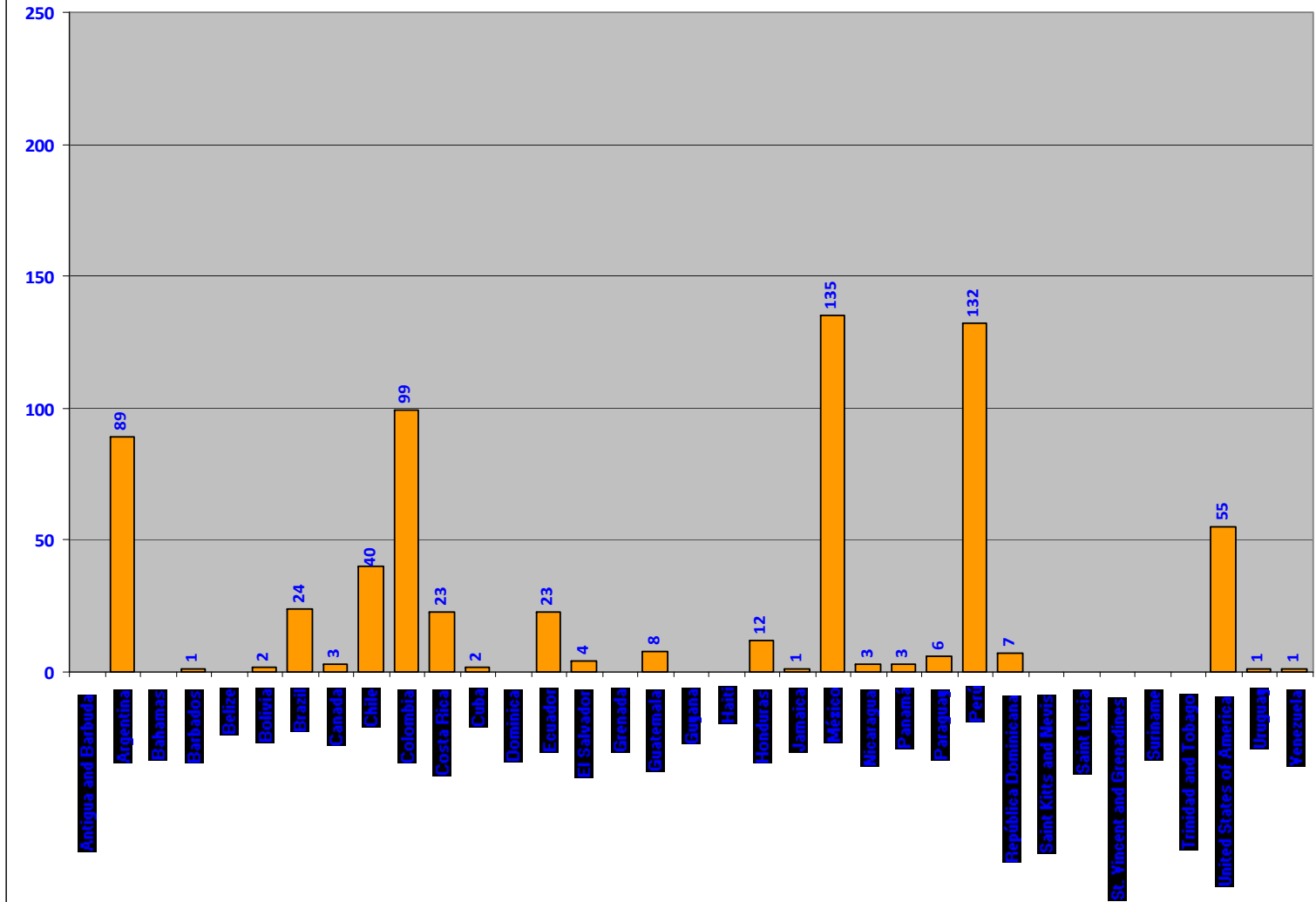
B) Peticiones aceptadas a trámite (2012) Petitions accepted for processing

TOTAL: 137



C) Peticiones no aceptadas a trámite (2012) Petitions not accepted for processing

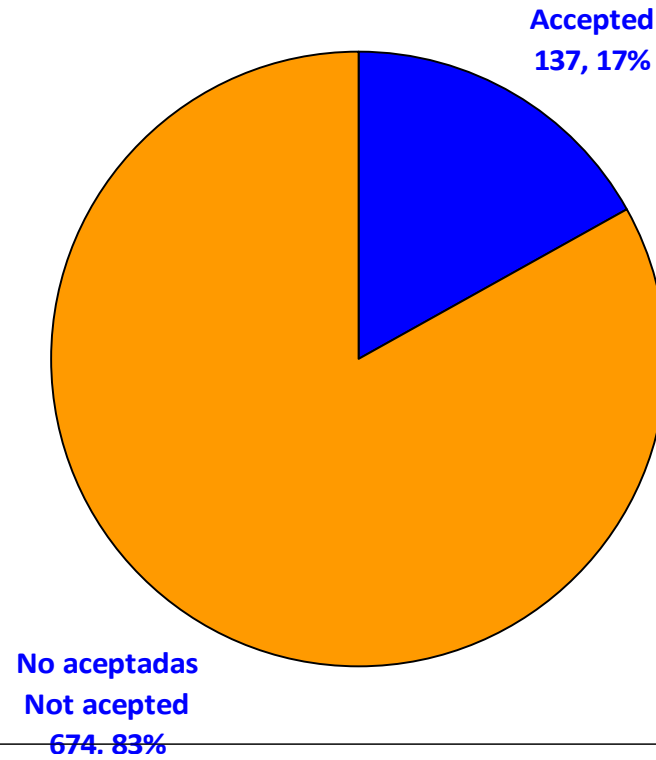
TOTAL: 674



D) Comparación entre peticiones aceptadas a trámite y no aceptadas a trámite

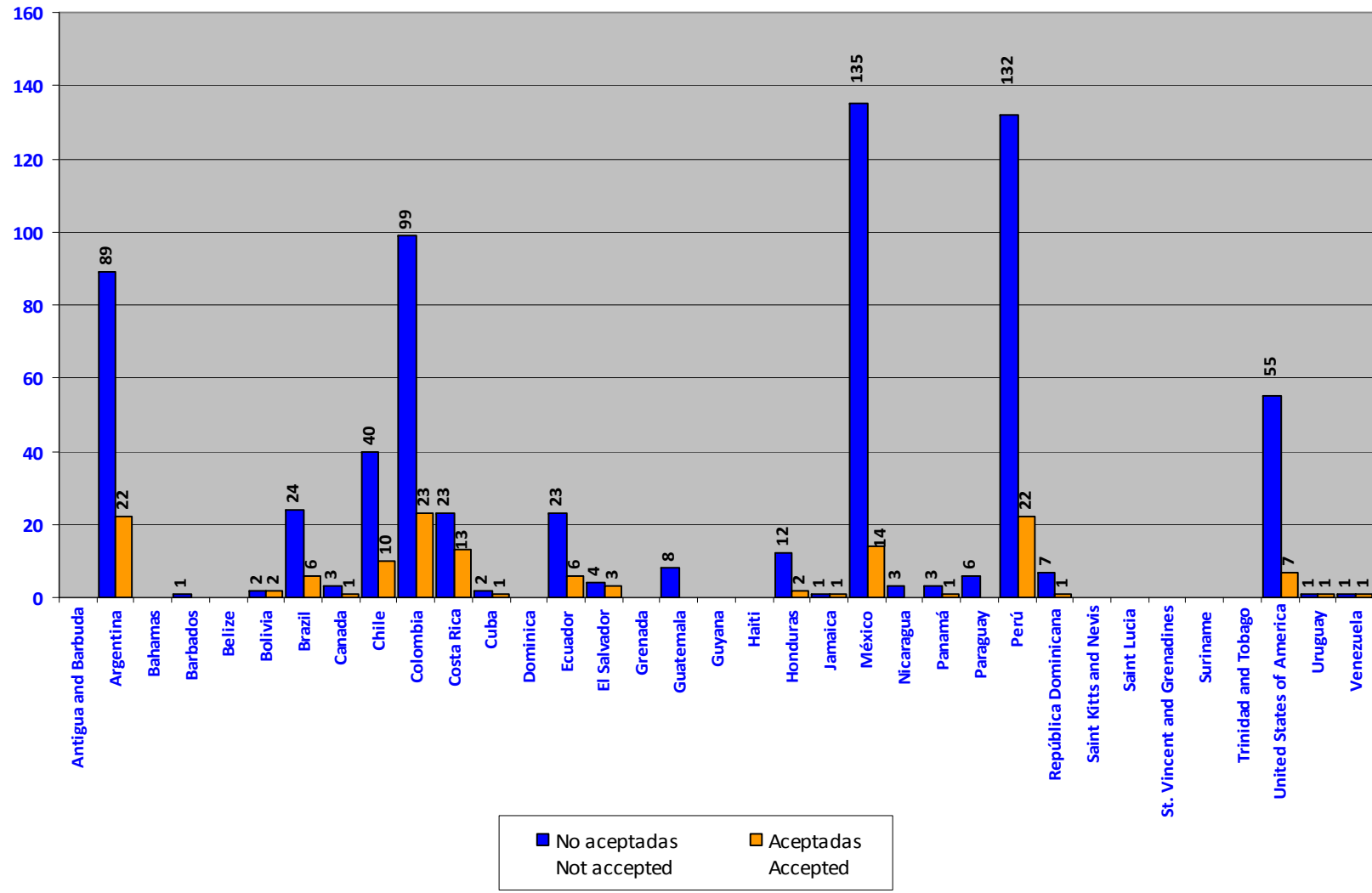
2012

Comparison between petitions accepted for processing and not accepted for processing

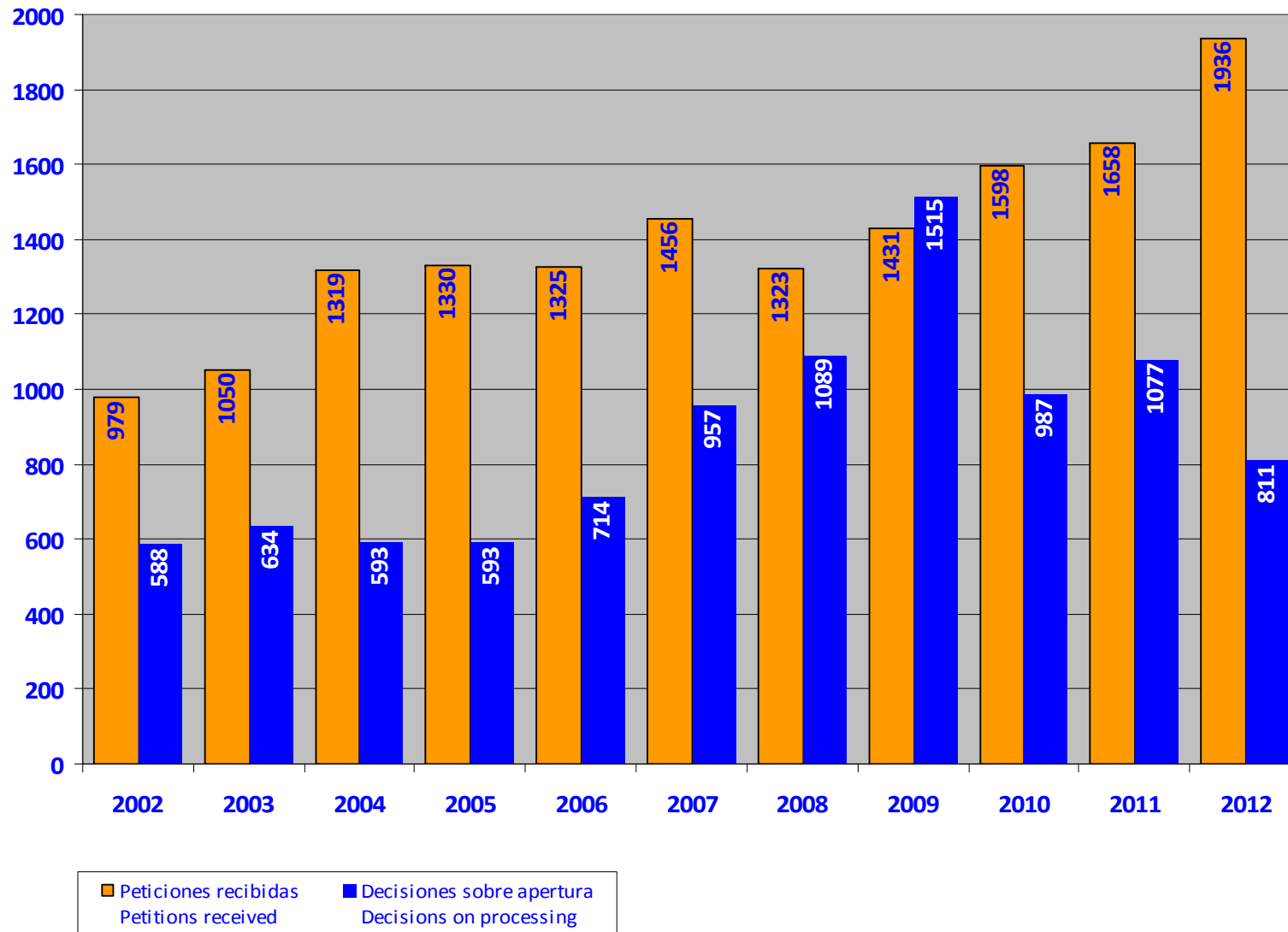


E) Comparación entre peticiones aceptadas a trámite y no aceptadas a trámite, por país (2012)

Comparison between petitions accepted for processing and petitions not accepted for processing, by country



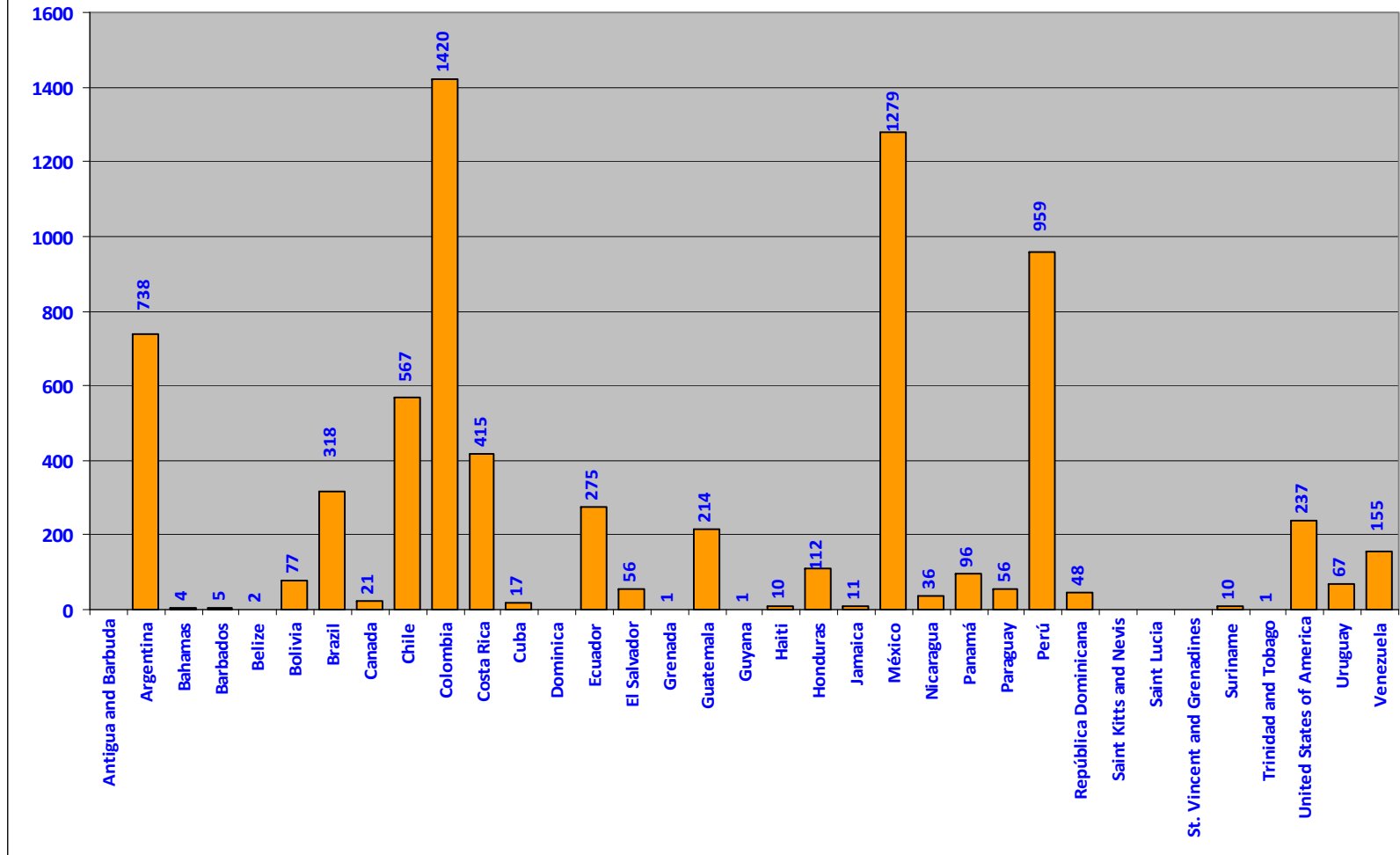
F) Comparación entre peticiones recibidas y decisiones sobre apertura, por año
Comparison between petitions received and decisions on processing, per year



G) Peticiones que continuaban pendientes de estudio inicial a final del año 2012

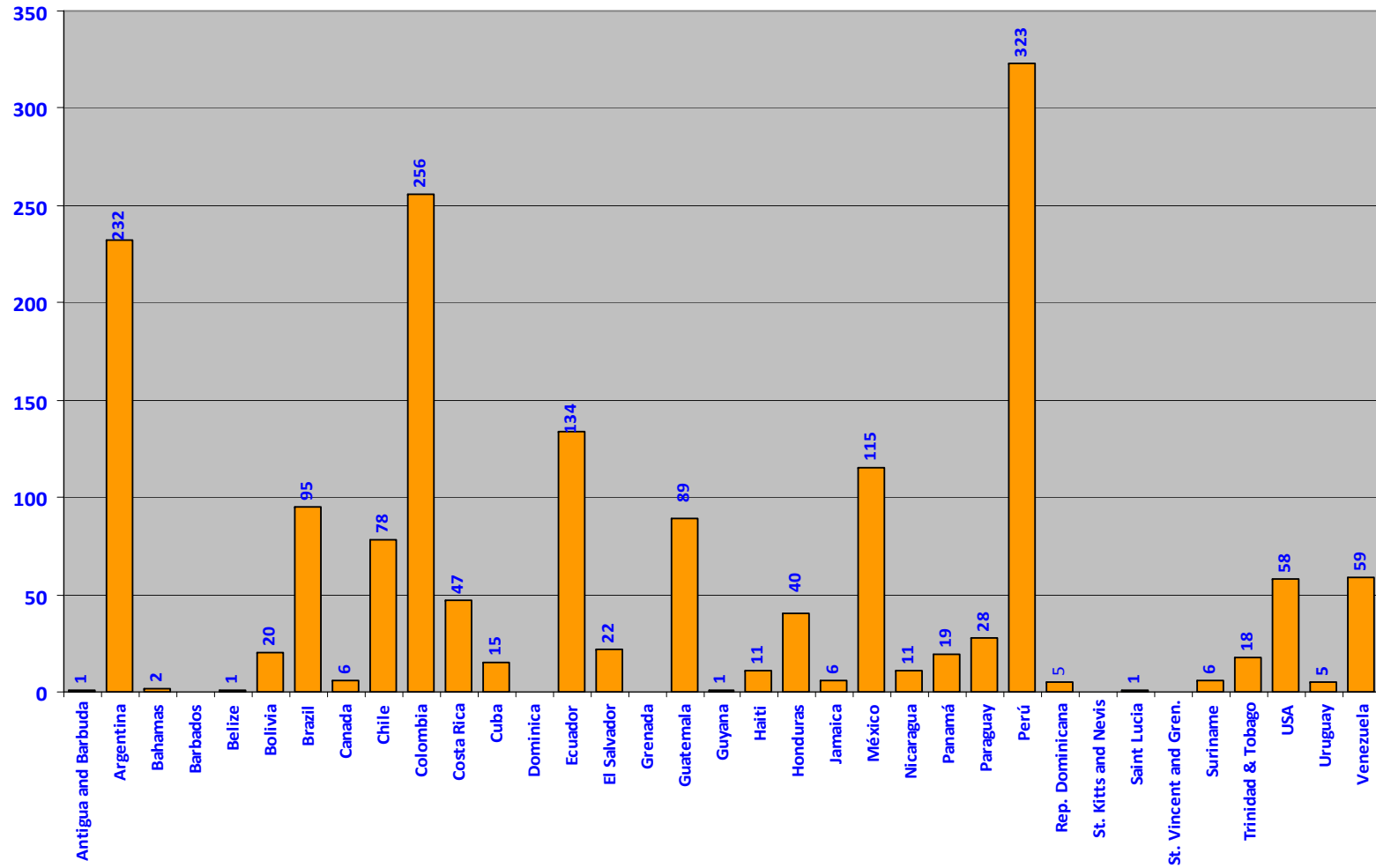
Petitions pending initial evaluation at the end of the year 2012

TOTAL: 7208



H) Peticiones en admisibilidad y fondo (2012) Petitions in admissibility and merits

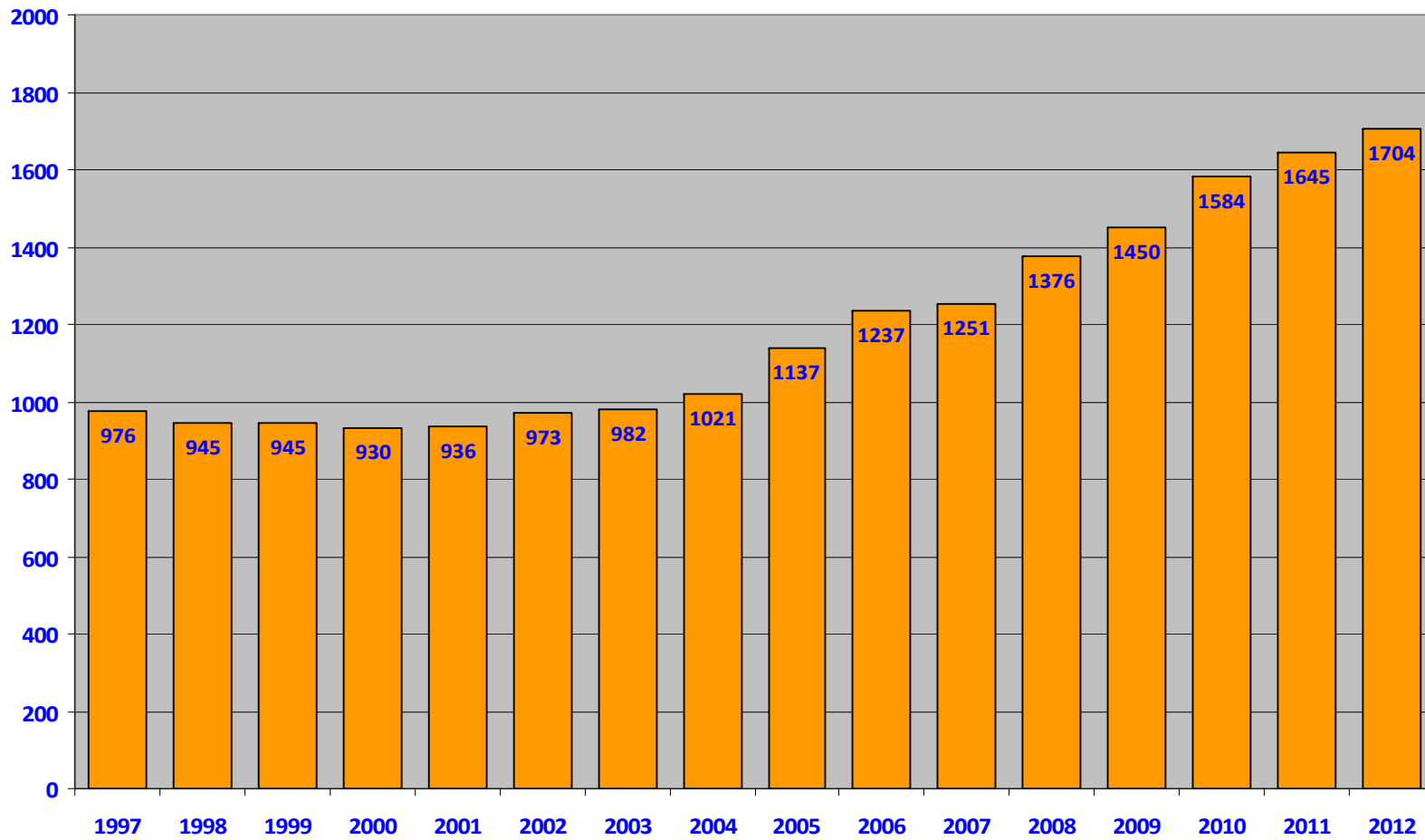
TOTAL: 1704

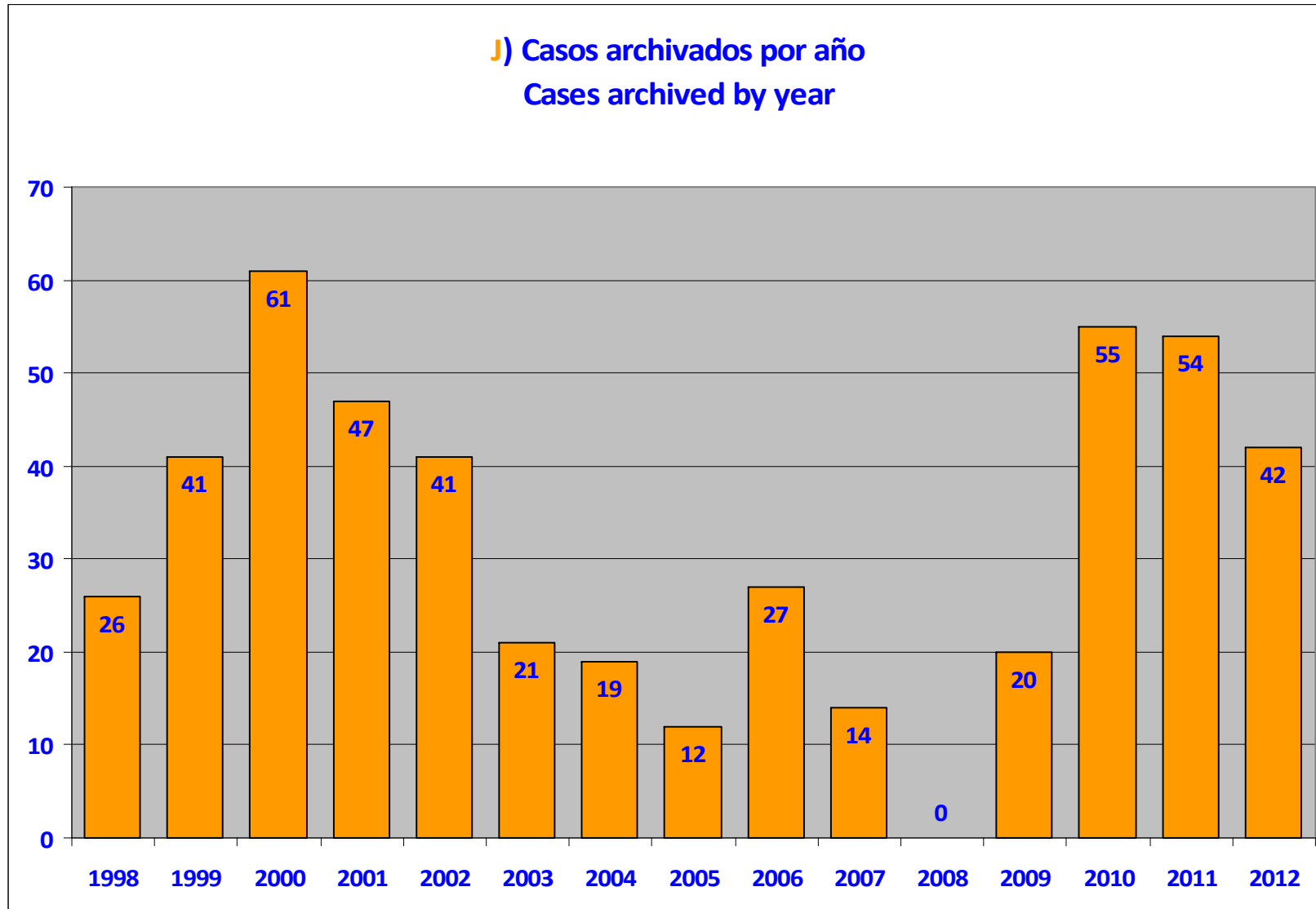


Admisibilidad es la etapa en que la CIDH determina si una petición satisface los requisitos establecidos en los artículos 46 y 47 de la Convención Americana. Fondo es la etapa en la que la CIDH decide sobre los méritos del caso según el procedimiento establecido en los artículos 48 y 50 de la Convención Americana.

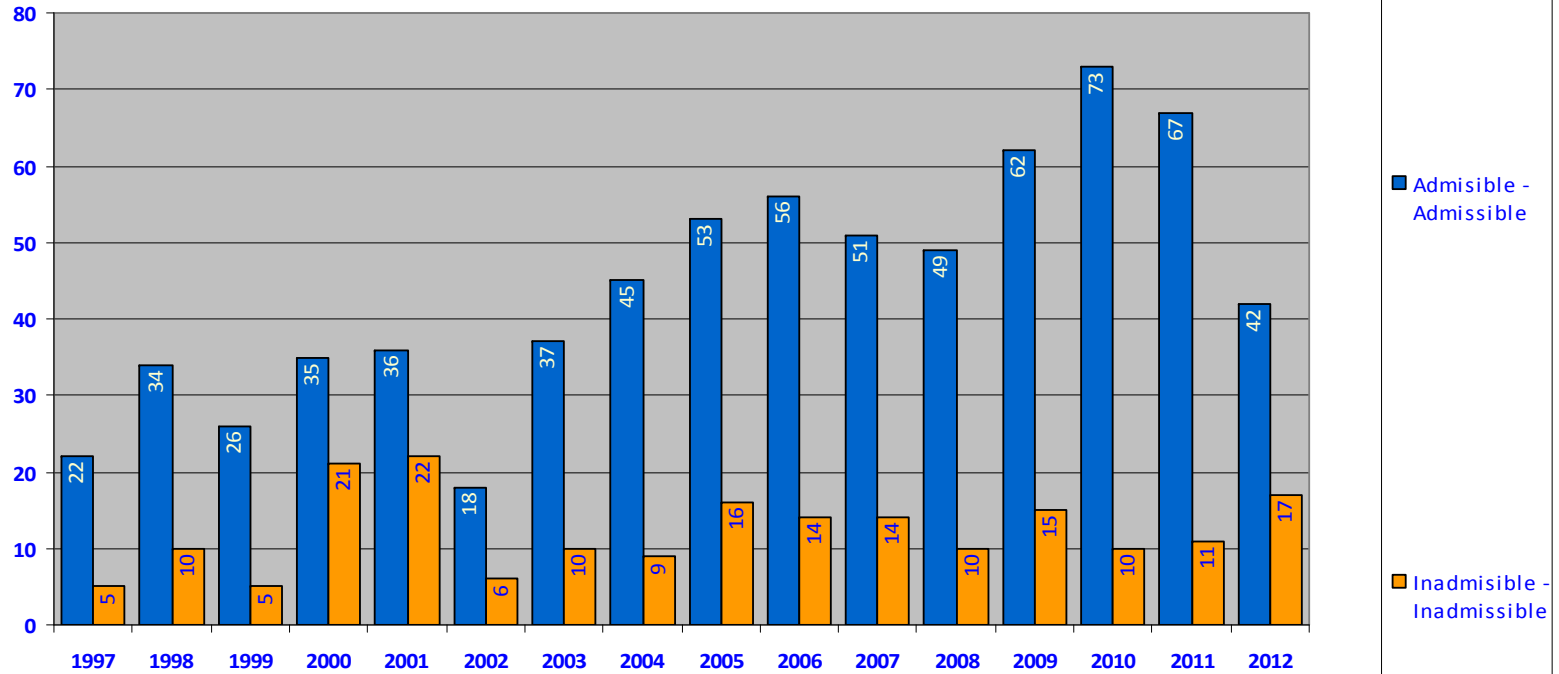
Admissibility is the stage in which the IACHR determines if a petition meets the requirements set forth in Articles 46 and 47 of the American Convention. Merits is the stage in which the IACHR decides on the merits of the case pursuant to the procedure established in Articles 48 and 50 of the American Convention on Human Rights.

I) Portafolio en trámite (admisibilidad y fondo) al final de cada año
Case docket (admissibility and merits) at the end of every year





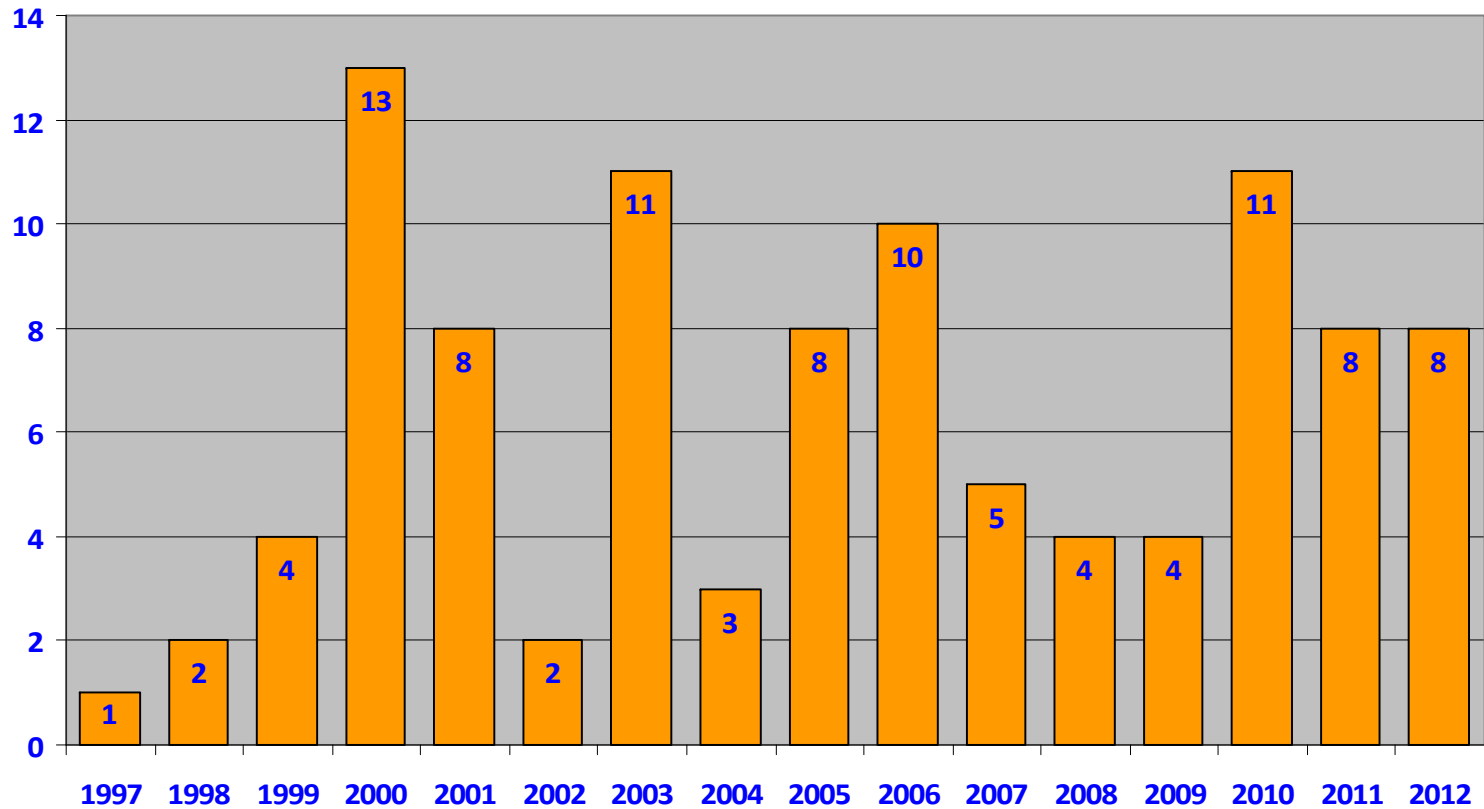
K) Informes sobre admisibilidad publicados por año Reports on admissibility published by year



Admisibilidad es la etapa en que la CIDH determina si una petición satisface los requisitos de admisibilidad establecidos en los artículos 46 y 47 de la Convención Americana sobre Derechos Humanos, según el procedimiento establecido en los artículos 30 al 36 del Reglamento de la Comisión.

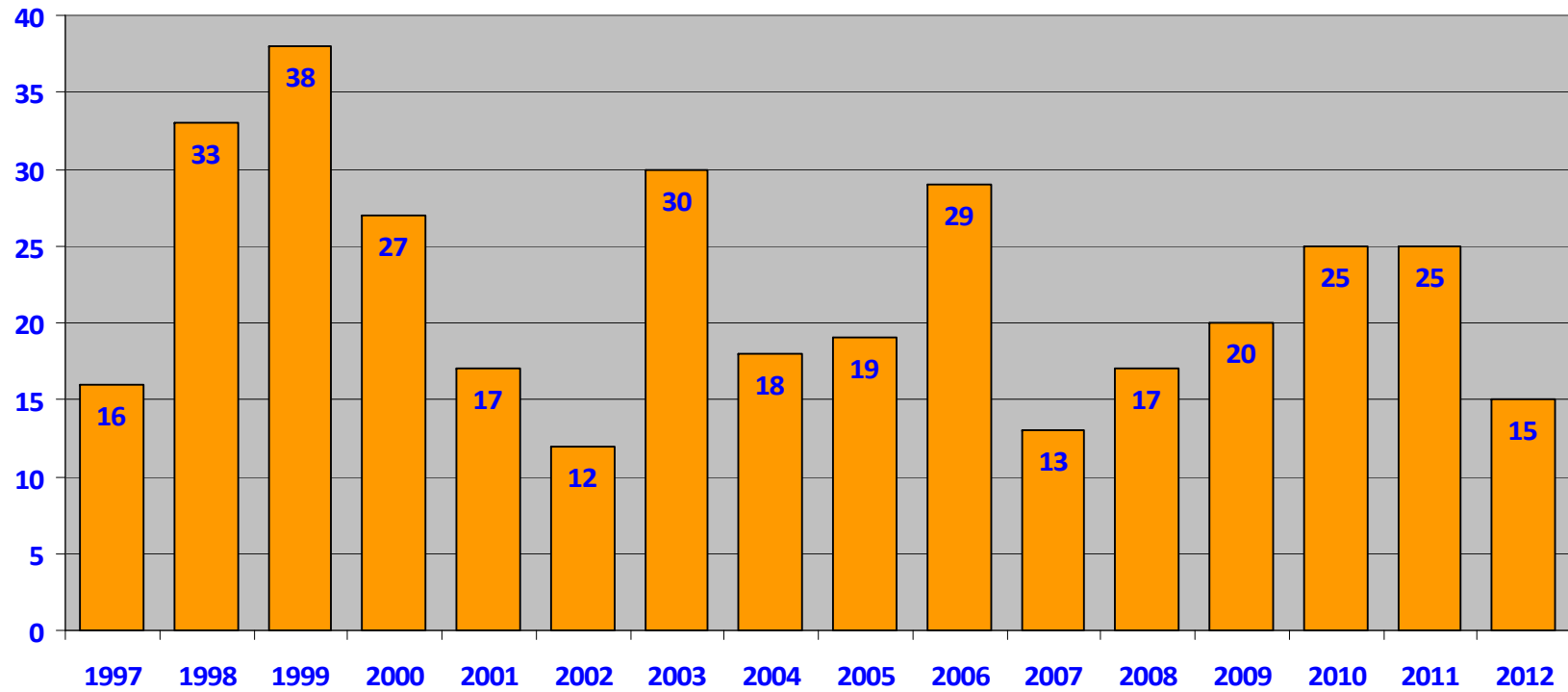
Admissibility is the stage in which the IACHR determines if a petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention on Human Rights, in accordance with the procedure established in Articles 30 and 36 of the Rules of Procedure of the Commission.

L) Informes de solución amistosa publicados por año
Reports on friendly settlement published by year



Una petición o un caso puede, en cualquier momento de las etapas de admisibilidad o fondo, entrar en un proceso de solución amistosa entre las partes.
A petition or case can, at any time in the admissibility or merits stage, enter into a friendly settlement process between the parties.

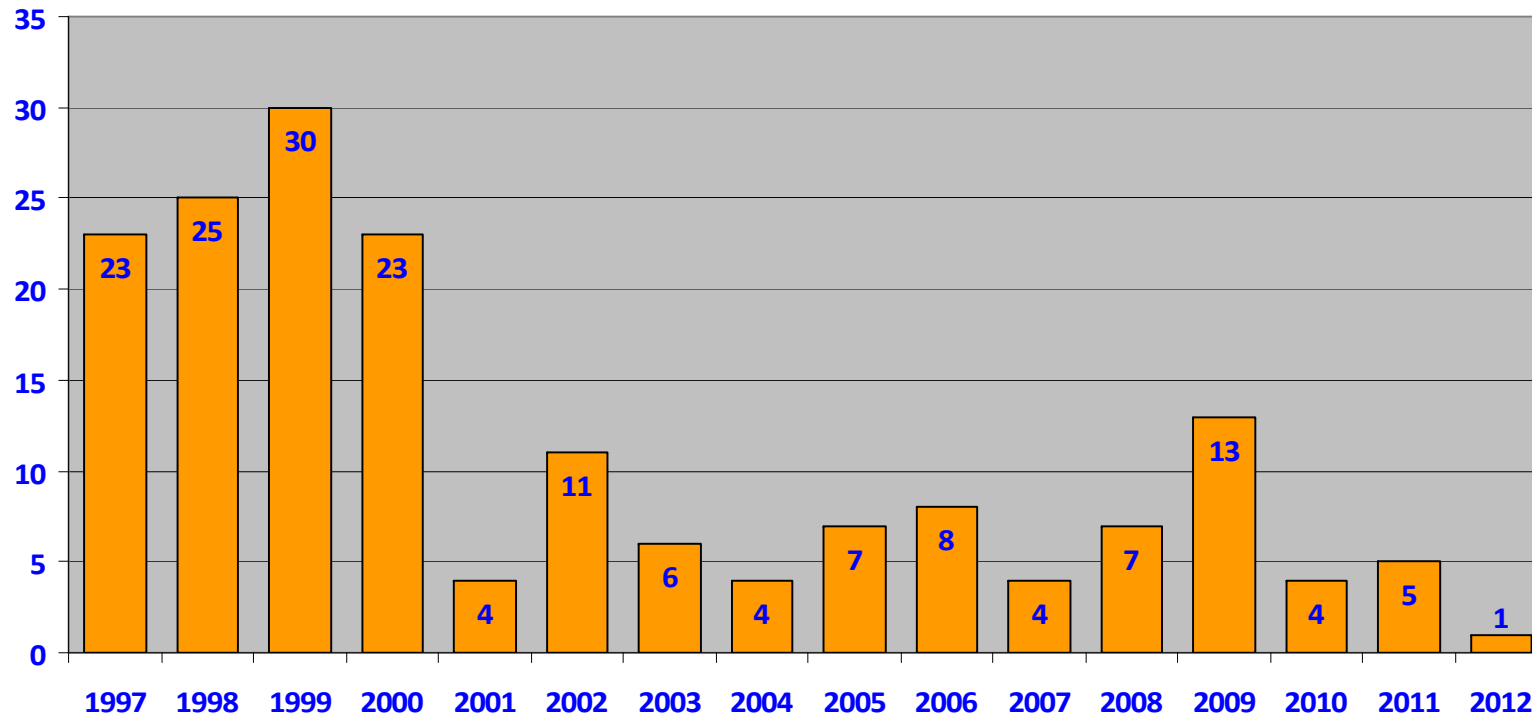
M) Informes de fondo aprobados por año
Reports on the merits approved by year



Fondo es la etapa en la que la CIDH decide sobre los méritos del caso según el procedimiento establecido en los artículos 48 y 50 de la Convención Americana sobre Derechos Humanos y en los artículos 37, 38, 39, 43 y 44 del Reglamento de la Comisión.

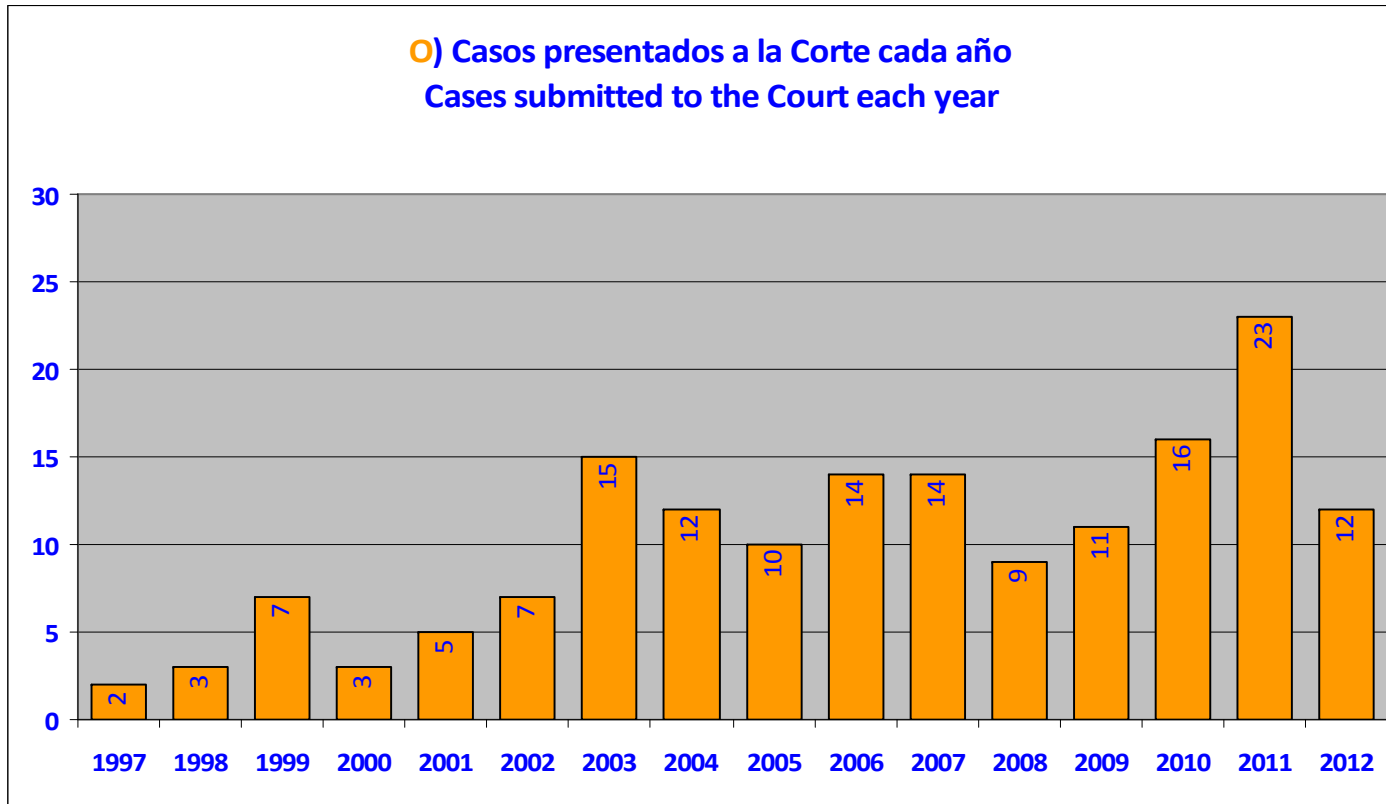
Merits is the stage in which the IACHR decides on the merits of the case pursuant to the procedure established in Articles 48 and 50 of the American Convention on Human Rights and Articles 37, 38, 39, 43 and 44 of the Rules of Procedure of the Commission.

N) Informes de fondo publicados por año
Reports on the merits published by year



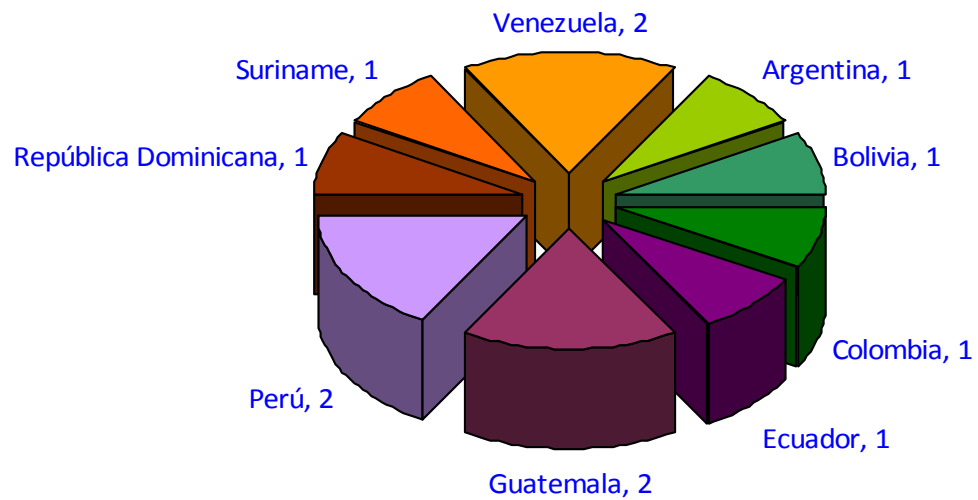
En el año 2001 cambió la regla de remisión de casos a la Corte, lo cual provocó un descenso de los casos en que es pertinente publicar el informe de fondo.

In 2001 the rule of remission of cases to Court changed; this change decreased the number of cases in which it corresponds to publish a report on the merits.

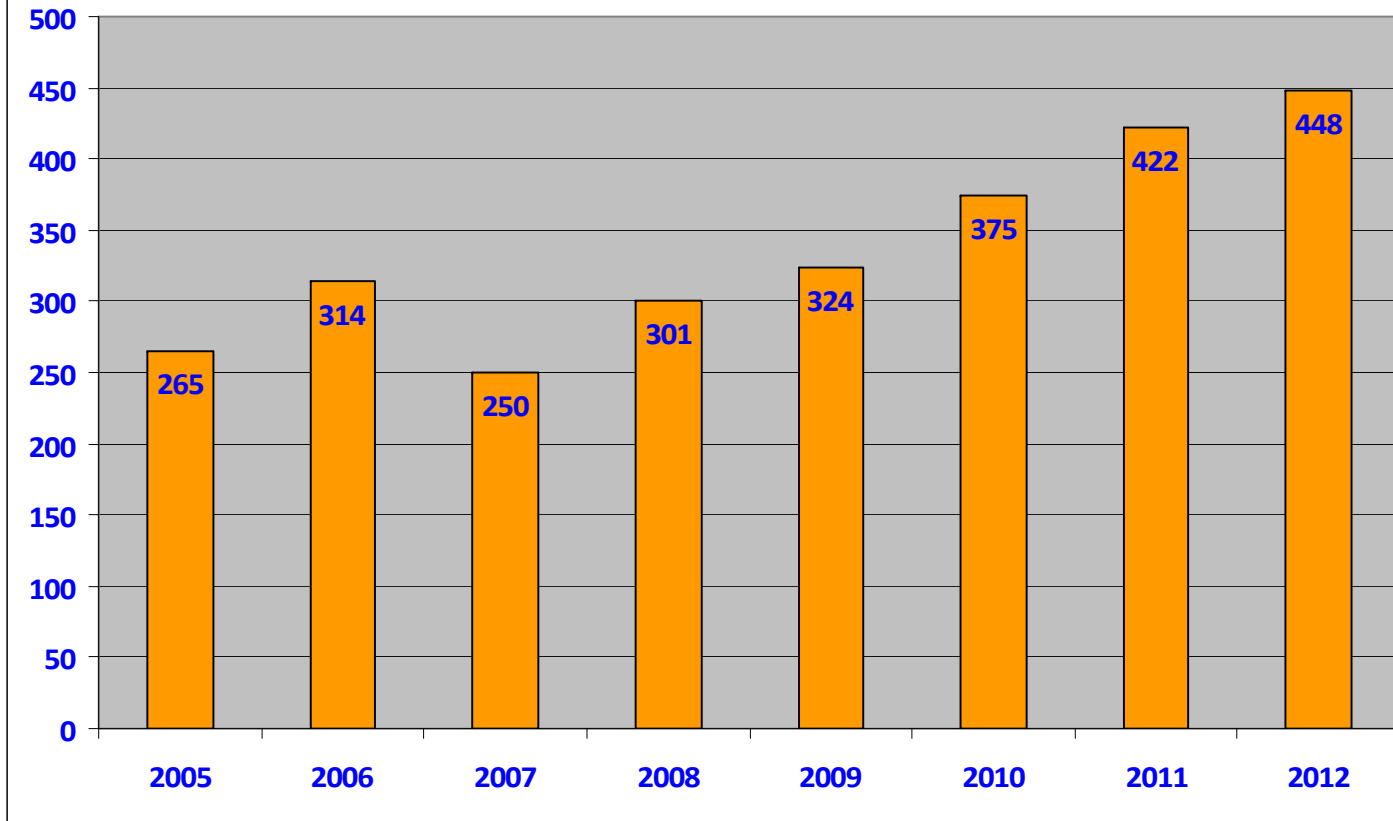


P) Casos presentados a la Corte por país (2012)
Cases submitted to the Court by country

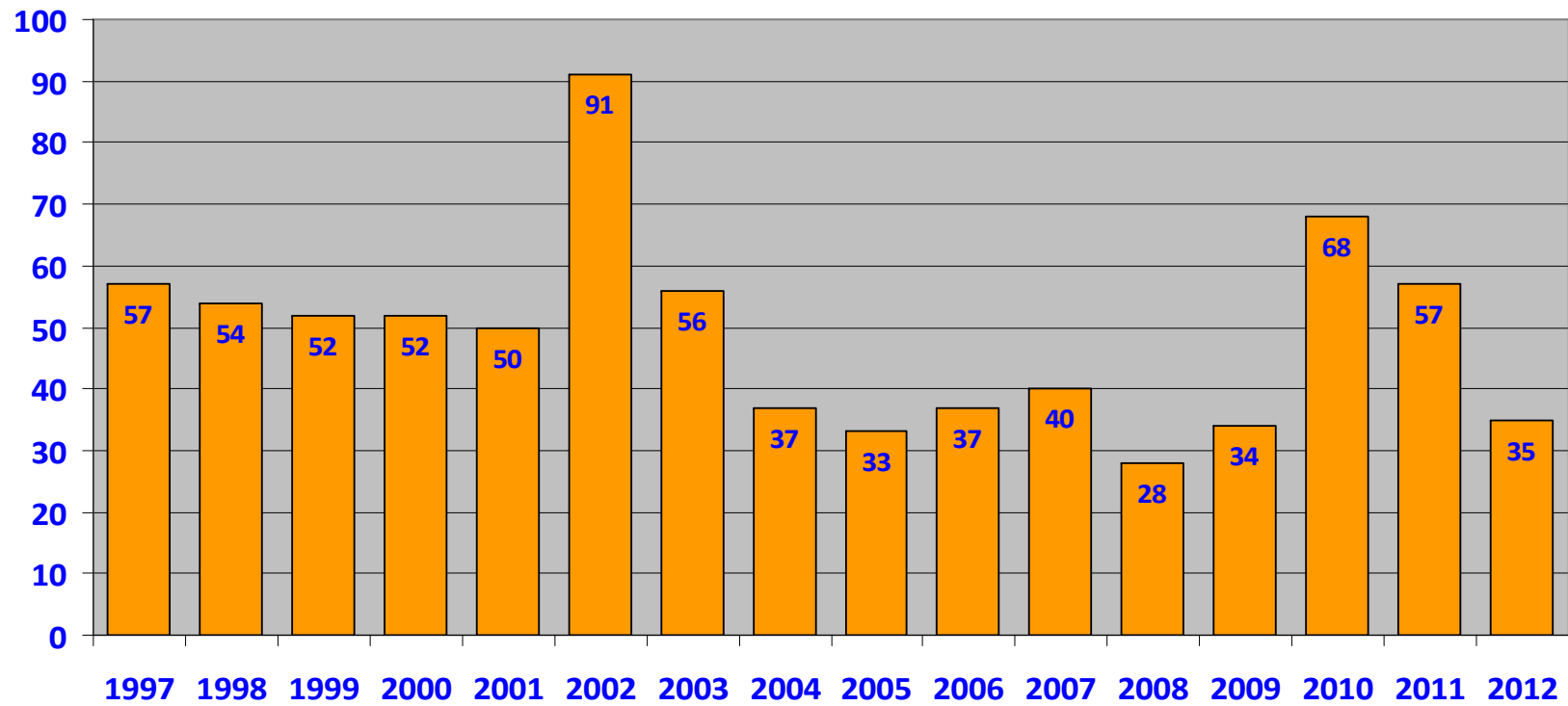
TOTAL: 12



Q) Solicitudes de medidas cautelares recibidas por año
Requests for precautionary measures received per year



R) Medidas cautelares otorgadas por año*
Precautionary measures granted by year**



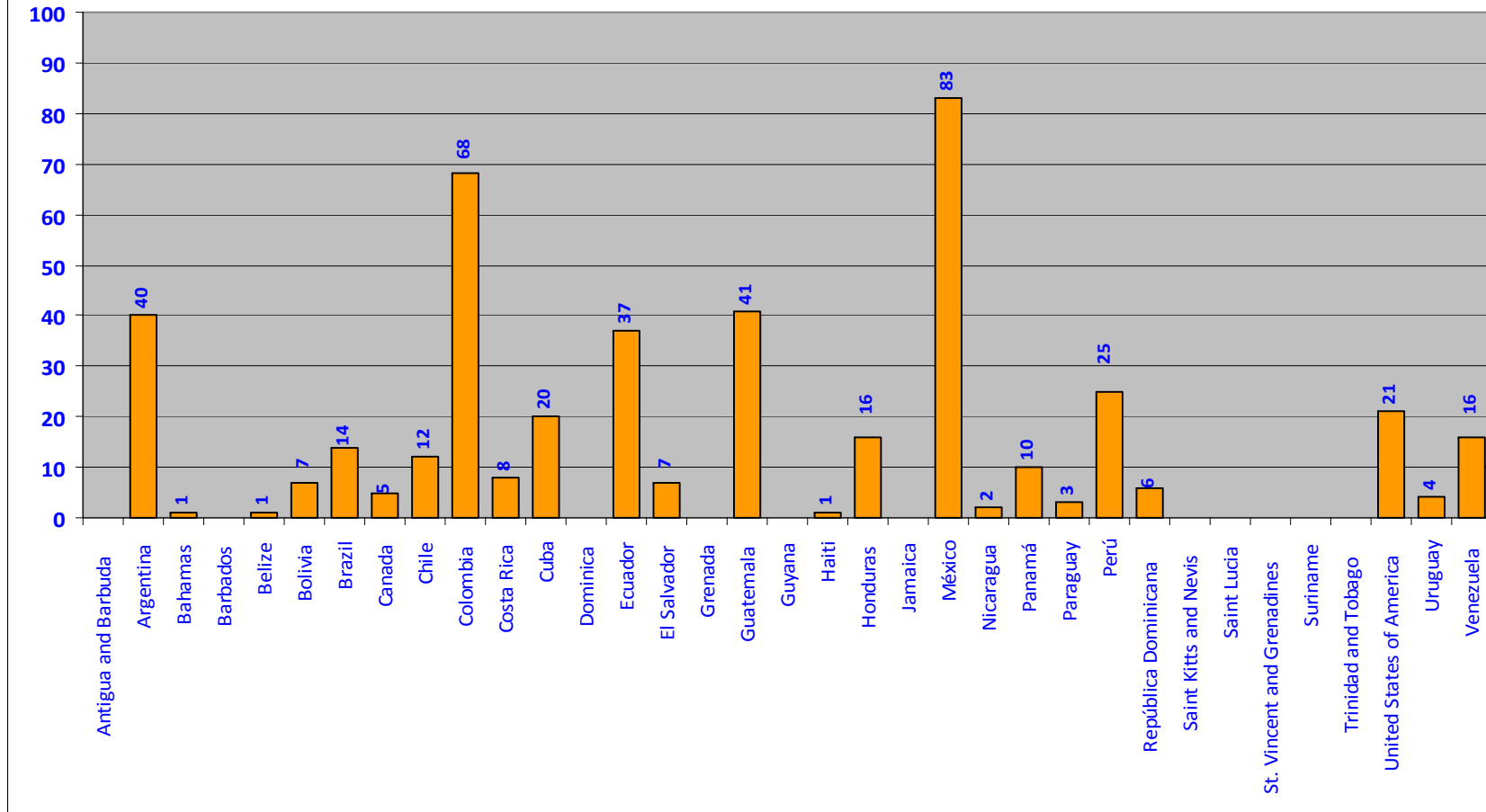
**Las medidas cautelares otorgadas pueden incluir situaciones presentadas en años anteriores*

*** Precautionary measures granted may include requests presented in previous years*

**S) Solicitudes de medidas cautelares recibidas por país
(2012)**

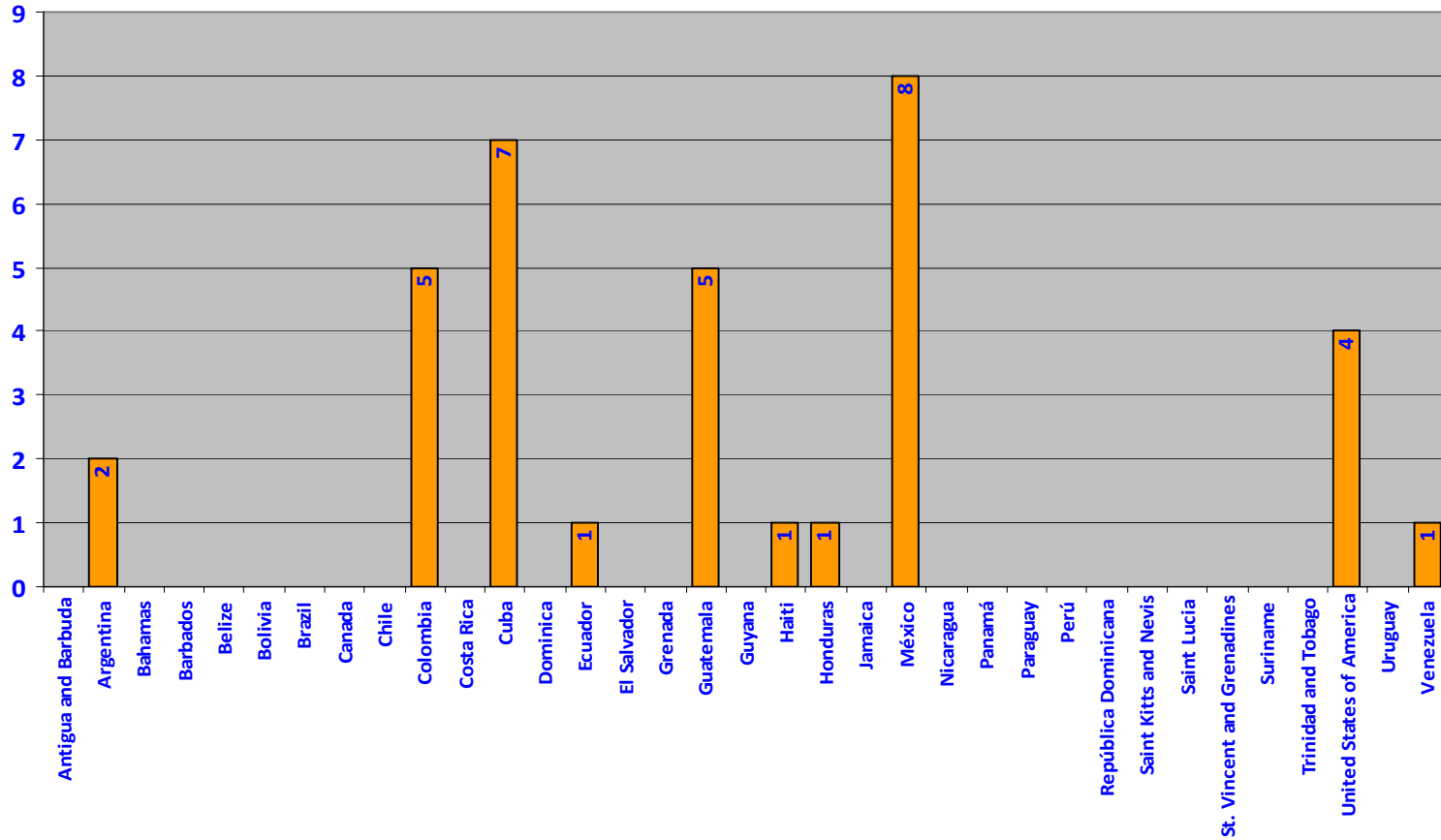
Requests for precautionary measures received by country

TOTAL: 448



T) Solicitudes de medidas cautelares otorgadas (2012) Precautionary measures granted

TOTAL: 35

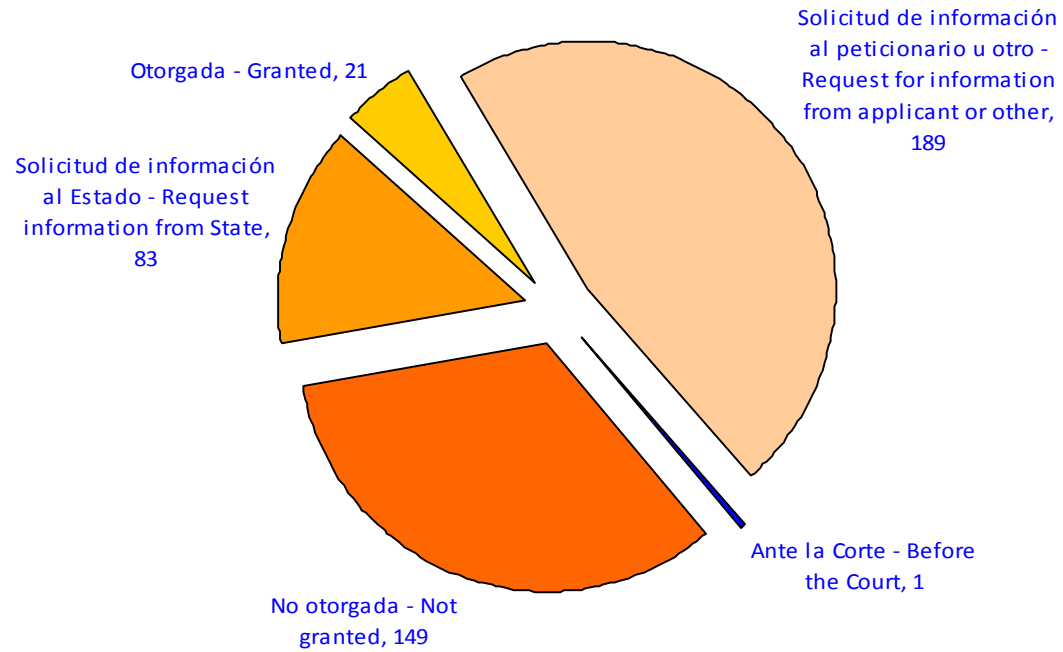


**El total puede incluir decisiones en solicitudes presentadas en años anteriores*

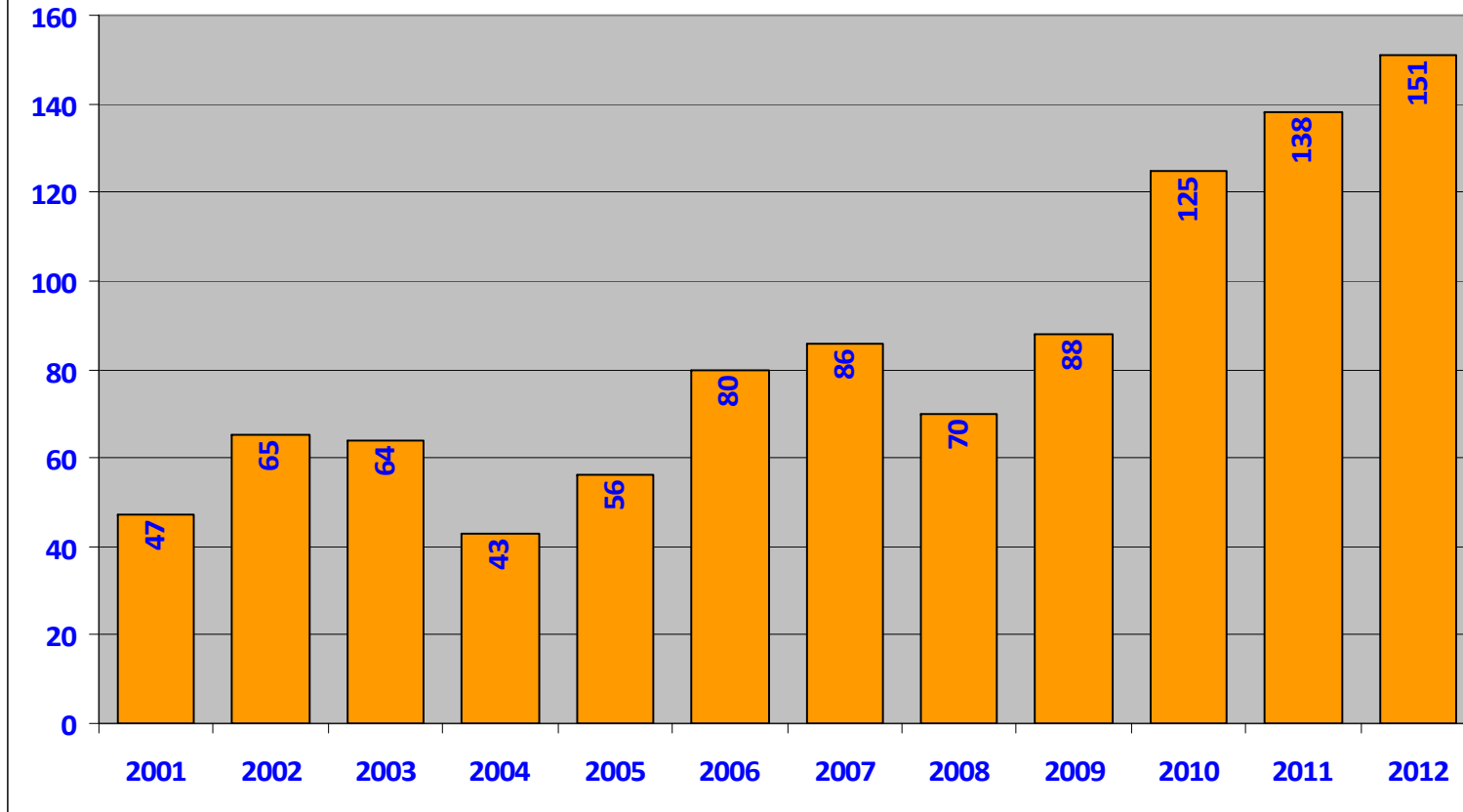
**The total may also include decisions of requests received in previous years*

U) Estátus actual de solicitudes de medidas cautelares recibidas en 2012
Current status of precautionary measures received in 2012

TOTAL: 448



V) Comunicados de prensa emitidos por año
Press releases issued by year



1. Precautionary measures granted by the IACHR in 2012

6. The mechanism for precautionary measures is established in Article 25 of the Rules of Procedure of the IACHR. The Rules of Procedure establish that, 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, as well as to persons under the jurisdiction of the State concerned, independently of any pending petition or case. The measures 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. As a result, the number of precautionary measures granted does not reflect the number of persons protected by their adoption; as can be seen below; many of the precautionary measures issued by the IACHR protect more than one person and, in certain cases, groups of persons such as people deprived from their liberty, communities or indigenous peoples. Moreover, the Rules of Procedure establish that 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.

7. Below is an overview of the precautionary measures granted in 2012 under Article 25 of the Regulations of the Commission in connection with the Member States of the OAS. Precautionary measures granted in 2012 might include request presented in previous years.

ARGENTINA

PM 104/12 – Penitentiary Services, Buenos Aires Province, Argentina

8. On April 13, 2012, the IACHR granted precautionary measures in favor of persons detained in units 46, 47 and 48 of the Buenos Aires Province Penitentiary Services, Argentina. The request for precautionary measures alleges that there exist patterns of violence in these units, which are allegedly linked with the alleged presence of knives and drugs, the alleged inactivity of guards regarding the protection of the prisoners, the alleged practice to imprison in the same cell or space persons who display enmity to each other, and the overcrowding, among other factors that allegedly resulted in the death of at least four persons deprived of liberty. The IACHR requested the State of Argentina to adopt the necessary measures to guarantee the life and personal integrity of all persons deprived of liberty in units 46, 47 and 48 of the Buenos Aires Province Penitentiary Services.

PM 347/09 – Members of the El Nogalito (Lule) community of Tucumán Province, Argentina

9. On December 27, 2012, the IACHR granted precautionary measures to protect the life and personal integrity of the Lule indigenous people residing in the El Nogalito community of Tucumán Province, Argentina. According to the information furnished by the petitioners, on November 11, 2012, several individuals interested in land historically occupied by the Lule indigenous people of the El Nogalito community in Tucumán Province committed a series of violent acts. According to the specific information received, a number of individuals had perpetrated acts of plunder which included “the plowing over of community lands and removal of posts and fencing” and also physically attacked community members who tried to prevent these acts. According to the petitioners, as a result of these acts of aggression three community members had sustained injuries: a community political boss (*cacique*), Joaquín Pérez, had been struck in the head and lost consciousness; Margarita Mamaní received injuries to her arms; and 17-year-old Ángel José Pérez received injuries to his back and arms. The petitioners also indicated that these individuals continued to threaten members of the indigenous community with forceful removal from their lands. Consequently, the Commission requested that the Government of Argentina: (1) adopt the necessary measures to guarantee the life and physical integrity of the members of the Lule indigenous people residing in El Nogalito, Tucumán Province; (2) reach agreement on measures to be adopted with the beneficiaries and their representatives; and (3) report the results of adopted actions to facilitate investigation of the events that gave rise to the adoption of precautionary measures.

COLOMBIA

PM 102/12 – José Humberto Torres and family, Colombia

10. On April 5, 2012, the IACHR informed the State of Colombia its decision to separate José Humberto Torres from Precautionary Measure 83/99, whose beneficiaries are members of the Committee of Solidarity with Political Prisoners, in order to give special follow-up to his situation and that of his family. This decision is based in information received by the Commission that indicates that alleged paramilitaries in jails and members of the criminal gang “Los Rastrojos” have offered 200 million pesos to whomever kills José Humberto Torres. The IACHR requested the State of Colombia to adopt the necessary measures to guarantee the life and physical integrity of José Humberto Torres and his family; to adopt the measures in consultation with the beneficiaries and their representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 323/11 – Members of the Comité Permanente por la Defensa de los Derechos Humanos and its Sections, Colombia

11. On May 9, 2012, the IACHR granted precautionary measures in favor of Edgar Montilla, Martín Sandoval, Athemay Sterling and Diego Alejandro Martínez Castillo, and of the members of the Sections Bogota, Huila, Nariño and Arauca of the Comité Permanente por la Defensa de los Derechos Humanos (CPDH, or Permanent Committee for the Defense of Human Rights), en Colombia. The request for precautionary measures alleges that the members of the CPDH in Bogota and 14 sections in the country have been subject of threats and harassment since 2009. They allege that, although they requested protection measures, some have not been granted and the others are insufficient and ineffective. The IACHR requested the State of Colombia to adopt the necessary measures to guarantee the life and physical integrity of Edgar Montilla, Martín Sandoval, Athemay Sterling and Diego Alejandro Martínez Castillo, as well as other members of the Sections in Bogotá, Hila, Nariño and Arauca of the Comité Permanente por la Defensa de los Derechos Humanos; to adopt the measures in consultation with the beneficiary and her representatives, and to inform the Commission on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 131/12 – Hernán Henry Díaz, Colombia

12. On June 11, 2012, the IACHR granted precautionary measures in favor of Hernán Henry Díaz, in Colombia. The IACHR received information on April 25 and 27, 2012, about the alleged forced disappearance of Hernan Henry Díaz, a peasant leader, member of the Coordination of Social, Peasant, Afrodescendant and Indigenous Organizations of the Department of Putumayo, member of the National Federation of Agricultural Farming Unions, and leader of the social and political movement Marcha Patriótica (Patriotic March). According to the information received, the last time that anyone heard from Hernán Henry Díaz was on April 18, 2012, when through a text message he communicated that he was in his way to Bogota to participate in the launching of the “Marcha Patriótica”. Through the precautionary measure, the IACHR requested the State of Colombia to immediately adopt the necessary measures to determine the situation and whereabouts of Hernán Henry Díaz and to protect his life and personal integrity; and to inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 269/10 – Manuel Junior Cortéz Gómez and Yolanda Gómez Torres, Colombia

13. On June 22, 2012, the IACHR granted precautionary measures in favor of Manuel Junior Cortéz Gómez and Yolanda Gómez Torres, in Colombia. The request for precautionary measures alleges that Manuel Junior Cortéz Gómez is the only survivor of an alleged massacre of a soccer team, which was allegedly executed in October 2009 in Venezuela, near the border with Colombia, by a grup that calls itself Fuerza de Liberacion Bolivariana. The request alleges that after the alleged massacre, Manuel Junior Cortéz Gómez and Yolanda Gómez Torres cooperated with the Judiciary, and that afterwards the threats and harassment against them started. Additionally, it is indicated that on June 6, 2012, Manuel Junior Cortéz Gómez was attacked and stabbed, and was hospitalized in serious condition. The IACHR requested the State of Colombia to adopt the necessary measures to guarantee the life and physical

integrity of Manuel Junior Cortéz Gómez and Yolanda Gómez Torres, to adopt the measures in consultation with the beneficiaries and their representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PC 225/12 – Alfamir Castillo, Colombia

14. On October 17, 2012, the IACHR granted precautionary measures for Alfamir Castillo, in Colombia. The request for precautionary measures alleges that Alfamir Castillo was subject to repeated death threats and persecution. According to the petition, on August 28, 2012, someone on a motorcycle fired two shots into the air while passing by her, and on October 10, 2012, an unknown individual pointed a gun at her chest and threatened her with death. The request indicates that these actions were linked to her participation in the criminal investigation into the death of her son. The IACHR asked the government of Colombia to adopt any necessary measures to guarantee the life and physical integrity of Alfamir Castillo, reach agreement with the beneficiary and her representatives on the measures to be adopted, and inform the Commission about the steps taken to investigate the events that led to the adoption of precautionary measures.

CUBA

PM 153/12 – Niurka Luque Alvarez, Cuba

15. On May 16, 2012, the IACHR granted precautionary measures in favor of Niurka Luque Álvarez, in Cuba. The request for precautionary measures alleges that Niurka Luque Álvarez suffers epilepsy attacks, and that she had not received medical attention, or medicines, or authorization for her family members to provide the medicines needed for her condition. The IACHR requested the State of Cuba to adopt the necessary measures to guarantee the life and personal integrity of Niurka Luque Álvarez; to instruct the competent authorities to conduct the medical exams that allow to evaluate the health situation of the beneficiary and to authorize the adequate treatment for her condition, including the provision of medicines needed to treat epilepsy; and to adopt these measures in consultation with the beneficiary and her representatives.

PM 163/12 – Damaris Moya Portieles and daughter, Cuba

16. On June 12, 2012, the IACHR granted precautionary measures in favor of Damaris Moya Portieles and her daughter, 5 years old, in Cuba. The request for precautionary measures alleges that Damaris Moya Portieles is a human rights defender, and that she had been deprived of her liberty several times as a result of her participation in demonstrations in her country. The request also alleges that on May 2, 2012, during a vigil organized for freedom in Cuba, agents of the Security police again deprived her of her liberty, beat her, and threatened with raping her daughter. The IACHR requested the State of Cuba to adopt the necessary measures to guarantee the life and physical integrity of Damaris Moya Portieles and her daughter, to adopt the measures in consultation with the beneficiary and her representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 484/11 – José Daniel Ferrer García, Cuba

17. On November 5, 2012, the IACHR granted precautionary measures for José Daniel Ferrer García, in Cuba. According to the request for precautionary measures, José Daniel Ferrer García was deprived of his liberty and held in solitary confinement, and was threatened by security guards on numerous occasions, in February, April, May, and July of 2012. In particular, the request indicates that police agents threatened that they would "lock up his wife" and "leave his three children on the street, without their parents." The IACHR asked the State of Cuba to adopt the necessary measures to guarantee the life and personal integrity of José Daniel Ferrer García; reach agreement with the beneficiary and his representatives as to the measures to be adopted; and inform the Commission on the steps taken to investigate the facts that led to the adoption of precautionary measures.

PM 354/12 – Sonia Garro, Cuba

18. On November 8, 2012, the IACHR granted precautionary measures for Sonia Garro, in Cuba. According to the request for precautionary measures, the life and integrity of Sonia Garro—a member of the organization Damas de Blanco (Ladies in White) of the Fundación Afrocubana Independiente (Independent Afro-Cuban Foundation)—are at imminent risk. The petition states that Sonia Garro is suffering from various illnesses and is being deprived of her liberty in the Occidente Women's Prison, where she has reportedly been subject to threats. As a result of an incident in the prison, the petition adds, the delivery of food to her by family members was suspended, and this had been her only source of food due to her medical condition. The IACHR asked the State of Cuba to adopt the necessary measures to guarantee the life and personal integrity of Sonia Garro; reach agreement with the beneficiary and her representatives as to the measures to be adopted; and inform the Commission on the steps taken to investigate the facts that gave rise to the adoption of precautionary measures.

PM 350/12 – Yoani María Sánchez Cordero, Cuba

19. On November 9, 2012, the IACHR granted precautionary measures for Yoani María Sánchez Cordero and her family, in Cuba. The request for precautionary measures indicates that Yoani María Sánchez Cordero is at risk, due to the publication of several articles on an Internet blog about the human rights situation in Cuba. Specifically, the petitioners allege that she has had threats, acts of harassment, and smear campaigns waged against her. Moreover, the petition indicates that Yoani María Sánchez Cordero and her husband were arrested on October 4, 2012, and that as a result of being assaulted by police agents, Yoani María Sánchez Cordero ended up with a broken tooth and contusions. Yoani María Sánchez Cordero was again arrested on November 8, 2012. The IACHR asked the State of Cuba to adopt the necessary measures to guarantee the life and physical integrity of Yoani María Sánchez Cordero and her family; to come to an agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the IACHR on the actions taken to investigate the facts that gave rise to the adoption of precautionary measures.

PM 444/12 – José Díaz Silva, Cuba

20. On December 20, 2012, the IACHR granted precautionary measures on behalf of José Díaz Silva, a human rights defender and president of the *Movimiento de Opositores por una Nueva República* [Movement of Opponents for a New Republic – ONR] and promoter of the “*Demanda Ciudadana por otra Cuba*” [Citizen Action for a Different Cuba]. According to the petition, on November 8, 2012, the beneficiary was detained by police agents of *Patrulla 373* and allegedly severely beaten and driven to two different police stations, where he was held for two days under poor detention conditions. Considering the background of the matter, the IACHR requested the Cuban State to adopt the necessary measures to ensure the life and physical integrity of José Díaz Silva; to adopt the measures in consultation with the beneficiaries and their representatives; and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 420/12 – Antonio G. Rodiles, Cuba

21. On December 18, 2012, the IACHR granted precautionary measures on behalf of Antonio G. Rodiles, a human rights defender and promoter of the “*Demanda Ciudadana por otra Cuba*” movement. According to the petition, on November 8, 2012, during an alleged demonstration to demand the release of journalist Yaremis Flores, the beneficiary was detained by agents of the so-called political police, who allegedly severely beat her during the arrest. According to the petitioners, the alleged beating left his with serious injuries to his face requiring medical attention, which he was said to have been denied. In addition, the petitioners contend that the beneficiary was being held incommunicado and under poor detention conditions, particularly due to the low temperature inside the detention center, thus aggravating his health situation. The IACHR requested that the Cuban State adopt the necessary measures to guarantee the life and physical integrity of Antonio G. Rodiles; to adopt the measures in consultation with the beneficiaries and their representatives; and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

ECUADOR**PM 406/11 – Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga, Ecuador**

22. On February 21, 2011, the IACHR granted precautionary measures in favor of Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga, in Ecuador. This decision is based on information received by the Commission since November 2011 regarding a process of libel and slander promoted by President Rafael Correa against journalist Emilio Palacio, the three directors of the newspaper *El Universo* - Carlos Perez Nicolas Lapentti, Carlos Perez Perez and Cesar Barriga Barriga - and the newspaper *El Universo*. According to the information provided, on February 15, 2012 the National Court of Justice of Ecuador confirmed the judgment sentencing the beneficiaries to three years in prison and ordering to pay 40 million dollars. The facts reported to the Commission could cause irreparable damage to the right to freedom of expression of Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga. Accordingly, the Commission on Human Rights requested the Government of Ecuador to immediately suspend the effects of the judgment of February 15, 2012, to ensure the right to freedom of expression of Emilio Palacio, Carlos Nicolás Pérez Lapentti, Carlos Pérez Barriga and César Pérez Barriga. In addition, the Commission decided to hold a hearing on March 28, 2012, to receive information from the parties on the adoption and observance of these precautionary measures. Following the hearing, the Commission will decide whether to continue these measures, modify them or lift them.

23. On March 9, 2012, the IACHR lifted these precautionary measures and archived the file, after receiving a communication, dated February 29, 2012, in which the petitioners asked the measures to be lifted, given that the reasons of immediate urgency that has motivated them had ceased. In view of the decision to lift the measures, the IACHR also decided to cancel the hearing initially scheduled for March 28, 2012.

GUATEMALA

PM 69/12 – Leonel Asdrúbal Dubón Bendfelt et al, Guatemala

24. On April 5, 2012, the IACHR granted precautionary measures in favor of Leonel Asdrúbal Dubón Bendfelt et al., in Guatemala. The request for precautionary measures alleges that Leonel Asdrúbal Dubón Bendfelt has been followed for approximately one year, as a result of his work as a human rights defender and the cases brought forward by the association he heads. It also alleges that the threats intensified in recent months, and that he has been threatened directly and by telephone. The IACHR requested the State of Guatemala to adopt the necessary measures to guarantee the life and physical integrity of Leonel Asdrúbal Dubón Bendfelt, his immediate family, and the members of the association El Refugio de la Niñez (Children's Refuge); to adopt the measures in consultation with the beneficiaries and their representatives and to inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 13/12 – Members of the Human Rights Lawyers Group, Guatemala

25. On May 2, 2012, the IACHR granted precautionary measures in favor of the members of the Human Rights Lawyers Group (Bufete Jurídico en Derechos Humanos), in Guatemala. The request for precautionary measures alleges that the members of the group have been subject to threats and harassment that is allegedly linked to their work, specifically with the cases related to the period of internal armed conflict. The IACHR requested the State of Guatemala to adopt the necessary measures to guarantee the life and physical integrity of the members of the Human Rights Lawyers Group, to adopt the measures in consultation with the beneficiaries and their representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 207/12 – Telma Yolanda Oqueli Veliz and family, Guatemala

26. On August 24, 2012, the IACHR granted precautionary measures in favor of Telma Yolanda Oqueli Veliz and family, in Guatemala. The request for precautionary measures alleges that Telma Yolanda Oqueli Veliz, a human rights defender and member of the community group North Front of the Metropolitan Area Peoples in Resistance, has allegedly received threats in the context of the opposition of this group to a mining project. It is indicated that on June 13, 2012, Telma Yolanda Oqueli Veliz was shot in the back, and was hospitalized several days. It is also alleged that her brother was threatened. The IACHR requested the State of Guatemala to adopt the necessary measures to guarantee the life and physical integrity of Telma Yolanda Oqueli Veliz, to adopt the measures in consultation with the beneficiaries and their representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 388/10 – Carlos Pop, Rodrigo Tot, and their family members (leaders of the Agua Caliente community, Guatemala)

27. On October 15, 2012, the IACHR granted precautionary measures on behalf of Agua Caliente leaders Carlos Pop and Rodrigo Tot and their family members. According to the information furnished, on October 1, 2012, four unknown assailants threatened the life and physical integrity of the children of community leader Rodrigo Tot of the Agua Caliente community. According to the petitioner, the children of Mr. Tot were on their way to Guatemala City in a public transport vehicle when they were "held up at gunpoint." In addition, the petitioners contend that the perpetrators were asking around about the Mr. Tot's children and "upon identifying them" shot at them. The petitioners allege that this incident was in retaliation for the human rights defense work being carried out by the leaders in the Agua Caliente community. The IACHR asked the Guatemalan State to adopt the necessary measures to guarantee the life and physical integrity of community leaders Carlos Pop, Rodrigo Tot, and their family members; to adopt the measures in consultation with the beneficiaries and their representatives; and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 370/12 – Patients at the Federico Mora Hospital, Guatemala

28. On November 20, 2012, the IACHR granted precautionary measures for 334 patients at the Federico Mora Hospital in Guatemala. The request for precautionary measures alleges that everyone who is hospitalized at the Federico Mora Hospital is in a situation of risk. According to the petition, the 334 hospitalized patients, including children, share the same space with mentally disabled individuals who have been prosecuted and sentenced for various crimes. The petition adds that agents of the National Civilian Police and staff of the prison system are responsible for guarding the facility, and use threats, harassment, and acts of violence against the patients. The information presented to the IACHR indicates that there is physical and sexual abuse against women and children, and those patients have been denied proper medical care and given psychiatric treatment that does not suit their pathology. The Commission was also informed that some patients are being locked in isolation rooms, and that there is a practice of tying patients to chairs, among other allegations. The IACHR asked the government of Guatemala to adopt any necessary measures to guarantee the life and personal integrity of those hospitalized at the Federico Mora Hospital, and especially to provide proper medical care to patients, in accordance with each person's pathologies; to ensure the separation of the children from the adults and to seek special measures in light of the principle of the best interest of the child; to separate patients who have been prosecuted and sentenced, and who are being deprived of liberty under court order, from the other patients at the hospital, and to ensure that the protection of these patients is provided by unarmed hospital staff; to restrict the use of isolation rooms to the situations and conditions established in international standards regarding persons with mental disabilities; and to implement immediate prevention measures so that no patients, especially women and children, are subject to acts of physical, psychological, or sexual violence on the part of other patients, security agents, or hospital staff. The IACHR also asked the State of Guatemala to reach agreement with the beneficiaries and their representatives on the measures to be adopted. In this regard, the IACHR informed the government that it believes it is necessary for the parties, by common agreement, to present a timetable for implementing these precautionary measures, after having held the first meeting on coordination of the measures. Finally, the IACHR requested that the government inform the Commission about the steps taken to investigate the events that led to the adoption of these precautionary measures.

HAITI

PM 363/12 - Mario Joseph, Haiti

29. On October 19, 2012, the IACHR granted precautionary measures for Mario Joseph, in Haiti. According to the request for precautionary measures, the life and personal integrity of Mario Joseph, director of the nongovernmental organization Bureau des Avocats Internationaux (BAI), are at risk. The request contends that Mario Joseph has been subject to threats and acts of harassment in recent months, allegedly because of his activities in defending human rights. It indicates that he received several death threats per day after participating, in February 2012, in a press conference on the criminal proceedings underway against former President François Duvalier and that, starting in September 2012, security agents had interrogated BAI members, searched the organization's facilities, and persecuted Mario Joseph. The IACHR asked the State of Haiti to adopt any necessary measures to guarantee the life and personal integrity of Mario Joseph, come to an agreement with the beneficiary and his representative on the measures to be adopted, and inform the Commission on the steps taken to judicially investigate the events that led to the adoption of precautionary measures.

HONDURAS

PM 342/12 – César Adán Alvarenga Amador and Roberto García Fúnez, Honduras

30. On October 3, 2012, the IACHR granted precautionary measures for César Adán Alvarenga Amador and Roberto García Fúnez, in Honduras. The request for precautionary measures alleges that the two human rights defenders, members of the *Movimiento Amplio por la Dignidad y Justicia* (Broad Movement for Dignity and Justice), had been subject to threats and harassment in recent months. The Commission was also informed that on August 18, 2012, unidentified individuals had entered the home of César Adán Alvarenga, where they reportedly destroyed several of his belongings,

though they did not steal anything of value. The petitioners indicated that the incident was reported to the relevant authorities, but that protection measures had not yet been implemented. The IACHR requested that the government of Honduras adopt any necessary measures to guarantee the life and physical integrity of César Adán Alvarenga Amador and Roberto García Fúnez, reach agreement with the beneficiaries and their representatives on the measures to be adopted, and inform the Commission about the steps taken to investigate the events that led to the adoption of precautionary measures.

MEXICO

PM 351/11 – Ananías Laparra Martínez, México

31. On January 18, 2012, the IACHR granted precautionary measures in favor of Ananías Laparra Martínez, in Mexico. The request for precautionary measures alleges that the life and health of Ananías Laparra Martínez, who is deprived of liberty in a detention center in Tapachulas, Chiapas, is in grave danger, due to a critical health condition he suffers. It is also alleged that the necessary medical examination to have a diagnosis and to advice on treatment has not taken place. They also allege that his representatives have not had access to his medical file. The IACHR requested that the State of Mexico adopt the necessary measures to protect the physical integrity of Ananías Laparra Martínez; instruct the competent authorities to conduct the medical examinations necessary to make an evaluation of the health status of the beneficiary and authorize an adequate treatment; and to come to an agreement with the beneficiary and his representatives on the measures to be adopted, guaranteeing that he and the persons he authorizes have access to his medical file.

PM 208/10 – Estela Ángeles Mondragón, México

32. On March 1, 2012, the IACHR granted precautionary measures in favor of Estela Ángeles Mondragón, in México. The request for precautionary measures alleges that Estela Ángeles Mondragón is in a situation of risk, due to threats and acts of harassment and violence against her, which are allegedly a consequence of her involvement in several judicial processes followed in favor of the Indigenous Community Rarámuri de Baqueachí. The IACHR requested the State of Mexico to adopt the necessary measures to guarantee the life and physical integrity of Estela Ángeles Mondragón; to adopt the measures in consultation with the beneficiary and her representatives; and to inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 485/11 – X, Mexico

33. On May 8, 2012, the IACHR granted precautionary measures in favor of the child X, in Mexico. The IACHR withholds her identity because she is a minor. The request for precautionary measures alleges that on July 17, 2011, approximately at 1 a.m., a group of 15 armed policemen and paramilitaries entered the house of the family of X, in the State of Chiapas. The request further alleges that the father of the family was not present, and that the mother tried to wake up their four children, but X did not wake up in time and the mother escaped with the other three children. The current whereabouts of the child X is undetermined. The IACHR requested the State of Mexico to immediately adopt the necessary measures to determine the situation and whereabouts of the child X and to protect her life and personal integrity, and to inform the Commission on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 77/12 – Alberto Patishtán Gómez, Mexico

34. On May 24, 2012, the IACHR granted precautionary measures for Alberto Patishtán Gómez, in Mexico. The request for precautionary measures contends that the health of Alberto Patishtán Gómez, who is being deprived of his liberty, is in grave danger due to the worsening of an alleged glaucoma. The request indicates that without access to proper medical treatment, which is contingent upon the care he may receive under custody of the State, Alberto Patishtán Gómez could lose his vision permanently. The IACHR asked the government of Mexico to instruct the relevant authorities to conduct the medical exams that would make it possible to assess the beneficiary's health and to provide him with

proper treatment. It also asked the government to reach agreement with the beneficiary and petitioner on the measures to be adopted, ensuring that he and anyone he authorizes has access to the beneficiary's medical file.

PM 21/11 – Blanca Velázquez Díaz et al., Mexico

35. On May 29, 2012, the IACHR granted precautionary measures in favor of Blanca Velázquez Díaz, José Enrique Morales Montaña, Cecilia Medina and other members of the Centro de Apoyo al Trabajador (CAT, or Support Center for Workers), in Mexico. The request for precautionary measures alleges that the CAT members have been victims of harassment, following, and threats, due to their involvement in actions to promote the protection of labor rights in Mexico. Subsequently, they informed that on May 15, 2012, defender José Enrique Morales Montaña was kidnapped and resulted seriously injured, and that after this, the telephonic threats have increased. The IACHR requested the State of Mexico to adopt the necessary measures to guarantee the life and physical integrity of Blanca Velázquez Díaz, José Enrique Morales Montaña, Cecilia Medina and other CAT members, to adopt the measures in consultation with the beneficiaries and their representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 60/12 – Members of the Triqui Indigenous Community in the San Pedro River Valley, San Juan Cópala, Putla de Guerrero, Oaxaca, Mexico

36. On May 29, 2012, the IACHR granted precautionary measures in favor of 76 members of the Triqui Indigenous Community in the San Pedro River Valley, San Juan Cópala, Putla de Guerrero, Oaxaca, Mexico. The request for precautionary measures alleges that the 76 members of this community, who currently live in the San Pedro River Valley, are in a risk situation. They informed that they had been displaced from San Juan Copala by armed actors operating in the area, and that currently they are victims of threats, acts of violence and harassment, aiming to displace them again. In this context, on May 8, 2012, a pick-up truck allegedly entered with violence in the community, firing against the houses, resulting in the death of three persons. The IACHR requested the State of Mexico to adopt the necessary measures to guarantee the life and physical integrity of the 76 members of the Triqui Indigenous Community in the San Pedro River Valley, San Juan Cópala, Putla de Guerrero, Oaxaca, Mexico, to adopt the measures in consultation with the beneficiaries and their representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 152/11 – Members of the House for Migrants “Frontera Digna”, Municipality of Piedras Negras, Coahuila, México

37. On August 17, 2012, the IACHR granted precautionary measures in favor of the members of the House for Migrants “Frontera Digna”, Municipality of Piedras Negras, Coahuila, México. Initially, the IACHR requested information to the State and took note of the implementation of protection measures in favor of the members of the organization on the part of the competent authorities. Notwithstanding, the IACHR has continued to receive information that indicates that the threats and harassment against them have continued. The IACHR requested the State of México to adopt the necessary measures to guarantee the life and physical integrity of the members of the House for Migrants “Frontera Digna”, to adopt the measures in consultation with the beneficiaries and their representatives, and to inform on the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 388/12 – Edgar Ismael Solorio Solís et al., Mexico

38. On November 6, 2012, the IACHR granted precautionary measures for the three sons of Ismael Urrutia and Manuela Marta Solís, who were reportedly leaders of the organization "El Barzón," as well as for the members of that organization, in Mexico. According to the request for precautionary measures, "El Barzón" is an organization that advocates for a healthy environment in the state of Chihuahua, Mexico. The petition alleges that since July 2012, all of the organization's members have been subject to continual death threats. It indicates that on October 13, 2012, members of a mining company allegedly beat up Ismael Urrutia, after which he sought protection from the competent authorities; this protection allegedly was not implemented. The petitioners add that on October 22, 2012, Ismael Urrutia and Manuela Marta Solís were reportedly killed, after which their three sons requested protection, without having received a response. The IACHR requested that the State of Mexico adopt the necessary measures to guarantee the life and physical integrity of Edgar Ismael Solorio Solís, Erick Solorio Solís, Uriel Alejandro Solorio Solís, Joaquín Solorio Urrutia, Felipe Solorio Urrutia, César Solorio Urrutia, Heraclio Rodríguez, Martín Solís Bustamante, Luis Miguel Rueda Solorio, Ángel Rueda Solís, and Siria Solís. In addition, the IACHR asked that the State of Mexico reach agreement with the beneficiaries and their representatives as to the measures to be adopted, and that it inform the Commission on the steps taken to investigate the facts that gave rise to the adoption of precautionary measures.

UNITED STATES

PM 7/12 – Edgar Tamayo Arias, United States

39. On January 18, 2012, the Commission granted precautionary measures in favor of Edgar Tamayo Arias, who was sentenced to death in the United States. The request for precautionary measures was accompanied by a petition alleging violation of rights recognized in the American Declaration of the Rights and Duties of Man. That petition was classified as P-15/12. The Commission requested that the United States refrain from executing the death sentence until the Commission has had an opportunity to reach its decision on the petitioner's claim of violation of the American Declaration, so as not to render moot the filing of that claim with the inter-American system.

PM 357/11 – Héctor Rolando Medina, United States

40. On February 7, 2012, the Commission granted precautionary measures in favor of Hector Rolando Medina, who was sentenced to death in the United States. The request for precautionary measures was accompanied by a petition alleging violation of rights recognized in the American Declaration of the Rights and Duties of Man. That petition was classified as P-1907/11. The Commission requested that the United States refrain from executing the death sentence until the Commission has had an opportunity to reach its decision on the petitioner's claim of violation of the American Declaration, so as not to render moot the filing of that claim with the inter-American system.

PM 101/12 – Julius O. Robinson, United States

41. On April 9, 2012, the Commission granted precautionary measures in favor of Julius O. Robinson, who was sentenced to death in the United States. The request for precautionary measures was accompanied by a petition alleging violation of rights recognized in the American Declaration of the Rights and Duties of Man. That petition was classified as P-561/12. The Commission requested that the United States refrain from executing the death sentence until the Commission has had an opportunity to reach its decision on the petitioner's claim of violation of the American Declaration, so as not to render moot the filing of that claim with the inter-American system.

PM 490/12 – Linda Carty, United States

42. On December 26, 2012, the IACHR granted precautionary measures on behalf of Linda Carty, who was sentenced to death in the United States. The request for precautionary measures was accompanied by a petition alleging violation of the rights enshrined in the American Declaration, which was registered under the number P-2309/12. The Commission requested that the United States refrain from carrying out the death penalty until such time as it has occasion to decide the petitioner's complaint alleging violation of the American Declaration, should the processing of the complaint before the inter-American system proceed.

VENEZUELA**PM 349/11 – Rocío San Miguel, Venezuela**

43. On January 18, 2012, the IACHR granted precautionary measures in favor of Rocío San Miguel and her daughter, in Venezuela. The request for precautionary measures alleges that Rocío San Miguel was victim of harassment and threats, including death threats she received at her home, as a consequence of her activities as a member of the non governmental organization Control Ciudadano (Citizen Control). The request also alleges that the authorities have not investigated the origin of such threats and harassment acts, and that they did not implement measures to guarantee her life, integrity and security. The IACHR requested the Government of Venezuela to adopt the necessary measures to guarantee the life and physical integrity of Rocío San Miguel and her daughter, who is a minor; to adopt measures in consultation with the beneficiary and her representative; and to inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures.

D. Status of compliance with the recommendations of the IACHR

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

45. On several occasions the OAS General Assembly has encouraged Member States to follow-up on the recommendations of the Inter-American Commission on Human Rights, as it did in its resolution AG/RES. 2672 (XLI-O/11), "Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights," (operative paragraph 3.b). Likewise, in its resolution AG/RES. 2675 (XLI-O/11), "Strengthening of Human Rights Systems pursuant to the mandates arising from the Summits of the Americas," 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.d).

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

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

47. In compliance with its powers under the Convention and the Statute and with the above-cited resolutions, and pursuant to Article 48 of the Rules of Procedure, the IACHR requested information from the States on compliance with the recommendations made in the reports published on individual cases included in its annual reports from 2000 through 2011.

48. 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 eleven 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.

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

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

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.307, Report No. 103/01, María Meriadri de Morini (Argentina) ¹	X		
Case 11.804, Report No. 91/03, Juan Ángel Greco (Argentina)		X	
Case 12.080, Report No. 102/05, Sergio Schiavini and María Teresa Schnack (Argentina)		X	
Case 12.298, Report No. 81/08 Fernando Giovanelli (Argentina)		X	
Case 12.159, Report No. 79/09, Gabriel Egisto Santillán Reigas (Argentina)		X	
Case 11.732, Report No. 83/09, Horacio Aníbal Schillizzi (Argentina)		X	
Case 11.758, Report No. 15/10, Rodolfo Correa Belisle (Argentina)		X	
Case 11.796, Report No. 16/10, Mario Humberto Gomez Yardez (Argentina) ²	X		
Case 12.536, Report No. 17/10, Raquel Natalia Lagunas and Sergio Antonio Sorbellini (Argentina)		X	
Petition 242-03, Report No. 160/10, Inocencia Luca Pogoraro (Argentina)		X	
Petition 4554-02, Report No. 161/10, Valerio Castillo Báez (Argentina)		X	
Petition 2829-02, Report No. 19/11, Inocencio Rodríguez (Argentina)		X	
Petition 11.708, Report No. 20/11, Aníbal Acosta and L. Hirsch (Argentina)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petition 11.833, Report No. 21/11, Ricardo	X		

¹ See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 38-40.

² See IACHR, *Annual Report 2005*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 159-164.

Monterisi (Argentina)			
Petition 12.532, Report No. 84/11, Penitencierías de Mendoza (Argentina)			
Petition 12.306, Report No. 85/11, Juan Carlos de la Torre (Argentina)		X	
Petition 11.670, Report No. 168/11, Menéndez and Caride (Argentina)		X	
Case 11.395, Report No. 73/11, Juan José López (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, May Indigenous Community of the Toledo District (Belize)			X
Case 12.475, Report No. 97/05, Alfredo Díaz Bustos (Bolivia)		X	
Case 12.516, Report No. 98/05, Raúl Zavala Málaga and Jorge Pacheco Rondón (Bolivia) ³	X		
Petition No. 269-05, Report No. 82/07, Miguel Angel Moncada Osorio and James David Rocha Terraza (Bolivia) ⁴	X		
Petition No. 788-06, Report No. 70/07, Víctor Hugo Arce Chávez (Bolivia) ⁵	X		
Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil)		X	
Cases 11.286, 11.406, 11.407, 11.412, 11.413, 11.415, 11.416 and 11.417, Report No. 55/01, Aluísio Cavalcante <i>et al.</i> (Brazil)		X	
Case 11.517, Report No. 23/02, Diniz Bento da Silva (Brazil)		X	
Case 10.301, Report No. 40/03, Parque São Lucas (Brazil)		X	
Case 11.289, Report No. 95/03, José Pereira (Brazil)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
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) ⁶	X		

³ See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 109-114.

⁴ See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 115-19.

⁵ See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 120-124.

Case 12.001, Report No. 66/06, Simone André Diniz (Brazil)		X	
Case 12.019, Report No. 35/08 Antonio Ferreira Braga (Brazil)			X
Case 12.310, Report No. 25/09 Segastião Camargo Filho (Brazil)			X
Case 12.440, Report No. 26/09 Wallace de Almeida (Brazil)			X
Case 12.308, Report No. 37/10, Manoel Leal de Oliveira (Brazil)			X
Case 12.586, Report No. 78/11, John Doe (Canada)		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) ⁷	X		
Case 12.046, Report No. 33/02, Mónica Carabantes Galleguillos (Chile) ⁸	X		
Case 11.725, Report No. 139/99, Carmelo Soria Espinoza (Chile)		X	
Petition 4617/02, Report No. 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) ⁹	X		
Case 12.337, Report No. 80/09, Marcela Andra Valdés Díaz (Chile) ¹⁰	X		
Petition 490-03, Report No. 81/09 "X"(Chile) ¹¹	X		
Case 12.469, Report No. 56/10, Margarita Barberia Miranda (Chile)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 12.281, Report No. 162/10, Gilda Rosario Pizarro et al. (Chile)	X		
Case 12.195, Report No. 163/10, Mario Alberto Jara Oñate (Chile)	X		
Case 12.232, Report No. 86/11, María Soledad Cisternas (Chile)	X		
Case 11.654, Report No. 62/01, Ríofrío Massacre (Colombia)		X	
Case 11.710, Report No. 63/01, Carlos Manuel Prada González and Evelio Antonio Bolaño		X	

...continuation

⁶ See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 162-175.

⁷ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 187-190.

⁸ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 191-194.

⁹ See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 216-224.

¹⁰ See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 298-302.

¹¹ See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR.

Castro (Colombia)			
Case 11.712, Report No. 64/01, Leonel de Jesús Isaza Echeverry (Colombia)		X	
Case 11.141, Report No. 105/05, Villatina Massacre (Colombia)		X	
Case 10.205, Report No. 53/06, Germán Enrique Guerra Achuri (Colombia) ¹²	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) ¹³	X		
Petition 477-05, Report No. 82/08 X and family (Colombia) ¹⁴	X		
Petition 401-05, Report No. 83/08 Jorge Antonio Barbosa Tarazona <i>et al.</i> (Colombia)		X	
Case 10.916, Report No. 79/11, James Zapata Valencia y José Heriberto Ramírez (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) ¹⁵	X		
Case 11.466, Report No. 96/00, Manuel Inocencio Lalvay Guamán (Ecuador)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.584, Report No. 97/00, Carlos Juela 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 Arismendy (Ecuador)		X	
Case 11.991, Report No. 100/00, Kelvin Vicente Torres Cueva (Ecuador)		X	
Case 11.478, Report No. 19/01, Juan Clímaco Cuellar <i>et al.</i> (Ecuador)		X	

¹² See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 329-333.

¹³ See IACHR, *Annual Report 2009*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 274-280.

¹⁴ See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 339-444.

¹⁵ See IACHR, *Annual Report 2008*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 283-286.

Case 11.512, Report No. 20/01, Lida Ángela Riera Rodríguez (Ecuador)		X	
Case 11.605, Report No. 21/01, René Gonzalo Cruz Pazmiño (Ecuador)		X	
Case 11.779, Report No. 22/01 José Patricio Reascos (Ecuador)		X	
Case 11.992, Report No. 66/01, Dayra María Levoyer Jiménez (Ecuador)		X	
Case 11.441, Report No. 104/01, Rodrigo Elicio Muñoz Arcos <i>et al.</i> (Ecuador)		X	
Case 11.443, Report No. 105/01, Washington Ayora Rodríguez (Ecuador)		X	
Case 11.450, Report No. 106/01, Marco Vinicio Almeida Calispa (Ecuador)		X	
Case 11.542, Report No. 107/01, Angel Reiniero Vega Jiménez (Ecuador)		X	
Case 11.574, Report No. 108/01, Wilberto Samuel Manzano (Ecuador)		X	
Case 11.632, Report No. 109/01, Vidal Segura Hurtado (Ecuador)		X	
Case 12.007, Report No. 110/01 Pompeyo Carlos Andrade Benítez (Ecuador)		X	
Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda (Ecuador)		X	
Case 12.188 , Report No. 64/03, Joffre José Valencia Mero, Priscila Fierro, Zoreida Valencia Sánchez, Rocío Valencia Sánchez (Ecuador)		X	
Case 12.394, Report No. 65/03, Joaquín Hernández Alvarado, Marlon Loor Argote and Hugo Lara Pinos (Ecuador)		X	
Case 12.205, Report No. 44/06, José René Castro Galarza (Ecuador)		X	
Case 12.207, Report No. 45/06, Lizandro Ramiro Montero Masache (Ecuador)		X	
Case 12.238, Report No. 46/06 Myriam Larrea Pintado (Ecuador)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petition 533-01, Report No. 47/06 Fausto Mendoza Giler and Diógenes Mendoza Bravo (Ecuador)		X	
Case 12.487, Report No. 17/08, Rafael Ignacio Cuesta Caputi (Ecuador)			X
Case 12.525, Report No. 84/09, Nelson Iván Serano Sáñez (Ecuador)			X
Case 12.249, Report No. 27/09, Jorge Odir Miranda Cortez <i>et al.</i> (El Salvador)		X	
Case 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) ¹⁶	X		
Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States)			X
Case 11.193, Report No. 97/03, Shaka Sankofa (United States)		X	
Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)			X
Case 11.331, Report No. 99/03, Cesar Fierro (United States)			X
Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)		X	
Case 12.412, Report No. 101/03, Napoleon Beazley (United States)		X	
CASE 12.430, Report No. 1/05 Roberto Moreno Ramos, (United States)			X
Case 12.439, Report No. 25/05, Toronto Markkey Patterson (United States)		X	
Case 12.421, Report No. 91/05, Javier Suarez Medina (United States)			X
Case 12.534, Report No. 63/08 Andrea Mortlock (United States)			X
Case 12.644, Report No. 90/09 Medellín, Ramírez Cárdenas and Leal García (United States)			X
Case 12.562, Report No. 81/10, Wayne Smith, Hugo Arredariz et al. (United States)			X
Case 12.626, Report No. 80/11, Jessica Lenahan (Gonzales) (United States)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case. 12.776, Report No. 81/11, Jeffrey Timothy Landrigan (United States)			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	

¹⁶ See IACHR *Annual Report 2005*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 185-186.

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 Malarly (Haiti)			X
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique y Dalton Daley (Jamaica)		X	
Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)		X	
Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)		X	
Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)		X	
Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)		X	

Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)			X
Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)		X	
Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)		X	
Case 11.565, Report No. 53/01, González Pérez Sisters (Mexico)			X
Case 11.807, Report 69/03, José Guadarrama (Mexico) ¹⁷	X		
Petition 388-01, Report 101/05 Alejandro Ortiz Ramírez (Mexico) ¹⁸	X		
Case 12.130, Report No. 2/06, Miguel Orlando Muñoz Guzmán (Mexico)			X
Petition 161-02, Report No. 21/07, Paulina del Carmen Ramírez Jacinto (Mexico)	X		
Case 11.822, Friendly Settlement Report No. 24/09, Reyes Penagos Martínez <i>et al.</i> (Mexico)		X	
Case 12.228, Report No. 117/09, Alfonso Martín del Campo Dodd (Mexico)			X
Case 12.642, Report No. 90/10, Jose Ivan Correa Arevalo (Mexico)		X	
Case 12.660, Report No. 91/10, Ricardo Ucan Seca (Mexico)	X		
Case 12.623, Report No. 164/10, Luis Rey Garcia (Mexico) ¹⁹	X		
Case 11.381, Report No. 100/01, Milton García Fajardo (Nicaragua)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay)			X
Case 11.607, Report No. 85/09, Víctor Hugo Maciel (Paraguay)		X	
Case 12.431, Report No. 121/10, Carlos Albeto Mojolí (Paraguay)	X		
Case 11.800, Report No. 110/00, César Cabrejos Bernuy (Peru) ²⁰	X		
Case 11.031, Report No. 111/00, Pedro Pablo López González <i>et al.</i> (Peru)		X	
Cases 10.247 and others, Report No. 101/01, Luis Miguel Pasache Vidal <i>et al.</i> (Peru)		X	
Case 11.099, Report No. 112/00, Yone Cruz		X	

¹⁷ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 552-560.

¹⁸ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 562-562.

¹⁹ See IACHR *Annual Report 2011*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 982-987.

²⁰ See IACHR *Annual Report 2005*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras.928-935.

Ocalio (Peru)			
Case 12.035; Report No. 75/02, Pablo Ignacio Livia Robles (Peru) ²¹	X		
Case 11.149, Report No. 70/03 Augusto Alejandro Zúñiga Paz (Peru) ²²	X		
Case 12.191, Report No. 71/03, María Mamerita Mestanza (Peru)		X	
Case 12.078, Report No. 31/04, Ricardo Semoza Di Carlo (Peru)		X	
Petition 185-02, Report No. 107-05, Roger Herminio Salas Gamboa (Peru)		X	
Case 12.033, Report No. 49/06, Rómulo Torres Ventocilla (Peru) ²³	X		
Petition 711-01 <i>et al.</i> , Report No. 50/06, Miguel Grimaldo Castañeda Sánchez <i>et al.</i> (Peru); Petition 33-03 <i>et al.</i> , Report No. 109/06, Héctor Núñez Julia <i>et al.</i> (Peru); Petition 732-01 <i>et al.</i> , Report 20/07 Eulogio Miguel Melgarejo <i>et al.</i> ; Petition 758-01 and others, Report No 71/07 Hernán Atilio Aguirre Moreno <i>et al.</i> ; Petition 494-04 (Peru)		X	
Petition 494-04, Report No. 71/07, Hernan Atilio Aguirre Moreno et al. (Peru)		X	
Petition 494-04, Report No. 20/08 Romeo Edgardo Vargas Romero (Peru)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Petitions 71-06 et al, Report No. 22/11, Gloria José Yaquette Paredes et al (Peru)		X	
Case 12.269, Report No. 28/09, Dexter Lendore (Trinidad and Tobago)			X
Case 11.500, Report No. 124/06, Tomás Eduardo Cirio (Uruguay) ²⁴	X		
Petition 228-07, Report no. 18/10, Carlso Dogliana (Uruguay)	X		
Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay)		X	
Petition 12.555 , Report No. 110/06, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola (Venezuela)			X

²¹ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 332-335.

²² See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 336 and 337.

²³ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 613-616.

²⁴ See IACHR, *Annual Report 2010*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 1109-1116.

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

50. 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.

51. 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.

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

53. 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.

54. 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.

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

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

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

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

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

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

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

62. On March 26, 2011 the Commission met during its 141st regular session with representatives of the province of Chaco. The representatives agreed to urge its legislative branch to promptly approve the reform presented by the Special Prosecutor for Human Rights and the reform set forth by the institutional body for provincial security forces control. Likewise, the representatives agreed to express to the legislative branch the importance of the prompt implementation of the provincial mechanism for the prevention of torture.

63. During the same meeting, the representatives of the province of Chaco informed the Commission of the ministerial order to expand its administrative investigation on all police forces that were involved in the facts of the case and monitor the investigation's activities. Moreover, the representatives agreed to express the importance of the prompt implementation of an oral trial to the First Criminal Chamber of the First Circuit of the Province of Chaco.

64. By a note on May 27, 2011, the State of Argentina informed the Commission that throughout the disciplinary investigation of the persons allegedly involved in the detention and death of Juan Ángel Greco, it had resolved the administrative measure on the suspension from duty of Julio Ramón Obregón, First Sergeant of Police. Likewise, the State of Argentina informed the Commission that in April 2011, it had published an invitation for the public hearing on June 2, 2011 to allow the general public to take into consideration the preselected persons, who would serve on the Provincial Mechanism on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Similarly, the State of Argentina stated that in May 2011, it had conducted a training activity on the "Action Protocol for Investigation on Unlawful Coercions Offences and Tortures".

65. By a note on June 7, 2011, the State of Argentina forwarded a photocopy of Law No. 6.786, approved by the local parliament and enacted by Decree No. 982 of May 18, 2011, whereby reforming the Special Criminal Prosecutor Office for Human Rights.

66. By communications dated on October 17 and November 14, 2011, the petitioners expressed their satisfaction with the agreement presented by the Province of Chaco on the effective implementation of the agreements in Report 91/08. In particular, the petitioners informed the Commission that the State had begun the oral trial to determine the responsibility of the police authorities who were involved in the facts of the case and accused of the crime of failing to provide assistance or abandoning a person after death. The petitioners included that during the administrative process, the State would conduct processes to identify all personnel of the police station of Puerto Vilelas, where Juan Ángel Greco had been detained. Nonetheless, in respect to the administrative process, the petitioners expressed concern that the State had only implicated the criminally accused police officers, not holding the other police officers responsible for their failure in duty of control, prevention and punishment.

67. Furthermore, the petitioners stated that the State had advanced in appointing all the members of civil society that would serve on the Provincial Mechanism on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The petitioners also noted that they are only awaiting the Chamber of Deputies to elect their representatives and establish a separate budget so that the mechanism could begin operation. The petitioners also celebrated the legislative reform on the Special Prosecutor's Office for Human Rights and the existence of a draft law that would create a "Provincial system for the human rights protection on the exercise of policing and penitentiary duties", and would represent significant advances upon approval.

68. In a communication forwarded on December 3, 2012, the Commission requested updated information from the parties on the status of compliance with the remaining recommendations. The parties did not provide the requested information.

69. As for the commitments accepted by the State, the Commission has found that there has been compliance with the aspects of the friendly settlement agreement pertaining to monetary compensation, as well as the aspects pertaining to publication of the agreement. The Commission has not received up-to-date information on the duty to investigate and punish those responsible for the violations of Juan Angel Greco's human rights.

70. Based on the foregoing, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Accordingly, the Commission will continue to monitor the remaining items.

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

71. 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.

72. In the friendly settlement agreement, the State recognized its responsibility for “the 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.”

73. 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.

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

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

76. As for the non-pecuniary damages, the State reported the following progress: first, it reported that the Truth Commission had been formed, composed of Dr. Dr. Martín Esteban Scotto, named by the petitioner party, Dr. Carlos Alberto Beraldi, nominated by the Federal Government, and Dr. Héctor Granillo Fernández, appointed by the Ministry of Justice of the Province of Buenos Aires. It further indicated that to enable that Commission to begin its work, the provincial government was asked to

supply a copy of the three court cases and one administrative case, which the State had listed in its presentation. It also reported on the working meeting held on September 1, 2010, where the experts serving on the Commission agreed to work together to prepare the Commission's draft Rules of Procedure.

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

78. On October 25, 2011, the Commission requested updated information from the parties regarding the state of compliance with the friendly settlement agreement. Regarding the non-pecuniary measures, particularly the legislative reforms, the State updated information on three issues: the execution of autopsies, remedies and citizen security. In regards to point 3.a) of the agreement, it indicates that it is obligatory to conduct autopsies for all cases involving suspicious and violent death, as set forth " *in the Criminal Procedure Code of the Province of Buenos Aires (Código Procesal Penal de la Provincia de Buenos Aires, CPPBA) and the National Procedure Code (Código de Procedimientos de la Nación, CPPN) provide the required obligation to execute autopsies in such cases*". Likewise, the State of Argentina stated that such codes also provide room for objection based on the same grounds applicable to judges, which could be used in considering it necessary to question the appointment of an expert because of his or her alleged partiality. Regarding point 3.b) of the agreement, it emphasized that in accordance with the existing legislation, family members could participate and control the production of evidence based on the procedural concept of the individual victim, which allows the family to propose the participation of an expert. Finally, concerning point 3.c) of the agreement on the rules that regulate the activities of the forensic medical team, the State stressed that the Supreme Court of Argentina (Corte Suprema de Justicia Nacional) adopted measures in accordance to Agreements 16/08, 47/09 and 22/10. (...). In this framework, by fulfillment of Agreement 47/09, the State issued general rules of procedure that control the general aspects of the activities related to the Medical Staff.

79. Regarding the inclusion of violations against human rights as grounds for reform to what point 3.d) of the agreement, the State indicated that the Ministry of Justice and Human Rights had been working on a draft law to promote reform to the national code of criminal procedure, in order to incorporate as causal grounds for review, the cases that the Inter-American Court on Human Rights has judgments.

80. Finally, in regards to the implementation of public policies for citizen security in point 3.f) of the agreement, the State stated information from the Ministry of National Security pertaining to the adopted measures taken for every security force on the taking of hostages.

81. The petitioners expressed their concern to the Commission for the State's lack of enforcement on two aspects of the agreement: the operation of the Truth Commission; and the enforcement of rules on facilitating the internal procedure for international claims. With regards to these particular aspects of the agreement, the Commission observes that the State did not provide any information.

82. In a communication of November 27, 2012, the Commission requested up-to-date information from the parties on the status of compliance with the remaining recommendations.

83. In a note dated December 18, 2012, the petitioners provided updated information referencing, firstly, the Draft legislative reform "making it mandatory, without exception, to conduct an autopsy in every single case of violent death or death suspect of being a crime, including prohibiting the

members of the security forces from taking part in the autopsy connected to any incidents in which they may have participated.” They noted that said draft reform was submitted in a timely fashion, but that after several years elapsing, there has been no response to it and that the issue has not been addressed at any working meeting with the Secretariat for Human Rights. They also reported on the Draft reform of the Criminal Procedural Code of the Nation, which was to incorporate the right of the next-of-kin of the victim to opt for appointing their own expert prior to the autopsy being conducted; and the Draft reform of the Criminal Procedural Code of the Nation, introducing human rights violations as grounds for review; none of which has been dealt with by the Secretariat for Human Rights either as of the present date.

84. As for evaluation of domestic legislation on hostage taking and the use of force, in order to bring these laws into line with international standards under Principle No. 3 of UN Resolution 1989/65, the petitioners noted that said item has not been put on the working agenda of the meetings being held with the Secretariat for Human Rights and the Special Representative for Human Rights in the International Sphere (REDHU) of the Ministry of Foreign Relations, International Commerce and Worship.

85. With respect to the creation and governance of the “Truth Commission,” the petitioners reported that it was formally established in September 2010 and that, in July 2012, the Special Representative’s Office for Human Rights in the International Sphere (REDHU) of the Ministry of Foreign Relations, International Commerce and Worship did hand over the full copy of the case files of court cases that were heard in Argentina to the members of the aforementioned Commission. Notwithstanding, they contend that approval of its Regulations by the Argentine State is still pending, which has made it impossible for it to be fully functioning since July 2012 until the present time.

86. Lastly, with regard to drafting rules to establish a procedure for the processing and investigation of petitions that are brought before the Commission and the Inter-American Court of Human Rights, “which provides for the creation of a specific body with decision making authority – including the institution of the “friendly settlement” – and a mechanism for compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights,” the petitioners noted that they learned of draft rules prepared by the Argentine State, which were rejected and considered to be noncompliant with the reparations undertaken by the Argentine Government in the instant case.

87. In short, the petitioners claimed that even though some officials of the Argentine State have showed good will to move forward in complying with the executed Friendly Settlement Agreement, progress has been too slow and that this stands in the way of timely reparation, as provided in the commitment entered into on March 2, 2005.

88. Based on the available information, the Commission concludes that there still has not been compliance with some measures of non-pecuniary reparation. Consequently, the Commission finds that there has been partial compliance with the friendly settlement agreement. Accordingly, the Commission will continue to monitor the remaining items.

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

89. 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.

90. 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.

91. 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.

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

93. According to the documentation the Commission received, on April 8, 2010, the Arbitration Tribunal for Fixing Pecuniary Damages in the Case of Giovanelli v. Argentina, composed of arbiters Fabián Omar Salvioli, Chair, and Oscar Schiappa-Pietra and Ricardo Monterisi, issued the arbitral award in which they set the reparations owed to Esther Ana Ramos de Giovanelli, mother of Fernando Giovanelli; Horacio José Giovanelli, father of Fernando Giovanelli; Guillermo Jorge (brother) and Enrique José Giovanelli (brother). The ruling set the sum of US\$100,000 (one hundred thousand United States dollars) as *lucrum cessans*; the sum of US\$ 3,000 (three thousand United States dollars) as *damnum emergens*; and US\$ 15,000 (fifteen thousand United States dollars) in damages to the family estate. For non-pecuniary damages, the Tribunal ordered US\$60,000 (sixty thousand United States dollars) for Fernando Giovanelli; US\$50,000 for Horacio José Giovanelli; US\$50,000 for Esther Giovanelli; US\$20,000 for Guillermo Giovanelli and US\$20,000 for Enrique José Giovanelli. As for costs and expenses, the Tribunal, based on the rules of sound judgment, set the costs and expenses of the proceedings before the Commission at US\$3,700; of that amount, the sum of US\$ 1,800 was awarded to COFAVI and US\$ 1800 to Mariana Bordones. In addition it assigned US\$2000 as the costs and expenses of the proceedings before the CIDJ, plus US\$ 1,600 to be paid to Mariana Bordones to cover her fees in the case before the Arbitration Tribunal.

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

November 15, 2010, it advised the parties that the award was consistent with the applicable international standards.

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

96. On October 26, 2011, the Commission requested updated information to the parties on the state of compliance with the friendly settlement agreement.

97. Through communications received on September 29 and November 18, 2011, the petitioner informed the Commission that the family Giovanelli had not yet been paid the compensation established in the arbitral ruling of April 8, 2010. It also argued that the State has not advanced in the issue of the non-pecuniary measures of reparation.

98. On October 31, 2011, the petitioner submitted a copy of the note of October 24 from the mother of the victim and addressed to the President of the Republic of Argentina in which she requests the compliance with the measures agreed on in the friendly settlement accord.

99. On December 3, 2012, the Commission requested up-to-date information from the parties on the status of compliance with the friendly settlement agreement.

100. In a communication of January 2, 2013, the petitioner provided updated information indicating that, regarding the non-pecuniary reparation measures set forth therein, publication of the Friendly Settlement Agreement in the Official Gazette of the Argentine Republic, or in a daily newspaper of nationwide circulation, has still not taken place.

101. Furthermore, she notes that *case file No. 1-2378* entitled "N.N. re/Homicide – victim: Giolvanelli, Fernando Horacio," which is being heard before Trial Court No 3 for Criminal and Transitional Correctional Matters of the Judicial District of Quilmes, Province of Buenos Aires, has been closed, even though no dispositive judgment had been handed down. With regard to *case file No 3001-1785/00*, entitled "Supreme Court of Justice – General Secretariat re/Irregular Situation observed in the processing of *case No 1-2378* of Court No 3 for Criminal and Transitional Correctional Matters of Quilmes," which is being heard by the Supreme Court of Justice of the Province of Buenos Aires – Office of Judicial Control and Inspection, she notes that it has also been closed.

102. She also claims that the State has not honored its commitment to examine the possibility of incorporating the "Giovanelli" case into the current curricula at the police training institutes as a measure of non-repetition of human rights violating practices. She further contends that no steps have been taken by the authorities to draw up draft rules establishing a procedure to process and investigate petitions brought before the Commission and the Inter-American Court of Human Rights, as provided in the final item of the non-pecuniary reparation measures included in the Agreement.

103. As for the pecuniary reparation measures, the petitioner reported that, thus far, the reparation amount owed to the family, or any type of expenses stipulated in the arbitration award, have yet to be paid out.

104. Consequently, the Commission concludes that the friendly settlement agreement has yet to be complied with. Accordingly, the Commission will continue to monitor the pending items.

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

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

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

III. Measures to be adopted

a. Pecuniary damages

1. The parties agree to set up an ad-hoc Arbitration Tribunal to determine the amount of pecuniary damages owed to the petitioners, in keeping with the rights acknowledged to have been violated and with applicable international standards.
2. The Tribunal shall be made up of three independent experts [...] and shall be formed no later than 30 days following approval of this agreement by Decree of the Executive Branch of the Nation.
3. The procedure to be followed shall be determined by common agreement among the parties [...]
4. The Arbitration Tribunal's award shall be final and not subject to appeal [...]
5. The petitioners relinquish, definitively and irrevocably, the ability to initiate any other claim of a pecuniary nature against the national State associated with the instant case [...]
6. Without prejudice to the foregoing concession in this favor, and in any event, the National State declares that it reserves the right to recover from the Government of the Province of Buenos Aires the amounts actually paid out to the petitioners, as determined by the Arbitration Tribunal [...]

b. Non-pecuniary damages

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

3. The Government of the Republic of Argentina commits to carrying out its best efforts to hold an academic event, as soon as possible, on questions having to do with the interaction and coordination between the Federal State and the Provincial States in the area of compliance with international obligations, in light of the provisions of Article 28 of the American Convention on Human Rights.

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

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

109. By a communication dated November 19, 2010, the IACHR asked the parties for follow-up information. In a communication dated December 7, 2010, the petitioning party indicated that the Ad Hoc Arbitration Tribunal has been formed and that the rules of procedure for the arbitration proceeding had been approved. The petitioning party submitted a brief seeking pecuniary damages, which was forwarded to the State. The State, for its part, has already submitted its observation on that brief. The petitioning party asserted that nothing had been done with regard to the non-pecuniary damages.

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

111. In a note dated May 11, 2011, the State forwarded to the Commission the arbitration award establishing damages and issued on May 6, 2011 by the Tribunal for Fixing Pecuniary Damages in the Case of Santillán v. Argentina, made up of the arbitrators Fabián Omar Salvioli, Chairman, Oscar Schiappa-Pietra and Ricardo Monterisi. That award established the amount of US\$100,000.00 (one hundred thousand U.S. dollars) for lost wages; the amount of US\$17,000.00 (seventeen thousand U.S. dollars) as consequential damages; and the amount of US\$20,000.00 (twenty thousand U.S. dollars) for damages to the family estate, in favor of Mrs. Mirta Liliana Reigas, mother of Gabriel Egisto Santillán. For moral damages, the award amounted to US\$170,000.00 (one hundred seventy thousand U.S. dollars), with US\$130,000.00 (one hundred thirty thousand U.S. dollars) going to Mrs. Mirta Liliana Reigas; US\$20,000.00 (twenty thousand U.S. dollars) going to Raúl Alejandro López, and US\$20,000 going to Pamela Lucila López. For costs and expenses, the Tribunal valued the fees for the proceeding before the IACHR reasonably at US\$3,800.00 (three thousand, eight hundred U.S. dollars), granting US\$1,900 to COFAVI and US\$1,900 to Mariana Bordones. In addition, it allocated US\$2,000 for expenses with the IACHR, granting US\$500 to COFAVI and US\$1,500 to Mariana Bordones, plus US\$2,000 granted to the latter for fees related to the proceeding before the Arbitration Tribunal.

112. In a communication forwarded on December 5, 2012, the IACHR requested updated information from the parties on compliance with the commitments entered into in the aforementioned settlement agreement.

113. In a note dated January 2, 2013, the petitioners reported that, with regard to the non-pecuniary reparation measures set forth therein, publication of the Friendly Settlement Agreement in the Official Gazette of the Argentine Republic, or in a daily newspaper of nationwide circulation had not taken place yet.

114. Additionally, regarding case file No 5-23148-02, entitled "Assault and Resistance in concurrence with Abuse of Weapons, Homicide and Finding of Stolen Motor Vehicle, victim: Santillan, Gabriel Egisto," which is being heard before Trial Court No. 2 for Criminal and Transitional Correctional Matters of the Judicial District of Moron, Province of Buenos Aires, the petitioner reported that said case

has been closed. She claims that even though, in early 2012, the mother of the victim requested judicial authorization to exhume the body and have it cremated and for the appropriate measures to be taken so that the Forensic Anthropology Team preserves DNA evidence for a possible comparison, should the remains of his father Omar Santillán, who disappeared during the military dictatorship period in Argentina, come to light at some point in time. As for case file No 3001-2014/99 “Ministry of Justice, Santillán, Gabriel Egisto. Report on case No 12.148/91” and “3001-465/05 Executive Branch of the Province of Buenos Aires-Office of the Under Secretary of Justice transfers case 12.159- Santillán, Gabriel Egisto,” which were brought before the Supreme Court of Justice of the Province of Buenos Aires, she stated that both of these cases have been closed.

115. She contends that the State has not honored the commitment to foster an academic activity pertaining to issues of coordination between the Federal and Provincial governments with regard to compliance with international obligations, under Article 28 of the American Convention.

116. As for the pecuniary reparation measures, the petitioner stated that the reparation amount owed to the family, or any type of expenses provided for in the arbitration award, have not been paid out thus far, even though the time period set forth therein has expired.

117. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Accordingly, the Commission will continue to monitor the remaining items.

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

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

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

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

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

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

122. For its part, in a communication dated January 12, 2011, the State addressed only the second of the two recommendations, and submitted a report prepared by the Supreme Court of Argentina which states that as of December 21, 2010, "all national and federal chambers in the country's capital and its interior were in compliance with the recommendation to adopt regulatory measures so that they are able to discharge the disciplinary authorities that the law gives to the courts in a manner that is respectful of due process, as ordered in Administrative Decision No. 26/08 of the Supreme Court."

123. The Commission takes note of the progress the State has made toward compliance with the second recommendation contained in Report No. 83/09. According to the information reported by the State, the latter had fully complied with that recommendation inasmuch as the Argentine judicial authorities had reportedly adopted the necessary measures to ensure that disciplinary sanctions would be applied in accordance with the guarantees of due process and the right to judicial protection, recognized in articles 8 and 25 of the American Convention.

124. In a communication dated March 10, 2011 the State submitted copy of the regulatory measures adopted by the national and federal chambers of Buenos Aires and the provinces, allowing the exercise of the disciplinary powers the law assigns to the courts, consistent with due process and as provided by Supreme Court in Administrative Decision No. 26/08.

125. On October 26, 2011, the IACHR requested updated information from the parties on the status of compliance with the recommendations. On December 3, 2012, the IACHR requested information from the parties on compliance with the first recommendation.

126. The Commission does not have any additional information, other than what was provided by the petitioners in December 2010 with regard to the first recommendation, according to which they lost contact with Mr. Schillizzi as of 2006. This was reiterated by the petitioners in a note of December 31, 2012. On this score, the IACHR renews its call to both parties to put forth their best efforts to locate Mr. Horacio Anibal Schillizzi Moreno and comply with said recommendation.

127. Based on the foregoing, the Commission concludes that the Argentine State has partially complied with the recommendations put forth in Report No. 83/09. Accordingly, the Commission will continue to monitor the remaining item.

Case 11.758, Report No. 15/10, Rodolfo Correa Belisle (Argentina)

128. In Report No. 15/10 dated March 16, 2010, the Commission approved the friendly settlement agreement signed by the parties in Case 11.758, Rodolfo Correa Belisle. In summary, the petitioning party indicated that in April 1994 the alleged victim, a captain in the Argentine Army, was ordered to conduct a search of the Zapala Regiment, which led to the discovery of the body of Private Carrasco, who had joined the regiment a few days earlier. They added that a criminal proceeding was begun as a consequence of the death of Private Carrasco. During that proceeding, Correa Belisle was summoned to testify, and he allegedly reported activities he considered illegal that had been carried out by military personnel. The petitioners alleged that as a consequence of his testimony and because the then-Chief of Staff was offended, a proceeding was initiated against Correa Belisle in the military criminal courts, in which he was sentenced to three months' imprisonment for the military offense of "disrespect." The petitioners alleged that the Argentine State was responsible for the arbitrary detention of Mr. Correa Belisle, as well as for the various violations of judicial guarantees and due process that occurred during the proceedings against him.

129. On August 14, 2006, the State of Argentina and the petitioners signed a friendly settlement agreement, which was approved by National Executive Decree No. 1257/2007 of September 18, 2007. The main points of the agreement are as follows:

1. Recognition of international responsibility

Having evaluated the facts reported in light of the conclusions of Admissibility Report No. 2/04, and considering Report No. 240544 of February 27, 2004, produced by the Office of the Auditor General of the Armed Forces, which indicated, among other things, that "...we are facing a clear situation—a system of administration of military justice that does not ensure the observance of the rights of those who become involved in criminal proceedings within that jurisdiction, and that [is] powerless to ensure an upright administration of justice," the Argentine State recognizes its international responsibility in the case for the violation of Articles 7, 8, 13, 24, and 25, in conjunction with Article 1.1, of the American Convention on Human Rights, and commits to adopt the reparation measures provided for in this instrument.

2. Non-monetary reparation measures

a) The Argentine State apologizes to Mr. Rodolfo Correa Belisle

Based on the preceding recognition of international responsibility, the Argentine State considers it fitting to present its sincerest apologies to Mr. Rodolfo Correa Belisle for the event that occurred in 1996, during which he was subject to a military proceeding and trial that culminated with a 90-day sentence as a consequence of the application in this matter of norms that are incompatible with required international standards.

To that effect, and in accordance with the evaluation of the circumstances surrounding the case brought by the petitioners before the Inter-American Commission on Human Rights, and for which the competent bodies of the national State have taken suitable action, the prosecution of Rodolfo Correa Belisle has not complied with the strict observance of the rights and guarantees that international human rights law requires in this area, and thus this apology is imposed as part of the commitment assumed by the national State.

b) Reform of the System for the Administration of Military Justice

In the working meeting held during the IACHR's 124th regular period of sessions, the government delegation reported on the state of the efforts being carried out by the Argentine State with regard to the legislative reform involving the military justice system. In that regard, it reported on the Ministry of Defense's issuance of Resolution No. 154/06, which formed a working group made up of experts of the Secretariat for Human Rights and the Secretariat for Criminal Policy and Prison Affairs of the Ministry of Justice and Human Rights of the Nation, various representatives of civil society organizations, the University of Buenos Aires, and members of the Armed Forces, whose work has produced agreements on the transformation of the military disciplinary system, a comprehensive review of military legislation, and the consideration of questions pertaining to the regulation of activities in the framework of peace operations and situations of war, having set a time frame of 180 days for finishing its activities. The aforementioned working group completed, before the established deadline, the preparation of a draft reform of the System of Administration of Military Justice, which was formally presented to the Minister of Defense on July 19, 2006.

Bearing this in mind, the Argentine State is committed to making its best efforts to send that draft reform to the National Congress before the end of the current regular period of legislative sessions.

c) Publication of the friendly settlement agreement

The Argentine State is committed to publish the text of this agreement, one time and in full, in the Official Gazette of the Republic of Argentina; in the newspapers *Clarín*, *La Nación*, *Río Negro*, and *La Mañana del Sur*; as well as in the Confidential Gazette of the Army, the Public Gazette of the Army, *Soldados* magazine, and in the *Tiempo Militar* newspaper, once this agreement is duly approved in accordance with the provisions of Point III of this instrument and ratified by the Inter-American Commission on Human Rights, in line with the provisions of Article 49 of the American Convention on Human Rights.

130. On November 10, 2010 the IACHR asked the parties for updated information on the status of compliance with the friendly settlement agreement. In a communication dated December 21, 2010 the petitioners reported that Law 26.394, approved on August 6, 2008, repealed the Code of Military Criminal Justice and all related internal regulatory rules, resolutions, and provisions. That same law created a new system of military justice respectful of due process and Argentina's Penal Code and Criminal Procedure Code were amended. The petitioners also reported that the only item pending compliance was point II.2.c of the friendly settlement agreement relating to publication of the content of the agreement.

131. The State, for its part, reported to the IACHR in its note of January 12, 2011 that the Argentine Ministry of Defense, through the Secretariat of Human Rights and International Humanitarian Law, reported that it would take the necessary measures to effect the publication of the friendly settlement agreement.

132. On October 26, 2011 the IACHR asked the parties for updated information on the status of compliance with the friendly settlement agreement, specifically with regard to the commitment to publish the friendly settlement agreement. No additional information was received.

133. On December 3, 2012, the IACHR requested information from both parties on compliance with the commitments undertaken in the friendly settlement.

134. In a communication dated December 31, 2012, the petitioners claimed that the Argentine State still hadn't complied with item II.2.c of the friendly settlement agreement, which involves a commitment to publish the content of the report in several widely circulated daily newspapers. On this score, they reported that, based on an inquiry conducted by them, they learned that on January 28, 2012, the State had published the content as they were requested to do in the daily newspaper *La Nación*. Likewise, they indicated that they were interested in learning whether the State is indicating that it will publish it in other widely circulated news media for the same purpose. They note that should compliance with that remaining item be confirmed, the friendly settlement agreement could be considered fully complied with and the case could be closed.

135. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Accordingly, the Commission will continue to monitor the remaining item.

Case 12.536, Report No. 17/10, Raquel Natalia Lagunas and Sergio Antonio Sorbellini (Argentina)

136. In Report No.17/10 dated March 16, 2010, the Commission approved the friendly settlement agreement signed by the parties in Case 12.536, Raquel Natalia Lagunas and Sergio Antonio Sorbellini. In summary, the petitioners maintained that as of the discovery of their children's corpses, police activity was deployed in order to cover up the incident and do away with or distort the evidence. The petitioners referred to a series of procedural irregularities as a result of which two persons were convicted, who later benefited from a declaration of nullity of the case against them due to procedural defects. They indicated that in the instant case, the Legislature had created a Special Commission to investigate the chain of cover-ups, as they were considered grave acts of public interest. They asserted that through the actions of that Commission, the bodies were exhumed, and it was verified that the judicially declared autopsies had never been performed, and that the police records and expert testimony were false.

137. On November 19, 2007, the State of Argentina and the representatives of Raquel Lagunas' family signed a friendly settlement agreement, which was joined by the Sorbellini family on November 24 of that year, by means of a protocol of accession. The main points of the agreement are follows:

III. Measures to be adopted

A. Measures of non-pecuniary reparation

1. The Government of the Province of Río Negro undertakes, fully respecting the separation of powers, to make its best efforts to continue the investigations of the case to the final consequences. With that purpose, and as certified in the act of November 8, 2007, the Government of the Province of Río Negro and the petitioners agree to constitute a Commission for Follow-up (Comisión de Seguimiento) for the purposes of monitoring progress in the judicial case in order to prepare an assessment of the case to evaluate the steps to be taken, to which the federal government will be invited to participate. The parties shall agree upon the composition of that commission.

2. In addition, and as committed to in point 1(b) of the act of December 6, 2006, it is noted for the record that the Government of the Province of Río Negro has proceeded to implement a police overseer ("Fiscal en Comisaría") in the city of Río Colorado, who shall be named through a public competitive process.

3. In terms of vindicating the good name and honor of Raquel Natalia Lagunas and Sergio Sorbellini, it is noted for the record that the Government of the Province of Río Negro proceeded to publish the public declaration agreed upon in point 2 of the act of September 30, 2002.

4. As another measure of satisfaction, it is stated for the record that point 3 of the act of September 30, 2002 has been carried out; pursuant to it, the Deliberating Council of the city of Río Colorado designated a plaza in that city with the name of Raquel Lagunas and Sergio Sorbellini.

B. Measures of pecuniary reparation

1. The Government of the Province of Río Negro undertakes to compensate the family of each of the victims with the sum of US\$100,000 respectively. That compensation shall be paid in keeping with the following schedule: (a) Lagunas family: 60% of the total, plus 20% for the professional fees of the attorneys (Messrs. Thompson, Espeche, and Bugallo), which shall be paid in this act, by check No. 16664764 of the Banco Patagonia for the sum of one hundred ninety thousand eight hundred pesos (\$190,800), to the order of Leandro Nicolás Lagunas, and check No. 16664762 of the Banco Patagonia to the order of Mr. Ricardo Thompson for the sum of sixty-two thousand three hundred twenty-eight pesos (\$62,328); the tax on gross income has been withheld from the attorneys in the amount of one thousand two hundred seventy-two pesos (\$1,272), for which they receive a receipt. The remaining sum shall be paid in two equal and consecutive installments whose due dates shall be December 10, 2007 and January 10, 2008, respectively. Mr. Leandro Lagunas receives the corresponding amount in representation of the family of Raquel Lagunas and Mr. Ricardo Thompson in representation of the attorneys. (b) Sorbellini family: The Government of the Province of Río Negro undertakes to include the reparation due in the 2008 budget, and to pay it in full before June 30, 2008.

138. On November 24, 2007, the representatives of the Sorbellini family signed a protocol of accession to the following effect:

I. Accession of the family of Sergio Sorbellini to the Friendly Settlement Agreement of November 19, 2007. In this regard, the petitioners state that, in the capacity indicated in the heading, they accede in all its terms and conditions to the friendly settlement agreement signed November 19, 2007 by the representatives of the family of Raquel Lagunas and the Government of the Province of Río Negro, a copy of which they receive. In addition, Mr. D'agnillo, in his capacity as the attorney representing the family of Sergio Sorbellini, accedes in all its terms and conditions to said friendly settlement agreement.

II. Conclusions

In consideration of the accession stated above, the petitioners and the Government of the Province of Río Negro agree to forward this additional protocol to the Ministry of Foreign Affairs, International Commerce, and Worship, for the purposes of having it attached, as an integral part thereof, to the friendly settlement agreement signed on November 19, 2007, requesting, consequently, its ratification in the international jurisdiction and that it be submitted to the Inter-American Commission on Human Rights for the purposes set forth in Article 49 of the American Convention on Human Rights. In that sense, it is noted for the record that it must first be forwarded to the Argentine Foreign Ministry; this agreement shall be approved in keeping with the corresponding legal provisions by the Province of Río Negro.

139. On January 3, 2011, a communication was received from Mr. Leandro Nicolás Lagunas indicating that as of that date no progress had been made in terms of compliance with the friendly settlement agreement.

140. For its part, in a note dated January 12, 2011, the Argentine State submitted a report on progress made. In this regard, it reported that a commission had been set up and members appointed for "Follow-up of the Double Crime of Río Colorado" and that it had not been possible to include relatives of the victims on this committee because they had refused to participate. It reported that competition for the position of Overseer for the city of Río Colorado was under way as of that date. It was also indicated that in the case followed by the investigation, the prosecutor stated that no evidence had emerged that would merit analysis of some criminal hypothesis not considered earlier nor had it been possible to produce

evidence that would clarify the circumstances of the deaths of Sergio Antonio Sorbellini and Raquel Natalia Lagunas.

141. Regarding the measures of pecuniary reparation, the State indicated that each family had been paid US\$100,000.00, in compliance with the agreement.

142. On December 3, 2012, the IACHR asked the parties for updated information on the status of compliance with the friendly settlement agreement.

143. In a communication of September 27, 2012, the petitioners reported that the State had complied with the monetary reparation commitment, and that it had not taken any steps to comply with the remaining items.

144. The petitioners also noted that not even a single meeting had taken place since November 2007, for the purpose of establishing the "Commission to Follow Up on the Double Crime of Rio Colorado," and that only the mayor of the city and municipal employees had attended the dedication ceremony of the victims' memorial square.

145. It can be gathered from the information that the non-pecuniary reparation measures consented to by the parties in the friendly settlement agreement have still not been complied with. So far, the IACHR has not received any information on the results attained by the "Commission to Follow Up on the Double Crime of Rio Colorado," or on the results of the competitive selection process for the position of the Decentralized Prosecuting Attorney of the City of Rio Colorado. As for the pecuniary reparation measures, the Commission notes that the State has complied with the commitment it undertook under the agreement.

146. Based on the information provided by the State, the Commission concludes that there has been partial compliance with the friendly settlement agreement.

Petition 242-03, Report No. 160/10, Inocencia Luca de Pegoraro et al. (Argentina)

147. In Report No.160/10 of November 1, 2010, the Commission approved the friendly settlement agreement signed by the parties in Petition 242-03, Inocencia Luca de Pegoraro et al. In summary, the petitioners maintained that on June 18, 1977, Susana Pegoraro, who was five months pregnant at the time and the daughter of Inocencia Pegoraro, was arrested and taken to the Clandestine Detention Center that operated during the military dictatorship at the Naval Mechanics School (ESMA). According to the testimony of Inocencia Luca Pegoraro, Susana Pegoraro gave birth to a daughter inside the detention's facilities. The petitioners state that, in 1999, Inocencia Luca Pegoraro and Angélica Chimeno de Bauer became complainants and initiated a court proceeding, denouncing the abduction of their granddaughter, who they identified as Evelin Vásquez Ferra. Initially, the Federal National Court for Criminal and Correctional Matters No. 1 ordered expert testing to establish the identity of Evelin Vásquez Ferra. However, when this testing was challenged, the procedure was finally determined by the Supreme Court as not being mandatory because it felt that the testing was complementary for the purposes of the process given that the adoptive parents, Policarpo Luis Vásquez and Ana María Ferra, had confessed that Evelin Vásquez Ferra was not their biological child. The court also felt that mandatory testing violated the latter's right to privacy. The petitioners alleged that the ruling of the Supreme Court of Justice of the Nation closed the door to possible investigation into the disappearance of Susana Pegoraro and Raúl Santiago Bauer as well as the identification of Evelin Vásquez Ferra.

148. On September 11, 2009, the State of Argentina and the petitioners signed a friendly settlement agreement. The main points of the agreement are follows:

1. Recognition of facts. Adoption of measures

The Government of the Argentine Republic recognizes the facts presented in Petition 242/03 of the registry of the Inter-American Commission on Human Rights. In this regard, and without prejudice to the legal debate that emerges regarding the collision of legally protected assets presented by the

case and the decision adopted by the Supreme Court of Justice of the Nation, the State agrees with the petitioner on the need to adopt suitable measures that could effectively contribute to obtaining justice in those cases in which it is necessary to identify persons using scientific methods that require that samples be obtained.

2. Non-monetary reparation measures.

2.1. On the right to identity

a. The National Executive Branch of the Argentine Republic agrees to send the Honorable Congress of the Nation a bill on establishing a procedure for obtaining DNA samples that protects the rights of those involved and effectively investigates and adjudicates the abduction of children during the military dictatorship.

b. The National Executive Branch of the Argentine Republic agrees to send to the Honorable Congress of the Nation a bill to amend the legislation governing the operation of the National Genetic Data Bank in order to adapt it to scientific advances in this area.

2.2. On the right of access to justice

a. The National Executive Branch of the Argentine Republic agrees to send to the Honorable Congress of the Nation a bill to more effectively guarantee the judicial participation of victims – understanding as such persons allegedly kidnapped and their legitimate family members – and intermediate associations set up to defend their rights in proceedings investigating the kidnapping of children.

b. The National Executive Branch of the Argentine Republic agrees to adopt, within a reasonable period of time, the measures necessary to optimize and expand on the implementation of Resolution No. 1229/09 of the Ministry of Justice, Security, and Human Rights.

c. The National Executive Branch of the Argentine Republic agrees to work on adopting measures to optimize the use of the power conferred upon it by Art. 27 of Law No. 24.946 (Organic Law of the Attorney General's Office) in order to propose that the Attorney General: 1) issue general instructions to prosecutors urging them to be present at residential searches conducted in cases in which the kidnapping of children is being investigated; and 2) design and execute a Special Investigation Plan on the kidnapping of children during the military dictatorship in order to optimize the resolution of cases, providing special prosecutors for the purpose in jurisdictions where the number of cases being processed justifies this.

2.3. On the training of judicial actors

a. The National Executive Branch of the Argentine Republic agrees to work on adopting measures associated with the use of the power conferred on it by Art. 27 of Law No. 24.946 (Organic Law of the Attorney General's Office) in order to propose that the Attorney General provide training for prosecutors and other employees of the Attorney General's Office in the appropriate handling of the victims of these serious crimes.

b. The National Executive Branch of the Argentine Republic agrees to urge the Council of the Judiciary of the Nation to plan training courses for judges, functionaries, and employees of the Judicial Branch in the appropriate handling of the victims of these serious crimes (see. Art. 7(11) of Law No. 24.937, o.t. Art. 3 of Law No. 26.080).

2.4. Regarding the task force

a. The National Executive Branch of the Argentine Republic agrees to establish specific mechanisms to facilitate the correction of national, provincial, and municipal public and private documentation and records of anyone whose identity was changed during the military dictatorship, in order to promote the restoration of identity.

b. The parties agree to hold periodic working meetings, in the Foreign Ministry, for purposes of evaluating progress made with the measures agreed to herein.

c. The Government of the Argentine Republic agrees to facilitate the activities of the task force, and provide it with technical support and the use of facilities as needed to develop its tasks, agreeing to report periodically to the Inter-American Commission on Human Rights.

2.5. On publicity

The Government of the Argentine Republic agrees to publicize this agreement in the Official Bulletin of the Argentine Republic and in the newspapers "Clarín," "La Nación," and "Página 12," once it is approved by the Inter-American Commission on Human Rights in accordance with the provisions of Article 49 of the American Convention on Human Rights.

149. In Report No. 160/10 the Commission acknowledged compliance with the commitments contained in sections 2(1) (a), 2(1) (b), and 2(2) (a) of the friendly settlement agreement, through laws establishing a procedure for obtaining DNA samples and for the modernization of the National Genetic Data Bank approved by the National Congress on November 18, 2009 and published on November 27, 2009. It also acknowledged compliance with section 2(4) (a) through creation of the "Documentary Regularization Unit for the victims of human rights violations in the context of state terrorism actions," by Resolution No. 679/2009, published by the Ministry of Justice and Human Rights in the Official Bulletin of October 2, 2009; as well as compliance with section 2(2) (b) through the formation of the "Judicial Assistance Group" under Resolution No. 1229-1209 of the Ministry of Justice and Human Rights.

150. On October 26, 2011, the IACHR asked the parties for updated information regarding the status of compliance with the friendly settlement agreement.

151. Regarding sections 2(3)(a) 2(2) (c), the IACHR had received information on steps taken toward conducting the agreed upon training courses, but the results of those steps are not known.

152. The Commission learned of Resolution No. 166 of 2011 creating the Special Judicial Assistance Group within the Ministry of Security and assigning it the function of conducting searches, examinations, investigations, and seizure of items for purposes of obtaining DNA in the context of cases involving the abduction of minors under the age of ten during the period of State terrorism between 1976 and 1983. That resolution contained the protocol on the formation, coordination, and operation of the Special Group.

153. On December 4, 2012, the IACHR requested information from both parties on the status of compliance with the commitments set forth in the friendly settlement agreement.

154. In a communication of January 30, 2013, the State reported, with regard to item 2.2 of the friendly settlement agreement, that the Attorney General of the Nation ordered, under Decision PGN No 435112 of October 23, 2012, the creation of the "Specialized Unit for cases of appropriation of children during the period of State terrorism." It notes that the unit operates under the Prosecutorial Coordination and Follow-up Unit for Human Rights Violations committed during the period of State terrorism and its chief coordinators are attorneys Martin Mikilson and Pablo Parenti, who are empowered to intercede as assistant and ad hoc prosecutor, respectively, in the different proceedings before the courts and at every level, from the trial through all appeal and review levels.

155. Additionally, the State notes that prior to the creation of the aforementioned Unit, the Attorney General had approved, under Decision PGN No 398/12 of October 19, 2012, a Protocol of procedure for cases of appropriation of children during the period of State terrorism. On this topic, it indicates that the Prosecutorial Coordination Unit drafted a procedural protocol describing the main elements and issues pertaining to these crimes and many of the measures aimed at uncovering the truth, identifying those responsible and prosecuting them. It specifies that the Protocol instructs the country's prosecutors to bring their prosecutorial actions, within the context of investigations linked to subject matter in which they intervene, into line with the guidelines set forth therein and also directs all of the country's prosecutors, who deal with cases of appropriation during the period of State terrorism, to become personally involved in every key juncture of investigations into the appropriation of children during the period of State terrorism, such as, in DNA collecting efforts. The State notes that the Decision approving the Protocol explains that everything provided for therein is compatible with item 2.2 of the Friendly Settlement Agreement entered into between the Association of Grandmothers of the Plaza de Mayo and the Government of the Republic of Argentina, within the framework of IACHR petition 242/03.

156. It adds that one of the challenges for 2013 laid out as well by the Attorney General was to continue to delve deeper into prosecution in certain areas, such as examination of responsibility of civilian actors in State terrorism (judicial officials, businessmen, etc.), sexual crimes and appropriation of children.

157. Moreover, the State indicated that commitment 2.5 of the friendly settlement agreement was published in Official Gazette No. 31785 on November 20, 2009, under Decree No 1800/2009, which

approved the aforementioned Agreement. It added that the daily newspapers *Página 12*, *Clarín* and the *La Nación*, as well as several print media articles have occasionally mentioned the Pegoraro case both directly and indirectly.

158. The Commission notes the progress made toward compliance with the friendly settlement agreement and urges the parties to provide information on the remaining items, particularly, regarding training operators of justice to afford proper treatment to the victims.

159. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Accordingly, the Commission will continue to monitor the remaining items.

Petition 4554-02, Report No. 161/10, Valerio Castillo Báez (Argentina)

160. In Report No.161/10 of November 1, 2010, the Commission approved the friendly settlement agreement signed by the parties in Petition 4554-02, Valerio Castillo Báez. In summary, the petitioners argued that the alleged victim was detained and held under arrest from May 5, 1980 to April 13, 1982, accused under federal law of infringing Law No. 20,840 whereby it is a crime to participate in political parties considered to be subversive, and was absolved of the charges on April 13, 1982 by Federal Court No. 1 of Mendoza. The petitioners also requested, without success, that the competent authorities compensate Valerio Oscar Castillo Báez for damages in view of the fact that Law 24,043 provides an indemnity must be paid to anyone who was placed under the authority of the National Executive Power or deprived of their freedom under orders issued by military courts or authorities. The State presented no observations on this case.

161. On October 2, 2008, the State of Argentina and the petitioners signed a friendly settlement agreement, which was approved by Decree No. 399/09 of April 27, 2009. The main points of the agreement are as follows:

III. Measures to be adopted

1. The parties hereby agree that Mr. Valerio Oscar Castillo Báez should be granted monetary reparation in accordance with the scheme envisaged in Law 24,043, for the whole of the period during which he was detained and which is not indemnifiable within the framework of file MI No. 329.637/92. The administrative procedure is initiated by filing a complaint with the Secretariat of Human Rights of the Ministry of Justice and Human Rights of the Nation, pursuant to the provisions of said law regarding competence in such matters; the Secretariat must then take the necessary steps to certify exactly how long Mr. Castillo was held under detention under Law 20,840.

2. The State also undertakes to prepare, through its Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights of the Nation, a draft amendment to Law 24,043 in order to include, under conditions deemed appropriate, cases in which a person is deprived of his freedom in accordance with the law. The State also undertakes to make every effort to remit it to the Argentine Congress as soon as possible.

3. The petitioners definitively and irrevocably renounce their right to file any other claim of any kind against the national State, in connection with this case.

162. On October 26, 2011, the IACHR asked the parties for updated information regarding the status of compliance with the friendly settlement agreement.

163. In communications received on October 26 and November 28, 2011, the petitioners indicated that Mr. Castillo Báez received payment of 153,575.00 in bonds as monetary reparations. However, given that he understood that the amount owed to him for this was 467,312.30, the petitioners assert that the State failed to comply on this point with the friendly settlement agreement. In addition, they indicated they did not know nor had the State informed them whether Law 24.043 had been amended.

164. Regarding legislative changes, the Commission learned of the approval of Law 26.564 enacted on December 15, 2009, expanding the definition of beneficiaries entitled to the protection of Laws 24.043 and 24.211. It was expressly ordered that the beneficiaries covered under those laws include political prisoners, victims of forced disappearance, or persons who died between June 16, 1955 and December 9, 1983. Also included, among others, were the victims of the uprisings of 1955, as well as soldiers who did not join the rebellion against the Constitutional government and because of this became the victims of defamation, marginalization, and/or dismissal.

165. On December 3, the IACHR requested information from both parties on compliance with the friendly settlement agreement. In a note of January 30, 2013, the State reiterated information pertaining to enactment of Law No 26.564 and, with regard to the petitioners' disagreement over payment of the benefit, it claimed that said benefit had been paid out by the appropriate authorities in keeping with current law. In response, on January 29, 2013, the petitioners indicated that even though the appropriate legislative changes had been made, they still disagreed with the amount of indemnity compensation awarded to Mr. Castillo Baez, while expressing their willingness to engage in dialogue with the Argentine State. They contended that, thus far, they had received no response nor has any Government official been in touch with them in order to work out a settlement regarding the above-mentioned disputed amount.

166. The Commission notes with satisfaction the progress made in complying with the friendly settlement agreement. However, given the information provided by the petitioners regarding the payment of monetary reparations, it cannot consider compliance complete. In this regard, the Commission urges the parties to resolve the difference existing with respect to the amount of the compensation.

167. Based on the above, the Commission concludes that the friendly settlement agreement has been partially implemented. Accordingly, the Commission will continue to monitor the item pending compliance.

Petición 2829-02, Informe No. 19/11, Inocencio Rodríguez (Argentina)

168. In Report No.19/11, dated March 23, 2011, the Commission approved the friendly settlement agreement signed by the parties on August 16, 2007, in petition No. 2829-02, Inocencio Rodríguez. In summary, the petitioner indicates that during the last military dictatorship in Argentina, Mr. Inocencio Rodríguez had been deprived of his liberty for more than four years in a prison controlled by the military; that he was systematically tortured at the hands of agents of the State and unacceptable conditions of deprivation of libertad. The petitioner added that once the rule of law had been reestablished, several reparations laws were enacted, including Law No. 24.043 and No. 24.906, under which Mr. Rodríguez sued for reparations in 1996. That same year, the Ministry of the Interior granted reparations for the period of 14 days from the time of the alleged victim's arrest until he was turned over to the custody of the federal court, but refused to concede reparations for the remainder of Mr. Rodríguez' incarceration, on grounds that a civilian court had convicted him in regular legal proceedings. The petitioner contends that the Argentine justice system would have therefore considered Mr. Rodríguez an ordinary prisoner and not a political victim of the *de facto* authoritarian regime. The petitioner argued that denying reparations to Mr. Rodríguez would be tantamount to discrimination and deprived him of a right to which he is entitled under the law. The petitioner argued that the court actions filed were ineffective and that the authorities acted arbitrarily. The petitioner contended that the alleged victim suffered violations of the rights protected by Articles 8, 21, 24, and 25 of the Convention, in conjunction with the obligation of respecting those rights set out in Article 1.1 thereof.

169. On August 16, 2007, the petitioners and the representatives of the Government of the Argentine Republic signed an agreement, the text of which reads as follows:

FRIENDLY SETTLEMENT AGREEMENT

The parties to petition No. 2829/02 (Inocencio Rodríguez), registered with the Inter-American Commission on Human Rights: the petitioners, represented herein by Dr. Tomás Ojea Quintana,

and the Government of the Argentine Republic, as a State party to the American Convention on Human Rights, hereinafter "the Convention," acting in accordance with the express mandates of Articles 99(11) and 126 of the Argentine Constitution, represented by the Secretary of Human Rights of the Ministry of Justice and Human Rights of the Nation, Dr. Eduardo Luis Duhalde, and by the Special Representative for Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, Ambassador Horacio Arturo Méndez Carreras, have the honor to inform the Honorable Inter-American Commission on Human Rights that they have reached a friendly settlement to the petition, whose content is included below, and request that, based on the consensus achieved, this agreement be accepted and the pertinent report adopted, pursuant to Article 49 of the Convention.

I. Background

On August 8, 2002, the petitioner filed a petition on behalf of Mr. Inocencio Rodríguez against the Argentine State. The petitioner asserted that during the last military government, Mr. Rodríguez had been imprisoned from March 26, 1976 through May 22, 1980, accused by the federal justice system of having violated Article 189 bis of the Criminal Code in force at the time. Sometime later, Mr. Rodríguez sought reparations from the competent authorities pursuant to Law No. 24.043, convinced that his circumstances were homologous to the specific cases addressed under the above-cited legislation. However, Mr. Rodríguez' case was denied on grounds it did not satisfy the provisions of said law inasmuch as he had been tried and convicted by the federal justice system.

Having exhausted domestic remedies, Mr. Rodríguez filed a petition with the Inter-American Commission on Human Rights alleging that the facts presented amounted to violations of Articles 8, 25, 21, and 24 of the American Convention on Human Rights.

II. Friendly settlement

After evaluating the petition, the Commission decided to forward it to the Argentine State in a communication dated July 13, 2005. Upon analyzing Mr. Rodríguez' case, and without recognizing the issues of fact and law raised in the petition, the Argentine State, in a communication dated February 1, 2006, expressed its willingness to engage in dialogue to explore the possibility of reaching a friendly settlement.

On March 26, 2006, the representative of the petitioner presented the Argentine Ministry of Foreign Affairs, International Trade, and Worship with a document outlining his expectations for the process. Within that framework, a number of working meetings were held in which it was confirmed from the statements set out in the petition that Mr. Rodríguez had in fact received a prison sentence in the case entitled "Rodríguez Ramón Inocencio et al s/violation Article 189 bis of the Criminal Code and/or violation of law No. 20.840 and/or criminal association," which was tried before the Federal District Court of First Instance of Santa Rosa.

In that respect, although the petitioner's detention was due to a decision handed down by judicial authorities, whereby the normative basis justifying it was excluded from the provisions of Law No. 24.043, it was based on Law No. 20.840, known as the "Law on National Security: Penalties for all types of subversive acts," which was notoriously used by the military dictatorship to legalize the persecution of its political opposition. It was precisely this situation that led the Argentine Congress, through Law No. 23.077, to repeal Articles 1 through 5 of the aforementioned law, once the country returned to democratic governance.

The reparations policy of the Argentine State with respect to state terrorism is nurtured and inspired by international law, whereby States must respect and guarantee the unrestricted and effective enjoyment of human rights. Thus, if human rights are infringed, the State must do everything in its power to investigate the facts, punish those responsible, compensate the victim properly, and take steps to prevent recurrences. So it was precisely a friendly settlement agreement reached through the Commission of Human Rights in Report 28/92, and the Inter-American Court of Human Rights in the case "Birt et al." that led to Decree No. 70/91, and subsequently to laws 24.043 and 24.411, which contain provisions aimed at obtaining reparations for all the victims of the last dictatorship.

However, there are certain scenarios such as the one presented today to the Inter-American System for the Protection of Human Rights, for which there is no provision for obtaining compensation from the State. As indicated by the Inter-American Commission on Human Rights in

Report 28/92 and the Inter-American Court of Human Rights in the cases “Barrios Altos” and “Bulacio”, the States have a legal duty to provide adequate compensation to the victims of human rights violations. It is, moreover, a peacefully accepted principle of international law that a State may not invoke provisions of its domestic law to justify its failure to perform an international obligation. From that point of view, the State considers Mr. Inocencio Rodríguez a victim of political persecution by the military dictatorship that ruled the country with an iron fist from March 24, 1976 through December 10, 1983, by applying a legal provision whose sole purpose was to make any opposition activity a crime, in flagrant violation of the rights and guarantees enshrined in the Convention on Human Rights. Taking this into consideration and in compliance with the international obligations in the field of human rights, the Argentine State considers that the petitioner is entitled to be adequately compensated for the violations of his rights.

III. Measures to be adopted

1. The parties hereby agree that Mr. Inocencio Rodríguez should be granted monetary reparations in accordance with the scheme envisaged in Law No. 24.043, for the whole of the period during which he was detained and not compensated within the framework of file MI No. 345.041/92. The administrative procedure is initiated by filing a complaint with the Secretariat of Human Rights of the Ministry of Justice and Human Rights of the Nation, pursuant to the provisions of said law regarding competence in such matters.

2. The State also undertakes to prepare, through its Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights of the Nation, a draft amendment to Law No. 24.043 in order to include, under conditions deemed appropriate, cases in which a person is deprived of his freedom in accordance with the provisions of Law No. 20.840 as compensable grounds under its regulatory framework. The State also undertakes to make every effort to remit it to the Argentine Congress as soon as possible.

3. The petitioners definitively and irrevocably renounce their right to file any other claim of any kind against the national State, in connection with this case.

IV. Petition

In signing this agreement, the Government of the Argentine Republic and the petitioner express their complete agreement with its content and scope and mutually appreciate the good will evidenced in the negotiation process. To that effect they hereby place on record that this agreement must be approved through a Decree by the National Executive Branch, following which the Inter-American Commission on Human Rights shall be asked to ratify the friendly settlement achieved by adopting the report envisaged in Article 49 of the American Convention on Human Rights.

Buenos Aires, August 16, 2007.

170. On December 3, 2012, the Commission requested information from both parties on compliance with the commitments contained in the friendly settlement agreement signed by the parties.

171. In a note dated January 21, 2013, the State reported that on January 25, 2009, it had adopted Law No. 26.564, amending Law 24.043 and incorporating as beneficiaries thereof “anyone (...) detained, tried, convicted, and/or subject to military justice or courts-martial, in accordance with the provisions of Decree 4161/55, or the State’s Plan on Internal Disruptions, and/or Laws 20.840, 21.322, 21.323, 21.325, 21.264, 21.463, 21.459, and 21.886. Likewise, it reported that the Reparations Laws area of the Secretariat for Human Rights of the Ministry of Justice and Human Rights was reviewing the reparations benefit application file, from the viewpoint of the laws cited, in order to fulfill the commitment undertaken by the Argentine State.

172. The Commission appreciates the information provided by the State and draws attention to the progress made in implementing the friendly settlement agreement, in particular with regard to legislative reform to expand the beneficiaries of reparations laws. At the same time, it urges the parties to provide information on matters pending implementation, in particular with regard to monetary reparations for Inocencio Rodríguez.

173. In view of the foregoing, the Commission concludes that the friendly settlement agreement has been complied with in part. Consequently, the Commission will continue to monitor the points pending implementation.

Caso 11.708, Informe No 20/11, Aníbal Acosta y L. Hirsch (Argentina)

174. In Report No.20/11, dated March 23, 2011, the Commission approved the friendly settlement agreement signed on April 21, 2010, by the parties in case No. 11.708, Aníbal Acosta, Ricardo Luis Hirsch, and Julio César Urien. In summary, the petitioners stated that the alleged victims were members of the military personnel of the School of Mechanics of the Argentine Navy, serving as officers, with the rank of sea cadets, and, because they had participated, on November 17, 1972, in the group that promoted the return of former constitutional president Juan Domingo Perón, were prosecuted in a military trial. Nevertheless, once constitutional order was restored in Argentina, the Congress adopted an amnesty act in 1973, which covered the actions attributed to the alleged victims and closed the summary military proceeding in which they were defendants, with no verdict reached. The petitioners added that, despite this, the Executive, by decree of July 1974, ordered the compulsory discharge of the alleged victims, on the basis of the 1972 charges, for which they had already been amnestied. The petitioners add that the alleged victims requested that this administrative ruling be vacated, which motion was denied despite jurisprudence on an identical case, and that the courts had rejected their claims on procedural grounds without ruling on the merits. The petitioners maintained that the alleged victims had been subjected to violations of the rights protected by the Convention in Articles 8.1, 24, and 25, in relation to the obligation to respect, set forth in Article 1.1 of that treaty.

175. On April 21, 2010, the petitioners and the representatives of the Government of the Argentine Republic signed an agreement, the text of which reads as follows:

FRIENDLY SETTLEMENT AGREEMENT

In the Autonomous City of Buenos Aires, Argentine Republic, on April 21, 2010, the parties to Case N° 11,708, ACOSTA, HIRSCH, URIEN, ACTIS vs. ARGENTINE REPUBLIC, registered by the Inter-American Commission on Human Rights, represented in this action by Dr. Tomás OJEA QUINTANA, for the PETITIONERS, and by Dr. Luis H. ALLEN, Assistant National Secretary for the Protection of Human Rights, Dr. Andrea GUALDE, National Director of Legal Affairs in the area of Human Rights, Dr. Jorge Nelson CARDOZO, Cabinet Adviser to the FOREIGN MINISTER, Minister Eduardo ACEVEDO, in charge of the General Directorate of Human Rights of the Ministry of Foreign Affairs, International Trade, and Worship, and Dr. A. Javier SALGADO, Director of Human Rights (International Contentious Matters) of the Ministry of Foreign Affairs, International Trade, and Worship, for the Argentine State, in its capacity as state party to the American Convention on Human Rights, acting by express mandate of Article 99, section 11, of the Argentine Constitution, agree to enter into this FRIENDLY SETTLEMENT AGREEMENT, whose conclusion and content they have the honor to convey to the honorable INTER-AMERICAN COMMISSION ON HUMAN RIGHTS:

I. Background to the complaint to the Inter-American Commission on Human Rights

Mr. Julio URIEN, Mr. Aníbal Amilcar ACOSTA, and Mr. Ricardo Luis HIRSCH submitted a complaint against the Argentine State, alleging violation of the rights recognized in Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention on Human Rights, registered under no. 11,708. Mr. Mario ACTIS later joined the petition under the same terms.

As stated in the petition, in 1972, the petitioners served as inspectors at the Navy School of Mechanics, as subordinate officers, with the rank of sea cadets. On November 17 of that year, it was announced that the former constitutional president, General Juan Domingo Perón, who had been in exile since September 1955, would return to the Argentine Republic. The military government, headed by General Lieutenant Lanusse, prevented groups of citizens who intended to greet their leader from entering the Ezeiza International Airport. The popular fervor was not confined to civilians. Young members of the military, including the petitioners, launched an uprising that led to their arrest and subsequent prosecution under military jurisdiction on the charge of insurrection.

After constitutional order was restored in the Argentine Republic, in 1973, the Argentine Congress adopted Act No. 20,508, which declared an amnesty that covered the actions attributed to the petitioners. The Supreme Council of the Armed Forces decided to apply the provisions of that law to the petitioners, considering that the events had been politically motivated.

Although Act No. 20,508 prohibited the adoption of any decision stemming directly or indirectly from the actions to which the amnesty applied, the petitioners were given a compulsory discharge through Decree No. 281 on July 24, 1974, effective July 1 of that year.

From the attested copy of the petition, in the light of the historical events described, and from an analysis of the personnel files of the petitioners, it was inferred that the discharge of former sea cadets Urien, Acosta, Hirsch, and Actis was ordered for political reasons in the context of the institutional turmoil in which the Argentine nation was immersed.

II. Friendly settlement process

By note dated July 16, 1997, the Inter-American Commission on Human Rights, considering the requirements and characteristics of this case, placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, as provided in Article 48.1.f of the American Convention on Human Rights.

The representatives of the petitioners and of the Government of the Argentine Republic jointly conveyed to the Inter-American Commission on Human Rights their interest in that proposal and requested that an IACHR representative be appointed to help, through mediation, to reach a settlement based on respect for the human rights recognized in the American Convention.

In response to that request, the IACHR proposed that then-Commission member Robert K. Goldman assist in that process.

III. Measures adopted by the Argentine State

In the context of the agreed upon dialogue arrange the processing of this case, the Argentine State took a number of measures to address the situation reported by the petitioners.

Accordingly, 33 years after the events reported, on November 17, 2005, the Argentine president signed Decree No. 1404, providing as follows:

- A. To nullify the compulsory discharge of the petitioners from the Argentine Navy, as of July 1, 1974, and to reinstate them under compulsory retirement status;
- B. To grant the petitioners the rank of frigate lieutenant under effective compulsory retirement status, as of July 16, 1974;
- C. To grant the petitioners retirement pay based on 35 years of basic military service; and
- D. To recognize the pay due to the petitioners as of five years prior to the date of issuance of the decree.

In application of the national government policy on the preservation of the historical record, and as part of the reparations measures adopted by the Argentine State in this case, the signature of Decree No. 1404 was performed in a public ceremony attended by the Argentine president and the three chiefs of the armed forces, at which the petitioners recalled the historical events in the context of which the reported violations took place.

The parties agree that the measures ordered by Presidential Decree No. 1404 fully satisfy the claims lodged with the Inter-American Commission on Human Rights and express their full agreement with the content and scope of the settlement.

Therefore, the petitioners state that they renounce, definitively and irrevocably, any other claim of any nature against the Argentine State in relation to this case.

IV. Petition

The Government of the Argentine Republic and the petitioners sign this agreement and express their appreciation to one another for the good will shown in the negotiation process.

Accordingly, the parties request the Inter-American Commission on Human Rights to ratify this friendly settlement agreement by adopting the report stipulated in Article 49 of the American Convention on Human Rights.

176. On December 5, 2012, the Commission requested information from both parties on compliance with the commitments contained in the friendly settlement agreement signed by the parties.

177. The Commission notes that, by Presidential Decree No. 1404, signed at a public ceremony presided over by the President of the Argentine Republic at which he recalled the events that gave rise to the petition, the State adopted a set of measures designed to address the reported situation. First of all, it nullified the compulsory discharge of the petitioners from the Argentine Navy, as of July 1, 1974, and ordered their reinstatement under compulsory retirement status. Likewise, it accorded the petitioners the rank of frigate lieutenant under effective compulsory retirement status, as of July 16, 1974.

178. The Commission appreciates the measures taken by the Argentine State to repair the damage caused by the facts reported. However, the Commission does not have any information to date on compliance with points C and D of the aforementioned decree, with regard to retirement assets and pay due to the petitioners.

179. In view of the foregoing, the Commission concludes that the friendly settlement agreement has been complied with in part. Consequently, the Commission will continue to monitor the points pending implementation.

Case No 11.833, Report No. 21/11, Ricardo Domingo Monterisi (Argentina)

180. In Report No. 21/11, dated March 23, 2011, the Commission adopted a friendly settlement agreement signed by the parties on October 27, 2010; in the case of Ricardo Domingo Monterisi. In summary, the petitioner maintain that he was retained by the Central Bank of the Republic of Argentina between 1981 and 1988 to provide professional services as legal counsel to Banco Patagonico, to represent it in all trials to come, because Banco Patagónico was in bankruptcy process. Accordingly, he brought three lawsuits seeking to have the Central Bank to be found obligated to pay his fees. He noted that the first one of these cases concluded on May 6 with a judgment of the Supreme Court of Justice of the Nation (hereinafter the "Supreme Court" or "Federal Supreme Court"). While the Supreme Court found in this judgment that the Central Bank was responsible for paying his fees, it also found that Law 24.144 could be applied retroactively in the enforcement of judgment stage of the proceedings, which would preclude him from receiving payment for his professional services. According to the petitioner, said law was also applied in the two other lawsuits, wherein the courts found that the Central Bank did not have to pay the fees. The petitioner argued that the principles of an impartial and independent judiciary were disregarded in these decisions.

181. On October 27, 2010, the petitioner and representatives of the Republic of Argentine executed a friendly settlement agreement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT PETITION N° 11.833 (RICARDO DOMINGO MONTERISI)

The parties in petition N° 11.833 of the IACHR registry - Ricardo Domingo Monterisi - : The petitioner, Dr. Ricardo Domingo Monterisi, and the Government of the Republic of Argentina, in its capacity as State party to the American Convention on Human Rights, hereinafter the "Convention", acting under express mandate of Article 99 section 11 of the Constitution of the Argentine Nation, represented by Dr. Andrea Gualde, National Director of Legal Affairs relating to Human Rights of the Secretariat of Human Rights of the Ministry of Justice, Security and Human Rights of the Nation and by Minister Eduardo Acevedo Diaz, head of the General Directorate of Human Rights of the Foreign Ministry of Argentina, are honored to inform the Illustrious Inter-

American Commission on Human Rights that a friendly settlement agreement on the petition has been reached, whose content is as set forth hereunder, requesting that in light of the consensus reached, it should be accepted and the resulting report, as provided in Article 49 of the Convention, should be adopted.

I. Background

On October 27, 1997, Dr. Ricardo Domingo Monterisi filed a petition with the Inter-American Commission on Human Rights against the State of Argentina alleging violations of several rights recognized in the American Convention on Human Rights. Essentially, the petitioner held the State internationally responsible for violation of due process of the law, which is protected by Article 8 of the aforementioned Charter, inasmuch as it provides for the universal principle that every person has the right to be heard by an impartial and independent judge for the determination of his rights of a civil and/or any other nature. The petitioner further alleged that the facts might constitute a violation of Article 21 (right to property), 25 (judicial protection), and 11 (respect for honor and dignity).

The petitioner asserted that said violation of the right to an impartial and independent judge had been committed in the adjudication of several cases before the Supreme Court of the Nation and that he filed a petition in an international forum because of the actions of several sitting justices of the Federal [Supreme] Court at the time in the notorious Banco Patagonico S.A. Metalurgica Skay case that was being heard before the Federal [Supreme] Court, and in which Dr. Monterisi appeared on the side of one party and the Central Bank of the Republic of Argentina appeared as a party on the other side.

The claimant argued that after the judgment in the aforementioned case was handed down denying the federal appeal filed by the CBRA, some of the justices of the Court had been pressured by the head of the Ministry of Economy at the time to change the above-cited judgment issued on June 8, 1993, to one more favorable to the interests of the Central Bank. The petitioner charged in his complaint that the final judgment, that is, the judgment that had been signed by all the justices of the Court and had become part of the record and formalized was removed and replaced with another one, which the local press ironically labeled as the "*recurso de arrancatoria*" or 'snatch away appeal'. Justices Bellucio and Petracchi brought criminal charges for the serious crime of the removal of the appeal, but the case strangely ended up being dismissed. Days later, then Justice of the Court Dr. Antonio Goggiano was investigated by an impeachment committee of the Senate of the Nation and, by only one vote, the Committee voted to deny the motion to bring impeachment proceedings against him.

The petitioner emphasized that the affair of the "snatch away appeal" made it clear that the Court of that time, with its so-called "automatic majority", blatantly served at the pleasure of those holding political office who governed the country prior to May 25, 2003, as was the belief of most of the media and the literature appearing as documentary evidence along with the petition and also of accomplished Argentinean jurists.

In short, the petition alleges that this very serious crime undermined the very principle that every person has the right to a hearing before an independent and impartial judge, as the axis around which the entire framework of fair trial rights revolves, as is the case wherever there is the rule of law and which is guarded with particular zeal by the provisions of the American Convention on Human Rights. The petition also emphasized that such a scandal should have at least led to ex Justice Antonio Boggiano recusing himself from hearing the subsequent cases between the petitioner and the CBRA, which came before the Court and dealt with the same issue as in "Metalurgica Skay", after the "snatched away appeal" affair took place, but this judge did not recuse himself from the case on his own even out of a sense of decorum and propriety, which prompted the petitioner to file the petition with the Illustrious Inter-American Commission of Human Rights.

II. Friendly Settlement Process

Without prejudice to the positions taken by the parties in the context of the legal dispute in which questions of admissibility and the merits were examined, the State and the petitioner decided to engage in discussions aimed at reaching a friendly settlement. In this context, the State and the petitioner reviewed the different cases involved in the petition in light of the general situation facing

the administration of justice, particularly in the Supreme Court of Justice of the Nation.

From this perspective, an examination of the role played by the Supreme Court of Justice of the Nation at that point in history, when it was made up of a majority of justices who were suspected of not having faithfully performed their duties as such, nor did they do so with the independence and impartiality that is required under applicable international standards, and which subsequently gave rise to impeachment proceedings being brought against several of its members, makes it possible to conclude that the petitioner, at the time the petition was filed, could have had reasonable doubts as to whether or not the State properly fulfilled its duties under the obligations emanating from Articles 8 and 25 of the American Convention of Human Rights in the court cases identified in the formal petition before the illustrious Inter-American Commission on Human Rights.

Nonetheless, the petitioner notes that the measures taken by the Argentinean State in the administration of justice as of May 25, 2003 and henceforth, particularly the process of turnover of the members of the highest court of the Republic and instituting impeachment proceedings against and the subsequent removal for improper performance of duties of justices of the Supreme Court of the Nation, constituted an adequate response to the subject of the petition, considering himself to have received full satisfaction and redress for the possible violations of fair trial rights and effective judicial protection that may have been committed in the aforementioned cases. In light of this, the petitioner waives any other potential reparation arising from this petition.

Furthermore, the petitioner appreciates the self-imposed limitations on the appointment of justices to the Supreme Court of the Nation, implemented by the National Executive Branch under decree 222/03, which he considers positive proof of the political will of the Argentinean government to properly fulfill the international obligations it pledged to fulfill in this subject matter.

III. Conclusions

The parties enter into this agreement recognizing each other's good will and positive approach throughout the whole friendly settlement process, note their full agreement with its content and scope and express their gratitude to the Illustrious Inter-American Court on Human Rights for its good offices and ongoing commitment.

Lastly, the parties request the Illustrious Commission to promptly approve the present agreement, as provided by Article 49 of the American Convention on Human Rights, and for the Ministry of Foreign Relations of Argentina to be directed to implement the appropriate measures for that purpose.

In witness of their acquiescence, four copies of this same document are signed, in the City of Washington DC on October 27, 2010."

182. In the mentioned Report No 18/10, the Commission noted that the petitioner recognizes in the agreement particular actions of the State as full reparation of his claims. The Commission considered that the petitioner was fully satisfied and hereby drops his claim before the Commission. The Commission also appreciated the efforts by the parties in reaching the settlement, and declared that it was compatible with the object and purpose of the Convention.

183. Based on the mentioned above, the Commission concludes that the State has fully complied with the friendly settlement agreement.

Caso 12.532, Informe No 84/11, Penitenciarías de Mendoza (Argentina)

184. In Report No. 84/11, dated July 21, 2011, the Commission approved the friendly settlement agreement signed by the parties on October 12, 2007, in case No. 12.532, Inmates of the Penitentiary of Mendoza. The Commission received a petition lodged by 200 inmates of Cell Block 8 of the Penitentiary of Mendoza alleging responsibility of the Republic of Argentina for violation of the right of the inmates to their physical integrity, health and life. In summary, the petitioners claimed that approximately 2,400 of them were allegedly being housed in a prison with a maximum capacity of 600 inmates, where 4 to 5 inmates were living in a single 3 by 2 square-meter cell. They also alleged that they lack toilets, showers, enough food and adequate medical care. They reported that, many times,

confinement time in such conditions is as long as twenty hours per day, with only a total of four non-continuous hours permitted outside of the cell. They claimed that inmates must relieve themselves into a nylon bag without any privacy inside of their cell in front of the rest of their cellmates. They further alleged that they lack water to bathe with and must resort to using a hose for washing and that many of them suffer scabies and other diseases as a result of unsanitary conditions. As a result of the overcrowding, the petitioners denounced a series of deaths of inmates and other incidents in which and indefinite number of inmates were injured; however, the authorities have not cleared up any of the circumstances in which this events happened. Moreover, the petitioners alleged that the inmates did not have access to medical treatment, nor to any kind of work or activity aimed to their rehabilitation; additionally they cannot attend to school or the religious services; and, there is no separation between convicted prisoners and prisoners on remand.

185. On October 12, 2007, the petitioners and the representatives of the Government of the Argentine Republic signed an agreement, the text of which reads as follows:

FRIENDLY SETTLEMENT AGREEMENT

The parties to Case N° 12.532 of the registry of the Inter-American Commission on Human Rights – Inmates of the Penitentiaries of Mendoza – the petitioners, represented at this meeting by Dr. Carlos Varela Álvarez, and the Government of Argentina, as a State party to the American Convention on Human Rights, hereinafter “the Convention”, acting under the express mandate of Article 99 section 11 and Article 126 of the National Constitution of Argentina, and as provided under Article 28 of the Convention, represented at this proceeding by the Sub-Secretary for Penitentiary Affairs of the National Ministry of Justice and Human Rights, Dr. Federico Horacio Ramos; by the National Director of International Affairs of the Secretariat for Human Rights of the Nation, Dr. Andrea Gladys Gualde; and by the Advisor to the Office of the Minister of Foreign Relations, International Trade and Worship, Dr. Jorge Nelson Cardozo, are honored to inform the Illustrious Inter-American Commission on Human Rights that a friendly settlement agreement on the petition has been reached, the content of which is set forth hereunder, requesting that, in view of the consensus reached, it be accepted and that the consequent report be adopted as provided by Article 49 of the Convention, in accordance with the terms and conditions specified in this document.

I.- Responsibility of the Province of Mendoza in the Case

1. By means of the agreement signed in the city of Mendoza on August 28, 2007, the Government of the Province of Mendoza has declared that “...in view of the evidence that exists regarding the facts that triggered the request for the adoption of precautionary measures issued by the Inter-American Commission on Human Rights on the date of August 3, 2004, and the subsequent provisional measures issued by the Inter-American Court of Human Rights on the date of November 22, 2004, in the “case of the Penitentiaries of Mendoza”, and after considering the conclusions at which the Illustrious Inter-American Commission arrived in admissibility report No 70/05 regarding the case referenced in the previous paragraph, in which it held that the case “...is admissible pursuant to Article 46 and 47 of the American Convention, with regard to alleged violations of the right to life, humane treatment and health, as set forth in Articles 4 and 5 of the American Convention, in reference to the conditions of detention of the inmates of the penitentiary of Mendoza” as well as with regard to “...possible application of Article 1, 2, 7 and 25 of the Convention in connection with the obligation of the State of Argentina to ensure personal liberty, respect rights, adopt provisions of domestic law and ensure that the competent authorities enforce any remedy when granted” and other compelling evidence that was introduced during the friendly settlement procedure, particularly as of implementation of the cooperation agreement, whereby the National Ministry of Justice and Human Rights dispatched an inspection team to conduct a field inspection, the Government of the Province of Mendoza agrees that there is sufficient evidence to attribute objective responsibility to the Province of Mendoza in the case, and therefore has decided to accept responsibility for the facts and the legal consequences thereof, pursuant to the conclusions of the Inter-American Commission of Human Rights as cited above.”

2. Mindful of the foregoing, and in view of the international nature of the above-recognized human rights violations, which took place under the jurisdiction of the Province of Mendoza, the Government of the Republic of Argentina states that it has no objection to endorsing said recognition in the international sphere in its status as a State party to the Convention and in accordance with the constitutional provisions in the above-cited paragraph, requesting the Illustrious Commission to hereby consider as recognized the acts of violation taking place in said jurisdiction as set forth in section 1.

II.- Measures of Pecuniary Reparation:

The Government of the Republic of Argentina and the Petitioners request the Illustrious Inter-American Commission to accept the commitments taken on by the Government of the Province of Mendoza through the agreement cited in section 1.1, relating to the measures of pecuniary reparation which appear hereunder verbatim:

"1. The parties agree to create an "ad-hoc" Arbitration Tribunal, in order for it do determine the amount of pecuniary reparation owed to the victims involved in the case, in accordance with the rights for which a violation has been recognized in section 1 of this agreement, in keeping with any international standards that may be applicable.

2. The Tribunal shall be composed of three independent experts, of recognized authority on the subject of human rights and of the highest moral standing, one appointed by the petitioners, the second nominated by the State, and the third nominated by the two experts who were nominated by the parties. The Tribunal must be fully appointed, no later than 30 days following ratification by the legislature of the Provincial Executive Decree, whereby this agreement is approved.

3. The procedure to be followed shall be defined by mutual agreement between the parties, the content of which shall be entered into a written record, a copy of which shall be filed with the Inter-American Commission on Human Rights through the Ministry of Foreign Relations, International Trade and Worship. The parties shall appoint, for this purpose, a representative to participate in the deliberations on the procedure.

4. The arbitration decision shall be final and unappealable. It should include the amount and form of pecuniary reparation agreed upon, the beneficiaries thereof, and the determination of any costs and fees that may be appropriate in both proceedings held before the international body and arbitration body, and must be submitted to the Inter-American Commission on Human Rights in the context of the follow-up on agreement compliance, in order to verify that it has conformed to applicable international standards. The amounts recognized in the award decision shall not be subject to attachment and shall be exempt from payment of any existing or future tax, levy or fee.

5. The petitioners undertake to drop any civil actions brought before local courts with respect to persons who benefit from the reparation determined by the ad-hoc Arbitration Tribunal, and definitively and irrevocably waive any right to bring any other claim of a pecuniary nature against the Provincial State and/or against the National State with regard to the instant case."

III. Measures of non-pecuniary reparation

The Government of the Republic of Argentina requests the Illustrious Inter-American Commission to accept the commitments undertaken by the Government of the Province of Mendoza through the agreement cited above in section 1.1, relating to measures of non-pecuniary reparation which are copied verbatim hereunder:

1. Normative measures:

a) Introduce a bill before the Legislature of the Province of Mendoza to create a local prevention agency within the framework of the Optional Protocol of the Convention against Torture and other Cruel Inhumane and Degrading Treatment or Punishment, and take the necessary steps to achieve the approval thereof. Said agency shall meet the standards of independence and autonomy prescribed in said Protocol, and should eventually be adapted in a timely fashion to meet the established criteria, when the corresponding national mechanism is approved. A period of 90 days from the date of the signing of this document has been set for this purpose;

- b) Introduce a bill before the Legislature of the Province of Mendoza to create the office of the Human Rights Ombudsman of Mendoza, whose responsibility shall be the defense of the human rights of the entire population (right to health, education, security, development, a healthy environment, freedom of information and communication, of consumer and users, etc.) and take the necessary steps to achieve the approval thereof.
- c) Introduce a bill before the Legislature of the Province of Mendoza, within a maximum period of 90 days, to create an office of a Special Prosecutor to benefit persons deprived of liberty, and take the necessary steps to achieve the approval thereof.
- d) Introduce a bill before the Legislature of the Province of Mendoza, within a maximum period of 90 days, to create a government Office of the Public Defender to litigate before chambers of criminal sentence execution of the courts, and to take the necessary steps to achieve the approval thereof.
- e) Take any measures that may be necessary to change the hierarchical level of the Office of Coordination for Human Rights of the Ministry of the Interior elevating it to a Directorate or Sub-Secretariat.

2. Other Measures of Satisfaction:

- a) The Government of the Province of Mendoza shall take the necessary measures, within a maximum period of 90 days, to post a notice of the measures requested by the IACHR and the IA Court of Human Rights regarding the prisons of Mendoza, which shall be placed at the entrance to the Provincial Penitentiary, as a reminder;
- b) The Government of the Province of Mendoza undertakes to carry out, within the scope of its authority, all necessary measures for the continuation of the investigations into all of the human rights violations that gave rise to the provisional measures issued by the Inter-American Court of Human Rights. A report on the outcome of said measures, as well as measures taken to determine responsibility emanating from said violations, shall be submitted by the Government of the Province of Mendoza within the framework of follow-up on agreement compliance. The media shall disseminate the outcome of said investigations.

C. Plan of Action and Budget

- 1. The Government of the Province of Mendoza undertakes to draw up, in conjunction with the National State and the petitioners, within a maximum period of 90 days, a Plan of Action on Penitentiary Policy to aid in setting short, medium and long-term public policies with an appropriate budget to make implementation possible. Said plan shall include, at a minimum, the following points:
 - a) Indicate measures that shall be implemented for the assistance and custody of young adults deprived of their liberty in the Province of Mendoza by staff specially trained for these duties. Additionally, every member of that population must be ensured education, recreation and access to cultural and athletic activities, adequate medical/psychological assistance and other measures geared towards adequate social integration and job placement;
 - b) In light of the conditions of detention of the inmates at the penitentiaries of Mendoza, request administrative and judicial authorities to review the disciplinary files or reports of the Criminological Technical Agency and the Correctional Council, which affect implementation of the benefits set forth in the Rules on the Progressive Application of Punishments. Additionally, the operation of the Criminological Technical Agency and the Correctional Council should be scrutinized in order to optimize their performance;
 - c) Improve the health-care service of the Provincial Penitentiary in collaboration with the Ministry of Health and make the necessary investments for effective provision of the service to every person deprived of liberty;
 - d) Ensure access to a job for all inmates in the Prisons of Mendoza who should so request one;

- e) Ensure access and adequate service at the Courts of Criminal Sentence Execution, for all persons who have a legitimate interest in the Execution of the Punishment of the inmates in the Prisons of Mendoza. Especially, unimpeded access for attorneys who can freely examine the records of the proceedings being heard in said courts;
- f) Endeavor to provide adequate training and professional instruction to Penitentiary Staff.

D. Ratification and dissemination:

Let the record reflect that this agreement shall be approved by Decree of the Executive Branch of Government of the Province of Mendoza, and subsequently submitted for ratification by the legislature. After said formalities are completed, the Government of the Province of Mendoza undertakes to submit this agreement to the Ministry of Foreign Relations, International Trade and Worship, for evaluation and ratification thereof at the seat of the international body, thus requesting it be submitted to the Inter-American Commission on Human Rights for the purposes provided by Article 49 of the American Convention on Human Rights.

Moreover, the parties agree to ensure the confidentiality of the terms and conditions agreed to herein until such time as the National State ratifies the instant agreement by forwarding it to the Illustrious Inter-American Commission of Human Rights as provided in the previous paragraph.

Notwithstanding, the Government of the Province of Mendoza and the petitioners agree that the report produced by the Monitoring Commission should be disseminated in two provincial circulation newspapers and one national circulation newspaper.

Lastly, the parties agree to keep open a space of dialogue and to set up a Monitoring Commission in order to follow-up on compliance with the commitments taken on under this agreement, including the normative and other measures agreed upon, in which framework the parties may propose other measures of action that could aid in better fulfilling the purpose and objective of the instant agreement.”

IV. Final Request

The Government of the Republic of Argentina and the Petitioners sign the instant agreement into effect, state their full agreement with its content and scope, appreciate the good will displayed by each other during the friendly settlement procedure. Additionally, and in light of the provisions of section II.D of the agreement to which reference is made in section L1, approved by Decree of the Executive Branch of the Province of Mendoza N° 2740/07 dated October 12, 2007, the record hereby reflects that the instant agreement is signed ad-referendum to ratification of said decree by the Legislative Branch of the Province, and to completion of the required formalities in the sphere of the National Executive Branch. Once that has taken place, the parties agree that, through the Ministry of Foreign Relations, International Trade and Worship, the Illustrious Inter-American Commission on Human Rights is formally requested to approve the instant agreement and adopt the report pursuant to Article 49 of the American Convention on Human Rights.

Washington, DC, October 12, 2007.

Annex I to the Agreement of August 28, 2007

Deaths at the Penitentiary of Mendoza, which are the subject of claims

01) ANDRADA MOLFA, Mario Guillermo: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4249- P-04. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Cándida Graciela MOLFA (mother)

02) FALCON PORRAS, José Alejo: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4349- P-04. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Alicia Cruz FALCON (sister).

- 03) GUALPA, Javier Antonio: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4349- P-04. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Norma Lila GUALPA (mother).
- 04) REALES REYNOSO, Sergio Darío: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4349- P-04. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Rosa Aurelia REYNOSO (mother).
- 05) VILLAROEL MURÚA, Carlos Marcelo: Deceased on May 1, 2004 by suffocation at Granja Penal. Ministry of Justice and Security Administrative File No 4349- P-04. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.375 of the First Civil Chamber of Mendoza. Plaintiff: Manuel VILLAROEL (father).
- 06) SAEZ, Ramón Pedro: Deceased at Lagomaggiore hospital on June 4, 2004, after being hospitalized for one month for burns sustained in the fire at Granja Penal de Lavalle. Criminal Case: No: 106032, 106045 and 106054 Third Chamber of the Investigating Magistrate. Civil Claim: No 163.566, of the First Civil Chamber of Mendoza. Plaintiffs: Rosa Antonia SAEZ (mother); Julio César SAEZ (son); Tomás Agustín SAEZ (son); Ramón Emiliano SAEZ (son).
- 07) CASTRO IRAZOQUE, Ángel Patricio: Murdered on September 27, 2004 with puncture-cutting implements. Ministry of Justice and Security Administrative File No 1403- P-04. Criminal Case: Indictment No: 4759/04, 6th Police Precinct, Second Chamber of the Investigating Magistrate. Civil Claim: No 97.524 of the Tenth Civil Chamber of Mendoza. Plaintiff: María Argentina IRAZOQUE (mother) and Heriberto Dionisio CASTRO (father).
- 08) CAMARGO QUIROGA, Alejandro Ceferino: Murdered on October 30, 2004 with puncture-cutting implements inside of cell block No 11 of the Provincial Penitentiary. Ministry of Justice and Security Administrative File No 2818-P-04, Criminal Case: Indictment No. 6397/04, 6th Police Precinct, no. P-78757/04, Fourth Chamber of the Investigating Magistrate, Civil Case No. 15.2460, Eleventh Civil Chamber of Mendoza. Plaintiff: Teresa QUIROGA (Madre).
- 09) SALINAS ARES, Sergio Norberto: Murdered on December 4, 2004 with puncture-cutting implements and cut up into pieces inside Cell Block No. 7. Criminal Case Third Chamber of Criminal Matters of Mendoza. Civil Case: No. 115.187, Thirteenth Civil Chamber of Mendoza. Plaintiffs: Norberto Ángel SALINAS and Julia Rosario ARES.
- 10) CAMARGO QUIROGA Marcelo Javier: Wounded on November 21, 2004, with puncture-cutting implements in Cell Block 13 of the Provincial Penitentiary and passed away at the Lagomaggiore hospital on October 30, 2004. Criminal Case: No. P-84858-04, Office of the General Secretariat NN, Civil Case: 152,460, Eleventh Civil Chamber of Mendoza; Plaintiffs: Mónica Beatriz LUCERO on behalf of his minor daughter Priscila Abigail CAMARGO LUCERO and Teresa QUIROGA (mother).-
- 11) Luis CUELLAR VASQUEZ Murdered on March 17, 2005. Criminal Case: Prosecutors Unit for Complex Crimes. Civil Case: 21,5519, 20th Civil Chamber of Mendoza. Plaintiff: Ella Brualia VASQUEZ (mother).
- 12) GOMEZ GONZALEZ, Gerardo: (39 year old): Murdered and mutilated on June 17, 2006. Criminal Case: 159801, Prosecutors Unit for Complex Crimes. Civil Case: nº 110,752, 12th Civil Chamber of Mendoza. Plaintiffs: Not recognized minor son, filiation under examination.
- 13) FERRANTI LUCERO, Diego Ceferino (32 years of age): Murdered and mutilated on June 17, 2006. Criminal Case: P- 59801, Prosecutors Unit for Complex Crimes. Civil Case: nº 82,744, 7th Civil Chamber of Mendoza. Plaintiffs: Mirta Yolanda LUCERO (mother) and a minor son without legal representation.
- 14) HERNANDEZ ALVARADO, Héctor Gustavo: After becoming intoxicated on "Chimichuqui", he died from lack of medical care inside of the Penitentiary of Mendoza in September of 2006, Criminal Case: P- 107889, Prosecutors Unit for Complex Crimes. Civil Case: Plaintiff: ESPINOSA, Vanesa.

15) MINATI, Federico Alberto (22 years of age): Murdered on February 1, 2006 inside of Cell Block 13 of the Provincial Penitentiary, with puncture-cutting implements. Criminal Case: P- 794.6106, Prosecutors Unit for Complex Crimes. Civil Case: Plaintiffs: Víctor Hugo MINATI (brother), Andrea Silva MINATI (sister), Lorena Mónica MINATI (sister), Gustavo MINATI and Daniel Orlando SUAREZ (stepbrothers).

16) MANRIQUE FLORES, Sergio Alberto (28 years of age): Murdered on March 12, 2007, with puncture-cutting implements inside of Cell Block 10 of the Penitentiary of Mendoza. Criminal Case: n° 20031107, of the Prosecutors Unit for Complex Crimes, "F.c RIVAS SOSA, Mario Alberto". Civil Case: Plaintiffs: Marina ABREGO, on behalf of their minor children Marcelo Ezequiel ABREGO (filiation), Priscila Daiana ABREGO (filiation); Sheila Milagros Nicol ABREGO (filiation) Matías Emanuel MANRIQUE, Sara Nieves Flores (mother) y Miguel Ángel MANRIQUE (father).

17) CESAR NICOLAS VIDELA FERNANDEZ: Was murdered on December 8, 2006, inside of Cell Block 4 of the Penitentiary by a stabbing in his back. Criminal Case: P- 131268106, Prosecutors Unit for Complex Crimes. Civil Case: Plaintiffs: Ricardo VIDELA (father) and Stella Maris FERNANDEZ.

18) VIDELA FERNANDEZ, Ricardo. David: Was found hanging in his cell of Unit 1.1 of the Penitentiary on June 21, 2005. Criminal Case: P-468241051A, Prosecutor's Unit, n° 1 of the Capital. Civil Case: Plaintiffs: Ricardo VIDELA (father) and Stella Maris FERNANDEZ,

ANNEX II to the Agreement of August 28, 2007

Persons Injured at the Penitentiary of Mendoza filing claims

1) **RUARTE SORIA, Diego Hernán:** Seriously injured on March 16, 2004, along with Esteban Apolinario GARCIA CONTRERAS (he subsequently passed away) and was transferred to Lagomaggiore Hospital due to the complexity of his injuries. Criminal Case: n° P-19773104, Titled "F.c/NN p/ Av. Homicidio de GARCIA CONTRERA, Esteban Apolinario", 10th Chamber of the Investigating Magistrate. Civil Case: no153.117, of the 11th Civil Chamber of Mendoza. Plaintiffs: As a result of the death subsequent to the filing of civil claim, Maria Isabel SORIA (mother) is the claimant, as his heir.

2) **HERRERÍA Jose Edmundo:** Seriously injured on June 6, 2003, with a puncture-cutting implement in the thorax when was housed in Cell Block 9 of the Provincial Penitentiary. Criminal Case n° 178.693/1: case titled: "F.c/ PEREZ, Julio; DIAZ, Mauricio; BARROSO, Sergio y CANTO/Italo p/Lesiones Graves a Edmundo José HERRERIA" in the First Chamber of the Investigating Magistrate of the Province. Civil Case: n° .83.541, titled "HERRERIA, Jose Edmundo CIPROVINCIA DE -MENDOZA S/ Daños y Perjuicios. Damages sought: \$ 40.000.

3) **VERA FUNES Miguel Gustavo:** Seriously injured on December 12, 2005, with puncture-cutting implements at Penitentiary Unit n° 4, Granja Penal de Gustavo André Lavalle. Criminal Case: Proceeding N° P-92.931105 of the Office of the Prosecutor of Investigating Magistrate N° 18 –Prosecutors Complex Crimes Unit. Civil Case: 70% disability.

4) **GUIRALDES ECHEGARAI, Sergio Héctor:** Seriously injured on October 3, 2006 inside of the Penitentiary, with a "chuzá" [makeshift knife] to the face. He was transferred to Lagomaggiore Hospital and then to Central Hospital where he was diagnosed with meningitis and was kept in the hospital until December 28 of that same year. Criminal Case: Civil Case.

5) **VILLAREAL DOMINGUEZ, José Lucas.** Entered the Penitentiary on April 7, 2007 and was raped on April 10 and 11, that same day he was seriously injured with a puncturing implement, loosing his sight in the left eye. Criminal Case: Complaint at Prosecutors Unit No 1 of the Capital of Mendoza.

6) **ORELLANO SILVA, Vicente Raúl:** Because of an infection, a probe was placed in his bladder, and due to deficient medical care, his urethra sustained necrosis since it was in that state for 14 months. In July of 2006, he was injured with a puncturing implement in one of his eyes injuring his brain and causing an infection. Criminal Case:

Civil Case:

7) MOLINA VALDEZ, Hernán Adrián: Was deprived of his liberty in September of 2003 until July 5, 2007, when he was released. He was diagnosed with alopecia (a disease of the skin), as a psychosomatic manifestation from the conditions of his detention, according to reports from prison psychologists, which appear in case nº 7067-F of the First Criminal Chamber. Initially, he was denied conditional release due to a minor punishment he received in February of 2006, which was vacated a year later by Judge Eduardo Mthus, based on the argument that his right to a defense and due process had been violated. His release was finally granted in July of 2007.

8) IDEME BASAEZ: Inmate who sustained serious injuries when he fell from scaffolding while performing repair duties of inside the Penitentiary.

186. On December 5, 2012, the Commission requested information from both parties on compliance with the commitments contained in the friendly settlement agreement signed by the parties.

Measures of Pecuniary Reparation:

The parties agree to set up an "ad-hoc" Arbitration Tribunal, to determine the amount of pecuniary reparation owed to the victims involved in the case:

187. As indicated in Report No. 84/11, the friendly settlement agreement was approved by means of Decree No. 2740, in which State responsibility was recognized and the Law ratifying the agreement was approved on September 16, 2008 and published on October 17, 2008. In keeping with the aforementioned agreement, the Ad-Hoc Tribunal was created on December 15, 2008. Said Tribunal issued its arbitral award judgment on November 29, 2010. The Tribunal examined the 6 deaths (numbered 1 to 6 in the agreement), which took place at the prison of Lavalle as a result of the fire occurring on May 1, 2004, and set a total amount of \$601,000 USD. It additionally set the amount of \$1,413,000 USD to be paid by the State in the 10 cases of persons (7 to 18 in the agreement) who died at the penitentiary located in Boulogne Sur Mer. In the 8 cases of persons who sustained injuries at the different centers, it set an amount of \$202,000 USD. As costs and fees, it ordered the payment of \$100,000 USD, and \$18,000 in remuneration to the arbitrators.

188. The Commission does not have any information on the payment of monetary reparations ordered by the Arbitration Tribunal.

Measures of Non Pecuniary Reparation

Normative Measures:

Introduce a bill before the Legislature of the Province of Mendoza to create a local prevention agency within the framework of the Optional Protocol of the Convention against Torture and other Cruel Inhumane and Degrading Treatment or Punishment, and take the necessary steps to achieve the approval thereof.

Introduce a bill before the Legislature of the Province of Mendoza, within a maximum period of 90 days, to create an office of a Special Prosecutor to benefit persons deprived of liberty, and take the necessary steps to achieve the approval thereof.

189. As indicated in Report No. 84/11, the friendly settlement agreement, the State reported that on April 15, 2011, Law 8.279 was enacted, which orders the creation of the Provincial Mechanism for the Prevention of Torture and other Cruel, Inhuman and Degrading Treatment. Said Law was published in the Official Gazette on Monday May 16, 2011.

190. The Commission does not have any information on the point concerning the special prosecutor's office for persons deprived of liberty.

Introduce a bill before the Legislature of the Province of Mendoza to create the office of the Human Rights Ombudsman of Mendoza.

191. The State reports that said bill has been introduced and notes that in order to achieve the approval thereof, in 2009 and 2010, the Ministry of Government, Justice and Human Rights appeared before a number of committees of the Provincial Legislature of Mendoza and attended workshops on enforcement of the Optional Protocol.

192. The Commission does not have any information on compliance with this point of the agreement.

Introduce a bill before the Legislature of the Province of Mendoza, within a maximum period of 90 days, to create a government Office of the Public Defender to litigate before the chambers of criminal sentence execution of the courts, and to take the necessary steps to achieve the approval thereof.

193. As indicated in the Report, the State reported on the creation of these defenders' offices through the Organic Law on Public Prosecution, No. 8008, dated December 30, 2008, the purpose of which is the defense and representation of those convicted under final sentence in judicial and administrative proceedings regarding the rules of progressive application of punishments and conditions of detention in general. Official defenders will have the same duty with regard to defendants. In due course it was announced that a defender had been appointed for the Almafuerde Prison and another for the Boulogne Sur Mer prison.

194. The Commission does not have any information regarding the appointment of defenders for the Mendoza and Gustavo André prisons.

Take any measures that may be necessary to change the hierarchical level of the Office of Coordination for Human Rights of the Ministry of the Interior elevating it to a Directorate or Sub-Secretariat.

195. The State reported that this commitment had been complied with through Executive Decree No. 186, dated January 29, 2008.

Other Measures of Satisfaction:

The Government of the Province of Mendoza shall take the necessary measures, within a maximum period of 90 days, to post a notice of the measures requested by the IACHR and the IA Court of Human Rights regarding the prisons of Mendoza, which shall be placed at the entrance to the Provincial Penitentiary, as a reminder.

196. The State reported that said notice has been posted at the entrance to Penitentiary Complex No. 1, Boulogne Sur Mer.

The Government of the Province of Mendoza undertakes to carry out, within the scope of its authority, all necessary measures for the continuation of investigations into all of the human rights violations that gave rise to the provisional measures issued by the Inter-American Court of Human Rights. A report on the outcome of said measures, as well as measures taken to determine responsibility emanating from said violations, shall be submitted by the Government of the Province of Mendoza within the framework of follow-up on agreement compliance. The media shall disseminate the outcome of said investigations.

197. In their most recent communication to the IACHR, the petitioners reported on the lack of progress in the investigations, indicating that impunity prevailed in most of the cases. The Commission does not have updated information on the measures taken to fulfill this commitment.

Plan of Action and Budget

The Government of the Province of Mendoza undertakes to draw up, in conjunction with the National State and the petitioners, within a maximum period of 90 days, a Plan of Action on Penitentiary Policy to aid in setting short, medium and long-term public policies with an appropriate budget to make implementation possible.

198. The Commission does not have updated information on the adoption and implementation of the Plan of Action on Penitentiary Policy.

Indicate measures that shall be implemented for the assistance and custody of young adults deprived of their liberty in the Province by staff specially trained for these duties. Additionally, every member of that population must be ensured education, recreation and access to cultural and athletic activities, adequate medical/psychological assistance and other measures geared towards adequate social integration and job placement.

199. The Commission does not have updated information on the measures taken to fulfill this commitment.

In light of the conditions of detention of the inmates at the penitentiaries of Mendoza, request administrative and judicial authorities to review the disciplinary files or reports of the Criminological Technical Agency and the Correctional Council, which affect implementation of the benefits set forth in the Rules on the Progressive Application of Punishments. Additionally, the operation of the Criminological Technical Agency and the Correctional Council should be scrutinized in order to optimize their performance;

200. As indicated in Report No. 84/11, according to the information provided by the State in early 2008, the Technical Criminological Agency changed the evaluation criteria, which resulted in a considerable increase in positive assessments and, consequently, greater access by inmates to the benefits set forth in Law 24.660 (on the execution of sentences depriving persons of liberty).

Improve the health-care service of the Provincial Penitentiary in collaboration with the Ministry of Health and make the necessary investments for effective provision of the service to every person deprived of liberty.

201. The Commission does not have updated information on the measures taken to fulfill this commitment.

d) Ensure access to a job for all inmates in the Prisons of Mendoza who should so request one;

202. The Commission does not have updated information on the measures taken to fulfill this commitment.

e) Ensure access and adequate service at the Courts of Criminal Sentence Execution, for all persons who have a legitimate interest in the Execution of the Punishment of the inmates in the Prisons of Mendoza. Especially, unimpeded access for attorneys who can freely examine the records of the proceedings being heard in said courts;

203. The Commission does not have updated information on the measures taken to fulfill this commitment.

f) Attempt to provide adequate training and professional instruction to Penitentiary Staff.

204. In Report No. 84/11, the Commission took note of the adoption of Organic Law No. 7.976 on the Provincial Penitentiary Service, which requires professionalization of senior penitentiary officials. However, no information is available to date on the establishment of the Penitentiary University Institute.

Lastly, the parties agree to keep open a space of dialogue and to set up a Monitoring Commission in order to follow-up on compliance with the commitments taken on under this agreement, including the normative and other measures agreed upon, in which framework the parties may propose other measures of action that could aid in better fulfilling the purpose and objective of the instant agreement.

205. The Commission does not have any information on the establishment of the Monitoring Commission.

206. It is apparent from the information available to the Commission that a large number of the commitments undertaken by the State in the friendly settlement agreement have been implemented. In this connection, it bears mentioning that, in Report No. 84/11, the IACHR was very appreciative of the efforts made by the parties to reach the agreement and implement it.

207. Notwithstanding the above, the Commission cautions that it cannot comment on the points pending implementation because of the absence of information about them.

208. In view of the foregoing, the Commission concludes that the friendly settlement agreement has been complied with in part. Consequently, the Commission will continue to monitor the points pending implementation.

Caso 12.306, Informe No 85/11, Juan Carlos de la Torre (Argentina)

209. In Report No. 85/11, dated July 21, 2011, the Commission approved the friendly settlement agreement signed by the parties on November 4, 2009, in case No. 12.306, Juan Carlos de la Torre. In summary, the petitioners state that Mr. Juan Carlos De la Torre, a Uruguayan national, entered Argentina in 1974 with authorization from the National Immigration Office, and then, after 24 years of living in Argentine territory, Mr. De la Torre was arrested without a judicial warrant and expelled from the country through a summary proceeding that did not provide him with judicial guarantees. The petitioners allege that the Argentine State, by taking those actions, violated the rights to personal liberty, a fair trial, judicial protection, non-interference in one's private life, and protection of the family, enshrined respectively in Articles 7, 8, 25, 11(2), and 17 of the American Convention on Human Rights, in conjunction with Article 1(1) of said instrument, to the detriment of Mr. Juan Carlos De la Torre.

210. On November 4, 2009, the petitioners and representatives of the Government of the Argentine Republic signed an agreement whose text reads as follows:

FRIENDLY SETTLEMENT AGREEMENT

The parties in petition No. 12,306 of the registry of the Inter-American Commission on Human Rights – Juan Carlos De la Torre: Centro de Estudios Legales y Sociales (CELS), represented herein by Ms. Andrea Pochak, and the Center for Justice and International Law (CEJIL), represented herein by Ms. Liliana Tojo, both in their capacity as petitioners, and the Government of the Argentine Republic, in its capacity as a state party to the American Convention on Human Rights, hereinafter “the Convention,” represented by the Deputy Secretary for the Protection of Human Rights of the Nation, Mr. Luis Hipólito Alen; the National Director for Legal Matters on Human Rights, Ms. Andrea Gualde; the Director for Human Rights (International Litigation) of the Argentine Ministry of Foreign Affairs, Mr. Javier Salgado; the Adviser to the Minister of the Argentine Foreign Ministry, Mr. Jorge Cardozo; and the Representative of the National Immigration Office, Mr. Carlos Alberto Beraldi, who signs this document *ad referendum* the National Director for Immigration, have the honor to inform the illustrious Inter-American Commission on Human Rights

that they have reached a friendly settlement agreement in relation to the petition, whose contents are set forth below requesting that considering the consensus reached, it be accepted and that the report provided for in Article 49 of the Convention be adopted.

I. THE FRIENDLY SETTLEMENT PROCESS

1. In the context of the 118th period of sessions of the Inter-American Commission on Human Rights, the Argentine State and the petitioners agreed to engage in a dialogue aimed at exploring the possibility of a friendly settlement of the petition, all without prejudice to the arguments of fact and of law put forth by the parties in the course of the procedure.

2. On that occasion, a working agenda was agreed upon that included the evaluation of various regulatory and administrative measures related both to the legal framework in force on immigration and with respect to the individual situation of Mr. Juan Carlos De la Torre.

3. The process that began contributed decisively to the derogation of the law on immigration then in force, known as the "Videla Law," and to its replacement by Law 25,871, approved on January 20, 2004; to the implementation of a mechanism for consultation with different organizations for the purpose of issuing the regulation of the new law; to the adoption of the measures necessary for approving and subsequently ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; to the suspension of immigration inspections and their sequelae of stops, arrests, and expulsions; to the issuance of Decree 836/04 that regulates the normalization of the papers of natives of MERCOSUR, Chile, Bolivia, and Peru; and to the issuance of Decree 1169/04, with the identical objective for the persons who are nationals of any other state. In that regard, the recently approved "National Plan against Discrimination" includes a chapter specifically dedicated to migrants and refugees.

4. In addition, and particularly as regards the personal situation of Mr. De la Torre – whose expulsion from the national territory without proper guarantees led to the complaint filed with the IACHR – the National Immigration Office, pursuant to the working agenda to which reference is made in point 2 of this agreement, resolved on October 13, 2005 to lift the prohibition on his re-entry to Argentine territory.

5. In the context of the 123rd regular period of sessions of the IACHR, on October 19, 2005, the parties stated that in view of the extent of progress in getting through the working agenda of this dialogue process, "... the conditions are set for evaluating the final document of understanding." From that perspective, the parties stated their "satisfaction with and mutual recognition of the efforts deployed by both with a view to reaching a friendly settlement of this petition."

II. FRIENDLY SETTLEMENT AGREEMENT

In view of the foregoing, the Government of the Argentine Republic and the petitioners agree:

1. To state their satisfaction with the results of the friendly settlement process described above, which ratifies once again the high value and potential of the inter-American system for the protection of human rights, and in particular of the institution of friendly settlement as a legitimate early warning mechanism and for the effective implementation of measures aimed at the institutional improvement of the State;

2. That the Argentine State undertakes to adopt all those measures necessary to ensure respect for the international standards that apply on immigration matters, based on the following tentative working agenda:

a) The Argentine State undertakes to make its best efforts to issue, within one (1) month, the regulation of the new Law on Immigration, taking as the text the proposed legislation approved by the Advisory Commission for the Regulation of Law No. 25,871, created by Order No. 37130/08 of the National Immigration Office, of May 26, 2008. Said Commission was made up of ecclesiastic organizations such as the Fundación Comisión Católica, and human rights organizations such as CELS, among others. The Commission, which sat from June to October 2008, drew up a draft regulation of the immigration law, which is attached as an integral part of this agreement. This draft respects the contents of the new law, guaranteeing, among other aspects, equal access for immigrants to social services, public goods, health care, education, justice, work, employment and

social security, the right to form and raise a family, the right to due process in immigration proceedings, facilities for the payment of the immigration fee (*tasa migratoria*), and a clear system of exemption from that fee, and the adoption of the measures necessary to ensure adequate legal advisory services for migrants and their families.

b) The Argentine State undertakes to make a detailed review of the legislation in force on this subject (federal and provincial) so as to foster the adaptation of those provisions that may contain provisions that effectuate illegitimate discrimination based on the status of a person as a foreigner or on their immigration status to the international and constitutional standards on the subject. In this regard, the parties note the approval of the "National Plan against Discrimination," which includes a chapter specifically devoted to migrants and refugees.

c) The Argentine State undertakes, through the coordination of the Ministry of Foreign Affairs, International Trade and Worship, to periodically hold working meetings, at the office of the Ministry of Foreign Affairs, as necessary so as to monitor the effective application of the commitments taken on, to which the state agencies with jurisdiction over the various issues to be evaluated shall be convened, and to inform the Inter-American Commission on Human Rights with the same frequency.

III. PETITION

1. The Government of the Argentine Republic and petitioners celebrate the signing of this agreement, state their full agreement with its content and scope, and mutually value the good will expressed in the negotiation process.

2. In addition, the parties are grateful for the permanent cooperation and monitoring of the case by the illustrious Inter-American Commission on Human Rights and ask that once the Decree of Regulation of the law is published in the official gazette (Boletín Oficial) of the Argentine Republic, that the friendly settlement agreement reached be approved by adoption of the report provided for in Article 49 of the American Convention on Human Rights.

3. Finally, it is noted for the record that this instrument is signed by CELS and CEJIL in their capacity as petitioners – in keeping with the broad active standing recognized by Article 44 of the American Convention on Human Rights – and not in the exercise of their representation. Accordingly, it cannot be opposed by Mr. Juan Carlos De la Torre, considering that he has not expressed his conformity.

Washington, DC, November 4, 2009.

211. On December 5, 2012, the Commission requested information from both parties on compliance with the commitments contained in the friendly settlement agreement signed by the parties.

212. According to information provided by the State, Decree 616/2010, regulating Law 25.871, was issued on May 6, 2010. It continued along the lines of the Law on Immigration as concerns respect for human rights standards on the matter.

213. In a communication dated January 2, 2013, the petitioners informed the Commission that, although the State had initially given strong indications of a commitment to implementation of the agreement, in particular through issuance of regulations for the new Law on Immigration, essential points of the agreement had not yet been complied with. In particular, the petitioners indicate that no progress has been made on the detailed review of federal and provincial legislation, which the State pledged to conduct in order to foster the adaptation of those provisions to human rights standards, and that a joint working group has not been formally set up to work periodically on the effective implementation of the commitments undertaken.

214. The Commission is highly appreciative of the efforts made by the parties that resulted in the repeal of the immigration law known as the "Videla Law" and its replacement by Law 25.871, adopted on January 20, 2004, as well as the Regulations for the Law on Immigration, approved by the President of Argentina, through Decree No. 616. At the same time, the Commission notes that points 2.b and 2.c of the friendly settlement agreement are pending implementation. It therefore urges the parties to make

every effort to move forward in the review of the legislation currently in force in order to bring it into line with international standards in the area, and to establish the joint working body to follow up on implementation of the agreement.

215. In view of the foregoing, the Commission concludes that the friendly settlement agreement has been complied with in part. Consequently, the Commission will continue to monitor the points pending implementation.

Case 11.670, Report No. 168/11, Amílcar Menéndez and Juan Manuel Caride et al. (Argentina)

216. In Report No.168/11 of November 3, 2011, the Commission approved the friendly settlement agreement executed by the parties on November 4, 2009 in Case No. 11.670, Amílcar Menéndez and Juan Manuel Caride et al. In short, the petitioners argued that during the processing of the readjustment of their social security benefits by ANSES [National Social Security Administration] and subsequently before the national courts, they were subjected to interminable administrative and judicial proceedings, which in most instances were unsuccessful at providing for the rights to which they were entitled. Additionally, Articles 16 and 22 of Law 24.463, known as the “Social Security Solidarity Law,” allow the State to deny payment on the grounds of budget resource constraints and indefinitely put off collection of the social security benefit readjustment. Consequently, judicial proceedings involving claims for readjustment or setting of social security benefits were excessively long from the time of the filing of the initial administrative claim until settlement and the attendant payment under final judicial disposition. They also contended that even after final judgments were handed down, presumably with the status of *res judicata*, the State agency in charge of enforcing said judgments, ANSES, had put up countless roadblocks to final payment. Additionally, they claimed that enforcement of Law 24.463 has further exacerbated the plight of retirees. This is because, during benefit readjustment or benefit-setting proceedings, ANSES argued as a defense that budget constraints prevented them from complying with the court decision granting the claim, which was then expanded to include analogous cases (Article 16). In such cases, ANSES was able to introduce as expert evidence a report of the Office of the Auditor General of the Nation (Article 17), as well as the defense of budget resource constraints on compliance with the rulings against the Social Security Administration (Article 22). This situation led to retirees passing away without their right to enjoy a dignified old age ever being provided for.

217. On November 4, 2009, the petitioners and government representatives of the Republic of Argentina entered into an agreement, the text of which reads as follows:

FRIENDLY SETTLEMENT AGREEMENT

The parties in petition No. 11.670 of the registry of the Inter-American Commission on Human Rights (hereinafter, “IACHR” or “the Inter-American Commission”) – Case MENÉNDEZ and CARIDE – Sergio BOBROVSKY and Horacio GONZÁLEZ, attorneys representing the victims and their successors, the Center for Legal and Social Studies (CELS), represented in this act by Andrea POCHAK, and the Center for International Justice and Law (CEJIL), represented in this act by Liliana TOJO, in the character of petitioners, and the Government of the Republic of Argentina, in its character of Party State to the American Convention on Human Rights (hereinafter, “the American Convention”, “Convention”, or “ACHR”), represented by the Deputy Secretary for the Protection of Human Rights of the Nation, Dr. Luis Hipolito ALEN, the National Director for Legal Matters on Human Rights, Ms. Andrea GUALDE; the Director for Human Rights (International Litigation) of the Argentine Ministry of Foreign Affairs, Mr. Javier SALGADO; the Adviser to the Minister of the Argentine Foreign Ministry, Mr. Jorge CARDOZO; the Manager of Coordination and Control of the National Social Security Administration (ANSES), Dr. María TABOADA, have the honor of reporting to the illustrious Inter-American Commission on Human Rights that they have reached a friendly settlement agreement to the petition, whose content is set forth below requesting that considering the consensus reached, it be accepted, that the report provided in Article 49 of the American Convention be adopted, and that a follow-up mechanism be provided.

1. BACKGROUND

On December 27, 1995, Juan Manuel CARIDE and Amílcar MENÉNDEZ, with the sponsorship of attorneys Sergio Carlos BOBROVSKY and Horacio Ricardo GONZÁLEZ, filed a petition against the State of Argentina for violation of a number of rights and guarantees protected under the American Convention on Human Rights. On January 16, 1997, CELS and CEJIL filed as co-petitioners.

Before lodging the petition, the retirees or pensioners of Argentina had sought readjustment of benefits through legal proceedings in Argentine courts. Because of the delay in substantiation of claims and/or noncompliance with judgments issued in those proceedings, the presenters Juan Manuel CARIDE and Amílcar MENÉNDEZ – to whom other cases were added under the same terms – claimed the violation of the rights to an effective recourse and to a hearing within a reasonable time, as provided in Articles 25 and 8, respectively, of the American Convention. They also claimed the violation of their rights to property (Article 21 of the ACHR) and equal protection (Article 24 of the ACHR), all of which are related to Articles 1(1) and 2 of the ACHR. The petitioners also claim the violation of the rights to the preservation of health and to well-being (Article XI), to social security as it relates to the duty to work and contribute to social security (Articles XVI, XXXV and XXXVII), as provided the American Declaration of the Rights and Duties of Man.

In particular, the petition contested the judicial procedure set forth in Law 24.463, known as the Social Security Solidarity Law, insofar as the law permitted the Government of Argentina to delay proceedings to readjust benefits and to postpone compliances with judgment based on the lack of budget resources.

On January 19, 2001, the Inter-American Commission on Human Rights, through Report No. 3/01, declared the petitions of several of the petitioners admissible in reference to the alleged violations of rights provided in Articles 1(1), 2, 8(1), 21, 24 and 25(2)(c) of the American Convention on Human Rights, and of the rights enshrined in Article XI and those considered jointly in Articles XVI, XXXV, and XXXVII of the American Declaration of the Rights and Duties of Man.

The Friendly Settlement Process

En In the context of the 118th Regular Period of sessions of the Inter-American Commission on Human Rights, in October 2003, the State of Argentina and the petitioners agreed to engage in a dialogue aimed at exploring the possibility of a friendly settlement of the petition, all without prejudice to the arguments of fact and law put forth by the parties in the course of the procedure.

On that occasion, the parties agreed to develop a tentative working agenda that would include the evaluation of various regulatory and administrative measures related both to the legal framework in force on matters of social security and to the individual situations of the petitioners.

The process initiated contributed decisively to the reform of Law 24.463 on Social Security. As a result, on April 6, 2005, the Congress of the Nation, through Law 26.025, revoked Article 19 of the contested law. Months later, on October 26, 2006, Law 26.153 was passed, revoking Articles 16, 17, 20 and 23 of the contested law, and reformulated Article 22 in terms agreed among the parties. With these reforms to the law a substantial portion of the petitioners' original complaint was satisfied: the revocation of a regulation that had become an obstacle to prosecuting lawsuits.

The international proceedings also influenced the Supreme Court of Justice of Argentina, in its new composition, to reestablish constitutional doctrine in matters of social security and its compatible interpretation with international human rights treaties. Thus, in the ruling on "Itzcovich" (CS, 221312005, 1.349.XXXIX) the Supreme Court declared unconstitutional Article 19 of Law 24.463, which would then be revoked by Congress. Later, through its ruling on "Sánchez" (CS, 171512005, S.2758.XXXVIII) the Court caused the doctrine of the "Chocobar" case to be of no consequence (CS, 2711211996, C.278.XXVIII), reestablishing the validity of the constitutional right to retirement benefit adjustments and the in the cases known as "Badaro" (CS, 8/8/2006 y 2611 112007, B.675.XLI) the Court declared unconstitutional Article 7 item 2 of Law 24.463, which subjugated the application of readjustments of retirement benefits to the allocation of budget resources.

Furthermore, through Resolution 23 of 2004, the Secretariat of Social Security (SESS) instructed ANSES – the agency of the Ministry of Labor, Employment, and Social Security responsible for administering the funds of the national retirement and pension regimes, among others – to comply strictly with firm legal judgments, thus preventing this artificial mode of litigiousness that prolonged legal proceedings on retirement income cases, to the clear injury of the retirees.

Moreover, during the friendly settlement proceedings, ANSES took the measures necessary to resolve the individual specific cases of the petitioners in this case.

Therefore, the parties view positively the constructive dialogue engaged and the reforms achieved to date. However, there are pending issues that must be resolved, making it necessary that the drafting of this friendly settlement agreement include concrete commitments to be assumed by the State of Argentina and a follow-up process that includes periodic meetings, and that it be monitored by the Inter-American Commission on Human Rights.

II. FRIENDLY SETTLEMENT AGREEMENT

In view of the progress made so far, the parties express their satisfaction and mutual acknowledgement of the efforts made by both in order to reach a friendly settlement to this petitions, which once again ratifies the high value and potency of the Inter-American system in protecting human rights and, particularly, of the friendly settlement construct as a legitimate mechanism for early warning and for the effective instrumentation of measures that improve the institutions of the State.

However, without prejudice to the positive assessment of the constructive dialogue engaged and the reforms achieved to date, some pending issues remain to be resolved. In particular, there are some administrative practices that do not comply with current law and that require special attention to effectively protect the human rights affected in this case in order to restore to all current and future Argentine retirees their rights to social security and to effective and timely judicial protection.

1. Therefore, the State of Argentina – through the National Social Security Administration – commits to adopt all measures necessary to guarantee compliance with the resolutions and regulations decreed as a result of this friendly settlement process, as mentioned in the foregoing paragraph. In particular, these measures must include:

a) Strict compliance with all provisions contained in Resolution No. 23 of 2004, of the Secretariat of Social Security, complemented by Resolution No. 955 of 2008 (in force since 13/8/2008) of the Secretariat of Social Security, which is attached to this agreement. Especially that which sets forth that all judgments still awaiting execution, except there be provisions to the contrary contained in the firm judgment itself, must be fulfilled without other limitations than those provided by the law, pursuant to the provisions of Circular 1. Any other limitation introduced through infra-regulatory interpretations will not be applicable.

b) To formalize a system to liquidate payroll settlements of court judgments that will guarantee compliance with the terms and time frames specified in the final rulings of the court.

c) Not to appeal court judgments in the trial and appeals phase that were ruled in favor of the beneficiaries on allegations of fact on which the Supreme Court has already ruled.

d) To desist, within sixty calendar days of the signing of this agreement, from appeals that have been filed with the Supreme Court or the Federal Chamber of Social Security Appeals contesting judgments in favor of the beneficiaries on allegations of fact on which the Supreme Court has already ruled in similar cases.

2. The State of Argentina obliges itself to establish a mechanism for the periodic follow-up on the commitments made in this agreement, in which the various public agencies involved will participate, and that this mechanism be coordinated by the Foreign Ministry of Argentina. Except in the case of a special request by any of the parties, working meetings will be held every two months at the headquarters of the Foreign Ministry of Argentina.

3. This mechanism will include the systematic production and systemization – every six months – of essential information for this purpose, with respect to the points of commitment in this agreement:

a) liquidating judgments; b) cases appealed by ANSES; c) the cases desisted by the ANSES before the Supreme Court; and d) compliance with judgments with executions still pending.

III. PETITION

1. The Government of the Republic of Argentina and the petitioners celebrate the signing of this agreement, manifest their complete conformity with its content and scope, and mutually value the goodwill made manifest in the negotiation process.

2. The parties thank the illustrious Inter-American Commission on Human Rights for its ongoing collaboration and follow-through on this case and request the approval of the friendly settlement agreement reached through the adoption of the report provided in Article 49 of the American Convention on Human Rights.

3. Lastly, the parties request that the illustrious Inter-American Commission continue to monitor the process of execution of the agreement until all aspects contained therein have been satisfied.

Washington, DC, November 4, 2009.

218. On December 5, 2012, the Commission requested information from both parties on the commitments included in the friendly settlement agreement entered into by the parties.

219. In a communication dated December 31, 2012, the petitioners asserted that in order to consider that there has been compliance with the agreement and the consequent follow-up to the terms of item 1 of the agreement, there must be compliance with items 2 and 3 thereof. On this score, they claimed that even though some meetings were held during 2011 with the National State at the Ministry of Foreign Relations and Worship, during 2012, no meeting had been held in order to continue to work towards compliance with the agreement.

220. They noted that, in light of said situation, they requested a meeting on July 11, 2012, suggesting an agenda, and also calling for the attendance of the actors involved in the remaining items in order to move toward final disposition of the matter; for the purpose of facilitating dialogue and advancing joint efforts. They claim they never received any response to this request. In short, the petitioners argue that for more than one year now, talks on the items of the agreement pending compliance have been at a standstill.

221. In turn, the State reported in a note of January 30, 2013, that the Argentine Integrated Social Security System (SIPA) operates under a set of values and economic policy decisions that have made Social Security in Argentina the exact opposite of what the petitioners contended it was in their initial claim. It specifically argues that this is all based on strategic application of several legal and operational measures, which are designed to bring about a paradigm shift in the Argentine Social Security System, and it attached detailed information on this. In summary, the State referred to a series of paradigm changes in the welfare policy, among others, that the system values are now based on a concept of solidarity, that the administration went from being mixed to be on the State, that the distribution of the income is redistributive, that the passive coverage rate stands at 95.1%, that the wage replacement rate is 60.8% for profits without moratorium and 52.1% for the total system, that there are progresses in the coverage of the more vulnerable sectors (3.5 million children in family groups in Argentina perceived universal child allowance and 60,000 pregnant women without other coverage are included in the birth allowance for Social Protection), that has operated a decrease in the "digital gap" with the donation of netbooks to students in public secondary schools in the country and also because the schools have been equipped with the Internet, that there is access to credit for seniors, and access to housing with "Credit Argentine Bicentennial program for Single Family Housing," that there is financial sustainability because the pension system has a break-even situation, that there is access to justice because the provisions at issue in this case had been terminated and that the settlement of judgments are regulated with the current normative, which have also been modified.

222. With respect to compliance with the remaining items of the friendly settlement agreement (section II, items 1, 2 and 3), the State provides by way of information that the administrative proceedings for execution of the court judgment adhere to current law, to the guidelines for settlement of accounts as set forth in the court judgment, and to legal precedents as established by the Supreme Court of Justice of the Nation (SCJN) on the subject of social security. It adds that, once procedural remedies are exhausted within the lawsuit itself, and all disputed issues between the parties are settled by the presiding

magistrate, the court judgment is executed within this same framework; and that because of the length of time that has elapsed since the initial filing of the petition by the petitioners, the entering into the agreement between the parties and the present date, laws have been amended and brought into line, as appropriate, with new legal precedents.

223. Additionally, the State contended that a court judgment execution system had been put into place, which has shortened the time it takes to obtain a final disposition in such proceedings, all within a context of institutional transparency through strict and systemic enforcement of the rules of procedure and steady progress in automatizing the settlement system, oversight of proceedings and settlement by conducting random monitoring and safeguarding the public treasury. It also noted that the instruction had been given to the legal representatives of the agency, who are subject to internal control mechanisms, to desist from pursuing any appeals or to expressly consent to judgments that strictly and specifically match the circumstances of fact laid out by the Supreme Court of Justice of the Nation up until the time of the signing of the Friendly Settlement Agreement; and to create and make available a page on the agency's web site to which beneficiaries and their attorneys can gain access and provide information on any lawsuits or appeals that they believe ANSES has not desisted from, in breach of the terms and conditions of the Friendly Settlement Agreement.

224. Moreover, with respect to items 2 and 3, the State noted that the periodic follow-up mechanism on compliance with the commitments made under the agreement has proceeded on two parallel fronts: a) an institutional framework, as provided for under item 2 of the agreement, spearheaded by ANSES with the participation of the Association of Social Security Attorneys of Buenos Aires (the organization with the highest membership of attorneys specialized in this field in the Autonomous City of Buenos Aires); b) Dr. Bobrovsky and, occasionally, other registered attorneys, will meet at ANSES headquarters in order to analyze, discuss and agree on opportunities to improve procedures, on a monthly basis, except when obligations or specific circumstances of the participants warrant postponement. The States also mentioned the meetings in the Foreign Ministry, with all parties to the agreement. The States indicates that at the last meeting on September 15, 2011, the ANSES provided a copy of the Report submitted to the Supreme Court detailing the status of Social Security System in Argentina, among others.

225. In short, the State claims that the Social Security System, the subject of the petition before the Inter-American Commission on Human Rights, has undergone deep structural reforms aimed at "restoring the right of all current and future Argentine retirees to social security and to effective and timely judicial protection," as set forth under the terms of the agreement. It contends that, because Social Security essentially constitutes an inter-generational pact, said reforms, in turn, have provided a response to society, which has benefited as a whole from the evolution of the major social indicators. It concludes by asserting that the State of Argentina has fully complied with the commitments it has undertaken in the Friendly Settlement Agreement.

226. In view of the information provided to it, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Accordingly, the Commission will continue to monitor the remaining items.

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

227. In Report No. 48/01 of April 4, 2001, the Commission concluded that the State was responsible for: a) violating Articles I, XVIII, XXV and XXVI of the American Declaration by sentencing Messrs. Edwards, Hall, Schroeter and Bowleg to a mandatory death penalty; b) violating Messrs. Edwards', Hall's, Schroeter's and Bowleg's rights under Article XXIV, of the American Declaration, by failing to provide the condemned men with an effective right to petition for amnesty, pardon or commutation of sentence; c) violating Messrs. Hall's, Schroeter's and Bowleg's rights under Articles XI, XXV, and XXVI of the American Declaration, because of the inhumane conditions of detention to which the condemned men were subjected; d) violating Messrs. Edwards', Hall's, Schroeter and Bowleg's rights under Articles XVIII, and XXVI of the American Declaration, by failing to make legal aid available to the

condemned men to pursue Constitutional Motions; and e) violating Messrs. Schroeter's and Bowleg's rights to be tried without undue delay under Article XXV of the Declaration.

228. 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.

229. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the Inter-American Commission has not received any response to those communications from the parties within the established time period. Prior to that, on April 10, 2012, the State presented a response to a similar request submitted to the parties in 2011. The State informed that Messrs. Schroeter, Bowleg and Hall were released from Her Majesty's prison on December 5, 2007, March 13, 2009, and September 15, 2009, respectively. With regard to Mr. Edwards, Bahamas informed that on June 11, 2010, he was re-sentenced to life imprisonment, thus his date of release is unknown.

230. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

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

232. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the Inter-American Commission has not received any response to those communications from the parties within the established time period. Prior to that, on April 10, 2012, the State presented a response to a similar request submitted to the parties in 2011. The State informed that on October 23, 2008, Mr. Goodman was re-sentenced to fifty years of imprisonment, and that his scheduled date of release is November 24, 2009.

233. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

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

235. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the Inter-American Commission has not received any response to those communications from the parties within the established time period. Prior to that, on April 10, 2012, the State presented a response to a similar request submitted to the parties in 2011. The State informed that Mr. Pinder's scheduled date of release is July 28, 2017. However, the State did not present any information regarding the recommendations of the IACHR, which are related to the sentence of judicial corporal punishment imposed on Mr. Pinder and the legal framework authorizing such form of punishment.

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

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

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

238. 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.

239. On February 1, 2006, the Commission wrote to both the State and the Petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report No. 40/04. The Petitioners responded to the Commission by letter of March 01, 2006, stating that the State of Belize had so far failed to comply with the Commission's recommendations. The Petitioners also requested the Commission to grant precautionary measures aimed at enforcing compliance of the recommendations. In July 2006, the Commission considered the Petitioners' request and declined to grant precautionary measures.

240. On November 2, 2007, the Commission wrote to both the State and the Petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report No. 40/04. The Petitioners responded to the Commission by letter of November 30, 2007, stating that the State of Belize had so far failed to comply with the Commission's recommendations. However, the Petitioners informed the Commission of a judgment of the Supreme Court of Belize delivered on

October 18, 2007, that “found that Belize is obligated not only by the Belize Constitution but also by international treaty and customary international law to recognize, respect, and protect Maya customary land rights.” The Petitioners added that the judgment was “significantly informed throughout by the 2004 final report of the Inter-American Commission on Human Rights”. The Petitioners stated that leasing, logging, and oil exploration activities have continued on Maya lands in the Toledo District, despite the Supreme Court judgment and the Commission’s recommendations contained in Report No. 40/04.

241. 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.

242. 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.

243. 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”.

244. 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”.

245. 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.

246. 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.

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

248. 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.

249. 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 Maya culture of the person who delivered it.

250. 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".

251. 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.

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

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

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

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

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

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

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

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

259. On October 25, 2011, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The State did not respond by the deadline but the petitioners submitted a communication on November 22, 2011 submitting the information requested by the Inter-American Commission.

260. Regarding the first recommendation, the petitioners indicated that since their previous report of 2010 the Court of Appeals held hearings on an appeal during March and June of 2011 and the parties are awaiting a decision. With respect to the legislative measures, they explained that in July 2011 the Toledo Alcaldes Association (TAA) had submitted a draft law for consideration by the government and added that so far this aspect of the process seemed quite promising to them. In this regard, they indicated that the questions from the National Council for Supervision of Local Governments (NLGM) had been constructive and there was no resistance to including reference to traditional Mayan title and resource rights within the scope of authority of the alcaldes. In the petitioners’ opinion, if the alcaldes contribution regarding the central topics were accepted, the draft law would represent a great step toward formal recognition of traditional Mayan rights, including the right to territory.

261. In addition, the petitioners reported that the government of Belize has not formally demarcated or titled the lands of the Mayan villages, nor has it created any mechanism for doing so in accordance with the IACHR recommendation. Moreover, they explained that the national policy initiative of the local government also includes the preparation of a draft law on the demarcation of villages. However, they make it clear that the alcaldes have not yet received any such draft law, which would be applied to all of Belize’s villages, not just the Maya. Since in most cases the limits of the Mayan villages are identical to those of the traditional titles, this draft law could result in the official demarcation of the

Mayan lands, but again without recognizing the traditional titles. With respect to the consultation recommended by the IACHR, the petitioners emphasize that this has not occurred and they assume this is because the process has been suspended while awaiting the result of the aforementioned litigation.

262. Regarding the second recommendation, the petitioners indicate that the State has not yet taken any action to delimit, demarcate, or title Mayan lands. They emphasize that the language used in the judicial orders from the courts of Belize to prevent any assignment of land is identical to the language used in the related recommendation from the IACHR, which they see as “significant formal compliance” even though the government is not fully complying with the judicial orders. In effect, they maintain that the number of licenses granted and the exploitation of Mayan lands has fallen, but that the government continues to take actions affecting the rights of the Mayan people, including subdividing Mayan village lands for individuals and granting licenses to exploit timber, petroleum, and hydroelectric resources on traditional lands. In addition, the petitioners indicate that construction and paving work is proceeding on the Jalacte highway that will connect Belize to Guatemala and will pass through various Mayan villages, including Santa Cruz. They emphasize in particular that the inhabitants of this last village were never consulted about construction of the highway, despite the injunctions issued by the courts in 2007 and 2010. In addition, they were not notified of any expropriation and did not receive any compensation.

263. With respect to the third recommendation, the petitioners indicate that large scale illegal logging on Mayan lands has restarted, at the instigation of governmental authorities themselves, and that the State has never taken any affirmative action to repair the damage caused by logging and removing other resources on those lands.

264. On November 2, 2012, the petitioners submitted a communication whereby they presented updated information on the situation of the Maya communities of the Toledo District, especially regarding plans for exploratory oil drilling on the traditional lands of these communities. The petitioners affirmed that “these actions are in clear contravention of Belize’s international obligations and also in contempt of two Supreme Court of Belize injunctions specifically prohibiting this activity”. Along with the report on non-compliance on the recommendations of IACHR Report 40/04, the petitioners requested precautionary measures.

265. On December 4, 2012, the Inter-American Commission transmitted to the State of Belize the pertinent parts of the information submitted by the petitioners and considered the possibility of convening a working meeting on this matter during its 147th sessions to be held in March 2013.

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

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

267. 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.

268. 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;

269. 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.

270. 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.

271. 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.

272. 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.

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

274. On February 2, 2011, the applicant asserted that on February 7, 2009, a new Constitution was enacted in Bolivia, but did not incorporate the conscientious objection. He alleged that this right is not

protected by any statute and neither under the law of Compulsory Military Service, which was drafted by the Ministry of Defense and is currently pending of approval in the Congress.

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

276. During 2011, the IACHR received information from the parties on the status of compliance with points (d) and (d), which are pending compliance with respect to Report No. 97/05. In this regard, the State reported in communications dated February 18, April 12, and May 20, 2011 that the draft Military Service Law submitted by the Executive Branch on January 16, 2008 has already been approved by the Chamber of Deputies and is pending debate in the Senate Chamber of the Plurinational Legislative Assembly. The State also reported that the Ministry of Defense, through Ministerial Resolution No. 1062 of December 28, 2010, ordered that the Reserve Officer Passbook be granted to personnel providing Outreach and Social Integration Service in the context of Paid Military Service. This represents significant progress in modernization of the armed forces in that it gives young people the opportunity to serve their country according to their aptitudes and academic training and with respect for their professed beliefs. As a result, the State indicated that it has complied with the commitments assumed under Report No. 97/05.

277. In a communication dated June 6, 2011, the petitioner reported that the proposed Law on Compulsory Military Service, Law No.17/08 of January 16, 2008, does not specifically include conscientious objector status. For this reason, the petitioner approached the Ministry of Defense and the Chamber of Deputies but received no commitment in this regard. He stated that the proposed law is not moving through the legislative process and thus there is fear that it will be approved hastily without allowing any opportunity for observations from the Ombudsman's Office. In addition, the petitioner reported that as a result of approval of the text of the Constitution, in 2009 the Ministry of Defense developed a series of preliminary drafts, including one referring to the Security and Integrated Defense of the Plurinational State, which omits conscientious objector status in Article 61 prescribing Compulsory Military Service. Consequently, the petitioner feels that to date the Bolivian State has not complied with commitments (d) and (e) of Friendly Settlement Report No. 97/05.

278. On November 16, 2012, the Commission asked the parties for an update on compliance with the commitments entered into by the Bolivian State under the friendly settlement agreement. The petitioner did not submit information in the time allowed by the IACHR. In a communication received on December 14, 2012, the State asked the IACHR for an extension, which the Commission granted (for 15 days) in a communication dated December 17, 2012.

279. In a communication received on December 31, 2012, the State reported that in 2011 and 2012, the Plurinational Legislative Assembly had received the draft Law on Compulsory Military Service for police and military candidates and the draft Law on Compulsory Military Services, respectively, so that the conscientious objection continued to be the subject of much in-depth analysis. It pointed out that one proposal in the draft Law on Compulsory Military Service is to include alternative military service for conscientious objectors. The State indicated that, although Article 249 of the Political Constitution of the State establishes that "all Bolivian men are forced to perform military service," implementation of that Constitution provision takes several forms, some of which exclude military training and the use of arms. Accordingly, the State pointed out that through Bolivia's Civil Aviation Law (Law 2902 of 2004) and Ministerial Resolution No. 1152 of August 25, 2000, provision is being made to award a military service certificate free of charge to young volunteers in the Bolivian Air Force's search and rescue squads who meet the requirements and perform that service once a week for two years. In short, the State pointed out that in practice there is an alternative to compulsory military service.

280. In a communication received on February 5, 2013, the petitioner indicated that no further progress had been made vis-à-vis what was reported in 2011 and, consequently, the State had not

complied to date with the commitments made in subparagraphs (d) and (e) of Friendly Settlement Agreement N° 97/05.

281. The Commission appreciates the measures the State has adopted to comply with the commitments made in the Friendly Settlement Agreement. At the same time, it notes that some measures are still pending compliance. On this basis, the Commission concludes that there is partial compliance with the friendly settlement agreement. Consequently, the Commission will continue to monitor the pending items. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has been implemented in part. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

282. 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.

283. The IACHR made the following recommendations to the Brazilian State:²⁵:

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.

²⁵ The IACHR notes that it had previously considered recommendations Nos. 1 and 3 to have been fully discharged, in its Annual Report of 2008 (IACHR. *Annual Report 2008*. Chapter III.D, paras. 101 and 103).

- 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.

284. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The Inter-American Commission has not received any response to those communications from the parties within the established time period.

285. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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)

286. 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 Claudio 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.

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

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

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

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

288. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the Inter-American Commission has not received any response to those communications from the parties within the established time period. Prior to that, on December 20 and December 30, 2011, the petitioner presented responses to a similar request submitted to the parties in 2011. With regard to recommendation No. 1 and 3 *supra*, the petitioner informed that the criminal and administrative proceedings related to all these cases remain pending a final judgment. Regarding recommendation No. 2 *supra*, the petitioner stated that it remains unjustifiably pending compliance. With regard to recommendation No. 4 *supra*, the petitioner informed that only family members of the two victims of Case 11.286 received partial compensation. Lastly, regarding recommendations No. 5 and 6 *supra*, the petitioner asserts that they were not fully complied with.

289. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

290. 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).

291. 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.

292. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State presented its response to the Commission's request on December 19, 2012. Regarding recommendation No. 1 *supra*, the State informed that the Office of the Public Prosecutor presented an indictment charging 14 military police with the victim's death, on June 27, 2011. The State adds that this criminal process is in its evidentiary stage, and at present the defendants are being summoned to appear before the judicial authority. There is no first instance judgment to date. Regarding recommendation No. 2 *supra*, Brazil informed that its feasibility is being analyzed by the appropriate State authorities. Finally, with regard to recommendation No. 3 *supra*, the State described the measures it has been implementing in Paraná state and countrywide, in conformity with the National Plan to Combat Rural Violence, including the creation of specialized agencies and the establishment of national guidelines for the Military Police in cases involving land disputes and eviction.

293. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

294. 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.

295. 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.

296. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

297. 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."

298. Pursuant to that agreement, the State undertook to:²⁶

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.

²⁶ Regarding points 1, 2, and 4 of the referenced friendly settlement agreement, the Commission already considered those obligations to have been fully discharged (IACHR. *Annual Report 2008*. Chapter III.D, para. 137).

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 Zulaê Cobra to take the place of the proposed law No. 5,693 of Deputy Nelson Pellegrino, which amends Article 149 of the Brazilian Criminal Code.
7. Defend the establishment of federal jurisdiction over the crime of reduction to conditions analogous to slavery, for the purpose of preventing impunity.
8. Strengthen the Public Ministry of Labor; ensure immediate compliance with the existing legislation, by collecting administrative and judicial fines, investigating and pressing charges against the perpetrators of the practice of slave labor; strengthen the Mobile Group of the MTE; take steps along with the Judiciary and its representative entities to guarantee that the perpetrators of the crimes of slave labor are punished.
9. Revoke, by the end of the year, by means of the appropriate administrative acts, the Cooperation Agreement signed between the owners of estates and authorities of the Ministry of Labor and Public Ministry of Labor, signed in February 2001, and which was denounced in this proceeding on February 28, 2001.
10. Strengthen gradually the Division of Repression of Slave Labor and Security of Dignitaries (STESD), established under the Department of the Federal Police by means of Administrative ruling (*Portaria*)-MJ No. 1,016, of September 4, 2002, so as to give the Division adequate funds and human resources for the proper performance of the functions of the Federal Police in the actions to investigate reports of slave labor.
11. Take initiatives *vis-à-vis* the Federal Public Ministry to highlight the importance of Federal Prosecutors according priority to participating in and accompanying the actions to perform inspections for slave labor.
12. Undertake in October 2003 a national campaign to raise awareness of and oppose slave labor with a particular focus on the state of Pará. On this occasion, through the presence of the petitioners, publicity will be given to the terms of this Friendly Settlement Agreement. The campaign will be based on a communication plan that will include the preparation of informational materials geared to workers, inserting the issue in the media through the written press, and through radio and TV spots. In addition, various authorities are to make visits to the targeted areas.
13. Evaluate the possibility of holding seminars on the eradication of slave labor in the state of Pará no later than the first half of 2004, with the presence of the Federal Public Ministry, ensuring that the petitioners are invited to participate.

299. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year.

300. On the other hand, the State presented its response to the Commission's request on January 2, 2013. Firstly, the State described the measures aimed at strengthening the legal framework to

combat slave labor, including the Constitutional Amendment proposal (PEC) 458/2001, which is still waiting for a vote by the Chamber of Deputies; the decision to establish a Parliamentary Inquiry Commission (CPI) to investigate the situation of slave labor in Brazil, on February 3, 2012; as well as several bills related to slave labor currently under consideration by the Federal Legislature (PL 5016/2005, which aims at reforming the Penal Code regarding the punishment for slave labor; PL 169/2009, which aims at prohibiting Brazilian enterprises from signing contracts with companies that exploit degrading labor abroad; PL 603/2011, which relates to labor conditions in coal mines; and PL 1515/2011, which aims at impeding that public spaces of any nature be named after people notoriously involved in the exploitation of slave labor). In addition, the State explained the measures adopted to adequately monitor compliance with existing labor laws. In this regard, the State highlighted that the ILO has asserted that Brazil's inspection actions should be considered as exemplary best practices. The State also made specific reference to the continuous achievements regarding administrative/civil sanctions, quantity of freed workers, and number and scope of operations carried out.

301. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned friendly settlement agreement. Accordingly, the Commission will continue to monitor compliance with the items pending compliance.

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

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

303. 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.

304. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the Inter-American Commission has not received any response to those communications from the parties within the established time period. Prior to that, on February 9, 2012, the State presented a response to a similar request submitted to the parties in 2011. Regarding recommendations No. 1 and 2 *supra*, the State reiterated previously submitted information. As regards recommendation No. 2, the IACHR takes this opportunity to once again ask both parties to provide accurate information concerning this recommendation in the future, in terms of the 28 victims named in Report No. 32/04 (Merits Report No. 32/04, paragraph 306). With regard to recommendation No. 3 *supra*, the State described the measures it has been implementing in Rondônia state and countrywide, in conformity with the National

Plan to Combat Rural Violence, including the creation of specialized agencies and the establishment of national guidelines for the Military Police in cases involving land disputes and eviction. As regards recommendation No. 4 *supra*, the State presented no updated information. Lastly, Brazil informed that the land corresponding to the “Santa Elina” ranch was concretely expropriated in September 2011, and efforts are advancing to promote agrarian reform settlements in the area, which would prioritarily benefit victims and family members of the victims of Case 11.556.

305. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

307. The Commission made the following recommendations to the State:²⁷

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.

²⁷ Regarding recommendations Nos. 1 and 3, as indicated in the 2009 Annual Report of the IACHR, both parties agreed that there had been compliance (IACHR. *Annual Report 2009*. Chapter III.D, para. 181).

308. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

310. The Commission made the following recommendations to the State of Brazil:²⁸

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

²⁸ With regards to recommendations 1, 2 and 4, as indicated in the IACHR annual report of 2009, both parties coincided that they had been complied with (IACHR, Annual Report 2009, Capítulo III.D, para. 187). In 2011, the petitioners specified that the consider recommendation 12 fully complied with.

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.

311. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

313. 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.

314. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the Inter-American Commission has not received any response to those communications from the parties within the established time period. Prior to that, on January 25, 2012, the petitioners presented a response to a similar request submitted to the parties in 2011. The petitioners informed that all four recommendations were still pending compliance.

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

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

316. In Report No. 15/09 of March 19, 2009, the IACHR concluded that the Brazilian State breached its obligation to ensue the right to life of Sebastião Camargo Filho, provided for at Article 4 of

the American Convention, on not preventing the victim's death on February 7, 1998, despite being aware of the imminent risk to the workers who had settled on the *Boa Sorte* and *Santo Ângelo* estates, and on failing to duly investigate the facts and punish those responsible. In addition, the IACHR established that the Brazilian State is responsible for violations of judicial guarantees and judicial protection, under Articles 8 and 25 of the American Convention, due to lack of due diligence in the process of investigating and collecting evidence, without which judicial proceedings cannot go forward. Finally, the Inter-American Commission concluded that the State breached the general obligation established at Article 1(1) of the Inter-American Convention.

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

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

318. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State presented its response to the Commission's request on December 19, 2012. Regarding recommendation No. 1 *supra*, the State informed that, on November 28, 2012, a jury trial against two of the four defendants took place. Osniir Sanches and Teissin Tina were convicted at first instance to 13 years and 6 years of imprisonment, respectively. According to the State, the two other defendants – Marcos Prochet and Augusto Barbosa da Costa – were not tried on that same date because of changes in their legal representation. Brazil indicated that they have not been tried at first instance to date. The State did not inform of any steps taken to conduct further investigations of the incident, in order to identify additional material or intellectual perpetrators. With regard to recommendation No. 2 *supra*, the State indicated that a meeting took place between State representatives and the next-of-kin of the victim, on August 21, 2012, and that the appropriate State authorities are examining the feasibility of complying with the aforementioned recommendation. Finally, with regard to recommendations No. 3, 4 and 5 *supra*, the State described the measures it has been implementing in Paraná state and countrywide, in conformity with the National Plan to Combat Rural Violence, including: the creation of specialized agencies; the activities carried out by the National Commission to Combat Rural Violence; the exemplary first ever conviction sentence regarding a murder of a rural worker in Paraná state, which was handed down in July 2011 and was related to the same illegal armed group responsible for killing Sebastião Camargo Filho; and the achievements of several operations carried out by the Federal Police (namely, operations "Paz no campo," "Faroeste," "Março Branco," "Tentáculos," and "Terra Limpa").

319. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

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

321. As of result of those facts, the Inter-American Commission found violations of the rights to life, humane treatment, judicial guarantees, equality, and judicial protection, enshrined respectively at Articles 4, 5, 8, 24, and 25 of the American Convention. State responsibility for violations of Articles 4, 5, and 24 of the American Convention has been to the detriment of Wallace de Almeida, whereas in relation to the violations of Articles 8 and 25, in conjunction with Article 1(1) of the American Convention, the violations run to the detriment of his next-of-kin. The Inter-American Commission also determines that there were violations of the obligations imposed by the American Convention at its Article 1(1) to respect and ensure the rights enshrined therein; at Article 2, which establishes the duty to adopt provisions of domestic law for the purpose of upholding the rights contained in the American Convention; and at Article 28, regarding the obligation of both the federal State and the state of Rio de Janeiro to implement the provisions of the American Convention.

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

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

323. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the Inter-American Commission has not received any response to those communications from the parties within the established time period. Prior to that, on April 10, 2012, the State presented a response to a similar request submitted to the parties in 2011. First of all, the State highlighted several changes promoted by the Rio de Janeiro Government in recent years, in order to implement new citizen security policies. According to the State, these actions aim at eliminating from the State security forces the mentality of “combating violence with violence,” and moving towards a progressive and human rights-oriented paradigm of “promoting peace through peace.” According to Brazil, some of the key elements of this new “system” of citizen security consist of actively promoting community police actions and improved relations with the citizenry, as well as retaking control over territories – particularly *favelas* – previously dominated by criminal gangs and drug traffickers, by means of the installation of Units of Pacifying Police (UPPs). The State stressed that these actions have already resulted in the reduction of homicides and criminality in general, in Rio de Janeiro.

324. The State did not make any reference to its compliance with recommendation No. 1 *supra*, so it remains pending, as it was stressed by the IACHR in its Report No. 26/09 (para. 182). On the other hand, with regard to recommendation No. 2 *supra*, the State briefly asserted that it has already been complied with, since it compensated the relatives of the victim in June 2009. Regarding

recommendation No. 3 *supra*, Brazil stated that, supposedly at the request of the petitioners, it would discuss measures related to its public security policies. The IACHR notes, however, that this recommendation relates to the effective implementation of the provision in Article 10 of the Brazilian Code of Criminal Procedure, which refers to the maximum duration of a police inquiry into a crime (Report No. 26/09, paras. 69 and 130). Instead of informing the Commission about the adoption of measures aimed at complying with such recommendation, the State submitted information about current reflexions regarding the utilization of forms or “acts of resistance to arrest” (*autos de resistência*), police lethality, the creation of training programs for police that incorporate human rights standards, and separating police that are involved in criminal offenses. The IACHR requests that, in future occasions, both parties specifically refer to the State’s compliance with this recommendation, in line with the considerations in this Merits Report. Finally, regarding recommendation No. 4 *supra*, the State firstly highlighted the creation of the National Special Secretariat for the Promotion of Racial Equality (SEPPIR), as well as its activities that are related to the State’s public security policies. The State also informed about the goals behind the 2008-2011 Tri-Annual Plan of the Federal Government, the National Policy for the Promotion of Racial Equality (PNPIR), and the National Plan for the Promotion of Racial Equality (Planapir). In Rio de Janeiro state, Brazil observed that discussions are being carried out in order to create a State Plan for the Promotion of Racial Equality by the Government of Rio de Janeiro.

325. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

Case 12.308, Report No. 37/10 Manoel Leal de Oliveira (Brazil)

326. In Report No. 37/10 of March 17, 2010, the IACHR concluded that the Brazilian State was responsible for violating, to the detriment of Mr. Manoel Leal de Oliveira and his family members, the rights to life, freedom of thought and expression, due process, and judicial protection, as established in Articles 4, 13, 8 and 25, respectively, of the American Convention, all in connection with the obligation imposed by Article 1.1 of the same instrument.

327. The Inter-American Commission made the following recommendations to the Brazilian State:

1. Recognize its international responsibility for the violations of human rights established in this report by the Inter-American Commission;
2. Conduct a thorough, impartial, and effective investigation into the events, so as to identify and punish all of the material and intellectual authors of the murder of Manoel Leal de Oliveira;
3. Conduct a thorough, impartial, and effective investigation into the irregularities that occurred throughout the police investigation of the homicide of Manoel Leal de Oliveira, including actions to impede the identification of its material and intellectual authors;
4. Make reparations to the family of Manoel Leal de Oliveira for the damages suffered. Such reparation should be calculated in keeping with international parameters, and must be in an amount sufficient to compensate the material and moral damages suffered by the victim’s family members;
5. Adopt, on a priority basis, a global policy of protecting the work of journalists and centralize, as a matter of public policy, efforts to combat impunity for the murders, attacks, and threats perpetrated against journalists, through exhaustive and independent investigations of such occurrences and the punishment of their material and intellectual authors.

328. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The

State has not presented information on compliance with the recommendations set forth above this year. On the other hand, the petitioner presented its response to the Commission's request on December 18, 2012. Regarding recommendations No. 1 and 4 *supra*, the petitioner informed that the State has already fully complied with them. The petitioner observed that, on September 21, 2009, the State recognized its international responsibility for the violations of human rights established in this report, and on April 7, 2010, the State paid R\$ 100,000 (one hundred thousand *reais*) to the family of the victim for the damages suffered. With regard to the other recommendations, the petitioner asserted that they are still pending compliance.

329. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations

Case 12.568, Report No. 78/11, John Doe *et al.* (Canada)

330. In Report 78/11 dated July 21, 2011, the Commission concluded that the State was responsible for violations of Articles XVII and XXVII of the American Declaration. As a result, the IACHR issued the following recommendations to Canada:

1. Adopt measures to identify the John Does and verify their situation and status, in order to process any outstanding claim for asylum they may wish to present;
2. Make full reparation to the John Does for the established violations, including, but not confined to material damages;
3. Adopt the necessary legislative or administrative changes to ensure that refugee claimants are afforded due process in presenting their asylum claims. If the direct back policy is continued, this would require gaining the necessary assurances from the third State's immigration officials that directed back individuals will be able to return to Canada for their scheduled refugee eligibility interviews. In the alternative, the State would need to conduct individualized assessments based on the third State's immigration law to determine whether directed back individuals would have access to seek asylum in that State and not face automatic legal bars. In those cases where there is a bar from seeking asylum, those individuals may not be directed back. Finally, any "direct back" policy shall include an individualized determination of whether there is risk of subsequent *refoulement* for any refugee claimant directed back to the third State; and
4. Adopt the necessary legislative or other measures to ensure refugee claimants have access to adequate and effective domestic remedies to challenge direct-backs before they occur.

331. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 20, 2012. With regard to recommendations No. 1 and 2 *supra*, the State claimed that it was impossible to identify John Does 1 and 2 because they have always been, and still remain, anonymous. As regards John Doe 3, Canada observed that it still is not certain who he is. In any case, the State considered that the facts of his case fail to support a finding that his rights to claim asylum and to due process have been violated or that any reparations are owing to him. Canada concluded that it has made its best efforts to identify the three John Does, but they were unsuccessful. With respect to recommendation No. 3 *supra*, Canada explained that it had already satisfied it, since the policy of using direct backs was revised, and direct backs are now permitted only in very limited circumstances. Since said revision, the State claimed that no one arriving in Canada seeking asylum had been or would be directed back to the United States to await an interview in Canada unless the United States gave assurances that the directed back individuals would be allowed to return to Canada for their appointments. Lastly, regarding recommendation No. 4 *supra*, the State reiterated that its existing remedies are adequate and effective, thus no other measures were required to implement this recommendation.

332. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations.

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

333. 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.

334. 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.

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

336. 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.

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

338. In a note dated December 30, 2010, the State observed that the Special Visiting Judge from the Temuco Appeals Court had presided over case No. 113,958 (Catalán Lincoleo), which is in the preliminary inquiry phase; no one is currently standing trial or has been convicted. At the present time,

investigative measures still need to be carried out. The State observed that in this proceeding, the Law No. 19.123 Continuation Program of the Ministry of the Interior is a coadjutor party.

339. 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.

340. In its communication of December 30, 2010, the State reiterated this information and reported that the bill was currently in the Senate for the second reading required under the Constitution. It had been sent to the Senate on May 6, 2009. The State said that another bill had reportedly been introduced to establish a new mechanism of review for cases involving human rights violations. That bill was currently in its first reading.

341. 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.

342. On October 25, 2011, the Commission asked the parties for updated information on the status of compliance with the recommendations made in Report No. 61/01. In a note dated January 17, 2012, the State responded to the request for information as follows: With respect to the first recommendation, it reiterated the information provided on earlier occasions to the effect that the Temuco Appeals Court was examining case No. 113.958, which is in the preliminary inquiry phase, and said that as of that date some investigative measures still had to be carried out. Regarding the second recommendation, on adapting legislation to the provisions of the Convention, the State did not report any progress in the processing of the bills introduced in 2009. As concerns the bill on interpretation of Article 93 of the Criminal Code, said bill was still in the Senate for the second reading required under the Constitution, and the bill on the new review mechanism for cases involving human rights violations was still in the constitutionally mandated first reading. Finally, as concerns the third recommendation, on reparations to the victim's next-of-kin, it recalled that the IACHR, in its 2010 Annual Report, had deemed that recommendation implemented.

343. On December 12, 2012, the Commission asked the parties to provide updated information on the status of the first and second recommendations made to the State in Report No. 61/01. In its note of January 10, 2013, the State supplied information concerning the first recommendation, in reference to the status of the proceedings in Case No. 113.958 (Catalán Lincoleo). It noted that the State of Chile is a party in the case, and that the Executive Branch is represented by the Law No. 19.123 Continuation Program (or Human Rights Program) of the Ministry of the Interior and Public Security. It also reiterated that the case is being heard by the Special Visiting Judge from the Temuco Appeals Court and that it is currently a preliminary criminal inquiry; no one has as yet been charged with the crime of qualified abduction committed against the victim. It added that as of December 2012, certain

investigative measures had not yet been carried out, intended to establish the identity of the subjects who participated in the crime committed against Catalán Lincoleo.

344. As for the second recommendation, the State offered no information concerning any progress made on the bills introduced in 2009. The bill for the interpretation of Article 93 of the Penal Code is still in the second reading in the Senate required under the Constitution, while the bill concerning a new mechanism for review of human rights violations was still in its first reading.

345. In view of the foregoing, the IACHR again observes with concern that its recommendation to the effect that the identity of the parties responsible for the murder of Samuel Alfonso Catalán Lincoleo be established has not been heeded, and that despite the amount of time that has passed, case No. 113.958 is still in the preliminary inquiry phase, and no one has thus far been brought to trial. Lastly, the Commission reiterates that despite the efforts made to adapt Chile's laws to conform to the American Convention, which is an international obligation incumbent upon the State but thus far unfulfilled, in 2011 and 2012 no progress was made on the constitutional procedures required for passage of the bills that the Executive Branch introduced in 2009. Since all branches of the Chilean government have to be involved in the process of adapting domestic laws to conform to the American Convention, the legislative branch is urged to comply with the Commission's recommendations.

346. The Commission concludes that the Chilean State has partially complied with its recommendations. The Commission will, therefore, continue to supervise the recommendations still outstanding.

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

347. In Report No. 139/99 of November 19, 1999, the IAHCRC 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.

348. 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.

349. 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.

350. 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.

351. For their part, the petitioners agreed to:

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

352. 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.

353. 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.

354. 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.

355. 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.

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

357. By a communication received on June 8, 2010, the petitioners reported that on March 5, 2010, the petitioners and representatives of the Chilean Government's Human Rights Program had, in separate submissions, both asked the Supreme Court to reopen the case into the murder of Mr. Carmelo Soria. On March 29, 2010, the Special Justice of the Supreme Court, don Héctor Carreño Seaman, did not agree to the request on the grounds that "the case was closed as a result of the complete and definitive dismissal of the punishable offense charged, in a judgment that had become final." They added that on April 1, 2010, the Government's Human Rights Program and the petitioners both appealed that decision. On April 28, 2010, the Second Chamber of the Supreme Court heard the arguments in which it was asked to overturn the decision being appealed and to order the case record reopened. The Second Chamber of the Supreme Court decided to confirm the ruling, solely on the grounds that the proceedings and the ends thereby sought were not properly explained. The Court therefore held that the investigation had been completed. The petitioners regretted that the Supreme Court had refused to reopen the case

record, which in practice meant that the perpetrators of the murder of Carmelo Soria Espinoza never faced punishment, i.e., they enjoy complete and absolute impunity.

358. In November 2010, the Commission requested updated information from the parties. The State sent its response by note dated December 30, 2010. It reaffirmed the information reported in the preceding paragraph as to the proceedings and current status of the case prosecuted into the murder of Carmelo Soria. As to Case No. 7.981, prosecuted for the crimes of conspiracy to commit crime and obstruction of justice in the case that investigated the murder of Carmelo Soria, the State indicated that it had been underway since September 7, 2009, with seven defendants.

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

360. On October 25, 2011, the Commission asked the parties for updated information on the status of compliance with the recommendations made in Report No. 139/99.

361. In a note dated January 18, 2012, the State responded to the request for information on compliance with the recommendations. With respect to the first recommendation, on the establishment of criminal responsibility for the murder of Carmelo Soria, the State indicated as additional information on the case of aggravated homicide that, in view of the refusal of the Supreme Court of Justice to reopen the preliminary inquiry, the Ministry of the Interior's Human Rights Program was taking all available legal measures to implement the Commission's recommendation, but the State did not indicate which measures. Regarding Case No. 7.981, prosecuted for the crimes of conspiracy to commit crime and obstruction of justice in the case that investigated the murder of Carmelo Soria, the State said that it was about to be informed of the final ruling.

362. Concerning the second recommendation, the State reiterated that it was gathering information to enable it to comply with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. Likewise, it reiterated the information regarding the third recommendation, on the bill interpreting Article 93 of the Penal Code, which was still under consideration in Congress.

363. On December 3, 2012, the Commission asked the parties to supply updated information on the status of compliance with the recommendations made in Report No. 139/99. The State provided information by a note dated January 10, 2013. In connection with the first recommendation, it reiterated that through the Ministry of the Interior's Human Rights Program, it had called for a reopening of the preliminary inquiry into the case of aggravated homicide that claimed the life of Carmelo Soria Espinoza, but that its request was denied by the Supreme Court's Examining Justice. In its 2013 presentation, the State also reported that it was awaiting notification of the final ruling in Case No. 7,981, prosecuted for the crimes of conspiracy and obstruction of justice in the investigation into the murder of Carmelo Soria.

364. As for the second recommendation, the State again observed that it was compiling information to enable it to comply with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. It also reported that the bill interpreting Article 93 of the Penal Code was still in the second constitutional round in the Senate, while the bill for a new mechanism for review of human rights violations was still in the first constitutional round.

365. In view of the foregoing information, the Commission reiterates that the State has not yet complied with the Commission's recommendation regarding the investigation and punishment of those responsible for the murder of Carmelo Soria and its recommendation that Chilean domestic law be brought in line with the provisions of the American Convention on Human Rights.

366. The Commission concludes, therefore, that the Chilean State has partially complied with the recommendations the Commission made in Report No. 139/99. Consequently, the Commission will continue to monitor for compliance with the recommendations that have not been carried out.

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

367. On March 11, 2004, by Report No. 30/04, the Commission approved a friendly settlement agreement in the petition of Mercedes Julia Huenteaño 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.

368. 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.

369. In 2011, the IACHR asked the parties for updated information on compliance with the preceding recommendations.

370. With regard to the measures to improve legal institutions that protect the rights of indigenous peoples, the State provided information in notes dated January 5, 2011, and December 21, 2011. In the first note, it explained that the reform under consideration in the Constitution, Legislation, and Regulation Committee of the Senate was the outcome of a political agreement reached in April 2009 among all groupings represented in the National Congress. It added that, before reaching such an agreement, the Senate Committee had received and listened to more than 50 indigenous organizations

and leaders. After a consensus was reached on the reform text, the Executive held a “Consultation on Constitutional Recognition,” whose results were transmitted to the Senate Committee. In the second note, the State said that the Chilean Government maintained its commitment to push for a constitutional amendment in the National Congress and, to that end, on March 8, 2011, it announced that the “Consultation on Indigenous Institutions” would be held in seven stages, on three thematic areas: (1) definition of the procedure for consultation and participation, including participation regulations of the Environmental Impact Assessment System (EIAS); (ii) the draft constitutional amendment recognizing the indigenous peoples; and (iii) the establishment of an Agency for Indigenous Development and a Council of Indigenous Peoples. Likewise, it reported that between March and August 2011 the first two stages, i.e., dissemination and information, had been successfully carried out. The State pointed out that the second stage took the form of 124 workshops at the national level, in which a total of 5,582 indigenous leaders participated. According to information provided by the State, the consultation process concluded between September and November 2011 and an ad hoc committee was set up to propose a mechanism and roadmap for the first thematic area. Said committee’s preliminary conclusions were submitted to CONADI on November 23, 2011.

371. Regarding commitment 2(a) of the agreement, the State had already reported that on September 15, 2008, it ratified ILO Convention 169, which entered into force in September 2009, in keeping with Article 38(3) of that Convention. With that commitment 2(a) of the above agreement was fulfilled.

372. The State reported that commitment 3(a) was carried out back in July 2004. Concerning commitment 3(b), the State reported that lands had been bought for almost all the Pehuenche communities that belonged to the *Comuna* of the Upper Bío Bío and that in the three-year period from 2008 through 2010, an area of 180 hectares was purchased for the Butaleibun indigenous community and an area of 353.7 hectares was purchased for the Newen Mapu community of Malla Malla. It added that henceforth, every land-grant will be coupled with an agreement to provide productive support and technical assistance. In its note of January 2012, it said that in 2011 CONADI had invited tenders for a preinvestment study on land acquisition in the Cajón de Queuco sector of the Upper Bío Bío region.

373. As for commitment 3(c), the State indicated that in June 2009 the technical board for monitoring public investment in the Area of Indigenous Development of the Upper Bío Bío was launched. With regard to that commitment, in its note dated January 12, 2012, the State referred to the consultation process under way on indigenous institutions and to the activities carried out by CONADI to ensure participation by the sector’s families in said consultation.

374. As for commitment 3(d), the State observed that an agreement was concluded with the National Forestry Corporation (CONAF) under which members of the indigenous communities would be able to enter and make use of the Reserve. That agreement includes the communities of Quepuca Ralco and Ralco Lepoy. In the January 2012 report, the State confirms that that commitment has been met.

375. In connection with commitment 4(a) of the Friendly Settlement Agreement, the State indicated that necessary measures had been taken to transmit the audit results to the municipalities of Santa Bárbara and Upper Bío Bío, among others, for public consultation and that the audit results had been published on the CONAMA web page, but that no comments whatsoever had been received from said municipalities. Moreover, it said that the Office of the Executive Director of CONAMA and the public utilities had followed up on and monitored the project, as established in the environmental qualification resolution. With regard to the impacts of the Ralco dam in the Upper Bío Bío sector, the State reported that it would conduct an independent audit three years after the hydroelectric plant had started to operate, in order to propose necessary measures to correct any possible unforeseen effects, in particular on tourism development along the banks of the reservoir. In that regard, in its note of January 2012, the State reports that the “Independent Environmental Audit Report for the Ralco Hydroelectric Plant Project” for the second half of 2011 has been sent by the Environmental Assessment Service to the Edensa Chile firm, which presented its observations on December 14, 2011.

376. As for commitment 4(b), the State reported that CONADI prepared the “Productive Development Plan for relocated families on the *El Porvenir* estate, Quilaco, province of Bío Bío”; working in conjunction with the relocated families and the National Agricultural Development Institute (INDAP), it is preparing a work plan for the communities in the Upper Bío Bío sector. According to information provided by the State, two meetings were held with the petitioners in 2011 to review the commitments in the Friendly Settlement Agreement: one in the city of Los Ángeles on May 10 and the other in Santiago on May 15. Likewise, in letter No. 477, dated September 9, 2011, the National Director of CONADI informed the petitioners of the decision of the Ministry of Planning to make CONADI responsible for implementing and following up on the commitments under the Friendly Settlement Agreement.

377. As for commitment 4(c), the State reported that tourism projects on the banks of Lake Ralco had been funded. Works had been promoted and financed to strengthen the ability to service the tourism trade with a particular interest in the Southern Andes. Regarding commitment 4(d), the State indicated that the national laws were being observed; accordingly, the limits set by the current laws and regulations must be respected. In its most recent report, the State reported that an independent audit of the Ralco Hydroelectric Plant had been conducted in 2011 and that, on October 6, its results had been transmitted for analysis to CONADI and the Indigenous Affairs Coordination Unit of the General Secretariat of the Presidency. As concerns commitment 4(d), the State indicated that that was covered by national legislation; consequently implementation of that commitment must fall within the bounds established by the provisions in force. In its most recent report, the State indicates that this commitment had been met.

378. As for commitment 5, the State indicated that “this particular point concerns the case of don Víctor Ancalaf LLaupe, who is currently at liberty.” In its most recent report, the State indicates that this commitment had been met.

379. As for commitment 6, concerning measures to meet the specific demands of the affected Mapuche Pehuenche families, the State reported that in late 2006 each individual had received parcels of land, drawn by lot. Each person received land in the zone intended for residential, agricultural, tourism development, or forest management use; it clarified that three parcels still had to be distributed, because of demarcation problems. It reported that the charitable pensions had been paid out and that scholarships had been awarded in June 2009. The State updated the previous information, indicating that in February 2011 title had been given free and clear to three beneficiaries for the pending real estate of lot A of the Porvenir Fund. Likewise, it reported on the execution of a project to upgrade access roads to the Porvenir Fund properties.

380. In 2011, the petitioners did not provide any additional information concerning compliance with the pending commitments. In 2007, the petitioners sent a communication in which they discussed each point of the agreement in detail. In that communication they highlighted compliance with that point of the agreement that concerned creation of a municipality [*comuna*] in the Upper Bío Bío sector; they were of the view that the provision of the agreement concerning the mechanism to ensure the indigenous communities’ participation in the administration of the Ralco Forestry Reserve had been complied with, and reported that a memorandum of understanding had been signed with the Government and the Pehuenche families with measures to meet the particular demands of the affected Mapuche Pehuenche families.

381. Finally, the petitioners sent a communication on December 15, 2008, in which they indicated that the State has failed to carry out commitment 4(d) of the friendly settlement agreement, on having accepted to undertake an environmental impact study of a hydroelectric megaproject in Mapuche Pehuenche territory known as the Angostura Project. According to the petitioners, this project would affect indigenous lands of the Alto Bío Bío in which there are at least four sacred sites for the Mapuche Pehuenche and on which some Mapuche Pehuenche families currently live. The petitioners indicated that the National Corporation of Indigenous Development (CONADI: Corporación Nacional de Desarrollo Indígena), an agency of the State entrusted with ensuring the protection of indigenous lands, issued a report on July 31, 2008 (Official Note 578) in which it confirms the importance of the sector for the heritage of the Mapuche Pehuenche communities. The petitioners indicated, based on what was stated

above, that the State breached its commitment to adopt land-use management measures so that the indigenous lands in the Upper Bío Bío may be “characterized as an area for protection of resources of natural or cultural heritage value, and, accordingly, that they be declared as zones not fit for building or with building restrictions.” They also indicated that pursuant to Indigenous Law 19,300 and Convention 169, the Chilean State has a special obligation to protect indigenous persons and their lands and territories. The petitioners reported that the Angostura Hydroelectric Project has plans to begin construction in the first half of 2009 and is to come on line in the second half of 2012. This project includes the construction and operation of a hydroelectric plant, and will have a total volume of water in the reservoir of approximately 100 million cubic meters.

382. On December 3, 2012, the IACHR asked the parties to provide updated information concerning their compliance with the commitments undertaken in the agreement.

383. As for the State’s commitment to undertake measures to improve the legal institutions protecting the rights of indigenous peoples and their communities, in a communication dated January 4, 2012, the State provided information to the effect that the Government has a commitment to the country’s indigenous organizations to push for constitutional recognition of the indigenous peoples, which would require it to undertake consultations on the draft constitutional amendment recognizing indigenous peoples; once those consultations were concluded, the legislative discussion could again get underway.

384. Concerning its compliance with commitment 1(b), the State again made the point that it had ratified ILO Convention No. 169 –as stated in the IACHR’s 2011 report. It also advised that in fulfillment of the consultation and participation obligations set forth in that Convention, in March 2011 it began implementation of the “Consultation on Indigenous Institutions”, the first stages of which were carried out between March and August 2011 and involved dissemination and Information. It again pointed out that, as previously noted, the Consultation Commission created by the CONADI Council had, since September 2011, held various meetings to discuss the “Consultation Procedure” required under ILO Convention No. 169.

385. The State added that the elections for the Indigenous Members of the CONADI Council were held on January 15, 2012; the elected members took office on May 9, 2012, and immediately began working with the CONADI Council’s Consultation Commission to move forward with the discussions “on the rules that would govern the Indigenous Consultation required under ILO Convention No. 169.” The State reported that as a result, on August 8, 2012, the Minister of Social Development visited the ILO office where he officially delivered to the indigenous peoples and various organizations the proposed “New Regulations Governing Indigenous Consultation” so that the indigenous peoples of Chile might study and discuss them independently and then enter into a dialogue with the Government to agree upon the final version of those regulations. The State reported that the various organizations of Indigenous Peoples began discussing the new Proposed Regulations to Govern Indigenous Consultations on August 8, 2012, in meetings that they themselves convened, with support and funding from the Government. The State also observed that more than 74 informative workshops and meetings were held between August and November 2012, and that Indigenous Peoples from across the country had met in a Grand National Encounter of Indigenous Peoples, held in Santiago, Chile, November 30, 2011, with over 250 representatives of the indigenous peoples in attendance.

386. The State reported that some concrete proposals have been received so far, containing observations on the Government’s proposal or alternative proposals on how to regulate indigenous consultation. It added that all these proposals, and those received thereafter, will become basic material that will be taken up at the Negotiating Table where the government and the various representatives of the indigenous peoples will sit down to agree upon the final version of the regulations to govern Indigenous Consultation, which hopefully will enter into force in 2013.

387. As for the State’s compliance with commitment 1(b)(2)(a) regarding the creation of a municipality in the Upper BíoBío sector, the State reiterated that this commitment had been honored –as confirmed in the IACHR’s 2011 Annual Report. As for commitment 1(b)(2)(b) concerning agreement on mechanisms to resolve the land problems affecting the indigenous communities in the Upper BíoBío, the

State reported that under Article 20, letter B of Law 19.253, land had been purchased for almost all the Pehuenche communities in the municipality of Upper BíoBío. The State explained that this was how the 8,000-hectare Trapa Ranch was purchased for the Pehuenche communities of Butalelbún and Kiñe Leche Coyan, located in the Cajón del Queuco, Upper BíoBío; that purchase represented an investment of \$1,556,772,000 Chilean pesos.

388. As for commitment (c), which was to “Strengthen indigenous participation in the Upper BíoBío Indigenous Development Area (ADI)”, the State reported that reactivation of the Upper BíoBío Indigenous Development Area is scheduled for 2013, and is a clause in an agreement that CONADI, the BíoBío Provincial Government and the Upper BíoBío Municipality concluded. The State asserts that CONADI will draw upon the Indigenous Development Fund for the resources necessary to operate the ADI.

389. As for commitment (d) concerning an agreement on mechanisms designed to ensure the participation of indigenous communities in the management of the Ralco Forest Reserve, the State reiterated that this commitment had already been carried out, as confirmed in the IACHR’s 2011 Annual Report.

390. As for fulfillment of commitment 3(a), the State reported that in 2012, the Environmental Evaluation Service (SEA) continued to monitor the project’s environmental obligations and had requested an opinion from the competent agencies regarding the following reports: a) the 2010 report of the Independent Environmental Auditor’s Office; b) ENDESA’s response to SEA’s opinion on the 2010 reports of the Independent Environmental Auditor’s Office; c) the 2011 report of the Independent Environmental Auditor’s Office; d) Report of the Independent Environmental Auditor’s Office for the first half of 2012; e) Final Report “Audit on the status of compliance with the environmental commitments and demands in relation to the tourism value of the territory. Ralco Hydroelectric Dam,” and f) Report “Identification and Protection of Pehuenche Heritage Sites in the Upper BíoBío.”

391. The State reported that because it is still compiling background information, it does not yet have any final results to report to the interested municipalities and communities. It said that once it has the results, they will be reported by the authority charged with follow-up and inspection. It added that because the Office of the Environmental Superintendent (SMA) and the environmental courts started functioning on December 28, 2012 as part of the New Environmental Institutional Infrastructure, the SEA is preparing to hand over all the background information it has compiled; henceforth, the SMA will be in charge of that background information, by virtue of its legal authorities.

392. As for compliance with commitment 3(b), the State reported that the municipality of Upper BíoBío has been incorporated into the planning of the BíoBío regional government’s Rural Territorial Development Infrastructure Program (PIRDT). It indicated that the program will strengthen the concept of land planning, maximize production and develop new planning methods. It also observed that the planning is to be a participatory enterprise conducted by the BíoBío Regional Government; at the same time, the BíoBío Regional Government and CONADI have approved the sum of \$458,000,000 pesos to execute non-farm projects of Pehuenche Communities in BíoBío Province. The State explained that the purpose of these projects is to strengthen and diversify the economy of Pehuenche families, in areas such trade, crafts, beekeeping, ecotourism, and others. This program will last 18 months, during which time it will support the enterprise projects of 300 Pehuenche families in the province, 200 of whom are in the Upper BíoBío municipality. As a result of communications between the government and ENDESA, at the families’ request their concerns and demands have been taken into account in the context of the measures aimed at the affected communities’ development.

393. As for fulfillment of commitment 3(c), according to the State, the government anticipates that new initiatives can be undertaken in 2013 to fulfill commitment 3(c). As for commitment 3(d), the State repeated what it had said in 2011 to the effect that this commitment was being carried out in accordance with the existing legal system, which includes the treaties signed by the State, among them ILO Convention No. 169.

394. The State claims that commitment 4 has been fulfilled, as stated in the IACHR's 2011 annual report.

395. As for commitment 5(a), following up on what it reported in 2011 the State asserted that in 2012 the BíoBío Regional Secretariat of the Ministry of National Assets did on-site work to make technical corrections and then administrative business to legalize the changes. The State reported that the operating premise was that each beneficiary's land was to be respected, and the idea was to help identify boundaries. It observed that the technical and legal corrections necessary to transfer title to the tracts of land in Lots B and C will be completed in the first half of 2013. It also pointed that the procedure requires the permission of the families involved. At an on-site meeting held on December 10, 2012, those families were advised of the procedure and what it will mean.

396. As for commitment 5(b), the State indicated that in 2012, the Municipality of Quilaco, CONADI and the Regional Government began talks about applying the Territorial Development Template [Plan Marco de Desarrollo Territorial] (PMDT) in the "Pemehue Highlands Reserve". The State reports that this tool is a means of enabling investment on the relocated ranches of La Suerte and El Porvenir; it also reported that in 2012, this Project was presented to the Regional Council and the terms of reference and the terms of the tendering procedure were prepared; the study is planned for the first half of 2013.

397. With regard to commitment 5(c), the State reported that the housing is being arranged through MINVU's Rural Subsidy Program. However, to achieve this objective, basic services (sanitation) have to be made available before this measure can be finalized. Finally, it reiterated that it had complied with commitment 5(d).

398. The Commission appreciates the measures the State has taken to honor the commitments it made under the Friendly Settlement Agreement. While it observes that a number of commitments have been fulfilled, some measures are still in the process of being implemented. Therefore, the Commission concludes that the State has partially fulfilled the Friendly Settlement Agreement. Consequently, the Commission will continue to monitor the pending commitments.

Case 12.469, Report No. 56/10, Margarita Cecilia Barbería Miranda (Chile)

399. In Report No. 56/10 of 18 March 2010, the Commission found that the State of Chile is liable for violation of Margarita Barbería Miranda's right to equal protection, as set forth in Article 24 of the American Convention, by applying to her case a discriminatory provision that prohibited her from practicing as a lawyer in Chile solely because she was a foreigner. Because of this situation, the IACHR found that the State also violated its general obligations to respect and guarantee all human rights of the victim, without any discrimination whatsoever, as set forth in Article 1(1) of the American Convention, further violating its duty to adopt domestic legal provisions that would align its law with its international commitments in this matter, as enshrined in Article 2 of the Convention.

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

1. That measures are to be taken to amend the Chilean law that precludes individuals from the practice of the law solely on the grounds that they are aliens, and in particular the norms contained in the Organic Code of Tribunals of Chile.
2. That Margarita Barbería Miranda is to be adequately compensated for the violations established in the present report.
3. That Margarita Barbería Miranda is to be permitted to take the oath of an attorney and practice the law in Chile.

401. In Report No. 56/10, the Commission gave a very positive assessment to actions taken by the State of Chile related to compliance with the first and third recommendations, to wit, passing Law

20.211 that modified Article 526 of the Organic Code of the Courts; and swearing in Margarita Barbería Miranda as an attorney on 16 May 2008, before the Supreme Court of Chile.

402. On 29 November 2010 the IACHR sent a communication requesting information of the parties on the status of compliance with the second recommendation, which had to do with reparations for the violations established in the Commission's report. In a communication dated 29 December 2010, the State reported that at the end of 2008 it held a meeting with Ms. Margarita Barbería and suggested the possibility that she press for satisfaction of her financial claims by pursuing recognized domestic procedures under Chilean law. The State also indicated that the petitioner rejected this proposal, reiterating her expectation that she be compensated for material and moral injury suffered as a result of the legal prohibition that had hindered her from being sworn in as an attorney. Additionally, the State of Chile stated that Ms. Barbería had not introduced adequate evidence of the injury to sustain the following requests: university scholarships for each of her three children; a full scholarship for graduate studies at the doctoral, master's or professional degree level in a law-related subject of interest to the petitioner; a furnished office; an automobile; and a lump-sum payment of US\$ 90,000.00.

403. On 25 October 2011, the Commission requested that the parties provide updated information on the status of compliance with the recommendations made in Report No. 139/99.

404. In a note date 16 November 2011 the petitioner reported to the IACHR that the State of Chile had not provided adequate compensation for the violations she had suffered. For its part, on 21 December 2011, the State of Chile sent a communication in which it reiterated in the same terms the information it had provided in its note submitted on 29 November 2010.

405. The Commission observes that, for the reasons explained by the State, the recommendations regarding reparations to Mrs. Margarita Barbería Miranda for the violations established in the Commission's previous report have not been carried out.

406. On December 5, 2012, the Commission asked the parties to update the information on the status of compliance with the second recommendation the Commission made in report No. 56/10. By a communication received on January 15, 2013, the petitioner claimed that in 2012 she had no contact with representatives of the Chilean State in connection with fulfillment of the Commission's second recommendation. For its part, on January 4, 2013, the State sent a communication repeating what it had previously reported, specifically that while it had suggested to the petitioner that she press for satisfaction of her financial claims by pursuing recognized domestic procedures under Chilean law, Mrs. Barbería had not opted to pursue that course of action.

407. The Commission is concerned that the recommendation concerning adequate reparations for Margarita Barbería Miranda has not been carried out. The Commission therefore concludes that the Chilean State has partially complied with the aforementioned recommendations. Consequently, it will continue to monitor the recommendation not yet honored.

Petition 12.232, Report No. 86/11, María Soledad Cisternas (Chile)

408. In Report No. 86/11, dated July 21, 2011, the Commission adopted a friendly settlement agreement in the case of María Soledad Cisternas. In summary, the petitioners indicated that the alleged victim, attorney by profession, is totally blind and that on October 19, 1998, she asked her travel agent for a reservation for air travel to go to the city of Montevideo, Uruguay. The airline "Línea Nacional –Chile S.A" (LAN Chile S.A.) made the reservation on condition that she not travel alone, that she be accompanied by another passenger or by a guide dog. On November 5, 1998, the alleged victim filed a motion for constitutional protection (*recurso de protección*) before the Court of Appeals of Santiago against LAN Chile S.A. alleging that the facts constituted a violation of the right to equality. The motion was rejected, as was the appeal of that ruling.

409. On December 11, 2003, Ms. María Soledad Cisterna Reyes and representatives of the Chilean State signed an agreement whose text reads as follows:

FRIENDLY SETTLEMENT AGREEMENT

In Santiago, December 11, 2003, THE FOLLOWING PERSONS APPEARING: Ms. María Soledad Cisternas Reyes, Chilean, married, attorney,...²⁹, complainant before the Inter-American Commission on Human Rights, in Case 12,232, and, for the Chilean State, the Minister of Foreign Affairs, Ms. María Soledad Alvear Valenzuela, the Minister of National Defense, Ms. Michelle Bachelet Jeria, and the Minister Secretary-General of Interior, Mr. Francisco Vidal Salinas, domiciled for these purposes at Catedral 1158, Santiago, hereinafter “the Parties,” who, having undertaken a study of the antecedents of the above-mentioned case regarding limitations that affect the air travel of persons with disabilities, have reached the following settlement, which is presented as “Bases of Agreement” between the parties to settle this dispute.

FIRST: On occasion of the situation that affected Ms. María Soledad Cisternas Reyes by virtue of the demands posed for her air travel from the city of Santiago, Chile, to the city of Montevideo, Uruguay, in October 1998, put forth by the airline referred to in the judicial actions brought by Ms. Cisternas in relation to the visual disability that affects her, she had recourse to the Inter-American Commission on Human Rights of the OAS in order to make her case known to this collegial body.

SECOND: It being the intent of the Parties to contribute to the progressive social integration of persons with disabilities, especially bearing in mind Law 19,284 of 1994 and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities of the OAS, ratified by the State of Chile in February 2002, agree as follows:

a) Ms. María Soledad Cisternas has been invited to and is participating in the work of the Committee of Studies established at the General Directorate of Civil Aviation in charge of reviewing, updating, and enhancing the laws and regulations regarding the air travel of persons with various disabilities, for the purpose of Ms. Cisternas being able to collaborate as an expert with her knowledge and academic experience in the area of “vulnerable communities,”

b) The Parties shall undertake broad dissemination of the laws and regulations that make possible adequate air travel of persons with disabilities, among the different carriers, public and private agencies, as well as the general public, with the collaboration, for carrying out said campaign, of the Division of Social Organizations of the Ministry General Secretariat of Interior, by means of its Tolerance and No Discrimination Program.

THIRD: In view of these “Bases of Agreement,” which constitute a settlement, the Parties grant the broadest and most complete release of their claims, declaring the dispute in question to be fully settled, and request that the Honorable Inter-American Commission on Human Rights take due note of what is stated herein, setting forth the relevant part in the respective Report on Friendly Settlement.

410. In a communication of May 9, 2011, the petitioners indicated that according to the information provided by Ms. Cisternas, in April 2008 the General Director of Civil Aviation of Chile (DGAC) published the aviation regulation that regulates the air transport of passengers with disability, illness, or special needs³⁰, which is included in the National program for the Facilitation of Air Transport that the Bureau of Airports of the Ministry of Public Works of Chile plans to implement in 2011.³¹ In that regard, the petitioners indicated that they consider that the Chilean State has implemented the commitments assumed in the friendly settlement agreement.

411. Based on the above, in Report No. 86/11 the Commission highly valued the parties’ efforts to reach this agreement, and declares that it is compatible with the object and purpose of the Convention. The Commission takes note of and values in particular the intent of the parties “to contribute

²⁹ The personal data on Ms. Cisternas Reyes, i.e. her national ID number and mailing address, have been omitted.

³⁰ <http://www.dgac.cl/transparencia/pdf5/dan-382-20110505.pdf>.

³¹ <http://www.aeropuertos.gov.cl/Noticias/Paginas/DetalledeNoticias.aspx?item=34>.

to the progressive social integration of persons with disabilities,” mindful of the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities.

412. Based on the information provided by the parties, the Commission concludes that the State has fully complied with the friendly settlement agreement

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

413. In Report No. 62/01 of April 6, 2001, the Commission concluded that the State was responsible for the violation of the right to life, enshrined in Article 4 of the American Convention, in the massacre perpetrated by State agents and members of paramilitary groups of the following persons: Miguel Enrique Ladino Largo, Miguel Antonio Ladino Ramírez, María Cenaida Ladino Ramírez, Carmen Emilia Ladino Ramírez, Julio Cesar Ladino Ramírez, Lucely Colorado, Dora Estela Gaviria Ladino, Celso Mario Molina, Rita Edelia de Molina, Ricardo Molina, Freddy Molina, Luz Edelsy Tusarma Salazar, and Hugo Cedeño Lozano. In addition, it concluded that the State was responsible for having breached its special duty of protection, under Article 19 of the American Convention, to the detriment of minors Dora Estella Gaviria Ladino and Luz Edelsy Tusarma Salazar. The Commission also concluded that the Colombian State was responsible for violating the right to humane treatment, enshrined in Article 5 of the Convention, to the detriment of Hugo Cerdeño Lozano, Miguel Ladino, Cenaida 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.

414. 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.

415. The IACHR has been monitoring the State compliance of the recommendations it issued and on November 15, 2012 it requested information from both parties. On January 2, 2013 the State submitted the information requested by the IACHR regarding the measures adopted for the compliance of the three recommendations, the petitioners did not submit the information requested.

416. Regarding recommendation No. 1, the State reiterated that the case has been reassigned to Specialized Prosecutor’s Office 48 of the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation and that it remained in the evidentiary stage. It also reiterated that since October 1998, the decision to acquit the members of the military forces in the disciplinary proceeding brought against them was upheld and that some of their harsher sentences were made more lenient (dismissal became reprimand and suspension of duties became acquittal).

417. With respect to recommendation No. 2, the State reiterated that, as of 2004, there has been compliance with a conciliation agreement between Colombia and the family members of the victims and it requested the IACHR to rule that there has been compliance with the obligation set forth under recommendation No. 2 of Report 62/01.

418. As for recommendation No. 3, the State reiterated the information submitted in 2010 and 2011 regarding the Ministry of National Defense making Human Rights (HR) and International Humanitarian Law (IHL) policies permanent, applying them to all members of the public security forces and developing the guiding principles of leadership, promotion and respect for HR and IHL; as well as

prevention, deterrence, control, integration and recognition. It mentioned the Comprehensive HR and IHL Policy that was issued in January 2008, the HR and IHL School of the Military Forces being up and running as of 2009 and ongoing progress made by the Constitutional Court in setting legal precedents to define the limits of military criminal jurisdiction. The State also highlighted the efforts of the Superior Council of the Judiciary to enforce judgment C-358 and define the jurisdiction of civilian courts when faced with serious human rights violations and it noted that from 2009 to 2011, the Superior Council of the Judiciary entertained motions from 472 cases, of which 410 were referred on jurisdictional grounds to civilian courts and 62, to the military criminal justice system.³² Consequently, the State requested the IACHR to find that recommendation No. 3 of Report 62/01 has been fully complied with.

419. 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)

420. 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.

421. In Report No. 63/01, 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.

422. The IACHR has been monitoring the State compliance of the recommendations it issued and on November 26, 2012 it requested information from both parties. On January 2, 2013 the State submitted the information requested by the IACHR regarding the measures adopted for the compliance of the three recommendations, the petitioners did not submit the information requested.

423. With regard to recommendation No. 1, the State reiterated that the case has been reassigned to Specialized Prosecutor's Office 16 of the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation and that an appeal is still pending. It reiterated that there are six individuals deprived of liberty under the control of the judge and, that several public hearings have been conducted to take the defendants' statements. Additionally, it reiterated that since October 1994, a ruling was handed down to punish the members of the Army, who took part in the incidents, relieving them of their duties.

³² Note of the Secretariat: At the time of approval of the Annual Report, the State had approved and enacted the constitutional reform amending Articles 116, 152 and 221 of the Political Constitution of Colombia, which significantly expands military criminal jurisdiction. See: IACHR Expresses Concern over Constitutional Reform in Colombia, January 4, 2013. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2013/004.asp>

424. With respect to recommendation No. 2, the State reiterated that as of 2009, payment of damages for pain and suffering to the next-of-kin of Carlos Manuel Prada and Evelio Antonio Bolaño was fully complied with and it requested the IACHR to find that there is compliance with the obligation set forth in recommendation No. 2 of Report 63/01.

425. Regarding recommendation No. 3, the State reiterated the information it has submitted as of 2010. The State submitted information concerning the introduction of policies and lines of action in human rights and international humanitarian law intended for all members of law enforcement, emphasized the work of the Superior Council of the Judiciary to implement the doctrine developed by the Constitutional Court on the definition of the competence of ordinary courts when dealing with serious human rights violations and reported on the measures taken to transfer cases involving possible human rights violations from the military justice system to the regular courts. Given the importance of the topic and its heavy impact on the evaluation of the duty to guarantee and protect human rights, and inasmuch as all branches of government were constantly monitoring this problem, the State asked the Commission once again to find that recommendation No. 3 had been fully carried out.

426. Based on the foregoing, and given that the criminal process is pending 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)

427. 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.

428. 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 for reparation of the consequences of violations committed to the detriment of 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.

429. The IACHR has been monitoring the State compliance of the recommendations it issued. So, on November, 2012 held a work meeting between both parties and on November 26, 2012 it requested information from both parties. On January 2, 2013 the State submitted the information requested by the IACHR regarding the measures adopted for the compliance of the three recommendations, the petitioners did not submit the information requested.

430. As to recommendation No. 1, the State reiterated the information on the decision handed down in November 2004 acquitting the defendants under the principle of *in dubio pro reo*. However, it added that a motion to review the ruling was filed with the Supreme Court of Justice in order to enforce proper due process procedures and ensure that a legally pre-established judge with jurisdiction to hear the matter presides (guarantee of natural judge).³³

431. The State reiterated that by Payment Resolution No. 2512 the conciliation agreement was carried out, as the payment of compensation was made to María Fredesvina Echeverri de Isaza and Lady Andrea Isaza Pinzón and requested the IACHR to find that there was compliance with the obligation set forth in recommendation No. 2 of Report 64/01.

432. With respect to recommendation No. 3, the State reiterated the information submitted in 2010 and 2011 on making Human Rights (HR) and International Humanitarian Law (IHL) policies permanent, applying them to all members of the public security forces and developing the guiding principles of leadership, promotion and respect for HR and IHL; as well as prevention, deterrence, control, integration and recognition. It mentioned the Comprehensive HR and IHL Policy that was issued in January 2008, the HR and IHL School of the Military Forces being up and running as of 2009 and ongoing progress made by the Constitutional Court in setting legal precedents to define the limits of military criminal jurisdiction. The State also highlighted the efforts of the Superior Council of the Judiciary to enforce judgment C-358 and define the jurisdiction of civilian courts when faced with serious human rights violations and it noted that from 2009 to 2011, the Superior Council of the Judiciary entertained motions from 472 cases, of which 210 were referred on jurisdictional grounds to civilian courts and 62, to the military criminal justice system. In light of the foregoing, the State requested the IACHR to find full compliance with recommendation No. 3 of Report 64/01.

433. 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)

434. On July 29, 2002, by Report No. 105/05³⁴, the Commission approved and recognized the partial implementation of a friendly settlement agreement signed on July 29, 1998, in the case known as the "Villatina Massacre." In summary, the petition alleged the responsibility of state agents in the massacre of children Johana Mazo Ramírez, Johny Alexander Cardona Ramírez, Ricardo Alexander Hernández, Giovanni Alberto Vallejo Restrepo, Oscar Andrés Ortiz Toro, Ángel Alberto Barón Miranda, Marlon Alberto Álvarez, Nelson Dubán Flórez Villa, and the youth Mauricio Antonio Higueta Ramírez, perpetrated on November 15, 1992 in the Villatina neighborhood of the city of Medellín.

435. 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.

³³ Submission of the date of the filing of the motion for review and a copy thereof by the State is pending as of the date of approval of this Annual Report.

³⁴ 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>.

436. 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.

437. On November 15, 2012 the IACHR requested information from both parties about the compliance of the friendly settlement agreement. On December 19, 2012 the State submitted the information requested by the IACHR regarding the measures adopted, the petitioners did not submit the information requested.

438. The State reiterated that at present a preliminary investigation is under way in the Human Rights Unit of the Office of the Attorney General, and that the office in charge ordered a series of measures be taken to make progress in determining the possible perpetrators and accomplices of the events that are the subject matter of the case. It also reported that the entities with jurisdiction are studying the possibility of presenting a complaint seeking a review of the proceedings that concluded favorably for the persons being investigated. As for the publication and dissemination of the friendly settlement agreement, the State advised that consensus could not be achieved with the representatives of the victims and, therefore, "it will proceed to publish and disseminate the friendly settlement agreement."

439. 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 12.009, Report No. 43/08 Leydi Dayán Sánchez (Colombia)

440. 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, to a fair trial, 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.

441. 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.

442. 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.

443. On November 15, 2012, the IACHR requested information from both parties on the measures of compliance that had been adopted. On January 2, 2013, the State submitted information regarding the measures adopted, while the petitioners did not submit the information requested.

444. The State advised that even though the ruling on the statute of limitations set back the normal course of the proceedings, corrective measures were taken as soon as possible. It added that Criminal Case Backlog-Clearing Circuit Court No. 55 of Bogota issued a conviction in October 2012 and sentenced Juan Bernardo Tulcan Vallejo to 438 months in prison and the State has been making efforts on an ongoing basis to expedite proceedings.

445. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendation. Therefore, the Commission will continue to monitor compliance.

Petition 401-05, Report No. 83/08, Jorge Antonio Barbosa Tarazona (Colombia)

446. On October 30, 2008, in its Report No. 83/08³⁵, 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.

447. 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.

448. 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.

449. On November 15, 2012, the IACHR requested information from both parties on measures of compliance adopted. On December 22, 2012, the State submitted information on measures adopted, while the petitioners did not submit the information requested.

450. The State reported that the Criminal Appeals Chamber of the Supreme Court of Justice settled the motion to review filed by the Office of the Inspector General of the Nation against the ruling of February 15, 1993 (which terminated the investigation of an individual for the crime of homicide) and the ruling of April 15, 2002 (which precluded investigation of three individuals for the crime of simple abduction). In its judgment of September 26, 2012, the Supreme Court of Justice vacated both decisions

³⁵ 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>

and ordered the investigation to be transferred to the Office of the Attorney General of the Nation. The State noted that because of this, the investigations will be reopened and continued in order to determine what happened and who is responsible.

451. With regard to the search for the remains of Mr. Jorge Antonio Barboza Tarazona, the State informed that the case was registered in the Single Virtual Identification Center (CUVI) and was filed at the National Unit of Prosecutors for Justice and Peace, to be included on the list of individuals pending identification among those who were found in the exhumations of that Unit. Lastly, the State requested the IACHR to find that the State has fully complied with its obligations under the friendly settlement agreement.

452. 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.

Caso 10.916, Informe No. 79/11, James Zapata Valencia y José Heriberto Ramírez

453. On October 21, 2010, the Commission approved Merits Report No. 113/10, pursuant to Article 50 of the American Convention. In said report, the Commission concluded that the Republic of Colombia violated the right to life, the right to humane treatment and the right to personal liberty, enshrined in Articles 4, 5 and 7 of the American Convention, to the detriment of James Zapata Valencia and José Heriberto Ramírez Llanos, in connection with the provisions of Article 1.1 of the aforementioned international instrument. Likewise, it concluded that the State violated the rights of the child of Jose Heriberto Ramirez Llanos, who was 16 years of age at the time of the incidents. And lastly, the IACHR also concluded that the State was responsible for the violation of the right to humane treatment, to a fair trial and to judicial protection, enshrined in Articles 5, 8 and 25 of the Convention, to the detriment of the next-of-kin of the victims and in conjunction with the general obligation to respect and ensure of Article 1.1 of the Convention.

454. In approving the aforementioned Report, the Commission established several deadlines for the State to move towards compliance with the recommendations set forth therein. After considering the information provided by both parties and the efforts made by the State to comply with the recommendations, the Commission decided to issue Report No. 79/11, pursuant to Article 51 of the American Convention and publish it. In said report, the IACHR recommended the following to the State:

1. That it conduct a full, impartial, effective investigation within a reasonable time into the circumstances in which James Zapata Valencia and the child José Heriberto Ramírez Llanos died.
2. That it adopt the necessary measures to ensure a due investigation into the cases of the executions perpetrated by State security agents.
3. That it provide adequate reparations to the families of James Zapata Valencia and José Heriberto Ramírez Llanos, taking into account the child special condition of José Heriberto Ramírez at the time of the events.

455. The IACHR has been monitoring State compliance with the recommendations it issued and on November 15, 2012 it requested information from both parties. On January 2 and 10, 2013, the State and the petitioners, respectively, submitted the information requested.

456. With respect to recommendation No. 1, the State informed that the Human Rights and IHL Unit of the Office of the Attorney General of the Nation is conducting a criminal investigation under case file number 169. The State submitted a list of steps taken in the investigation from 1998 to 2011 and requested the IACHR to find compliance with the recommendation to investigate.

457. Regarding recommendation No. 2, the State reported on “numerous measures adopted in order to prevent executions perpetrated by agents of State security, as well as to move the respective investigations forward and, as the case may warrant, provide reparation to the victims of this criminal

conduct.” In this regard, the State mentioned the state policy of zero tolerance for human rights violations by the public security forces, the legal framework to punish arbitrary deprivation of life and the death of persons in protective custody, the administrative framework to prevent and ensure non-repetition of arbitrary deprivation of life or homicides of individuals in protective custody, the judicial framework to ensure the investigation, prosecution and punishment of those allegedly responsible for punishable conduct that may constitute arbitrary deprivation of life or homicide of protected individuals, and the judicial framework to ensure full reparation for the damages caused as a consequence.

458. As for recommendation No. 3, the State noted that in order to comply it must first create an intersectoral Human Rights and International Humanitarian Law Commission, and this has not been carried out.

459. In response, the petitioners mentioned unwarranted delay in the process of State compliance with the recommendations of the IACHR. They noted that even though time periods are prescribed under Law 288 of 1996, the State has exceeded them, thus jeopardizing the effectiveness of reparation. The petitioners requested the State to be urged to immediately take the appropriate measures for the family members of the victims to be promptly compensated.

460. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendations. Accordingly, the Commission will continue to monitor compliance.

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

461. 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, Juan Adolfo Fernández Saínez, José Daniel Ferrer García, Luís Enrique Ferrer García, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez, Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso, Diosdado González Marrero, Léster González Pentón, Alejandro González Raga, Jorge Luís González Tanquero, Leonel Grave de Peralta, Iván Hernández Carrillo, Normando Hernández González, Juan Carlos Herrera Acosta, Regis Iglesias Ramírez, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña, Librado Ricardo Linares García, Marcelo Manuel López Bañobre, José Miguel Martínez Hernández, Héctor Maseda Gutiérrez, Mario Enrique Mayo Hernández, Luís Milán Fernández, Rafael Millet Leyva, Nelson Moline Espino, Ángel Moya Acosta, Jesús Mustafá Felipe, Félix Navarro Rodríguez, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, Arturo Pérez de Alejo Rodríguez, Omar Pernet Hernández, Horacio Julio Piña Borrego, Fabio Prieto Llorente, Alfredo Manuel Pulido López, José Gabriel Ramón Castillo, Arnaldo Ramos Lauzurique, Blas Giraldo Reyes Rodríguez, Raúl Ramón Rivero Castañeda, Alexis Rodríguez Fernández, Omar Rodríguez Saludes, Martha Beatriz Roque Cabello, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba, Ariel Sigler Amaya, Guido Sigler Amaya, Miguel Sigler Amaya, Ricardo Enrique Silva Gual, Fidel Suárez Cruz, Manuel Ubals González, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo, Héctor Raúl Valle Hernández, Manuel Vázquez Portal, Antonio Augusto Villareal Acosta, and Orlando Zapata Tamayo.

462. 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.

463. 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.

464. On November 14, 2012, the Commission requested up-to-date information from the parties on the status of compliance with the recommendations that were put forth in the instant case. Neither the State nor the petitioners submitted any information.

465. As was noted in the 2011 Annual Report, the Cuban Government released the victims of Case 12.476, who as of that year were still deprived of their liberty, most of which moved to Spain and, those who refused to leave Cuba, were granted a "furlough."

466. However, their convictions were not vacated, even though the statutory basis for them placed unlawful restrictions on their human rights. As for the second, third and fourth recommendation of the IACHR, the Cuban State has not taken any steps thus far to comply with them.

467. The Commission expresses its appreciation to the State for releasing all of the victims of Case 12.476.

468. Based on the foregoing, the Commission concludes that the State has partially complied with the recommendations. Consequently, the Commission will continue to monitor the pending items.

Case 12.477, Report No. 68/06, Lorenzo Enrique Copello Castillo *et al.* (Cuba)

469. 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.

470. 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.

471. On November 14, 2012, 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. The parties did not provide any information.

472. Based on the foregoing, the Commission concludes that the State has not complied with the recommendations. Therefore, the Commission will continue to monitor the pending items.

Case 11.421, Report No. 93/00, Edison Patricio Quishpe Alcívar (Ecuador)

473. 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.

474. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 93/00³⁶, 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.

475. On November 15, 2012, the IACHR requested information on compliance from both parties. On December 28, 2012, the petitioners indicated that the State has still not taken any judicial steps to investigate, prosecute and punish those responsible for the murder of the victim nor has it punished those judges whose conduct has allowed the case to remain in impunity, who by not adequately disposing of the case and by allowing the case to become time-barred with the passage of time, inasmuch as more than 10 years have elapsed, as provided for in the Criminal Code. The State did not respond to the request for information.

476. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

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

³⁶ Report No. 93/00, Case 11.421, Edinson Patricio Quishpe Alcívar, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.421.htm>

477. 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.

478. On November 19, 2000, the IACHR adopted Friendly Settlement Report No. 94/00³⁷, 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.

479. The IACHR requested information from both parties regarding compliance with the pending items on November 26, 2012. On December 29, 2012, the petitioners informed that the Ecuadorian State had not taken any steps to investigate, prosecute and punish the acts alleged in the petition before the Commission.

480. 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)

481. 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.

482. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 96/00³⁸, in which it acknowledged that the State had complied with the payment of a compensation in the amount of US\$25,000, and decided:

2. To urge the State to take the measures needed for carrying out the commitments still pending with respect to bringing to trial the persons considered responsible for the facts alleged.

3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney

³⁷ Report No. 94/00, Case 11.439, Byron Roberto Cañaverl, Ecuador, October 5, 2000, available at: <http://cidh.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.439.htm>

³⁸ Report No. 96/00, Case 11.466, Manuel Inocencio Lalvay Guzmán, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.466.htm>

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.

483. On November 26, 2012, the IACHR asked both parties to report on compliance with the items still pending. On December 28, 2012, they [the petitioners] reiterated that as of 1999 the police jurisdiction found the statute of limitations on the case to have lapsed, while the State did not take any action to vacate said ruling for being a violation of a right, because the police judges had acted without jurisdiction to prosecute human rights violations and, consequently, said crimes remained in impunity. The State failed to respond to the request for information.

484. 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)

485. 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.

486. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 97/00³⁹, 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.

487. On November 26, 2012, the IACHR requested information from both parties regarding compliance with pending items. On November 26, 2012, the IACHR requested information from both parties on compliance with the remaining items. On December 28, 2012, the petitioners reported that the State had not taken any judicial action to investigate, prosecute and punish the police judges, who improperly assumed jurisdiction to investigate human rights violations and, in 1995, found the case to be time-barred under the statute of limitations and closed it. Once again, the State failed to respond to the request for information.

488. 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)

³⁹ Report No. 97/00, Case 11.584, Carlos Juela Molina, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.584.htm>.

489. 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.

490. On October 5, 2000⁴⁰, 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.

491. On November 15, 2012, the IACHR asked both parties for information on compliance with pending items. Neither of the parties submitted any information.

492. 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)

493. On May 14, 1998, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged that “the domestic judicial proceeding was characterized by unjustified delays, excessive technicalities, inefficiency, and denial of justice. The Ecuadorian State could not demonstrate that it was not its official agents who illegally and arbitrarily detained brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy, to the point of torturing them and taking their lives, nor could it refute that those actions were at odds with the Constitution, with our country’s legal framework, and with respect to the international conventions that guarantee human rights.” The State also agreed to pay compensatory damages, to conduct a search for the bodies, and to prosecute the guilty. The case deals with the detention and subsequent disappearance of the brothers Carlos Santiago and Pedro Andrés Restrepo on January 8, 1988, at the hands of officers of the National Police.

494. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 99/00⁴¹, 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.

⁴⁰ 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>

⁴¹ 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>

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."

495. On November 15, 2012, the IACHR asked both parties to report on the steps taken in compliance with the pending items; however, no replies were received. As of the date of approval of the instant Annual Report, neither of the parties had submitted the information.

496. 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)

497. 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.

498. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 100/00⁴², in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$50,000, and decided:

2. To urge the State to make the decisions needed to carry out the pending commitments to bring to trial the persons considered responsible for the facts alleged, and to pay interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in that context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on performance of the obligations assumed by the State under this friendly settlement agreement.

499. On November 15, 2012, the IACHR asked both parties for information on compliance with the pending items. On December 27, 2012, the petitioners noted that, despite the time elapsed since the signing of the agreement, the State had not complied with the obligation it accepted regarding investigation, prosecution and punishment of those responsible. Additionally, they claimed that the State had not reported on any steps taken to overturn the judgment handed down in the absence of the victim, when the Constitution clearly provides that the trial stage of the proceedings shall take place in the presence of the defendant, in order to ensure his legitimate right of defense. They added that said judgment, which they contend violates domestic legislation and was adopted in the absence of Kelvin Torres, could be retaliation against him because he had the courage to file suit against the State and charge prosecutors and judges with violating his rights. For its part, the State did not submit the information requested.

⁴² 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>

500. 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)

501. 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.

502. On February 20, 2001 the IACHR adopted Friendly Settlement Report No. 19/01⁴³ 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.

503. On November 26, 2012 the IACHR asked both parties to report on compliance with the items still pending. Neither the State nor the petitioners responded to the request for information.

504. 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)

505. 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.

506. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 20/01⁴⁴, 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:

⁴³ 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>

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.

507. On November 26, 2012, the IACHR asked both parties to report on compliance with the items still pending. On December 28, 2011, the petitioners reported that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim and, consequently, the case became time-barred under the statute of limitations, while the judges who delayed the case from going forward have enjoyed impunity from prosecution. The State did not respond to the request for information.

508. 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)

509. 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.

510. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 21/01⁴⁵, 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.

511. On November 26, 2012 the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported that on December 28, 2012, the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case became time-barred under the statute of limitations in the Criminal Code, which time bars cases after a period of 10 years from the date of the crime or from the start of the trial, as the case may be, when the judiciary issues no decision in cases punishable with jail sentences such as those involving the crime of murder. The State did not respond to the request for information.

...continuation

⁴⁴ 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>

⁴⁵ 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>

512. 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)

513. 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.

514. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 22/01⁴⁶, 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.

515. On November 26, 2012 the IACHR requested information from both parties regarding the state of compliance with pending items. The petitioners responded on December 28, 2011, by saying that the State had not initiated any judicial or administrative proceeding towards the investigation and punishment of those responsible for the alleged facts and that the delay had led the matter to lapse within the domestic jurisdiction. The State did not respond to the request for information.

516. 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)

517. 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 to respect and ensure of Article 1.1 of the Convention. 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.

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

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

⁴⁶ 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>

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.

519. On November 26, 2012, the IACHR requested information from both parties on compliance with the remaining items. Neither of the parties submitted the information requested by the IACHR.

520. 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)

521. 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.

522. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 104/01⁴⁷, 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.

523. On November 16, 2012, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on December 7, 2011 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.

524. 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)

525. 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

⁴⁷ 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>

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.

526. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 105/01⁴⁸, certifying that the victim had been paid compensatory damages in the amount of US\$30,000, and decided:

2. To remind the State that it should fully implement the friendly settlement by beginning judicial proceedings against the persons implicated in the violations alleged.
3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR, every three months, on the implementation of the obligations assumed by the State under this friendly settlement agreement.

527. On November 16, 2012, the IACHR asked both parties to submit information on compliance with the pending items. In response, the petitioners reported on December 28, 2012 that the State has not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. The State did not respond to the request for information.

528. 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)

529. 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.

530. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 106/01⁴⁹, 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.

⁴⁸ Report No. 105/01, Case 11.443, Washington Ayora Rodríguez, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11443.htm>

⁴⁹ 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>

531. On November 16, 2012, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on December 28, 2012 that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case was time-barred under the statute of limitations in the Criminal Code, which time bars cases after a period of 10 years from the date of the crime or from the start of the trial, when no judicial decisions are taken in cases punishable with jail sentences such as those involving the crime of murder. The State did not respond to the request for information.

532. 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)

533. 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 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.

534. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01⁵⁰, 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.

535. On November 21, 2012 the IACHR asked both parties to report on compliance with the items still pending. Neither of the parties submitted the information requested. On December 28 that year, the petitioners noted that the police judges (who did not have jurisdiction) heard this case of human rights violations and dismissed and closed it, without the State having taken any action to vacate said decision on the grounds that it was issued by judges who did not have jurisdiction to punish those responsible; nor has the State taken any action against the police judges who improperly assumed jurisdiction. The State did not respond to the request for information.

536. 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)

⁵⁰ 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>

537. 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.

538. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01⁵¹, 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.

539. On November 16, 2012 the IACHR asked both parties to report on compliance with the items still pending. Neither of the parties submitted the information requested. On December 28 that year, the petitioners reported that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case was time-barred under the statute of limitations in the Criminal Code, which time bars a case from moving forward after a period of 10 years has elapsed from the date of the crime or from the start of the trial, when there has been no judicial decision in cases punishable with jail sentences such as those involving the crime of murder. The State did not respond to the request for information. The State did not respond to the request for information.

540. 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)

541. 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.

542. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 109/01⁵², 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:

⁵¹ Report No. 108/01, Case 11.574, Wilberto Samuel Manzano, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11574.htm>

⁵² Report No. 109/01, Case 11.632, Vidal Segura Hurtado, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11632.htm>

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.

543. On November 21, 2012, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported on December 28, 2012 that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. On the contrary, in light of the time elapsed as of the present date, the case was time-barred under the statute of limitations in the Criminal Code, which time bars cases from moving forward after a period of 10 years has elapsed from the date of the crime or from the start of the trial, when no judicial decision has been taken in cases punishable with jail sentences such as those involving the crime of murder. The State submitted no information.

544. 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 12.007, Report No. 110/01, Pompeyo Carlos Andrade Benítez (Ecuador)

545. 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.

546. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 110/01⁵³, 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.

547. On November 21, 2012, the IACHR requested both parties to report on the state of compliance with pending items. Neither of the parties submitted the information requested.

548. 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.

⁵³ Report No. 110/01, Case 12.007, Pompeyo Carlos Andrade Benítez, October 11, 2001, available at <http://www.cidh.oas.org/annualrep/2001eng/Ecuador12007.htm>

Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda (Ecuador)

549. 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).

550. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 63/03⁵⁴, in which it acknowledged that the State had complied with paying the victim the amount of US\$30,000 as compensatory damages, 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 this friendly settlement.

551. On November 21, 2012, the IACHR asked both parties to report on compliance with the pending points. The petitioners reported on December 28, 2012 that the State had not instituted any judicial or administrative proceeding to investigate, identify and punish the police, judges and prosecutors responsible for the facts alleged to the Commission. The State did not reply to the Commission's request for information.

552. 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)

553. 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.

554. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 64/03⁵⁵, in which it acknowledged that the State had complied with paying each victim the amount of US\$25,000 as indemnification, and decided:

⁵⁴ 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 these friendly settlements.

555. On November 21, 2012, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported on December 28, 2012, 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.

556. 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)

557. 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.”

558. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 65/03⁵⁶, 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.

559. On November 16, 2012, the IACHR asked both parties to report on compliance with the items still pending, but received no response.

560. 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)

...continuation

⁵⁵ Report No. 64/03, Case 12.188, Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, Rocío Valencia Sánchez, October 10, 2003, available at <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.12188.htm>

⁵⁶ 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>

561. 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.

562. This case deals with the duration of the preventive custody in which José René Castro Galarza was held during his prosecution for drug trafficking, acting as a front, and illegal enrichment. The victim was detained, without an arrest warrant, on June 26, 1992. He was then kept incommunicado for 34 days. On November 22, 1996, the illegal enrichment charges against the victim were dismissed; on March 23, 1998, the fronting charges were dismissed; and he was sentenced to an eight-year prison term for drug trafficking, which was reduced to six years on September 15, 1997. The victim was kept in prison even though he had been in custody for six years, and he was released on June 16, 1998.

563. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 44/06⁵⁷, 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.

564. On November 16, 2012, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners indicated on December 28, 2012, that the State had not initiated any action to punish the police officers and prosecutors responsible for the facts, nor had it carried out all necessary reparations measures and lifted the prohibition against transferring ownership of the property of the of Mr. José René Castro Galarza. They added that they had requested the State to lift the precautionary measures prohibiting transfer of the victim's property and that the Ministry of Justice (the institution in charge of complying with the agreement entered into between the State and the victim) told them that it could not order records in the register of property to be expunged.

565. In this regard, the petitioners claimed that the precautionary measure prohibiting transfer of the victims property was issued in 1992, and that 20 years had elapsed without the victim being able to use and enjoy his property, which would be a serious breach of the friendly settlement agreement and a violation of his right to property stemming from arbitrary acts of State agents. Consequently, the IACHR was requested to urge the State to cease the violations against the victim and proceed to lift the aforementioned precautionary measures. The State did not respond to the request for information.

566. 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)

567. 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.

⁵⁷ 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>

568. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 45/06⁵⁸, 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.

569. On November 16, 2012 the IACHR asked both parties to report on compliance with the pending points. In reply, On December 28, 2012, the petitioners asserted that the State had not instituted any actions (civil, criminal or administrative) to punish all those responsible for the facts covered in the complaint. The State did not reply to the Commission's request for information.

570. 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)

571. 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.

572. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 46/06⁵⁹, 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.

573. On November 16, 2012 the Commission asked both parties to report on compliance with the pending points. On December 28, 2012, the petitioners indicated that the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victim. For its part, the State did not submit the requested information.

574. 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)

575. 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.

⁵⁸ 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>

⁵⁹ 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>

576. 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.

577. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 47/06⁶⁰, 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.

578. On November 16, 2012 the IACHR requested both parties to report on the state of compliance with the pending items. In response, the petitioners reported that on December 28, 2012, the State had not taken any judicial action to investigate, prosecute and punish those responsible for the violations committed against the victims, nor against the police judges, who improperly assumed jurisdiction to try cases of human rights violations. The State did not reply to the Commission's request for information.

579. Based on the foregoing, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 12.487, Report No. 17/08 Rafael Ignacio Cuesta Caputi (Ecuador)

580. In Report No. 17/08⁶¹ of March 14, 2008, the Commission concluded that the Ecuadorian State had incurred international responsibility for violation of Rafael Ignacio Cuesta Caputi's rights to a fair trial, to judicial protection and to freedom of expression, set forth in articles 8(1), 25 and 13 of the American Convention, in conjunction with its general obligation under Article 1(1) to respect and ensure the Convention-protected rights. The present case concerns the Ecuadorian State's responsibility for failure to properly investigate the facts surrounding the explosion of a bomb that Mr. Cuesta Caputi was holding in the course of practicing his profession of journalism.

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

1. Publicly acknowledge international responsibility for the human rights violations established by the IACHR in the present report.
2. Carry out a complete, impartial, and effective investigation into the attack on Rafael Ignacio Cuesta Caputi.
3. Grant adequate reparation to Mr. Rafael Ignacio Cuesta Caputi for the violations of his right to judicial guarantees, to judicial protection, to personal integrity, and to freedom of thought and expression.

582. On November 16, 2012 the IACHR requested both parties to report on the state of compliance with the pending items. On November 20, the petitioner claimed that since publication of the 2011 Annual Report "there has been no attempt by the Ecuadorian State to comply with the recommendations of the judicial investigation". Moreover, with regard to economic reparation, there is no formal proposal for the State to pay, even though it is obligated and pledged to pay the compensation during the first quarter of 2011.

⁶⁰ 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>

⁶¹ Report No. 17/08, Case 12.497, Rafael Ignacio Cuesta Caputi, March 14, 2008, available at: <http://www.cidh.oas.org/annualrep/2008eng/Ecuador12487eng.htm>

583. On December 17, 2012, the State requested an extension that was granted and it was given until December 31, 2012 to respond; nonetheless, the time period has lapsed and nothing has been received.

584. The Commission therefore concludes that the recommendations made in Report No. 17/08 have not been carried out. Therefore, the Commission will continue to monitor for compliance.

Case 12.525, Report No. 84/09 Nelson Iván Serrano Sáenz (Ecuador)

585. In Report No. 84/09⁶² of August 6, 2009, the Commission concluded that the State was responsible for violation of the rights to humane treatment, personal liberty, to a fair trial, nationality, freedom of movement and residence, and judicial protection, recognized in articles 5, 7, 8, 20, 22 and 25, respectively, of the American Convention, in relation to articles 1(1) and 2 thereof, by virtue of the unlawful detention of Nelson Iván Serrano Sáenz, a citizen with dual Ecuadorian and United States citizenship, and his immediate deportation to the United States to face trial for the murder of four people in the state of Florida, where he was subsequently convicted and sentenced to die.

586. The IACHR made the following recommendations to the Ecuadorian State:

1. Continue granting legal assistance to Nelson Iván Serrano Sáenz according to international law.
2. Modify domestic legislation to ensure simple and effective recourse to courts pursuant to Article 25 of the American Convention for anyone subject to deportation proceedings.
3. Provide adequate reparations for the violations of Nelson Iván Serrano Sáenz's rights established in this report.

587. On November 16, 2012 the IACHR requested information from both parties on the compliance measures adopted. On December 27, 2012, the State reported that it had contracted the professional services of a team of attorneys in Florida, in July 2012, to draft and subsequently file a motion in the criminal proceeding against Mr. Nelson Ivan Serrano Saenz. In the context of the engagement of services to provide legal assistance to Mr. Serrano, the attorneys drafted and filed with the Circuit Court of Florida the motion based on Rule 3,851 of the Rules of Criminal Procedure of Florida. Consequently, the State requested that the Commission find that there has been compliance with recommendation No. 1.

588. The State also indicated that the National Secretariat of Migrants (SENAMI) is drawing up a draft Law of Human Mobility and it is expected that as of next year officials of the Ministry of Justice, Human Rights and Worship can work with SENAMI officials to take into account recommendation No. 2 in the draft law.

589. Regarding recommendation No. 3, the State reported that the "Commission to investigate the Process of Deportation of Nelson Ivan Serrano Saenz" drafted a report that was delivered to the Attorney General of the State and a criminal investigation was opened in order to determine criminal responsibility of those who participated in the process of deportation of Mr. Serrano. So, on August 22, 2012, an arraignment hearing was held of those who took part in the locating, tracking and detention and transfer Operation of the victim. Consequently, a preliminary investigation was open by the prosecutors in which several steps have been taken and on November 27, 2012, the investigation was deemed completed.

⁶² Report No. 84/09, Case 12.535, Nelson Iván Serrano Sáenz, August 6, 2009, available at: <http://www.cidh.oas.org/annualrep/2009eng/Ecuador12525eng.htm>

590. The Commission therefore concludes there has been partial compliance with the recommendations made in Report 84/09. Accordingly, the Commission will continue to monitor compliance with those recommendations.

Case 12.249, Report No. 27/09, Jorge Odir Miranda Cortez et al. (El Salvador)

591. In Report No. 47/03, of October 8, 2003, the IACHR concluded that the Salvadoran State was responsible for: i) violation of Article 25 of the American Convention on Human Rights, to the detriment of Jorge Odir Miranda Cortez and 26 other persons identified in the processing of the petition, by virtue of the fact that a petition they attempted to file seeking *amparo* relief was not the simple and effective remedy required under the international human rights obligations undertaken by the Salvadoran State; ii) violation of Article 2 of the Convention, by virtue of the fact that El Salvador's *amparo* law did not meet the requirements set forth in Article 25 of the American Convention, as it was not the simple and prompt recourse required under Article 25 of the Convention; and iii) violation of Article 24 of the Convention, to the detriment of Mr. Jorge Odir Miranda Cortez. The Commission did not find a violation of Article 26 of the Convention.

592. According to the complaint, the State had failed to provide the 27 victims –all of whom were infected with the HIV/AIDS virus- the medications that together constitute the HIV/AIDS triple therapy needed to save their lives and improve their quality of life, thereby placing them in a situation that, in their judgment, constituted cruel, inhuman and degrading treatment. They also alleged that they were discriminated against by the Salvadoran Social Security Institute because they had HIV/AIDS. They said that the almost two years that passed before a decision was handed down on the petition they filed seeking *amparo* relief in order to claim violation of their rights was an unreasonable period and violated their rights to judicial guarantees and judicial protection.

593. The IACHR made the following recommendations to the Salvadoran State:

- a) Implement legislative measures to amend the provisions governing *amparo*, in order to make it the simple, prompt and effective remedy required under the American Convention, and
- b) Make adequate reparations to Jorge Odir Miranda Cortez and the other 26 victims mentioned in the record of Case 12,249 –or their beneficiaries, as appropriate- for the human rights violations herein established.

594. In its Merits Report No. 42/04 (Article 51), dated October 12, 2004, the IACHR evaluated the measures that El Salvador had taken to comply with the recommendations made. It concluded that those recommendations had not been fully carried out. Accordingly it reminded the Salvador State of its previous recommendations.

595. Subsequently, the IACHR adopted its Merits Report No. 27/09 (Article 51 – Publication), of March 20, 2009. There, the Commission concluded that the Salvadoran State had complied with the second recommendation made in Report No. 47/03, but observed that the recommendation it had made suggesting legislative amendment of the *amparo* laws had still not been carried out. Accordingly, it reiterated this recommendation.

596. On November 14, 2012, the IACHR asked the parties to provide updated information on the status of compliance with the pending recommendation. The parties did not submit any information.

597. In 2011, regarding the first recommendation from the IACHR, the Salvadoran State reported that the Constitutional Procedure bill – introduced in the Legislative Assembly in 2002 - was still being studied by the Commission on Legislation and Constitutional Provisions.

598. Based on the above, the Commission concludes that the State has not complied with the recommendations. Therefore, the Commission will continue to monitor the pending items.

Case 9903, Report No. 51/01, Rafael Ferrer Mazorra *et al.* (United States)

599. In Report No. 51/01 dated April 4, 2001, the 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.

600. 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.

601. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 12.243, Report No. 52/01, Juan Raul Garza (United States)

602. In Report No. 52/01 dated April 4, 2001, the Commission concluded that the State was responsible for violations of Articles I, XVIII and XXVI of the American Declaration in condemning Juan Raul Garza to the death penalty. The Commission also hereby ratified its conclusion that the United States will perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration, should it proceed with Mr. Garza's execution based upon the criminal proceedings under consideration.

603. 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.

604. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State informed that Mr. Garza was executed on June 19, 2001. Therefore, the Commission

reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 11.753, Report No. 52/02, Ramón Martínez Villarreal, (United States)

605. In Report No. 52/02 dated October 10, 2002, the IACHR concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Ramón Martínez Villarreal; and, b) should the State execute Mr. Martínez Villarreal pursuant to the criminal proceedings at issue in this case, the State would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

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

1. Provide Mr. Martínez Villarreal with an effective remedy, which includes a re-trial in accordance with the due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Martínez Villarreal's release.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

607. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State informed that Mr. Villarreal was released on October 4, 2006. Therefore, the Commission reiterates that the State has partially complied with the recommendations set forth in Report N° 52/02. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States)

608. In Report No. 75/02 dated December 27, 2002, the IACHR concluded that the State failed to ensure the Dannels' right to property under conditions of equality contrary to Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.

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

1. Provide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measures necessary to ensure respect for the Dannels' right to property in accordance with Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.
2. Review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration, including Articles II, XVIII and XXIII of the Declaration.

610. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners presented their response on December 28, 2012, and observed that the United States has continued to take no action on the recommendations made by the Commission. The petitioners also indicated that the State has continued to allow destructive resource extraction activities on the ancestral

lands of the Western Shoshone with no attempt to resolve the long standing and ongoing human rights violations identified in this Merits Report. For its part, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the recommendations of the Commission. Therefore, the Commission reiterates that compliance with its recommendations set forth in Report No. 75/02 remains pending. Therefore, it will continue to monitor compliance with its recommendations.

Case 11.193, Report No. 97/03, Shaka Sankofa (United States)

611. In Report No. 97/03 dated December 29, 2003, the Commission concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Shaka Sankofa; b) by executing Mr. Sankofa based upon these criminal proceedings, the State was responsible for a violation of Mr. Sankofa's fundamental right to life under Article I of the American Declaration; and c) the State acted contrary to an international norm of *jus cogens* as encompassed in the right to life under Article I of the American Declaration by executing Mr. Sankofa for a crime that he was found to have committed when he was 17 years of age.

612. 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.

613. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that compliance with the recommendations in Report No. 97/03 remains partial. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)

614. In Report No. 98/03 dated December 29, 2003, the Commission concluded that the State was responsible for violations of the petitioners' rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature.

615. 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.

616. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the recommendations of the Commission. Therefore, the Commission reiterates that compliance with its recommendation remains pending. Accordingly, it will continue to monitor compliance with its recommendation.

Case 11.331, Report No. 99/03, Cesar Fierro (United States)

617. In Report No. 99/03 dated December 29, 2003, the Commission concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Cesar Fierro; and, b) should the State execute Mr. Fierro pursuant to the criminal proceedings at issue in this case, the State would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

618. 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.

619. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the first recommendation of the Commission. Therefore, the Commission reiterates that there has been partial compliance with its second recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)

620. In Report No. 100/03 dated December 29, 2003, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Douglas Christopher Thomas to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

621. 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.

622. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that compliance with the recommendations in Report No. 100/03 remains partial. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.412, Report No. 101/03, Napoleon Beazley (United States)

623. In Report No. 101/03 dated December 29, 2003, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Napoleon Beazley to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

624. 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

625. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the recommendations of the Commission. Therefore, the Commission reiterates that compliance with the recommendations in Report N° 101/03 remains partial. Accordingly, the IACHR will continue to monitor the item still pending compliance.

Case 12.430, Report No. 1/05 Roberto Moreno Ramos, (United States)

626. In Report No. 1/05 dated January 28, 2005, the IACHR concluded that: a) the State was responsible for violations of Articles II, XVIII and XXVI of the American Declaration in the criminal proceedings against Mr. Moreno Ramos; and, b) should the State execute Mr. Moreno Ramos pursuant to the criminal proceedings at issue in this case, the State would commit a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

627. 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.

628. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that there has been partial compliance with its recommendations. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 12.439, Report No. 25/05, Toronto Markkey Patterson (United States)

629. 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.

630. 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.

631. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the

IACHR. Therefore, the Commission reiterates that compliance in this case remains partial. Accordingly, the IACHR will continue to monitor the item still pending compliance.

Case 12.421, Report No. 91/05, Javier Suarez Medina (United States)

632. 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.

633. 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.

634. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates 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 No. 63/08, Andrea Mortlock (United States)

635. 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.

636. 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”.

637. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendation, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendation set forth above this year. On the other hand, the State submitted its response to the Commission’s request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendation of the IACHR. Therefore, the Commission reiterates that, apparently, there has been compliance with its recommendation. However, in light of the position previously adopted by the State with respect to the recommendation 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 recommendation.

Case 12.644, Report No. 90/09, José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García (United States)

638. In Report N° 90/09 issued on August 7, 2009, the IACHR concluded that the United States is responsible for the violations of the rights of José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García under Articles I, XVIII and XXVI of the American Declaration in respect of the criminal proceedings leading to the imposition of the death penalty against them. With respect to Mr. Medellín, who was executed on August 5, 2008 while he was the beneficiary of precautionary measures, the Inter-American Commission additionally concluded that “the United States failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States”. In Report N° 90/09, the IACHR also concluded that should the State execute Messrs. Medellín, Ramírez Cardenas and Leal García, it would commit an irreparable violation of their right to life as guaranteed in Article I of the American Declaration.

639. Accordingly, the IACHR issued the following recommendations to the State:

1. Vacate the death sentences imposed on Messrs. Ramírez Cardenas and Leal García and provide the victims with an effective remedy, which includes a new trial in accordance with the equality, due process and fair trial protections, prescribed under Articles I, XVIII and XXVI of the American Declaration, including the right to competent legal representation.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national’s circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
3. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.

4. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes can apply for amnesty, pardon or commutation of sentence with minimal fairness guarantees, including the right to an impartial hearing.

5. Provide reparations to the family of Mr. Medellín as a consequence of the violations established in this report.

640. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the first recommendation of the Commission, and that Mr. Medellín was executed on August 5, 2008, while Mr. Leal García was executed on July 7, 2011. Therefore, the Commission reiterates that the State failed to comply with the recommendation issued by the Commission regarding Messrs. Medellín and Leal García and is pending compliance with the recommendations regarding Mr. Ramírez Cárdenas. Consequently, the Commission will continue its supervision of the matters pending compliance.

Case 12.562, Report No. 81/10, Wayne Smith, Hugo Armendariz et al. (United States)

641. In its Report No. 81/10, approved July 12, 2010, the IACHR concluded that in light of the deportation of Wayne Smith and Hugo Armendariz from the United States, the State is responsible for violating the rights of Messrs. Wayne Smith and Hugo Armendariz enshrined in Articles V, VI, VII, XVIII, and XXVI of the American Declaration. The IACHR pointed out, moreover, that it is well-recognized under international law that a Member State must provide non-citizen residents an opportunity to present a defense against deportation based on humanitarian and other considerations, such as the rights protected under Articles V, VI, and VII of the American Declaration. The administrative or judicial bodies charged with reviewing deportation orders in each Member State must be permitted to give meaningful consideration to a non-citizen resident's defense, examine it, and balance it against the State's sovereign right to enforce reasonable, objective immigration policy, and provide effective relief from deportation if merited. In Case 12.562 the United States did not follow these International norms.

642. Consequently, the IACHR issued the following recommendations to the State:

1. Permit Wayne Smith and Hugo Armendariz to return to the United States at the expense of the State.
2. Reopen Wayne Smith and Hugo Armendariz's respective immigration proceedings and permit them to present their humanitarian defenses to removal from the United States.
3. Allow a competent, independent immigration judge to apply a balancing test to Wayne Smith and Hugo Armendariz's individual cases that duly considers their humanitarian defenses and can provide meaningful relief.
4. Implement laws to ensure that non-citizen residents' right to family life, as protected under Articles V, VI, and VII of the American Declaration, are duly protected and given due process on a case-by-case basis in U.S. immigration removal proceedings.

643. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on January 2, 2013. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. The State also reiterated that it declines the recommendations of the Commission. Therefore, the Commission reiterates that the State has failed to comply with the recommendations issued. In this

regard, the Inter-American Commission deems that the obligation of “significant redress” to Mr. Smith’s family remains, under the terms of the third recommendation of Report 81/10. The Commission likewise urges the State to take expeditious steps to comply with the recommendation concerning Mr Armendariz and will continue its supervision of the matters pending compliance.

Case 12.626, Report No. 80/11, Jessica Lenahan (González) et al. (United States)

644. In its Report No. 80/11, approved July 21, 2011, the IACHR concluded that the State failed to act with due diligence to protect Jessica Lenahan and Leslie, Katheryn and Rebecca Gonzales from domestic violence, which violated the State’s obligation not to discriminate and to provide for equal protection before the law under Article II of the American Declaration. The State also failed to undertake reasonable measures to protect the life of Leslie, Katheryn and Rebecca Gonzales in violation of their right to life under Article I of the American Declaration, in conjunction with their right to special protection as girl-children under Article VII of the American Declaration. Finally, the Commission finds that the State violated the right to judicial protection of Jessica Lenahan and her next-of kin, under Article XVIII of the American Declaration.

645. Consequently, the IACHR issued the following recommendations to the State:

1. Undertake a serious, impartial and exhaustive investigation with the objective of ascertaining the cause, time and place of the deaths of Leslie, Katheryn and Rebecca Gonzales, and to duly inform their next-of-kin of the course of the investigation;
2. Conduct a serious, impartial and exhaustive investigation into systemic failures that took place related to the enforcement of Jessica Lenahan’s protection order as a guarantee of their non-repetition, including performing an inquiry to determine the responsibilities of public officials for violating state and/or federal laws, and holding those responsible accountable;
3. Offer full reparations to Jessica Lenahan and her next-of-kin considering their perspective and specific needs;
4. Adopt multifaceted legislation at the federal and state levels, or to reform existing legislation, making mandatory the enforcement of protection orders and other precautionary measures to protect women from imminent acts of violence, and to create effective implementation mechanisms. These measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country;
5. Adopt multifaceted legislation at the federal and state levels, or reform existing legislation, including protection measures for children in the context of domestic violence. Such measures should be accompanied by adequate resources destined to foster their implementation; regulations to ensure their enforcement; training programs for the law enforcement and justice system officials who will participate in their execution; and the design of model protocols and directives that can be followed by police departments throughout the country;
6. Continue adopting public policies and institutional programs aimed at restructuring the stereotypes of domestic violence victims, and to promote the eradication of discriminatory socio-cultural patterns that impede women and children’s full protection from domestic violence acts, including programs to train public officials in all branches of the administration of justice and police, and comprehensive prevention programs; and
7. Design protocols at the federal and state levels specifying the proper components of the investigation by law enforcement officials of a report of missing children in the context of a report of a restraining order violation.

646. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the petitioners have not presented information on compliance with the recommendations set forth

above this year, but prior to that, the petitioners sent a communication to the IACHR regarding compliance with the recommendations, on March 20, 2012. On the other hand, the State submitted its response to the Commission's request on December 17, 2012 and November 1, 2012. Firstly, the State observed that it "disagrees with the conclusions contained in the Commission's report," and that it "is not bound as a legal matter by obligations and duties contained, respectively, in human rights treaties that it has not joined and in non-binding instruments such as the American Declaration." Nevertheless, the State stressed its commitment to preventing domestic violence and protecting victims, which is allegedly shown by many actions taken at the federal, state and local levels to respond to domestic violence. Moreover, "with a view to engagement and cooperation with the inter-American human rights system and directly with the petitioners, to continue to show its commitment to prevention of domestic violence, particularly violence against women and girls," the State presented the following observations that enhance the existing legal framework and address these issues through a more affirmative approach to prevention.

647. With regard to recommendations No. 1 and 2 *supra*, the State observed that the Special Litigation Section (SPL) of the Department of Justice's Civil Rights Division does not have authority to conduct an investigation into a single incident or into discriminatory conduct affecting an individual. The State added that it has sent three letters to state and local authorities in Colorado about the Commission's Final Report, but it has not received any response from these authorities. Moreover, Acting Director of the Office of Violence against Women (OVW) has had several conversations with Castle Rock Chief of Police to explore options to ensure that the Police Department's policies, protocols and procedures incorporate best practices for domestic violence response. The petitioners, for their part, observed that no steps had yet been taken to conduct either of the investigations described in recommendations 1 and 2. Regarding recommendation No. 3 *supra*, the United States indicated that it did not have a legal authority that would permit it to provide funds to Ms. Lenahan and her son absent an act of Congress. Likewise, the petitioners stressed that they were not aware of any progress on this front, and demanded a face-to-face and public apology, as well as payment of reparations in the form of money.

648. With regard to recommendations No. 4, 5 and 6 *supra*, the petitioners made several concrete and specific suggestions about "policy remedies" that ought to be implemented at federal and state levels. Regarding recommendation No. 4 *supra*, the State pointed out that improving the criminal justice response to crimes of violence against women is the core mission of OVW, and the issuance and enforcement of protection orders is a significant activity of communities and entities funded by OVW. According to the State, in the six-month reporting period from July to December 2011, jurisdictions receiving funding from OVW granted 301,902 protection orders, and, in direct response to this case, Congress added a new statutory purpose area to the STOP program in the Violence against Women Act (VAWA) of 2005. This has allowed states to use STOP funds to place special victim assistants, known as "Jessica Gonzales Victim Assistants," in local law enforcement agencies, in order to improve the enforcement of protection orders. The State observed that OVW has also implemented a host of training and technical assistance projects aimed at increasing the enforcement of protection orders and improving the response to violence against women, such as the National Center for Full Faith and Credit (NCFCC), Project Passport, the publication of the manual "Civil Protection Orders: A Guide for Improving Practice," Blueprint for Safety Initiative, Lethality Assessment TA Project, Danger Assessment and Risk Management Training Project, and in 2012 OVW released the solicitation for a special initiative addressing homicide reduction and is currently reviewing applications.

649. Regarding recommendation No. 5 *supra*, the State informed that OVW has held a series of focus groups over the past several years exploring issues around custody and safety for women and children, which resulted in OVW's decision to undertake a new demonstration initiative: the Family Court Demonstration Initiative (FCDI). With regard to recommendation No. 6 *supra*, the State asserted that the Department of Justice's Civil Rights Division is committed to addressing gender-based police discrimination, and already is engaged in a variety of efforts relevant to this recommendation. As an example, the State mentioned the "Gender Discrimination Findings and Recommendations in New Orleans Police Department Consent Decree," which stemmed from the settlement, in July 2012, about the Division's investigation into the New Orleans Police Department. The State also reiterated that the

Department of Justice continues to be interested in a roundtable on domestic violence and human rights. Lastly, regarding recommendation No. 7 *supra*, the State stressed that OVW has supported the development of a host of best practices materials related to the enforcement of protection orders.

650. Based on these considerations, the Commission concludes that the State has partially complied with the aforementioned recommendations. Accordingly, the Commission will continue to monitor compliance with the remaining recommendations

Case 12.776, Report No. 81/11, Jeffrey Timothy Landrigan (United States)

651. In Report No. 81/11, the Commission concluded that the United States was responsible for violating Articles II, XVIII, and XXVI of the American Declaration with respect to Jeffrey Timothy Landrigan, and that his execution on October 26, 2010, constituted a serious and irreparable violation of the basic right to life enshrined in Article I of the American Declaration.

652. Consequently, the IACHR issued the following recommendations to the State:

1. Provide reparations to the family of Mr. Landrigan as a consequence of the violations established in this report; and
2. Review its laws, procedures, and practices to ensure that people accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, II, XVIII, and XXVI.

653. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners presented their response on December 12, 2012, and observed that the United States had failed to provide reparation to the family of Mr. Landrigan, and had continued to execute beneficiaries of precautionary measures granted by the Commission. For its part, the State submitted its response to the Commission's request on December 17, 2012. In its response, the State observed that it disagreed with and declined the recommendations of the IACHR.

654. Based on these considerations, the Commission concludes that the State has failed to comply with the aforementioned recommendations. Accordingly, the Commission will continue its supervision of the recommendations.

Case 12.028, Report No. 47/01, Donnason Knights (Grenada)

655. In Report No. 47/01 dated April 4, 2001, the Commission concluded the State was responsible for: a) violating Mr. Knights' rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Knights to a mandatory death penalty; b) violating Mr. Knights' rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Knights' with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Knights' rights under Article 5(1) and 5(2) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of Mr. Knights' conditions of detention; and d) violating Mr. Knights' rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

656. 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.

657. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 11.765, Report No. 55/02, Paul Lallion (Grenada)

658. In Report No. 55/02 dated October 21, 2003, the IACHR concluded that the State of Grenada was responsible for: a) violating Mr. Lallion's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Lallion to a mandatory death penalty; b) violating Mr. Lallion's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Lallion with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Lallion's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of its failure to respect Mr. Lallion's right to physical, mental, and moral integrity by confining him in inhumane conditions of detention; d) for violating Mr. Lallion's rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to Mr. Lallion to pursue a Constitutional Motion; and e) violating Mr. Lallion's right to personal liberty as provided by Article 7(2), 7(4), and 7(5) of the Convention, in conjunction with Article 1(1) of the Convention by failing to protect his right to personal liberty, and to be brought promptly before a judicial officer.

659. 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.

660. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 12.158, Report No. 56/02 Benedict Jacob (Grenada)

661. In Report No. 56/02 dated October 21, 2003, the Commission concluded that the State was responsible for: a) violating Mr. Jacob's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Jacob to a mandatory death penalty; b) violating Mr. Jacob's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Jacob with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Jacob's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of its failure to respect Mr. Jacob's rights to physical, mental, and moral integrity by confining him in inhumane conditions of detention; and d) violating Mr. Jacob's rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

662. 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.

663. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates 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)

664. In Report No. 4/01 of January 19, 2001, the IACHR indicated that “it fully recognizes and appreciates the reforms carried out by the State of Guatemala in response to the recommendations put forth in Report 86/98. As recognized by the partes, said recommendations constitute a significant step forward in protecting the fundamental rights of the victim and of women in general in Guatemala. These reforms represent a measure of substantial compliance with the Commission’s recommendations, and are consistent with the obligations of the State as a party to the American Convention.” For this reason, it concluded that the State had implemented a significant portion of the recommendations issued in Report 86/98.

665. In this same Report, the Commission indicated that it was not in a position to conclude that the State had fully complied with the recommendations and reiterated 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.

666. 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.

667. 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.”

668. On November 14, 2012 the Commission asked the parties to provide updated information on the status of compliance with the recommendations.

669. On December 15, 2012, the petitioner contended that Article 317 of the Guatemalan Civil Code had not been amended and that, consequently, her rights under the American Convention were still being violated and that she had not been given any “reparation or compensation for the damages caused.”

670. In response, the State reiterated that it had implemented all of the reforms to the Civil Code that had been deemed necessary by the IACHR and that the only reform pending was Article 137 of said body of laws. In this regard, it reiterated that the Draft Law to amend the article had been introduced by the Executive Branch in the National Congress, where it was awaiting approval.

671. With regard to the recommendation on redress and adequate compensation to María Eugenia Morales de Sierra, as was noted earlier, it is on record in the “Agreement for Specific Compliance with Recommendations,” entered into by the parties on March 3, 2006 that Attorney Morales de Sierra expressly stated “that her struggle is to bring dignity to women and, therefore, she has no personal pecuniary interest, expressly waiving the economic redress that was recommended by the IACHR in her status as a victim.”

672. The IACHR has not received any information in 2012 as to which commitments set forth in the agreement signed by the aforementioned parties are pending compliance.

673. Based on the foregoing, the Commission reiterates that the State has partially complied with the recommendations. Consequently, the Commission will continue to monitor the pending items.

Case 9207, Report No. 58/01, Oscar Manuel Gramajo López (Guatemala)

674. 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.

675. 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.

676. On November 14, 2012, the Commission asked the parties to supply updated information on the status of compliance with the recommendations made in this case. The petitioners did not supply any information.

677. The State reported on the first recommendation that the Internal Armed Conflict Special Cases Unit of the Human Rights Section of the Office of the Public Prosecutor had drawn up an investigation plan but that it was classified pursuant to Article 314 of the Criminal Procedure Code and therefore specific details could not be provided about the investigation. However, it did mention some steps taken in the investigation aimed at determining the individuals who made up the chain of command of the National Police in San Marcos in November 1980.

678. As to the second recommendation of the IACHR, the State reported the following:

- a) Concerning the search for the remains of Mr. Oscar Manuel Gramajo Lopez, it indicated that the Forensic Anthropology Foundation of Guatemala (FAFG) –an autonomous, technical-scientific non-governmental organization- interviewed and took DNA samples of the family members of Mr. Gramajo Lopez. A comparison of said samples, as well as samples secured from the bone remains recovered in the exhumations by the FAFG at different locations in Guatemala, had been run to check them against the genetic data in its database (BDD) and, thus far, Oscar Manuel Gramajo Lopez has not been successfully identified.
- b) Regarding the necessary arrangements to accommodate the wishes of the family as to the final resting place of the remains of Mr. Oscar Manuel Gramajo, it indicated that once his remains are located and identified “the transfer shall be coordinated under the National Reparations Program (PNR) in keeping with reparation policies on the necessary arrangements in respect of the final resting place of Mr. Gramajo Lopez.”

c) With regard to the recommendation to award proper and timely reparations to the victim's family, it stated that on December 5, 2008, the National Reparations Program awarded economic reparation in the amount of twenty four thousand quetzals to Mrs. Edelia Lopez Escobar as a result of the forced disappearance of her son Oscar Manuel Gramajo. Accordingly, a settlement agreement for payment of economic reparation was signed by Mrs. Edelia Lopez Escobar stating that there were no other individuals either equally or more entitled to be beneficiaries in this case and that she fully, totally and effectively released the State of Guatemala and the National Reparations Program of any further payment of reparation, as the reparation had been received to her satisfaction.

679. The Commission therefore concludes that the recommendations have been partially fulfilled. Accordingly, the Commission will continue to monitor for compliance with the pending points.

Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay *et al.*; Case 10.799 Catalino Chochoy *et al.*; Case 10.751 Juan Galicia Hernández *et al.*; and Case 10.901 Antulio Delgado, Report No. 59/01 Remigio Domingo Morales *et al.* (Guatemala)

680. 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 Ixcay, 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 Baycaj, 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.

681. 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.

682. 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.

683. With regard to Case 10.626 (Remigio Domingo Morales and Rafael Sanchez) in Report 59/01, on April 24, 2006, the IACHR decided under Resolution 1/06 to correct the aforementioned Report, declaring that on June 28, 1990, Remigio Domingo Morales and Rafael Sanchez were detained by members of the Civil Self-Defense Patrols (PAC) and were taken on that same day to Huehuetenango Hospital to be treated for multiple blunt-force sharp instrument injuries that they presented; both of them were discharged from the hospital on July 3, 1990. The State of Guatemala and the petitioners were notified of the above-cited Resolution and it was subsequently published in Report N° 59/01.

684. On November 14, 2012, the Commission requested updated information from the parties regarding compliance with the recommendations set forth in Report No. 59/01. The petitioners did not provide any information.

685. In its reply, the State addressed Case 10.626 (Remigio Domingo Morales and Rafael Sanchez) and stated that if the petitioners believe that their rights had been violated by the State during the internal armed conflict, the National Reparations Program was in place and functioning, and that its purpose was to provide reparation to the victims of human rights violations, which occurred during said conflict, provided that they qualify for reparation under Program criteria.

686. As to the fourth recommendation of Report 59/01, the State reiterated that the Civil Self-Defense Patrols (PAC) were dissolved under Decree 143-96 of the Congress of the Republic of Guatemala, dated November 28, 1996, and that the process of disarmament of the PAC had been verified by the Office of the Prosecutor for Human Rights of Guatemala and by the United Nations Verification Mission in Guatemala, (MINUGUA).

687. As for the fifth recommendation, the State asserted "that it is organized to ensure that all of its inhabitants enjoy their rights and freedoms," under the legal-political framework of the Political Constitution of the Republic. It further noted that, as part of current government policy, "a pact for peace, security and justice is being developed for the purpose of drawing up a cooperative strategy to incorporate all sectors of society and institutions of the Guatemalan State to attain better levels of peaceful coexistence, not only of individuals who are engaged in the promotion of fundamental rights, but of the entire Guatemalan population in order to ensure governance, security, justice and social protection."

688. The Commission therefore concludes that the recommendations have been partially fulfilled. Accordingly, the Commission will continue to monitor for compliance with the pending points.

Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo, Ana María López Rodríguez⁶³ and Luz Leticia Hernández (Guatemala)

⁶³ The State reported in a note dated December 18, 2012 that the correct name of the victim is Ana Maria Lopez Rodriguez and not Maria Ana as it appeared in the IACHR Report.

689. 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, Ana María 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, Ana María 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.

690. 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, Ana María 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, Ana María 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.

691. On November 14, 2012, the Commission requested the parties to provide updated information on compliance with the recommendations set forth in Report No. 60/01. The petitioners did not provide any information.

692. In the instant case, the State entered into an agreement on compliance with the recommendations issued by the IACHR in Merits Report No. 60/01 on December 19, 2007 with the next-of-kin of victim Ileana del Rosario Solares Castillo, and on October 14, 2010 with the next-of-kin of Ana Maria Lopez Rodriguez.

693. The next-of-kin of victim Luz Leticia Hernandez Agustin have informed the State that after reaching a consensus on economic reparation or measures of moral reparation, the State must hand over the remains of Luz Leticia.

694. With regard to the first recommendation, that is, to investigate the incidents that were the subject of the complaint pertaining to the forced disappearance of Ileana del Rosario Solares Castillo, Ana Maria Lopez Rodriguez and Luz Leticia Hernandez, which took place in 1982, to determine those who are responsible for it and punish them, the State informed that the Office of the Public Prosecutors had opened two investigations (File MP001/2006/12842 for the forced disappearance of Ileana del Rosario Solares Castillo and File MP001/2006/67766 for the forced disappearance of Ana Maria Lopez Rodriguez and Luz Leticia Hernandez) and that the investigations are still on-going.

695. As for the second recommendation, to adopt measures of reparation, including: measures to locate the remains of the three women detainees, who disappeared in 1982, and help to accommodate the wishes of their next of kin regarding the final resting place of their remains, the State reported that the Forensic Anthropology Foundation of Guatemala (FAFG) –an autonomous, scientific/technical non-governmental organization- performed exhumations and that when it completed the appropriate examination, the FAFG would provide the results of the exhumations.

696. Concerning the component of adequate and timely reparation to the next-of-kin of the victims, the State informed that the degree of compliance with the agreements entered into with the family members of victims Ileana del Rosario Solares Castillo and Ana María López Rodríguez, can be summarized up as follows:

Commitments stemming from the agreement on	Family members	Family members of
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recommendation compliance as provided in Report No. 60/01	of Ileana del Rosario Solares Castillo	Ana María López Rodríguez
Recognition of international responsibility and apology	Implemented	Implemented
Unveiling of commemorative plaque in memory of the victim	Implemented	In the process of implementation
Payment of economic reparation	Implemented	Implemented
Seed capital for creating a foundation	Implemented	Implemented
Printing of CD with biography of the victim and case summary	Implemented	NA
Printing of education brochure	Implemented	In the process of implementation
Scholarships	NA	Implemented
Promoting approval of Law 3.590 (which creates the Commission for the Search of Disappeared Detainees)	In the process of implementation	In the process of implementation
Promote the prosecution and punishment of those responsible for the forced disappearances	In the process of implementation	In the process of implementation

697. Based on the above, the Commission expresses its appreciation for the State's actions and concludes that there has been partial compliance with the recommendations summarized above. As a result, the Commission will continue to monitor the pending items.

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

698. 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.

699. 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.

700. On June 9, 2003, the parties entered into an "Agreement on the Rules for Compliance by the State of Guatemala with the Recommendations of the IACHR" and on October 24, 2003, they entered into an Agreement on Economic Reparation: Additionally they signed an *addendum* under which the Government undertook to appropriate 950,000 quetzals as economic reparation.

701. On November 14, 2012, the Commission requested updated information from the parties on the status of compliance with the recommendations issued in the instant case.

702. With regard to the first and second recommendation, on investigation and punishment of those responsible for the crimes in the complaint, the petitioners report that no information is available to make significant and concrete progress possible in the investigation of the crimes and in the arrest of those who have been charged with the crimes, and the prosecution and punishment of those who are responsible; consequently, according to the petitioners, this commitment has still not been fulfilled by the State of Guatemala.

703. On this issue, the State reiterated the information on the investigation conducted by the Office of the Public Prosecutor in 2002 and 2008 in connection with the arrest warrants issued against several of the individuals charged with the crimes committed on August 24, 1994, when a group of people assaulted the workers occupying La Exacta farm and their families and, as a result of the assault, three workers were killed and at least eleven people were seriously injured.

704. As for the third recommendation of the IACHR on reparation, the petitioners reported that in the Agreement on Economic Reparation entered into by the parties on October 24, 2003, the commitment to continue discussing and negotiating the following measures of reparation was set forth: awarding 96 housing units, construction of a monument to dignify the memory of the victims; [building] school infrastructure and [providing] access to potable water services. It was reported that the State had made some effort with regard to above listed measures of reparation, but that they still were not implemented.

705. Regarding this recommendation, the State reported that in December 2003, payment of 950,000 quetzals was made as economic reparation, which were apportioned as follows: 235,000 quetzals to redress the families of the victims, who lost their lives in the incidents of August 24, 1994, and 735,000 quetzals for land purchase to address the housing issue, which the beneficiaries used to purchase a plot of land.

706. As for other measures of reparation that the parties agreed to continue discussing and negotiating, the State reported that COPREDEH (Presidential Human Rights Commission) and CALDH introduced a draft specific agreement, but with the changes in government that have taken place, it was under review and examination so that the commitments can be fulfilled and executed within a reasonable period of time.

707. Regarding the fourth recommendation of the IACHR, that is, for the State to adopt measures to ensure that no future violations occur such as the ones under examination in Case 11.382, the petitioners report that the State has not adopted such measures because there has not been adequate investigation, prosecution and punishment of those responsible in criminal matters to assure the petitioners that the State does not allow nor will it allow these types of incidents to take place again. Nor have workplace-related measures been adopted to regulate labor relations and establish the appropriate punishments for acts such as those that took place in case 11.382.

708. On this issue, the State reported “that it is organized to ensure for its inhabitants the enjoyment of their rights and liberties,” under the legal-political framework of the Political Constitution of the Republic. Additionally, it noted that as part of current government policy it is reviewing “a pact for peace, security and justice that is designed to develop a cooperative strategy to incorporate and hold accountable all social sectors and institutions of the State of Guatemala in order to legitimize and make feasible several transformations and impact results, which make it possible to achieve higher levels of peaceful coexistence, governance, security, justice and social protection, in light of the prevailing violence, disregard for the law, crime and impunity in the country.”

709. Additionally, the State noted that it was keeping “the international commitment of reparation in the agreements it is a party to and, therefore, it has not let up in its efforts to coordinate between the institutions involved in the instant case, in order to enforce respect for human rights in the country.”

710. In light of the foregoing, the IACHR expresses its appreciation for the measure adopted by the State as economic reparation and finds that the recommendations outlined above have been partially fulfilled. Consequently, the Commission will continue to monitor the pending items.

Case 11.312, Report on Friendly Settlement No. 66/03, Emilio Tec Pop (Guatemala)

711. 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.

712. In the Friendly Settlement Agreement, the State undertook to 1) Recognize state responsibility; 2) Grant reparation and assistance to the victim consisting of payment of USD \$2,000.00 in compensation and provide seed capital for basic grains to Mr. Emilio Tec Pop in order to raise his standard of living and, 3) Investigate and punish those responsible for the incidents charged in the petition.

713. According to information provided by the parties, the record shows that the State has complied with the commitments pertaining to recognition of international responsibility, reparation and assistance.

714. On November 14, 2012, the Commission requested up-to-date information from the parties on the status of compliance with the commitments made under the Friendly Settlement Agreement.

715. With respect to the commitment to investigate and punish those responsible, the petitioners assert that the information provided by the State does not make it possible to establish whether concrete and significant progress has been made in the investigation, prosecution and punishment of those responsible for the human rights violations against Emilio Tec Pop.

716. In response, the State claimed that it is continuing to follow up on the criminal investigations aimed at prosecuting those responsible for the arbitrary detention of Emilio Tec Pop.

717. The IACHR appreciates the measures taken by the State as to recognition of international responsibility, payment of reparation and provision of assistance.

718. 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 on Friendly Settlement No. 67/03, Irma Flaquer (Guatemala)

719. 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.

720. On March 2, 2001, the parties agreed on a friendly settlement of the case. 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.

721. 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.

722. 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.

723. Based on information provided by the parties during follow-up on the Friendly Settlement Report, the State has complied with delivery of the apology letter to the next-of-kin of the victim in a public ceremony, which was held on January 15, 2009.

724. Consequently, the following measures are pending compliance: a) Creation of a scholarship for journalism studies; b) Creation of a university professorship on the History of Journalism; e) Investigating the forced disappearance of journalist Irma Flaquer Azurdia and the extrajudicial execution of Fernando Valle Flaquer.

725. On November 15, 2012, the IACHR requested up-to-date information from the parties on the status of compliance with the pending items of the agreement. The petitioners did not submit any information.

726. With regard to the creation of a scholarship for journalistic studies, the State indicated that it does not have financial resources available to create new scholarships during 2011 and 2012 and, therefore, steps toward this end have been suspended. As for the university professorship on the History of Journalism, the State reported that the School of Communication Sciences of the only government university in Guatemala, the University of San Carlos de Guatemala (USAC), teaches the course "History of Journalism" in which a specific section is taught on the life of journalist Flaquer. Regarding the investigation, it reported that in 2004 a Committee to Move the Proceedings Forward was created and is made up of [representatives of] the different institutions of justice and is tasked with moving forward the investigation into the disappearance of the victim, which is being conducted by the Crimes against Journalists and Union Members Unit of the Human Rights Section of the Office of the Public Prosecutor.

727. The IACHR notes that compliance with creating a scholarship for the study of journalism and investigation of the case is pending.

728. 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 No. 68/03, Community of San Vicente de los Cimientos (Guatemala)

729. 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.

730. On September 11, 2002, the parties agreed on a friendly settlement in the case and established the following commitments:

1. Purchase, on behalf of all the members of the Los Cimientos Quiché community comprising the civic association "Community Association of Residents of Los Cimientos Xetzununchaj," the San Vicente Osuna estate, and its annex, the Las Delicias estate, which are adjacent to each other and are located in the municipality of Siquinalá, Escuintla department.
2. The community of Los Cimientos, through the Community Association of Residents of Los Cimientos Xetzununchaj civic association, and the Government, shall identify and negotiate, within sixty days following the settlement of the community, urgent projects to reactivate its productive, economic, and social capacities, with a view to fostering the community's development and wellbeing, and in consideration of the agrological study carried out and the record of the landmarks and limits of the San Vicente Osuna estate and its annex, the Las Delicias estate.
3. The individual land owners, land holders, and assigns of the estates comprising the Los Cimientos community, as a part of the commitments arising from the government's purchase on their behalf of the estates known as San Vicente Osuna and its annex, the Las Delicias estate, shall cede their current rights of ownership, holding, and inheritance to the Land Fund, in compliance with the provisions of Article 8(h) of the Land Fund Law, Decree No. 24-99.
4. The State shall be responsible for relocating the 233 families of the community of Los Cimientos, Quiché, together with their property, from the village of Batzulá Churranchó, Santa María Cunén municipality, Quiché department, to the San Vicente Osuna estate and its annex, the Las Delicias estate, located in Siquinalá municipality, Escuintla department.
5. The government shall provide the resources necessary to feed the 233 families during their transfer to and settlement in their new homes, and it shall accompany them with a duly equipped mobile unit for the duration of the transfer and until such time as a formal health facility is established in their settlement, in order to cater for any emergency that may arise.
6. For the community's location and resettlement, the government of the Republic will provide humanitarian assistance, minimal housing, and basic services.
7. The government of Guatemala agrees to organize the creation of a promotion committee that will be responsible for monitoring progress with the legal proceedings initiated against the individuals involved in the events of June 25, 2001, perpetrated against the owners of the Los Cimientos and Xetzununchaj estates.

731. By a communication dated November 15, 2012, the Commission asked the parties to supply updated information on the status of compliance with those points of the agreement that were still pending in this case. The State did not provide any information.

732. The petitioners reported that compliance with the following commitments made by the State is pending:

- a) **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.** On this topic, the petitioners report that they have not received any information from the State on the current status of the criminal proceedings brought against the individuals allegedly responsible for the crimes charged in the complaint. Specifically, they reiterated that on April 27, 2011, a public hearing was conducted on the case of one of the individuals allegedly responsible and the court dismissed the case and ordered his release. Additionally, they noted that they have not received any information from the State on the current status of the case against the three individuals charged with the crimes alleged in the complaint, who the Office of the Public Prosecutor had brought charges against in 2002. Consequently, they believe that the State has still not complied with the commitment to investigate, prosecute and punish those responsible for the crimes charged in the petition.
- b) **The individual land owners, land holders, and assigns of the estates comprising the Los Cimientos community, as 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.** Regarding this item, the petitioners reiterate that the beneficiaries are absolutely willing to transfer the ownership rights in order to

complete this commitment. However, they assert that COPREDEH, the body coordinating this process and the Secretariat of Agrarian Affairs, have not followed up on the process.

c) **As to the granting of housing, as provided in the commitment “For the community’s location and resettlement, the Government of the Republic shall provide humanitarian assistance, minimum housing and basic services,”** the petitioners reported that on June 4, 2012, COPREDEH handed over to the Guatemalan Housing Fund (FOGUAVI) 103 case files of housing beneficiaries for review, assessment and approval. Additionally, COPREDEH informed FOGUAVI that budget would be made available from the prior contribution for each house awarded to the 103 beneficiaries. Nonetheless, the commitment is still pending compliance.

733. The petitioners reported, however, that the “Specific Agreement” proposed by the State for implementation and compliance with certain measures of reparation has still not been signed into force.

734. 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 on Friendly Settlement No. 29/04, Jorge Alberto Rosal Paz (Guatemala)

735. 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.

736. On January 9, 2004, the parties agreed on a friendly settlement in the case. 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.

737. 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.

738. On December 2, 2011, the State reported that financing had been provided through FINABECE to María Luisa Rosal Vargas to allow her to take preparatory French classes before entering a master’s program at McGill University in Montreal, Canada. However, on October 26, 2011 the beneficiary reported that she was not accepted in the master’s program and asked that the scholarship be continued and the place of study be changed to National University of San Martín in Buenos Aires, Argentina. On this subject, the State indicated that it was impossible to transfer the funds because a new scholarship contract would have to be drawn up with FINABECE and that several meetings were being scheduled with the petitioners to resolve this situation. It added that a non-reimbursable funding contract was signed for Jorge Alberto Rosal on February 16, 2011 for a scholarship amounting to US\$48,382.70. In addition, in response to a request from the petitioners, the scholarship was expanded on July 18, 2011 to include a non-reimbursable item for food and housing for the period April to December 2011 in the amount of US\$857.50.

739. As for the grant of a plot of land to Mrs. Blanca Elvira Vargas Cordón de Rosal, the State reported that thus far it had been unable to make good on this commitment. In April of this year, Mrs. Blanca Vargas was sent a draft of the commitment for her comments but did not respond even though

she was sent a reminder to continue with the process. On this subject, the State reported earlier that it needed to amend the friendly settlement signed on January 9, 2004 to justify payment by the Ministry of Public Finances of an amount equal to the current value of the land. The State indicated that the petitioners approached it in November of this year to resume discussion of the housing and they agreed to hold a meeting on December 12, 2011.

740. In a communication dated November 15, 2012, the Commission asked the parties to provide updated information on the status of compliance with the pending points of the agreement in this case.

741. The State reiterated the information provided earlier and indicated the following:

- Scholarship of Maria Luisa Rosal Paz: The State committed to award the scholarship provided that the costs are in line with approved funding.
- Scholarship of Jorge Alberto Rosal Vargas: On April 18, 2012, Jorge Alberto Rosal Paz requested an increase in the scholarship amount so it could cover an additional year of study. However, at a hearing before the IACHR held on November 3, 2012, the State indicated that it cannot make any further changes to the commitment it accepted and that it will only comply with what was approved in the financing agreement dated February 17, 2012.
- Land for a family home: The State reiterated that it has proposed to the petitioner awarding her the amount of money equal to the value of the property based on an appraisal conducted by the Cadastral Information Register, and that the proposal was turned down by the petitioner who found the amount of money offered to be insufficient.
- Process of investigation: The case investigation remains open.

742. The petitioners reported that Maria Luisa Rosal and Jorge Alberto Rosal have thus far received part of the scholarships. As for Maria Luisa, they noted that the awarding of the rest of the scholarship money for college studies is pending. With regard to the scholarship of Jorge Alberto Rosal, payment of US\$5,327.05 is pending for the first years of the intermediate level and, that as a result of payment delay, he was unable to matriculate as a full time student, which set him back in his studies. They point out that he would require two more years of university studies in order to get his undergraduate degree and, two years for a master's degree. Regarding family housing, the petitioners requested the State to conduct a new commercial appraisal so that the appraised value is consistent with the actual market value. They also noted that the investigation is still pending.

743. The IACHR finds that the State has complied with several of the commitments as set forth in the agreement, while the matter of the scholarships and the agreement on the value of the property are awaiting a settlement. The investigation is also pending.

744. The Commission therefore concludes that the friendly settlement agreement has been partially complied with. Accordingly it will continue to monitor for compliance with those points still pending.

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

745. 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.

746. On July 22, 2005, the parties agreed on a friendly settlement of the case. 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:

- a) To take steps to ensure that the *Ministerio Público* conducts a serious and effective investigation.
- b) To make appropriate arrangements to establish a fellowship for police studies abroad.
- c) 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.
- d) 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.
- e) 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.
- f) 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.
- g) 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.
- h) 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.

747. Based on information provided by the parties during the follow-up on the Friendly Settlement Report, the following can be established:

- a) Investigation into the facts of the case is pending.
- b) Regarding instituting the "Jose Miguel Merida Escobar" Scholarship, approval of the regulations is pending.
- c) The letter of recognition of international responsibility of the State was issued by former President Alvaro Colom and published in the Official Gazette on September 15, 2010. Circulating of the letter to international organizations by way of Internet is pending.
- d) The State fulfilled the commitment to place a memorial plaque to honor the memory of Jose Miguel Escobar.
- e) The State fulfilled the commitment to name the street where the victim resided with his family 'Jose Miguel Merida Escobar Street.'
- f) The commitment of awarding a lifetime pension for Jose Miguel Merida Escobar's parents was exchanged for medical care; and the pension for Edilsar Omar Merida Alvarado [was exchanged] for payment of an amount in quetzals. Both commitments have been fulfilled by the State.
- g) The beneficiaries entitled to the psychological treatment offered by the State expressed that they were not interested in receiving it.
- h) Regarding the scholarship offered to Edilsar Omar Merida Alvarado, he expressed that he was not interested in receiving it.

748. On November 15, 2012, the IACHR requested up-to-date information from the parties on the current status of compliance with the pending items of the agreement. The petitioners did not provide any information.

749. In addition to prior communications, the State reported on investigation of the crimes charged in the petition that the case was reopened in July 2010 because there had been an acquittal as part of the proceedings in 1993. Regarding investigations conducted, it noted that an investigation oversight judge had been assigned and an individual who is cooperating as a witness in the investigation had been located. It also noted that Mr. Ever Merida and his family are beneficiaries of the Witness Protection Program of the Office of the Public Prosecutor, as a consequence of threats against them. Said threats are being investigated.

750. The IACHR expresses its appreciation for the recognition of international responsibility by the State for violation of the rights enshrined under Articles 4, 5, 8 and 25 of the American Convention in the instant case. It also appreciates compliance with several of the commitments made by the State under the friendly settlement agreement it entered into with the petitioners.

751. The IACHR notes that the commitments that are still pending are: investigating the facts of the case; establishing the rules of the 'Jose Miguel Merida Escobar' Scholarship and; circulation of the letter of recognition of international responsibility of the State to international agencies by way of Internet.

752. 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 No. 100/05, Pedro García Chuc (Guatemala)

753. 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.

754. 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.

755. 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.

756. 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. On October 27, 2005, the IACHR published Report No. 100/05 on the "Compliance Agreement" in this case.

757. During follow-up on compliance, the Guatemalan State reported that the commitments pertaining to payment of financial compensation to the victim's next-of-kin; creation of an Indigenous Association for Business Development –ASINDE-; public apology from the State and; measures to dignify the memory of the victim, were complied with.

758. Regarding the commitments identified as "pending," the State of Guatemala reported that: i) regarding the operation of the Association, the articles of association of ASINDE (Indigenous Association for Business Development) had to be amended for the appointment of the new representative. However, it noted that this change had not been possible because the petitioners had not submitted the respective articles of association for amendment, in addition to the tax exemption that should be processed with the SAT. Regarding the handover of a property where ASINDE headquarters will be set up, the State asserted that arrangements have been made with the Municipal Mayor of Quetzaltenango on granting a plot of land in that department, with the prerequisite that the petitioners make a formal application to the Municipal Council for the proper approval but this has not happened, even though contact has been made for this purpose. Regarding its commitment to provide technical training to the members of ASINDE, it stated that because the Technical Training Institute –INTECAP- requires a minimum number of participants, it has coordinated with another association to join the training process in order to comply with the agreement but the petitioners have not responded in this regard.

759. On November 15, 2012, the IACHR requested up-to-date information from the parties on the status of compliance with the pending items of the agreement.

760. Regarding the recommendation to investigate the extrajudicial execution of Pedro Garcia Chuc, prosecute and punish those responsible, the State noted that said investigation is still ongoing. The petitioners, however, noted that no concrete and significant progress has been made in the investigations thus far.

761. With regard to the commitments emanating from the agreements executed by the parties, the State reiterated that the greatest difficulty in complying with them is the absence of and lack of interest shown by the petitioners in attending the scheduled meetings and their failure to submit the documentation required to streamline the procedures and be able to honor the commitments. It also asserted that the petitioners do not wish to pursue the pending commitments as provided for in the agreement signed on May 8, 2011.

762. In response, the petitioners claim that there has been no refusal as to compliance with the commitments, but that the next-of-kin of the victim have been waiting many years and the State is not complying with the commitments it has undertaken. They also contend that the meeting and subsequent agreement signed on May 8, 2011, was held and entered into with only the next-of-kin of the victim in attendance and without the knowledge or presence of the CALDH as their representatives. As for the other pending commitments, they reiterate their prior contentions. Specifically, they note that the State has not put forth any proposals to complete the procedure for change of legal representation of the association and for application for tax exemption with the SAT; that several obstacles must be overcome for the training in order to comply with the requirements of INTECAP, as well as requirements and information requested by the Office of State Property in order to award the right of enjoyment and use of the Association building.

763. 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)

764. 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.

765. 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.

766. On November 15, 2012 the Commission requested the parties to provide updated information on the status of compliance with the recommendations. The petitioners did not submit information.

767. The State indicated that it believes that it has partially complied with the first recommendation inasmuch as Santos Chich Us has been punished since 1996 for the death of Tomas Lares Cipriano. However, the arrest of two of the men charged is still pending.

768. As for reparation, the State once again made reference to the lack of interest on the part of the victim's next-of-kin in the instant case, despite consistent attempts by the State, the last one being in December 2010. Consequently, it requests the IACHR to deem said recommendation to be fulfilled because the victim's next-of-kin are opposed to it.

769. As to the recommendation aimed at preventing a resurgence of the PACs, it reported that under Decree No. 143-96 of November 28, 1996, a repeal was issued for Decree 19-86 of January 17, 1986, which had instituted said patrols.

770. Concerning the recommendation pertaining to the measures of reparation, the State indicated that it has implemented prevention measures with regard to security and justice including: decree 40-2010 dated November 2, 2010 of the National Congress of Guatemala creating the National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; government decision 197-2012 creating the “Specific Cabinet for Security, Justice and Peace” as part of the Executive Branch, which is designed to aid in the implementation of proposals and public policies, aimed at enhancing governance, security and protection from violence and impunity in the country. It also mentioned approval of Decree 17-2009, the Law Strengthening Criminal Prosecution, which includes reforming the Criminal Code, the Criminal Code of Procedure, the Anti-Organized Crime Law and the Law Regulating Extradition Procedures. In the area of strengthening investigation of crime, the Office of the Public Prosecutor implemented the prosecution strategy for pursuing crimes committed by criminal organizations, in order to successfully dismantle them.

771. The IACHR notes that the State has partially complied with the recommendation regarding the crimes charged in the petition, to prosecute and punish those responsible. It also takes note that the beneficiaries of the economic reparation are not interested in receiving it.

772. Based on the foregoing, the Commission finds that the recommendations outlined above have been partially complied with. Therefore, the Commission will continue to monitor the pending item, which is to prosecute and punish those charged with the death of Tomas Lares Cipriano, for whom arrests warrants are outstanding.

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

773. 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.

774. 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.

775. 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.

776. 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.

777. 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.

778. By means of a communication dated November 15, 2012 the IACHR requested the parties to provide updated information on the status of compliance with the recommendations made for the present case.

779. Concerning the recommendation of conducting an investigation into the crimes charged in the petition, prosecuting and punishing those responsible, the State of Guatemala submitted a timeline of the investigation and punishments of those responsible for the crimes alleged in the petition and reiterated that the Criminal Trial Court handed down an acquittal of Pedro Chaperon, who had been charged with the homicide of Mr. Martin Pelico Coxic. Additionally, it noted that the complainant and plaintiff to the civil proceedings related to the criminal proceedings stressed that she was unaware of who was responsible for the death of her husband and that she was no longer interested in pursuing the investigation into the case. The State also reported that on November 8, 2010, a new on-site inspection was conducted at the scene of the crime.

780. Concerning this item, the petitioners requested a report setting forth the timeline of the actions taken in the investigation, and the report was submitted by the State through the IACHR and they requested a detailed examination of the feasibility of criminal prosecution against the potential culprits.

781. As to the recommendation of providing reparation, the parties concur that the State has complied with these commitments.

782. The Commission welcomes the compliance with the majority of the commitments accepted under the "Compliance Agreement of the Recommendations of Report No. 48/03."

783. Based on the foregoing, the Commission concludes that the State has complied with the recommendations outlined above, except for the recommendation pertaining to investigation. Consequently, the Commission will continue to monitor this pending item.

Case 12.264, Report No. 1/06, Franz Britton (Guyana)

784. In Report No. 1/06, dated February 28, 2006 the Commission concluded that agents of the State security forces abducted and/or detained Franz Britton and that during the following six years his whereabouts have not been identified and that, as a result, Guyana violated the rights of Franz Britton

to life, liberty, personal liberty, judicial protection, arbitrary arrest and due process of law, all recognized, respectively, in Articles I, XVIII, XXV, XXV and XXVI of the American Declaration.

785. 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.

786. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Since then, the Inter-American Commission has not received any response to those communications from the parties within the established time period. Prior to that, on January 13, 2012, the State presented a response to a similar request submitted to the parties in 2011. The State informed that both the family of Mr. Britton as well as the petitioner failed to exhaust domestic remedies to search for or complain about Mr. Britton's disappearance. The State added that it had made efforts to ascertain what happened to Mr. Britton and to trace his whereabouts, but these revealed that there was no evidence or record that he was detained. Therefore, the State concluded that it was unable to carry out further investigations into what happened to Mr. Britton and his whereabouts, which made it impossible to implement recommendations No. 1 and 3 *supra*. Regarding recommendation No. 2 *supra*, the State submitted pertinent sections of its Constitution, statutes and administrative measures, which supposedly consist of impartial mechanisms for complaints against abuse, torture and degrading or inhuman punishment. Consequently, Guyana asserted that its constitutional and legislative framework already provided, in all cases, the required due process and effective means of establishing the whereabouts and fate of anyone held in State custody.

787. Based on these considerations, the Commission reiterates that compliance with the recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

Case 12.504, Report 81/07 Daniel and Kornel Vaux (Guyana)

788. 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.

789. 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.

790. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that compliance with the aforementioned recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

Case 11.335, Report No. 78/02, Guy Malary (Haiti)

791. In Report No. 78/02 of December 27, 2002, the IACHR concluded that: a) the Haitian State violated the right to life enshrined in Article 4 of the American Convention to the detriment of Mr. Guy Malary; b) the Haitian State violated the right to a fair trial and the right to judicial protection enshrined in Articles 8(1) and 25 of the American Convention to the detriment of the next-of-kin of Mr. Guy Malary; and c) that these violations of human rights involves that the Haitian State breached the general obligation to respect and guarantee rights under Article 1(1) of the above-cited international instrument, to the detriment of Mr. Guy Malary and his next-of-kin.

792. 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.

793. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that compliance with the Commission's recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley (Jamaica)

794. In Report No. 49/01 dated April 4, 2001 the Commission concluded that the State was responsible for: a) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with violations of Article 1(1) of the American Convention, by sentencing these victims to a mandatory death penalty; b) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 4(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide these victims with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating the rights of the victims in Case Nos. 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 7(5) and 7(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to promptly bring the victims before a judge following their arrests, and by failing to ensure their recourse without delay to a competent court to determine the lawfulness of their detention; d) violating the rights of the victims in Case Nos. 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delays in trying the victims; e) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the victims' conditions of detention; f) violating the rights of the victims in Case Nos. 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 8(2)(d) and 8(2)(e) in conjunction with violations of Article 1(1) of the Convention, by denying the victims access to legal counsel for prolonged periods following their arrests; and g) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to make legal aid available to these victims to pursue Constitutional Motions.

795. 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.

796. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its responses to the Commission's request on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. The IACHR will continue supervising until full compliance is reached.

Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)

797. In Report No. 50/01 dated April 4, 2001 the Commission concluded that the State was responsible for failing to respect the physical, mental and moral integrity of Damion Thomas and, in all of the circumstances, subjecting Damion Thomas to cruel or inhuman punishment or treatment, contrary to Articles 5(1) and 5(2) of the Convention, all in conjunction with violations of the State's obligations under Article 1(1) of the Convention.

798. 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.

799. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its responses to the Commission's request on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that there has been partial compliance with the recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)

800. In Report No. 127/01, dated December 3, 2001, the Commission concluded that the State was responsible for: a) violating Mr. Thomas' rights under Articles 4(1), 5(1), 5(2) and 8(1) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Mr. Thomas' rights under Article 4(6) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by failing to provide Mr. Thomas with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Thomas' rights under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention; and d) violating Mr. Thomas' rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the manner in which the judge instructed the jury during Mr. Thomas' trial.

801. 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.

802. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its responses to the Commission's request on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)

803. In Report No. 58/02 dated October 21, 2002, the Commission concluded that the State was responsible for: a) violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Aitken, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Article 4(6) of the Convention in respect of Mr. Aitken, in

conjunction with violations of Articles 1(1) and 2 of the Convention, by failing to provide him with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Aitken, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention; and d) violating Articles 8(1) and 25 of the Convention in respect of Mr. Aitken, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Aitken of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

804. 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.

805. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its responses to the Commission's request on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)

806. In Report No. 76/02 dated December 27, 2003, the Commission concluded that the State was responsible for: a) violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of his treatment and conditions in detention; c) violating Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delay in trying Mr. Sewell; and d) violating Articles 8(1) and 25 of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Sewell of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

807. 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.

808. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)

809. In Report No. 41/04 of October 12, 2004, the IACHR concluded the State was responsible for: a) violating Mr. Myrie's rights under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his conditions of detention; b) violating Mr. Myrie's rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, due to the trial judge's failure to ensure that the jury was not present during the *voir dire* on Mr. Myrie's statement, and the trial judge's failure to postpone the trial when Mr. Myrie's counsel was not present and thereby denying Mr. Myrie full due process during his trial; c) violating Mr. Myrie's rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide him with the assistance of competent and effective counsel during his trial; and d) violating Mr. Myrie's rights under Articles 25 and 8 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide Mr. Myrie with effective access to a Constitutional Motion for the protection of his fundamental rights.

810. 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.

811. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its responses to the Commission's request on December 19, 2012 and January 7, 2013. In its responses, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that compliance with the recommendations of Report 41/04 remains pending. As a result, the Commission shall continue to monitor its compliance.

Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)

812. In Report No. 92/05, issued on October 24, 2005, the Commission concluded that the State was responsible for: a) violating Mr. Gayle's right to life under Article 4 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful killing at the hands of members of the Jamaican security forces; b) violating Mr. Gayle's right not to be subjected to torture and other inhumane treatment under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of the assault perpetrated upon him by State agents and its effects, which led to his death; c) violating Mr. Gayle's right to personal liberty under Article 7 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful detention and arrest on false charges; and d) violating Mr. Gayle's rights to a fair trial and to judicial protection under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to undertake a prompt, effective, impartial and independent investigation into human rights violations committed against Mr. Gayle and to prosecute and punish those responsible.

813. 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.

814. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 19, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that the State has complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)

815. In Report No. 61/06, adopted on July 20, 2006, the Commission concluded that the State was responsible for: a) violations of Mr. Tracey's right to counsel and his right to obtain the appearance of persons who may throw light on the facts contrary to Article 8(2)(d), (e) and (f) of the Convention, in conjunction with Articles 1(1) and 2 of the Convention, in connection with the use of his statement against him at trial; b) violating Mr. Tracey's right to a fair trial under Article 8(2)(c) of the Convention, in conjunction with a violation of Article 1(1) of the Convention, due to the inadequate time and means provide to Mr. Tracey and his attorney to prepare his defense; and c) violations of Mr. Tracey's right to a fair trial and his right to judicial protection under Article 8(2)(e) and (h) and 25 of the Convention, in conjunction with a violation of Articles 1(1) and 2 of the Convention, due to the State's failure to provide Mr. Tracey with legal counsel to appeal his judgment to a higher court.

816. 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.

817. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. The petitioners have not presented information on compliance with the recommendations set forth above this year. On the other hand, the State submitted its response to the Commission's request on December 19, 2012. In its response, the State merely reiterated its earlier responses regarding this Merits Report, without mentioning any efforts undertaken this year in order to comply with the recommendations of the IACHR. Therefore, the Commission reiterates that the State has complied with the second and third recommendations. As a result, the Commission shall continue to monitor compliance with the first recommendation.

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

818. 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.

819. 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.

820. 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.

821. On November 15, 2012 the Commission requested the parties to provide updated information on the status of compliance with the recommendations.

822. As for the recommendation to investigate, prosecute and punish in the ordinary criminal jurisdiction those responsible for the crimes charged in the petition, the State noted that it is in the process of determining what the most adequate mechanisms would be to pursue the investigation of the case, in keeping with the provisions of the Mexico's current Constitution. In response, the petitioners assert that they do not have up-to-date information on what body is currently conducting the investigation.

823. Regarding the recommendation to provide adequate reparation to the victims of Case 11.565, it can be established as fact that in 2011 the State reported that, through the Government of Chiapas, on April 4, 2011, it awarded the victims and their mother, in a private ceremony, the sum of \$2,000,000 Mexican pesos (two million pesos), or the equivalent thereof of US\$172,000, as humanitarian support. It clarified that the support granted to the victims did not constitute recognition of responsibility for the incidents that prompted the recommendations of the IACHR and it could not be viewed as reparation for damages. In 2012, the State reiterated that the government of the State of Chiapas had awarded a sum of money to the victims as humanitarian relief.

824. In response, the petitioners recognized and expressed their satisfaction at the awarding of the humanitarian relief provided by the Government of Chiapas, as well as the import of such an act for the victims and petitioning organizations. Nonetheless, they noted that the State made it explicit that said relief does not imply a state action aimed at compliance with the recommendations made by the Commission in Merits Report 53/01. In 2012, they reaffirmed their position and asserted that subsequent to receiving the humanitarian support, the State made some suggestions for reparation but that these suggestions were out of step with reality and the living conditions of the victims and did not take into account the victims' customs and world view and way of life either.

825. Based on the foregoing, the IACHR notes that the recommendation issued in the merits report of 2001 pertaining to the investigation, prosecution and punishment of those responsible for the crimes charged in the petition has not been fulfilled. The IACHR, however, does appreciate the humanitarian relief granted by the government of Chiapas. Notwithstanding, said relief does not

constitute recognition of responsibility for the incidents nor reparation for damages, as the State itself has asserted.

826. As a result, the recommendations issued in this case by the Commission are pending compliance and the Commission will thus continue to monitor compliance therewith.

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

827. In Report No. 2/06 dated February 28, 2006, the Commission concluded that the Mexican State was responsible for breaching the right to a fair trial and judicial protection as provided for in Articles 8 and 25 of the American Convention, in connection with Article 1.1 of the same instrument, to the detriment of Miguel Orlando Muñoz Guzman. It also determined that the case file did not contain any evidence that would make it possible to attribute international responsibility to the State for the alleged forced disappearance of Miguel Orlando Guzman. Consequently, it did not find the State responsible for the alleged violation of the rights to life, humane treatment and personal liberty; nor of the right to humane treatment of his next-of-kin. However, it recommended that the State investigate under the ordinary court jurisdiction the whereabouts of Miguel Orlando Muñoz Guzman and, should it be established that there was forced disappearance, punish those responsible.

828. 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.

829. 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.

830. By means of a communication dated November 15, 2012, the IACHR requested both parties to report on the measures taken to comply with these recommendations.

831. The petitioners reiterated that almost six years after Merits Report No. 2/06 was issued, there is no proposal to restart the investigations or for any specific way forward toward compliance by the State with the recommendations. In response, the State contended that the measures and meetings agreed upon by the parties at a working meeting held before the IACHR in 2009 (during its 137th regular session) have not been carried out, even though the State had expressed on several different occasions its willingness to do so.

832. Based on the above, the Commission concludes that there has not been compliance with the recommendations summarized above. As a result, the Commission will continue to supervise the pending items.

Petition 161-02, Report on Friendly Settlement No. 21/07, Paulina del Carmen Ramírez Jacinto (Mexico)

833. On March 9, 2007, by friendly Settlement 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.

834. Friendly Settlement Report No. 21/07 concluded that “the achievements secured through the actions and good disposition of the two parties in this matter offer a significant example to be followed in other cases – both those that involve Mexico as well as other cases from other regions and countries of the hemisphere. In particular, the IACHR appreciates the active and direct interest of the representatives of the federal government and of the government of Baja California, pursuant to the terms of Articles 1, 2, and 28 of the American Convention. In a federally structured country such as Mexico, national and local authorities alike are obligated to uphold in full the rights enshrined in the American Convention. In this case particular note has therefore been taken of the joint, complementary work carried out by the federal and local authorities – each within its sphere of competence – in pursuit of this goal. The IACHR also applauds the efforts made and the flexibility shown by the petitioners, which made this agreement possible.”

835. In the same report, the IACHR decided to approve the friendly settlement agreement signed by the parties on March 8, 2006 and to continue monitoring and supervising the points in the friendly settlement that are pending compliance and continued compliance.

836. On March 11, 2008, the parties agreed as follows regarding matters pending from the 2006 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.

837. The State reported regarding academic support, that as agreed, on July 15, 2011 Mrs. Paulina del Carmen Ramírez Jacinto was given the related amount as well as a school kit containing a backpack and various school supplies. Regarding training, it indicated that steps were being taken to develop a cycle of courses for health personnel during the first quarter of 2012. Regarding the circular

“General Guidelines for Organizing and Operating Health Services Related to the Interruption of Pregnancy in the State of Baja California,” it referred to the considerations expressed earlier, i.e., that publication in the official State gazette was not necessary since the circular was properly disseminated and because the provisions contained in the circular were duly published at the appropriate time.

838. In addition, regarding the *productive project* the State reported that on June 1, 2010 official letter No. CU-001188-2009 was delivered to Paulina del Carmen Ramírez Jacinto regarding the Land Use Opinion issued by the Urban Control Department of the XIX Municipal Council of Mexicali, Baja California, so that compliance with the agreement is considered definitive. In addition, the State reported that in October 2011 the Governor of the State of Baja California supported Mrs. Paulina Ramírez Jacinto with 100 waterproofing sheets as “roofing material” indicating that the authorities’ commitment to the welfare of the beneficiary and her son is obvious.

839. Regarding *academic support*, on October 28, 2011 the petitioners indicated that the State had agreed to develop “a mechanism to ensure timely delivery” and in that sense they felt that an institutionalized payment mechanism had not been ensured to facilitate collection by Paulina del Carmen Ramírez Jacinto. On *training*, they indicated that the State had shown its willingness to repeat the training with health personnel and the prosecutor’s office in charge of the sex crimes agency. They added that measures are being taken to ensure that the Government of Baja California covers the expense of the training that may be conducted in early 2012. Regarding the *circular*, they indicated that its publication in an official State gazette constitutes the central point of the agreement as it involves the principal guarantee that the facts that led to the case will not be repeated, in that the circular describes the procedure to be followed by medical personnel to ensure appropriate treatment for legal interruption of the pregnancy in cases of rape. They added that the circular had not been officially published nor could it be found in the files on the website of the state Health Secretariat or through another Internet search engine.⁶⁴

840. On November 15, 2012 the Commission requested the parties to provide updated information. The petitioners did not provide any information.

841. The State reiterated that the “Mexican State has fully complied with all of the international commitments it has acquired under this friendly settlement agreement.” It also stated that on October 5, 2012, a meeting was held at which representatives of the Federal Government and of the General Secretariat of the Government of the State of Baja California participated for the purpose of establishing an item in the budget of the General Secretariat of the Government to make it possible to continue to provide financial support to the victim.

842. Based on the information provided by the parties during the follow-up on Friendly Settlement Report 21/07, the Commission can assert that the Mexican State has complied with the commitments viewed as pending by the parties on March 11, 2008 (as reproduced verbatim above).

843. The Commission takes it upon itself to reiterate that “the gains attained thanks to the actions and willingness of both parties in this matter, constitute an important example to follow in other cases both from Mexico and from other regions and countries of the hemisphere.”

844. Based on the foregoing, the IACHR concludes that the friendly settlement agreement has been complied with.

⁶⁴ The petitioners indicated in their communication that, in an effort to close the case and to show their good will, they suggested the following as an alternative form of compliance: 1) that the circular be published on the website of the Secretariat of Health of Baja California both in the PROGRAMAS section and the NOTICIAS section and that the circular be left there permanently so that it could be consulted by the public; 2) that the Secretariat of Health of Baja California deliver the circular to hospital chiefs and heads of gynecology and obstetrics, labor and delivery, and emergency services who are to be trained by the representatives, at least 15 days before the training sessions start.

Case 11.822, Report on Friendly Settlement No. 24/09, Reyes Penagos Martínez et al. (Mexico)

845. On March 20, 2009, in Friendly Settlement Report No. 24/09, the Commission approved a friendly settlement agreement for the case of Reyes Penagos Martínez, Enrique Flores González and Julieta Flores Castillo. The complaint the petitioners filed was based on the victims' alleged unlawful detention, the acts of torture to which they were reportedly subjected and the alleged extrajudicial execution of Mr. Reyes Penagos Martínez. Summarizing, the petitioners reported that the victims were detained on December 16, 1995, when a protest sit-in organized on the *ejido* of Nueva Palestina was forcibly broken up; in the days following their arrest, the victims were tortured. In the case of Mrs. Flores Castillo, the petitioners added that she had also been raped. In the early morning hours of December 18, Mr. Reyes Penagos Martínez was taken to an unknown location. Some hours later, his lifeless body was found near Jaltenango. The petitioners asserted that Enrique Flores González and Julieta Flores Castillo were released two months later. The petitioners stated that a preliminary inquiry was launched by the Office of the Attorney General of the State of Chiapas to look into Mr. Reyes Penagos Martínez' detention and subsequent death. However, the petitioners were of the view that the investigation was riddled with problems and not properly carried out.

846. On March 1, 1999, at IACHR headquarters, the parties signed the agreement to initiate a friendly settlement process and on November 3, 2006, in the city of Tuxtla Gutiérrez, State of Chiapas, they signed an agreement on reparations for damage to be paid to the victims and their relatives. In the commitment of 1999, the State undertook to:

- a) To investigate the events of which Mr. Reyes Penagos Martínez was victim, bringing the persons responsible to trial, so that they may be punished in keeping with the final judicial resolution.
- b) To continue the investigations and, in due course, bring the corresponding criminal actions, based on the statements made by Enrique Flores and Julieta Flores and all other evidentiary elements for the acts of torture that they note they suffered. This is for the purpose of bringing to trial and punishing those who turn out to be responsible for these facts.
- c) To determine and deliver the amount of economic aid or compensation and reparation to the victims and their family members, with the participation of the petitioners...

847. Thereafter, in the "Agreement on Reparation for the Harm to the Victims and Their Next of Kin," signed on November 3, 2006, the parties agreed that:

"THIRD. Measures of Satisfaction and Guarantees of Non-Repetition. (...)

a) Public Recognition of the International Responsibility of the Mexican State

The State undertakes to make a public pronouncement in which it recognizes ITS RESPONSIBILITY IN the facts described in the first section, considering that the death of Reyes Penagos Martínez and the detention and torture of Julieta Flores Castillo and Enrique Flores González, committed by various public servants of the state of Chiapas, are imputable to it. The State also undertakes to apologize publicly to the victims and their family members for the facts reported to the IACHR, which were the result of a violation of human rights. This pronouncement may be made at the moment the payment is made to make reparation for the material and non-material injury agreed upon in the preceding paragraphs. Likewise, the State undertakes to publish the public pronouncement in two local newspapers.

b) Investigation and punishment of the persons responsible

In addition, the State undertakes to continue the investigations until attaining the sanction of the persons responsible for those crimes, through a serious and impartial investigation according to the international human rights standards, for the purpose of avoiding their re-victimization due to lack of access to justice.

[...]

SIXTH. Material injury. [...]

In this regard, the following sums have been agreed upon:

Beneficiary	For	Amount
1. Penagos Roblero family*	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 105,354.00 MN
	SUBTOTAL	\$ 157,902.00 MN
2. Julieta Flores Castillo	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	SUBTOTAL	\$ 65,187.00 MN
3. Enrique Flores González	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	SUBTOTAL	\$ 65,187.00 MN
TOTAL 1		\$ 288,278.00 MN

SEVENTH. Non-material injury. [...]The sums agreed upon are as follows:

Beneficiary	For	Amount
1. Penagos Roblero family	Non-material injury	\$ 342,098.00 MN
2. Julieta Flores Castillo	Non-material injury	\$ 228,951.00 MN
3. Enrique Flores González	Non-material injury	\$ 228,951.00 MN
TOTAL 2		\$ 800,000.00 MN

[...]

NINTH. Considering the changes in the living conditions of the victims and their family members, the Office of the Attorney General of Chiapas undertakes to take whatever efforts necessary, before the competent authorities, so that scholarships be granted to the three youngest children of Mr. Reyes Penagos. While the Office of the Attorney General cannot guarantee that the result of those efforts will be positive, it nonetheless expresses its commitment to diligently pursue such requests, and to seek a favorable outcome for the children of Mr. Reyes Penagos.

TENTH. Along the same lines, the State undertakes to make efforts for the beneficiaries to obtain medical insurance.

848. In its Report No. 24/09, the Commission examined the measures taken by the Mexican State and acknowledged compliance with the obligations undertaken in regard to: i) recognition of the state's responsibility; ii) publication of the act of public recognition of state responsibility; iii) payment of pecuniary damages, and iv) access to medical insurance for Enrique Flores and Julieta Flores. In that report the Commission decided as follows:

"2. To urge the State to take the measures necessary to carry out the commitments pending, in particular the obligation to investigate, prosecute and punish the persons responsible for the unlawful detention, torture and extrajudicial execution of Mr. Reyes Penagos Martínez and the unlawful detention and torture of Mr. Enrique Flores and Ms. Julieta Flores."

849. On November 15, 2012, the IACHR asked the parties for updated information on the status of compliance with pending commitments.

850. Regarding the obligation to investigate, prosecute, and punish, the State reiterated that it had been following up on its compliance. It reported that the Specialized Prosecutor's Office for Human Rights of the Office of the Attorney General of the State of Chiapas was the agency in charge of making sure that the investigations were conducted diligently. Regarding the crime of rape committed against one of the victims, it reported that the Office of the Public Prosecutor brought a criminal action on September 13, 2012, against the seven men charged. It noted that the victim had the chance to gain access to the case files and the proceedings and confirmed its commitment to ensure that she can exercise her right to being a third party complainant to the case. As for the investigation into the crimes committed against Reyes Penagos and Enrique Flores, the State noted that the administrative and

criminal inquiries of the public servants involved were completed, and the appropriate sanctions were applied to them.

851. The petitioners claimed that the authorities ordered the case to be set aside because of a "lack of interest of the victim." On this issue, they reiterated that the State made the investigations into the crimes against Mrs. Julieta Flores contingent upon the procedural actions of the victim, in contradiction with the requirement to pursue cases of sexual violence against women *sua sponte* and not consider circumstances that would make it difficult for the woman to take part in the investigation. Therefore, they requested the IACHR to urge that the investigation be reopened and continued

852. Based on the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. As a result, the Commission will continue to monitor the pending item.

Case 12.228, Report No. 117/09, Alfonso Martín del Campo Dodd (México)

853. In its Report No. 63/02 of October 22, 2002, the IACHR concluded that the Mexican State was responsible for violation of articles 5, 7, 8(1), 8(2), 8(3) and 25 of the American Convention, and articles 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture, all in violation of its duty to respect and ensure the Convention-protected rights, undertaken in Article 1(1) of the American Convention, to the detriment of Mr. Alfonso Martín del Campo Dodd. The Mexican State incurred responsibility for these violations by virtue of the fact that Mexico City's judicial police had arbitrarily detained the victim and then subjected him to torture and other forms of cruel, inhuman and degrading treatment, all in order to force him to confess to the double homicide of his sister and brother-in-law; the State also failed to observe the guarantees of due process in the trial prosecuted against Alfonso Martín del Campo Dodd, particularly in the case of his right to be presumed innocent, inasmuch as the various magistrates ignored his complaints of torture and gave credence to a confession made under torture.

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

1. Take the necessary measures to throw out the confession obtained by means of torture in facilities of the PGJDF on 30 May 1992 and all legal action deriving therefrom; review the entire judicial proceeding against the victim in this case; and order the immediate release of Alfonso Martín del Campo Dodd while such measures are in process.
2. Carry out a complete, impartial, and effective investigation to determine the culpability of all those who violated the human rights of Alfonso Martín del Campo Dodd.
3. Provide appropriate compensation to Alfonso Martín del Campo Dodd for the violations of [...] human rights established herein.

855. In view of the State's failure to comply with the recommendations and in application of Article 50 of the American Convention and Article 44 of its Rules of Procedure, the Commission decided to refer the matter to the Inter-American Court. The application was filed on January 30, 2003.

856. On September 3, 2004, the Inter-American Court issued its judgment on the Preliminary Objections in this case. There, it decided to admit the preliminary objection *ratione temporis* brought by the State and ordered the case closed.

857. Since that time the Commission undertook an analysis of the possible follow-up of the recommendations contained in its Report No. 63/02. After a careful examination of both sides' arguments, the Commission concluded that, under Article 51(2) of the Convention, the State was still bound by the obligation to comply with the Commission's recommendations.

858. The Commission reasoned that according to the principles of efficacy, utility and good faith that govern the obligations of states in human rights matters, should the Inter-American Commission's application not meet the formal requirements for submission to the Court, the Commission nonetheless retains its competence to exercise its authorities under Article 51 of the American

Convention.⁶⁵ It also considered that “in the absence of a judgment on merit that considers “[i]f [the Court finds that] there has been a violation of a right or freedom protected by this Convention,” pursuant to Article 63 of the American Convention, the State’s treaty obligation to comply in good faith with issued recommendations, based on the responsibility established in Report No. 62/02, remains.”⁶⁶

859. Therefore, on March 30, 2009, the IACHR adopted its Merits Report No. 33/09 (Article 51 Report), wherein it examined compliance with the recommendations made to Mexico and concluded that they had not been effectively implemented. Given this fact, it confirmed the conclusions it reached in Report 63/02 and reiterated its recommendations.

860. Finally, on November 12, 2009, the IACHR approved Merits Report No. 117/09 (Article 51 Report – Publication). There, the Commission again reiterated the conclusions adopted on the situation denounced by Mr. Alfonso Martín del Campo Dodd and its recommendations to the State.

861. In a communication dated November 15, 2012, the IACHR requested updated information from the parties concerning the status of compliance with the recommendations made in the present case. The State did not respond to the request of the IACHR.

862. The petitioners reiterated that there still had not been compliance with the recommendations of the IACHR. As a result, the State was failing to meet its international obligations and Mr. Campo Dodd continued to be deprived of his freedom. They reported that in August 2010 Mr. Martín del Campo Dodd submitted a petition for recognition of innocence to the Seventh Criminal Chamber of the Superior Court of Justice of the Federal District. In that petition, he referred to the international processing of the case and on November 25, 2011, that Chamber declared his petition unfounded. They added that on November 16, 2011, an amparo proceeding was brought against said decision, which is still under consideration as of the present time. They noted that on August 17, 2012, nine months after the amparo claim was filed, the Third District Court Judge ruled he did not have jurisdiction to hear and settle the case, and it was passed on to the Second Collegiate Court of the 29th Circuit based in Pachuca Hidalgo to settle the jurisdictional dispute. Additionally, they contended that as a result of a request made by Martín del Campo Dodd to the Federal Government to comply with the merits report and to issue an order for his release, in November 2012, he received a communication from the General Directorate of Legal Services of the Government of the Federal District requesting the presence of his next-of-kin to review the matter and determine whether it is under the jurisdiction of the Office of Legal Counsel of the Federal District.

863. Based on the above, the IACHR concludes that the recommendations summarized above are still pending compliance. As a result, it will continue to monitor compliance therewith.

Case 12.642, Report on Friendly Settlement No. 90/10, José Iván Correa Arévalo (Mexico)

864. On July 15, 2010, in Report No. 90/10, the Commission approved a friendly settlement agreement in the case of José Iván Correa Arévalo. The petition alleged that José Iván Correa Arévalo, a young 17-year-old student died on May 28, 1991 as the result of a gunshot wound to his head. The petition argued that the death of the young José Iván – which was linked to his role as an independent student leader – had not been diligently investigated by the Mexican authorities and that those responsible for his death were not convicted. In summary, the petitioners alleged that the investigation conducted by the Office of the Attorney General of the State of Chiapas had been prosecuted without due diligence and that, despite the passage of many years, Mexican justice had not succeeded in determining the motives for the murder of the alleged victim nor had it punished those responsible.

⁶⁵ IACHR, Report No. 117/09, Case 12.228, Merits (Publication), Alfonso Martín Del Campo Dodd, Mexico, November 12, 2009, paragraph 110.

⁶⁶ IACHR, Report No. 117/09, Case 12.228, Merits (Publication), Alfonso Martín Del Campo Dodd, Mexico, November 12, 2009, paragraph 112.

865. In its report, the IACHR noted that the parties had agreed as follows in a working meeting held on October 24, 2008 during the 133rd regular session of the IACHR:

**MEMORANDUM OF WORKING MEETING
CASE 12.642
JOSÉ IVÁN CORREA ARÉVALO
OCTOBER 24, 2008**

In the framework of a working meeting held in connection with Case 12.642, José Iván Correa Arévalo, during the 133rd Regular Period of Sessions of the IACHR, the parties agreed the following:

1. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to proceed with the investigation in a diligent and exhaustive manner and to open new lines of inquiry in order to ensure the prompt clarification of the truth surrounding the homicide of José Iván Correa Arévalo. In the course of the investigation, working panels will be held between the agents in charge of same and the coadjutors, in order comprehensively to review the case file.
2. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to hold a public act of recognition of responsibility and public apology for the failure of the authorities to conduct a diligent investigation into the homicide of José Iván Correa Arévalo. This public recognition and apology shall be published in the newspapers with the widest circulation in the State of Chiapas. The petitioners undertake to submit a draft text of public recognition of responsibility and apology within 15 days counted from today's date. The draft shall be analyzed by the authorities of the State of Chiapas within 15 days of its receipt. The final text shall be agreed by the parties. In response to the request of the petitioners that the above public ceremony be presided over by the head of the executive branch of the State of Chiapas, the Ministry of Justice undertakes to present that request to said authority, and failing that, agrees that the head of the Ministry of Justice shall preside over the ceremony. The parties shall agree on a date for holding the public ceremony, endeavoring to ensure, if at all possible, the presence of Commissioner Florentín Meléndez, Rapporteur for Mexico. In agreeing on the aforesaid ceremony the parties state that the possibility exists of signing a friendly settlement agreement in this case.
3. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to offer psychological treatment to Mr. Juan Ignacio Correa López and to include him and his family in the Seguro Popular Health Care Program, as agreed in the Minute of the Working Meeting signed in the State of Chiapas on October 8, 2008.
4. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to include Mr. Juan Ignacio Correa López in the Social Assistance Housing Program under the terms of the Minute of the Working Meeting signed in the State of Chiapas on October 8, 2008.
5. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to include Mr. Juan Ignacio Correa López in the Economic Recovery Program of the State of Chiapas for the purpose of obtaining a business loan. The Ministry of Justice of the State of Chiapas undertakes to arrange, as necessary, the repayment of the loan and its nonreimbursement on behalf of the petitioner.
6. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to grant compensation for material damages and emotional distress to Mr. Juan Ignacio Correa López in the total amount of \$600.000 pesos (six hundred thousand Mexican pesos) clear, free, and unencumbered.
7. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to make arrangements with the Municipality of Tuxtla Gutiérrez in the State of Chiapas to have the street where José Iván Correa Arévalo was deprived of his life named after him; or, failing that, to make arrangements with the relevant education authority for a commemorative plaque recording the facts in the instant case to be put up at *Colegio de Bachilleres Plantel 01 (COBACH)*, which José Iván Correa Arévalo attended.

866. The above-referenced IACHR report also indicates that on February 19, 2009, the parties held a meeting in the city of Tuxtla Gutiérrez, Chiapas. On that occasion, they drew up for the record a memorandum of the following : i) the Office of the Attorney General indicated that the investigation to clarify the facts was ongoing and reported on the creation of a working panel to report to the IACHR every six months on the progress made in that regard; ii) the parties agreed on the date, time, and place for holding the public act of recognition of responsibility and public apology; iii) the representatives of the State submitted a draft text of recognition of responsibility and pledged to publish it once consensus was reached on its wording; iv) the Office of the Attorney General provided information on the arrangements made to provide psychological treatment to Juan Ignacio Correa López and to include both him and his family in the Seguro Popular Health Care Program; v) the Ministry of the Interior provided information on the steps take to include Mr. Correa López in the Social Assistance Housing Program and the Economic Recovery Program of Ministry of Social Development; and vi) the petitioners indicated their consent that a plaque be put up in the library of the COBACH in memory of José Iván Correa Arévalo, rather than naming the street where the incident occurred after him. In addition, the Government of Chiapas paid Mr. Correa López the previously agreed compensation for material damages and emotional distress.

867. On March 21, 2009, during the working meeting held during the IACHR's 134th Regular Period of Sessions, the parties signed a memorandum of working meeting in which they acknowledged "the fulfillment of the instant friendly settlement and agreed to continue to monitor points 1 and 4 of the Memorandum of Working Meeting of October 24, 2008[.]".

868. In its report, the IACHR noted that it had closely monitored the development of the friendly settlement reached and was highly appreciative of the efforts made by both parties to achieve this settlement, which is compatible with the Convention's object and purpose. It also noted the commitments undertaken by the State that, as of the date of the Friendly Settlement Agreement, were pending compliance:

- a. To include Mr. Juan Ignacio Correa López in the Social Assistance Housing Program; and
- b. Clarify the historical truth regarding the homicide of José Iván Correa Arévalo by conducting a diligent and exhaustive investigation.

869. On November 15, 2012, the IACHR asked the parties for updated information on the status of compliance with the pending commitments.

870. The State reiterated that it had complied with all of the commitments, including those listed as pending by the IACHR in Report 90/10.

871. The petitioners, however, claimed that compliance with the commitment regarding clarification of the historical truth about the homicide of Jose Ivan Correa Arevalo, through a diligent and thorough investigation, was still pending.

872. Additionally, they contended that they had reservations about compliance with the commitment to offer psychological treatment to Mr. Juan Ignacio Correa Lopez and include him, along with his family, in the People's Health Insurance Program, because said Program is not designed to provide a specific type of specialized care.

873. Based on information provided by the parties during follow-up on Friendly Settlement Report 90/10, the Commission notes the following:

- a. The State's commitment to offer psychological treatment to Mr. Juan Ignacio Correa Lopez and include him, along with his family, in the People's Health Insurance Program, was considered as complied with by the petitioners before the IACHR during a working meeting held on March 21, 2009 (134th regular session).

b. As for the commitment to include Mr. Juan Ignacio Correa Lopez in the Social Assistance Housing Program, according to the petitioners, it was replaced and supplemented by a sum of money awarded to Mr. Correa Lopez, and therefore it is deemed complied with.

c. Concerning the commitment to clarify the historical truth about the homicide of Jose Ivan Correa Arevalo through a diligent and thorough investigation, the Commission notes that the State has taken several steps in this regard. However, thus far clarification of the historical truth is still pending and, therefore, so is the determination of those responsible for the homicide of Jose Ivan Correa Arevalo.

874. In light of the foregoing, the Commission expresses its appreciation for efforts made by the State in order to comply with the commitments it has assumed and notes that compliance is still pending of:

Clarification of the historical truth regarding the homicide of Jose Ivan Correa Arevalo, through a diligent and thorough investigation.

875. Based on the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. As a result, the Commission will continue to monitor the pending items.

Case 12.660, Report on Friendly Settlement Agreement No. 91/10, Ricardo Ucán Seca (Mexico)

876. On July 15, 2010, in Report No. 91/10, the Commission approved a friendly settlement agreement in the case of Ricardo Ucán Seca. The petition alleged responsibility on the part of the Mexican State for the alleged irregularities that affected the criminal prosecution conducted against Mr. Ucán Seca, an indigenous Maya, because he had neither the assistance of an interpreter who would have allowed him to defend and express himself in his own language nor an effective public defender.

877. On December 31, 2009, the parties signed the following agreement:

Case 12.660 - Ricardo Ucán Seca (Mexico)
Friendly Settlement Agreement

One. This friendly settlement agreement is signed with respect to Case no. 12.660 (Ricardo Ucán Seca), being processed by the Inter-American Commission on Human rights (hereinafter referred to as "the Commission" or "the IACHR") by the United States of Mexico, represented by the Secretariat of Foreign Affairs and the Government of the State of Yucatán, for the first part, and by the petitioners, Mr. Ricardo Ucán Seca, the *Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todos y Todas* and *Organización Indignación Promoción y Defensa de los Derechos Humanos* represented respectively by José Miguel Edgar Cortéz and María Cristina Muñoz Menéndez (hereinafter referred to as "the petitioners") for the second part.

The parties enter into this agreement in accordance with Articles 48.1.f and 49 of the American Convention on Human Rights and Article 40 of the IACHR's Rules of Procedure.

Two: the parties indicate their full consent to the commitments for the definitive resolution of case 12.660, as follows:

- a) The Mexican State agrees as of the signing of this agreement to legally consider and, as appropriate, administratively grant the release of Mr. Ricardo Ucán Seca. To this end, the Mexican State, through the Government of Yucatán, shall make the appropriate determinations based on the legal system in effect in the entity and with full respect for the judicial independence of the Superior Tribunal of Justice of the State of Yucatán.
- b) The Mexican State shall guarantee that the right to compensation shall remain intact with respect to the relatives of Bernardino Chan Ek, who lost his life in the events that occurred on July 5, 2000, as stated in the record of Case No. 12.660 before the IACHR.
- c) As a consequence of the above, the Mexican State agrees, through the Government of Yucatán, to process for the benefit of Mr. Ricardo Ucán Seca and his family the social benefits that are applicable based on their socio-economic situation.
- d) The authorities of the Government of Yucatán indicate their willingness to analyze cases similar to this case that are submitted for its consideration and are properly documented. This shall be done with full respect for judicial independence and the division of powers; in addition, the rights of the victims or injured parties of the crimes involved shall in all cases be protected.
- e) The authorities of the Federal Government and the Government of Yucatán indicate their willingness to continue strengthening access to justice and the effectiveness of human rights on behalf of indigenous communities, as well as to consider the proposals the petitioners refer to them on such topics.
- f) The parties shall inform the IACHR periodically regarding progress made in carrying out this friendly settlement agreement. In addition, by mutual agreement, they ask the Commission to prepare the report referred to in Article 49 of the American Convention on Human Rights and to proceed in accordance with that article for purposes of publishing that report.

The State shall disseminate, through the Official Journal of the Federation and the corresponding journal of the State of Yucatán, the friendly settlement report published by the Inter-American Commission.

This agreement presupposes the principle that both parties are acting in good faith, so that in the event of any doubt regarding the scope thereof, it shall in principle be the parties themselves that resolve the matter and, in the event they do not reach agreement, they may seek the intervention of the IACHR to assist for that purpose within the scope of its powers.

The parties who sign this friendly settlement agreement indicate their free and spontaneous willingness and their acceptance of each and every one of its clauses and, as a result, they agree that processing of the petition in case 12.660 before the Inter-American Commission should be considered terminated once the release of Mr. Ricardo Ucán Seca proceeds and the right referred to in clause two (b) of this agreement has been satisfied.

878. In the Friendly Settlement Report the IACHR expressed its great appreciation for the efforts made by both parties to achieve a solution compatible with the Convention's object and purpose. It also noted that on December 31, 2009, Mr. Ricardo Ucán Seca regained his freedom and urged the State to fulfill the remaining obligations assumed in the friendly settlement agreement signed on December 31, 2009.

879. On November 15, 2012, the IACHR asked the parties for updated information on the status of compliance with the pending commitments. The petitioners did not provide information.

880. The State reported that the next-of-kin of Bernardino Chan EK were awarded due reparation as provided for by the Judiciary of the State of Yucatan. Additionally, Mr. Ricardo Ucan Seca had been provided sufficient and detailed information about the social programs available through the government of the State of Yucatan and reiterated its willingness to continue to entertain his requests in this regard. As for the strengthening of access to justice and human rights, it noted that in May 2010 the local constitution of Yucatan underwent a reform in order to modernize the justice system. It added that, as a consequence, several legal instruments were created, leading to legal harmonization of the new adversarial and oral proceedings-based criminal justice system, which came into force in the State in November 2012. Therefore, the State claimed that it has taken all of the measure for full compliance with the agreement.

881. Based on the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. As a result, the Commission will continue to monitor the pending items.

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

882. 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.

883. 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.

884. 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, Anibal 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.

885. On April 4, 2001, the Commission approved Report No. 56/01 (Article 51 Report), in which it reiterated for the Nicaraguan State the conclusions and recommendations contained in its report 80/00; on October 11, 2001, it adopted its Merits Report No. 100/01 (Article 51 Report – Publication), in which it ordered publication of the above-mentioned reports and reiterated yet again the conclusions and recommendations contained in Report 80/00.

886. Subsequent to these events, the State repeatedly told the Commission that the first recommendation could not be carried out, since criminal prosecution was time barred under Nicaragua's statute of limitations.

887. On the other hand, the Commission observes that in order to comply with the second recommendation, on June 7, 2007 the State and 113 victims signed an "Agreements and Commitments" (which another 20 workers later signed). In that agreement, Nicaragua pledged to pay the sum of 125 thousand *cordobas* to each of the 144 victims in this case, within a period of 5 years; to recognize contributions not drawn and contributed to the INSS for the 14 years not worked; and to make every effort possible to gradually rehire, somewhere in the public sector, those petitioners who were former Customs employees. On the other hand, the Commission understands that no agreement was reached with 6 of the petitioners.

888. On November 15, 2012, the Commission asked the parties to submit updated information on the status of compliance with the recommendations. The State did not provide information.

889. On December 17, 2012, co-petitioners CEJIL and CENIDH reported that they had no observations to submit. Additionally, Mr. Alfredo Barberena Campos, the victim in the case, asserted that the State has not complied with the commitments entered into on June 7, 2007.

890. The IACHR takes note of the agreement signed between the State and most of the victims in 2007 and again urges the State to submit the parameters that were used as the basis for the compensation figures in that agreement. Regarding the investigation to determine the criminal responsibility of all the perpetrators of the offenses against the victims, the IACHR again reminds the State of its obligation to investigate and sanction those who prove to be responsible for human rights violations.

891. Based on the above, the IACHR concludes that the State has partially complied with its recommendations. As a result, it will continue to monitor the pending items.

Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay)

892. 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.

893. 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.

894. In 2010, the Commission requested updated information from the parties. In a note dated November 22, 2010, the State requested a two-month extension to answer the request for information concerning compliance with the recommendations, in part because it did not know where the petitioners were. By the completion of this Annual Report, the parties had not presented any information regarding compliance with the Commission's recommendations.

895. Because of this, the Commission concludes that compliance with the recommendations continues to be pending. As a result, the Commission shall continue to monitor its compliance.

Case 11.607, Report No. 85/09, Víctor Hugo Maciel (Paraguay)

896. In Report No. 85/09 of August 6, 2009, the Commission concluded that the Paraguayan State had violated the right to personal liberty, the right to humane treatment, the right to life, children's right to special measures of protection, the right to judicial protection and the right to judicial guarantees, recognized, respectively in articles 7, 5, 4, 19, 25 and 8 of the American Convention. Summarizing, they alleged that Víctor Hugo Maciel, a child 15 years of age, was recruited on August 6, 1995, to perform Compulsory Military Service (SMO) in the Paraguayan Army, even though his parents expressly objected; he died on October 2, 1995, as a result of excessive physical exertion, known in Paraguay as "flaying", a punishment for a mistake made during the so-called "closed drill." The petitioners stated that Maciel, a minor, was suffering from Chagas disease in its chronic stage, the most evident symptoms of which are heart irregularities. The petitioners alleged that a summary inquiry was launched in the military courts, and the case was dismissed on December 4, 1995. Another inquiry was underway in the regular court system, because of the media attention that the case had received and the interest shown by members of the Senate Human Rights Commission. Even so, that inquiry did not move forward.

897. On March 8, 2005, the Inter-American Commission on Human Rights adopted Report No. 34/05, pursuant to Article 50 of the American Convention. The Paraguayan State was notified on April 20, 2005, and given two months to comply with the recommendations. In a communication dated June 17, 2005, the State requested that the time period established in Article 51(1) of the American Convention be suspended and formally requested the possibility of seeking a compliance agreement with the petitioners based on its acknowledgment of its international responsibility for the facts that gave rise to this case, which was accepted by the petitioners. On March 22, 2006, the petitioners and the State signed a friendly settlement agreement.

898. In Report No. 85/09, the Commission concluded that despite the substantial progress made to comply with the March 22, 2006 Compliance Agreement, the State had only partially complied with the recommendation made by the IACHR in Report No. 34/05 concerning the State's obligation to investigate the facts denounced. The Commission therefore recommended to the Paraguayan State the following:

1. That it complete a full, fair and effective investigation of the facts of this case for the purpose of trying and punishing the material and intellectual authors of the human rights violations committed to the detriment of Víctor Hugo Maciel Alcaraz.

899. In 2010, the Commission asked the parties to provide updated information on the status of compliance with this recommendation. In a note dated December 29, 2010, the State reported that the case titled "Complaint entered by the Attorney General of the State in connection with the Death of Conscript Víctor Hugo Maciel Alcaraz. Case No. 397/95" was with Examining and Sentencing Court No. 3, awaiting the testimony of four witnesses, as well other evidence.

900. For their part, in a communication dated December 21, 2010, the petitioners asserted that the State had not taken any steps to conduct a useful investigation to determine the identity of those responsible for the events that resulted in Víctor Hugo Maciel's death. It had thus failed to comply with the Commission's recommendation. The petitioners pointed out that four years had passed since the summary proceeding was reopened, yet the procedures and proceedings had been inadequate, barely functional and without any strategic direction encompassing every aspect of the case.

901. On October 25, 2011, the Commission requested updated information from the parties. In a communication dated November 21, 2011, the petitioners reported that no progress had been made in the judicial investigation since December 2010. In their view, in the five years since the reopening of the pre-trial investigation, the judicial proceedings have been inadequate and ineffectual and have lacked a strategic focus encompassing all aspects of the case.

902. On December 4, 2012, the Commission asked the parties to supply updated information. In a communication dated January 4, 2013, the petitioners pointed out that the recommendation concerning investigation, prosecution and punishment of the human rights violations committed against Víctor Hugo Maciel had still not been carried out. They reiterated that the State had not taken measures to conduct an effective investigation into the circumstances of the victim's death; that the investigations had made no tangible progress toward identifying, prosecuting and punishing all those responsible and that the judicial proceedings had been flawed and dysfunctional. They also maintained that the Paraguayan State had not yet supplied the complete information needed to ascertain the precise status of the judicial proceedings.

903. Based on the information supplied by the parties, the Commission observes that the recommendation concerning the investigation, prosecution and punishment of the human rights violations committed against Víctor Hugo Maciel, have not yet been fulfilled. Therefore, the IACHR concludes that the friendly settlement agreement that the parties signed on March 22, 2006, has been only partially honored.

Case 12.431, Report No. 121/10, Carlos Alberto Mojoli Vargas (Paraguay)

904. In Report No. 121/10 dated October 23, 2010, the Commission concluded that the State of Paraguay had violated Mr. Mojoli's right to a fair trial as enshrined in Article 8.1 of the American Convention, in conjunction with Article 1.1 thereof, by adopting an administrative sanction against him without affording him due procedural guarantees. The Commission also concluded that there was a violation against his detriment in the process of falsification of public document, on the right to be tried within a reasonable time under Article 8.1 of the American Convention in connection with Article 1.1 of the same instrument. In summary, the petitioner presented a series of allegations against the State of Paraguay and which he describes as persecution instituted against him, whereby: he was allegedly arbitrarily suspended from his position as a member of the Superior Court of Electoral Justice of the

Republic of Paraguay and purportedly later coerced into resigning that position; he was allegedly implicated in four court cases for different matters; and he and members of his family were allegedly the target of threats, harassment, and sundry acts of intimidation.

905. The IACHR advised the State of Paraguay as follows:

1. Take the necessary steps to guarantee the right to be heard in disciplinary proceedings brought against judges.
2. Take the necessary steps to conclude the proceedings against Mr. Carlos Alberto Mojoli for falsifying a public document.

906. In the mentioned Report No 121/10, the Commission carries out an analysis of the implementation of recommendations based on the information received, indicating with respect to compliance with the first recommendation that the State attached information regarding that the rules to carry out disciplinary proceedings had been amended as of 2007 in order to guarantee due process in administrative proceedings and guarantee anyone under investigation the effective right to defense. Those amendments were established by a Supreme Court of Justice (CSJ) Decree issued. The IACHR pointed out that Decree No. 470 of 2007 establishes, specifically, that in a preliminary investigation, a person under investigation shall be given 5 days to mount his/her defense; administrative appeals of final decisions by the government attorney during the trial of a case, as well as appeals of final decisions and their effects; and, in relation to sanctions, the principle of proportionality. The State also reported that the disciplinary proceedings are being held before the General Superintendency of Justice according to a Disciplinary Office operations and procedures manual that the Superintendency Council approved by Resolution No. 2158 of December 6, 2007; and that sanctions imposed by the Council can be appealed for reconsideration, interrupting a ruling entering into effect. Finally, the State indicated that the Supreme Court created the Office of Grievance and Complaints as a subsidiary body of the Superintendency Council, and invokes applicable laws in disciplinary proceedings. Accordingly, the Commission concluded that the State of Paraguay has fully complied with this recommendation.

907. Regarding the second recommendation, in the same Report, the IACHR indicated that the State reported that on May 22, 2009, the Criminal Court of Settlement and Ruling No. 3 decided to dismiss the charges of falsifying documents, lodged against Carlos Alberto Mojoli. Consequently, the Commission also concluded that this recommendation was fully implemented by State of Paraguay.

908. In light of the foregoing, the Commission concludes that the Paraguayan State has complied with the recommendations in Report No. 121/10.

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

909. In Report No. 111/00 of December 4, 2000, the IACHR concluded that the Peruvian State: (a) through members of the National Police and the Navy of Peru detained Messrs. Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez, and Carlos Martín and Jorge Luis Tarazona More on May 2, 1992, in the human settlements of "La Huaca," "Javier Heraud," and "San Carlos," located in the district and province of Santa, department of Ancash, and that subsequently it proceeded to disappear them; (b) that accordingly it was responsible for the forced disappearance of the victims identified above, thereby violating the right to liberty (Article 7), the right to humane treatment (Article 5), the right to life (Article 4), the right to juridical personality (Article 3), and the right to an effective judicial remedy (Article 25) enshrined in the American Convention on Human Rights; and (c) that it had breached the general obligation to respect and ensure these rights enshrined in the Convention, in the terms of Article 1(1) of that Convention.

910. 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.

911. On November 11, 2010, the Commission requested up-to-date information from the parties regarding the progress made on implementation of the above-mentioned recommendations. The State did not submit a reply within the established time period.

912. In a communication received on December 10, 2010, the petitioners reported that on October 1, 2010, the First Special Criminal Chamber convicted former members of law enforcement and high-ranking government officials under the government of then President Alberto Fujimori, who were convicted of the aggravated homicide of Pedro Pablo López Gonzales, Jesús Manfredo Noriega Ríos, Carlos Martín Tarazona More, Jorge Luis Tarazona More, Roberto Barrientos Velásquez, Carlos Alberto Barrientos Velásquez, Gilmar León Velásquez, Denis Atilio Castillo Chávez and Federico Coquis Vásquez. The petitioners added that the judges in that Criminal Chamber ordered the condemned persons and the State, as a third party that bore civil liability, to pay reparations and pay for medical-psychological treatment and other forms of compensation for the pecuniary and non-pecuniary damages sustained by the victims' next of kin. The petitioners indicated that the defense counsel filed an appeal to have the verdict vacated; the Supreme Court's decision on that appeal is still pending.

913. The petitioners asserted that the Peruvian State had not taken the measures necessary to determine the whereabouts and hand over the remains of the nine disappeared farm workers in the district of El Santa. As for the second recommendation in Report No. 111/00, the petitioners asserted that while Peru's Judicial Branch has repealed Laws Nos. 26479 and 26492, the Executive Branch has pressed for legislative measures which, if they took effect, would obstruct the investigation into serious human rights violations committed during the internal armed conflict.

914. In a communication dated October 21, 2011, the IACHR asked the parties for information on the status of compliance with the recommendations made in Report No. 111/00 and Report No. 101/01. The parties have not submitted updated information within the time period set by the IACHR. Nonetheless and given that recommendation 3 of Report Nos. 111/00 and 101/01 are included in subparagraphs c) and d) of the joint press release signed by the IACHR and the Peruvian State on February 22, 2011, on which the parties have submitted information during 2011, and the IACHR convened two working meetings during its 141st and 143rd regular sessions, the IACHR will combine its comments on compliance with this recommendation in the following section on Report N° 101/01.

915. Throughout 2012, the petitioners remitted communications indicating that on July 20, 2012, the Permanent Criminal Chamber of the Supreme Court of Justice had handed down judgment on appeal in the proceedings conducted to investigate on a series of crimes, including the forced disappearance of the El Santa farm workers. The petitioners pointed out the Permanent Criminal Chamber had concluded that the disappearance of the El Santa farm workers did not constitute a "crime against humanity" (*lesa humanidad*) because, although at that time there had indeed been a systematic and widespread practice of executions and disappearances, it had not been directed against the civilian

population but rather at “military leaders of the Peruvian Communist Party – Sendero Luminoso and terrorists.” In August 2012, the Inter-American Court of Human Rights held a hearing on this matter in its follow-up to the judgment in the Barrios Altos case and issued a resolution in September of the same year. According to information received by the IACHR, on September 27, 2012, the Permanent Criminal Chamber of the Supreme Court of Justice annulled the verdict handed down on July 20, 2012. With that decision, a new Chamber is to be formed to hear on first appeal the criminal proceeding aimed at establishing the liability of the perpetrators and high-level government officials for the El Santa and other cases.

916. On November 3, 2012, a working meeting on this case was held during the 146th regular session of the IACHR. At that meeting, the State indicated that it was meeting its international obligation to investigate and punish those responsible for the disappearance of the farm workers of El Santa, as a result of which the judgment handed down by the Permanent Criminal Chamber of the Supreme Court on July 20, 2012 had been voided *ex officio* by the same judicial body. For their part, the petitioners stressed that the July 20, 2012 decision illustrated a constant practice of the Permanent Criminal Chamber of issuing decisions in cases of grave human rights violations that contravened inter-American standards. The petitioners further argued that although the annulment of that decision had corrected a situation of impunity, the Supreme Court had yet to hand down a final verdict regarding the forced disappearance of the victims, even though more than 20 years had elapsed.

917. On November 16, 2012, the IACHR asked the parties to report on progress with implementing the aforementioned recommendations. The petitioners and the Peruvian State remitted communications in which they reiterated the arguments they put forward during the working meeting of November 3, 2012. In addition, the petitioners reported that, on March 6, 2012, one of the accused, Julio Rolando Salazar Monroe, had obtained a judgment, in the course of a *habeas corpus* proceeding, in which the Constitutional Court had ordered his removal from the criminal proceedings relating to the El Santa, Barrios Altos, and Pedro Yauri Bustamente cases. According to the petitioners, if that judgment were to be carried out, it would be tantamount to a denial of the Peruvian State’s obligation to punish the aforementioned crimes appropriately. As regards financial reparation, the petitioners repeated the observations remitted in previous years, which are summarized in the section dealing with Report No. 101/01.

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

918. 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.

919. 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.

920. On November 10, 2009, the Commission requested updated information from the parties concerning the implementation of the above-mentioned recommendations. The State did not reply to that request for information within the stipulated time period.

921. On November 11, 2010, the IACHR again requested information from the parties. The *Asociación Pro Derechos Humanos* (APRODEH) submitted observations on the criminal investigations in connection with the victims covered in cases 10,247, 11,501, 11,680 and 11,132. The other petitioners and the Peruvian State did not present observations.

922. Concerning case 10,247, APRODEH asserted that in May 2008 criminal proceedings were undertaken against Jesús Miguel Ríos Sáenz, Walter Elias Lauri Morales or Walter Elias Ruiz Miyasato and Máximo Augusto Agustín Mantilla Campos, for the kidnapping and aggravated homicide of Luis Miguel Pasache Vidal. According to what was reported, the examining phase has ended and the decision of the Superior Prosecutor is pending. As for case 11,501, APRODEH reported that on June 2, 2010, the National Criminal Chamber delivered a verdict of acquittal in favor of Santiago Enrique Martín Rivas and reserved judgment with respect to Eudes Najarro Gamboa until he is found. These individuals were tried for the aggravated homicide of Adrián Medina Puma. According to what was reported, the Public Prosecutor's Office filed an appeal to challenge the June 2, 2010 verdict of the National Criminal Chamber.

923. In case 11,680, APRODEH reported that on January 31, 2008, defendant José Alberto Delgado Bejarano was acquitted of the aggravated homicide of Moisés Carbajal Quispe, and that the verdict was upheld by the Transitory Criminal Chamber of the Supreme Court. As for case 11,132, it reported that the forced disappearance of Edith Galván Montero was still being investigated by the Fourth Supra-provincial Criminal Prosecutor's Office.

924. The IACHR has not received updated information on compliance with the second recommendation made in report 10/01 with respect to the following cases covered therein – 10.472, 10.805, 10.913, 10.947, 10.944, 11.035, 11.057, 11.065, 11.088, 11.161, 11.292, 10.564, 10.744, 11.040, 11.126, 11.179, 10.431, 10.523, 11.064 and 11.200.

925. Regarding the first recommendation of report 101/01, APRODEH expressed that even though the Judicial Branch of Peru has declared that Laws No. 26479 and 26492 have no effect, the Executive Branch has promoted legislative measures that would hinder the investigation of serious violations of human Rights perpetrated during the internal armed conflict.

926. Regarding the third recommendation, the Commission notes that the cases referred to in Report Nos. 111/00 and 101/01 are included in sections c) and d) of the joint press release that the Commission and the Peruvian State signed on February 22, 2001, in which Peru undertook a formal commitment to find comprehensive solutions to the recommendations issued by the Commission on the more than 100 final merits reports adopted pursuant to articles 50 and 51 of the American Convention on Human Rights.⁶⁷

927. The petitioners observed during 2010 that despite the obligations undertaken in that joint press release and the provisions of Law No. 28592 "Law on the Comprehensive Reparations Plan," thus far no reparations had been paid. They observed that while Supreme Decree No. 005-2002-JUS of April 2003 regulated some forms of non-monetary reparations in the area of housing, education and health, the Peruvian State had not even identified the plot of land that could be given to the next of kin of the victims in cases 10.805, 10.913, 11.035, 11.605, 11.680, 10.564, 11.162, 11.179 and 10.523.

⁶⁷ See <http://www.cidh.oas.org/Comunicados/English/2001/Peru.htm>.

928. The petitioners indicated that back in 2003, the Ministry of Justice granted a plot of land in the Huachipa sector, in the district of Lurigancho, province and department of Lima, to be turned over to 200 victims or their next of kin, in some of the cases mentioned in the February 22, 2001 joint press release. They include cases 10.247, 10.472, 10.878, 10.994, 11.051, 11.088, 11.161, 11.292, 10.744, 11.040, 11.126, 11.132, 10.431, 11.064 and 11.200, all of which are included under Report 101/01. They emphasized, however, that the Peruvian State had not taken steps to legalize occupation and property title to the lots on the land in question. They went on to point out that because of this, some beneficiaries had set up crude dwelling places that had no access to basic sanitation services; they lived under the constant threat of looting and third-party property takeovers.

929. According to the petitioners, the Ministry of Justice has made final handover of the property conditional upon a risk evaluation, because an Army weapons factory adjacent to the property has resumed operations. However, they observed that in Memorandum No. 709-2010-MML/SGDC, the Office of the Deputy Manager of Civil Defense of the Lima Metropolitan Municipality reported that the Huachipa property is approved for housing construction, and there should be no impediment to giving the 200 beneficiaries title to the lots.

930. Finally, with regard to the fourth recommendation in Report 101/01, the Inter-American Convention on Forced Disappearance of Persons was ratified on February 8, 2002, and entered into force in Peru on February 13 of that same year.

931. During 2011, the State submitted information regarding the measures adopted in the areas of housing, education, and health. Regarding the housing reparations, the State indicated that Supreme Decree No. 014-2006-JUS authorized the Ministry of Justice to take the actions needed to effect the transfer free of charge of 50% of the land called Sublot No. 01, located on Central Avenue, town of Huachipa, district of Lurigancho, province and department of Lima. The State indicated that at the meeting held during the 141st Regular Session of the IACHR, commitments were made to: 1) approve without further delay the Supreme Decree transferring ownership of the plots of land in Huachipa to the 200 victims benefiting from this measure; 2) report to the Commission within a period of two months on the measures that the State takes to identify possible lands for housing reparations with respect to the other 307 victims who have not been served. It also reported that on April 5, 2011, the Ministry of Justice submitted information regarding the transfer of ownership of Lot 1-B as well as the need to resolve some unexpected developments.

932. Regarding the reparations in terms of education, the State reported that Supreme Decree No. 038-2002-ED of November 13, 2002 ordered exempting the victims or relatives included in Supreme Decree No. 005-2002-JUS from the entry examination for public Higher Education Institutes in Technology, Teaching, and the Arts at the national level, provided they have certificates indicating completion of Secondary Education. In addition, the State indicated that during the working meeting held during the 141st Regular Session of the IACHR a commitment was made to introduce the educational points agreed to in Supreme Decree No. 005-2002-JUS, regarding the reparations program, and that they are designed: 1) to extend the status of beneficiary in education to the children of the victims who have died or disappeared, and the children resulting from rape, who did not necessarily interrupt their studies as a result of the violence; and 2) to establish as components of the program: vacancy set-asides, decentralized scholarship program, special ongoing training program, and refresher plan for promoting inclusion in the workforce and development of business skills. In this respect, the State reported that it will provide public universities and higher technology and teaching institutes with the database of the Single Registry of Victims and the list of cases included in the Joint Communiqué of February 22, 2001.

933. Regarding reparations in the area of health, the State reported that Administrative Resolution No. 082-2003/SIS incorporated the victims of human rights violations and their relatives as recognized by the IACHR in the Comprehensive Health Insurance System (SIS). It indicated that to date the Ministry of Health reports a total of 191 beneficiaries enrolled in the SIS and 68 beneficiaries enrolled with some other type of insurance. It stated that the Memorandum of Understanding of March 29, 2011, signed during the 141st regular session of the IACHR, agreed that the State, through the Ministry of Health, will issue a letter within no more than two months certifying lifetime affiliation with the SIS for each

of the beneficiaries, to ensure that the beneficiaries do not encounter any obstacles when proving their affiliation with the SIS.

934. In a communication dated November 22, 2011, the petitioners reported that although they acknowledge some progress made regarding the commitments assumed by the State in the Memorandum of Understanding signed during the 141st Regular Session of the IACHR, they are deeply concerned that so far the State has not implemented the previously announced measures regarding reparations in terms of housing, as well as some aspects concerning economic reparations in the area of health and education.

935. On November 16, 2012, the IACHR asked the parties to report on progress with implementation of the aforementioned recommendations. In a communication on December 20, 2012, the State reported that the victims' relatives were covered by the Comprehensive Health Insurance System (SIS) and had universal access to health care services in the centers corresponding to their address. As regards reparation in the form of housing, it stated that "progress is being made with implementing the reparation [corresponding] to two hundred (200) beneficiaries, of the total number of victims covered by Supreme Decree N° 005-2002-JUS, or their legal heirs, as the case may be, pursuant to Article 3 of Supreme Decree N° 014-2006-JUS. As for financial reparation, Peru said that the intention was to pay 10,000 new soles for each victim mentioned in the press release of February 22, 2001, adding that "all the relevant steps are being taken to comply with that decision."

936. The petitioners did not present up-to-date information in the time allowed by the IACHR. Nevertheless, given that recommendation 3 of Reports No. 111/00, No. 101/01, and 112/00 are included in paragraphs c) and d) of the joint press release issued by the IACHR and the Peruvian State on February 22, 2001, the IACHR will take information thereon submitted by the petitioners in 2012 in account. That information from the petitioners dealt with the following: justice, housing, education, and health care.

937. Regarding actions taken by the State to investigate and punish the alleged perpetrators, the petitioners voiced their concern regarding Plenary Agreement (*Acuerdo Plenario*) No. 9/2009 of the Supreme Court of the Republic of Peru, which requires that the alleged perpetrators of forced disappearances must be government officials at the time that crime is formally defined in Peruvian legislation in 1991.

938. Regarding reparation in the form of health care, the petitioners reported that in this period new problems had arisen because of interventions by the Household Targeting System (Sistema de Focalización de Hogares –SISFOH), which is the entity reporting to the Ministry of Social Inclusion that certifies or does not certify the poverty or extreme poverty status of persons applying for membership of the cost-free SIS, and which had rejected the affiliation of some of the victims' next of kin. The petitioners indicated that the State should include the category of "person affected by political violence" so as to avoid these kinds of problems.

939. With respect to reparation in the form of educational facilities, the petitioners reported that one of the beneficiaries' requests was the right to transfer the education benefit to a relative, a demand supported by the Ombudsman's Office (*Defensoría del Pueblo*) but not yet met by the State. With regard to reparation in the form of housing, the petitioners reported that, while the State had taken some steps that would benefit 200 of the 507 victims included in paragraphs "c" and "d" of the joint press release, no definition had yet been reached regarding measures that would effectively benefit the remaining victims. They pointed out that, in June 2012, the Metropolitan Municipality of Lima had issued a risk assessment report lowering very high-risk status to average-risk status. They reported that the victims and their relatives were feeling overwhelmed and very disappointed by the excessive delay in the State's compliance with its commitment to transfer ownership of the plots of land, which many of them were occupying despite the lack of basic services and security in that area.

940. As for financial reparation, the petitioners reported that there had been problems for some victims and their relatives in getting listed in the Register of Victims (Registro Único de Víctimas -

RUV), which was a prerequisite for benefiting under the financial reparation program. They pointed out that, apart from the disqualifications established in Article 4 of the Reparations Law, only those accrediting permanent disability as a result of torture would benefit from financial reparation, but not those persons who had been forcibly disappeared and later turned up alive.

941. The Commission appreciates the measures adopted by the State to comply with the recommendations made in Report Nos. 111/00 and N° 101/01. At the same time, it notes that there are measures that are pending compliance. Based on the above, the Commission concludes that there has been partial compliance with the recommendations, so that it will continue to monitor the pending items.

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

942. 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.

943. 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.

944. 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.

945. 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."

946. Concerning the second recommendation, the Peruvian State has repeatedly observed that its institutions have a practice, based on the judgment of the Inter-American Court of Human Rights

in the *Barrios Altos Case*, which is that amnesties cannot be invoked as grounds for contesting investigations undertaken to identify and punish those responsible for human rights violations.

947. On November 10, 2009, November 11, 2010, and October 21, 2011 the Commission requested updated information from the parties concerning the progress made with implementation of the recommendations. The parties did not submit observations on the matter.

948. On November 16, 2002, the IACHR asked the parties to report on progress made with implementing the aforementioned recommendations. The petitioners did not reply in the time allowed. On December 20, 2012, the State presented a report describing the steps it has been taking to make reparation. That report reiterates the information submitted in the other cases covered by the joint press release of February 22, 2001, which is summarized in the Commission's follow-up to Cases 10.247 et al [sic], Report No. 101/01, Luis Miguel Pasache Vidal et al. (Peru).

949. The Commission therefore concludes that the State has only partially complied with the recommendations contained in the report and will continue to monitor for compliance with the pending items.

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

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

951. According to the friendly settlement agreement, the State:

1. Recognized its international responsibility for the violation of Articles 1.1, 4, 5, and 24 of the American Convention on Human Rights, as well as Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women in the harm done to victim María Mamérita Mestanza Chávez.
2. Promised to undertake a thorough investigation of the facts and apply legal punishments to any person determined to have participated in them, as either planner, 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.

952. 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.

953. The State reported that the Permanent Commission on disciplinary measures of the Regional Bureau of Cajamarca, on January 9, 2001, had established that two physicians were disqualified and that on January 18, 2001, one physician-obstetrician, two obstetricians, and one nurse were acquitted.

954. With respect to the compensations, the State reported that it paid US\$ 10,000 in moral damages to each of the eight beneficiaries – the husband of Ms. Mamérita Mestanza and their seven children; that it paid US\$ 2,000 as actual damages for each beneficiary, and that a trust fund had been set up for this purpose of the child beneficiaries. In addition, it is indicated that US\$ 20,000 was handed over to Ms. Mamérita Mestanza's husband to purchase a plot of land or house in his children's name. It is indicated that the purchase of a piece of land was shown.

955. In addition, the State presented information on implementation of the eleventh clause of the friendly settlement agreement with regard to public policies on reproductive health and family planning. On this occasion, the State reported that in July 2004 the National Health Strategy for Sexual and Reproductive Health was established; that the technical standard for family planning was updated that indicates that any complication attributable to and verified to result from the use of contraceptives provided by the establishments of the Ministry of Health should be reported as soon as it is detected, and that all deaths and grave medical problems attributable directly to the use of contraceptive methods will be investigated to determine their causes; that in the context of the Health Strategy for Sexual and Reproductive Health workshops were programmed for professionals involved in reproductive health care for updating on contraceptive methods; that a total of 565 obstetricians, 30 physician obstetricians, 46 general physicians, and five nurses were trained; that educational materials on sexual and reproductive health have been given to the health services of the regions, nationwide; that in 2006, a series of workshops was scheduled on managing gender-based violence, directed to physicians, psychologists, and obstetricians from different regions of the country; that meetings were held to raise awareness for 410 members of the National Police of Lima, and for 69 members of the police forces in Arequipa, La Libertad, and Ucayali; that a Diploma Program on Violence was carried out; that it was established that in cases of voluntary contraception the period of reflection will be 72 hours, and that state institutions and NGOs should exercise citizen oversight of the family planning services, among others. Training was provided for health professionals and education programs were conducted on violence and sexual and reproductive health.

956. 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.

957. 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.

958. 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.

959. 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.

960. 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.

961. On October 27, 2010, the Commission held a working meeting on this case during the course of its 140th regular session. There, the petitioners stated that although Mrs. Mamérita Mestanza's next of kin were enrolled in the Comprehensive Health Insurance Program (SIS), they continued to encounter financial obstacles and problems in getting actual access to health services. As for the State's commitment to provide education to the victim's children free of charge, the petitioners asked the Peruvian State for details about the measures that the authorities of the Ministry of Education were taking to enable those children to pursue their elementary, secondary and higher education on a regular basis. They pointed out that young Napoleón Salazar Mestanza completed elementary school over five years ago but has been unable to enroll in secondary education because there is no secondary school where he lives.

962. As for the commitment to adopt measures to prevent a recurrence of similar events, the petitioners maintained that Peru's criminal laws had not yet been amended to specifically criminalize forced sterilization. They also alleged that Peru needed to adapt its Penal Code to the Statute of the International Criminal Court so that events such as those that claimed María Mamérita Mestanza and thousands of other Peruvians as victims could be classified as crimes against humanity.

963. The petitioners expressed great concern over the fact that the Peruvian Public Prosecutor's Office had declared that the criminal prosecution of the forced sterilization of María Mamérita Mestanza was now definitively time barred by the statute of limitations.

964. Subsequent to the working meeting the Commissioner Rapporteur on the Rights of Women sent a letter to the Peruvian State in which she expressed "her deep concern over noncompliance with the third clause of the agreement, which establishes the State's commitment to conduct an exhaustive investigation of the facts and apply the penalties that the law requires to any person who had a hand in these events..." The Commission underscored the fact that "under the American Convention and other inter-American instruments like the Convention of Belém do Pará, member states are obligated to investigate, prosecute and punish any and all violations of women's rights and ensure that they do not recur."

965. On November 11, 2010, the IACHR requested updated information on the progress made toward compliance with the friendly settlement agreement approved through Report No. 71/03. In response, the petitioners repeated the information they provided during the working meeting held on October 27, 2010. The Peruvian State did not submit observations within the stipulated time period.

966. During the course of 2011, the State indicated that it had complied with clauses in the agreement with regard to compensation of the relatives of Mrs. Mamérita Mestanza, health benefits and education benefits. It noted that all the beneficiaries are permanently affiliated with the Comprehensive Health Insurance System (SIS), which is subsidized by the State. Regarding educational benefits, it stated that the beneficiaries have access to public educational facilities in the locality where they live.

967. On October 26, 2011, the IACHR held a working meeting within the framework of its 143rd Session. At that time, the Peruvian State reported that on October 21, 2011 the Office of the Public Prosecutor ordered the reopening of the investigation regarding the forced sterilization of María Mamérita Mestanza and thousands of other women during the second half of the 1990s. Upon the conclusion of the 143rd Session, the IACHR welcomed the decision of the Prosecutor's Office and indicated that it represents an initial and important step in "the State's commitment to carry out a thorough investigation of the facts and apply legal sanctions against those who were responsible, including public officials."

968. On October 21, 2011, the IACHR asked the parties for information on progress made in terms of compliance with the commitments assumed by the Peruvian State. The petitioners did not submit information within the time period allowed by the IACHR. The State reiterated the information submitted during the last working meeting. It emphasized that in ordering the reopening of the criminal investigations, the Office of the Public Prosecutor emphasized that the previous decisions to archive the matter do not have the effect of *res judicata* and that they have considered the facts under investigation as common crimes and not as offenses linked to cases of human rights violations.

969. Regarding economic reparations, the State indicated that there has been full compliance with the payment of benefits for moral damages, emerging damage, psychological rehabilitation, and land or housing, for a total amount of US\$109,000. Regarding health benefits, it reiterated that all the beneficiaries are permanently affiliated with the Comprehensive Health Insurance System. Regarding education benefits, it noted that an intra-sectoral commission of the Ministry of Education has initiated actions to identify the needs of each of the seven children of María Mamérita Mestanza.

970. In a communication dated November 19, 2012, the IACHR asked both parties to provide up-to-date information on compliance with the aforementioned points.

971. The State reported that on December 20, 2012, the First Supraprovincial Criminal Prosecuting Attorneys' Office in Lima (*Primera Fiscalía Penal Supraprovincial de Lima*) had issued a resolution on November 5, 2012 ordering the reopening of the preliminary investigation into the alleged perpetrators of crimes against life, personal integrity, and health in the form of felonious homicide (*homicidio culposo*) and the exposure to danger under aggravating circumstances of dependent persons, crimes against the public administration in the form of embezzlement, and others, to the detriment of Mrs. María Mamérita Mestanza Chávez, 2,084 other people, and the Peruvian State. The State pointed out that the previous Prosecuting Attorneys' Office had ordered several procedures to be carried out, such as gathering the identity cards in the National Identification and Civil Status Registry Office (RENIEC) of those persons listed in the investigation as alleged victims, but that were not included at the time in the archiving resolution (*resolución de archivo*) nor in the prosecuting attorney's order. The State also said that preliminary statements by both those under investigation and the victims were being rescheduled.

972. In a communication on December 17, 2012, the petitioners expressed concern to the IACHR regarding the preliminary investigation recently started by the First Supraprovincial Prosecuting Attorneys' Office in Lima, because that Office was handling other human rights violation cases, had only minimal staff, and no personnel specializing in the subject (women's human rights, the gender perspective, and interculturalism).

973. The Commission appreciates the steps taken by the State to comply with the commitments undertaken in the Friendly Settlement Agreement. At the same time, it notes that with respect to some measures compliance is still pending. Therefore, the Commission concludes that there has been partial compliance with the friendly settlement. Accordingly, the Commission will continue to monitor the pending points.

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

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

975. 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.

976. 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.

977. On November 10, 2009, the Commission requested both parties to provide updated information on the progress in fulfilling the commitments made by the State as a result of the friendly settlement agreement. At the time of the drafting of the present chapter, the petitioner had not responded to the request for information. The petitioner did not submit observations at that time.

978. 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.

979. On November 11, 2010, the IACHR again requested updated information from the parties concerning progress made toward compliance with the commitments undertaken by the State in the friendly settlement agreement.

980. In a note received on December 10, 2010, the State again reported that the Peruvian National Police has already regularized the pension rights and granted Mr. Semoza Di Carlo a renewable pension; he was also reinstated at the National Police School of Advanced Studies. It has been unable to comply with its commitment to stage a public ceremony to make apologies because the petitioner is not interested, despite the invitations sent by the appropriate office of Peru's National Police. As for the other commitments, the State observed that it will send additional information to the Commission as soon as possible.

981. The petitioner did not answer the Commission's November 11, 2010 request for updated information.

982. Over the course of 2011, the State indicated that the General Director of the Ministry of the Interior's Office of Internal [sic] Affairs issued Ministerial Resolution No. 0217-2010-IN, dated March 9, 2010, setting up the Ad Hoc Commission charged with identifying and establishing the responsibilities of the officials who failed to enforce the judicial mandate in favor of Mr. Ricardo Semoza Di Carlo on a timely basis. It noted that in a resolution dated January 15, 2004 the National Police of Peru assigned a vacancy to Major Ricardo Semoza Di Carlo as a participant in a master's and social sciences program for academic year 2004. It added that on February 25, 2005 he was granted a diploma as a Staff Officer after having completed that program satisfactorily. Based on that information, the State maintained that it has complied with the friendly settlement agreement with respect to immediate reinstatement to the Superior School of the National Police of Peru.

983. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. Peru did not submit comments within the stipulated time period. The petitioner maintained that the State has not paid him a total amount of 92,000 new soles to restore various benefits and that it has not held a public apology ceremony or punished those responsible for the violation of his rights.

984. On November 20, 2012, the IACHR asked the parties to report on progress made with compliance with the commitments undertaken by the Peruvian State in the friendly settlement agreement. In a communication on December 20, 2012, the State asked for an extension which the Commission granted (for 15 days) in a communication of January 17, 2013. In a communication dated December 20, 2012, the State requested an extension, which the IACHR granted, for 15 days, on January 17, 2013. Peru did not submit any observations during the period of time granted.

985. The Commission does not have sufficient information to conclude that the State has fully complied with the recommendations contained in the friendly settlement agreement and will continue to monitor the pending items.

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

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

987. 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.

988. 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.

989. 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.

990. The petitioner, for his part, indicated that despite the time elapsed, the State still owed him a sum of money as a result of the friendly settlement agreement that was signed.

991. 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.

992. On November 11, 2010, the IACHR requested information from both parties concerning the progress made toward compliance with the commitments undertaken by the Peruvian State. In a note received on December 6, 2010, the petitioner asserted that the Peruvian Government had not fully complied with points 3 and 4 of the friendly settlement agreement. The State did not reply to the Commission's request for information.

993. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. The State did not submit comments within the time period stipulated by the IACHR. The petitioners, through a communication dated November 27, 2011 as well as in notes received over the course of the year, indicated that the State has not completely paid the reparation for benefits he ceased to receive during the period during which he was separated from the Judicial Branch. On this subject, the IACHR notes that the fifth clause of the friendly settlement agreement signed by the parties establishes as follows:

For the purposes of monetary reparations, consisting of remuneration not received, operating expenses pending payment up until his actual restitution, and the amount of compensation, the parties, by mutual agreement, defer their payment pending the results of the initiatives being taken to that end vis-à-vis the Judicial Branch.

994. Thus, the IACHR feels that the suggestions related to the payment of monetary compensation other than the fixed compensation amount established in the fourth clause of the Friendly Settlement Agreement⁶⁸ does not form part thereof. Accordingly, and without prejudice to any actions the petitioner may take before the Peruvian Judicial Branch, the IACHR will not monitor communications related to the payment of compensation and benefits not received.

995. On November 19, 2012, the IACHR asked the parties to report on progress with compliance with the commitments undertaken by the Peruvian State. On December 18, 2012, Peru remitted a communication in which it stated that Mr. Roger Herminio Salas had been reinstated to the position of Supreme Judge and regular member of the Second Provisional Criminal Division of the Supreme Court of Justice as of January 13, 2006 and that on April 11, 2008 his position had been terminated due to his having reached retirement age. The State said that in April 2011 it had paid Mr. Salas 834,166.58 new soles and that on December 16, 2005, at 11:00 a.m. a ceremony had been held in the Ministry of Justice and Human Rights to offer public apology and recognition to Mr. Salas, who had attended the ceremony. Throughout 2012, the petitioner remitted communications in which he maintained that the Peruvian State had not actually made the reparation payment for salaries and other fringe benefits not paid to him during his separation from the Judiciary. With respect to those propositions, the IACHR reiterates that they do not form part of the friendly settlement agreement signed by the parties and for that reason it will not follow-up on the matter through this Chapter of its Annual Report.

⁶⁸ Paragraph b) of that clause establishes as follows:

The Peruvian State recognizes the sum of US\$20,000.00 U.S. dollars [...] for moral injury [...]. Dr. Róger Herminio Salas Gamboa undertakes not to pursue any claim for moral injury, directly or indirectly. In addition, he agrees not to sue the Peruvian State for joint-and-several liability and/or a third party with civil liability, or on any other grounds.

996. In light of the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Consequently, the IACHR will continue to monitor the items 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)**

997. 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.

998. 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.

999. 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.

1000. 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.

1001. 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.

1002. On October 27, 2010, the Commission held a working meeting during its 140th regular session, to examine compliance with the commitments undertaken by the Peruvian State in the friendly settlement agreements concerning unconfirmed magistrates. The party who requested the working meeting, Mr. Elmer Siclla Villafuerte, pointed out that while the Constitutional Tribunal had established certain requirements that the National Council of the Magistracy must observe, the mere existence of a confirmation system in Peru whose purpose was to neither discipline nor penalize, was incompatible with international and constitutional standards on the independence of the judicial branch. He also asserted that the confirmation proceeding was incompatible with the guarantees of due process, as the right to double review did not exist. Mr. Elmer Siclla emphasized the fact that the State had not paid the compensation for costs and expenses to all the magistrates who were reinstated and had not held a ceremony to make a public apology to all the victims.

1003. The State, for its part, reported that it had assigned the Ministry of Justice an amount of money to pay a portion of the five thousand dollars in compensatory damages ordered for each magistrate covered under the friendly settlement agreements approved by the Commission. It maintained that the current case law of the Constitutional Court guaranteed magistrates their right to due process and their right to challenge the decision of the National Council of the Magistracy in the event they were not confirmed.

1004. On November 11, 2010, the IACHR requested updated information on the progress toward compliance with the friendly settlement agreements approved through reports 50/06, 109/06, 20/07 and 71/07. As of the date of completion of this section, the parties had not submitted observations.

1005. Over the course of 2011 some petitioners reported that a group of judges had been reinstated to positions other than those they held at the time they were separated from the Office of the Attorney General or the Judicial Branch. They indicated that the State has still not held a public apology ceremony for all the judges who signed the friendly settlement agreements and payment is still pending with respect to the US\$5,000 amount of compensation.

1006. The Peruvian State indicated that it has fully complied with the clause in the friendly settlement agreement related to the restoration of titles and reinstatement of the judges. It added that a very small number of judges could not be reinstated because they had reached the judiciary's maximum age of 70 or because of personal reasons that prevented their reinstatement such as the decision to retire or to serve in an elective position. Peru asserted that it has paid the amount of US\$5,000 to a total of 79 judges and that another 97 judges have collected a portion of that amount. It added that the Ministry of Justice already has a Budget Heading transferred by the Special Fund for the Administration of Money Obtained Illicitly to the Detriment of the State (FEDADOI) that is intended for payment of the remaining amount.

1007. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. Most of the petitioners did not submit information within the time period stipulated by the IACHR.

1008. On October 26, 2011, a working meeting was held between the Peruvian State and the representative for petition 33-03, Mr. Elmer Siclla Villafuerte. At that time, the solicitor repeated the information provided at earlier meetings. The State, in turn, confirmed the information provided over the course of 2011, adding that the National Council of the Judiciary and the Ministers of Justice and Foreign Relations are coordinating on a date for holding a public ceremony to recognize the State's responsibility, according to the terms indicated in the friendly settlement agreements.

1009. On November 19, 2012, the IACHR asked the parties to report on progress made with compliance with the commitments undertaken by the Peruvian State. Most of the petitioners did not submit information within the time allowed by the IACHR.

1010. In communications dated December 11 and 17, 2012, the State reported that it had paid reparation in full to a portion of the judges (79) and partially to another group of judges (97), disbursing a

total of US\$724,800.00. It said that in the case of Mr. Castañeda Sánchez, , it had paid the US\$5,000 agreed upon in the Friendly Settlement Agreement. For their part, some petitioners reported that the Peruvian State had still not paid the fully compensation of US\$5,000 and that it had not conducted a public apology and recognition ceremony for all the judges.

1011. Throughout 2012, the IACHR received communications in which some judges alleged that they had been subjected to disciplinary proceedings that did not respect their guarantees and that Peru had not paid their pensions or other outstanding fringe benefits. Since such propositions are not included in the friendly settlement agreements signed by the parties, and without prejudice to actions that may have been initiated by the petitioners under domestic law, the IACHR will not follow-up on the aforementioned communications in connection with the above-mentioned Friendly Settlement Reports.

1012. Based on the information submitted by the parties, the IACHR concludes that the friendly settlement agreements included in the reports listed above have been partially carried out. Accordingly, it will continue to monitor the pending points.

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

1013. 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.

1014. 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.

1015. On November 10, 2009, the Commission requested both parties to provide updated information on progress in the process of complying with the commitments made by the State by virtue of the friendly settlement agreement. At the time none of the parties responded to the request for information.

1016. On January 6, 2011, the Commission reiterated the request for updated information to the parties. The applicant did not submit observation.

1017. On February 3, 2011, the State attached the copy of resolution No. 133-2008-CNM, whereby the National Judicial Council (*Consejo Nacional de la Magistratura*) reinstated Mr. Romeo Edgardo Vargas' title as public prosecutor. Additionally, this resolution recalled the Attorney General to

report on the reincorporation of Mr. Edgardo Vargas in his former position or any other equivalent to the title reinstated. The State did not indicate whether the reincorporation has been fulfilled by the Attorney General.

1018. The State pointed that on January 6, 2011, the Supranational Public Attorney (*Procuraduría Pública Especial Supranacional*) sent a request to the General Office of Administration at the Ministry of Justice in order to issue a check of US\$ 3,400 (three thousand and four hundred dollars) in favor of Mr. Edgardo Vargas. The State attached a copy of the receipt by the aforementioned general office.

1019. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. Neither the petitioners nor the State submitted observations within the time period stipulated by the IACHR.

1020. On November 19, 2012, the IACHR asked the parties to report on progress made with compliance with the commitments undertaken by the Peruvian State. The petitioner did not submit information in the time allowed by the IACHR. For its part, Peru remitted a communication on December 18, 2012, in which it said it had complied with items 1, 2, 3, and 5 of the friendly settlement agreement, as described above.

1021. 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.

Petition 71-06 et al., Report No. 22/11, Gloria José Yaquetto Paredes et al. (Peru)

1022. On March 23, 2011, in Report No. 22/11, the Commission approved the terms of the Friendly Settlement Agreement of September 24, 2010, signed by the Peruvian State and 21 unratified judges, whose claims were joined in Petition 71-06.

1023. Pursuant to the text of the Friendly Settlement Agreement, the State:

1. Undertook to restore the corresponding title and to order the reinstatement of the judges.
2. Undertook to recognize the unworked service time in calculating duration of service, retirement benefits and other fringe benefits under Peruvian law.
3. Agreed to a total compensation of US\$5,000 (five thousand U.S. dollars and 00/100), which includes expenses and costs of national and international proceedings relating to their petition.
4. Undertook to conduct a new evaluation and ratification procedure overseen by the National Judicial Council with respect to the judges included in the friendly settlement agreements. That procedure will be conducted in accordance with the standards and principles of the Peruvian Constitution (Articles 139 and 154), the American Convention on Human Rights, and the binding jurisprudence guaranteeing due process handed down by the Inter-American Court of Human Rights and the Constitutional Court. Applicable regulatory provisions shall be adjusted as necessary.
5. Undertook to conduct a public exoneration and apology ceremony for the reinstated judges.

1024. On January 15, 2013, the IACHR asked both parties to report on the status of compliance with the Friendly Settlement Agreement.

1025. On January 15, 2013, the Commission requested updated information from both parties on progress made in complying with the commitments assumed by the State under the friendly settlement agreement. On that occasion, the IACHR did not receive an answer within the established time period.

1026. During the Commission's follow-up of compliance with the previous Friendly Settlement Report in 2012, the State presented information on some of the unconfirmed judges. With respect to commitments 1 and 4 of the agreement, the State notified the IACHR of the following: by resolution N° 029-2011-P-CSJS, dated September 1, 2011, Mr. Manuel Vicente Trujillo Meza was reinstated to the position of member of the Superior Court of the Judicial District of Junín, but he was not able to occupy the post because of the age limit established by law; by resolution N° 029-2011-P-CSJSU-PJ, dated September 1, Mr. José Miguel La Rosa Gómez de la Torre was reinstated to the position of member of the Superior Court of Justice of Lima, but, subsequently, he was not confirmed by the National Judicial Council during the individual evaluation and confirmation procedure conducted that same year; and by resolution N° 122-2011-CNM, dated April 14, 2011, Mr. Carlos Felipe Linares Vera Portocarreño was reinstated as a judge until early 2012 since, based on a new individual evaluation and confirmation procedure, the National Judicial Council decided not to renew its confidence in him. As for commitment 2, the State presented information solely on judges Manuel Vicente Trujillo Meza and José Miguel La Rosa Gómez de la Torre.

1027. Likewise, in 2012 Mr. José Miguel La Rosa Gómez de la Torre informed the IACHR, in connection with commitment 3, that the State had paid the amount of \$3,000, with \$2,000 still to be paid. With regard to commitment 4, Mr. José Miguel La Rosa Gómez said that the new evaluation and confirmation procedure he was subject to had not been conducted in accordance with constitutional standards and principles and the American Convention on Human Rights. Moreover, he said that the State had not complied with commitment 5 of the agreement.

1028. Judge Carlos Felipe Linares Vera Portocarreño, in a communication dated January 30, 2013, informed the IACHR with respect to commitment 1 of the agreement that the State had not reinstated him to his original position, even though it was available. Related to commitment 4, Mr. Linares said that he had been denied access to an impartial judge at the appeals level.

1029. In view of the information received, the IACHR concludes that the friendly settlement agreement signed by the parties has been complied with in part, and it will therefore continue monitoring the items still pending.

Case 12.269, Report No. 28/09, Dexter Lendore (Trinidad and Tobago)

1030. In Report No. 28/09 issued on March 20, 2009, the Inter-American Commission concluded that Trinidad and Tobago is responsible for violating Mr. Lendore's rights under Articles 8(1) and 8(2) of the American Convention, in conjunction with violations of Article 1(1) of that international instrument, due to its failure to provide him with the assistance of competent and effective counsel during his criminal proceedings; and that the State is also responsible for violating Mr. Lendore's rights under Articles 25 and 8 of the American Convention, in conjunction with violations of Article 1(1) of the American Convention, as well as violations of Articles XVIII and XXVI of the American Declaration, by failing to provide Mr. Lendore with effective access to a Constitutional Motion for the protection of his fundamental rights.

1031. On the basis of these conclusions, the IACHR recommended to Trinidad and Tobago that it:

1. Grant Mr. Lendore an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the American Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Lendore's conditions of detention comply with applicable international standards of humane treatment as articulated in the present report, including the removal of Mr. Lendore from death row.
3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Articles XVIII and XXVI of the American Declaration is given effect in Trinidad and Tobago in relation to recourse to Constitutional Motions.

1032. On November 19, 2012, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48.1 of its Rules of Procedure. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Based on these considerations, the Commission reiterates that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Petition 228-07, Report No. 18/10, Carlos Dogliani (Uruguay)

1033. In Report No. 18/10, dated March 16, 2010, the Commission adopted a friendly settlement agreement signed by the parties on September 18, 2009; in the petition of Carlos Dogliani. In summary, the petitioners maintain that Carlos Dogliani wrote two newspaper articles that were published on March 25 and April 1, 2004 in the *El Regional* weekly paper reporting that two public officials in the Paysandú Departmental government were involved in a case of irregular remission of a taxpayer's debt to the tax administration. The petitioners added that because of this, on August 30, 2006, the Supreme Court of Uruguay upheld the conviction and five-month prison sentence of Carlos Dogliani, stating that he was "guilty of four counts of defamation, which were aggravated because they were repeated" against the aforementioned public officials. According to the petitioners, the decision "handed down by the Supreme Court [...] had a chilling effect on freedom of expression, thus silencing the reporting of information on matters of public interest that involve high ranking political officials."

1034. On September 18, 2009, the alleged victim, Carlos Dogliani, his representatives, Jorge Pan, Diego Camaño, and Edison Lanza, and the representative of the State, Ambassador Nelson Fernández, in the presence of the Special Rapporteur on Freedom of Expression, Catalina Botero, as witness of honor, signed the friendly settlement agreement, whose text establishes the following:

FRIENDLY SETTLEMENT: At the headquarters of the Ministry of Foreign Affairs of the Republic of Uruguay, there appeared for the first party: Carlos Dogliani, Uruguayan, of legal age, bearer of the Identity card No. 1.245.447-9, domiciled at San José 1330, accompanied by his supporters Messrs. Jorge Pan and Diego Camaño for the *Instituto de Estudios Legales y Sociales del Uruguay* (IELSUR) and Mr. Edison Lanza for the *Asociación de la Prensa Uruguaya* (APU), and for the second party: the Acting Minister of Foreign Affairs of Uruguay, Ambassador Nelson Fernández, on behalf of the Republic of Uruguay, who agree to sign this friendly settlement agreement.

Background: Journalist Carlos Dogliani was prosecuted and convicted of four counts of repeated criminal libel pursuant to the Penal Code and Law No. 16.099 (Press Law). Once the domestic legal remedies were exhausted, in February of 2007 the journalist sought protection under the provisions of Article 13 of the American Convention on Human Rights, by lodging a petition before the Inter-American Commission on Human Rights (P.228-07).

After analyzing the case, the Uruguayan State informed the Inter-American Commission of its willingness to enter into a dialogue with the petitioner aimed at resolving the matter with a friendly settlement.

1. The State acknowledges that the conviction of the petitioner was based on criminal laws that are incompatible with the standards and principles of human rights regarding freedom of expression, and that this case violated the victim's rights as a journalist.
2. The journalist, Carlos Dogliani, declares that he is satisfied with the full redress given to his case, which has entailed the adoption of significant legislative reform through the enactment of Law No. 18.515 of June 26, 2009.
3. Journalist Carlos Dogliani also acknowledges the important steps that have been taken by the State in this regard, which have strengthened the role of journalists as well as their social recognition.
4. Journalist Carlos Dogliani accepts the sum of US\$8,000 (eight thousand dollars, U.S.) as indemnification for the damages suffered from his conviction under the now-repealed provisions of the Penal Code and Law No. 16.099.

5. Journalist Dogliani will file a motion before the Judicial Branch to overturn his conviction.
6. The State and the petitioner agree to appear jointly, through a note, before the Inter-American Commission on Human Rights to inform the Commission of the closure of the proceedings and the archiving of petition P.228-07.
7. Once a favorable decision is made by the Inter-American Commission on Human Rights, journalist Dogliani will desist from prosecution of this matter before the Commission on the facts in this case, and will refrain from any further domestic or international action stemming from same, except for the motion to overturn the conviction mentioned in paragraph 5.
8. The State and the journalist agree to cooperate to facilitate the public dissemination of the main points of the agreement reached. The Ministry of Foreign Affairs shall issue a press release, after signature of this agreement, outlining the essential points set forth herein.

1035. In report No 18/10, the IACHR took note that the State has acknowledged responsibility, and valued the legislative reforms instituted by the State through enactment of Law No. 18.515 of June 26, 2009. Said law eliminates sanctions for divulging opinions or information on public officials or regarding matters of public interest, except when the allegedly affected person can demonstrate the existence of *true malice*. Additionally, the law eliminated sanctions for offending or denigrating patriotic symbols or attacking the honor of foreign authorities. The legislation indicates that international treaties on freedom of expression are guiding principles for the interpretation, application, and integration of civil, procedural, and criminal laws affecting this freedom, and it expressly recognizes the relevance of decisions and recommendations by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights.

1036. Regarding the commitment to financially compensate the victim, in the same Report, the IACHR indicated that the petitioners report that "this requirement has been met because [the Vice President of the Republic] Rodolfo Nin Novoa signed a resolution on December 9, 2009 which orders the following: 'It is hereby ordered to pay the sum of US\$8,000 (eight thousand dollars, U.S.) as financial reparation to the journalist Carlos Dogliani in fulfillment of the friendly settlement agreement signed between the journalist and the Uruguayan State, pursuant to the petition lodged with the Inter-American Commission on Human Rights, No. P.228-07'".

1037. As regards the commitment to publicly disseminate the "main points" of the agreement reached by the parties, the IACHR took note that on September 18, 2009, the Press Office of the Ministry of Foreign Affairs issued Press Release No. 70/09 which generally stated the background of the case, the actions undertaken by the government, and that the parties had agreed to a friendly settlement.

1038. Based on the above, in Report No 18/10 the Commission valued the parties' efforts to reach this agreement, expressed its satisfaction with the friendly settlement agreement, declared that it is compatible with the object and purpose of the Convention, and in the light of the information provided, considered the Agreement to be fulfilled.

1039. Based on the information provided by the parties, the Commission concludes that the State has fully complied with the friendly settlement agreement.

Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay)

1040. In Report No. 86/09 of August 6, 2009, the Inter-American Commission concluded that the State was responsible for violation of the rights that Jorge, José and Dante Peirano have under articles 7(2), (3), (5) and (6), 8(1) and (2), and 25(1) and (2), as a function of its obligations under articles 1(1) and 2 of the American Convention. It therefore made specific recommendations. Summarizing, the petitioners had alleged that the three Peirano Basso brothers were deprived of their liberty on August 8, 2002. As of the date on which the complaint was filed, i.e., October 18, 2004, they had not been formally charged and had not been tried. The petitioners alleged that by January 2005, the requirements for their

release had been met, as they had already spent two and a half years in prison. The State accused them of violating Law 2230 (1893) which punishes the directors of companies in dissolution who commit tax evasion and other financial offenses. According to the complaint, persons charged with this crime need not be incarcerated during their trial; nevertheless, the Peirano Basso brothers were held in prison because of the “social alarm” brought on by the collapse of the Uruguayan banking system, which they were alleged to have caused.

1041. In its report the Commission decided the following:

1. Reiterate the recommendation that the State amends its legislation, to make it consistent with the rules of the American Convention, which guarantee the right to personal liberty.

1042. On November 19, 2010, the IACHR requested updated information from the parties concerning compliance with the recommendations.

1043. In a note dated December 20, 2010, the State reported that the Executive Branch had sent the bill to amend the Penal Code to the Parliament on November 9, 2010. The House of Representatives’ Committee on the Constitution, Codes, General Legislation and Government took it under consideration on November 16, 2010. It explained that from December 15, 2010 to March 30, 2011, representatives will be able to propose amendments. The House will then move on to discussion of the bill. Finally, the State observed that while the Commission’s recommendation is not fulfilled merely by sending the bill to the legislature, it does signify how seriously this commitment is taken.

1044. In notes dated July 15, 2010 and February 7, 2011, the petitioners requested a hearing with the IACHR and stated that the judge in the case had decided to continue the proceedings despite the repeal of the article under which the Peiranos had been investigated and imprisoned (Art. 76, Law 2.230). They also reported other allegedly arbitrary actions, including an injunction prohibiting the petitioners from leaving Montevideo, the suspension of Jorge Peirano’s professional credentials, and the disallowance of time served in remand custody in the United States by Juan Peirano. Subsequently, the petitioners submitted a statement dated July 18, 2011 in which they reported as very serious an April 15, 2011 decision by the Supreme Court to allow the case against the Peirano brothers to proceed, despite the repeal of Article 76 of Law 18.411 in 2008. In its decision, the Supreme Court held that, although the offense in question had been abrogated, the proceedings should continue because the State’s charges against the Peiranos had been broadened in October 2006 to include the charge of “fraudulent business insolvency” (Art. 5, Law 14.095). The petitioners claim that this decision violates the principle of the retroactivity of the lighter criminal penalty set forth in Article 9 of the American Convention because the State broadened its complaint in order to justify the lengthy period of detention in view of the imminent repeal of Article 76 of Law 2.230. Furthermore, contrary to the holding of the Supreme Court, they consider the broadening of the State’s charges improper, given that there have been no new facts in the case since the indictment (which, in their opinion, may not be altered) and that the sole original charge in the indictment was for a now abrogated offense.

1045. On October 25, 2011 the Commission requested updated information from the parties regarding the status of compliance with the recommendations in Report No. 86/09. A working meeting was held for this purpose at the Commission’s headquarters on October 26, 2011.

1046. With regard to the legal reform, the petitioners reported in a communication to the Commission on November 21, 2011 that, even though the bill was before the Legislature, they had concerns about its eventual outcome, given the lack of political will to achieve the necessary changes within the executive branch and existing provisions that delayed preliminary implementation of the new criminal procedure system until 2014. The petitioners asked the IACHR to require the Uruguayan State to provide information on actions taken after approval and publication of the report.

1047. In a communication received on December 15, 2011, the Uruguayan State provided the code of criminal procedure bill that the executive branch had put before the Legislature, as well as

stenographic versions of the meetings of the Senate Constitution and Legislation Committee on May 3, 10, and 31 and July 19, 2011.

1048. According to the State, articles 219 to 257 of the proposed code of criminal procedure, including, specifically, chapter II, section III, articles 226 to 238 on remand custody, meet inter-American system standards. The State's report mentions a series of principles of criminal due process that are upheld by the proposed legal reform. For example, with respect to the principle of "innocent until proven guilty," article 220 provides that remand custody may not under any circumstance become punishment served in advance of sentence. With regard to a time limit on remand custody, article 238 limits the length of remand, providing for its termination when, inter alia, more than three years have elapsed since the effective time of deprivation of liberty and no charges have been brought. Regarding the principle of provisionality, articles 235 and 236 regulate the procedure for revocation or replacement of remand when at the request of a party the grounds for its imposition cease to exist. Regarding the principle of proportionality of remand, article 231 defines the cases in which remand custody may not be ordered, which include (a) misdemeanor proceedings; (b) cases where the offense in question is punishable only by fine or suspension of credentials; and (c) cases where in the opinion of the court, if the defendant is found guilty, the sentence imposed will be one other than deprivation of liberty. Lastly, the State explains that, by nature, a reform process such as the one undertaken in Uruguay not only implies completion of the legal reforms in progress, but also a paradigm shift in the concept of criminal procedure, together with the cultural change involved in implementation.

1049. On December 11, 2012, the Commission asked the parties to supply updated information on the status of compliance with the recommendations made in Report No. 86/09.

1050. In its communication of January 3, 2013, the State reported that it continued to make progress on the implementation of the Commission's recommendations. It pointed out that the Chamber of Representatives' Committee on the Constitution, Codes, General Legislation and Government was still studying the bill to amend the Penal Code, and the bills to amend the General Procedural Code and the Code of Criminal Procedure. It maintained that those amendments are intended to introduce an accusatory system of justice that ensures full observance of the principle of presumption of innocence, the right to cross-examine prosecution witnesses, the principle of procedural immediacy, and the right to public, oral proceedings; the separation of functions, to ensure the conditions necessary for the accused to be defended by an attorney, with absolute procedural equality of arms; the victims' participation in the criminal proceedings, without prejudice to the State's prosecution of the case; restricted use of precautionary measures against an accused person, and others.

1051. The State also mentioned that progress is being made in other areas, as in the case of the regime of penalties and alternatives to imprisonment. Here it noted that the Chamber of Representatives' Committee on the Constitution, Codes, General Legislation and Government had completed its consultations on the bill to amend Law No. 17.725 on Penalties and Alternatives to Incarceration. The corresponding report must be drawn up before the bill can be introduced in the full Chamber.

1052. In its communication the State reported that it had a number of clarifications regarding the assertions made by the petitioners in their note of August 6, 2012, where they claimed that "despite the repeal of Article 76 of Law 2230, under which Messrs. Peirano had been tried and imprisoned, the judge presiding over the case had decided to go ahead with the proceedings."

1053. The State said that the court's decision was based on an interlocutory ruling on a request filed by the various defense attorneys representing all the defendants on trial –including the Peirano brothers-, seeking to have the case closed and the record of the case filed. The State indicated that the interlocutory ruling was appealed and the Criminal Appellate Court of Third Rotation overturned the ruling, and ordered the record of the proceedings closed. The public prosecutor then filed a cassation appeal to challenge the appellate court's ruling, which the Supreme Court overturned and confirmed the original court decision. Therefore, the State argues that the case brought against the Peirano brothers and the other defendants followed appropriate procedure and that –contrary to what the petitioners are claiming-

the Supreme Court's decision is what prevented the case from being closed; the principle of retroactivity of the law was never violated.

1054. Therefore, the State contends that one cannot make the case that the principle of the retroactivity of the law most beneficial to the criminal defendant was violated because Article 76 of Law 2230 was repealed in 2008; by that time, the indictment alleging a different crime (criminalized in Article 5 of Law 14,095 of 1972) had long since been filed. The State contends that none of the circumstances posited in Article 9 of the American Convention was present. In effect, this is not a case in which the law applied was not the applicable law at the time the crime was committed (as already noted, law 14,095 dates from 1972, and the events on trial in this case occurred well thereafter). The State further contends that this is not a case in which a heavier penalty was applied, since in its indictment, the Public Prosecutor's Office classified the criminal behavior with which the defendants were accused under the provisions Article 5 of Law 14,095. The State observes that the indictment marks the start of the criminal trial; the crime with which the defendant is charged can be changed provided that the facts for which the defendant is standing trial are not changed. Finally, the State points out that the article that was repealed was one that the Public Prosecutor's Office did not cite in its indictment. Hence the vicissitudes of a provision that was not used in the prosecution's case are irrelevant to the defendants since the defense arguments must go to and contest the indictment; the verdict must be rendered on the basis of the indictment. The charges against the defendant have to be analyzed in rendering a final decision.

1055. The State also asserted that the court did not deny the petitioners' right to leave the country; instead, it authorized them to leave provided they put up bond. It added that the suspension of Jorge Peirano's professional credentials was the result of enforcement of Article 140 of Law 15,750. It therefore contends that the application of the law in force at the time cannot be deemed a judicial abuse. As to the assertion that no allowance was made for the time that Juan Peirano served in preventive detention in the United States, the State's contention was that the preventive detention served in the United States was in connection with another case, not the case of the Peirano brothers, Jorge, José and Dante. In effect, the State points out that Juan Peirano's extradition from the United States was done pursuant to existing legal provisions and the extradition treaty, which are not part of case 12,553 processed with the IACHR.

1056. The petitioners, for their part, provided information on the follow-up. In a communication received on September 11, 2012, the petitioners expressed their concern over the fact that the State had not complied with the Commission's second recommendation in which the State was asked to amend its legal or other provisions in order to make them fully compatible with the rules of the American Convention that ensure the right to personal liberty, not only as a guarantee of non-repetition, but also as a measure to put an end to the violations suffered by the victims in the present case. They contend that the effect of the State's failure to comply with the Commission's second recommendation has been to deprive the victims of any protection against judicial abuse, and ensures that the violations of articles 8 and 25 of the American Convention of which the Peirano brothers have been victim will become continuing violations.

1057. The petitioners consider that the amendment process must be undertaken as a matter of urgency and that the Uruguayan State should consider the standards established in the inter-American system's case law on the subject of criminal proceedings so as to ensure that Uruguayan domestic law guarantees due process and the principles of legality, non-retroactivity and, above all, consistency in all criminal proceedings.

1058. In a communication dated November 1, 2012, the petitioners reported that once the victims in the case were released pursuant to the first recommendation in Report 35/07, they were subjected to a kind of "partial freedom", since they were not allowed to leave Montevideo; one of them was allegedly unable to practice his profession because his professional credentials were said to have been suspended even before he was convicted of anything; furthermore, they were allegedly granted extraditions, etc.

1059. In a communication received on July 18, 2012, the petitioners reported that the Peirano Basso brothers were still being criminally prosecuted. The petitioners observed that although enactment of Law No. 18411 of November 14, 2008, had repealed Article 76 of Law No. 2230 –for which the brothers had been prosecuted- and the criminal case was filed as a result, the Prosecutor's Office appealed that decision, which the Uruguayan Supreme Court overturned on April 15, 2011, ordering that the decision to close the case be revoked and that the criminal proceedings were to go forward.

1060. The petitioners assert that the ground cited in the Supreme Court's ruling was that the crime being prosecuted is established in the formal indictment, and not in the prosecution of the case; they consider this interpretation to be at variance with domestic and international law on this subject. Therefore, this is not simply a matter of the State's failure to comply with the second recommendation; it is also a violation of international law.

1061. The petitioners add that in the case against the Peirano brothers, the only crime charged in the final order binding them over for trial was abrogated; the final order binding them over for trial is the one that spells out the crime for which the defendants are being prosecuted. They contend that the court order mapped out the legal grounds on which the case was being prosecuted, which was Article 76 of Law 2230, not Article 5 of Law 14095 (fraudulent corporate insolvency); however, the case is now being prosecuted on the basis of Article 5 of Law 14095. They are therefore arguing that the set of facts existing at the time the order to stand trial was delivered and the set of facts when the complaint was filed had allegedly changed, which is not the case.

1062. The Commission observes that the process of amending the legal provisions on the subject of preventive detention in particular, and the entire system of criminal procedure as whole is underway. Since the recommendation not yet complied with concerns those legislative amendments, the Commission urges the State to complete the corresponding parliamentary procedures.

1063. The Commission therefore concludes that the recommendation in question has been partially fulfilled; it will therefore continue to monitor for compliance with the recommendation.

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

1064. On October 27, 2006, by means of Report No. 110/06⁶⁹, 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.

1065. 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.

1066. 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

⁶⁹ 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>

were not addressed in the case before it. The Commission therefore deemed it was necessary to state that the adopted report in no way implied a ruling on the individuals not named as victims in the case before the Commission, on the citizenship of Messrs. 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.

1067. On November 16, 2012, the IACHR requested information on measures of compliance from both parties. On January 13, 2013, the petitioners contended that the state had not fully complied with all of the agreements that had been reached and had publically disavowed the commitments it had assumed. The State did not submit the information requested.

1068. 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.

CHAPTER IV

DEVELOPMENT OF HUMAN RIGHTS IN THE REGION

INTRODUCTION

1. The Inter-American Commission on Human Rights continues its practice of including a Chapter in its Annual Report to the General Assembly of the Organization of American States on the situation of human rights in the member States of the Organization, based on its competence from the OAS Charter, the American Convention on Human Rights, the Statute and the Commission's Rules. The aim of this practice is furnishing the OAS with up-to-date information on the situation of human rights in the countries which have been the focus of special attention of the Commission.

2. Preparing reports on the situation of human rights in the countries of the region has been one of the main tools of the Commission's work since its mandate began. Those reports were prepared since the beginning of the Commission's work. Since its first Annual Report to the OAS General Assembly in 1969, the IACHR provided information and observations on specific countries.¹ Beginning in 1977, the Commission started to publish this information systematically, using different titles, chapters or sections, in what essentially has become the current Chapter IV.²

3. In 1996, the Commission established four specific criteria to identify those OAS member States whose human rights practices merited special attention by the IACHR and consequently a special analysis to be included in the annual report. In the 1997 Annual Report, the Commission added a fifth applicable criterion to be followed when deciding which countries to include in this Chapter.³ The IACHR underscores that the interpretation of such criteria is done on the basis of the mandate and faculties assigned to it by regional instruments, and that accordingly it analyzes the situations described in the criteria in light of the actions of States, pursuant to inter-American human rights standards.

4. During 2012, the IACHR continued its process of reflection about the strengthening of the Inter-American System that includes the refining of the methodology for the preparation of Chapter IV of its Annual Report. In this sense, the Commission revised the procedures in detail and has continued advancing with its internal debate, which has nurtured by the observations and suggestions provided by the States and civil society organizations.

5. During its 146 Period of Sessions, the IACHR analyzed informative *memoranda* about the situation of human rights in some countries, which were previously requested by the Commissioners, and voted on whether include them or not. As a result, in some cases it was decided to include the State in Chapter IV; and in others, not to do so.

¹ The Report includes references to the situation in Guatemala, Cuba, the Dominican Republic, Haiti, Paraguay, El Salvador, Honduras and Panama, whose object was to update the work of the Commission in these countries, which included *in loco* visits, country reports and observations and recommendations in previous reports on its activities. Also, at various times the General Assembly of the OAS has adopted resolutions requesting that the IACHR follow-up on the situation of human rights in different countries.

² In 1978, the Commission published a "Section IV" called "Development of the Situation of Human Rights in Various Countries", which examined the situation of human rights in Chile, Panama, Paraguay and Uruguay. This "Section IV" provided information on the Commission's work with regard to the preparation and publication of separate reports on each one of these countries, and observed that the General Assembly had requested the Commission to continue to provide information on developments in each one of them. In its Annual Report for 1979-80, the Commission published update reports with respect to Chile, Paraguay, Uruguay and El Salvador. That year the Commission changed the format of its Annual Report and published the follow up information in Chapter V instead of "Section IV", although the objective and content of this information followed the previous practice. In its Annual Report for 1981-82, the Commission published updated information in Chapter V on the situation of human rights in nine countries, following the same criteria applied in previous years.

³ The five criteria applied since then are to be found at the end of this introduction.

6. The Commission, by a majority, and based on the criteria set out below, decided to include four member States in the current Chapter: Cuba, Honduras and Venezuela. In addition, as has been the practice since 1996, the Commission sent the draft of the respective sections of Chapter IV to the State concerned with a request to present relevant observations within a certain time, which have been taken into account when adopting the final text of this report. Of the four States included in this Chapter, only Honduras and Venezuela sent their observations within the deadline established by the IACHR.

CRITERIA

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

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

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

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

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

METHODOLOGY

7. The Commission assesses the situation of human rights in the OAS Member States throughout the year in the exercise of its mandate to promote and protect human rights in the region. It gathers information from multiple sources in order to apply the criteria listed in the previous section to

determine the issues and the countries discussed in Chapter IV. In particular, the Commission utilizes reliable information obtained from the following sources in making its evaluation:

- (a) Official governmental acts, at any level and in any branch of government, including Constitutional amendments, legislation, decrees, judicial decisions, statements of policy, official submissions to the Commission and other human rights bodies, and any other statement or action attributable to the government.
- (b) Information available in cases, petitions and precautionary/provisional measures in the Inter-American system, as well as information about state compliance with recommendations of the Commission and judgments of the Inter-American Court.
- (c) Information gathered through visits in loco by the Commission, its rapporteurs, and its staff.
- (d) Information obtained through public hearings held by the Commission during its sessions.
- (e) Findings of other international human rights bodies, including UN treaty bodies, UN rapporteurs and working groups, the Human Rights Council, other UN organs and specialized agencies.
- (f) Information from human rights reports of governments and regional bodies.
- (g) Reports of civil society organizations and reliable, credible information submitted by them and by individuals.
- (h) Public information widely disseminated in the media.

8. Taking all this information into consideration, when the Commission receives credible communications denouncing widespread violations by a particular state, supported or corroborated by the reports or findings of other governmental or inter-governmental bodies and/or respected national and international human rights organizations, the Commission's mandate requires it to bring such situations to the attention of the Organization and its Member States. It deliberates in plenary during its third session each year, applying the methodology and criteria indicated to make reasoned decisions on Chapter IV and on other matters included in the Annual Report.

9. It should be mentioned that, in its reform process, the Commission is considering establishing a procedure by which a State that has received an on-site visit from the Commission, would not be included in Chapter IV of the Annual Report of that year. The monitoring of the situation of human rights would be carried out by means of a country report derived from the on-site visit. Once the country report is published, the Commission would follow up on compliance with the respective recommendations by means of Chapter V of its Annual Report. Thereafter, the Commission would decide what would be the appropriate procedure to monitor the situation.

CUBA

I. INTRODUCTION

10. The Inter-American Commission on Human Rights has paid special attention to the human rights situation in Cuba and, in the use of its competence, has observed and evaluated the human rights situation in special reports⁴, in Chapter IV of the Annual Report⁵, and through the case system.⁶ In addition, on several occasions it has asked the Cuban State to adopt precautionary measures for the purpose of protecting the life and personal integrity of Cuban citizens.⁷

11. On January 31, 1962, the Government of Cuba was excluded from participating in the inter-American system by Resolution VI adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held in Punta del Este (Uruguay).⁸ On June 3, 2009, during its Thirty-ninth Regular Session held in Honduras, the General Assembly of the Organization of American States (OAS) set aside Resolution VI adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs and established that “the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.”

12. The IACHR has recognized that the Cuban State – including the time of exclusion, is “juridically answerable to the Inter-American Commission in matters that concern human rights” since it “is party to the first international instruments established in the American hemisphere to protect human rights” and because Resolution VI of the Eighth Meeting of Consultation “excluded the present Government of Cuba, not the State, from participation in the inter-American system.”⁹

13. Based on the criteria spelled out by the IACHR in 1997 to identify those states whose human rights practices merit special attention, the Commission has considered that the human rights situation in Cuba fits within the first and fifth criteria, insofar as the political rights enshrined in the American Declaration of the Rights and Duties of Man are not observed, and structural situations persist that have a serious and grave impact on the enjoyment and observance of fundamental rights enshrined in the American Declaration.

14. The restrictions on the political rights to association, freedom of expression, and dissemination of ideas, the lack of elections, the lack of an independent judiciary, and the restrictions on freedom of movement over decades have come to shape a permanent and systematic situation of

⁴ IACHR, Special Reports from the following years: 1962; 1963; 1967; 1970; 1976; 1979; 1983. At www.iachr.org

⁵ IACHR, Chapter IV of the Annual Report for the following years: 1990-1991; 1991; 1992-1993; 1993; 1994; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007, 2008, 2009, 2010 and 2011. at www.iachr.org

⁶ See: IACHR, Merits Report No. 47/96, Case 11,436, Victims of the Tugboat “13 de marzo,” October 16, 1996; IACHR, Merits Report No. 86/99, Case 11,589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, September 29, 1999; IACHR, Admissibility Report No. 56/04, <http://www.cidh.org/annualrep/2004eng/Cuba.12127eng.htm>, Vladimiro Roca Antúnez *et al.*, October 14, 2004; IACHR, Admissibility Report No. 57/04, <http://www.cidh.org/annualrep/2004eng/Cuba.771.03eng.htm>, Oscar Elías Biscet *et al.*, October 14, 2004; IACHR, Admissibility Report No. 58/04, <http://www.cidh.org/annualrep/2004eng/Cuba.844.03eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 14, 2004; IACHR, Merits Report No. 67/06, <http://www.cidh.org/annualrep/2006eng/CUBA.12476eng.htm>, Oscar Elías Biscet *et al.*, October 21, 2006; IACHR, Merits Report No. 68/06, <http://www.cidh.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006. At: www.iachr.org

⁷ When it is notified of an IACHR decision, the Cuban State either does not respond or sends a note to the effect that the Inter-American Commission on Human Rights does not have competence -and the Organization of American States does not have the moral authority- to examine issues related to Cuba.

⁸ The complete text of Resolution VI can be found in the “Eighth Meeting of Consultation of the Ministers of Foreign Affairs to serve 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

⁹ IACHR, *Annual Report 2002*, Chapter IV, Cuba, paragraphs 3-7. See also IACHR, *Annual Report 2001*, Chapter IV, Cuba, paragraphs 3-7. IACHR, *Seventh Report on the Situation of Human Rights in Cuba*, 1983, paragraphs 16-46.

violation of the human rights of the inhabitants of Cuba. In the course of 2012, the information available suggests that the general human rights situation has not changed. The above-indicated human rights situations, as well as severe repression and restrictions of human rights defenders persist. Also, the IACHR received information on violence and discrimination against LGTBI persons in Cuba.

15. In preparing this report, the Commission has obtained information from international agencies, civil society organizations, and the Cuban government via the official web site of the Ministry of Foreign Affairs of Cuba. The Commission notes the scarcity of information available on human rights in Cuba from sources both on the island or abroad.

16. On January 23, 2013, the Commission sent this report to the State of Cuba and asked for its observations. The State did not respond.

II. ECONOMIC SANCTIONS

17. As regards the economic and trade embargo imposed by the United States on Cuba since 1961 and which continues in force, the IACHR reiterates its position in terms of the impact of such economic sanctions on the human rights of the Cuban population; accordingly, it reiterates that the embargo should end.¹⁰ Without prejudice to the foregoing, the economic embargo imposed on Cuba does not release the State of its obligation to carry out its international obligations, nor does it excuse the violations of the American Declaration described in this report.

III. SITUATION OF HUMAN RIGHTS IN CUBA

A. Respect and guarantee by the State for the rights to life, liberty, and security of the person

- The death penalty

18. The Commission observes with concern that Cuban law makes the death penalty the punishment for a significant number of crimes, especially crimes against the security of the State. The language of the law is broad and vague, and the death penalty can be applied even in the most summary proceeding¹¹ that does not afford the minimum guarantees necessary for the accused to be able to exercise his right to an adequate legal defense.¹²

19. As was observed in Chapter IV of the Annual report of 2008, the IACHR welcomes the fact that on April 28, 2008 the Council of State decided to commute the death penalty of those sentenced to that grave and irreparable punishment, and sentenced them to life or 30 years in prison instead. However, three people sentenced to death for supposed terrorist crimes would appear not to have had their sentences commuted.

¹⁰ On October 25, 2011, the United Nations General Assembly adopted for the 20th consecutive year a resolution that rejects the economic and trade embargo by the United States against Cuba since 1962. UN, Resolution. A/RES/66/6 "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba."

¹¹ Articles 479 and 480 of the Criminal Procedure Law establish the especially expedited summary proceeding:

Article 479: In a case of exceptional circumstances, the Attorney General may propose to the President of the People's Supreme Court and the latter shall decide whether to use the especially expedited summary proceeding to prosecute those crimes that any court has jurisdiction to hear, except for those crimes that are the jurisdiction of the People's Municipal Courts.

Article 480. In especially expedited summary proceedings, the procedures that this law establishes for preliminary proceedings, oral trial and appeals may be reduced to the extent that the court with jurisdiction deems necessary. Title X, Especially Expedited Summary Proceeding. Articles 479 and 480. [Translation ours].

¹² IACHR, Annual Report 2008, Chapter IV, Cuba, para. 177.

20. The Commission is mindful of the State's comment to the effect that:

Even if it is included in the national legislation, the application of this sanction has a very exceptional nature in Cuba. It is only applied by the authorized tribunal, in extremely serious cases, for a reduced number of crimes for which this sanction is established, and it is nuanced by a wide range of requisites and guarantees that must be complied with. Life-term sentences are prescribed for some crimes with the aim of using this as an alternative for the death penalty.
[...]

Philosophically speaking, Cuba is against application of the death penalty. We are in favour of eliminating it when suitable conditions exist.

We have been forced, in the legitimate defence of our national security, to establish and to apply severe laws against terrorist activities and crimes designed to destroy the Cuban state or the lives of its citizens, always adhering to the strictest legality and with respect for the most ample guarantees."¹³

21. The IACHR hopes that the commutation is extended to include all those sentenced to the death penalty.

22. Having said this, the Commission observes that under Cuban law, a significant number of crimes carry the death penalty, especially crimes against the security of the State. The language of the law is broad and vague.

23. Capital punishment is the penalty for crimes against the security of the State; against peace and international law; against public health; against life and bodily integrity; against the normal conduct of sexual relations; against the normal development of childhood and adolescence; and against property rights. The crimes against the security of the State that carry the death penalty are the following: acts committed against the independence and territorial integrity of the State; those aimed at promoting war or armed action against the State; the provision of armed services against the homeland; providing aid and comfort to the enemy; espionage; insurrection;¹⁴ sedition; usurpation of political or military control; sabotage; terrorism; hostile acts against a foreign State; genocide; piracy; enrolling in the service of a foreign military force; apartheid¹⁵ and other acts against the security of the State. Other capital offenses

¹³ United Nations, (2009) Universal Periodic Review, Report of the Working Group on the Universal Periodic Review of Cuba, Additions, Responses provided by Cuba on the recommendations listed under paragraph 131 of the report of the Working Group on the Universal Periodic Review of Cuba. At: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_11_22_Add1_CUB_E.pdf

¹⁴ Article 98: 1. Anyone who takes up arms to achieve any of the following ends shall be sentenced to prison for a period of ten to twenty years or to the death penalty: a) to prevent the higher organs of the State and of Government from discharging their functions, either entirely or partially and even if temporarily; b) to change the economic, political and social order of the socialist State; c) to change, in whole or in part, the Constitution or the form of government it establishes.

2. Any person who commits an act intended to encourage others to take up arms shall face the same punishment if he or she accomplishes his or her ends; if not, the penalty shall be imprisonment for four to ten years.

¹⁵ Article 120: 1. The penalty shall be imprisonment for ten to twenty years or death for anyone who, in order to establish or maintain one racial group's domination over another and acting in accordance with policies for racial extermination, segregation or discrimination: a) denies members of that group the right to life and the right to liberty through murder, egregious attacks on their physical or mental security or dignity; torture or cruel, inhuman or degrading treatment or punishment; arbitrary detention and unlawful imprisonment; b) imposes on that group legislative or other measures intended to prevent it from participating in the country's political, social, economic, or cultural life and deliberately creates conditions that thwart the group's full development by denying its members their fundamental rights and freedoms; c) divides the population along racial lines by creating reservations and ghettos, prohibiting marriage between members of different racial groups and expropriating their property; d) exploits the labor of the group's members, especially by subjecting them to forced labor.

1. 2. If a person in any way persecutes or harasses organizations and persons who are opposed to apartheid or who struggle against it, he or she shall face imprisonment for ten to twenty years.

2. 3. Responsibility for the acts provided for in the preceding paragraphs shall be irrespective of the country in which the culpable parties act or reside and applies, irrespective of motive, to private citizens, members of organizations and institutions and representatives of the State. [Translation ours]

include: the unlawful production, sale, use, trafficking, distribution and possession of drugs, narcotics, psychotropic substances and others having similar effects;¹⁶ murder;¹⁷ rape;¹⁸ violent pederasty;¹⁹ corruption of minors;²⁰ robbery committed with violence or intimidation.²¹ The death penalty is also the punishment for a significant number of offenses criminalized in broad or vague language that include expressions like “dangerous state.”²²

24. Furthermore, as previously noted, in Cuba the death penalty can be ordered even in especially expedited summary proceedings. The Commission has written that “[a]lthough Article XVIII of the American Declaration refers to the simple and brief procedure whereby the courts will protect persons from acts of authority that violate any fundamental rights, the requirement of simplicity and brevity cannot be applied to a trial that does not allow the accused to defend themselves with all the guarantees of due process of law, and even more so in cases where the penalty that could be applied is irreversible by nature, that is, death.”²³

25. According to the information available to the Commission, the last time the death penalty was used in Cuba was in 2003, when Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García and Jorge Luis Martínez Isaac²⁴ were executed. However, the death penalty continues to be applied in the especially expedited summary trials. The Commission believes that if capital punishment is an option, then the judicial branch must be an independent one, where judges exercise a high degree of scrutiny and respect the guarantees of due process. Here, the Inter-American Court has written that:

capital punishment is not *per se* incompatible with or prohibited by the American Convention. However, the Convention has set a number of strict limitations to the imposition of capital punishment.²⁵ First, the imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.²⁶ Second, the sentence must be individualized in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.²⁷ Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must be strictly observed and reviewed.²⁸

¹⁶ Cuban Criminal Code, Article 190.

¹⁷ Cuban Criminal Code, Article 263.

¹⁸ Cuban Criminal Code, Article 298.

¹⁹ Cuban Criminal Code, Article 299.

²⁰ Cuban Criminal Code, Article 310.

²¹ Cuban Criminal Code, Article 327.

²² As the Inter-American Court has observed, “[a]mbiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.” See, for example, I/A Court H.R., *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C No. 52, para. 121.

²³ IACHR, Merits Report No. 68/06, <http://www.IACHR.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, para. 96.

²⁴ IACHR, Merits Report No. 68/06, <http://www.IACHR.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.* October 21, 2006.

²⁵ *Cf. Restrictions to the Death Penalty (Arts 4(2) and 4(4) American Convention on Human Rights)*. Advisory Opinion OC-3/83 of September 8, 1983. Series A. No. 3.

²⁶ *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs.* Judgment of June 21, 2002. Series C No. 94, para. 106, and *Case of Raxcacó Reyes, Merits, Reparations and Costs.* Judgment of September 15, 2005. Series C No. 133, para. 68. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, Advisory Opinion OC-3/83 of September 8, 1983. Series A. No. 3.

²⁷ *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs.* Judgment of June 21, 2002. Series C No. 94, para 103, 106 and 108, and *Case of Raxcacó Reyes, Merits, Reparations and Costs.* Judgment of September 15, 2005. Series C No. 133, para. 81. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, Advisory Opinion OC-3/83 of September 8, 1983. Series A. No. 3., para. 55.

²⁸ *Cf. Case of Fermín Ramírez, Merits, Reparations and Costs.* Judgment of June 20, 2005. Series C No. 126, para. 79. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)* Advisory Opinion OC-3/83 of September 8, 1983. Series A. No. 3., para. 55. Continues...

26. The IACHR observes that the gradual trend in the hemisphere is toward abolition of the death penalty²⁹ and, in that respect, welcomes the statement made by the Cuban State to the effect that:

Even if the death penalty [sic] prescribed in the national legislation, Cuba understands and respects the arguments of the international movement that proposes its elimination or a moratorium. For that reason, our country has not rejected initiatives in the United Nations having this aim.³⁰

B. Right to liberty and security of the person

27. With respect to the right to liberty and security of the person, the American Declaration indicates that every human being has the right to liberty³¹ and no one may be deprived of it except in those cases and as per the forms established by pre-existing laws.³² According to the American Declaration, every person who has been deprived of liberty has the right to have the legality of his or her detention ascertained without delay by a court, and to be tried without undue delay, or otherwise to be released.³³ In addition, every person accused of a crime has the right to be heard impartially and in a public proceeding, to be judged by courts previously established as per pre-existing laws, and to not be subject to cruel, infamous, or unusual punishment.³⁴

28. In relation to the right to personal liberty, the IACHR has observed with concern³⁵ the continuation on the books and enforcement of criminal statutes in Cuba of the offense called “pre-delictive social dangerousness” (“*peligrosidad social pre-delictiva*”), provided for in the Criminal Code. Article 72 of the statute provides that:

Dangerous state is considered to be the special proclivity one finds in a person to commit crimes, demonstrated by the conduct observed in manifest contradiction with the norms of socialist morality.

29. The definition of “*estado peligroso*” (“dangerous state”) is contained in Article 73(1) of the Criminal Code, which establishes that such a state “is noted when any of the following indicators of dangerousness is observed in the subject: (a) habitual drunkenness or dipsomania; (b) drug addiction; and (c) antisocial conduct.” Article 73(2) provides:

anyone who habitually breaks the rules of social coexistence through acts of violence, or by other provocative acts, violates the rights of others, or who by his or her general conduct violates the rules of social co-existence or disturbs the order of the community, or lives as a social parasite from the work of others, or exploits or practices socially reproachable vices, is considered to be socially dangerous by virtue of such anti-social conduct.

...continuation

September 8, 1983. Series A. No. 3., para. 55, and *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, para. 135.

²⁹ “Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights”, Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989. At: <http://www2.ohchr.org/english/law/ccpr-death.htm>

³⁰ United Nations, (2009) Universal Periodic Review, Report of the Working Group on the Universal Periodic Review of Cuba, Additions, Responses provided by Cuba on the recommendations listed under paragraph 131 of the report of the Working Group on the Universal Periodic Review of Cuba. At: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_11_22_Add1_CUB_E.pdf

³¹ American Declaration, Article I.

³² American Declaration, Article XXV.

³³ American Declaration, Article XXV.

³⁴ American Declaration, Article XXVI.

³⁵ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

30. Article 75(1) of the Criminal Code provides that “anyone who, although not covered by any of the dangerous states described in Article 73, has ties or relations to persons who are potentially dangerous to society, to other persons, and to the social, economic and political order of the social State and may therefore be inclined to commit crimes, shall be warned by the competent police authority.”

31. If a person engages in one of the forms of conduct defined as dangerous, security measures, both pre- and post-delictive, may be applied to him or her. Article 78 of the Criminal Code provides that the person found to be in a “dangerous state” may be subject to the imposition of therapeutic, re-educational, or surveillance measures by the organs of the National Revolutionary Police. One of the therapeutic measures consists – according to Article 79 – of being confined to care facilities, psychiatric institutions, or detoxification centers.³⁶ The re-education measures are applied to allegedly anti-social individuals and consist of confinement in a special establishment for work or study, and handing the person over to a work collective for monitoring and orienting their conduct. These measures are imposed for at least one year and no more than four years.

32. These rules of the Cuban Criminal Code are supplemented by Decree No. 128, issued in 1991, which establishes that the declaration of pre-delictive dangerousness must be decided in a summary proceeding. According to that decree, the National Revolutionary Police puts together a case file that shows the conduct of the “dangerous person” and presents it to the Municipal Prosecutor, who has two days to decide whether to present it to the Municipal Court. If the Municipal Court considers the case file complete, it sets the date for the hearing in which the parties appear. Twenty-four hours after the hearing is held the Municipal Court must hand down its judgment.

33. The Commission considers that the criminal law should punish offenses or even frustrated attempts to commit an offense, but never attitudes or presumptions of an offense.³⁷ The IACHR is concerned about the use of the criminal law provisions concerning dangerousness, for it is a subjective concept on the part of the person making such a determination, and its vagueness constitutes a factor of juridical insecurity for the population, since it creates the conditions for the authorities to commit arbitrary acts. The Commission also considers it extremely serious that these provisions – which are *per se* incompatible with the principles established in the American Declaration – are applied using a summary procedure to persons who have not committed any offense but who according to the discretion of the Cuban authorities are considered *dangerous (peligrosas)* to society, and therefore deserving of severe measures of security depriving them of liberty.³⁸ In these cases, the State intervenes without limitations and does not hesitate to violate the right to individual liberty.

34. The impairments to the personal liberty of political dissidents in Cuba will be evaluated in the next section.

C. Respect for and guarantee of political rights

35. Political rights are of fundamental importance and are closely related to a set of other rights that make democratic government possible. According to the Inter-American Democratic Charter signed in Lima, Peru, on September 11, 2001, representative democracy constitutes the system recognized and required in the OAS for the stability, peace, and development of the region. The existence of free elections, independent and effective branches of government, and full respect for the freedom of expression, among others, are foundational characteristics of democracy that cannot be evaluated in isolation. From that perspective, fully guaranteeing human rights is not possible with the effective and unrestricted recognition of the rights of persons to constitute and participate in political groupings.

³⁶ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

³⁷ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

³⁸ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

36. The right to vote is one of the essential elements of democracy and one of the means by which citizens freely express their will and exercise the right to political participation. This right means that the citizens can directly and freely, in conditions of equality, choose who will represent them in making decisions on public affairs.³⁹ Political participation in turn through the exercise of the right to be elected presupposes that citizens can run as candidates on equal conditions and that they can hold public office subject to election if they win the required number of votes. The American Convention prohibits the suspension of this right even in states of emergency.⁴⁰

37. One of the main criteria for including Cuba in Chapter IV of the Annual Report is the lack of free elections in keeping with internationally accepted standards, which violates the right to political participation enshrined in Article XX of the American Declaration of the Rights and Duties of Men, which provides:

Article XX – Right to vote and to participate in government. 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.

38. Article 3 of the Inter-American Democratic Charter defines the elements of democratic government 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.

39. The State has affirmed that “Cuba’s democratic system is based on the principle of ‘government of the people, by the people and for the people’,” adding that “[t]he Cuban people participate in the exercise and active control of Government through its political and civil institutions and in the framework of its laws.”⁴¹ In addition, it has stated that the restrictions provided for by law on the enjoyment of some political rights in Cuba have been the minimum essential for ensuring the right to self-determination, peace, and life of the entire people, as a response to the mounting anti-Cuban aggressiveness of the Empire.⁴²

40. The American Declaration and the Inter-American Democratic Charter reflect a broad conception of representative democracy which, as such, rests on the sovereignty of the people, and in which the functions by which power is exercised are performed by persons chosen in free elections representative of the popular will.

41. In the view of the Commission those elements are not present in the Cuban elections, which are characterized precisely by the lack of plurality and independence and the absence of a

³⁹ IACHR, *Annual Report 1990-1991*, p. 557; IACHR, *Second Report on the Situation of Human Rights in Peru*, 2000, Chapter IV, Political Rights, A.1. See also 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.

⁴⁰ Article 27 of the American Convention on Human Rights, Suspension of Guarantees, establishes at section 2: “The foregoing provision does not authorize any suspension of the following articles: ...] and 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.” See also, I/A Court H.R. *Case of Castañeda Gutman v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008. Series C No. 184 and I/A Court H.R. *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 34; and *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 191.

⁴¹ National report presented by the State of Cuba; UN, Human Rights Council, Working Group on the Universal Periodic Review, Fourth session, Geneva, February 2 to 13, 2009. A/HRC/WG.6/4/CUB/1; November 4, 2008, para. 8.

⁴² In Chapter 9, “Libro Blanco del 2007,” published at the official website of the Ministry of Foreign Affairs of Cuba.

framework of free access to various sources of information. In light of the international standards noted, the Commission reiterates that the lack of free and fair elections, based on universal suffrage and secret ballot as an expression of popular sovereignty⁴³, violates the right to political participation of the Cuban people.

⁴³ Article 3 of the Inter-American Democratic Charter establishes as one of the essential elements of representative democracy the holding of periodic, free, and fair elections based on universal suffrage and secret ballot, as an expression of the sovereignty of the people; and the plural regime of political parties and organizations.

1. Situation of Defenders, Political Dissidents, and Political Repression

42. In 2006, the Commission notified the parties and published, in its Annual Report, Report on the Merits 67/06⁴⁴, in Case 12,476 (Oscar Elías Biscet et al.) regarding the political dissidents who were detained and prosecuted by highly summary procedures in the so-called “Black Spring” of 2003, based on the application of Article 91⁴⁵ of the Cuban Criminal Code, as well as Law 88 on Protection of the National Independence and Economy of Cuba, for acts related to the exercise of fundamental freedoms such as the freedom of thought, conscience, opinion, and expression, as well as the right to peaceful assembly and free association. The sentences ranged from six months to 28 years in prison.

43. In Report 67/06, the IACHR concluded that the Cuban State violated several articles of the American Declaration, including Articles I, II, IV, VI, XX, XXI, XXII, XXV, and XXVI, to the detriment of the victims in the case; Article V in relation to eight of the victims; the violation of Article X to the detriment of 14 victims, and the violation of Article XVIII to the detriment of 73 victims. In addition, the Commission concluded that the State had not violated Articles IX, XI, or XVII of the American Declaration to the detriment of the victims.⁴⁶

44. Moreover, the IACHR recommended to the State of Cuba:

1. Order the immediate and unconditional release of the victims in this case, overturning their convictions inasmuch as they were based on laws that impose unlawful restrictions on their human rights.

2. Adopt any measures necessary to adapt its laws, procedures and practices to international human rights law. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.

3. Redress the victims and their next of kin for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration herein established.

4. Adopt the measures necessary to prevent a recurrence of similar acts, in keeping with the State’s duty to respect and ensure human rights.⁴⁷

45. From July 2010 to March 2011, the Government of Cuba released persons who had been deprived of liberty since 2003 in the “Black Spring” (“Primavera Negra”), including the victims of Case 12,476 before the IACHR.⁴⁸ Most of the people were released under the condition to be sent to Spain.

46. The IACHR reiterates that the guilty judgments handed down against the political dissidents should be set aside since they were based on laws that imposed illegitimate restrictions on human rights.⁴⁹ In addition, granting conditional release amounting to house arrest (*licencias extrapenales*) to those who having been released opted to stay in Cuba does not constitute compliance with the recommendations that the IACHR issued in its report on the merits.⁵⁰

⁴⁴ Notice of Report on the Merits No. 67/06 was given to the Cuban State and the petitioners’ representatives on November 1, 2006. See in IACHR, Press Release No. 40/06, “IACHR announces two reports on human rights violations in Cuba,” of November 1, 2006.

⁴⁵ Article 91 of the Criminal Code of Cuba: “Whoever, in the interest of a foreign State, commits an act with the intent to cause damage to the independence of the Cuban State or the integrity of its territory, shall receive a sentence of between ten and twenty years or a death sentence.”

⁴⁶ See complete report at: <http://www.cidh.org>

⁴⁷ See complete report at: <http://www.cidh.org>

⁴⁸ IACHR, Report on the Merits No. 67/06, Case 12,476, Oscar Elías Biscet et al., October 21, 2006.

⁴⁹ IACHR, Report on the Merits No. 67/06, Case 12,476, Oscar Elías Biscet et al., October 21, 2006.

⁵⁰ IACHR, Report on the Merits No. 67/06, Case 12,476, Oscar Elías Biscet et al., October 21, 2006.

47. According to the information received, in the course of 2012 the Government continued to carry out what the IACHR has referred to as a tactic of political repression on the basis of systematic arrests for several hours or a few days, threats, and other forms of harassment directed against opposition activists.

48. In effect, in the course of 2012, information has continued to be received on physical attacks, threats, harassment, and acts of repudiation against human rights defenders, particularly in the context of the repression of expressions of social protest related to the rights of persons deprived of liberty due to their dissidence or political opposition. The report by Amnesty International published on March 22, 2012, is consistent with the assessment made by the Commission in its 2011 Annual Report, indicating that the repression of human rights defenders in Cuba takes the form of physical assaults and detentions for brief periods ranging from a few hours to several days.⁵¹

49. According to the Comisión Cubana de Derechos Humanos y Reconciliación Nacional, during the first half of 2012 there were more than 3,000 temporary detentions allegedly due to “political motivations.”⁵² The figures offered by the same organization indicate the following record of detentions per month: January, 631; February, 604; March, 1,158; April, 402; May, 423; and June, 427 detentions. According to the organization, in all cases the detentions were carried out arbitrarily and using different modalities, that is, for a duration of “a few hours” or several days, and in some cases “confinement under subhuman conditions” was reported, or “the subsequent abandonment of detainees in remote or desolate places.” In addition, the detentions were said to be carried out by the political police and were said to have been aimed at impeding the participation of the persons detained in different types of activities (political, social, religious, etc.). The organization highlights that the figures would represent more than twice the number of detentions recorded for the same period in 2011, and four times more than the record obtained in 2010; which would mean an upward trend in what is referred to as “low-intensity” political repression.

50. By press release of January 23, 2012, the Inter-American Commission condemned the death of Cuban dissident Wilmar Villar, who was a member of the Unión Patriótica de Cuba, an opposition group in Cuba.⁵³ According to the information available, Mr. Villar died after having been on a hunger strike to protest the criminal proceeding brought against him and the judgment handed down by a Cuban court that convicted him of “contempt of authority, resistance, and attempted criminal activity” (“*desacato, resistencia y atentado*”).

51. The IACHR received information that indicates that on April 30, 2012, 10 human rights defenders were assaulted, beaten, and arrested in the city of Colón, Matanzas, while staging a demonstration across from the offices of the State Security agency and the institutional headquarters of the Communist Party in that city to demand the return of a banner and edible goods that were said to have been confiscated from some political dissidents. Among the persons said to be affected were Iván Hernández Carrillo, Diosdado González Marrero, Francisco Rangel Manzano, Iván Méndez Mirabal, and the Ladies in White Blanco Alejandrina García de la Riva, Asunción Carrillo, Leticia Ramos Herrería, Caridad Burunate Gómez, Mercedes Caridad Laguardia, and Yanelis Pérez Rey.⁵⁴

52. The IACHR also received information on the alleged detention of José Daniel Ferrer García, leader of the organization Unión Patriótica de Cuba (UNPACU), on April 2, 2012, while his home

⁵¹ Amnesty International, *Cuba: Represión sistemática: acoso y detenciones breves por motivos políticos*, March 22, 2012. Available at: <http://www.amnesty.org/es/library/info/AMR25/007/2012/es>

⁵² Comisión Cubana de Derechos Humanos y Reconciliación Nacional. Report “Actos de represión política en el mes de junio de 2012.”

⁵³ IACHR, IACHR condemns death of Wilmar Villar in Cuba. January 23, 2012.

⁵⁴ Directorio, *Agresión física virulenta contra defensores de derechos humanos en Matanzas*, May 1, 2012. Available at: <http://netforcuba.org/2012/05/01/agresion-fisica-virulenta-contra-defensores-de-derechos-humanos-en-matanzas/>

was being searched by state agents, who were also said to have mistreated his older daughter and to have pillaged his personal belongings. According to the information provided, the UNPACU was organizing a peaceful demonstration to demand the release of other activists who were said to have been arbitrarily detained, and who at that moment remained in prison.⁵⁵

53. It was reported that this same defender was detained once again on May 9, 2012, and subjected to other acts of harassment, such as the surveillance of his home by two patrol cars of the political police, who were said to have threatened to detain him if he attempted to go to the city of Havana, or that they would place nails to pop the tires of bicycles or cars of persons who attempted to go to his home. On November 5, 2012, the IACHR decided to grant precautionary measures on his behalf and on behalf of Andrés Carrión Álvarez, Ángel Moya Acosta, Félix Navarro Rodríguez, Arnaldo Ramos Lauzurique, Martha Beatriz Roque Cabello, Héctor Maseda Gutiérrez, Pedro Arguelles Morán, Oscar Espinosa Chepe, and others, who were allegedly said to have been subjected to continuous arbitrary assaults and detentions, apparently due to their opposition to the government. Precautionary measures were granted considering that their lives and personal integrity were being placed at risk.

54. In October 2012, the organization “Directorio Democrático Cubano” reported that attacks were suffered by three of its members (Yanisbel Valido Pérez, Hanoi Almeida Pérez, and Alexei Sotolongo Díaz) after they were arrested on October 17 with the alleged participation of officials from the Ministry of Interior. According to the organization’s spokespersons, the three persons detained were subjected to “extreme beatings” and one of them had blows to the head and memory lapses.⁵⁶

55. The Commission was informed that during the month of November 2012, numerous detentions continued against opposition activists. By press release of November 9, 2012, the IACHR condemned the wave of arbitrary detentions of human rights defenders that took place in the first days of November in Cuba, when it was reported that at least 37 persons were detained, especially in the cities of Havana and Camagüey.⁵⁷

56. The IACHR notes the detentions that occurred on November 7 and 9 allegedly by officials of the State Security Department in conjunction with the National Revolutionary Police. According to the information provided on November 7, attorney Yaremis Flores Marín was detained as she left her home situated in the province of Havana, by security and police agents. Her family members reported that the authorities had not given them information on her whereabouts until November 8 when, through the “switchboard of the National Revolutionary Police – 106^{bi}” they indicated that she was detained at the “Criminal Investigation and Operations Division” and that an investigation had been initiated against her for the crime of “dissemination of false news against international peace.”⁵⁸ According to the information provided, Ms. Flores was released the night of November 9; nonetheless, the release papers did not indicate whether she would continue to be under investigation and on what charges.

57. Related to Ms. Flores’s arrest, the IACHR also received information that indicates that the day of her detention a group of persons went to Department 21 of State Security to request information as to her whereabouts. These persons included her husband, Veizant Boloy González; Antonio González-Rodiles Fernández, director of the independent project “Estado de Sats”; Rolando Reyes Rabanal, an independent journalist and member of the “Movimiento opositores por una nueva República” (“Movement opponents for a new Republic”) and the “Comisión de Atención a Presos Políticos y sus familiares”

⁵⁵ Directorio, *Cuba: Defensor de los derechos humanos se declara en huelga de hambre tras estar detenido arbitrariamente durante 21 días*, April 23, 2012. Available at: <http://netforcuba.org/2012/04/24/cuba-defensor-de-los-derechos-humanos-se-declara-en-huelga-de-hambre-tras-estar-detenido-arbitrariamente-durante-21-dias/>; Amnesty International, Cuba: se cree que un ex preso de conciencia ha sido detenido, February 23, 2012. Available at: <http://www.amnesty.org/es/library/info/AMR25/005/2012/es>

⁵⁶ Directorio Democrático Cubano. [Brutal golpiza a opositores en Santa Clara durante arresto arbitrario propicia llamado internacional](#). October 19, 2012.

⁵⁷ IACHR, IACHR condemns arbitrary arrests of human rights defenders in Cuba. November 9, 2012.

⁵⁸ Established at Article 115 of the Criminal Code, with a penalty of deprivation of liberty of 1 to 4 years.

(“Commission for Attention to Political Prisoners and their family members”); Andrés Suárez, a member of the “Comisión de Atención a Presos Políticos y sus familiares”; and another group of persons who left after receiving no response from the authorities. Nonetheless, they were said to have been violently arrested subsequently by persons in plainclothes who identified themselves as agents of the security corps⁵⁹. As reported, an agent was said to have grabbed Mr. Rodiles “by the head and beaten him against the rear windshield of the patrol car where ... he was along with another official wearing a green uniform from the Ministry of Interior, he was beating him on the ribs to force him into the car, while two other men grabbed him by the feet for the same purpose.” The rest of the persons detained were transferred to different police units where they reported they remained for several hours until they were released with no charges being brought against them. The Commission learned that a complaint was filed with the Office of the Attorney General of the Republic regarding these events to have the complaints investigated, to have sanctions imposed on the officials involved, and for compensation for the damages caused.⁶⁰

58. Regarding the situation of Mr. Rodiles, the information available indicates that he was detained at the Division of Criminal Investigations and Operations of the Ministry of Interior, for the crime of resisting authority, where he remained until November 26, 2012.⁶¹ Mr. Rodiles publicly denounced the physical violence to which he was subjected during his arrest and in the wake of which he had marks on his body and had suffered pain during the time he was detained. His family members denounced that the forensic exam to show the lesions received during his detention was not performed.⁶²

59. Various Cuban organizations indicated that several persons, among them Yoani Sánchez, Reinaldo Escobar, and other activists, went to the police station of Acosta, in Havana, to call for the release of those who were arrested; as a result, they themselves were detained. Human rights defender Berta Soler, leader of the Ladies in White, was said to have declared that subsequently her husband, Ángel Moya, was arbitrarily detained along with Julio Aleaga, Librado Linares, Félix Navarro, Iván Hernández Carrillo, Eduardo Díaz Fleites, and Guillermo Fariñas Hernández⁶³

60. It was also reported that in the city of Camagüey Virgilio Mantilla Arango was arrested in a violent procedure, and that subsequently Humberto Galindo Moya, Elicardo Freire Jiménez, and Ángelo Guillermo Álvarez Olazábal were so arrested. The persons who were said to have gone to the police unit of the Garrido district in the city of Camagüey to demand the release of the political prisoners were also said to have been arrested. They are: Pablo Jiménez, Alberto Faustino Calá, Jeiser Torres, and Santos Manuel Fernández Sánchez.

61. The information received by the IACHR indicates that the reprisals against human rights defenders include searches of their persons and homes. It was reported that on September 6, 2012, members of the Frente Nacional de Resistencia Cívica y Desobediencia Civil “Orlando Zapata Tamayo” held a march in opposition to the government. While there were no arrests during the demonstration, once it was over the home of Misahel Valdés Díaz, a member of the national executive committee of the Frente and its coordinator in Santiago de Cuba, had been searched, and that in that operation Vivian

⁵⁹ *Diario de Cuba, Arrestados varios activistas que indagaban sobre el paradero de la abogada Yaremis Flores*, 8 November 2012. Available at: <http://www.diariodecuba.com/derechos-humanos/13890-arrestados-varios-activistas-que-indagaban-sobre-el-paradero-de-la-abogada-ya>

⁶⁰ A copy of the complaint of November 19, 2012 presented to the Office of the Attorney General of the Republic was provided to the Commission by the Centro de Investigación Legal CUBALEX. *Diario de Cuba, Abogados denuncian ante la Fiscalía las detenciones ‘arbitrarias’ y ‘violentas’ de Rodiles y otros activistas*, 26 November 2012. Available at: <http://www.diariodecuba.com/derechos-humanos/14184-abogados-denuncian-ante-la-fiscalia-las-detenciones-arbitrarias-y-violentas-d>

⁶¹ Nuevo Herald. [Liberan a disidente cubano Antonio Rodiles tras 19 días de detención](#). November 27, 2012.

⁶² Directorio Democrático Cubano. [Novia de Antonio González Rodiles, Ailer González Mena brinda testimonio acerca de la situación del activista encarcelado](#). November 14, 2012.

⁶³ IACHR: *IACHR condemns arbitrary arrests of human rights defenders in Cuba*, November 9, 2012. Available at: <http://www.oas.org/es/cidh/prensa/comunicados/2012/132.asp>

Hernández Peña, a member of the organization Ladies in White, was arrested, along with Misahel's wife and daughters, one of them two years of age.⁶⁴

62. The IACHR has continued receiving information that is said to confirm that there is a climate of hostility and cruelty against women human rights defenders in Cuba, and especially against the members of the group Ladies in White, which takes the form of an attitude of repression and repudiation of the organization's activities. According to the information received, women human rights defenders continue to be victims of repeated physical assaults, are arbitrarily detained during demonstrations of social protest, and are limited or impeded from peacefully exercising their right to assembly.

63. The IACHR monitored this situation during its 144th period of sessions. Specifically, during the hearing regarding acts of aggression directed against women human rights defenders by security agents of the Cuban State, the IACHR was told that such acts of aggression had worsened since 2011. According to the information provided by the persons who requested the hearing, of the more than 1,000 arbitrary arrests of human rights defenders reported in Cuba as of March 2012, more than 50% were of women defenders.⁶⁵

64. The type of acts of aggression perpetrated against women human rights defenders in Cuba was also a topic taken up during that hearing. In this respect, the IACHR was informed that in addition to the beatings, searches of homes, death threats, and arbitrary arrests that women human rights defenders have been subjected to constantly were new forms of aggression, as there have been reports of women sexually harassed and threatened with rape, and of women who had been forcibly stripped in public and even bitten by security agents, in both public places and in the detention centers to which they are said to have been taken.⁶⁶

65. In the case of the group Ladies in White⁶⁷, the information received by the IACHR indicates that the attacks, threats, and acts of aggression against their members were constant and would be aimed at avoiding holding events and public expressions of social protest, as well as the peaceful exercise of the right to assembly. More details on this topic are explained in Section D of this report.

66. The IACHR received information about the detention of Leticia Ramos Herreria, a member of the Ladies in White, and Eduardo Pacheco Ortiz, both members of the "Movimiento Independiente Opción Alternativa – MIOA," which occurred on November 3, 2012, allegedly by state security agents in the municipality of Cárdenas, province of Matanzas. According to the report, both were forced by the security agents to get out of the vehicle in which they were travelling and to get into a jeep of the National Revolutionary Police in which they were taken to a local police unit where they were physically assaulted.⁶⁸

67. In addition, the IACHR has learned that the threats received by the women defenders referred to possible acts against the members of their families, especially against their children. In this respect, the Commission was informed that after the death of dissident Willmar Villar Mendoza, on

⁶⁴ Directorio Democrático Cubano: *Allanan vivienda y arrestan ejecutivo del Frente Nacional de Resistencia Cívica y su familia por realizar Marcha opositora en Palma Soriano*, September 6, 2012. Available at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3316

⁶⁵ IACHR. *Hearing on complaints regarding attacks on women human rights defenders in Cuba*. 144th period of sessions, March 23, 2012.

⁶⁶ IACHR. *Hearing on reports of attacks against women human rights defenders in Cuba*. 144th period of sessions, March 23, 2012.

⁶⁷ The Ladies in White are an organization of women family members of Cuban political prisoners established in 2003 in response to the detention and imprisonment of more than 70 political dissidents who are calling for political prisoners to be freed. Cubanet. February 9, 2012. *Golpean a Dama de Blanco*. Available at: <http://www.cubanet.org/noticias/golpean-a-dama-de-blanco-2/>; El Nuevo Herald. February 10, 2012. *Informe: 631 detenciones arbitrarias en enero*. Available at: <http://www.elnuevoherald.com/2012/02/09/1124006/informe-631-detenciones-arbitraras.html>

⁶⁸ Cuba. [Arrestan y golpean a disidentes en Cárdenas](#). November 8, 2012.

January 19, 2012, his wife Maritza Pelegrino Cabrales, a member of the Ladies in White, had been approached by state agents who allegedly threatened to take her two daughters, 7 and 5 years of age, if she continued her activities in the organization.⁶⁹ In addition, Damaris Moya Portieles, an activist with the Movimiento Femenino por los Derechos Civiles Rosa Parks, was said to have been arrested on May 2, 2012, and according to the information available, the officials of the political police threatened to rape her 5-year-old daughter.⁷⁰

68. In the face of the situation described, the IACHR has granted precautionary measures to protect the life and integrity of several women human rights defenders and their families in Cuba. Such was the case of Damaris Moya Portieles, mentioned in the previous paragraph. The IACHR also granted precautionary measures on behalf of Sonia Garro, a member of the organization Ladies in White and of the Fundación Afrocubana Independiente, who was at the women's prison known as Penitenciario de Mujeres de Occidente pursuant to a preventive detention measure, and deprived of food as the result of an incident that occurred with a woman prisoner. Finally, the IACHR ordered precautionary measures on behalf of Yoanni María Sánchez Cordero, who was reportedly being subjected to frequent acts of aggression and detention, presumably due to having published several articles on the Internet regarding the human rights situation in Cuba.

69. In addition to the acts of aggression against women human rights defenders, in 2012 the IACHR has continued receiving information regarding physical attacks and arbitrary detentions of dissident leaders and opponents of the government. According to the information, these detentions intensified around the visit by Pope Benedict XVI to the city of Havana for the purpose of repressing any expression, denunciation, or protest related to the defense of human rights that might occur during that event.⁷¹

D. Respect and guarantee by the State of the right to freedom of expression⁷²

70. In 2012, the situation of freedom of expression in Cuba has been similar to the situation in recent years. The IACHR has repeatedly indicated that Cuba is the only country in the America in which one can say that there is no guarantee whatsoever for the right to freedom of expression. The following paragraphs describe some of the problems that arise in Cuba in the exercise of that right.

1. Detentions, acts of aggression and threats to journalists and media outlets

71. As pointed out in the previous section, the IACHR received information on the various acts of harassment and detentions of the group "Ladies in White" [*Las Damas de Blanco*]. According to available information, on February 9, 2012, at least 15 members of the Ladies in White were prevented from leaving their homes or they would have been arrested to keep them from attending a workshop organized by blogger Yoani Sánchez. One of the women who attempted to attend, Aimé Cabrales, was reportedly beaten by women and several police officers who besieged her home. On February 19, the Archbishop of Santiago de Cuba, Monsignor Dionisio García Ibáñez, reportedly helped evacuate some 14 women from the Ladies in White who had taken refuge in the Basilica of the Virgin of Charity [*Nuestra Señora del Cobre*] after mass, and that they declared they were going on a hunger strike in response to

⁶⁹ Human Rights Watch, *Cuba: Dissident's Death Highlights Repressive Tactics. Stop Threats against Villar Mendoza Family*, January 20, 2012, available at: <http://www.hrw.org/news/2012/01/20/cuba-dissident-s-death-highlights-repressive-tactics>

⁷⁰ Movimiento por los Derechos Civiles Rosa Parks, Testimony of Damaris Moya Portieles on threats directed against her young daughter, May 13, 2012. Available at: <http://movimientofemeninorosapaks.wordpress.com/2012/05/13/testimonio-desgarrador-de-damaris-moya-portieles-sobre-amenazas-contr-su-pequena-hija/>

⁷¹ Human Rights Watch, *Cuba: Halt Repression in advance to Pope's Visit*, March 23, 2012, available at: <http://www.hrw.org/news/2012/03/23/cuba-halt-repression-advance-pope-s-visit>

⁷² The preparation of this part of the report was assigned by the Commission to the Special Rapporteurship on the Freedom of Expression.

being under siege by pro-government groups said to be threatening them.⁷³ On February 23, a sizable group of pro-government demonstrators staged an act of repudiation [*“mitin de repudio”*] and for several hours blocked the entry and exit of the Ladies in White in Havana when some 40 women were in a building in commemoration of the second anniversary of the death of dissident Orlando Zapata. Several persons who participated in the tribute were said to have been detained by the political police.⁷⁴ On March 17 and 18, 2012 nearly 70 Ladies in White were reported detained on commemorating the ninth anniversary of Black Spring [*Primavera Negra*].⁷⁵ On April 18, 13 of the Ladies in White were said to have been arrested to keep them from holding their monthly meeting, held the 18th of each month. Another group of women were kept from leaving their homes to attend the meeting. According to the information available, in April nearly 97 Ladies were arrested to keep them from attending Sunday mass in different cities.⁷⁶ On May 27, 13 Ladies were reportedly arrested to keep them from attending Sunday mass in different parts of the country. That day five Ladies in White were detained in El Condado, Santa Clara.⁷⁷ On June 15, nearly 30 Ladies in White were detained to keep them from attending a “literary tea” and celebrating Fathers Day in the different parts of Cuba. Twenty-two of these detentions were said to have occurred in Guantánamo and Granma, Palma Soriano, and Santiago de Cuba, and eight others in Villa Clara while the persons detained were traveling to Havana.⁷⁸ On July 18, 30 Ladies in a group were detained at their homes to keep them from attending the “literary tea.” According to the information available, members of government security visited them at their homes, and threatened and warned them that if they attended that meeting they would be taken to jail for 72 hours.⁷⁹ On September 20, 50 Ladies in White were reportedly detained while on their way to Havana to participate in activities organized to commemorate the political activists who died the day of Our Lady of Ransom [*la Virgen de la Merced*] and released September 22 and 23.⁸⁰ On November 11, 44 women members of the organization were detained and beaten by police and State Security agents while attempting to attend Sunday mass.⁸¹ As of the writing of this report, the detentions of the Ladies in White continued to be systematic, impeding the exercise of their right to assembly and to demonstrate at the events convened by the organization.

72. The Commission was informed of the October 4 detention of Yoani Sánchez, an independent blogger and critic of the Government of Cuba, along with her husband, journalist Reinaldo Escobar, and blogger Agustín López Canino Díaz. According to the information received, the three persons detained were on their way to cover trial regarding the death of Cuban dissident Oswaldo Payá when they were detained, presumably so they would not interfere in the trial. They were released 30

⁷³ Infobae. February 21, 2012. [Un arzobispo salvó de la represión a un grupo de Damas de Blanco](#); InfoCatólica. February 22, 2012. [Mons. García Ibáñez impidió que las Damas de Blanco fueran golpeadas por la policía de la dictadura cubana](#); El Nuevo Herald. February 21, 2012. [Arzobispo de Santiago de Cuba salva de paliza a mujeres disidentes](#).

⁷⁴ El Universal/Notimex. February, 23, 2012. [Bloquean sede de Damas de Blanco en Cuba](#); AFP/Noticias Univisión. February 24, 2012. [Damas de Blanco son repudiadas por oficialistas cuando homenajearon a Zapata](#); Cubanet. February 23, 2012. [41 Damas de Blanco continúan sitiadas en la casa sede del grupo](#).

⁷⁵ Centro de Información Hablemos Press. April 9, 2012. [Informe mensual de violaciones de derechos humanos – Marzo 2012](#); Primavera Digital. March 22, 2012. [Reprimen a Damas de Blanco en el noveno aniversario de la primavera negra](#).

⁷⁶ Centro de Información Hablemos Press. May 2, 2012. [Informe mensual de violaciones de derechos humanos – Abril 2012](#); Cuba Blog Spot. April 19, 2012. [Cuba ve peligro en “Te literario” de las Damas de Blanco](#); La voz del destierro. April 23, 2012. [Más de dos docenas de mujeres arrestadas para impedirles asistir a la misa dominical](#).

⁷⁷ Cuba Jutia. May 29, 2012. [Logran asistir a misa más de 90 damas de blanco](#); Desde Cuba. Un portal de periodismo ciudadano. May 29, 2012. [Noticias Semana del 26 al 31 de mayo: Arrestadas Damas de Blanco](#).

⁷⁸ El Nuevo Herald. June 15, 2012. [El régimen cubano arresta a al menos 30 damas de blanco](#); La Nación. June 15, 2012. [Damas de Blanco denuncian el arresto de al menos 31 activistas en Cuba](#).

⁷⁹ Damas de Blanco.com. July 19, 2012. [Detenidas unas 30 Damas para impedirles que asistan a un te literario](#); La voz del destierro. July 18, 2012. [Detienen a Damas de Blanco para impedirles asistir a un te literario](#).

⁸⁰ Amnesty International. September 25, 2012. [Urgent Action. Dozens of Cuban Opposition Activists Detained](#); Centro de Información Hablemos Press. September 23, 2012. [Más de 50 Damas de Blanco detenidas este fin de semana](#); Amnesty International. October 2, 2012. [Urgent Action. Human Rights Activists Released in Cuba](#).

⁸¹ Centro de Información Hablemos Press. November 13, 2012. [Más de 40 damas de blanco detenidas, el domingo](#); Puente Informativo. November 13, 2012. [Mas de cuarenta Damas de Blanco detenidas el Domingo](#).

hours after being detained.⁸² The information available indicates that other journalists were detained allegedly in relation to the trial.⁸³ According to the information received, Sánchez was detained once again on November 8 along with bloggers and journalists Orlando Luís Pardo, Eugenio Leal, Julio Aleaga, Angel Santiesteban, Guillermo Fariñas, and Iván Hernández Carrillo, after demonstrating against the detention of other human rights defenders across from a police station in Havana.⁸⁴

73. In May 2012, journalist Gerardo Younel Ávila, a photo-journalist with *Hablemos Press*, was said to have been detained on leaving his house in the municipality of Cerro. Later, he was reportedly detained again on June 23, July 14, and July 28. Journalist Enyor Díaz Allen of the same agency was detained when travelling from Cuba to Guantánamo. On July 23 he was detained for 72 hours. On June 11 editor Ernesto Aquino of *Hablemos Press* was said to have been summoned by the authorities. On June 23 journalist Magaly Norvis Otero was also said to have been summoned to a police station where she was reportedly warned that should would be jailed if she continued her journalism and “enemy propaganda.” These events are said to have occurred after the news agency *Hablemos Press* had begun the weekly publication of a Newsletter.⁸⁵

74. According to the information received, on July 24 journalists and activists Guillermo Fariñas and Julio Aleaga Pesant were held for at least nine hours, along with several political dissidents, on concluding the mass in Havana for deceased opposition leader Oswaldo Payá.⁸⁶ According to information received, detentions of political dissidents due to their exercise of the freedom of expression escalated in August. According to the Comisión Cubana de Derechos Humanos, that month there were 521 politically-motivated temporary detentions, which in most cases lasted a few hours or days.⁸⁷ Among the persons detained were dissident leader José Daniel Ferrer, arrested on charges of “public disorderly conduct” [“*desórdenes públicos*”] on August 23 and released three days later. After July 24, Fariñas was reportedly detained on August 17, 19, 21, and 23.⁸⁸ In addition, on September 1 blogger Orlando Luis Pardo was reportedly detained in Havana for nine hours when he was preparing to attend and participate as moderator in a roundtable discussion to analyze current issues in Cuba.⁸⁹

75. According to the information received, artist Yanoski Mora was detained on September 29 purportedly for having painted reproductions of photographs of Fidel Castro in a meeting with

⁸² Cubanet. October 5, 2012. [Juicio de Carrero motiva detenciones de opositores y periodistas](#); Miami Herald. October 6, 2012. [Cuban dissident blogger Yoani Sanchez released after hours-long detention](#); International Press Institute (IPI)/IFEX. October 10, 2012. [Cuban blogger released after 30 hours in custody](#).

⁸³ See Comisión Cubana de Derechos Humanos y Reconciliación Nacional. November 5, 2012. [Algunos Actos de Represión Política en el Mes de octubre de 2012](#).

⁸⁴ Inter-American Commission on Human Rights. November 9, 2012. Press Release No. 132/2012. [IACHR Condemns Arbitrary Arrests of Human Rights Defenders in Cuba](#). Committee to Protect Journalists (CPJ). November 9, 2012. [Cuban reporter Flores arrested on anti-state charges](#); El País. November 9, 2012. [La bloguera Yoani Sánchez es puesta en libertad tras varias horas de arresto](#)

⁸⁵ Centro de Información Hablemos Press. June 4, 2012. [Informe mensual de violaciones de derechos humanos- Mayo de 2012](#); El Nuevo Herald. June 27, 2012. [SIP denuncia acoso a periodistas independientes en Cuba](#); La voz del Destierro. July 14, 2011. [Detenido violentamente foto reportero de Hablemos Press](#); Misceláneos de Cuba. July 30, 2012. [Cinco periodistas de hablemos press son detenidos en una semana](#); Penúltimos días. PD en Cuba. May 14, 2012. [¿Observadores críticos?](#)

⁸⁶ BBC. July 25, 2012. [Police Free Cubans Detained at Oswaldo Paya's Funeral](#); La Razón. July 24, 2012. [Guillermo Fariñas y varios opositores cubanos detenidos en el velatorio de Oswaldo Payá](#); Knight Center for Journalism in the Americas. July 24, 2012. [Two Cuban journalists arrested during activist Oswaldo Payá's Funeral](#).

⁸⁷ Comisión Cubana de Derechos Humanos y Reconciliación Nacional. September 2012. [Cuba: Algunos actos de represión política durante el mes de agosto](#); German Press Agency (DPA). September 4, 2012. [Cuba: más de 500 arrestos políticos en agosto](#).

⁸⁸ BBC Mundo. August 27, 2012. [Liberado el disidente cubano José Daniel Ferrer](#); Radio Televisión Española (RTVE). August 27, 2012. [En Cuba prosiguen los arrestos y liberaciones de disidentes del régimen de Raúl Castro](#); German Press Agency (DPA). September 4, 2012. [Cuba: más de 500 arrestos políticos en agosto](#).

⁸⁹ El Nuevo Herald. September 1, 2012. [Detienen cerca de 9 horas a bloguero cubano Orlando Luis Pardo](#); Knight Center for Journalism in the Americas. September 3, 2012. [Cuban dissident Blogger released after nine hours of detention](#).

indigenous leaders in the United States in which he was wearing feathered headdress.⁹⁰ In addition, journalist and lawyer Yaremis Flores was reportedly detained on November 7 for approximately 24 hours by agents who made reference to her reports. Flores had written articles critical of the Government of Cuba. Her detention was said to have inspired demonstrations by other journalists and human rights defenders, at least 36 of whom were also reported to have been detained by the security forces.⁹¹

76. The IACHR was informed of the threats that had been received by independent journalist Odelín Alfonso Torna, made by a former officer of the political police on February 7, 2012. According to the information received, in November, 2011 he had published an article at the website *CubaNet* in which he reported irregular conduct by the agent. The officer was said to have been dismissed because of the publication, and his step-father had warned that he was going to “deal machete blows to” [*“machetear”*] the journalist. On February 9, the journalist was summoned by the political police to warn him that he should “avoid aggressive journalism.”⁹²

77. The Inter-American Commission recalls that principle 9 of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “[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.”

3. Subsequent liability

78. On November 14, journalist José Antonio Torres of the official daily newspaper *Granma* was reportedly sentenced to 14 years in prison for espionage, and his university degree in journalism was reportedly suspended.⁹³ According to the information available, Torres was detained in February or March 2011 for allegedly offering to share classified information with representatives of the Government of the United States. In July 2010 and January 2011 Torres had published reports critical of alleged anomalies committed in the construction of a major aqueduct in Santiago, under the direct supervision of the vice-president of the Council of State, Commander Ramiro Valdés Menéndez. The articles were originally praised by President Raúl Castro, who admitted he “had discrepancies” with some of the journalist’s ways of approaching the matter, but he sent him an “acknowledgement” for his steadfastness (*“constancia”*) in keeping track of the project.⁹⁴

79. The Commission was informed of the detention of Calixto Ramón Martínez Arias, a journalist with the agency *Hablemos Press*, on September 16, in the context of a criminal proceeding against him for *desacato*. Martínez Arias had been detained at the international airport while investigating alleged irregularities in the handling of drugs provided to Cuba by the World Health Organization.

⁹⁰ Cubanet. October 1, 2012. [Arrestado por pintar a Fidel Castro con penacho de plumas](#); Sampsonia Way. October 15, 2012. [Reproducir a Fidel Castro](#)

⁹¹ Inter-American Commission on Human Rights. November 9, 2012. Press Release No. 132/2012. [IACHR Condemns Arbitrary Arrests of Human Rights Defenders in Cuba](#); Committee to Protect Journalists (CPJ). November 9, 2012. [Cuban reporter Flores arreste don anti-state charges](#); Cubanet. November 8, 2012. [Liberada la periodista de Cubanet Yaremis Flores](#)

⁹² Cubanet. February 1, 2012. [Amenazan con machetear a periodista independiente](#); Ciudadanos. February 2, 2012. [Amenazan de muerte al periodista independiente Odelín Alfonso Torna](#); Cubanet. February 10, 2012. [Cita Seguridad del Estado a periodista independiente](#).

⁹³ El Nuevo Herald. November 14, 2012. [Condenan por espía a periodista del diario oficialista cubano “Granma”](#); Martí Noticias. November 14, 2012. [Condenado a 14 años excorresponsal de Granma en Santiago](#); Diario de Cuba. November 14, 2012. [Santiago de Cuba: Condenado a 14 años un excorresponsal de “Granma” acusado de “espionaje”](#)

⁹⁴ Knight Center for Journalism in the Americas. January 24, 2012. [Reporter for official Cuban newspaper faces 10-year prison sentence on corruption charge](#); Red Protagónica Observatorio Crítico. January 23, 2012. [Periodista oficialista podría recibir 10 años de cárcel](#); International Press Institute (IPI). January 27, 2012. [Cuban Journalist Faces Decade in Prison](#); The Miami Herald. July 18, 2012. [Cuban journalist who wrote exposé of bungled aqueduct project reportedly faces espionage charges](#); Cubanet. July 18, 2012. [Piden 15 años de cárcel para ex periodista de Granma](#).

According to the information received, he was beaten and sprayed with pepper spray in the custody of the National Revolutionary Police of Santiago de Las Vegas. Martínez Arias was said to have investigated and written on the cholera and dengue outbreaks in Cuba before the Government recognized the problem.⁹⁵ The Commission learned that Martínez had reportedly been transferred to a punishment cell on November 20 and that he was on a hunger strike as of late November.⁹⁶ Martínez had previously been detained on May 10 in Havana while covering an activity organized by opposition groups and was later said to have been transferred against his will to the province of Camaguey.⁹⁷

4. Other relevant situations

80. In February 2012 Cuban authorities were said to have denied Yoani Sánchez permission to leave Cuba to travel to Brazil. She had been invited to participate in the presentation of a documentary on freedom of the press for which she had been interviewed. Sánchez obtained a visa to enter Brazil. She noted in her Twitter account that it was the nineteenth time the Cuban State had prevented her from leaving the country.⁹⁸

81. The IACHR was informed of several actions by the authorities against independent journalists before and after the visit by Pope Benedict XVI, on March 27 and 28. According to the information received, the telephones of several journalists and dissidents had been disconnected, among them journalists Aini Martín Valero, José Antonio Fornaris, Luis Cino, Jorge Olivera, Juan González Febles, Dania Virgen García, Gustavo Pardo, Eugenio Leal, Calixto Ramón Martínez, and Roberto de Jesús Guerra. Journalists Alberto Méndez Castelló and Luis Felipe Rojas were said to have been detained by the Police for several hours.⁹⁹ On March 23, journalist Julio Aleaga Pesant was reportedly detained for several hours and taken forcibly from the city of Santiago de Cuba to Havana to keep him from covering the Pope's visit.¹⁰⁰

82. On May 12, bloggers Eugenio Leal and Miriam Celaya were said to have been intercepted by the Police, who kept them from participating in a public activity convened by the social network Observatorio Crítico.¹⁰¹ The IACHR was informed that the Cuban authorities had threatened to prevent a concert from being held that was organized by the group *Por Otra Cuba*; its purpose was to promote ratification by Cuba of the human rights treaties of the United Nations. According to the information received, the concert was held on September 28.¹⁰²

⁹⁵ Inter-American Press Association (IAPA)/IFEX. September 21, 2012. [Journalist charged after writing about cholera and dengue in Cuba](#); Martí noticias. August 22, 2012. [Acusarán de "desacato" a reportero estrella de Hablemos Press](#); Reports Without Borders. September 24, 2012. [RSF pide la puesta en libertad de Calixto Ramón Martínez Arias](#).

⁹⁶ Hablemos Press. December 4, 2012. [Hablemos Press: El periodista Calixto Ramón sigue en huelga de hambre](#); Martí Noticias. November 30, 2012. [Periodista independiente cumple 20 días en huelga de hambre](#)

⁹⁷ Reporters Without Borders. May 15, 2012. [Hablemos Press journalist awaits 10th deportation to home town](#); Pinceladas de Cuba. June 1, 2010. [Calixto Ramón Martínez Arias se declara en huelga de hambre](#).

⁹⁸ EFE/Noticias Univisión. February 3, 2012. [Gobierno cubano deniega a Yoani Sánchez permiso de salida para viaje a Brasil](#); El País. January 26, 2012. [Rousseff da un visado para Brasil a Yoani Sánchez antes de visitar Cuba](#); Yoani Sanchez/ @yoanisanchez. February 3, 2012. [#Cuba](#); Knight Center for Journalism in the Americas. February 6, 2012. [Cuba denies critical Blogger Yoani Sánchez's travel to Brazil](#).

⁹⁹ Inter-American Press Association (IAPA-SIP). [April 2012 Information by Country: Cuba](#); CubaEncuentro. March 30, 2012. [Activistas reclaman a ETECSA por interrupción del servicio telefónico](#); Knight Center for Journalism in the Americas. March 28, 2012. [Cuba denies visas to foreign press, arrests journalists during Pope's visit](#).

¹⁰⁰ Primavera Digital. March 28, 2012. [Detenido y posteriormente deportado a la capital el periodista Julio Aleaga Pesant](#)

¹⁰¹ Centro de Información Hablemos Press. June 4, 2012. [Informe mensual de violaciones de derechos humanos- Mayo de 2012](#); Penúltimos días. PD en Cuba. May 14, 2012. [¿Observadores críticos?](#)

¹⁰² Cubanet. September 27, 2012. [El régimen advierte que impedirá concierto en Estado de SATS](#); Estado de SATS. September 27, 2012. [Nota sobre amenazas de la Seguridad del Estado](#); Por otra Cuba. September 30, 2012. [Realizado ayer primer concierto Por otra Cuba](#); BBC Mundo. February 28, 2008. [Cuba firma pactos de DDHH de la ONU](#).

83. The first principle of the Declaration of Principles on Freedom of Expression of the IACHR establishes: “[f]reedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.” And Principle 13 of the Declaration of Principles stipulates: “[t]he exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The 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.” The fifth principle establishes: “[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.”

E. Respect and guarantee by the State of the rights of assembly and association

84. According to the American Declaration every person has the right to work¹⁰³, to assemble peaceably¹⁰⁴, and to associate with others to promote, exercise, and protect his or her legitimate interests.¹⁰⁵ As regards the freedom of association, the Commission reiterates its concern over the existence of a single trade union federation officially recognized and mentioned in Cuban legislation, which has been the subject of permanent attention of the International Labor Organization. The Commission, in agreement with the International Labor Organization, considers that trade union pluralism should be possible in all cases, and that the law should not institutionalize a *de facto* monopoly on referring to a specific union federation.¹⁰⁶ The Commission wishes to highlight that one of the guiding principles of the International Labor Organization, of which Cuba is a signatory, includes “recognition of the principle of freedom of association” as an essential requirement for “the peace and harmony of the world.”

F. Observance and guarantee of the exercise of freedom of movement and residence

85. The American Declaration of the Rights and Duties of Man provides that “Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.”¹⁰⁷ The Commission considers that although the American Declaration does not explicitly recognize every person’s right to return to his or her country, that right is implicitly recognized in the Declaration. The IACHR has held that “[t]he right of every person to live in his own country, to leave and return when he deems convenient [...]” is an elementary right that “is recognized in every international instrument that protects human rights.”¹⁰⁸ In effect, Article 13(2) of the Universal Declaration of Human Rights provides that “Anyone has the right to leave any country, including his own, and to return to it.”

¹⁰³ American Declaration, Article XIV.

¹⁰⁴ *Id.*, Article XXI.

¹⁰⁵ *Id.*, Article XXII.

¹⁰⁶ International Labor Conference, 97th Meeting 2008. Report of the Committee of Experts on the Application of Conventions and Recommendations. General Report and Observations concerning particular countries. Cuba: pp. 105-107.

¹⁰⁷ Article VIII of the American Declaration of the Rights and Duties of Man.

¹⁰⁸ IACHR. *Ten Years of Activities 1971-1981*, Secretariat General of the Organization of American States, Washington, D.C., 1982, page 325.

86. The IACHR has observed that according to the texts cited above, the right of residence and movement is related to the right of nationality. The latter is recognized in Article XIX of the American Declaration, and the Commission has underscored that its observance is an imperative and has condemned situations in which the right to nationality is violated as a result of the government's action against its political adversaries.¹⁰⁹

87. The Commission believes that exercise of the right to freedom of residence and movement can under no circumstances lead to the loss of nationality, and were such a penalty imposed for exercising that right, it would be unlawful; hence, no government can threaten loss of nationality to prevent a person from returning to his native country, regardless of status.¹¹⁰

88. Since 1983, the Commission has expressed its concern over the failure to protect the right of residence and movement in Cuba, recognized in Article VIII of the American Declaration of the Rights and Duties of Man. The right to residence and movement includes several dimensions: (a) the right of every person to fix his or her residence in the territory of the State of which he or she is a national; (b) the right of every person to move about freely within that territory; and (c) the right of every person not to leave the territory of the state of which he or she is a national other than by his or her own will.

1. The right of residence and movement or transit in the City of Havana

89. The Constitution of Cuba recognizes that citizens – without distinction as to race, color of skin, sex, religious beliefs, national origin, and any other distinction harmful of human dignity – may be domiciled in any sector, zone, or neighborhood of the cities and may stay in any hotel.¹¹¹ Nonetheless, and despite the constitutional provision, the Commission observes that in Cuba restrictions persist that impede the full exercise of this right by any person to reside freely in the territory of Cuba.

90. Decree 217 of 1997¹¹², on domestic migratory regulations for the city of Havana, restricted the right to reside freely in that city for those persons who, originally from other parts of the country, seek to establish their domicile in, reside in, or live permanently in a dwelling situated in the city of Havana, or those who, coming from other municipalities, seek to establish domicile, reside in, or live permanently in a dwelling in the municipalities of La Habana Vieja, Centro Habana, Cerro, and Diez de Octubre, and it requires that they request permission from administrative authorities in order to reside in the capital. That decree imposed fines and the obligation to return to the place of origin for those persons who violate its provisions. The foundation of the Cuban government for implementing the restrictions of Decree 217 of 1997 is that “[i]n recent years there [has been] a movement of persons who, coming from other territories of the country move to the City of Havana for the purpose of establishing their domicile, residing, or living with another person, which increase[d] in that City the already serious housing problem, the difficulties ensuring stable employment, adequate urban transport, and the support of water, electricity, domestic fuel, and impact[ed] on the quality of the services needed.”

91. Accordingly, persons interested in residing in the city of Havana had to request authorization to reside there permanently, and doing so in violation of the domestic Cuban provisions exposed the persons to fines and to being deported to their place of origin. The implementation of Decree 217 meant that dozens of persons were detained by the police and forced to return to their places of origin. According to Human Rights Watch, this decree was “often used to prevent dissidents from

¹⁰⁹ IACHR. *Ten Years of Activities 1971-1981*, Secretariat General of the Organization of American States, Washington, D.C., 1982, page 325.

¹¹⁰ IACHR, *Annual Report 1983*, Chapter VIII, Right of Residence and Movement.

¹¹¹ Constitution of the Republic of Cuba, Article 43(6).

¹¹² Council of Ministers, Decree No. 217 of 1997, April 22, 1997. Available at: <http://www.gacetaoficial.cu/html/regulacionesmigratoriasparaC.H.html> [Consulted on December 7, 2012].

traveling to Havana to attend meetings, and to harass dissidents from other parts of Cuba who live in the capital.¹¹³

92. Article 5 of Decree No. 217 of 1997 was amended by Decree No. 293 of 2011, by which an exception is made for the requirement to go through the authorization procedure for certain persons from other provinces who request to make a permanent move to the city of Havana¹¹⁴, which includes: (a) the spouse, children, parents, grandparents, grandchildren, and siblings of the person authorized; (b) the minor children of the spouse of the person authorized; (c) the persons found legally incompetent; (d) the nuclear family of the person to whom real property is assigned as a matter of the interest of the state or society. The Commission values the reform; nonetheless, it observes that restrictions that have a detrimental impact on the right to residence and movement continue in place.

93. The Commission considers that the internal migration regulations for the city of Havana have a detrimental impact on the right of every person to determine freely his or her place of residence and on the right to freedom of movement. In addition, these restrictions have an impact on other rights such as the right to equality before the law and the principle of non-discrimination and the right to protection of the family. In this context, the Commission recommends to the Cuban State that it repeal Decree 217 of 1997, as well as its supplemental provisions, and that it adopt the measures necessary for guaranteeing to all persons the rights to freely determine their place of residence and the freedom of movement in Cuban territory.

2. The right to freedom of movement

94. In Cuba the right to freedom of movement is not recognized constitutionally, which poses an obstacle to its exercise. According to the Law on Migration, Law No. 1312 of 1976, to leave and enter the national territory, Cubans require a current passport and a permit to enter and leave, granted by the Ministry of Interior.¹¹⁵ In practice the Cuban authorities have a series of requirements that pose an obstacle for Cubans to be able to exit and enter the country freely. Some of these requirements include: the need for certificates or declarations from employers or their family members in support of the request, the exact description of the itinerary, the requirement of posting a repatriation bond, being in possession of a return ticket, and having an invitation from the destination State or from persons who live there, among others. In addition, the Law does not stipulate a time for the authority to rule on the request for permission; in general, the requesters have to wait a long time to obtain permission to exit or enter. The decisions of the Ministry of Interior officials who refuse the exit or entry permits cannot be appealed to a court since they emanate from the exercise of a discretionary power.

95. On October 16, 2012, Decree-Law No. 302 was promulgated by the Council of State; it amends the 1976 Law on Migration; this reform will come into force on January 14, 2013. Among the main changes to the Law on Migration are the partial elimination of the requirement for authorization to leave the territory; the length of the period required for a Cuban national who has travelled abroad to be considered as an émigré, which was extended from 11 to 24 months; the elimination of the need for a letter of invitation from the country to which one intends to travel; and the possibility of children being able to travel on a temporary basis so long as they have the authorization of their parents or legal representatives. Before this reform Cuban children could only leave the country definitively.

96. Even though Decree-Law No. 302 of 2012 reflects advances with respect to the Law on Migration, the Commission observes that it establishes a series of situations in which certain Cuban nationals who reside in Cuba will not be able to obtain a regular passport or will not be able to leave the country “mindful of national defense and security concerns”; for “lacking the established authorization

¹¹³ Human Rights Watch, *World Report 2012*. Available at: <http://www.hrw.org/world-report-2012/world-report-2012-cuba> [Consulted on December 7, 2012].

¹¹⁴ Council of Ministers, Decree No. 293 of 2011, published in the *Gaceta Oficial* of November 16, 2011.

¹¹⁵ Council of Ministers, Law No. 1312, Law on Migration, September 20, 1976, Article 1.

pursuant to provisions aimed at preserving the skilled work force for the country's economic, social, and scientific-technical development, and the protection of official information"; "when for other reasons of public interest it is so determined by the authorities vested with such powers"; among other reasons. The Commission observes that the general wording of certain terms confers a broad margin of discretion on the Cuban authorities to allow or not allow the exit of Cuban nationals.

97. Despite the recent reforms to migration legislation in Cuba, the Commission maintains its concern various obstacles continue in place that limit the effective enjoyment of the right to residence and movement.

98. The Commission was informed that recently, Rosa María Payá, daughter of dissident Oswaldo Payá, who died in a car accident in July 2012, was prevented from travelling to Chile to study a course at Miguel de Cervantes University.¹¹⁶

99. In addition to the foregoing, the Commission also considers it necessary to note that under the Criminal Code (Articles 216 and 217) sanctions are imposed on those Cubans who leave Cuba in violation of the domestic legislation. According to the provisions of the Criminal Code, the penalty may be up to three years deprivation of liberty, and may be up to eight years if violence or intimidation of persons or force in respect of things is shown, or fines of 300 to 500,000 pesos.¹¹⁷ The Criminal Code also penalizes those persons who organize, promote, or incite the unlawful exit of persons from the national territory. According to information provided by civil society organizations, on occasion such conduct is characterized in the criminal law as trafficking of persons. The Commission thus urges the Cuban State to derogate Articles 216 and 217 of its Criminal Code and to adopt all the constitutional, legislative, administrative, and any other measures to ensure the right of all Cuban persons to leave Cuba freely.

100. Accordingly, the Commission reiterates its rejection of the provisions of the Criminal Code that establish that whoever leaves the national territory or commits acts aimed at leaving the territory without complying with the legal formalities must be sanctioned with imprisonment or a fine once he or she returns to Cuba. The Commission has considered that such provisions are contrary to and incompatible with the legitimate exercise of the right to residence and movement of all Cubans, as established in Article VIII of the American Declaration of the Rights and Duties of Man¹¹⁸; therefore, in the event that a person is detained for the legitimate exercise of his or her right to freedom of movement such a detention would be arbitrary and so contrary to the right to protection from arbitrary arrest, recognized at Article XXV of the American Declaration.

¹¹⁶ Journal *La Tercera. Reforma Migratoria en Cuba*, 16 January 2013. *Radio Cooperativa, La Esperanza de Rosa María Payá*, 22 December 2012. Available at: <http://blogs.cooperativa.cl/opinion/internacional/20121222091017/la-esperanza-de-rosa-maria-paya/>. CNN, *Adiós a la Cubana*, 15 January 2013. Available at: <http://blogs.cooperativa.cl/opinion/internacional/20121222091017/la-esperanza-de-rosa-maria-paya/>

¹¹⁷ See, Criminal Code of Cuba (1987), Articles 216 and 217:

Article 216(1) One who leaves the national territory or performs acts aimed at leaving the territory without complying with legal formalities may be deprived of liberty for one to three years, or subjected to a fine of 300 to 1,000 quotas.

(2) 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.

(3) 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.

Article 217(1) One who organizes, promotes, or incites the unlawful exit of persons from the national territory shall be subject to a penalty of deprivation of liberty for a period ranging from two to five years.

2. One who provides material support, offers information, or facilitates in any other way the unlawful exit of persons from the national territory shall be subject to a penalty of deprivation of liberty for a period ranging from one to three years or a fine of 300 to 1,000 quotas.

¹¹⁸ IACHR, *Annual Report of the Inter-American Commission on Human Rights 2010. Chapter IV. Cuba*. OEA.Ser.L/V/II. Doc. 5 corr. 1, March 7, 2011, paras. 369 and 366-374.

101. In addition, the Commission observes with concern that as a result of the restrictions on the right of Cubans to freely leave their country, impetus has been given to establishing illicit networks for the illicit trafficking of persons, which make use of both air and sea routes for taking people out of Cuba. Many persons have been forced to take recourse to illicit trafficking of persons as a means of family reunification. In this respect, one must bear in mind that Article 347 of the Criminal Code establishes that trafficking of persons consists of organizing or promoting, for profit, the entry to or exit from the national territory for persons to emigrate to third countries. The sanctions for this crime range from seven to 20 years of deprivation of liberty.¹¹⁹ The Commission has been informed that one generally punishes with equal severity those who enter in a launch in search of migrants and those who, within Cuban territory, become involved in the activity in exchange for leaving the country. With respect to this latter group, the Commission considers that those who leave Cuba in the same conditions and under the same risks as the persons being trafficked should not be considered traffickers. At the same time, the Commission considers it necessary to note that those migrants who have been involved in the illicit trafficking of migrants should not be penalized for such conduct.

102. The situation of Cubans who travel abroad in relation to personal matters and who remain outside of Cuba for more than 11 months is another matter of concern for the Commission. In the case of Cubans who decide not to return and remain outside Cuba beyond the 11 months, they lose permission to return to Cuba¹²⁰ and therefore they lose their status as residents of the island. This means they cannot access free services such as health care, education, their right to social security, their right to vote, and their properties. While they do not lose their status as Cuban nationals, the impossibility of returning to Cuba, and of exercising the rights they have as nationals, means that they are unable to enjoy an effective nationality. The Commission has learned of cases of Cuban nationals who after remaining outside Cuba for more than 11 months have been prevented from returning to their country and therefore from exercising the rights they could exercise as Cuban nationals. These provisions also have a direct impact on the right to protection of family life of these persons, who are deprived of the ability to reunite with their relatives who remain in Cuba. In addition, this situation poses additional obstacles for Cuban migrants who are in irregular migratory situations, given that they cannot return to their country of origin nor do they have a migratory situation that enables them to reside regularly in the country in which they find themselves. The Commission observes that as of Decree-Law No. 302 of 2012, the period during which Cubans who travel abroad on private matters can remain outside Cuba is extended from 11 to 24 months¹²¹ and one will be allowed to request extensions for stays abroad if they exceed 24 months, which will be granted by a Cuban consulate. The Commission also observes the situation of Cubans who are deported back to Cuba. According to the information available to the Commission, the government

¹¹⁹ See Criminal Code of Cuba (1987), Articles 347 and 348:

Article 347(1) One who, without being legally authorized to do so, organizes or promotes, for profit, the entry to the national territory of persons for the purpose of their emigration to third countries shall be subject to a sanction of deprivation of liberty for a period from seven to 15 years.

(2) The same sanction shall apply to one who, without being legally authorized to do so, and for profit, organizes or promotes the exit from the national territory of persons who are in it on their way to third countries.

Article 348(1) One who enters the national territory using a seagoing craft or aircraft or other means of transportation for the purpose of carrying out the illegal exit of persons shall be subject to a penalty of deprivation of liberty for a period from 10 to 20 years.

(2) The sanction is deprivation of liberty for a period of 20 to 30 years or life in prison when:

- (a) the act is carried out while the perpetrator is carrying a weapon or other instrument suitable for an assault;
- (b) violence or intimidation of persons or force in things is employed in the commission of the act;
- (c) persons' lives are put at risk or persons are seriously injured or die in the commission of the act;
- (ch) if among the persons who are transported anyone is under 14 years of age.

¹²⁰ Council of Ministers, Decree Law No. 302, October 16, 2012, Article 24(1)(f).

¹²¹ Council of Ministers, Decree Law No. 302, October 16, 2012, Article 9(2).

only accepts the deportation of one of its nationals if it has migration agreements with the country in which the national is found.

103. The Commission is aware that since 1987 the permit for repatriation or definitive return to Cuba was established; it is the authorization granted by the Cuban migration authorities for Cubans to return to Cuba permanently, based fundamentally on humanitarian reasons after a request made by the Cuban émigrés on their own behalf and/or on behalf of their minor children. This permit is granted to those persons who are clinically declared terminally ill or critically ill, victims of kidnappings, persons over 60 years of age who show they have the resources for their maintenance, and women over 60 years of age and males over 65 years of age and under 16 years of age, so long as they show that they have family members in Cuba who will guarantee their economic sustenance. If the repatriation permit is authorized, the Cuban authorities warn that if Law No. 989/61, the prior confiscation decision, was applied, it remains firm with respect to assets, properties, rights and securities confiscated.

104. The Commission observes with concern that in the course of 2012 there has been an increase in the number of Cuban persons who have opted to leave Cuba for various countries of the Americas – mainly to Ecuador given its open borders policy – and from there they continue their migration towards the United States. Once in Ecuador, their journey takes them through Colombia, Panama, the Central American countries, Mexico, and finally the United States. In Costa Rica, just over 900 Cubans have entered the territory from January to June 2012. In December 2011, 18 Cubans were identified on the island of Guanaja, Honduras and in March 2012, 22 Cubans were found on Swan Island, some 90 miles from the coast of mainland Honduras. In addition, along the migration route more than 80 Cuban citizens have been identified in Tapachula, Mexico. Finally, there has also been an increase in the number of Cuban persons in irregular migratory situations who have been intercepted at sea or who have reached the coasts of the United States.

105. In addition to the foregoing, Cubans who leave the country by sea without authorization are subject to administrative sanctions when they are detected by Cuban authorities along the coasts or at sea. Pursuant to Decree-Law 194, on infractions regarding the possession and operation of vessels in the national territory, 14 infractions are established such as building vessels without authorization, using unlawfully obtained resources in such endeavors, operating a vessel without it being registered with the Harbormaster's Office, and navigating in territorial waters without permission. The violations are considered slight, serious, and very serious, and subject to sanctions depending on how they are characterized, with fines ranging from 500 pesos to 10,000 pesos, including the possibility of applying, on a subsidiary basis, the sanction of confiscation of the vessel and goods aboard that are the property of the person committing the infraction.

106. The Commission urges the Cuban State to continue adopting all measures or reforms necessary to fully ensure the right of all Cubans to leave Cuba freely, to circulate freely inside Cuba, to freely choose their place of residence in Cuba, and to freely enter the country; it is clearly necessary to eliminate the restrictions on entry to and exit from the national territory. At the same time, the Commission makes an appeal to the states to guarantee human mobility and to allow or facilitate the entry of Cubans to their territories.

G. Guarantees for a fair trial, due process of law and effective access to justice

107. The IACHR has referred repeatedly in its reports on Cuba to the lack of independence and impartiality of the courts, and to the lack of judicial guarantees and due process guarantees in the trials of persons considered ideological dissidents, a particularly grave situation given the use of highly summary procedures.

108. The American Declaration establishes that every person has the right to resort to the courts¹²², to protection from arbitrary arrest¹²³, and to due process.¹²⁴ In addition, it indicates that every

¹²² American Declaration, Article XVIII.

human being has the right to liberty¹²⁵ and no one may be deprived of it except in those cases and in the manner established by pre-existing laws.¹²⁶ According to the American Declaration, every individual who has been deprived of liberty has the right for the judge to verify without delay the legality of the measure and to be judged without undue delay, or otherwise to be released.¹²⁷ In addition, every person accused of a crime has the right to be heard impartially and in public, to be judged by courts previously established pursuant to pre-existing laws, and not to be subject cruel, infamous, or unusual punishment.¹²⁸

109. The case-law of the inter-American system has consistently argued that all the organs that perform judicial functions have the duty to adopt fair decisions based on full respect for the guarantees of due process.

110. The right to a trial before a competent, independent, and impartial court previously established by law has been interpreted by the Inter-American Commission and the Inter-American Court to entail certain conditions and standards that must be satisfied by the courts in charge of substantiating any criminal accusation or determining a person's civil, tax, labor, or other rights or obligations.¹²⁹

111. This right to a fair trial, supported by the fundamental concepts of the independence and impartiality of justice, the criminal law principles recognized by international law – presumption of innocence, the principle of *non bis in idem*, and the principles of *nullum crimen sine lege* and *nulla poena sine lege*, as well as the precept that no one may be convicted of a crime except on the basis of individual criminal liability – are widely considered general principles of international law essential for the proper administration of justice and the protection of fundamental human rights.¹³⁰ The requirement of independence, in turn, means that the courts must be autonomous of other branches of government, free from influences, threats, and interference of any origin or for any reason, and have other characteristics necessary for ensuring the appropriate and independent performance¹³¹ of judicial functions, including the stability of a position and adequate professional training.¹³² The impartiality of the courts¹³³ should be

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¹²³ American Declaration, Article XXV.

¹²⁴ American Declaration, Article XXVI.

¹²⁵ American Declaration, Article I.

¹²⁶ American Declaration, Article XXV.

¹²⁷ American Declaration, Article XXV.

¹²⁸ American Declaration, Article XXVI.

¹²⁹ IACHR, *Report on Terrorism and Human Rights*, 2002, para. 228.

¹³⁰ Report of the Special Rapporteur on the Independence and Impartiality of the Judiciary, submitted pursuant to Resolution 1994/41 of the Commission on Human Rights, Commission on Human Rights, 51st session, February 6, 1995, E/CN.4/1995/39, para. 34. IACHR, *Report on Terrorism and Human Rights*, 2002, para. 229.

¹³¹ Similarly, the Court indicated that the impartiality of a court means that its members do not have a direct interest, a position taken, or a preference for any of the parties, and that they are not involved in the dispute. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 146.

¹³² IACHR, *Report on the Situation of Human Rights in Chile*, 1985, Chapter VIII, para. 139; *Report on the Situation of Human Rights in Haiti*, 1995, Chapter V, paras. 276-280; *Report on the Situation of Human Rights in Ecuador*, 1997, April 24, 1997, Chapter III; *Report on the Situation of Human Rights in Mexico*, 1998, Chapter V, paras. 393-398. *Report on Terrorism and Human Rights*, 2002, para. 229.

¹³³ The Inter-American Court has indicated that the right to be tried by an impartial and independent judge or court is a fundamental due process guarantee. In other words, it must be guaranteed that the judge or court in the exercise of its function as trier has the greatest objectivity in handling the trial. Moreover, the independence of the Judicial Branch vis-à-vis the other branches of government is essential for the performance of the judicial function. I/A Court H.R., *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 145; *Case of Herrera Ulloa*, para. 171.

“[O]ne of the principal purposes of the separation of public powers is to guarantee the independence of judges. Such autonomous exercise must be guaranteed by the State both in its institutional aspect, that is, regarding the Judiciary as a system, as well as in connection with its individual aspect, that is to say, concerning the person of the specific judge. The purpose of such protection lies in preventing the Judicial System in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary or even by those judges with review or

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evaluated from a subjective and objective perspective to ensure the non-existence of real prejudice on the part of the judge or court, as well as sufficient guarantees to avoid any legitimate doubt in this regard. These requirements, in turn, require that the judge or court not harbor any real bias in a particular case and that the judge or court not be reasonably perceived as being inclined by such a bias.¹³⁴

112. With respect to the guarantees of independence and impartiality, Article 121 of the Constitution of Cuba establishes:

The courts constitute a system of state bodies which are set up with functional independence from all other systems and subordinate only to the National Assembly of People's Power and the Council of State.

113. In that regard, the Commission reiterates that the deficiencies of the Cuban judicial apparatus begin with the Constitution, which does not establish a separation of powers that ensures the independence of the administration of justice. The Commission recognizes that mere constitutional stipulation of the independence of the judicial organs with respect to the political departments of government is not a sufficient condition for the existence of a proper administration of justice, but it does consider that it is a necessary condition.

114. The subordination of the courts of justice to the National Assembly of People's Power, and especially to the Council of State, establishes a relationship of dependence with respect to the Executive branch. This relationship is reinforced by the function of the Council of State of "giving the laws in force, if necessary, a general and binding interpretation." Also, Article 128 of the Constitution establishes: "The Attorney General of the Republic receives direct instructions from the Council of State."

115. The information available indicates that during 2012, criminal proceedings, especially those brought against political dissidents and opponents, were not conducted in a manner respectful of the international standards on judicial guarantees. In addition, the existence of constitutional provisions with ideological or political references such as Article 5 of the Constitution cited above violate the principle of equality before the law because they place members of the Communist Party on a higher plane than the rest of Cuban citizens who attempt to have an alternative opinion or who take issue with the political system in place.

116. In light of the foregoing considerations, the IACHR observes that the information received during 2012 indicates that the situation related to the structural lack of independence and impartiality persists; and the lack of judicial guarantees and due process in the trial of persons convicted of crimes that in some cases provide for the death penalty, and of persons considered political-ideological dissidents, is an especially serious situation due to the use of highly summary procedures preceded in most cases by arbitrary detentions. This situation is consistent with what has been observed by the Committee Against Torture of the United Nations in its 2011 report in relation to the concern expressed in view of the information that suggests violations of the rules of due process, especially in those cases that include trials for political offenses.¹³⁵

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appellate functions." I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 55.

"Likewise, public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge's freedom of action." I/A Court H.R., Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, para. 131.

¹³⁴ IACHR, Case 11,139, Report No. 57/96, William Andrews (United States), *Annual Report of the IACHR 1997*, paras. 159-161. See also, European Court of Human Rights, Findlay v. United Kingdom, February 25, 1997, *Reports 1997-I*, p. 281, para. 73. IACHR, Report on Terrorism and Human Rights, 2002, para. 229.

¹³⁵ See: Report of the Committee on the Elimination of Racial Discrimination of the United Nations. April 8, 2011. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/420/06/PDF/G1142006.pdf?OpenElement>

117. The information received indicates that on September 23, 2012, Emilio Plana Robert, a member of the Movimiento Resistencia y Democracia, affiliated with the Unión Patriótica de Cuba, was detained and allegedly subjected to a summary procedure that culminated in a judgment of the Municipal Court of Guantánamo on October 5, by which a sentence of 42 months in prison was imposed by application of the criminal statute on “pre-delictive social dangerousness.”¹³⁶

118. In addition, on October 15, 2012, Rafael Matos Montes de Oca, a member of the Movimiento de Resistencia y Democracia, affiliated with the Unión Patriótica de Cuba, was sentenced by a municipal court of Guantánamo to two years and six months by application of the statute on “pre-delictive social dangerousness.”¹³⁷ The information available indicates that Mr. Matos was detained on September 27 by police officials at his home located in the province of Guantánamo. In addition, his family members were unable to appoint legal counsel for his defense, and denounced that the authorities had indicated that he was only under investigation.¹³⁸ The hearing for the trial was held behind closed doors and lasted approximately two hours. The indictment presented by the Office of the Attorney General was said to have been based on the facts that “he did not work, he did not have good ties with his neighbors, he consumed alcoholic beverages, he wandered about at night, and he maintained relations with counterrevolutionary elements.”¹³⁹

119. On October 11, 2012, Reinaldo Castillo Martínez, a member of the Movimiento por los Derechos Humanos Miguel Valdés Tamayo, was convicted by the Municipal Court of Guanabacoa in Havana to one year of imprisonment for the crime of contempt of authority (*desacato*). The accusation was presented by an officer with the National Revolutionary Police of the municipality of Guanabacoa in Havana. It was reported that the detention occurred on October 4 after Mr. Castillo went to Unit 14 of the National Police to file a complaint, and that after having had an incident with officers of that Unit he was arrested. Mr. Castillo publicly denounced that the police beat him before and during the arrest. Members of the Movimiento por los Derechos Humanos denounced that the detention and subsequent conviction were due to the protest activities in which Mr. Castillo participates actively. According to the information available, Reinaldo Castillo was previously convicted in 2010 and sentenced to one year of prison for the same offense of contempt for former president Fidel Castro.¹⁴⁰

120. The Commission was also informed of the conviction and sentence of two years of prison imposed on trade unionist Ulises González.¹⁴¹ According to the information available, Mr. González, Deputy Secretary General of the Sindicato Independiente de Carpinteros por Cuenta Propia (Independent Union of Self-Employed Carpenters), was detained on November 15, 2012, and sentenced to two years in prison by decision of the People’s Municipal Court of Centro Habana on November 28, for the offense of “pre-delictive social dangerousness” after having been subjected to a summary trial.¹⁴²

121. As expressed in previous reports, the Commission considers and reiterates that it considers very serious the repeated use of summary trials in Cuba without the observance of due process guarantees including the minimum guarantees necessary for the accused to exercise his or her right to mount an adequate legal defense. This is consistent with what the concern expressed by the UN Committee Against Torture in its 2012 report that the information available suggests a failure by the State to respect and ensure due process, especially in those cases related to prosecutions for political

¹³⁶ <http://www.misclaneasdecuba.net/web/article.asp?artID=37373> <http://www.cubonet.org/noticias/tribunal-municipal-de-guantanamo-condena-a-otro-opositor/>

¹³⁷ Cubanet.org. [Tribunal Municipal de Guantánamo condena a opositor](#). October 16, 2012

¹³⁸ Cubanet.org. [Tribunal Municipal de Guantánamo condena a opositor](#). October 16, 2012.

¹³⁹ Cubanet.org. [Tribunal Municipal de Guantánamo condena a opositor](#). October 16, 2012.

¹⁴⁰ Misclaneasdecuba.net. [Condenan en juicio sumario a otro opositor cubano](#). December 10, 2012.

¹⁴¹ Information provided to the IACHR by the International Group for Corporate Social Responsibility in Cuba (GIRSCC).

¹⁴² Information provided to the IACHR by the International Group for Corporate Social Responsibility in Cuba (GIRSCC).

offenses.¹⁴³ The Committee expressed its concern over those safeguards that are still not guaranteed, including the failure to guarantee, from the outset of the detention, access to legal counsel, notice to a family member, an independent medical verification, and appearance before the competent judicial authority.¹⁴⁴

122. In addition, the Commission reiterates its concern over the provisions on certain offenses in Cuban legislation that are incompatible with the relevant international standards. The IACHR has referred repeatedly to the problems posed by the vague definition of the offense of “pre-delictive social dangerousness” of a person, established in Article 72 of the Criminal Code. According to what the State of Cuba has indicated, criminal sanctions are not enforced against the persons tried under this statute.¹⁴⁵ Nonetheless, the IACHR notes the observation made by the Committee Against Torture in its 2012 report to the effect that other corrective measures (“re-educational, therapeutic or surveillance”) established in Articles 78 to 84 of the Criminal Code provide for the possibility of confinement for one to four years in “specialized establishments for work or study, care facilities, psychiatric institutions, or detoxification centers.” The IACHR has referred in earlier reports to how the Government of Cuba uses the criminal legislation on “dangerousness” as well as the “special proclivity of a person to commit criminal offenses” to detain opponents of the regime.¹⁴⁶

123. The Commission has repeatedly recommended that the State of Cuba adopt the measures necessary to bring the laws, procedures, and practices into line with international human rights provisions. In particular, the Commission has recommended reforming the criminal legislation for the purpose of ensuring the right to justice and the right to due process, and beginning a process of reforming the Constitution with a view to ensuring the independence of the judicial branch.

124. The Commission has observed, as explained at the beginning of this report, that through very summary proceedings political dissidents and those who have attempted to flee the island have been put on trial, and that the death penalty as a result of such trials that violate minimum due process standards.¹⁴⁷

IV. SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

125. In previous reports the IACHR has valued the international opening manifested by the government of Cuba since 2008. In addition, in its 2011 report the Commission highlighted the approval of a plan of economic reforms during the Sixth Congress of the Communist Party of Cuba to “bring up-to-date the Cuban economic model with the objective of ensuring the continuity and irreversibility of Socialism.”¹⁴⁸ The Commission valued the measures approved in relation to the purchase and sale of housing as between natural persons and the forms of transmitting property rights, as well as the regulations regarding the purchase and acquisition of vehicles.¹⁴⁹

126. In 2012, the Commission learned of the adoption of additional measures in the context of implementing the 2011 plan of economic reforms. In this regard, special note is made of the adoption of a series of provisions that would make it possible to open up the system of cooperatives in Cuba by

¹⁴³ Committee Against Torture of the United Nations. 48th Regular Session. May 7 to June 1, 2012, para. 8.

¹⁴⁴ Committee Against Torture of the United Nations. 48th Regular Session. May 7 to June 1, 2012, para. 8.

¹⁴⁵ Committee Against Torture of the United Nations. 48th Regular Session. May 7 to June 1, 2002, para. 12.

¹⁴⁶ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

¹⁴⁷ IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo et al. (Cuba), October 21 2006, paras. 87-92.

¹⁴⁸ [Lineamientos de la Política económica y social aprobados por el Partido y la Revolución](#), 6th Congress of the Communist Party of Cuba, April 18, 2011.

¹⁴⁹ Annual Report 2011, paras. 236 and 237.

establishing – gradually – that such forms of association need not be exclusively agricultural.¹⁵⁰ According to the information published in the official daily newspaper Granma, the adoption of this new legal framework is in an initial experimental phase during which it is anticipated that more than 200 cooperatives will be established in different activities such as “transportation, the production of building materials and services, personal, domestic, and professional services (specifically translation, information technology, and accounting services).”¹⁵¹

127. The Commission values the efforts made by the State in the area of economic, social, and cultural rights and reiterates its recognition of the important gains made by Cuba in relation to the millennium development goals established by the United Nations.¹⁵² The IACHR values in particular the gains made in maternal health, especially the fact that 100% of births were attended to by qualified personnel.¹⁵³

128. The IACHR especially salutes the elimination of child malnutrition in Cuba. The United Nation Children’s Fund (UNICEF) in its report “Progress for Children: A Report Card on Nutrition,” determined that Cuba is the only country in Latin America and the Caribbean that has eliminated child malnutrition, a scourge that according to that same report affects the 7% of all children under 5 years of age in Latin America and the Caribbean who suffer serious problems of child malnutrition.¹⁵⁴

129. Regarding the advances in economic, social and cultural rights, the delegate of the Cuban State indicated before the UN Committee on the Elimination of Racial Discrimination that “Access to all levels of education was free and universal. Cuba had exceeded the six objectives of the UNESCO “Education for All” programme and had fully achieved the tirad and fourth Millennium Development Goals. The enrolment rate at all levels of schooling was over 99 per cent, and almost 70 per cent of young people studied at university. The right to culture was fully guaranteed and available to all sectors of society. The right to work had constitutional status, and at the end of 2010 the unemployment rate had stood at 1.6 per cent. Every Cuban was guaranteed access to free, high-quality health services under the national health system. Cuba’s health indicators were similar to those of developed countries; in 2010, the infant mortality rate had been 4.4 per 1,000 live births and 23 of the country’s municipalities had recorded zero rates. Every member of Cuba’s population was guaranteed social protection through the system of social security and welfare.”¹⁵⁵

130. Also, the Cuban State expressed before the UN Committee on the Elimination of Discrimination against Women that “As a result of medical and health care and State measures to improve the quality of life of the general population, life expectancy in Cuba has now attained 77.97 years, one of the highest values of this indicator in the regions, and an improvement over the figure of 76 years in the previous report. For women, the indicator is 80.02 years, 4.02 years higher than the life

¹⁵⁰ The measure entered into force with the publication in the Gaceta Oficial Extraordinaria No. 53 of December 11, 2012 of Decree-Laws Nos. 305 and 306 of the Council of State, of November 15 and 17, 2012, respectively; Decree No. 309 of the Council of Ministers of November 28, 2012; and Resolutions Nos. 427/2012 and 570/2012 of the Ministry of Finance and Prices and the Ministry of Economy and Planning, respectively. In this respect see: Granma. [Una experiencia favorable para la economía y la sociedad cubanas](#). December 13, 2012; Cubadebate. [Aprueban en Cuba constitución de cooperativas en sectores no agropecuarios](#). December 11, 2012.

¹⁵¹ Granma. [Una experiencia favorable para la economía y la sociedad cubanas](#). December 13, 2012.

¹⁵² See Report by Cuba on the Millennium Development Goals 2010.

¹⁵³ United Nations Population Fund, State of World Population 2012, Available at: <http://www.unfpa.org/webdav/site/global/shared/swp/2012/SP-SWP2012-Report.pdf>

¹⁵⁴ http://www.bbc.co.uk/mundo/cultura_sociedad/2010/01/100126_1823_unicef_cuba_gz.shtml

¹⁵⁵ UN, Committee on the Elimination of Racial Discrimination, Seventy-eighth session. Summary record of the 2055th meeting Held at the Palais Wilson, Geneva. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued). Fourteenth to eighteenth periodic reports of Cub.

Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/409/98/PDF/G1140998.pdf?OpenElement>

expectancy for men. The overall fertility rate is 1.70 children per woman, and the gross rate of reproduction is 0.82 daughters per woman.”¹⁵⁶

V. SITUATION OF PARTICULAR GROUPS

131. In the process of evaluating the human rights situation the Commission has received information related to the situation of certain groups in particular, and the gains and challenges they pose related to the enjoyment of their rights given that they face structural situations – analyzed throughout this report – that have a disproportionate impact on them, bearing in mind their special situation of vulnerability due to the context of discrimination to which they have been subjected historically. In this regard, the IACHR makes additional mention, in this section, of the information received in relation to the protection of the rights of lesbian, gay, trans, bisexual, and intersex persons; and the situation of the Afrodescendent population in Cuba.

A. Situation of lesbian, gay, trans, bisexual, and intersex (“LGTBI”) persons

132. In relation to the protection of the rights of the LGTBI community in Cuba, in 2012 the IACHR received information on certain progress in this area. In that regard, LGTBI organizations celebrated express recognition by the Communist Party of Cuba of sexual orientation as one of the grounds of discrimination that need to be addressed in Cuba.¹⁵⁷ In addition, the IACHR recognizes the efforts made by the National Center for Sex Education (CENESEX), a state entity that works on issues of sexual diversity, to promote and protect the rights of LGTBI persons.

133. In November 2012 the first trans delegate was elected to the Municipal Assemblies of People’s Power in the municipality of Caibarién. Adela – registered at birth as José Agustín Hernández González – 48 years of age, was elected municipal delegate in an event that is unprecedented in Cuban history.¹⁵⁸

134. In this respect, it is worth noting that the General Assembly of the OAS urged the States “within the parameters of the legal institutions of their domestic systems to eliminate, where they exist, barriers faced by [LGBTI] persons in access to political participation and in other areas of public life.”¹⁵⁹

135. Without prejudice to the foregoing, in 2012 the Commission also learned of situations of discrimination and violence with respect to LGTBI persons in Cuba. With respect to acts of violence, on January 4, 2012, in the municipality of Guaimaro in the province of Camagüey, a trans woman 18 years of age, Jessica – registered at birth as Luis Leidel – was allegedly beaten by police agents without any motivation. According to the information received by the IACHR, Jessica was subsequently taken to a police station, where she was once again beaten and left in a cell in which she died due to the blows received.¹⁶⁰

¹⁵⁶ UN, Committee on the Elimination of Discrimination against Women, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined seventh and eighth periodic reports of States parties, Cuba, April 2011.

Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/423/53/PDF/G1142353.pdf?OpenElement>

¹⁵⁷ Organización Hombres por la Diversidad. Available at: http://hxdcuba.blogspot.com/2012/02/aprobo-partido-comunista-enfrentar_06.html.

¹⁵⁸ Cubaencuentro, *Un transexual es elegido delegado municipal en Caibarién*, Villa Clara, 17 November 2012. Available at: <http://www.cubaencuentro.com/cuba/noticias/un-transexual-es-elegido-delegado-municipal-en-caibarien-villa-clara-281620>; EFE, *Transsexual wins local office in Cuba*, 17 November 2012. Available at: <http://www.efe.com/efe/noticias/english/world/transsexual-wins-local-office-cuba/4/2060/1912261>

¹⁵⁹ OAS, AG/RES. 2721 (XLII-O/12) “Human Rights, Sexual Orientation, and Gender Identity,” adopted June 4, 2012, operative paragraph 1.

¹⁶⁰ Carsten Balzer and Jan Simon Hutta, Transmurder Monitoring Project, a project of Transrespect versus Transphobia Worldwide, “List of 265 reported murdered trans persons from November 15th, 2011 to November 14th, 2012 (in chronological order)”, available at: <http://www.transrespect-transphobia.org/uploads/downloads/TMM/TvT-TMM-TDOR2012-NameList-en.pdf>

136. In this respect, the IACHR recalls that it is an obligation of the Cuban State to investigate such incidents at its own initiative and to punish those responsible. The Commission urges the State to open lines of investigation that take into account whether these acts were committed because of the victim's sexual orientation, gender identity, or gender expression. In this regard it is noteworthy that the OAS General Assembly this year approved Resolution 2721 "Human Rights, Sexual Orientation, and Gender Identity" by which the member states of the OAS resolved to "condemn acts of violence and human rights violations committed against persons by reason of their sexual orientation and gender identity; and to urge states to strengthen their national institutions with a view to preventing and investigating these acts and violations and ensuring due judicial protection for victims on an equal footing and that the perpetrators are brought to justice."¹⁶¹

137. In relation to acts of discrimination, in May 2012, the Observatorio Cubano de los Derechos LGBT (OBCUD LGBT) denounced situations of repression against them from the start of the Fifth Campaign against Homophobia in Cuba (V Jornada contra la Homofobia en Cuba).¹⁶² According to the information received by the IACHR, some members of OBCUD LGBT were kidnapped, locked up, and interrogated in jails by state security officers so that they would not participate in the activities organized by the National Center for Sex Education (CENESEX) in the framework of that campaign on May 11, 2012. The organization noted that such repression was due to its maintaining a position different from that of the governmental entity CENESEX, and that they have publicly indicated that they would "made a special appeal to" ("*emplazarían*") Mariela Castro, director of CENESEX, if they were to encounter her.¹⁶³ This organization indicates that it has attempted to "legalize its situation" to win legal recognition of its status as an organization at the domestic level. Nonetheless, they allege that the State and the CENESEX do not recognize them.¹⁶⁴

138. On November 18, 2012, the Proyecto Cubano Shui Tuix alleged that police authorities were harassing the LGTBI population in Havana, including shutting down and imposing excessive controls in bars and restaurants where LGTBI persons socialize.¹⁶⁵

139. The IACHR reiterates to the Cuban Government that the right of all persons to live free from discrimination is guaranteed by international human rights law, the American Declaration and the American Convention. The IACHR urges Cuba to take actions to prevent and respond to violations of the human rights of LGTBI persons, including adopting legislation, public policies, and campaigns against discrimination based on sexual orientation, general identity, and gender expression.

B. Situation of the Afrodescendent population

140. Official figures from the 2002 Census of Population and Housing in Cuba indicate that approximately 10.1% of the population is Afrodescendent.¹⁶⁶

¹⁶¹ OAS, AG/RES. 2721 (XLII-O/12) "Human Rights, Sexual Orientation, and Gender Identity," adopted June 4, 2012, operative paragraph 3.

¹⁶² In August 2012, the OBCUD LGBT distributed a bulletin entitled "Verdad y Memoria" ("Truth and Memory") that seeks to vindicate the rights of the LGTBI persons who in 1960 were taken to the Military Units to Help Production (UMAP) where, according to the organization, they were arbitrarily detained and tortured because of their sexual orientation and gender identity. Observatorio Cubano de Derechos LGBT, Verdad y Memoria, Boletín Semanal sobre las Unidades Militares de Ayuda a la Producción (UMAP), No. 1, August 2012. Available at: <http://www.cubanet.org/wp-content/uploads/2012/08/Folleto-2-hojas1.pdf>.

¹⁶³ Observatorio Cubano de Derechos LGBT, comunicado of May 14, 2012. Available at: <http://observacuba.org/denuncia-del-observatorio-cubanos-de-derechos-lgbt/>.

¹⁶⁴ OBCUD LGBT. Available at: <http://observacuba.org/dossier-obcud-lgbt/>.

¹⁶⁵ Cubaencuentro, *Proyecto LGBT cubano denuncia acoso policial al colectivo y cierre de locales en La Habana*, November 20, 2012. Available at: <http://www.cubaencuentro.com/cuba/noticias/proyecto-lgbt-cubano-denuncia-acoso-policial-al-colectivo-y-cierre-de-locales-en-la-habana-281675>

¹⁶⁶ The information presented by the Government of Cuba to the United Nations Committee on the Elimination of Racial Discrimination indicated that according to the 2002 census, "Cuba had a total of 11,177,743 inhabitants....Information was collected
Continues...

141. In 2012, the IACHR monitored the situation of the Afrodescendent population in Cuba. During the 146th regular period of sessions a hearing was held on the situation of the Afrodescendent population in Cuba in which the Commission received information on the challenges Afro-Cubans face in the observance and enjoyment of their rights.

142. The Commission takes into account the context of discrimination to which Afrodescendent persons in the Americas have been and continue to be subjected.¹⁶⁷ In that regard, the information received indicates that Afro-Cubans are particularly vulnerable in the face of arrangements of exclusion and racism that are aggravated by the failure to adopt effective political and institutional measures to eradicate such discrimination.

143. In this respect, the IACHR notes what was observed by the United Nations Committee on the Elimination of Racial Discrimination in its 2012 report, to the effect that the Cuban legal order, specifically in the criminal legislation, does not establish racial motivation as an aggravating circumstance for determining criminal liability.¹⁶⁸

144. The IACHR takes into account that the State has made efforts to address the situation of racial discrimination in Cuba, including affirmative actions aimed at ensuring greater representation of Afrodescendent persons in public office.¹⁶⁹ According to official figures, of the 611 deputies who make up the National Assembly of People's Power, approximately 19.5% are Afrodescendent persons.¹⁷⁰ In addition, in the elections of delegates to the Municipal Assemblies of People's Power held in October 2012, of the 14,537 persons elected, 11.61% are Afro descendants, according to the data offered by the National Electoral Commission.¹⁷¹ In that regard, the IACHR observes that while inclusion of the Afrodescendent population in public office has been achieved, this measure does not address the design of a public policy aimed at ensuring the effective representation of the Afro-Cuban population in matters of national interest, mindful that the election of such positions is not held with the full guarantees of a democratic system, as analyzed above. In effect, according to the information received, the elections of delegates to the municipal assemblies were not held in conditions that ensured genuine political representation of the Afro-Cuban population.

145. The Commission further notes the existence of specialized commissions entrusted with studying this phenomenon in Cuba, such as the "Commission against racism and racial discrimination of the Union of Writers and Artists of Cuba (UNAEC)" and the "Inter-institutional Commission coordinated by the José Martí National Library," in addition to the creation of a "coordinating group to examine and propose actions linked to the racial question, under the Central Committee of the Communist Party of Cuba."¹⁷² In this respect, the IACHR received information that indicates that the composition of these commissions is entrusted to an official organ, the "Central Committee of the Communist Party."

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on a number of personal details, including sex, age, level of education, and skin colour. Where skin colour is concerned, 65 per cent of the population was listed as white, 10.1 per cent as black, and 24.9 per cent as mestizo." See: United Nations Committee on the Elimination of Racial Discrimination, January 20, 2010, para. 22. Available at: <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.CUB.14-18.pdf>

¹⁶⁷ See: IACHR, *Report on the Situation of People of African Descent in the Americas*. 2011.

¹⁶⁸ See: Report of the Committee on the Elimination of Racial Discrimination. April 8, 2011. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/420/06/PDF/G1142006.pdf?OpenElement>

¹⁶⁹ See: Report of the Committee on the Elimination of Racial Discrimination. April 8, 2011. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/420/06/PDF/G1142006.pdf?OpenElement>

¹⁷⁰ The information available indicates the following: 265 are women, 43.37%; 393 are white, 64.32%; 117 are black, 19.15%; 101 are mestizos, 16.53%; and 285 are municipal delegates, 46.64%. Information available at: <http://www.cubadebate.cu/cuba/asamblea-nacional-poder-popular/>

¹⁷¹ Trabajadores.cu. [Constituidas las Asambleas Municipales del Poder Popular](http://trabajadores.cu/constituidas-las-asambleas-municipales-del-poder-popular). November 25, 2012.

¹⁷² Information provided by the State in its 2011 report to the Committee on the Elimination of Racial Discrimination, see paras. 4 and 5. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/420/06/PDF/G1142006.pdf?OpenElement>

146. In light of the states' obligation to adopt affirmative measures to reverse situations of discrimination, as well as their duty of special protection vis-à-vis the actions of private persons who also further such discrimination, in analyzing the situation of Afrodescendent persons in the Region the Commission has highlighted the non-existence of independent national human rights agencies and/or institutions.¹⁷³ In the case of Cuba, the IACHR observes that there is no independent national body authorized to monitor and address, in particular, issues related to the situation of racism and racial discrimination that affects Afro-Cuban persons.¹⁷⁴

147. In addition, the Commission has been informed that in the face of government initiatives related to the rights of Afrodescendent persons, there would appear to be limited access to the activities undertaken pursuant to such initiatives by civil society and independent organizations also dedicated to the promotion and defense of the human rights of Afro-Cuban persons. Accordingly there do not appear to be forums for engagement with official agencies to address the structural issues of discrimination.

148. In 2012, the Commission also continued to receive information on the establishment of racial profiles as a selective and discretionary mechanism for detaining and investigating persons, as a practice often used by the state authorities that has a disproportionate impact on Afrodescendent persons, who face many levels of discrimination, giving rise to a situation of constant risk for Afro-Cubans. That context is aggravated by the lack of public policies aimed at generating an effective process of raising the awareness of the population so as to lead to the elimination of racial prejudices and stereotypes.

V. RECOMMENDATIONS

149. Taking into consideration all the foregoing, the Commission once again states that the restrictions on political rights, the freedom of expression and the dissemination of ideas, the lack of elections, the lack of independence of the judiciary, and the restrictions on the right to residence and movement add up to a permanent situation of violation of the fundamental rights of Cuban citizens in Cuba and urges the State to make the reforms needed in keeping with its international human rights obligations.

1. The Commission urges the State of Cuba to bring its procedural laws into line with the applicable international standards on due process so that persons who go before the courts for the determination of their rights and responsibilities can enjoy minimum legal guarantees to mount a defense. In particular, it should void the convictions of the victims in case 12,476.

2. In addition, the Commission urges the State of Cuba to adopt the legislative and other measures necessary to ensure that the death penalty is not applied in violation of the principles of due process and a fair trial conducted before a competent, independent, and impartial court previously established by law.

3. The IACHR also urges the Cuban State to eliminate the provisions on "dangerousness" and "special proclivity of a person to commit crimes" found in the Criminal Code.

4. The Commission urges the Cuban State to adopt measures to prevent and eradicate the different forms of harassment of those who exercise the right to association and assembly for humanitarian and trade union purposes, and against those who are dedicated to defending and promoting human rights.

¹⁷³ See: IACHR, *Report on the Situation of People of African Descent in the Americas*. 2011, para. 205.

¹⁷⁴ In its 2011 report, the UN Committee for the Elimination of Racial Discrimination encouraged the State to create an independent organ of this nature or "an independent national human rights body, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights," para. 13.

5. The Commission also recommends to the Cuban State that it adopt the measures necessary to ensure its citizens the right to freely determine their place of residency, freedom of movement in Cuban territory, and the freedom to leave and enter the country.

HONDURAS

I. INTRODUCTION

150. The Commission has followed the human rights situation in Honduras with particularly close attention, and it has observed, through its reports, a series of structural issues in the areas of justice, security, marginalization and discrimination, which have affected for decades the human rights of its people. In addition, it has observed that since the 2009 *coup d'état* there have been human rights violations that have gravely affected the Honduran population, the effects and repercussions of which have continued, persisted, and made the situation of the country more complex¹⁷⁵.

151. In the years 2009, 2010, and 2011, the IACHR decided to include Honduras in Chapter IV of its Annual Report, in accordance with Article 59(1)(h) of its Rules of Procedure, because it considered that the situation met the criteria contained in its Annual Report of 1997, as well as those criteria identified in the introduction to the present Chapter.

152. The information received in 2012 in connection with Honduras relates to a number of structural issues that the IACHR observes with particular concern, particularly the situation related to citizen security, the independence of the judiciary, and the weaknesses in the administration of justice related to the high rates of impunity, discrimination and marginalization of certain sectors of society. Additionally, part of the information relates to the effects or consequences of the 2009 *coup d'état*, particularly on the right to freedom of expression and the situation of human rights defenders who monitor situations derived from the coup, among them the role that the military plays in domestic security and issues related to the separation of powers¹⁷⁶. In this regard, the IACHR observes with concern the high rate of non-compliance with the recommendations issued by the Truth and Reconciliation Commission (CVR).

153. Having evaluated the human rights situation in Honduras, the Commission decided to include it in the present Chapter because it falls under the fifth criteria established in the Annual Report of 1997, as regards to circumstantial or structural situations which for various reasons have a serious and grave effect on the enjoyment and exercise of the fundamental human rights enshrined in the American Convention on Human Rights or the American Declaration. To that end, the IACHR recounts the activities conducted in 2012 in connection with Honduras, analyzes its human rights situation, identifies good government practices, and makes recommendations.

154. On January 23, 2013, the Commission conveyed this report to the State of Honduras, and the State's reply was received on February 23, 2013.¹⁷⁷

¹⁷⁵ In 2009, 2010 and 2011, the IACHR decided to include Honduras in Chapter IV of its Annual Report, pursuant to Article 57(1)(h) of its Rules of Procedure, having determined that the situation in Honduras fit the criteria set forth in the 1997 Annual Report.

¹⁷⁶ In its observations on the draft of this report, the State of Honduras said that, "if this is the IACHR's Annual Report for 2012, it is not logical to refer, each year, to the political crisis of 2009, when, in the 'Introduction' section, the IACHR itself states that the reason for including the country this year is chiefly the existence of structural situations." Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

¹⁷⁷ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

II. ANALYSIS OF THE HUMAN RIGHTS SITUATION IN HONDURAS

155. With the purpose of monitoring the situation in Honduras, in 2012 the Commission used a variety of mechanisms, which included public hearings on general topics, and hearings on specific cases held during the Commission's 144th (March 19 to 30, 2012) and 146th periods of sessions (October 29 to November 16, 2012);¹⁷⁸ press releases;¹⁷⁹ requests for information to the State pursuant to Article 41¹⁸⁰ of the American Convention on Human Rights, and visits.¹⁸¹

156. In this document, the IACHR analyzes the human rights situation in Honduras, for which it first refers to the facts related to the 2009 coup d'état. It continues with an analysis of the situation related to citizen security, the judiciary and its independence, and the exercise of freedom of expression. It then reviews the situation related to economic, social and cultural rights to highlight some good practices adopted by the State. In addition, it refers to the situation of human rights defenders, persons deprived of liberty, women, children, indigenous peoples, afro-descendants, the LGBTI population, and migrant workers and their families, to finalize with some recommendations.

A. THE 2009 COUP D'ÉTAT

157. On June 28, 2009, a civilian military *coup d'état* in Honduras toppled the government of the Constitutional President, Manuel Zelaya Rosales. That democratically elected government was replaced by a *de facto* government headed by Roberto Micheletti. The IACHR immediately condemned the *coup d'état*.¹⁸²

¹⁷⁸ During its 144th regular period of sessions, the Commission held the following public hearings on Honduras: the "Human Rights Situation of Persons Deprived of Liberty in Honduras," and the "State of Fundamental Freedoms and Their Effect on the Protection of Human Rights in Honduras." The Commission also held a hearing on the merits of Case No. 12.816 (Guillermo López Lone *et al.*, Honduras). During the 146th session, the IACHR held a public hearing on the "Right to Freedom of Expression in Honduras". Hearings and videos available at: www.iachr.org.

¹⁷⁹ In 2012, the IACHR issued the following press releases in connection with Honduras: [19/12 - IACHR Deplores Deaths in Fire in Honduran Prison](#), Washington, D.C., February 15, 2012; [43/12 - Rapporteurship on the Rights of Persons Deprived of Liberty Finds Serious Structural Deficiencies in Prisons of Honduras](#), Tegucigalpa, Honduras, April 27, 2012; [R46/12 - Office of the Special Rapporteur of Freedom of Expression, the Rapporteurship on Human Rights Defenders and the Unit for the Rights of LGBTI Persons Condemn Murder of Journalist and LGBTI Activist in Honduras](#), Washington, D.C., May 11, 2012.; [R52/12 - The Office of the Special Rapporteur Condemns Murder of Journalist Kidnapped in Honduras](#), Washington, D.C., May 17, 2012; [109/12 - IACHR Condemns the Murder of a Trans Woman in Honduras](#), Washington, D.C., August 28, 2012; [121/12 - IACHR Condemns Murder of Human Rights Defenders in Honduras](#), Washington, D.C., September 28, 2012. Press releases available at: www.iachr.com.

¹⁸⁰ In 2012, the IACHR requested information from the Honduran State on the following occasions: on February 17, 2012, concerning the fire at the Comayagua National Penitentiary; on May 11, 2012, concerning the assassination of activist Eric Alexander Martínez Ávila; on May 17, 2012, concerning the death of Santos Alberto Domínguez Benítez, and on December 17, 2012, concerning the Situation of the Constitutional Chamber of the Supreme Court. The Office of the Special Rapporteur for Freedom of Expression submitted a request for information on February 7, 2012, concerning the situation of journalists Uriel Rodríguez, Istmania Pineda and Gilda Silvestrucci.

¹⁸¹ - The IACHR's Rapporteurship on the Rights of Persons Deprived of Liberty conducted an observation visit to Honduras from April 23 through 27, 2012, to ascertain the general situation of the Honduran correctional system and to make recommendations to the State. IACHR, Press Release [43/12 - Rapporteurship on the Rights of Persons Deprived of Liberty Finds Serious Structural Deficiencies in Prisons of Honduras](#), Tegucigalpa, Honduras, April 27, 2012.

- From May 28 to 30, 2012, staff from the IACHR's Executive Secretariat participated in the public hearing and in the international academic seminar on the "Situation of Human Rights Defenders in Bajo Aguan, Honduras," which was held in Tocoa, Colón, Honduras. The human rights specialists from the IACHR attended the public hearing and, at the seminar, explained the inter-American system for the protection of human rights and the mechanism of precautionary measures. IACHR, Rapporteurship on Human Rights Defenders, Promotion and other activities. See at: <http://www.oas.org/en/iachr/defenders/activities/activites.asp>.

- On July 23, 2012, Rapporteur Rosa María Ortiz joined with the United Nations Office of the High Commissioner for Human Rights (OHCHR) and the United Nations Children's Fund (UNICEF) to present the Inter-American Commission's report on *Juvenile Justice and Human Rights in the Americas and Citizen Security and Human Rights*, both prepared by the IACHR. This presentation was delivered during the Forum on Juvenile Criminal Justice organized by UNICEF.

¹⁸² IACHR, Press Release 42/09: *IACHR Strongly Condemns Coup d'état in Honduras*, June 28, 2009. Available at <http://www.IACHR.oas.org/Comunicados/English/2009/comunicados2009eng.htm>

158. On July 4, 2009, because of the disruption of democratic order the OAS General Assembly resolved “to suspend the Honduran state from the exercise of its right to participate in the Organization of American States, in accordance with Article 21 of the Inter-American Democratic Charter”¹⁸³ 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.” (Resolution AG/RES. 2 XXXVII-E/09).¹⁸⁴

159. In exercise of its authority to promote the observance of and respect for human rights in the hemisphere and to follow up on OAS General Assembly resolution AG/RES 2 XXXVII-E/09, the Commission took a number of measures and closely followed the human rights situation in Honduras. In 2009, the IACHR conducted an *in loco* visit to Honduras and in December of that year published the report titled “Honduras: Human Rights and the *Coup d’état*.” As a result of the *coup d’état*, the Commission granted many precautionary measures to protect persons whose lives and personal integrity were in peril; it published multiple press releases, held public hearings and requested information pursuant to Article 41 of the American Convention and Article XIV of the Inter-American Convention on Forced Disappearance of Persons.¹⁸⁵

160. In May 2010, the Commission visited Honduras again to follow up on the *in loco* visit and its 2009 Report. In June 2010 it published the document titled “Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010.”¹⁸⁶

161. While the *de facto* government was in power in Honduras, the IACHR confirmed that along with the loss of institutional legitimacy brought about by the *coup d’état*, serious human rights violations had been committed, including the killing of at least seven people; a state of emergency had been arbitrarily declared; force was used disproportionately against public demonstrations; public protest was criminalized; thousands of persons were arbitrarily detained; many Hondurans were the victims of cruel, inhuman and degrading treatment; detention conditions were poor; Honduran territory was militarized; incidents of racial discrimination increased; women’s rights were violated, and severe and arbitrary restrictions were imposed on the right to freedom of expression.¹⁸⁷

162. Mr. Porfirio Lobo Sosa was sworn in as the elected president of the country on January 27, 2010.¹⁸⁸

¹⁸³Article 21 of the Inter-American Democratic Charter:

When the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states in accordance with the Charter of the OAS. The suspension shall take effect immediately.

The suspended member state shall continue to fulfill its obligations to the Organization, in particular its human rights obligations.

Notwithstanding the suspension of the member state, the Organization will maintain diplomatic initiatives to restore democracy in that state.

¹⁸⁴ OAS, Resolution [AG/RES. 2 \(XXXVII-E/09\)](#), on the suspension of the right of Honduras to participate in the Organization of American States. Thirty-seventh Special Session. OEA/Ser.P. July 4, 2009.

¹⁸⁵ Given the number and magnitude of complaints, the IACHR instituted a series of measures to ensure that human rights in Honduras were respected. These included, *inter alia*, requests for precautionary measures, requests seeking information in exercise of its authority under Article 41 of the American Convention, press releases, and others. Available at www.iachr.org.

¹⁸⁶ IACHR, Preliminary Observations of the Inter-American Commission on Human Rights on Its Visit to Honduras, May 15 to 18, 2010. June 3, 2010. Available at: <http://www.IACHR.org/countryrep/Honduras10eng/Honduras10TOC.eng.htm>

¹⁸⁷ IACHR, Preliminary Observations of the Inter-American Commission on Human Rights on Its Visit to Honduras, May 15 to 18, 2010. June 3, 2010 paragraph 9.. Available at: <http://www.IACHR.org/countryrep/Honduras10eng/Honduras10TOC.eng.htm>.

¹⁸⁸ Candidate of the National Party elected President of the Republic of Honduras on November 27, 2009.

163. On June 1, 2011, the 41st special session of the OAS General Assembly lifted the suspension of Honduras's right to participate in the Organization that had been adopted by means of AG/RES. 2 (XXXVII-E/09) on July 4, 2009.¹⁸⁹

1. Truth and Reconciliation Commission

164. On July 7, 2011, the Truth and Reconciliation Commission (CVR),¹⁹⁰ created in 2010, released its report "*Para que los Hechos no se Repitan*"¹⁹¹ ['So that the events are not repeated]. In its report, the CVR found the events of June 28, 2009 to be a *coup d'état*, and not constitutional succession, as the de facto government of Roberto Micheletti regarded them.¹⁹² Additionally, the CVR established in its report that "Honduras lacks a clear procedure to settle disputes between the Branches of the State and a way to address and solve when a president or high-level official must undergo investigation or removal. The lack of a defined procedure can cause the overstepping of functions of the National Congress."¹⁹³

165. In the chapter "Findings and Recommendations," the CVR noted that it confirmed the disproportionate use of force by the military and police institutions during the *coup d'état* and the *de facto* government; the result of which were human rights violations, which manifested themselves in the form of violent deaths, deprivation of liberty, torture, rape and political persecution. In this regard, it recommended the State to publically recognize that its authorities and agents committed human rights violations, apologize to the victims and pledge to them and to society that such violations will not be repeated.¹⁹⁴

166. Additionally, the CVR recommended that the State investigate, prosecute and punish those responsible for the human rights violations taking place from June 28, 2009 until January 27, 2010:

The State of Honduras in fulfillment of its international obligations must investigate, try and punish all human rights violations, which took place from June 28, 2009 to January 27, 2010, as well as the responsibility of the persons identified as the main perpetrators of the violations, without excluding the highest levels of responsibility and without undue delay, and should ensure all protections of due process for the accused persons, including the presumption of their innocence, assistance of an attorney, full access to evidence and opportunities to examine and refute evidence. For this purpose, the Government of Honduras is to provide the Office of the Public

¹⁸⁹ AG/RES. 1 (XLI-E/11), Resolution on the Participation of Honduras in the OAS. OEA/Ser. P. June 1, 2011. Forty-first Special Session. In its comments the State noted the importance of adding this provision, since its absence seemed to indicate that the State was still subject to the suspension sanction. AG/RES. 1 (XLI-E/11), Resolution on the Participation of Honduras in the OAS. OEA/Ser. P. June 1, 2011. Forty-first Special Session. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

¹⁹⁰ The Truth and Reconciliation Commission (CVR) was created on April 13, 2010, under Executive Decree PCM-011-2010, issued by President Porfirio Lobo Sosa. On May 4, 2010, the CVR began its work and was made up of Eduardo Stain, Coordinating Commissioner; Michael F. Kergin, María Amabilia Zavala Valladares, Julieta Castellanos and Jorge Omar Casco Zelaya, Commissioners and Sergio Membreño Cedillo as Executive Secretary.

¹⁹¹ Report "*Para que los Hechos no se Repitan*" ['So that the events are not repeated'], available at: <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/TOMO-I-FINAL.pdf>

¹⁹² In the Report "*Para que los Hechos no se Repitan*", Findings and Recommendations Section – Principal Findings in connection with the events of June 28, 2009," the Commission expressly notes in paragraph 6: "We the commissioners recognize that the call by the President of the Republic to a consultation first and opinion poll afterwards, known as the fourth ballot, marked a definitive and irreversible element of confrontation, culminated in the arrest of President Jose Manuel Zelaya under judicial order and then his expulsion to San Jose, Costa Rica, the *coup d'état* against the Executive Branch being executed in this way."

¹⁹³ CVR, Report "*Para que los Hechos no se Repitan*", Findings and Recommendations Section – Principal Findings in connection with the events of June 28, 2009, para. 15. Available at <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/hallazgos-y-recomendaciones-low.pdf>.

¹⁹⁴ CVR, Report "*Para que los Hechos no se Repitan*", Findings and Recommendations Section – Principal Findings in connection with the events of June 28, 2009, para. 35. Available at <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/hallazgos-y-recomendaciones-low.pdf>.

Prosecutor and the competent judges the technical, logistical and budgetary support necessary to successfully carry out these investigations and proceedings. The Armed Forces, the National Police and other competent institutions must cooperate fully in a timely manner with the Office of the Public Prosecutor for these investigations, including identifying suspects, providing information and access to its files, records of operational orders, communications and intelligence reports and any other internal and personal documentation that may be relevant in the investigations into human rights violations.¹⁹⁵

167. The CVR also recommended the following to the Honduran State:

The Government and National Congress of Honduras must publically pledge to the victims to redress them for the damage that its agents caused them, under standards of restitution, indemnification, rehabilitation, satisfaction and guarantees of non repetition, and should establish a national reparation plan to ensure full redress of the victims of human rights violations stemming from the political crisis following June 28, 2009.

The Government and Judiciary must ensure full reparation to the victims of human rights violations stemming from the political crisis following June 28, 2009, under the responsibility of the State of Honduras or, as appropriate, under the responsibility of the perpetrators of said violations.

The State of Honduras must take measures of public acknowledgement of the victims individually and collectively, such as naming public facilities, monuments or commemorative plaques or other appropriate things after them.

The State of Honduras must publically acknowledge that the authorities and agents committed human rights violations, apologize to the victims and promise them and society that such violations shall not be repeated.

The State of Honduras must provide to the victims of human rights violations, or to their loved ones, the information that is in the possession of the state security forces on them [the victims] and disclose how it has been used.¹⁹⁶

168. In May 2012, the members of the CVR asked Congress to appoint a working team to follow up on the recommendations the CVR made in its report.¹⁹⁷ In its June 2012 report, the Unit for Follow-up of the CVR's Recommendations, which is under the Secretariat for Justice and Human Rights, indicated that of the 84 recommendations made by the CVR, only 13 had been carried out. It also noted that the severe delay in execution and the high percentage of disinterest were troubling.¹⁹⁸

III. ANALYSIS OF THE SITUATION OF CIVIL AND POLITICAL RIGHTS

A. The State's respect for and observance of the rights to life, humane treatment and personal liberty. Citizen Security in Honduras.

¹⁹⁵ CVR, Report "Para que los Hechos no se Repitan", Findings and Recommendations Section, III, Elements so that the events are not repeated, Recommendations in the area of human rights, para. 12.

Available at <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/hallazgos-y-recomendaciones-low.pdf>.

¹⁹⁶ CVR, Report "Para que los Hechos no se Repitan", Findings and Recommendations Section, III, Elements so that the events are not repeated, Recommendations in the area of human rights, paras. 22 a 26.

Available at <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/hallazgos-y-recomendaciones-low.pdf>.

¹⁹⁷ El Heraldo.hn, "[Solo 15% de recomendaciones se han cumplido, advierte Comisión de la Verdad](http://www.elheraldo.hn/Secciones-Principales/Pais/Solo-15-de-recomendaciones-se-han-cumplido-advierte-Comision-de-la-Verdad)", May 12, 2012. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Pais/Solo-15-de-recomendaciones-se-han-cumplido-advierte-Comision-de-la-Verdad>. See also, El Heraldo.hn, "[Solo 13 de las 84 recomendaciones de la Comisión de la Verdad ha cumplido Honduras](http://www.elheraldo.hn/Secciones-Principales/Pais/Solo-13-de-las-84-recomendaciones-de-la-Comision-de-la-Verdad-ha-cumplido-Honduras)", June 25, 2012. <http://www.elheraldo.hn/Secciones-Principales/Pais/Solo-13-de-las-84-recomendaciones-de-la-Comision-de-la-Verdad-ha-cumplido-Honduras>

¹⁹⁸ El Heraldo.hn, "[Falta cumplir 71 recomendaciones de Comisión de la Verdad](http://www.laprensa.hn/Secciones-Principales/Honduras/Apertura/Falta-cumplir-71-recomendaciones-de-Comision-de-la-Verdad)", June 25, 2012, at: <http://www.laprensa.hn/Secciones-Principales/Honduras/Apertura/Falta-cumplir-71-recomendaciones-de-Comision-de-la-Verdad>.

169. As will be shown throughout this report in connection with the State's respect for and guarantee of the rights to life and to humane treatment, in 2012 the Inter-American Commission received disturbing information on the situation of journalists, human rights defenders, the peasants in Bajo Aguán, indigenous peoples and LGTBI persons, all against the backdrop of high rates of murder and impunity¹⁹⁹ that strike particularly hard at women, children and adolescents, amid a serious citizen security problem which has left Honduras with the highest murder rate in the world. In its reply to the IACHR, the State said that "it is aware of the situation of violence that exists in the country, and that recognition was also extended in its comments to the IACHR's draft annual report in 2011."

- **Citizen security**

170. Citizen security is a dimension of human security and, by extension, a dimension of human development. It involves the intersection of multiple actors, conditions and factors, including the history and structure of the State and society; the government's programs and policies; the observance and enforcement of economic, social and cultural rights; and the regional and international scenario. Citizen security is threatened when the State fails to perform one of its basic functions, which is to protect the public against crime and social violence. That failure severs the basic relationship between the governed and the governing.²⁰⁰

171. Citizen security is when the citizenry is able to live free of the threats generated by violence and crime and the State has the necessary wherewithal to guarantee and protect the human rights directly compromised by violence and crime. In practice, from the human rights standpoint citizen security is a condition where persons are not threatened by the violence practiced by state or non-state actors.²⁰¹

172. The member states have undertaken international obligations to protect and guarantee human rights which are directly compromised by the threats that interpersonal violence or crime poses. These obligations are negative in nature and states can live up to their obligations by designing, implementing and constantly evaluating policies that ensure comprehensive and sustainable citizen security, with the emphasis on the observance and enforcement of the human rights of all persons under their jurisdiction. Observance of a state's international obligations in the area of human rights is also an essential tool to properly address the recurring citizen security needs that the societies of the region have.²⁰²

173. In Honduras, the lack of citizen security is one of the most serious problems affecting Honduran society, a situation that has a profound impact on the protection of human rights.

174. As reported in the [Global Study on Homicide](#) that the United Nations Office on Drugs and Crime prepared and then published in 2011, that year Honduras had the highest homicide rate in the

¹⁹⁹ According to a [Informe Especial sobre la Prevención y la Investigación del Delito](#) "La Seguridad Pública: Una Prioridad en la Agenda Nacional" [Special Report on Crime Prevention and Investigation, "Public Security: A Priority on the National Agenda], prepared by the Office of the National Commissioner for Human Rights of Honduras (CONADEH), in October 2010, which examined information from the Public Prosecutor's Office for the 2005-2009 period, the Public Prosecutor's Office received 320,153 complaints; 250,216 were referred to the Office of the National Director for Criminal Investigation (DNIC) for investigation. According to that report, the DNIC came back with an investigation report for the Public Prosecutor's Office on 48,626 complaints, which is 19% of the total. . According to the Special Report, the DNIC sent the Public Prosecutor's Office an investigation report in 48,626 of those complaints, which is the equivalent of 19% of the total; the other 201,590 cases (81%) of reported crime either remained under investigation or possibly went unpunished.

²⁰⁰ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, available at: <http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf> IACHR.

²⁰¹ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 221, available at: <http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf>.

²⁰² IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 226, available at: <http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf> IACHR,

world, at 82.1 per 100,000 population.²⁰³ In its observations on the draft of the report, the State indicated that the ONUDD report also states that the homicide rate rose in five of the eight countries of Central America over the past five years. It also noted that the main cause of violent crime in Central America is the region's strategic location en route to "the lucrative consumers' market in North America and the main areas where coca crops are grown in Colombia, Peru and the Plurinational State of Bolivia." Honduras stated that the report claims that the trends in the region's homicide patterns are at least partly due to changes in cocaine trafficking routes and increased competition and conflicts related to drug trafficking, together with the presence of *maras* and other criminal gangs. The State also refers to the World Bank's 2011 report "Crime and Violence in Central America, A Development Challenge," which offers a similar diagnostic assessment to the one in the UNODC report, and in light of which it concludes that "the causes of the violence in Honduras go beyond the political crisis of 2009."²⁰⁴

175. In 2012, insecurity in Honduras continued on the downward trend it had been on for several years. In September, the United Nations Office on Drugs and Crime published the report titled "Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment", in which it reported, *inter alia*, that Honduras has the highest homicide rate in the world.²⁰⁵ That homicide rate has doubled in the last five years, and now stands at 92 per 100,000 population.²⁰⁶ The report observes that the increase in violence has been particularly pronounced since the 2009 *coup*.²⁰⁷ As a point of reference, in Honduras the number of firearm homicides is almost four times the number of firearm seizures.²⁰⁸ The area of the country where the rates of violence and homicide are highest is the northwest, along the border with Guatemala.²⁰⁹

176. On this point, in its observations on the draft of this report, the State said that the UNODC report did not reach the same conclusion as the present report regarding increased violence as a result of the 2009 political crisis. Honduras said the UNODC report refers to the increase in murders in terms of changes in cocaine trafficking routes and local circumstances influencing that trend. The State says that as a result of the 2009 political crisis, "the authorities responsible for law enforcement fell into disorder, resources were diverted to maintain order, and the United States' antidrug assistance was suspended [...]"; to quote the report, "traffickers took advantage of the post-coup chaos in Honduras, re-routing their shipments virtually overnight to take advantage of the opportunity."²¹⁰

177. One of the main causes of the alarming increase in violence is the influence that organized crime has had in many spheres of society. As the UNODC points out, organized crime has made its way into some sectors of the police, politics and the judicial branch, to the point that it appears to

²⁰³ In October 2011, the United Nations Office on Drugs and Crime (UNODC) published its first [Global Study on Homicide](http://www.unodc.org/documents/southerncone/noticias/2011/10-outubro/Globa_study_on_homicide_2011_web.pdf). The study found that young males, particularly in Central and South America, the Caribbean and Southern and Middle Africa, were at greater risk of becoming the victims of intentional homicide, whereas women were at greater risk of being killed in domestic violence. The report indicated that the evidence suggests a surge in the homicide rate in Central America and the Caribbean, countries "where today it can be seen to be nearing crisis point". See report at: http://www.unodc.org/documents/southerncone/noticias/2011/10-outubro/Globa_study_on_homicide_2011_web.pdf

²⁰⁴ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

²⁰⁵ United Nations Office on Drugs and Crime, "Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment," September 2012, p. 12. Available at: https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf

²⁰⁶ *Ibid.*, p. 15.

²⁰⁷ *Ibid.*, p. 19.

²⁰⁸ *Ibid.*, p. 64.

²⁰⁹ *Ibid.*, p. 37.

²¹⁰ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

have grown beyond law enforcement's ability to deal with it.²¹¹ This is due, in part, to the fact that Honduras has become an important drug route leading to the northern part of the hemisphere.²¹²

178. In 2012, the Organization of American States (OAS) also published a Report on Citizen Security in the Americas. The report underscored the following as the principal institutional weaknesses of the Central American countries –Honduras included- in the area of security: (i) politization of the judicial authorities, (ii) threats to judges and prosecutors; (iii) budgets too small to enable the administration of justice to function properly; (iv) the judicial authorities' lack of independence; (v) weaknesses within the legal framework, and (vi) prison overcrowding, and (vii) serious problems with the efficiency of the criminal justice system.²¹³ The report also highlighted the importance of regional coordination when tackling problems that are regional in scope, like drug trafficking and the widespread violence.²¹⁴ Here, the IACHR welcomes the Memorandum of Understanding on citizen security that the Government of Honduras signed with the Government of the United States, and attaches great importance to regional approaches to the problem of crime.²¹⁵

179. The United Nations Office of the High Commissioner for Human Rights observed that despite the creation of a number of state human rights agencies, evidence has come to light of police agents' involvement in summary and extrajudicial executions.²¹⁶ Regarding this matter, in its observations on the draft of this report, the State indicated that "these are deaths of people at the hands of certain members of the National Police; however, rather than excesses in the discharging of the duties of state agents, they are the result of serious instances of corruption and criminal infiltration into the police force; they do not reflect a state policy of executing people."²¹⁷ It also observed that impunity persists in the killing of journalists, women, youth, street children and members of the LGBTI community.

180. For its part, the Office of the National Commissioner for Human Rights in Honduras has said that increasing the police force without a sweeping change in policy, is not necessarily a solution to the problem of citizen insecurity.²¹⁸

181. As for the involvement of the armed forces in internal security matters, on November 30, 2011 the National Congress passed a Decree-Law "intended to restore public order and achieve social comity."²¹⁹ The decree authorizes the armed forces to "perform police functions on a temporary basis, in

²¹¹ *Ibid.*, pp. 19, 21, 71-72, 75-76.

²¹² *Ibid.*, pp. 16, 19.

²¹³ Organization of American States, Report on Citizen Security in the Americas, 2012: Official Statistical Information on Citizen Security Provided by the OAS Member States, OEA/Ser.D/ XXV.2, 2012, p. 131. Available at: <http://www.oas.org/dsp/alertamerica/Report/Alertamerica2012.pdf>.

²¹⁴ *Ibid.*, pg. 132.

²¹⁵ *Honduras y Estados Unidos suscriben nuevo memorando de entendimiento en seguridad* [Honduras and United States sign new memorandum of understanding on security], Office of the President, September 13, 2012. Available at: http://www.presidencia.gob.hn/index.php?option=com_content&view=article&id=990:honduras-y-estados-unidos-suscriben-nuevo-memorando-de-entendimiento-en-seguridad-&catid=34:asia-a-pacific&Itemid=54#.UNDX-OSx_ko.

²¹⁶ Report of the UN High Commissioner for Human Rights, OHCHR in the field: Americas, p. 295. Available at: http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/22_Americas.pdf.

²¹⁷ The State also noted that this is closely related to the decision to purge the ranks of the National Police, implemented since 2011, in order to detect officers' participation or involvement in criminal acts. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

²¹⁸ El CONADEH asegura que el reclutamiento de policías inexpertos y sin verdaderos valores causó el incremento de la criminalidad en Honduras [CONADEH asserts that the recruitment of police without experience or values caused crime in Honduras to spike], Mondo TV, May 30, 2012. Available at: <http://www.mundotvhn.com/2012/05/el-conadeh-asegura-que-el-reclutamiento-de-policas-inexpertos-y-sin-verdaderos-valores-caus-el-incremento-de-la-criminalidad-en-honduras/>.

²¹⁹ Decree Law interpreting Article 274 of the Constitution available at: <http://www.congresonacional.hn/phocadownload/Proyectos/LeyAsuntosinvestigativos/interpretacion%20constitucional%20art.274.pdf>.

emergency situations affecting individuals and property; to play a constant role in the war in combating drug trafficking, and to cooperate in fighting terrorism, arms trafficking and organized crime, when so requested by the Secretariat for Security.²²⁰ The Decree-Law recognizes the security crisis that the country is undergoing, and on May 24, 2012, the National Congress declared a state of emergency in the security system, lasting 180 days.²²¹ The IACHR observes that using members of the armed forces for police activities must be the exception, and must be done with absolute respect for the people's human rights and constant vigilance to protect those rights. As the United Nations Office of the High Commissioner for Human Rights observed, this type of activity must go hand-in-hand with activities to avoid impunity in relation to possible human rights violations.²²²

182. The Inter-American Commission again underscores its concern over the armed forces' involvement in professional activities that, given their nature, should be the exclusive purview of the police. Time and time again, the Commission has observed that because the armed forces do not have training appropriate for controlling citizen security, it is the job of an efficient civil police force, respectful of human rights, to combat insecurity, crime and violence on the domestic front.

183. Another development observed is the significant increase in the number of femicides in the country. According to the available statistics, the number of cases of femicide in Honduras went from 161 in 2005, to 407 in 2009 and 351 in 2010.²²³ The Inter-American Court has observed that gender-based murders of women, also known as femicide, is a function of a structural situation and a social and cultural phenomenon deeply rooted in customs and mindsets and that these situations of violence are founded in a culture of gender-based violence and discrimination.²²⁴ Therefore, it is up to the State to adopt measures to prevent, investigate and prosecute these crimes.

184. Regarding the homicide figures given in the previous paragraph, in its observations on the draft of this report, the State said they covered women in general and were not strictly related to "gender-based violence and discrimination." It also referenced the UNODC 2011 Global Study on Homicide, which reports that murders of women accounted for 6.9% of the total, a lower rate than in all the other nations of Central America. It also cited the Bulletin from the Violence Observatory, which states that between January and December 2011, there were a total of 7,104 murders, with men most frequently the victims: 6,592 (92.8%), compared to 512 cases in which women were killed (7.2%). The State noted that the increase in violence in the country has also led to an increase in killings of women.²²⁵

185. Another sector of the population that has been hard hit by the levels of violence in Honduras are children. The United Nations Special Rapporteur on the sale of children, child prostitution and child pornography visited Honduras from August 30 to September 7, 2012, and commented that "socioeconomic disparities, insecurity and violence all contribute to children's vulnerability to multiple

²²⁰ *Ibid.*, Art. 1.

²²¹ In its reply the State said that in performing police duties, the armed forces must act within the terms and scope set down in the Executive Emergency Decree; in addition, their members must be ensured the same rights (stipulated in Article 125 of the Organic Law of the National Police of Honduras) as are enjoyed by officers of the National Police, and they must be subject to the same responsibilities and obligations as are set down in Article 106 of that same law. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

See, for example, *Congreso Nacional decreta estado de emergencia para depurar Policía Nacional* [National Congress decrees state of emergence to purge National Police], *El Herald*o, available at: <http://www.elheraldo.hn/Secciones-Principales/Pais/Congreso-Nacional-decreta-estado-de-emergencia-para-depurar-la-Policia-Nacional>.

²²² Report of the UN High Commissioner for Human Rights, OHCHR in the field: Americas, p. 295.

²²³ *Informe Final de Femicidios en Honduras 2011* [Final Report on Femicide in Honduras 2011], National Campaign against Femicide, Women's Court against Femicide, 2011, p. 19.

²²⁴ I/A Court H.R.. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, para. 133.

²²⁵ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

forms of economic and/or sexual exploitation.”²²⁶ She also observed that because the judicial investigations are slow, and some exploiters of children are never punished, there is no way to ensure rapid and efficient protection to victims and witnesses.²²⁷

186. In its observations on the draft of this report, the State reiterated the comments made on its observations on Chapter IV of the IACHR’s 2011 Annual Report in which Honduras remarked that the risk in the country was one that everyone faced, not just some, and added that the “information on the high rates of violence in Honduras is alarming to all Hondurans, as there have been murders, assaults and attacks against persons in various areas of activity, professions and trades, and not just one specific group.” It indicated that this situation was depicted in the Report on “Public Security: A Priority on the National Agenda”, prepared by Honduras’ Office of the National Commissioner on Human Rights (CONADEH) in October 2010.²²⁸

187. Given the grave situation of the Honduran people where citizen security is concerned, the IACHR is compelled to remind the State of the IACHR’s recommendations in its Report on Citizen Security and Human Rights.²²⁹ The State has a duty to protect and guarantee human rights. Accordingly, States must:

- Discharge their international obligations to protect and ensure the human rights at stake in citizen security by designing and implementing comprehensive public policies involving simultaneous performance of specific measures and strategic plans at the operational, normative, and preventive levels. These policies must be sustainable, which will necessitate the required political and social consensus. At the same time, evaluation and accountability systems will have to be in place to check these policies in a context of broader citizen participation.
- Generate the institutional capacity within the public sector to carry out the measures included in the plans and programs associated with public policy on citizen security, while making available adequate human, technical, and economic resources. This means, inter alia, improving the process for selecting and training the personnel of the institutions involved in implementing the policy on citizen security (especially the police, the members of the judicial branch, the staff of the public prosecutor’s office and those of the prison system) and earmarking the material resources needed to provide the public with quality service.
- Adapt the domestic laws and State apparatus to ensure democratic governance of citizen security. The legitimate political authorities of the State will have to shoulder their responsibility for designing, executing and monitoring public policy on citizen security, with the support of multidisciplinary technical teams.
- Put into practice accountability systems and procedures that apply to all those authorities who have some role in the policy on citizen security. The procedures will use internal and external control mechanisms, thereby strengthening the institutions of democratic government, fostering transparency in the exercise of public office, and implementing measures to deal with impunity and corruption.
- Ensure the special standards of protection needed or those persons or groups that are particularly vulnerable to violence and crime, such as children and adolescents, women the indigenous

²²⁶ UN expert calls on Honduras to step up efforts to protect children from sexual exploitation. UN News Centre. Available at: <http://www.un.org/apps/news/story.asp?NewsID=42839#.UOGM-m9ZWS0>

²²⁷ *Special Rapporteur on the Sale and Exploitation of Children Concludes her Mission to Honduras* United Nations Office at Geneva News & Media, September 10, 2012. Available [in Spanish only] at: [http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/9779E01A89BC9E1BC1257A750034ED7F?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/9779E01A89BC9E1BC1257A750034ED7F?OpenDocument) [translation ours].

²²⁸ [Informe Especial sobre la Prevención y la Investigación del Delito](#) [Special Report on Crime Prevention and Investigation]. “La Seguridad Pública: Una Prioridad en la Agenda Nacional” [Public Security: A Priority on the National Agenda], by the Office of the Honduran National Commissioner for Human Rights (CONADEH), October 2010.

²²⁹ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.LV/II. Doc. 57, December 31, 2009, para. 232. See at: <http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf>

population, afro-descendants, migrants and their families, notwithstanding the obligations that the member states have undertaken to protect and ensure the human rights at stake in the policy on citizen security to all persons subject to their jurisdiction.²³⁰

188. The Commission must again express its concern over the negative consequences that follow when the public authorities either do not respond or come up with an ineffective response to society's needs in the area of citizen security.²³¹ The failure to react to those needs means that the rights of children, women, the elderly, indigenous people, men, persons in the LGBTI community are violated day after day.

189. The Commission welcomes the adoption of Legislative Decree No. 59-2012 of April 25, 2012 approving the Law against Human Trafficking. On December 12, 2012, the Inter-Institutional Commission against Commercial Sexual Exploitation and Human Trafficking (CICECST) was installed, which will draft the regulations that the law prescribes.²³²

- **Situation in Bajo Aguan²³³**

190. There has been a long-standing dispute over land between peasant farmers and business interests in the Bajo Aguan area, Tocoa. The Commission was informed that since the *coup* on June 28, 2009, the number of deaths, threats and acts of intimidation against peasant farmers in the region has reportedly increased and the agrarian conflict has been stigmatized and criminalized.²³⁴ In April 2010, the National Government signed an agreement with the peasant organizations in the area, which was meant to be a solution to the problem. Nevertheless the acts of violence have continued.

191. During 2012, the IACHR continued to receive information on the serious conflict in the area. According to a network of national and international organizations that are following this situation, between September 2009 and August 2012, 53 persons that either supported or were members of the Bajo Aguán peasant farmers organizations, and a journalist and his partner, were allegedly killed in the agrarian conflict in the region. Another peasant farmer has been missing since May 15, 2011. According to information provided by the Office of the Special Prosecutor for Human Rights, these crimes have not been properly investigated.²³⁵

²³⁰ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 232. See at: <http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf>

²³¹ IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 231. See at: [://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf](http://www.oas.org/en/iachr/docs/pdf/CitizenSec.pdf)

²³² Secretariat of Justice and Human Rights. Available at: http://www.sjdh.gob.hn/?q=20121212_Se_instala_Comision_Interinstitucional_Contra_la_Explotacion_Sexual%20

²³³ The IACHR also learned of the situation through PM 240-11; information has been requested from the State in connection with this precautionary measure.

²³⁴ IACHR, Preliminary Observations of the Inter-American Commission on Human Rights on its Visit to Honduras, May 15 to 18, 2010, June 3, 2010. The Bajo Aguán Situation, paragraphs 118-121, available at: <http://www.IACHR.org/countryrep/Honduras10eng/Honduras10.Situation.htm>. See also: IACHR, Annual Report, Chapter IV, Honduras, Bajo Aguán Situation, paragraphs 543-551.

²³⁵ Press release of August 31, 2012, civil society organizations and networks: APRODEV (Association of World Council of Churches related Development Organizations), CIFCA (Copenhagen Initiative for Central America and Mexico), CIDSE (International Alliance of Catholic Development Agencies), FESPAD (Fundación de Estudios para la Aplicación del Derecho), FIAN International (International Human Rights Organisation for the Right to Food), FIDH (International Federation for Human Rights), HIC (Habitat International Coalition), LAWG (Latin America Working Group), La Vía Campesina, MISEREOR, OXFAM, PIDHDD (Inter-American Platform of Human Rights, Democracy and Development), Rel-UITA (Latin American regional branch of the International Food, Agricultural, Hotel, Restaurant, Tobacco and Allied Workers' Association), TROCAIRE. See at: http://www.fian.org/news/news/international-organisations-condemn-repression-and-criminalisation-of-peasant-organisations-of-the-bajo-aguan-honduras?set_language=en.

192. In 2012, complaints were filed concerning a number of murders of peasant farmers in the area.²³⁶ Information has also been received alleging frequent abuses of the judicial branch by influential private interests seeking to get judgments favorable to peasant farmers in the area reversed.²³⁷ The Commission has also been informed of a series of threats and other acts of harassment against human rights defenders working in the Bajo Aguán, which will be discussed at greater length under the section on the situation of human rights defenders in Honduras.

193. In its comments the State of Honduras reported that the conflict in Bajo Aguán had not only led to the deaths of campesinos, but that there were several cases in which security guards, estate day-workers, and other individuals had been killed; this, it said, served to indicate “the true dimension of the situation in that region, and not the criminalization or persecution of the campesino movement.”²³⁸ Honduras also reported that to date, the Public Prosecution Service had documented the deaths of 73 people in the area, of whom “48 are campesinos, 16 are security guards, and 9 are of occupation unknown. Nothing is known about the alleged disappearance of one campesino.” It added that the local prosecutors’ offices in Tocoa and La Ceiba were in charge of the cases, with the support of the Public Prosecution Service in Tegucigalpa. Also, of the figures provided, seven cases had been brought to trial and 66 cases were at the investigation stage.²³⁹

194. In its observation on the draft of this report, the State reports that between 2010 and 2011, the Public Prosecution Service documented a total of 31 deaths in Bajo Aguán, of whom “18 were campesinos, 2 were presumed to be campesinos (it could not be determined whether they belonged to any movement), 12 security guards, 4 estate day-laborers, 5 persons of unknown occupation and identity, and 5 other persons (neither guards, campesinos, or day-laborers), for a total of 46 violently killed in Bajo Aguán up to November 2011.” It added that of the slain campesinos, progress had been made with the investigation of four case files, with concrete hypotheses and suspects.²⁴⁰

B. Guarantees of due process of law and of effective access to justice. The independence of the judicial branch.

195. One of the principles underpinning the rule of law and a democratic society is the independence of the branches of government.²⁴¹ In the case of the judicial branch, under the principles of

²³⁶ The small-scale food producer Gregorio Chávez Arando, 69 years old, active member of the Catholic Church, disappeared from his parcel on July 2. On July 6, his body was found buried in the Paso Aguán estate, which is under the control of the businessman and palm oil producer Miguel Facussé. On July 7, Jacobo Erazo López, member of MUCA (Movimiento Unificado Campesino de Aguán) and ex-director of the Tranvía business, of the La Confianza settlement, was captured and shot to death by unknown persons as he was going to work in the Quebrada de Arena community. José Luis Dubón Díaz, also a member of MUCA, was murdered in La Ceibita close to the Lempira settlement on Sunday, July 8. See at: http://www.fian.org/news/news/international-orgs-warn-the-state-of-honduras-must-guarantee-judicial-independence-and-impartiality?set_language=en

²³⁷ FIAN press release dated July 17, 2012: http://www.fian.org/news/news/international-orgs-warn-the-state-of-honduras-must-guarantee-judicial-independence-and-impartiality?set_language=en.

²³⁸ The State reiterated this year its comments on the 2011 Draft General Report on the Situation of Human Rights in Honduras. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

²³⁹ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras,” p. 9.

²⁴⁰ This year Honduras reiterated its comments made on the 2011 Draft General Report on the Situation of Human Rights in Honduras, stating that the evictions and arrest warrants were ordered by the Sectional Magistrates’ Court of Trujillo, Colón department, under prosecutorial applications for crimes of usurpation of land or property not included in the agreements signed between the government, business owners, and some campesino organizations. It reported that “the evictions and arrest warrants ordered at eight estates covered by agreement will not be carried out.” This year the State reiterated the comments it offered on the 2011 Draft General Report on the Situation of Human Rights in Honduras, p. 9. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

²⁴¹ IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009, paragraph 180. Available at: <http://www.IACHR.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

separation of powers and an independent judiciary, judges must be able to perform their functions without undue interference from the executive and legislative branches, the parties to the proceedings, social actors and other parties associated with the administration of justice.²⁴² The Inter-American Commission has written that the independence of the judiciary must be assured as it reviews the constitutionality and legality of the acts of public power and administers justice.²⁴³

196. An independent judiciary is vital to enabling victims of human rights violations to have access to the courts.²⁴⁴ Therefore, the IACHR has been particularly attentive to the degree of independence that the Honduran judiciary enjoys and has been receiving reports concerning a number of problems the judicial branch has encountered since the 2009 *coup*.

197. Generally speaking, the Commission has observed that in the years since the *coup*, the process of rebuilding the democratic order in Honduras has posed great challenges for those who run the State's justice system. On occasion, a variety of actors, including members of other branches of government and even organized crime, have interfered. That interference, combined with the danger threatening some judges when they perform their functions, can affect the independence of Honduras' judicial branch and access to justice for those whose rights have been violated.

198. This concern is one shared by the United Nations Special Rapporteur on the Situation of Human Rights Defenders who, after her visit to Honduras in February 2012, said she had received "disconcerting information indicating a lack of independence and impartiality of the judiciary which undermines both the effectiveness of the administration of justice and the potential role of judges as human rights defenders."²⁴⁵ Given these circumstances, the IACHR has devoted this chapter of the report to pointing out some of the problems facing Honduras' Judicial Branch of Government.

1. Background: The Judicial Branch during and after the *coup*

199. During the *in loco* visit that it made to Honduras in 2010, the IACHR was told of acts of harassment committed against judges identified as being opposed to the 2009 *coup*. At the time, the Commission stated that it was "unacceptable that those persons in charge of administering justice who were opposed to the democratic rupture would face accusations and dismissals for defending democracy."²⁴⁶

200. In that regard, on July 6, 2010, the IACHR received a petition against Honduras alleging the unlawful, arbitrary and politically motivated dismissal of Tirza del Carmen Flores, Magistrate of the San Pedro Sula Appellate Court; Guillermo López Lone, Judge of the San Pedro Sula Trial Court; Ramón Enrique Barrios, San Pedro Sula Trial Court Judge, and Luis Alonso Chévez, Domestic Violence Judge,

²⁴² IACHR, *Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz (Corte Primera de lo Contencioso Administrativo) v. Venezuela*, Case 12.489, November 29, 2006, paragraph 83..

²⁴³ IACHR, *Democracy and Human Rights in Venezuela*, December 30, 2009, paragraph 183. Available at: <http://www.IACHR.org/countryrep/Venezuela2009eng/VE09.TOC.eng.htm>

²⁴⁴ In its 2006 report, the Commission noted "the valuable work of those individuals and authorities whose functions include protecting, enforcing, promoting, or defending the human rights [...]. Judges, prosecutors, public defenders, and police precinct chiefs, as agents of the administration of justice, play a fundamental role as a liaison between the state and the general population. Moreover, they are the ones who carry out the investigation, prosecution, and punishment of perpetrators of human rights violations." IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, paragraph 223.

²⁴⁵ Statement of the United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, on the conclusion of her official visit to Honduras. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11830&LangID=E>.

²⁴⁶ In press release 54/10, the IACHR issued an urgent call to stop the harassment of Honduran judges. On May 28, 2010, in exercise of its authority under Article 41 of the American Convention, the IACHR asked the Honduran Supreme Court to provide information on the situation of judges that faced disciplinary action because of their participation in protests against the coup. See IACHR, *Preliminary Observations of the Inter-American Commission on Human Rights on Its Visit to Honduras, May 15 to 18, 2010*, paragraph 82.

all members of the *Asociación de Jueces por la Democracia* (AJD) alleged to have engaged in activities opposing the *coup*. The Inter-American Commission declared the petition admissible during its 141st session;²⁴⁷ the case is now in the merits phase.

201. Subsequent to the 2009 *coup*, the IACHR received information concerning the danger that certain officers of the court were said to be facing. In 2010, the Commission was told of the assassination of Judge Olga Mariné Laguna, who was driving when her car was stopped by two unknowns who shot her at least seven times with a 9 mm firearm. According to the information available, staff of the National Bureau of Criminal Investigation allegedly claimed that they were unaware of the motive for the crime; however, one judge, who wished to remain anonymous for safety reasons, said that she and many of her colleagues had received death threats when hearing cases involving organized crime.²⁴⁸ That same year, Raúl Enrique Reyes Carbajal, coordinator of the Prosecutor's Office in Puerto Cortes, Honduras, was assassinated; just prior to taking this job, he had been the prosecutor for Organized Crime cases in San Pedro Sula. According to the information available, the prosecutor was shot while driving from Puerto Cortés to San Pedro Sula.²⁴⁹ In response to this assassination, the Office of the United Nations High Commissioner for Human Rights expressed grave concern and stated that the killing of prosecutors indicates "an apparent new trend of targeting public prosecutors in Central America, apparently by organized crime groups ... amid growing insecurity and violence."²⁵⁰

202. In 2011, the IACHR singled out this dangerous situation in its *Second Report on the Situation of Human Rights Defenders*. In that report, the IACHR expressed concern over the fact that as many as 22 Honduran judges said they had received death threats because they were presiding over sensitive cases involving organized crime, juvenile gangs or *pandillas*.²⁵¹

2. The situation of the Judicial Branch in Honduras in 2012

203. As part of their duty to guarantee the independence of the Judicial Branch, States have an obligation to guarantee, in law and in fact, that prosecutors and judges are able to perform their functions independently. To achieve that objective, the Inter-American Commission and the Inter-American Court have highlighted the following as ways to guarantee the independence of the courts: a) establish a proper system for appointment and removal of judges and prosecutors;²⁵² b) guarantee that judges shall not be removed from the bench for the duration of their term²⁵³ and c) provide guarantees to protect them from external pressure.²⁵⁴ The Commission will examine the facts brought to its attention in

²⁴⁷ IACHR, Report No. 70/11. Petition 975-10. Adán Guillermo López Lone *et al.* (Honduras), March 31, 2011.

²⁴⁸ *El Heraldito*, *Sicarios acribillan a una jueza en la capital hondureña* [Judge shot and killed by gunmen in Honduran capital], March 3, 2010. Available at: <http://archivo.elheraldo.hn/Ediciones/2010/03/04/Noticias/Sicarios-acribillan-a-una-jueza-en-la-capital-hondurena>. See also, *La Tribuna*, *Asesinan a Jueza de la Niñez* [Juvenile Court Judge shot to death], March 3, 2012, available at: <http://old.latribuna.hn/2010/03/03/asesinan-a-jueza-de-la-ninez/>

²⁴⁹ *La Prensa*.hn, *Asesinan a coordinador de fiscales en Puerto Cortés* [Coordinator of prosecutors killed in Puerto Cortés], May 28, 2011. Available at: <http://www.laprensa.hn/content/view/full/500604>.

²⁵⁰ UN News Centre, *UN voices concern at targeting of prosecutors and rights defenders in Central America*, May 31, 2011. Available at: <http://www.un.org/apps/news/story.asp?NewsID=38546&Cr=rights+defenders&Cr1=&Kw1=Honduras&Kw2=organized+crime&Kw3=#.UOHINW9ZWS0>.

²⁵¹ *El Heraldito*, *Amenazan a muerte a 22 jueces de Honduras* [22 Honduran judges receive death threats], March 5, 2010. Available at: <http://www.elheraldo.hn/layout/set/print/Sucesos/Ediciones/2010/03/05/Noticias/Amenazas-a-muerte-contra-22-jueces-de-Honduras>.

²⁵² I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraphs 73-75.

²⁵³ I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraph 75; *Case of Apitz Barbera et al. (Corte Primera de lo Contencioso Administrativo) v. Venezuela*, Judgment of August 5, 2008. Series C No. 182, paragraph 138.

²⁵⁴ I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, paragraph 75.

2012, bearing the above criteria in mind, as they are the conditions *sine qua non* for the independence of the Honduran judicial branch.

a. Procedure for appointing and removing judges

204. As the Inter-American Court has written, when the States establish procedures for the appointment of their judges,²⁵⁵ they have to consider that not just any procedure will satisfy the conditions required under the Convention for proper implementation of a truly independent system.²⁵⁶ An appropriate procedure for appointing members of the judiciary -one that is transparent and guarantees that the candidates will be given equal consideration- is a fundamental guarantee for judicial independence.²⁵⁷ The institutions in charge of appointing, promoting and disciplining judges play an important role and must be objective. Accordingly, the Commission has recommended that States establish an independent body whose functions are to appoint, promote and remove judges.²⁵⁸

- *Honduras' Council of the Judiciary*

205. In December 2011, the National Congress of Honduras passed Decree No. 219, establishing the Law on the Council of the Judiciary and Judicial Career Service. The Council's creation was an important step toward relieving the Supreme Court of the administrative functions it was performing.

206. The Council of the Judiciary is the organ of governance of the Honduran Judiciary. Under Article 3 of that law, its functions include "Organizing and directing the financial and administrative affairs of the Judicial Branch" and "appointing and removing magistrates on the courts of appeals and judges, and the other officials and judicial aides, administrative and technical staff." The Council of the Judiciary is also in charge of running the disciplinary system for members of the Judicial Career Service.²⁵⁹

207. As for the Council's membership, under Article 4 of the law, the Council shall have five permanent members and two alternates, one of whom shall be the Chief Justice of the Supreme Court, who shall also chair the Council; two members are elected by associations of judges; one by the Honduran Bar Association and another representing the National Association of Employees and Staff of the Judicial Branch. The candidates that each of these bodies nominates are referred to the National Congress, which elects the Council's members by a qualified majority.²⁶⁰

208. The Commission notes that Article 8 of the original version of the Law on the Council of the Judiciary and Judicial Career Service, published in December 2011, provided that the members of the Council had to have served in some judicial post for five years or had to have taught law in a university for ten years. In March 2012, the National Congress published a "*Fe de Erratas*" amending those requirements to allow professionals with other university degrees to serve on the Council, provided they

²⁵⁵ I/A Court H.R. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 74.

²⁵⁶ I/A Court H.R. *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, para. 74.

²⁵⁷ IACHR. *Democracy and Human Rights in Venezuela*, para. 187.

²⁵⁸ See, IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2012, para. 374. See also, Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of

the Covenant, CCPR/CO/84/TKJ, 18 June 2005, para. 17.

²⁵⁹ The law can be consulted at: <http://www.tsc.gob.hn/leyes/Ley%20del%20Consejo%20de%20la%20Judicatura%20y%20la%20Carrera%20Judicial.pdf>

²⁶⁰ The law can be consulted at: <http://www.tsc.gob.hn/leyes/Ley%20del%20Consejo%20de%20la%20Judicatura%20y%20la%20Carrera%20Judicial.pdf>

had ten years' experience in their given professions or in teaching.²⁶¹ The Commission observes that although the "errata" introduced a substantive change in the requirements to be eligible to serve on the Council, the amendment was done almost three months after the law was published and did not follow the normal process of legislative amendment.

209. Elections for the new members of the Council of the Judiciary were held in 2012. The process was monitored by the National Anti-Corruption Council (CNA).²⁶² Following the elections, the Commission received information on the results of the visit by the International Commission of Jurists (ICJ) on the occasion of a High-level Mission conducted in Honduras to observe the election of the Council members. That information mentioned a number of problems in the selection process.²⁶³

210. The information received by the IACHR suggests that some aspects of the process may not be conducive to enabling the Council to function as it should in administering the Judicial Branch. Here, the Commission observes that: i) because the institutions participating in the selection process may nominate candidates who are not from the judicial branch, the Council ended up having more members from the other associations than it had tenured judges (two); ii) the law does not prescribe the legal requirements or procedures that the institutions charged with selecting candidates for the Council must observe, which means that their selection may be based on considerations other than merit and that candidates can anticipate; and lastly iii) the Chief Justice of the Supreme Court is the one who chairs the Council of the Judiciary.

211. Here, the Commission observes that the United Nations Special Rapporteur on the independence of judges and lawyers has written that a number of factors have to be taken into consideration to guarantee the independence of the governing body of the Judicial Branch. She wrote that "it is important that judges constitute the majority of the body so as to avoid any political or other external interference." In the opinion of this Rapporteurship, "if the body is composed primarily of political representatives there is always a risk that these "independent bodies" might become merely formal or legal rubber-stamping organs behind which the Government exerts its influence indirectly."²⁶⁴ The Special Rapporteur has recommended that the Council of the Judiciary should be presided over by someone other than the Chief Justice of the Supreme Court.²⁶⁵

212. Given these features of the law, the Commission has observed that the current arrangement for determining the Council of the Judiciary's membership has been called into question by various actors, mainly because of the risk that the institutions authorized to nominate candidates for the Council will be influenced by the National Congress, which, in the final analysis, will choose the Council's

²⁶¹ Radio Honduras, *Trastocan Ley del Consejo de la Judicatura y de la Carrera Judicial* [Law on the Council of the Judiciary and the Judicial Career Service changed], March 27, 2012. Available at: <http://www.radiohmn.hn/content/trastocan-ley-del-consejo-de-la-judicatura-y-de-la-carrera-judicial>. See also: *El Heraldo*, *Congreso Nacional reforma la Ley de la Judicatura con fe de erratas en la Gaceta* [National Congress amends Judiciary Law with fe de erratas in the Official Gazette].

²⁶² *El Heraldo*, *En la mira selección del consejo de la Judicatura* [Selection of the Council of the Judiciary being monitored], August 21, 2012. Available at: <http://www.elheraldo.hn/Secciones-Principales/Pais/En-la-mira-seleccion-de-Consejo-de-Judicatura>

²⁶³ The International Commission of Jurists is an international nongovernmental organization established in Berlin in 1952. It is composed of sixty eminent jurists who represent the world's various legal systems. The International Secretariat is headquartered in Geneva and has national sections and affiliates on all the continents. Its activities in Central America are conducted through its Office in Guatemala. The Commission's statement after its visit to Honduras is available at: http://old.ici.org/IMG/Mision_Guate_250909.pdf

²⁶⁴ UN General Assembly, *Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy*, A/HGRC/11/41, March 24, 2009, paragraph 28. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/125/66/PDF/G0912566.pdf?OpenElement>

²⁶⁵ The following was among the recommendations made by the Special Rapporteur on the Independence of Judges and Lawyers: "The Council of the Judiciary should be presided over by someone other than the Chief Justice of the Supreme Court, who has important, full-time duties to discharge." See UN General Assembly, *Report of the Special Rapporteur on the independence of Judges and Lawyers*, A/HRC/17/30/Add.3, April 18, 2011. Recommendation 94(i). Available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.30.Add.3_en.pdf

members.²⁶⁶ The Commission has observed that the Commission for Public Security Reforms has presented a set of draft amendments that would imply changes in the procedure followed to appoint members of the Council of the Judiciary²⁶⁷ and proposes that the Chief Justice of the Supreme Court not be the person to preside over the Council and that the Council members be chosen by a Selection and Evaluation System in which the personal and professional merits of the candidates are weighed.²⁶⁸

213. The Commission hopes that, with the proposal from the Commission for Public Security Reforms, the State of Honduras will take into consideration the standards mentioned above, so as to guarantee that the procedures followed to select and remove judges will ensure the independence of the Judicial Branch.

b. Irremovability of judges

214. In order to safeguard their independence and impartiality, judges must have “reinforced guarantees” of job stability.²⁶⁹ This right to remain on the bench for the duration of their appointment is a “reinforced guarantee”²⁷⁰ which is an essential condition for judicial independence.²⁷¹ This guarantee protects judges, who may only be removed for serious misconduct previously established in law; other disciplinary measures may be considered for cases of negligence or incompetence.²⁷² Accordingly, judges may only be suspended or removed for reasons of incapacity or behaviour that renders them unfit to discharge their duties.²⁷³ If none of these grounds is present, a judge should remain on the bench for the duration of his or her appointment.²⁷⁴

- Removal of justices from the Constitutional Chamber of the Supreme Court

215. In 2012, the Commission closely followed the process whereby the National Congress ousted four of the five justices of the Supreme Court’s Constitutional Chamber in the early morning hours

²⁶⁶ At the conclusion of her 2012 visit, the United Nations Special Rapporteur on Human Rights defenders noted the adoption of Decree 219-2011 on the Law on the Council of the Judiciary and Judicial Career Service (*Ley del Consejo de la Judicatura y la Carrera Judicial*), but observed that an independent body should be established to safeguard the independence of the judiciary and to oversee the appointment, promotion and regulation of the profession in accordance with international human rights standards.. Statement of the United Nations Special Rapporteur on the situation of human rights defenders, Margaret Sekagya, on the conclusion of her official visit to Honduras. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11830&LangID=E>.

²⁶⁷ *La Prensa.hn*, *Presentan proyectos de ley para reformas al sistema de justicia* [Bills introduced to reform justice system]. October 26, 2012. Available at: <http://www.laprensa.hn/Secciones-Principales/Honduras/Tegucigalpa/Presentan-proyectos-de-ley-para-reformas-al-sistema-de-justicia#.UNN0grKPXmk>

²⁶⁸ *La Prensa.hn*, *Presidente de la Corte quedaría fuera del Consejo de la Judicatura* [Chief Justice of the Supreme Court off Council of the Judiciary], November 5, 2012. Available at: <http://www.laprensa.hn/Secciones-Principales/Honduras/Tegucigalpa/Presidente-de-la-Corte-quedaría-fuera-del-Consejo-de-la-Judicatura#.UNNDYLKPxmk>

²⁶⁹ I/A Court H.R., *Case of Reverón Trujillo v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of June 30, 2009. Series C No. 197, paragraph 67.

²⁷⁰ IACHR, *Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz (Corte Primera de lo Contencioso Administrativo) v. Venezuela*, Case 12.489, November 29, 2006, paragraph. 85.

²⁷¹ IACHR, *Democracy and Human Rights*, paragraph 229.

²⁷² IACHR, *Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz (Corte Primera de lo Contencioso Administrativo) v. Venezuela*, Case 12.489, November 29, 2006, paragraph 87.

²⁷³ Principle 18 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Available at: <http://www2.ohchr.org/english/law/indjudiciary.htm>

²⁷⁴ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2012, paragraph 367.

of December 12. According to the information available, during the debate, which ended with the justices' dismissal from the bench, the Congress building was surrounded by military and police forces.²⁷⁵

216. As background to this event, the information available indicates that on November 27, 2012, the Constitutional Chamber ruled that Legislative Decree No. 89-2012 was unconstitutional. That Legislative Decree contained the so-called "Police Purge Law". The majority of the justices were of the view that the law would allow tests like polygraphs, which would be violations of the basic rights of members of the Police Force. Because the vote was four to one, the appeal challenging the constitutionality of the law would then be taken up by the Supreme Court *en banc*.²⁷⁶

217. On Monday night, December 10, a deputy asked Congress to form a Committee of Inquiry to examine the administrative conduct of the justices who voted to declare the law unconstitutional. According to reports, the argument made in the motion was that the Decree establishing the "Police Purge Law" would have taken effect six months following its publication and the Supreme Court's decision was issued some days after the decree expired. This, it was argued, would have "adverse consequences for the country's already weak economy" because of the compensatory damages that would have to be paid to the affected police officers. Therefore, the motion maintained that by "their infidelity to the Republic, and failing to comply with and enforce the Constitution and the law, which is the duty of every public official, [the justices] put the safety of the citizenry in imminent peril."²⁷⁷

218. On December 12, 2012, the National Congress received the Committee of Inquiry's report, in which it stated, *inter alia*, that:

TWELVE: The decision handed down by the Constitutional Chamber, unless Congress deems otherwise, is inconsistent with the security policy implemented by the legislative and executive branches of government and puts the State in grave jeopardy because it represents a setback in the progress thus far made in fighting crime, imperils the security of the citizens and their property, and paves the way for the State to be sued for millions by members of the National Police who have been separated from the service in application of that decree.²⁷⁸

219. On the strength of that argument, at around 4:00 a.m. on Wednesday, December 12, the National Congress decided to remove the following Supreme Court justices: Rosalinda Cruz Sequeira, Francisco Ruiz Gaekel, Gustavo Enrique Bustillo Palma and José Antonio Gutiérrez Navas, none of whom had been heard or submitted to any other procedure. That same day, at around 6:00 a.m., Congress appointed and swore in the new justices to serve on the Constitutional Chamber's bench.²⁷⁹

²⁷⁵ *El Heraldo*, Congreso de Honduras asesta golpe técnico al poder judicial [Honduran Congress deals a technical blow to the judicial branch], December 12, 2012, available at: <http://www.elheraldo.hn/Secciones-Principales/Al-Frente/Congreso-de-Honduras-asesta-golpe-tecnico-a-la-CSJ>

²⁷⁶ *El Heraldo*, Ley de depuración policial pasa a la CDJ [Police Purge Law passes the CDJ], November 27, 2012. Available at: <http://www.elheraldo.hn/content/view/full/99393>

²⁷⁷ *La Tribuna*, Con esta moción destituyeron a los magistrados de la Sala constitucional [Justices in the Constitutional Chamber dismissed with this motion], October 12, 2012. Available at: <http://www.latribuna.hn/2012/12/12/con-esta-mocion-destituyeron-a-los-magistrados-de-la-sala-constitucional/>. See also: TIEMPO, *Investigación sobre la conducta administrativa de los magistrados de la CSJ* [Supreme Court justices' conduct on the bench under investigation], December 13, 2012. Available at: <http://www.tiempo.hn/portada/item/3603-los-documentos-que-echaron-a-andar-suerte-de-los-magistrados>

²⁷⁸ The text is available at: *La Prensa*, *Conozca el informe presentado por la Comisión al Congreso Nacional* [Read the report by the National Congressional Committee], October 13, 2012. Available at: <http://m.laprensa.hn/Secciones-Principales/Honduras/Tegucigalpa/Conozca-el-informe-presentado-por-la-comision-al-Congreso-Nacional>. See also: TIEMPO, *Investigación sobre la conducta administrativa de los magistrados de la CSJ* [Administrative conduct of Supreme Court justices under investigation], October 13, 2012. Available at: <http://www.tiempo.hn/portada/item/3603-los-documentos-que-echaron-a-andar-suerte-de-los-magistrados>

²⁷⁹ *Proceso*, *Nombran y juramentan a nuevos magistrados de la Sala de lo Constitucional* [New Constitutional Chamber justices named and sworn in], December 12, 2012. Available at: <http://proceso.hn/2012/12/12/Nacionales/Nombran.y.juramentan/61391.html>

220. The Commission notes that during the proceedings to remove the justices, public officials made statements calling the Constitutional Chamber's decision into question. With regard to the decision to declare the "Police Purge Law" unconstitutional, the President of the Republic, Mr. Porfirio Lobo Sosa, reportedly said the following:

"Honduras is in mourning over the Constitutional Chamber's decision. Whose side are they on? On the side of criminals or on the side of the honest people of this country...? The victims or their assailants? I tell you this: I feel deceived. I sincerely do."²⁸⁰

221. The Commission also received information to the effect that the deputy who introduced the motion for the judges' removal allegedly told the media that "the justices' conduct jeopardizes citizen security." Another deputy reportedly told the media that "we are troubled by the fact that there are those within the Supreme Court who would obstruct the country's development;" still another reportedly said that Congress' action was justified since the judges had "colluded with organized crime and prosecutors also linked to crime."²⁸¹

222. On December 17, 2012, the IACHR requested information from the Honduran State in exercise of its authority under Article 41 of the American Convention. It was asking for information concerning the removal of the justices of the Constitutional Chamber. In its communication, the IACHR stressed the point that "given the principle of the irremovability of judges, the grounds for disciplinary investigations and sanctions imposed on a judge should never be the legal judgment developed in a decision."²⁸²

223. According to the latest information the Commission has received, the President of Honduras, Porfirio Lobo, convened the President of the National Congress and the Chief Justice of the Supreme Court to a national dialogue roundtable, whose purpose was "to ensure that the three branches of government are working in synchrony in discharging their respective functions, while respecting the principle of separation of powers."²⁸³

c. Guarantees against external pressure

224. Protection of judges from external pressure is a fundamental part of the guarantee of an independent judiciary and means that judges are able to decide the cases they hear on the basis of the facts and the law, free of any undue constraints, influence, inducements, pressure, threats or interference, either direct or indirect, from any quarter or for any reason.²⁸⁴ If States fail to protect their judges and magistrates from any kind of external pressure, including reprisals directed at attacking their

²⁸⁰ *La Prensa.HN*. Hn, *Lobo arremete contra la Corte ¿de qué lado están?* [Lobo assails Court: Whose side are they on?] December 4, 2012. Available at: <http://www.laprensa.hn/Secciones-Principales/Honduras/Tegucigalpa/Lobo-arremete-contra-la-Corte-De-que-lado-están-dice#.UNN80LKPXmk>. See also *Tiempo*, *Magistrados piden cesar ataques contra la independencia judicial* [Justices ask for attacks on judicial Independence to stop], December 5, 2012. Available at: <http://tiempo.hn/portada/item/2867-magistrados-piden-cesar-ataques-contra-la-independencia-judicial>.

²⁸¹ *El Universal*, *Temen crisis en Honduras tras destitución de magistrados* [Crisis feared in Honduras after dismissal of justices], December 13, 2012. Available at: <http://www.eluniversal.com/internacional/121213/temen-crisis-en-honduras-tras-destitucion-de-magistrados>. See also: *La Tribuna*, *Destituidos* [Dismissed], December 11, 2011. Available at: <http://www.latribuna.hn/2012/12/11/destituidos/>

²⁸² IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2012, para. 376. See also, IACHR, *Application filed with the Inter-American Court of Human Rights in the Case of Ana María Ruggeri Cova, Perkins Rocha Contreras and Juan Carlos Apitz (Corte Primera de lo Contencioso Administrativo) v. Venezuela*, Case 12.489, November 29, 2006, para. 89.

²⁸³ *La Prensa*, *Lobo anuncia diálogo tras destitución de magistrados* [Lobo announces dialogue after justices' dismissal], December 14, 2012. Available at: <http://www.laprensa.hn/Secciones-Principales/Honduras/Tegucigalpa/Lobo-anuncia-dialogo-tras-destitucion-de-magistrados#.UNPiOeS89qo>

²⁸⁴ Principle 2 of the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Available at <http://www2.ohchr.org/english/law/indjudiciary.htm>.

person and family and those intended to affect their permanence on the bench and professional future, exercise of the judicial function can be seriously affected, rendering courts unable to protect victims of human rights violations and frustrating full performance of the judicial function and full observance of the standards that must govern due process of law.²⁸⁵

- *Assassination and intimidation of judges and prosecutors*

225. Throughout 2012, the Commission continued to receive reports on assassinations and intimidation of judges in Honduras.

226. The IACHR received information on the murder of Police Court Judge Jesús García, who was shot multiple times and killed near the Office of the Mayor of Lempira on August 14, 2012. In the investigations, the authorities reportedly eliminated the theory of robbery, as Judge García's belongings, his weapon included- were still on his person when the body was discovered.²⁸⁶

227. Also in August, the IACHR learned of the murder of Ernesto Velázquez Martínez, Municipal Police Court Judge in El Progreso, Yoro. He was killed as he stepped out of his car.²⁸⁷ According to the information reported in the media, after a number of searches conducted in various parts of the city, police succeeded in capturing one of the suspects, who was a member of a gang known as "Del Charro", responsible for a series of crimes in La Perla del Ulúa. The officer in charge of the operation had said that one of the main theories was that the crime may have been an assault; another is that the crime was in retaliation for the victim's work as a judge.²⁸⁸

228. The IACHR must point out that the Honduran State has an obligation to investigate these events and open lines of inquiry that consider whether the murders were committed because of the murdered judges' service on the bench. An ineffective response on the State's part could encourage further crime, instill fear in judges and severely curtail the rights of those who turn to the Honduran courts in search of justice.

229. In February 2012, the IACHR learned of the permanent resignation of Judge Alceste Menardi Marconi, President of the Association of Judges and Magistrates of Honduras (ASOJMAH), who worked on the Criminal Courts of San Pedro Sula, in the department of Cortés in northern Honduras. According to the information available, the judge is said to have resigned as a result of the death threats he received because of his work in the ASOJMAH.²⁸⁹ As he said, the judge and his family had reportedly been the targets of various types of threats; their cars were followed and, on several occasions, personal warnings were received from friends and anonymous sources. On the question of the security of judges, prosecutors and law enforcement in Honduras, the judge said the following: "we judges and magistrates

²⁸⁵ IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, December 31, 2012, para. 384.

²⁸⁶ *El Heraldito*, *Acribillan a un juez de Policía en el occidente de Honduras* [Police court judge shot to death in western Honduras], August 15, 2012. Available at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Acribillan-a-un-juez-de-Policia-en-el-occidente-de-Honduras>

²⁸⁷ *La Prensa*, *Ultiman a balazos a Juez de policía en El Progreso, Yoro* [Police Chief shot to death in El Progreso, Yoro], August 26, 2012. Available at: <http://laprensa.hn/Secciones-Principales/Sucesos/Ultiman-a-balazos-a-juez-de-policia-de-El-Progresso-Yoro#.UNM2r7KPXmk>

²⁸⁸ *Teleprogreso*, *Cae supuesto victimario de juez de policía de progreso* [Suspect in murder of Progreso police court judge caught], August 27, 2012. Available at: <http://www.teleprogreso.tv/micanal/?p=14092>. See article reproduced in <http://www.laprensa.hn/Secciones-Principales/Sucesos/Cae-supuesto-victimario-de-juez-de-Policia-de-El-Progresso#.UNPmx-S89qo>

²⁸⁹ *La Prensa*, *Juez renuncia por amenazas de muerte* [Judge resigns because of death threats], February 17, 2012. Available at: <http://www.laprensa.hn/Secciones-Principales/Sucesos/Juez-renuncia-por-amenazas-de-muerte>. See also, *El Heraldito*, *Juez hondureño renuncia por amenazas de muerte* [Death threats force judge to resign], February 17, 2012. Available at: <http://www.elheraldo.hn/Secciones-Principales/Pais/Juez-hondureno-renuncia-por-amenazas-a-muerte>

in Honduras decide cases with a sense of ethics, transparency and independence, but without protection [...]”²⁹⁰.

230. The Commission received information to the effect that the Chief Justice of the Supreme Court had said that two weeks prior to his resignation, a decision had been made to remove Judge Menardi from the bench “for failure to perform or gross violation of the duties of his office and for having engaged in acts contrary to efficacy in the administration of justice.” In response, Judge Menardi said that before submitting his resignation, he was unaware of any notice of dismissal and did not get it until after he had denounced the persecution of judges when submitting his formal resignation.”²⁹¹

231. The Commission takes note of the information asserting that Magistrate José Antonio Gutiérrez, whom the National Congress had removed from the Constitutional Chamber in December 2012, had reportedly left the country after receiving various death threats. According to what the media were told, the justice was applying for asylum abroad.²⁹²

232. As a result of the pressure brought to bear against the Judicial Branch in Honduras and attorneys, on April 4, 2012 independent United Nations experts called upon the Honduran Government to take concrete measures to end the assassinations of judges and lawyers. According to the information received from the UN experts, in the last three years 74 persons in the legal profession had been assassinated in Honduras, and yet no adequate response was forthcoming from the authorities.²⁹³

233. In this regard, in its observations to the draft of this report, the State established the following:

This authority will continue to make efforts to improve the administration of justice, aware that it is necessary to implement in the area of its functions and competences, in the shortest time possible, the legal instruments that have been adopted, in order to resolve the problems indicated by the IACHR. However, it cannot be ignored that the judiciary has taken decisions that have no other intent than to comply with the nature of its responsibilities, in order to uphold its institutionality. This means, regardless of any difficulties that may arise, that it has to manage its proceedings in accordance with the principles and provisions that govern the national and international legal systems.

We cannot, however, ignore the fears of the general public about the climate of insecurity responsible for the crime wave we are facing, and so we are aware that we need a public security policy that will assist the efforts that have been made to tackle this problem.

To that end, as a structural component in the judiciary’s 2010-2011 Strategic Plan, four strategic axes were defined that “address the major topics where the judiciary believes specific, prompt, and coordinated actions are essential in order to optimize judicial work with efficiency and transparency; adopting, as an institutional policy, permanent ties with the public in order to allow them to express their opinions and to provide them with abundant information on their rights in the judicial arena and the services that they can access.” The four axes that were defined are: Judicial Management, Human Talent, Administrative Organization, and Contact with the Citizenry.²⁹⁴

²⁹⁰ *El Heraldo*, *Juez hondureño renuncia por amenazas de muerte* [Death threats force judge to resign], February 17, 2012. Available at: <http://www.elheraldo.hn/Secciones-Principales/Pais/Juez-hondureno-renuncia-por-amenazas-a-muerte>

²⁹¹ *El Heraldo*, *Juez que renunció ya había sido cancelado* [Judge who resigned had already been dismissed], February 21, 2012. Available at: <http://www.elheraldo.hn/Secciones-Principales/Pais/Juez-que-renuncio-ya-habia-sido-cancelado>

²⁹² *El Mundo*, *Ex magistrado hondureño abandona el país por recibir amenazas de muerte* [Former Honduran magistrate leaves country because of death threats], December 18, 2012. Available at: <http://elmundo.com.sv/exmagistrado-hondureno-abandona-el-pais-por-amenazas-de-muerte>

²⁹³ Honduras: UN independent experts call on Honduras to adopt measures to stop killing of lawyers, Office of the United Nations High Commission for Human Rights, April 4, 2012. Available at: <http://www.un.org/apps/news/story.asp?NewsID=41745#UOLVfW9ZWSOas>.

²⁹⁴ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

234. Based on the observations contained in this section, the Commission is calling upon the Honduran State to take the measures necessary to guarantee the independence of judges and prosecutors, so as not to allow undue interference from other powers to affect their independence. The IACHR is also urging the State to adequately protect the lives and personal integrity of judges against any kind of external pressure that might influence their performance on the bench.

C. The State's respect for and protection of the exercise of freedom of expression²⁹⁵

235. The Inter-American Commission on Human Rights has received information on the situation of freedom of expression in Honduras from both civil society and the State of Honduras. On February 22, 2013, the State of Honduras forwarded Official Letter No. SP-A-34-2013 from the Office of the Attorney General of Honduras, in which the State refers to the status of freedom of expression in Honduras and provides information concerning the specific cases that have been reported to the IACHR and which are presented in this report.

1. Progress

236. The IACHR takes note of the criminal ruling to convict handed down on September 11, 2012, over the murder of journalist Jorge Alberto Orellana. Orellana was murdered on April 20, 2010, after leaving the offices of the *Televisión de Honduras* TV channel, where he hosted an opinion program on current affairs. The investigations carried out determined that the journalist's murder was not related to his professional activity.²⁹⁶

237. Likewise, on March 20, 2012, an ex-member of the National Police was arrested in Tegucigalpa for being suspected of having participated in the murder of journalist Israel Zelaya Díaz, which took place on August 24, 2010, in Villanueva, Cortés department.²⁹⁷

238. In addition, the IACHR observes with satisfaction the decision of the National Human Rights Commissioner to provide protection for journalist Ariel D'Vicente after the allegations of corruption that he made on August 2, 2012, regarding alleged acts of corruption by public officials.²⁹⁸

239. Likewise, the IACHR views positively the public apology made by a police officer via the media to Sandra Sarybel Sánchez, a journalist and director of *Radio Gualcho* and correspondent with German news agency *Deutsche Welle*, as the result of a reconciliation agreement reached in the national criminal courts. The officer apologized for "the outrage she suffered during a police operation" and voluntarily agreed to take a training course on the subject of freedom of expression.²⁹⁹ On March 21, 2011, police officers intimidated the journalist and destroyed her camera while she was covering a

²⁹⁵ The Inter-American Commission assigned the preparation of this section of the report to the Office of the Special Rapporteur for Freedom of Expression.

²⁹⁶ IFEX/ Reporters Without Borders. September 14, 2012. [TV journalist's killer gets 28 years in Honduran prison](#); La Tribuna. September 11, 2012. [28 años de cárcel para el homicida de "Georgino" Orellana](#); IACHR. Office of the Special Rapporteur for Freedom of Expression. April 22, 2010. Press Release R45/10. [Office of the Special Rapporteur Expresses its Concern at the Latest Murder of a Journalist in Honduras and at the Grave Vulnerability of the Media There](#).

²⁹⁷ La Tribuna. March 21, 2012. [Explicación cae por muerte de periodista Israel Zelaya Díaz](#); C-Libre/ IFEX. March 23, 2012. [Capturan a sospechosos de asesinatos de dos periodistas](#).

²⁹⁸ Comisionado Nacional de Derechos Humanos (CONADEH). No date. [Comisionado DDHH Pide Protección para Periodista Ariel D'Vicente](#); IFEX/ C-Libre. August 7, 2012. [Honduran journalist fears for safety after uncovering financial corruption](#); Proceso Digital. August 2, 2012. [Dinero que trasladaba esposa de ex ministro de Finanzas proviene de coimas, denuncia periodista](#).

²⁹⁹ Communication of journalist Sandra Marybel Sánchez. August 30, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; El Heraldo. September 21, 2012. [Policía pide perdón a periodista hondureña](#); La Tribuna. August 29, 2012. [Policía pide disculpas a periodista por agresión](#).

teachers demonstration in Tegucigalpa. The Public Prosecutor's Office issued a summons to the police officer.³⁰⁰

240. The IACHR receives with satisfaction the information provided by the representatives of the State during the public hearing held at the IACHR on November 4, 2012, regarding Honduras's creation of a special investigation unit focused on crimes against journalists and other vulnerable groups. The IACHR will continue to monitor closely the implementation of this program.³⁰¹ In its observations to this draft report, the State provided information on the approval of the National Protection Plan for human rights defenders, journalists, media workers, and legal practitioners. The Honduran State indicated that the plan is "in the consultation phase," and that "in order for the National Protection Plan to be properly implemented, an awareness Plan has also been approved for the respective national authorities, and a National Board of Human Rights Organizations, journalists, media workers, and legal practitioners has been established, with the involvement of 50 non-governmental organizations."³⁰²

241. In its observations to the draft report, the Honduran State remarked that "the Bill of the 'Law for the Protection of Human Rights Defenders, Journalists, Media Workers, and Legal Practitioners' has been introduced." The State reported that the bill was the result of "a broad process of consultation and validation at the national level," and was supported by civil society organizations, bar associations, professional journalists' organizations, and government human rights bodies.³⁰³

2. Murders

242. In its report to the IACHR, the State indicated that it is aware of its commitment to guarantee the diligent and exhaustive investigation of acts that violate freedom of expression, and that it "has requested the cooperation of friendly nations in order to strengthen its investigative teams with more personnel and the necessary logistical resources." In this same vein, the State maintained that "to date, the Office of the Public Prosecutor has documented the deaths of 22 media workers, and 8 of those cases have been prosecuted." Nevertheless, the State said that "the preliminary investigations confirm that the homicides are the result of common crime or organized crime, and it has not been determined that they were motivated by the opinions expressed by the media workers about the government."³⁰⁴ In particular, the IACHR urges the State not to dismiss the theory that the victims may have been murdered in retaliation for exercising their right to freedom of expression, and to exhaust any line of investigation in that direction.

243. According to information received by the IACHR, on December 5, 2011, journalists Luz Marina Paz was murdered in a neighborhood on the outskirts of Tegucigalpa when two men on a motorcycle shot at her while she was traveling to the radio station where she worked. According to the information received, Paz hosted the program "Three in the news" on the *Cadena Hondureña de Noticias* (CHN) network. Prior to that, she had worked for eight years at *Radio Globo*. The communicator was known for alleging wrongdoing in her journalism and for being critical of the *coup d'état* that took place on

³⁰⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. March 30, 2011. Press Release R27/11. [Office of the Special Rapporteur Expresses Concern over Attacks against Media in Honduras](#); IACHR. Annual Report 2011. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 343.

³⁰¹ IACHR. 146 Period of Sessions. [Hearing on the Right to Freedom of Expression in Honduras](#). November 4, 2012; IACHR. November 16, 2012. Press Release 134/12. [IACHR Concludes its 146th Session and Expresses Appreciation for the Confidence Shown by All Stakeholders in the Human Rights System. Annex to Press Release 134/12 on the 146th Regular Session of the IACHR](#).

³⁰² Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, "Observations of the State of Honduras to the Draft of the Report." p. 10.

³⁰³ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, "Observations of the State of Honduras to the Draft of the Report." p. 10.

³⁰⁴ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, "Observations of the State of Honduras to the Draft of the Report." p. 11.

June 28, 2009. The IACHR learned that the Honduran authorities were weighing a number of different theories as to the motive behind the murder.³⁰⁵ The State indicated with regard to this matter that “as the IACHR notes, the Public Ministry is assessing different theories, and the investigation is ongoing.”³⁰⁶

244. The IACHR was informed of the murder of communicator and LGBTI rights defender Eric Alex Martínez Ávila, who disappeared on May 5 and was found dead two days later. According to the information received, on May 7, residents of the Guasculile community found the body of a young man who was later identified as Martínez Ávila on the side of a highway between the cities of Olancho and Tegucigalpa. The communicator was working as a monitoring, evaluation and public-relations official with the Kukulcán Association, an organization dedicated to the defense of the human rights of lesbians, gays and trans and bisexual persons. He had recently been designated as a pre-candidate for a deputy position in the Liberty and Refounding party and was an active member of the Sexual Diversity Board of the National Resistance Front.³⁰⁷ The IACHR was informed that on September 12, one of the possible perpetrators of the crime was arrested.³⁰⁸ The State reports that the case “is being prosecuted.”³⁰⁹

245. The IACHR learned of the kidnapping and murder of radio journalist Alfredo Villatoro, which took place in Tegucigalpa on May 15. According to information received, several armed men abducted Villatoro in the early morning hours of May 9 after intercepting the vehicle he was driving to work. Despite a significant police response, the authorities were not able to find the communicator. On May 15, the journalist’s body turned up on a piece of land south of Tegucigalpa, with two bullet wounds to the head. The police informed that the communicator appeared murdered to have been murdered only moments before in the place where the body was found. Villatoro was a well-known and influential journalist who was working as the news coordinator of the *HRN* radio network, one of the most important in the country, and hosted a morning news show with that station.³¹⁰ According to the information, eight people have been arrested on suspicion of being connected to the kidnapping and murder of journalist.³¹¹ On July 11, the State sent information via a letter to the Inter-American Commission indicating that as regards these incidents, the authorities have identified and brought to trial five people as possibly responsible for the crimes of kidnapping and murder.³¹²

³⁰⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression. December 8, 2011. Press Release R126/11. [Office of the Special Rapporteur regrets death of journalist and shooting against newspaper in Honduras](#); La Prensa. December 6, 2011. [CPH y SIP condenan asesinato de periodista Luz Marina Paz](#).

³⁰⁶ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 11.

³⁰⁷ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 11, 2012 Press Release R46/12. [Office of the Special Rapporteur of Freedom of Expression, The Rapporteurship on Human Rights Defenders and The unit for the Rights of Persons LGBTI condemn murder of journalist and LGBTI activist in Honduras](#); La Tribuna. May 8, 2012. [Estrangulado encuentran a periodista de la resistencia.](#); La Prensa. May 8, 2012. [Acaban con la vida de otro periodista en Honduras; ya son 22.](#)

³⁰⁸ El Heraldo. September 12, 2012. [Capturan a pandillero sospechoso de asesinar a periodista](#); La Tribuna. September 12, 2012. [Implicado en la muerte de periodista cae en El Pedregal.](#)

³⁰⁹ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” pp. 11 & 17.

³¹⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. May 17 2012. Press Release R52/12. [The Office of the Special Rapporteur condemns murder of journalist kidnapped in Honduras](#); Committee to Protect Journalists (CPJ). May 16, 2012. [Kidnapped Honduran Journalist found dead](#). C-Libre. May 16, 2012 [Ejecutado encuentran a periodista secuestrado hace siete días.](#)

³¹¹ La Prensa. No date. [Honduras: Apresados en Cofradía mataron a Alfredo Villatoro](#); El Heraldo. May 28, 2012. [Dictan detención judicial a supuestos secuestradores del periodista Alfredo Villatoro](#); C-Libre. May 28, 2012. [Un total de ocho detenidos por el secuestro y asesinato del periodista Villatoro.](#)

³¹² Secretary of Foreign Affairs of the Republic of Honduras. [Secretaría de Relaciones Exteriores de Honduras] July 11, 2012. *Official Note No. 803/DGEA/012*. Transmitting Official Note-SUB-SEDS-N° 092-2012 of June 26, 2012, of the Office of the State Ministry for Security [Secretaría de Estado en el Despacho de Seguridad]. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

246. The IACHR was informed that on August 28, 2012, spokesperson and deputy police inspector Julio César Guifarro Casaleno was murdered. According to the information received, one day prior to his death, the police spokesperson had publicized national statistics on arrests and confiscation of vehicles and motorcycles. The police indicated that the killing was a contract killing; however there is still no word on the motive behind crime.³¹³ The Honduran State indicated with respect to this case that “the Office of the Public Prosecutor has requested several expert reports in order to obtain evidence, and therefore the investigation is ongoing.”³¹⁴

247. During the hearing held at the IACHR on November 4, 2012, the petitioners provided information on other individuals who may have been murdered for having exercised freedom of expression. This was the case with José Ricardo Rosales, who was murdered on January 18 in Tela after having accused the local police of human rights violations.³¹⁵ Also, it was reported that on January 20, Matías Valle, the leader and spokesperson of the Unified Movement of Aguán (MUCA in its Spanish acronym) was murdered. According to the information provided, Valle had been receiving death threats for many years.³¹⁶ The information received also indicates that on April 23, television host Noel “Tecolote” Valladares was murdered. According to the information, the communicator was threatened prior to his murder.³¹⁷ The IACHR was also informed during the hearing that on July 8, Adonis Felipe Bueso, a reporter with Christian broadcaster *Radio Stereo Naranja*, was murdered. According to the information provided during the hearing, the crime’s motives have not been determined.³¹⁸ Finally, information was provided on the murder of journalist José Noel Canales Lagos, who worked for digital newspaper *Hondudiario.com*. He was killed while on his way to work. According to information provided, the journalist had been receiving death threats since 2009.³¹⁹

248. The State subsequently provided information on the matters addressed at the November 4, 2012 hearing. With regard to the case of Matías Valle, the State indicated that “the Office of the Public Prosecutor requested that the Court exhume the body, which [...] had been buried at Finca La Confianza,” and that, “the Court scheduled the exhumation for February 23 of this year.” Nevertheless, the State reported that it was not possible to conduct the exhumation due to the alleged lack of cooperation on the part of the victim’s relatives and other residents of the farm, and that the judge

³¹³ Telesur. August 29, 2012. [Periodista de la policía de tránsito es asesinado a tiros en Honduras](#); Estrategia & Negocios/AFP. August 29, 2012. [Honduras: asesinan a periodista vocero de policía de tránsito](#); IFEX/ C-Libre. August 31, 2012. [Periodista y portavoz policial asesinado en Honduras](#).

³¹⁴ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 11.

³¹⁵ IACHR. [Information brought by the petitioners Centro de Investigación y Promoción de Derechos Humanos \(CIPRODEH\), and Comité por la Libre Expresión \(C-Libre\). Hearing on the Right to Freedom of Expression in Honduras](#). November 4, 2012. Available at Archives of the Office of the Special Rapporteur for Freedom of Expression; La Tribuna. 18 January 2012. [Abogado que denunció torturas fue acibillado frente a su casa en Tela](#).

³¹⁶ IACHR. [Information brought by the petitioners Centro de Investigación y Promoción de Derechos Humanos \(CIPRODEH\), and Comité por la Libre Expresión \(C-Libre\). Hearing on the Right to Freedom of Expression in Honduras](#). November 4, 2012. Available at Archives of the Office of the Special Rapporteur for Freedom of Expression; Reporters Without Borders. January 24, 2012. [Women journalists terrorized, peasant spokesman gunned down in Aguán](#).

³¹⁷ IACHR. [Information brought by the petitioners Centro de Investigación y Promoción de Derechos Humanos \(CIPRODEH\), and Comité por la Libre Expresión \(C-Libre\). Hearing on the Right to Freedom of Expression in Honduras](#). November 4, 2012. Available at Archives of the Office of the Special Rapporteur for Freedom of Expression; La Prensa. April 23, 2012. [Honduras: Matan al presentador del show televisivo “El Tecolote”](#).

³¹⁸ IACHR. [Information brought by the petitioners Centro de Investigación y Promoción de Derechos Humanos \(CIPRODEH\), and Comité por la Libre Expresión \(C-Libre\). Hearing on the Right to Freedom of Expression in Honduras](#). November 4, 2012. Available at Archives of the Office of the Special Rapporteur for Freedom of Expression; Reporters Without Borders. July 13 2012. [HONDURAS | Asesinado el periodista Adonis Felipe Bueso Gutiérrez](#).

³¹⁹ IACHR. [Information brought by the petitioners Centro de Investigación y Promoción de Derechos Humanos \(CIPRODEH\), and Comité por la Libre Expresión \(C-Libre\). Hearing on the Right to Freedom of Expression in Honduras](#). November 4, 2012. Available at Archives of the Office of the Special Rapporteur for Freedom of Expression; La Prensa. August 10, 2012. [Matan a empleado de Hondudiario](#); UNESCO. August 22, 2012. [La Directora General condena el asesinato del periodista hondureño José Noel Canales Lago y pide el fin de la impunidad para tales crímenes](#).

reportedly ordered the authorities to leave the property.³²⁰ In addition, the State provided information on the situation of Noel Valladares, stating that “he was not a journalist, nor was he an employee of any media outlet. He had been paying for airtime on television since January 30, 2012 [...], and on his program he would predict winning numbers for the national lottery. Therefore, the investigation into his murder and the murder of his companions is being conducted by the Homicide Unit of the Office of the Prosecutor for Common Crimes, and not by the investigative team specializing in the death of journalists.”³²¹ Finally, regarding the case of reporter Adonis Felipe Bueso, the State indicated that “statements have been taken from several individuals to investigate possible motives for the crime.”³²²

249. The IACHR recalls that Principle 9 of its Declaration of Principles 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.”

250. The IACHR takes note of the State's proposal to create a special investigative unit for investigating crimes against journalists and other groups. At the same time, it reminds the State of the need for taking into account that the functioning of that unit must be accompanied by conditions allowing for adequate results to be obtained. Thus for example, it is crucial for the unit to have the financial and personnel resources necessary for its proper implementation, as well as for it to effectively coordinate with the agencies responsible and adequately define procedures for its operation. Likewise, the IACHR highlights the convenience of seeking support from the international community to help the unit function better.

3. Attacks on and Threats against Media Outlets and Journalists

251. The IACHR received numerous communications concerning attacks on and threats against journalists and media outlets in Honduras. According to the information, in the early morning hours of December 5, 2011, armed men fired from a moving vehicle at the offices of the newspaper *La Tribuna*, wounding security guard José Manuel Izaguirre. He was hospitalized and required abdominal surgery. Newspaper officials indicated that the attack took place because of investigations published in the newspaper on the murder of the son of the Rector of the Universidad Nacional Autónoma de Honduras, Rafael Vargas, and his friend, Carlos Pineda. Those articles had mentioned allegations that police officers were among the possible perpetrators of the crime.³²³

252. The IACHR was informed that on December 23, 2011, Leonel Espinoza, a journalist and correspondent with Colombia's *NTN 24* was arrested, assaulted and intimidated by supposed members of the National Police. The incident took place at night while the communicator was driving his car. He was intercepted by a police vehicle. The journalist had reported on issues including the cleaning up of the police department, attacks on media outlets and journalists, impunity in journalist murders, and the case of the murder of the son of the rector of the Universidad Nacional Autónoma de Honduras.³²⁴ The State of Honduras provided information regarding this case, stating that “the Office of the Public Prosecutor has taken several steps that included obtaining witness statements; the victim was evaluated by the Forensic

³²⁰ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

³²¹ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” pp. 11 & 12.

³²² Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

³²³ IFEX. December 5, 2011. [Armed men fire shots at daily's offices](#); Knight Center for Journalism in the Americas. December 6, 2011. [Police exposé linked to shooting attack on newspaper, Honduran editor says](#).

³²⁴ IFEX. December 23, 2011. [Journalist assaulted by National Police officers](#); El Heraldo. December 23, 2011. [Periodista denuncia a policías por agresión](#).

Medicine Office, [and] a report was requested from the Chief of the Metropolitan Police Office and the Chief of the Motorized Squad. We have the names and composite sketches of the officers who took part in this operation but they have still not been individually identified, given that the Victim only fully recognizes one of the suspects.”³²⁵ The State also indicated that Espinoza Flores is the beneficiary of protection measures.³²⁶

253. The IACHR received information indicating that Uriel Gudiel Rodríguez, a cameraman with news program “Direct Contact” on *Canal 45* had received death threats on December 24, 2011, presumably from an officer with the homicide division of the Department of Criminal Investigations.³²⁷

254. The IACHR learned of death threats received by independent journalist Itsmania Pineda Platero. According to the information, on January 6, 2012, the journalist received a telephone call in which a man insulted her and warned her that she would be murdered. Hours later, she received another call in which men’s voices were heard along with the sound a firearm makes when it is cocked and readied to fire. On January 8 and 9, the threats were received through text messages. The text message sent on January 8 said, “don’t play with fire, not even your bodyguards will save you, [...] be careful.” On January 9, the journalist received another threat: “at any moment we’re going to put you in the crematorium, were going to be your nightmare.” In November of 2012, the journalist alleged that her accounts for communicating online were blocked through hacking attacks that were intended to silence her.³²⁸

255. Likewise, on January 23, 2012, Gilda Silvestrucci, a journalist with *Radio Globo*, received several calls on her cellular telephone. During one of them, the voice of an unidentified man mentioned personal information regarding her three children and explicitly told her, “we’re going to kill you.” Almost simultaneously, an unidentified person called one of her daughters and asked her what time her mother normally gets home. The journalist also noticed she was being followed by suspicious vehicles. Silvestrucci is an active member of the “Journalists for Life and Freedom of Expression” collective and participated in a demonstration organized by that group on December 13, 2011.³²⁹ In addition, the journalist took part in filing a criminal complaint against senior civilian and military officials on December 21, wherein a group of human rights defenders alleged to the Office of the Special Public Prosecutor for Human Rights that the President, the head of the Joint Chiefs of Staff of the Armed Forces, and the head of the Presidential Honor Guard were responsible for a series of human rights violations committed by the Presidential Honor Guard.³³⁰

256. In that sense, on February 7, 2012, the IACHR sent a communication to the State of Honduras in keeping with the faculties established in Article 41 of the American Convention on Human Rights in which it requested information on the death threats received by Uriel Rodríguez, Itsmania

³²⁵ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

³²⁶ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

³²⁷ C-Libre. December 27, 2011. [Camarógrafo amenazado de muerte por agente policial de homicidios](#); International Freedom of Expression Exchange (IFEX). December 28, 2011. [Police officer issues death threat against camera operator](#); Honduras News. December 29, 2011. [Letter to President Lobo from Pakistan Press Foundation](#).

³²⁸ Honduras Tierra Libre. November 15, 2012. [Defensora de Derechos Humanos en Honduras Silenciada por Delinquentes Cibernéticos](#); Habla Honduras. November 23, 2012. [Defensora de derechos humanos denuncia amenazas](#); Xibalba Arte y Cultura. November 20, 2012. [Defensora de derechos humanos denuncia amenazas](#).

³²⁹ Comité de Familiares de Detenidos Desaparecidos de Honduras (COFADEH). January 26, 2012. Communication to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Protecti@nline. January 27, 2012. [Gilda Silvestrucci, Honduran journalist and defender: victim of death threats and harassment](#); Conexihon.info. January, 30 2012. [Amnistía Internacional realiza acciones urgentes para proteger la vida de dos integrantes del colectivo de periodistas por la vida y libre expresión](#).

³³⁰ Comité de Familiares de Detenidos Desaparecidos de Honduras (COFADEH). January 26, 2012. Communication to the IACHR. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; Asociación para los derechos de la Mujer y el Desarrollo (AWID)/ RSF. January 3, 2012. [Honduras: Quince Mujeres Periodistas Presentan Una Denuncia Contra Altas Autoridades Del Estado](#).

Pineda and Gilda Silvestrucci. The request was repeated on March 12, 2012.³³¹ On March 20, 2012, the State responded with information regarding the threats to Gilda Silvestrucci. According to the information provided by the State, following the filing of the complaint, on January 24, 2012, a series of steps were taken to investigate the origin of the threatening phone calls received by the journalist. The final action was taken on March 13, 2012, in which a Special Prosecutor on Organized Crime was asked to carry out “an investigation into the calls using a specialist in that area.”³³² In addition, in its communication of February 22, 2013, the State reported that it was taking “the pertinent steps to identify the calls that were received.”³³³ With respect to the case of journalist Itsmania Pineda Platero, the State also indicated that “the Office of the Public Prosecutor has conducted several investigative proceedings aimed at identifying the individual participants, for which witness statements have been taken.” It further stated that “the progress of the complaint in the National Criminal Investigations Bureau (DNIC) has been verified.”³³⁴ Finally, the State reported that Itsmania Pineda Platero has been the beneficiary of protection measures since March 5, 2010.³³⁵

257. Likewise, on January 23, 2012, Ivis Alvarado, a journalist and news coordinator with *Globo TV*, alleged the theft of two computers from his home and the later search of his vehicle, incidents which took place in the capital city.³³⁶

258. According to the information received, on February 14, three journalists with the television channel *Catedral TV*, in Comayagua, who had been reporting on and investigating a fire in the Comayagua prison, received a number of threats and were harassed. According to the information, journalist Luis Rodríguez, cameraman Javier Villalobos and channel owner Juan Ramón Flores received a number of phone calls and messages on their cellular telephones warning them to stop reporting on the issue or they would be murdered. The videos and information revealed in the program entitled “Save Yourself” showed images of and featured testimony on a number of irregularities in the penitentiary facility.³³⁷ According to the information received, Ramón Cabrera, the general manager of *Digicable*, was also threatened in order to force him to take *Catedral TV* out of its lineup.³³⁸ Regarding this matter, the State reported that “there is no record of any complaint filed with the Office of the Public Prosecutor [...] and therefore they are asked to file the respective complaint before the national authorities.”³³⁹

³³¹ IACHR. Office of the Special Rapporteur for Freedom of Expression. February 7, 2012. *Letter to the State of Honduras: Request for information about the situation of journalists Uriel Rodríguez, Itsmania Pineda and Gilda Silvestrucci*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IACHR. Office of the Special Rapporteur for Freedom of Expression. March 12, 2012. *Second letter to the State of Honduras: Request for information about the situation of journalists Uriel Rodríguez, Itsmania Pineda and Gilda Silvestrucci*. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

³³² Attorney General of the Republic of Honduras [Ministerio Público de la República de Honduras]. March 20, 2012. Communication to the sub-Attorney General of the Republic [Sub Procurador General de la República] No. UAI-024-2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

³³³ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

³³⁴ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

³³⁵ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 12.

³³⁶ IFEX. February 27, 2012. [Periodista denuncia incursión de desconocidos en su vivienda](#); SIP-IAPA. April 23, 2012. [Informe por país: Honduras](#).

³³⁷ C-Libre. February 24, 2012. [Periodistas amenazados de muerte por cobertura periodística](#); Reporters Without Borders. March 2, 2012. [Oleada de amenazas a periodistas, editores, y líderes de opinión](#).

³³⁸ IFEX. February 28, 2012. [Gerente de empresa Digicable recibe amenazas](#); Reporters Without Borders. March 2 2012. [Journalists and civil society activists caught up in new wave of threats](#).

³³⁹ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 13.

259. According to information received by the IACHR, on February 19, 2012 presumed members of the Honduran military intimidated a group of 20 international journalists who were traveling to Bajo Aguán, in Tocoa, Colón, to cover the International Human Rights Meeting in Solidarity with Honduras. According to the information, at a military checkpoint, individuals presumed to be soldiers stopped the caravan of vehicles in which the journalists were traveling. When the communicators tried to capture images of what was happening, the soldiers warned them that their equipment would be confiscated. Almost half an hour later, the soldiers allowed the caravan to pass.³⁴⁰ The Honduran State asserted that “it is unaware of the incident,” and therefore asked the journalists “to file the respective complaint before the national authorities.”³⁴¹

260. The IACHR received information indicating that on February 22, 2012 journalist Danilo Osmaro Castellanos, vice president of the Committee for Free Expression (C-Libre) and director of television news show ‘ATN: Honduras Todo Noticias,’ broadcast by *Canal 32*, was the victim of death threats toward him and his family. Prior to the threats, the journalist had broadcast reports critical of the local Copán government’s administration.³⁴² The State provided information on the case indicating that “the Office of the Public Prosecutor has conducted several proceedings, such as taking statements from the victim and from witnesses. The victim was asked to appear at the offices of the National Criminal Investigations Bureau to add to his statement for the purposes of clarifying some circumstances.” The State indicated that the journalist reportedly stated that it was not necessary to continue with the proceedings in the case “because they have stopped calling him from the number from which the messages had been sent.” Nevertheless, the State reported that “a court order was requested so that the mobile carrier informs the details of the incoming and outgoing calls for the cell phone number from which Mr. Castellanos reports to have received the messages, in order to establish who it belongs to.”³⁴³

261. On February 29, 2012 Mavis Cruz, a journalist with *Radio Libertad*, in San Pedro Sula, received death threats. According to the information, a person called to tell her that she was “causing lots of trouble” on her radio program and that for that reason they were going to “destroy her.”³⁴⁴ Regarding this matter, the Honduran State indicated that “the Office of the Public Prosecutor has conducted several proceedings, such as taking statements from the victim and from witnesses. A wiretap warrant for Ms. Cruz’s telephone was requested from the respective Court.” The State further reported that “detailed information on the incoming and outgoing telephone traffic for Ms. Cruz Zaldívar’s landline was obtained from the National Telecommunications Company (HONDUTEL), and a review of the report sent by the Telecommunications Company does not show any incoming call on the date and time specified by the complainant.” The State added that “investigations are ongoing.”³⁴⁵

262. Additionally, the IACHR learned of death threats and threats of sexual violence received on a number of occasions between February and April by Dina Meza Elvir, spokesperson for the Committee of Relatives of the Detained and Disappeared (COFADEH in its Spanish acronym). According to the information, on February 22, 2012 she received two text messages that said, “We are going to burn your pussy with lime until you scream and the whole squad is going to enjoy it.” CAM”. And second: “you’ll to end up like the people in Aguán dead nothing better than fucking some bitches.” CAM is an

³⁴⁰ C-Libre. February 20, 2012. [Militares intimidan a prensa internacional en el Bajo Aguán](#); Reporters Without Borders. March 2, 2012. [Regional radio Journalist murdered by assailant with machete](#).

³⁴¹ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 13.

³⁴² C-Libre/ IFEX. February 27, 2012. [C-libre Vice-president receives death threat](#); Hondudiario. February 28, 2012. [Periodista Danilo Osmaro Castellanos denuncia amenazas a muerte](#).

³⁴³ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 13.

³⁴⁴ La Tribuna. March 1, 2012. [Periodista denuncia amenazas a muerte](#); La Prensa. March 1, 2012. [Periodista sampedrana es amenazada de muerte](#).

³⁴⁵ Communication from the State of Honduras, Official Letter No. SP-A-34-2013, dated February 22, 2013, “Observations of the State of Honduras to the Draft of the Report.” p. 13.

acronym for Comando Álvarez Martínez with which other human right defenders were threatened after the 2009 *coup d'état*. Likewise, on April 6, Dina Meza saw two men photographing her while she walked down the street with her children, and on April 14 she received a phone call during which a man warned her, “Watch your *pipa*” (vagina).³⁴⁶ Later, in August 2012, she reported having received new telephone threats in the context of the violent breaking up of a peasant demonstration in El Aguán.³⁴⁷ Dina Meza Elvir has been the beneficiary of a IACHR precautionary measures since 2006.³⁴⁸

263. According to information received, Alex Roberto Sabillón, a reporter with *Multicanal*, was threatened and intimidated between the months of March and August. The information indicates that on March 13, the reporter received a threatening phone call while broadcasting a news program on *Multicanal*, a TV channel located in the Choloma municipality. The program had called into question an increase in public fees and alleged abuses against street vendors.³⁴⁹ The threats received during the month of August arrived via phone call and text messages. Likewise, on August 27, Sabillón appeared before the General Directorate of Criminal Investigation (DGIC in its Spanish acronym) to give a statement after having been accused of the crime of sedition by the water company. On leaving that office, an unidentified individual warned him that he would be murdered. The journalist requested protection at a Choloma police station, where he spent the night. On the following day, Sabillón returned home with a police escort and later filed a complaint against one of that company’s officials for threats.³⁵⁰

264. In March, Elvis Guzmán, a spokesperson for the Public Ministry, filed a complaint for intimidation involving individuals in a vehicle loitering near his house. The incidents took place after a Public Ministry attorney informed the media that Guzmán had made information regarding sensitive criminal cases public. This would be the third complaint Guzmán has filed over threats against him.³⁵¹

265. The IACHR received information indicating that on March 28, 2012, a mobile unit of *Canal 36 Choluta Sur* was destroyed by armed men who attempted to enter station facilities. According to the information, the attack took place one day after the broadcaster reported on questions raised regarding a politician and a soldier.³⁵²

266. In addition, journalist Antonio Cabrera was threatened through text messages sent to his cellular telephone in February, March and April 2012. The threats against Cabrera, who is responsible for the *Radio Frescura 90.9* news programs in the city of Tela, Atlántida department, have generally been received while he broadcasts the morning news. According to the information received, some of the messages received by the communicator include the following: “you have a few days left to keep talking; you’re going to be the third to last journalist to get his tongue cut out.” Cabrera reports that the subjects covered in his program that may have provoked the threats include alleged illegal cutting down of trees in Lancetilla National Park and alleged arbitrary actions taken by local authorities.³⁵³

³⁴⁶ Amnesty International. April 18, 2012. [Periodista de derechos humanos amenazada](#); Front Line Defenders. April 17, 2012. [Honduras: Death Threat and ongoing intimidation against human rights defender Ms. Dina Meetabel Meza Elvir](#).

³⁴⁷ Iniciativa Mesoamericana de Mujeres Defensoras de Derechos Humanos. August 27, 2012. Communication to the Office of the Special Rapporteur for Freedom of Expression. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression.

³⁴⁸ IACHR. [Annual Report 2006](#). OEA/Ser.L/V/II.127, Doc. 4 rev. 1, March 3, 2007. Vol. I. Chapter III.

³⁴⁹ IFEX/ C-Libre. March 20, 2012. [Journalists receives death threats in Choloma](#); Conexihon.info. March 19, 2012. [Comunicador Alex Sabillón interpone denuncia por amenazas a muerte](#).

³⁵⁰ C-Libre. August 28, 2012. [Reportero se refugia en estación policial para salvaguardar su vida](#); C-Libre. September 1, 2012. [C-Libre solicitó medidas cautelares para reportero cholomeño](#); La Prensa. August 31, 2012. [Comunicadores piden protección a Fiscalía](#).

³⁵¹ La Tribuna. March 17, 2012. [Portavoz del MP denuncia amenazas de una fiscal](#); C-Libre/ IFEX. March 20, 2012. [Periodista en San Pedro Sula recibe amenaza de muerte](#).

³⁵² C-Libre. March 29, 2012. [Desconocidos destruyen unidad móvil de Canal 36](#); Knight Center for Journalism in the Americas. March 30, 2012. [TV channel's mobile unit destroyed in Honduras](#).

³⁵³ IFEX. May 28 2012. [Periodista de la Radio Frescura denuncia amenazas de muerte](#); C-Libre. May 28, 2012. [Periodista denuncia amenazas](#).

267. The IACHR was informed that on April 12, at least two unidentified individuals entered the facilities of community radio stations *La Voz Lenca* and *Radio Guarajambala* and cut their power. According to information received, the attack took place after the broadcaster publicly backed the Lenca indigenous community in Santo Domingo, in Colomoncagua, in opposition to the construction of a private hydroelectric project. When the attackers entered the station, they said, “There has been too much criticism from these radio stations.” The stations belong to the City Council of Popular and Indigenous Organizations of Honduras (COPINH in its Spanish acronym) and they have suffered sabotage and attacks in the past.³⁵⁴

268. According to information received, on April 18, Rony Espinoza, a journalist with *Radio Globo*, was attacked and threatened by two presumed leaders of the Liberal Party when he tried to get statements from Bishop Luis Alfonso Santos during a public event in Tegucigalpa.³⁵⁵ Likewise, on April 26, Santiago Cerna, a journalist with *Canal 6* and director of informational programming, received threatening phone calls and the following day was intimidated by a vehicle without license plates and with tinted windows that intercepted him in San Pedro Sula.³⁵⁶ According to the information, on May 1, 2012, Edgardo Castro, a journalist and director of the program “The Whip against Corruption,” which is broadcast on *Cadena Globo Televisión*, received numerous threats by text message while broadcasting activities in celebration of Labor Day.³⁵⁷

269. The IACHR received information indicating that on April 27, in Copán, at least one unidentified individual chased a vehicle identified with the *Canal 6* logo in which Edgar Joel Aguilar and other journalists were traveling, firing on it with a rifle.³⁵⁸ Likewise, on April 26, in the municipality of Omoa, unidentified individuals fired on the home of Selvín Martínez, a journalist with broadcaster *JBN Televisión*.³⁵⁹ On May 18, Martínez alleged that there had been an attempt to kidnap his wife, Dilcia Moreno, the previous day, while she was traveling through the city of Omoa.³⁶⁰ On July 11, an individual fired several times at the motorcycle Martínez was riding. The authorities arrested a person as a suspect in the attack.³⁶¹ In October, Martínez allege that a man suspected of being involved in the attacks against him and who was in preventative detention continued to threaten him from prison.³⁶²

270. On May 28, David Romero Elnor, the news director for *Radio Globo*, alleged that a retired Colonel had stated that Romero and Esdras Amado López, the owner of *Canal 36*, could be murdered for being “bigmouths,” the same as Alfredo Villatoro. The former Armed Forces head of military intelligence

³⁵⁴ C-Libre. April 13, 2012. [Desconocidos sabotean señal de radios comunitarias](#); Knight Center for Journalism in the Americas. April 16, 2012. [Electricity disconnected at two Honduran community radio stations](#).

³⁵⁵ C-Libre. April 23, 2012. [Radio journalist assaulted, gets death threat from Liberal Party leaders](#); La Tribuna. April 30, 2012. [El IPI condena los ataques de políticos a periodistas en Honduras, Panamá y Argentina](#).

³⁵⁶ Reporters Without Borders. May 4, 2012. [Attacks and threats aimed at provincial media reach alarming level](#); C-Libre. April 30, 2012. [Periodista de Canal 6 denuncia amenazas a muerte](#).

³⁵⁷ C-Libre. May 9, 2012. [Director de noticiero con medidas cautelares continúa recibiendo amenazas de muerte](#); Notimex. May 8, 2012. [Denuncian amenazas de muerte contra periodista](#).

³⁵⁸ La Prensa. April 28, 2012. [Atentan contra vida de comunicador en Copán](#); El Tiempo. No date. [Atentan contra el corresponsal de Canal 6](#).

³⁵⁹ Reporters Without Borders. May 4, 2012. [Attacks and threats aimed at provincial media reach alarming level](#); C-Libre. April 30, 2012. [Desconocidos disparan contra la vivienda de comunicador](#).

³⁶⁰ C-Libre/ IFEX. May 23, 2012. [Periodista denuncia intento de secuestro](#); Crónica Viva. May 23, 2012. [Honduras: periodista denuncia intento de secuestro](#).

³⁶¹ C-Libre. July 18, 2012. [Prisión preventiva para el responsable del atentado contra comunicador](#); Reporters Without Borders. July 20, 2012. [Journalist still fears for safety although suspect held for his attempted murder](#).

³⁶² C-Libre. October 17, 2012. [Desde prisión agresor de periodista le continúa enviando amenazas de muerte](#); El Libertador. October 17, 2012. [Honduras: Desde la cárcel periodista recibe amenazas](#).

and current Director of Strategic Information of the Empresa Hondureña de Telecomunicaciones (HONDUTEL) stated that someone had distorted his comments.³⁶³

271. On June 13, Juan Vásquez and Sotero Chavarría, social communicators with the radio stations of the Council of Popular and Indigenous Organizations of Honduras (COPINH), were attacked by two individuals riding a motorcycle who fired at them twice and caused a car accident. According to the information received, the communicators were returning from a meeting with an indigenous community in Santa Bárbara over a land conflict.³⁶⁴ The IACHR was also informed of the July 27 attack on and arrest of Edwin Murillo, a cameraman with the channel *Hable como Habla*. According to the information, individuals presumed to be police officers handcuffed, beat and arrested the cameraman while he was covering information related to a crime committed in the Lempira de Comayagüela neighborhood, in the city of Tegucigalpa.³⁶⁵

272. According to the information received, on July 22, Francis Estrada, a candidate for mayor of the municipality of Talanga, alleged that the current mayor of the municipality, who is seeking reelection, had prevented the local media from interviewing other candidates and ordered to the media outlets who did so to be closed. The mayor rejected the accusations and denied having shut down media outlets for that reason.³⁶⁶

273. According to information received, Ariel D'Vicente, the owner of *Canal 21* in Choluteca, received a number of threats based on his work that has alleged corruption among public officials.³⁶⁷ The journalist, who was receiving State protection after allegations he made on August 2, 2012, filed a complaint with the Office of the Public Prosecutor on August 10 over new threats.³⁶⁸

274. The IACHR received information on an August 3 attack on the house of José Encarnación Chichilla López, a journalist and correspondent with *Radio Cadena Voces* in the city of El Progreso, Yoro state. According to the information, two people riding a motorcycle fired at the house. The journalist's son was injured. Prior to the attack, the journalist had reported locally on gangs and covered a land dispute.³⁶⁹

275. On August 3, 2012, two presumed police officers entered *Radio Progreso* during the broadcast of a discussion with peasant leaders of the Aguán Unified Peasant Movement (MUCA in its Spanish acronym). According to information, the officers entered asking "where are the peasants?" and only left when the station's legal counsel informed them that the station was protected by IACHR

³⁶³ IFEX. May 28, 2012. [Periodista preocupado por amenazas de coronel retirado](#); C-Libre. May 28, 2012. [Coronel retirado afirma que a los periodistas en Honduras los matan por bocones](#).

³⁶⁴ IFEX. June 25, 2012. [Radios comunitarias condenan atentado contra dos comunicadores indígenas](#); Frontline Defenders. June 15, 2012. [Honduras: Shots fired at HRD Messrs Juan Vásquez and Sotero Chavarría as they return from negotiations on a land conflict](#).

³⁶⁵ La Tribuna. June 28, 2012. [Encuentran cadáver en caja de cartón](#); C-Libre. July 3, 2012. [Agentes policiales detienen, secuestran camarógrafo](#).

³⁶⁶ La Tribuna. July 23, 2012. [Pugna política provoca cierre de medios de comunicación](#); C-Libre. July 23, 2012. [Alcalde municipal nacionalista cierra medios de comunicación y censura a periodistas](#).

³⁶⁷ IFEX/ C-Libre. August 7, 2012. [Honduran Journalist fears for safety after uncovering financial corruption](#); Proceso Digital. August 2, 2012. [Dinero que trasladaba esposa de ex ministro de Finanzas proviene de coimas, denuncia periodista](#); Frente a Frente/ You Tube. August 3, 2012. [Interview with journalist Ariel D'Vicente](#).

³⁶⁸ Comisionado Nacional de Derechos Humanos (CONADEH). No date. [Comisionado DDHH Pide Protección para Periodista Ariel D'Vicente](#); IFEX/ C-Libre. August 15, 2012. [Politicians in Honduras resorts to threats, bribes to force journalist into exile](#).

³⁶⁹ IFEX/ CPJ. August 7, 2012. [Radio journalist's house attacked by gunmen](#); La Tribuna. August 4, 2012. [Atentan contra periodista y hieren de gravedad a su hijo](#).

precautionary measures.³⁷⁰ The information received also indicates that on August 17, 2012, Roberto García, a journalist and contributor to *Radio Progreso*, was threatened. The journalist also works as a defender of environmental rights and is particularly involved in the struggle against the installation of mining companies in the Atlántida department.³⁷¹

276. Likewise, on August 20, 2012, communicator Vitalino Álvarez, spokesperson for the Aguán Unified Peasant Movement (MUCA), was struck in the hands by police officers who attempted to take his camera. According to the communicator, he was the victim of persecution because of his position as the MUCA spokesperson. He also indicated that he was arrested on August 26 on accusations of being a “foreigner” because he did not have the identification requested. Days prior, the communicator had been arrested with other members of the movement during a protest in Tegucigalpa.³⁷² Also, on January 31, 2012, Álvarez alleged that he had received multiple threats.³⁷³

277. The IACHR received information indicating that Miguel Dubón, a journalist and director of the *Canal 12* program ‘Noticiero Independiente’ and a correspondent with *Radio Globo*, alleged in August of 2012 that he had been attacked, harassed, and hounded, presumably by the Municipal Mayor of Trujillo, after making public statements regarding issues of transparency in the management of public municipal funds. According to the journalist, four months previously he had to withdraw his program from Estero Casillas due to pressure that the mayor had exerted on the station owner.³⁷⁴

278. According to information received by the IACHR, on September 6, Eduardo Coto Barnica, a journalist with *Radio Uno*, was intimidated by an unidentified individual who approached him and threatened him with an object hidden underneath his shirt that appeared to be a firearm. Months prior, he had reported having received threatening phone calls. According to Coto Barnica, the attack is related with his criticism toward the *coup d'état* and the work that he does in the radio station's news department, where he takes a critical stance in addressing political, social and economic topics.³⁷⁵

279. Likewise, since September 20 and in the context of a court proceeding against peasants accused of participating in illegal demonstrations, journalist Karla Zelaya has received a number of text messages threatening her with death. Zelaya, who is a journalist with the Aguán Unified Present Movement (MUCA), indicated that she fears for her life, particularly after the September 22, 2012, murder of her defense attorney, Antonio Trejo Cabrera, who was also an attorney for the Aguán Authentic Restoration Movement (MARCA).³⁷⁶ Later, Zelaya alleged that on October 23, he was detained and assaulted by unknown individuals for several hours. They interrogated him about his activities with the MUCA.³⁷⁷

³⁷⁰ IFEX/ C-Libre. August 7, 2012. [Previo a visita de relator de libertad de expresión, se incrementan agresiones a la prensa](#); Conferencia de Provinciales Jesuitas en América Latina (CPAL). August 16, 2012. [Honduras: Acoso policial en las instalaciones de Radio Progreso](#).

³⁷¹ C-Libre. August 21, 2012. [Periodista y defensor del medio ambiente temen por su vida](#); IFEX/ Reporters Without Borders. August 27, 2012. [More threats, attacks on human rights activists in Honduras](#); Radio Progreso. August 21, 2012. [Continúan amenazas a defensores de recursos naturales en Atlántida](#).

³⁷² IFEX/ C-Libre. August 31, 2012. [Peasant's rights spokesperson harassed by Honduran authorities](#); El Faro. August 26, 2012. [Honduras: Denuncian detención de portavoz de Movimiento Unificado Campesino](#); Radio Nederland. August 27, 2012. [Honduras: Denuncian detención de portavoz de Movimiento Unificado Campesino](#).

³⁷³ IFEX/ C-Libre. January 31, 2012. [Dirigente campesino denuncia atentado en su contra](#); Honduras Tierra Libre. August 29, 2012. [Honduras: Portavoz de campesinos denuncia ser víctima de persecución policial y militar](#).

³⁷⁴ C-Libre. August 15, 2012. [Alcalde de Trujillo obstruye la labor periodística de reportero](#); El Libertador. August 17, 2012. [Honduras: Denuncia: Periodista es acosado por parte de alcalde de Trujillo](#).

³⁷⁵ IFEX/ C-Libre. September 17, 2012. [Critical Honduran radio journalist threatened](#); Cerigua. September 18, 2012. [Honduras: Periodista denuncia amenaza por su labor informativa](#).

³⁷⁶ Defensores en Línea. September 27, 2012. [Se intensifica estrategia de terror: Mensajes amenazantes contra periodista de MUCA](#); IFEX/ C-Libre. October 2, 2012. [Honduran journalist linked to peasant group receives death threats](#).

³⁷⁷ Telesur. October 24, 2012. [Campesinos hondureños denuncian secuestro y torturas contra su vocera](#); Defensores en Línea. October 23, 2012. [Secuestran por varias horas a Karla Zelaya periodista de MUCA](#).

280. According to information received, online newspaper *Hondudiaro* suffered an attack from hackers on October 12 that took its website down for two days. The incident took place after the website received a series of threats over its regular publication of information on alleged irregularities in the use of helicopters.³⁷⁸

281. The IACHR was informed that on October 24, journalists Nery Arteaga y Ninfa Gallo, hosts of the program "News and debate" on *Canal 51*, were intercepted close to the country's capital. According to information provided, unidentified individuals wearing official uniforms beat them and took their vehicle and their journalism material.³⁷⁹

282. The information received also indicates that journalist Juana Dolores Valenzuela Calix alleged that on November 29, she received e-mailed death threats. According to the journalist, who is also a defender of environmental rights, the threats were the result of her work against open pit mining in the country.³⁸⁰

283. In addition, during the hearing on the right to freedom of expression in Honduras held on November 4, 2012, at the IACHR, the petitioners provided information on murders, death threats and attacks on journalists and communicators in the country, highlighting that many of the incidents remain in impunity. According to the petitioners, even though the State has carried out investigations into some of the acts of violence, the investigations generally do not duly take into account the crimes' possible connection with the victims' professions. For its part, the State indicated that the large majority of reported attacks are perpetrated by private individuals and not State officials or agents, and that they were the result of common criminality and organized crime.³⁸¹

284. Following the hearing, the IACHR expressed its deep concern over the information provided by the petitioners on the alleged lack of effectiveness of the precautionary measures granted by the Inter-American Commission for the protection of communicators in Honduras. It called on the State to immediately seek to implement those measures.³⁸²

285. Principle 9 of the Declaration of Principles of the IACHR 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."

³⁷⁸ C-Libre. October 16, 2012. [Hackers atacan periódico digital](#); *Hondudiaro*. October 15, 2012. [Hondudiaro.com y Seproc listos en el ciberespacio tras superar "hackeo"](#).

³⁷⁹ IFEX/ C-Libre. November 1, 2012. [Hombres vestidos de policías roban vehículo de periodistas hondureños](#); Cerigua. November 3, 2012. [Honduras: Sujetos armados hurtan equipo a periodistas](#).

³⁸⁰ IFEX/ C-Libre. November 29, 2012. [Environmental reporter gets death threats in Honduras](#); *La Tribuna*. November 29, 2012. [Periodista ambientalista denuncia amenazas](#).

³⁸¹ Petitioners: Centro de Investigación y Promoción de Derechos Humanos (CIPRODEH), and Comité por la Libre Expresión (C-Libre). With the participation of the State of Honduras. IACHR. 146 Periodo de Sesiones. [Hearing on the Right to Freedom of Expression in Honduras](#) November 4, 2012; IACHR. Information brought by the petitioners in the *Hearing on the Right to Freedom of Expression in Honduras*. November 4, 2012. Available at: Archives of the Office of the Special Rapporteur for Freedom of Expression; IACHR. November 16, 2012. Press Release 134/12. [IACHR Concludes its 146th Session and Expresses Appreciation for the Confidence Shown by All Stakeholders in the Human Rights System. Annex to Press Release 134/12 on the 146th Regular Session of the IACHR](#).

³⁸² IACHR. 146 Period of Sessions. November 4, 2012. [Hearing on the Right to Freedom of Expression in Honduras](#); IACHR. [Information brought by the petitioners Centro de Investigación y Promoción de Derechos Humanos \(CIPRODEH\), and Comité por la Libre Expresión \(C-Libre\)](#). *Hearing on the Right to Freedom of Expression in Honduras*. November 4, 2012. Available at Archives of the Office of the Special Rapporteur for Freedom of Expression; IACHR. November 16, 2012. Press Release 134/12. [IACHR Concludes its 146th Session and Expresses Appreciation for the Confidence Shown by All Stakeholders in the Human Rights System. Annex to Press Release 134/12 on the 146th Regular Session of the IACHR](#).

4. Other relevant situations

286. According to the information received by the IACHR, Esdras Amado López, a journalist and news director for “That’s how you report,” broadcast on *Canal 36*, was called on February 3, 2012, to appear before the First Civil Court for a February 9 hearing over a complaint filed by the Cooperativa de Ahorro y Crédito ELGA. According to the journalist’s allegations, the court system admitted the complaint at a time when Amado López was preparing to travel to Brazil to present a documentary and speak on her experience during the *coup d’état*, a trip that she could not make because of the court summons.³⁸³

287. On April 12, three student leaders of the Universidad Pedagógica Nacional Francisco Morazán alleged that they had been subjected to political persecution and violations of their freedom of expression. According to Kelly Núñez, Erlin Gutiérrez and Miguel Ángel Aguilar, university authorities accused them of incitement for organizing protests, suspension of academic work, denigration the university’s public image and calling for a revolt against the authorities, for which they could be expelled from the university. On March 7, a group of students staged a protest in defense of public education.³⁸⁴

288. According to information received, the mayor of the city of Talanga induced the suspension of cable broadcaster *Telecentro* and the mass purchase of copies of the newspaper *El Heraldo* on October 16 and 17 after it published a news item on the suspension of the broadcaster. According to the information, two cable television companies suspended the broadcast at the request of the mayor, who was bothered by criticism from his opposition.³⁸⁵ According to available information, the Office of the Public Prosecutor on Human Rights is investigating the incidents and has called the mayor to testify regarding them³⁸⁶.

289. On November 13, 2012, the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH in its Spanish acronym) accused individuals assumed to be officials with the National Telecommunications Council (CONATEL in its Spanish acronym) of appearing at the offices of community radio station *La Voz Lenca* and threatening to confiscate its equipment if their frequency was not regularized within 10 days. According to the COPINH, the CONATEL action came after a complaint was filed by the owners of a local radio station in 2007 alleging that the community radio station was interfering with its frequency. However, they reported that the complaint was dismissed that same year. COPINH also indicated that in 2011, CONATEL sent them a communication indicating that it would be sending a technician to verify that there had been no interference with frequency. However, no visit was made, despite the fact that CONATEL had been asked for one on several occasions. According to this, they suggested that the threat was more of a warning designed to intimidate the community radio station³⁸⁷.

290. The IACHR notes that article 13.3 of the American Convention on Human Rights states that “The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.”

³⁸³ IFEX/ C-Libre. February 7, 2012. [Juzgado impide viaje de periodista a Brasil](#); La Tribuna. February 4, 2012. [Impiden que director de Canal 36 hable para su documental en Brasil](#).

³⁸⁴ IFEX. April 17, 2012. [Dirigentes estudiantiles denuncian violaciones a la libertad de expresión y asociación](#). Defensores en Línea. April 12, 2012. [Universidad pedagógica amenaza con expulsar a dirigentes que demandan derechos para la comunidad estudiantil](#).

³⁸⁵ El Heraldo. October 18, 2012. [Alcalde de Talanga ordenó “secuestrar” todos los ejemplares de El Heraldo](#); Knight Center for Journalism in the Americas. October 25, 2012. [Major of Honduras orders the closure of cable channel and impedes newspaper circulation](#).

³⁸⁶ La Prensa. October 18, 2012. [Fiscalía citará al alcalde de Talanga](#); El Heraldo. October 25, 2012. [Hay que investigar cierre de medios en Talanga](#).

³⁸⁷ Conexihon. November 15, 2012. [COPINH denuncia amenazas a la Radio La Voz Lenca](#); Telesur. November 15, 2012. [La Voz Lenca denuncia asedio por parte del Conatel](#).

IV. EXAMINATION OF THE STATE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

291. The political instability and restrictions associated with the June 28, 2009 *coup*, combined with the curfews, took a serious toll on economic, social and cultural rights, such as the right to health and the right to education.³⁸⁸ The lack of resources in hospitals and health clinics caused delays in supplies of medications, particularly in the case of HIV/AIDS patients, who suffered serious setbacks because of the discontinuation of their anti-retroviral treatments.³⁸⁹ The teachers' strikes associated with the *coup* meant that children were unable to go to school.³⁹⁰ The curfews affected the right to food for the most vulnerable segments of the population.³⁹¹ The precarious state of social services deteriorated further, affecting the most vulnerable segments of the population, who are very dependent on such services.³⁹²

292. The protection of economic, social and cultural rights ("ESCR") in Honduras is a major challenge for the State. Honduras ranks 109th of 194 countries in the Human Development Index prepared by the United Nations Development Programme, with a Human Development Index value of 0.604.³⁹³ Close to 60% of the population lives in poverty, and 36% lives in extreme poverty.³⁹⁴ Against this backdrop, the protection of ESCRs is essential to the advancement of other human rights in the country.³⁹⁵

293. Where the right to health is concerned, the Honduran Constitution recognizes the right to protection of one's health (Article 145). Even so, problems persist with the governance of the health sector, its operation, inefficiencies in execution of the health budget, and inequitable delivery of services within Honduras' national health system.³⁹⁶ The situation is so dire that 22 percent of the population does not have access to basic health services.³⁹⁷ The principal causes of disability in the country are a function of health problems: illness (35%) and procedures associated with birth (27%).³⁹⁸

294. Furthermore, the Special Law on HIV/AIDS has been in effect since 1999, to promote the defense of the human rights of persons living with that illness.³⁹⁹ Nevertheless, HIV/AIDS victims

³⁸⁸ *Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009*, March 3, 2010, A/HRC/13/66, para. 52.

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*, para. 55.

³⁹² *Ibid.*, para. 56.

³⁹³ International Labour Organisation, *Perfil Nacional de Salud y Seguridad en el Trabajo* (SST) [Occupational Safety and Health Country Profile], Honduras, August 27, 2012, p. 27. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_187975.pdf (citing the United Nations Development Programme (UNDP), Human Development Report 2010).

³⁹⁴ *Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009*, March 3, 2010, A/HRC/13/66, para. 50.

³⁹⁵ During its 146th session, "in accordance with its commitment to strengthen its efforts in the area of economic, social, and cultural rights and in response to suggestions made by the States and by civil society, the Commission decided during these sessions to create a Unit on Economic, Social, and Cultural Rights." See at: http://www.oas.org/en/iachr/media_center/PReleases/2012/134.asp.

³⁹⁶ Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1*, Honduras, November 1 to 12, 2010, A/HRC/WG.6/9/HND/1. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/155/62/PDF/G1015562.pdf?OpenElement>.

³⁹⁷ International Labour Organisation, *Perfil Nacional de Salud y Seguridad en el Trabajo* (SST) [Occupational Safety and Health Country Profile], Honduras, August 27, 2012, p. 26. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_187975.pdf.

³⁹⁸ International Labour Organisation, *Perfil Nacional de Salud y Seguridad en el Trabajo* (SST) [Occupational Safety and Health Country Profile], Honduras, August 27, 2012, p. 27.

³⁹⁹ Human Rights Council, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council
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continue to be stigmatized and often do not have the basic medications needed to treat the disease.⁴⁰⁰ Regarding this matter, in its reply the State reported that work was underway on preparing the preliminary draft amendment to the Special HIV/AIDS Law, with the involvement of several civil society organizations active in the area, and that its presentation to Congress was imminent.⁴⁰¹

295. Life expectancy within ethnic communities (including indigenous peoples and Afro-Hondurans) is much lower than it is within the greater population: 36 years for men and 42 for women,⁴⁰² the average for the general population is 72.6 years. Some 60% of this population does not have access to drinking water; 91% do not have basic sanitation facilities, and 80% of minors under the age of 5 are suffering from some degree of basic malnutrition.⁴⁰³ The ILO has observed that “the living and health conditions of the general [Honduran] population have greatly deteriorated, which has had serious repercussions for hygiene, safety and environment in the workplace.”⁴⁰⁴

296. As for the right to education, the Constitution provides that “education is an essential function of the State” and must be provided “without discrimination of any kind.”⁴⁰⁵ Various efforts have been made to combat illiteracy in Honduras, such as “*Educatodos*”, “*El Maestro en Casa*” and others.⁴⁰⁶ However, the illiteracy rate is still relatively high, with 16.4 percent of the population being illiterate.⁴⁰⁷ According to the ILO, some 12.3 percent of the population claim to have no schooling, while only 5.2% has a university education.⁴⁰⁸ The main reasons for the education problems in Honduras are (a) teachers’ poor attendance rate and shortened school days; (b) high repeater rates, and (c) secondary education’s limited availability.⁴⁰⁹

V. BEST PRACTICES ADOPTED BY THE STATE⁴¹⁰

- Truth and Reconciliation Commission

297. The Commission again welcomes the creation of the Truth and Reconciliation Commission (CVR), established by an executive decree of April 13, 2010, for the purpose of “clarifying the events that took place prior to and after June 28, 2009 in order to identify the acts that led to the crisis

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Council resolution 5/1*, Honduras, November 1 to 12, 2010, A/HRC/WG.6/9/HND/1. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/155/62/PDF/G1015562.pdf?OpenElement>.

⁴⁰⁰ Report of the United Nations High Commissioner for Human Rights on the violations of human Rights in Honduras since the coup d'état on 28 June 2009, March 3, 2010, A/HRC/16/66, para. 50

⁴⁰¹ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁰² International Labour Organisation, *Perfil Nacional de Salud y Seguridad en el Trabajo* (SST) [Occupational Safety and Health Country Profile], Honduras, August 27, 2012, p. 26.

⁴⁰³ *Ibid.*

⁴⁰⁴ International Labour Organisation, *Perfil Nacional de Salud y Seguridad en el Trabajo* (SST) [Occupational Safety and Health Country Profile], Honduras, August 27, 2012, p. 31.

⁴⁰⁵ Constitution of the Republic of Honduras, Article 151.

⁴⁰⁶ *Ibid.*, para. 47.

⁴⁰⁷ International Labour Organisation, *Perfil Nacional de Salud y Seguridad en el Trabajo* (SST) [Occupational Safety and Health Country Profile], Honduras, August 27, 2012, p. 26. Available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/policy/wcms_187975.pdf.

⁴⁰⁸ International Labour Organisation, *Perfil Nacional de Salud y Seguridad en el Trabajo* (SST) [Occupational Safety and Health Country Profile], Honduras, August 27, 2012, p. 28. .

⁴⁰⁹ International Labour Organisation, *Perfil Nacional de Salud y Seguridad en el Trabajo* (SST) [Occupational Safety and Health Country Profile], Honduras, August 27, 2012, p. 28. .

⁴¹⁰ In its report, the State of Honduras acknowledged the inclusion of the section on good practices. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

situation and provide the people of Honduras with the wherewithal to keep these events from being repeated."⁴¹¹ As was mentioned, the CVR released its Final Report on July 7, 2011.

298. The IACHR has supported Truth Commissions in several countries of the hemisphere where they were created, to the extent that they represent an adequate mechanism to ensure the right to the truth. In this regard, the IACHR has affirmed that:

The right possessed by all persons and by society to have means of satisfaction and guarantees that the acts will not be repeated, of knowing the full, complete, and public truth on incidents which have occurred, their specific circumstances, and who participated in them, are part of the right to reparation for violations to human rights. The right of a society to know, in full, its past is not only to be found in the methods of reparation and elucidation of the incidents which have occurred, but in the objective of preventing future violations.⁴¹²

299. Additionally, the IACHR has declared that the right to the truth is also related to Article 25 of the Convention, which establishes the right to have a simple and prompt remedy for the protection of the rights enshrined in it. The presence of artificial or legal impediments (such as the amnesty law or domestic regulations on access to information) to accessing and obtaining important information regarding the facts and circumstances surrounding the violation of a fundamental right, constitutes an open violation to the right established in the provision referred to, and hampers the establishment of domestic remedies which allow for judicial protection of the fundamental rights established in the Convention, the Constitution, and the laws.⁴¹³

300. The IACHR appreciates the efforts of the Truth Commission, but deems it important to reiterate that the release of its report and the important findings set forth therein, do not relieve the State of its international obligation to investigate, try and punish through the judiciary, agents of the State who have committed human rights violations⁴¹⁴. However, as already observed, the Commission notes that of the 84 recommendations that the CVR made, only 13 have been carried out.

- **Secretariat for the Development of Indigenous Peoples and Afro-Hondurans**

301. Legislative Decree No. 203-2010, published in the Official Gazette of November 12, 2010, created the Secretariat for the Development of Indigenous Peoples and Afro-Hondurans. The function of this secretariat is to craft, coordinate, execute and evaluate policies that promote the economic, social, cultural, academic and environmental development of indigenous and Afro-descendent peoples and communities in Honduras. Its function is also to prepare, promote and implement policies to strengthen the varied forms of organization of the indigenous peoples and Afro-Hondurans, to promote and protect the nation's native and Afro-Caribbean identities, and to cooperate with their institutions in discharging their responsibilities and to promote the specific and across-the-board inclusion of indigenous peoples and Afro-Hondurans in the various branches of government.

- **Secretariat for Justice and Human Rights**

⁴¹¹ Executive Decree PCM-011-2010, Article 1.

⁴¹² IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea et al (El Salvador), January 27, 1999, para. 154.

⁴¹³ IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea et al (El Salvador), January 27, 1999, para. 151.

⁴¹⁴ In a letter sent on December 22, 2011, by the Secretary of State in the Ministry of Justice and Human Rights, Ana Pineda H., noted that the Commission of Truth and National Reconciliation issued 84 recommendations contained in the Report "For that the Events are not Repeated", which are not limited to overcome the causes and effect of the June 28, 2009, "because it aimed at the structural problems of the State of Honduras." For this, the State informed that on November 8, 2011, the President, Porfirio Lobo Sosa, created the Unit for Following the Recommendations of the Commission of Truth and Reconciliation, attached to the Secretary of State in the Ministry of Justice and Human Rights. Observations of the Secretary of State in the Ministry of Justice and Human Rights to the "Draft of the General Report on the Situation of Human Rights in Honduras", approved by the Commission, dated December 21, 2011, pg. 3.

302. The Secretariat for Justice and Human Rights was created in 2010⁴¹⁵ to promote, coordinate, craft, harmonize, implement and evaluate policies in the area of justice and human rights.⁴¹⁶ This Secretariat has played an important role in public policy on human rights, having taken a number of measures to promote and protect them.

303. In December 2012, Minister Ana Pineda, in charge of the Secretariat, delivered to the President the First Public Policy and National Plan of Action in Human Rights. According to the Secretariat, “for more than a year and a half the public and civil society organizations took part in broad discussions [of the public policy and plan of action]. As a result, these tools accurately reflect reality and the need for a State response. These two tools together represent the national human rights agenda until 2021, and dovetail with the Country Vision and Plan for the Nation.” According to information furnished by the State, that policy and plan of action were approved by the President of the Republic on January 22, 2013.⁴¹⁷

- **Accession to inter-American human rights instruments**

304. The IACHR welcomes the fact that in November 2011, Honduras deposited its instrument of accession to the following inter-American human rights instruments: a) Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities; b) the Protocol to the American Convention on Human Rights to Abolish the Death Penalty; and c) Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador.”

VI. SITUATION OF SPECIFIC GROUPS

A. Situation of human rights defenders and officers of the court

305. The information received in 2012 indicates that the attacks, threats and harassment of community leaders and human rights defenders persist.

306. Following a visit to Honduras in February 2012, the United Nations Special Rapporteur on the situation of human rights defenders expressed concern over the violence and insecurity in which human rights defenders worked, and pointed out that “certain categories of human rights defenders are at particular risk, including journalists, staff of the National Human Rights Commission, lawyers, prosecutors and judges. Defenders working in favour of the rights of women, children, the LGBTI community, the indigenous and Afro-Honduran communities are also targeted, as well as those working on environmental and land rights issues.”⁴¹⁸

307. On May 15, 2012, the European Union’s Delegation in Honduras expressed “concern over the situation of human rights defenders in the country” and noted “an increase in the acts of harassment and persecution targeting vulnerable groups like journalists, members of the LGTBI

⁴¹⁵ Legislative Decree No. 177-2010 amended articles 28 and 29 of Decree No. 146-86 of October 27, 1986, on the General Public Administration Act, and created the Secretariat for Justice and Human Rights..

⁴¹⁶ Executive Decree No. PCM-027-2011 “Amendments to the Regulations Governing the Organization, Operation and Authorities of the Executive Branch”, Article 1 –amendment adding articles 87-D, 87-E and 87-F to the Regulations Governing the Organization, Operation and Authorities of the Executive Branch, which appear in Executive Decree No. PCM-008-97 of June 2, 1997.

⁴¹⁷ The State reported that four strategic guidelines were established in those documents: Human Security (right to education, to health, sexual and reproductive rights, right to food, work, decent housing, water, and environment); Justice System (right to life, security, physical integrity and freedom, justice); Democracy (freedom of expression, access to information, citizen participation, political participation, and democratic governance); and Population Groups. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴¹⁸ United Nations, Office of the High Commissioner for Human Rights, *UN Special Rapporteur Margaret Sekaggya urges the Honduran Government to effectively protect human rights defenders*. February 14, 2012. Available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11827&LangID=E>.

community, and others whose laudable mission is to promote unqualified respect for the human rights of every Honduran citizen.”⁴¹⁹

308. The information the IACHR has received makes particular reference to acts associated with the defense of land and territory; defenders of the rights of LGBTI persons, and women human rights defenders of human rights.

309. As for events associated with the defense of land and territory, the Special Rapporteur on Human Rights Defenders expressed concern over the climate of impunity in the Bajo Aguán region, where a considerable number of human rights defenders were said to have been attacked by state and non-state actors alike.⁴²⁰ In connection with the Bajo Aguán, the IACHR was informed that Wilfredo Paz, spokesperson for the El Aguán Human Rights Observatory and a human rights defender for whom precautionary measures had been requested, was said to have received death threats.⁴²¹ The Commission has also received information concerning alleged attacks, threats and harassment of indigenous defenders and leaders in the community of Vallecito, Colón, reportedly on the part of organized crime rings and groups of hired gunmen. The reports also suggest that the State has failed to take any protective measures. The Commission also learned that indigenous and Garifuna leaders in the corridor between Trujillo and La Moskítia are subjected to constant harassment.⁴²² It also learned of the June 28, 2012 assault on Bonifacio Muñoz, a member of the Civic Council of Honduran Grassroots and Indigenous Organizations (COPINH), who was shot in the back as he was at work planting corn.⁴²³ Two members of COPINH’s Executive Board, defenders Juan Vásquez and Sotero Chavarría, were said to have been shot by two unidentified subjects on a passing motorcycle, as they were returning from a meeting over a land conflict involving the indigenous community of La Cuchía, in Santa Bárbara.⁴²⁴ Furthermore, according to the information available, on May 23, 2012 Isabel and Jorge Chavarría, members of the Civic Council of Grassroots and Indigenous Organizations (COPINH), and Allan Chavarría, a minor, were said to have been arrested as they were on their way to the Buenos Aires communal lands, on the pretext that they were on property on which operations were allegedly being conducted.⁴²⁵

⁴¹⁹ European Union Delegation to Honduras, *Defensores de Derechos Humanos en honduras siguen recibiendo severas amenazas [Human Rights Defenders in Honduras Still Receiving Serious Threats]*, May 15, 2012. Available [in Spanish] at: http://eeas.europa.eu/delegations/honduras/press_corner/all_news/news/2012/20120515_01_es.htm

⁴²⁰ Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*. Addendum. Document A/HRC/19/55/Add.2, p. 21. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/107/45/PDF/G1210745.pdf?OpenElement>

⁴²¹ Front Line Defenders, *Honduras: Death threats against human rights defenders Mr Juan Chinchilla and Mr Wilfredo Paz in the Lower Aguán region*, February 22, 2012. Available at: <http://www.frontlinedefenders.org/node/17594> ; Amnesty International, *Honduras: Two human rights activists in the Lower Aguán region received a death threat*, February 27, 2012. Available at: <https://www.amnesty.org/en/library/asset/AMR37/003/2012/en/da7c7b1d-7bf1-44df-99f5-04b8509de1f8/amr370032012en.pdf>

⁴²² Consejo Cívico de Organizaciones Populares e Indígenas de Honduras [Civic Council of Honduran Grassroots and Indigenous Organizations], *Brillan por su ausencia las autoridades hondureñas en Vallecito, Colón* [Honduran authorities notable for their absence in Vallecito, Colón], August 27, 2012. Available [in Spanish] at: <http://copinhonduras.blogspot.com/2012/08/hondurasalerta-contactos-dirigencia.html>

⁴²³ Consejo Cívico de Organizaciones Populares e Indígenas de Honduras [Civic Council of Honduran Grassroots and Indigenous Organizations], *El COPINH denuncia atentado contra la vida del compañero Bonifacio Muñoz Troches y la impunidad en este caso* [COPINH denounces the attempt against the life of Bonifacio Muñoz Troches and the fact that no one has been made to answer for this crime], July 3, 2012. Available [in Spanish] at: <http://copinh.org/article/el-copinh-denuncia-atentado-contra-la-vida-del-com/>

⁴²⁴ Front Line Defenders, *Honduras: Shots fired at HRD Messrs. Juan Vásquez and Sotero Chavarría as they return from negotiations on a land conflict*, June 13, 2012. Available at: <http://www.frontlinedefenders.org/node/18655>

⁴²⁵ Front Line Defenders, *Honduras: Death threats against human rights defenders Mr. Juan Chinchilla and Mr. Wilfredo Paz in the Lower Aguán region*, February 22, 2012. Available at: <http://www.frontlinedefenders.org/node/17594>

310. Civil society organizations have observed that threats and acts of intimidation continue to be committed against groups that defend the rights of LGTB persons.⁴²⁶ The Commission received information to the effect that an armed man on a motorbike had followed Donny Reyes, coordinator of the Rainbow LGTB Association and an activist in defending the rights of LGTB persons, as he drove from his home to the offices of the organization.⁴²⁷

311. In the case of women human rights defenders, the Commission has learned of the acts of intimidation committed against Gladys Lanza Ochoa, coordinator of the *Movimiento de Mujeres por la Paz Visitación Padilla* (Honduran Women's Committee for Peace "Visitación Padilla"), a collective of women human rights defenders fighting gender violence and advocating women's participation in public life. On August 22, 2010, she was allegedly followed by an unknown person on a motorbike as she was walking down the street.⁴²⁸

312. Information has also been received concerning death threats made via telephone and text messaging against Itsmania Pineda Platero, a human rights defender who heads up the Asociación Xibalba, an activist organization working on issues related to public security and youth rehabilitation in Honduras.⁴²⁹ The Commission also learned of threats and harassment against activists and members of the Committee of the Families of the Detained and Disappeared in Honduras, COFADEH. According to the information available, on March 8, 2012, Bertha Oliva, the organization's founder and coordinator, had allegedly received a telephone call where she heard a recording of a conversation that she had had only moments earlier. In a similar incident, Nohemí Perez had reportedly noticed a car parked at the main entrance to the organization's headquarters in Tegucigalpa, and heard the driver threaten her saying "You'll see [what happens] bitches, you'll see." (*Ya van a ver hijas de la gran puta, ya van a ver*) as he threw a piece of wood at her. The day before, this same human rights defender had noticed that someone pointed at her as she was taking part in a public demonstration.⁴³⁰ Similarly, Dina Meza, another member of COFADEH, reportedly received text messages and calls on her mobile phone threatening her with rape.⁴³¹

313. The Commission has also learned of alleged death threats made on April 26, 2012, against members of the Honduras Accompaniment Project, composed of international observers who provide physical accompaniment to Honduran human rights defenders.⁴³²

314. In its comments on this report, the State said that text messaging and voice calls to cellphones were one of the most common methods used to extort and make threats against the general public as well as media workers and human rights defenders, and that because of technological limitations, those cases cannot be resolved; for that reason, the State has requested international support to strengthen its investigation mechanisms. Given the growing numbers of such crimes, a Unit for

⁴²⁶ Front Line Defenders, *Honduras: Protect Defenders of Gay Rights in Honduras*, February 2, 2012. Available at: <http://www.frontlinedefenders.org/node/14066>

⁴²⁷ Amnesty International, *Honduras: LGBT activist's life in danger*, August 17, 2012. Available at: <https://www.amnesty.org/en/library/asset/AMR37/010/2012/en/49d597cf-9fb2-4a80-a72e-065a8c9ecd0b/amr370102012en.html>.

⁴²⁸ Front Line Defenders, *Honduras: Persistent threats against human rights defender Ms. Gladys Lanza Ochoa*, September 4, February 2, 2012. Available at: <http://www.frontlinedefenders.org/node/19743>

⁴²⁹ Amnesty International, *Honduran Human Rights Defender at Risk*, January 24, 2012. Available at: <https://www.amnesty.org/en/library/asset/AMR37/001/2012/en/d6605637-3679-47b8-becc-7d6e43b5d614/amr370012012en.html>.

⁴³⁰ Amnesty International, *Honduras: Human Rights Defenders Threatened*, April 30, 2012. Available at: <http://www.amnesty.org/en/library/asset/AMR37/007/2012/en/bfd4a4ef-5433-4711-b5d5-ee500e564890/amr370072012en.html>

⁴³¹ Front Line Defenders, *Honduras: Death threats and ongoing intimidation against human rights defender Ms. Dina Meetabel Meza Elvir*, April 14, 2012. Available at: <http://www.frontlinedefenders.org/node/18041>

⁴³² Information received by the Rapporteurship through the institutional mail system. Available [in Spanish] at: C:\Documents and Settings\cidhbec8\Local Settings\Temporary Internet Files\OLKB5EI Observatorio Honduras Amenazas de muerte contra miembros delPROAH.htm

Extortion and Bribery Offenses has been established within the office of the Prosecutor for Common Crimes.⁴³³

B. Persons Deprived of Liberty

315. The IACHR observed that the situation of persons deprived of liberty in Honduras was particularly dire in 2012. The most dramatic event was the February 14, 2012 fire at the Comayagua National Penitentiary, 80 kilometers from Tegucigalpa. That fire claimed the lives of 361 people (including a woman who was illegally spending the night with an inmate there). The tragedy occurred despite repeated warnings from the Comayagua Fire Department concerning structures that were fire hazards inside the prison. The high death toll exposed the fact that the authorities did not have what they needed to respond to emergencies. In fact, the person who opened the burning doors and rescued survivors was an inmate who was sleeping in the prison infirmary.

316. On the heels of the fire at the Comayagua National Penitentiary, the Inter-American Commission publicly deplored what happened, called upon the State to take the urgent measures necessary to properly investigate the tragedy and reported that it had decided to conduct a visit to follow up on the events at Comayagua and the human rights situation of persons deprived of liberty in Honduras (Press Release No. 19/12⁴³⁴). Then, in exercise of its authorities under Article 41 of the American Convention, the IACHR asked the State to provide specific information on the event and, on its own initiative, convened a public hearing to be held during the 143rd regular session.⁴³⁵

317. In Press Release No. 19/12, the IACHR noted that the State is in a special position of guarantor when it comes to the rights of persons deprived of liberty. This means that the act of incarceration implies a specific and real commitment by the State to guarantee the conditions required under international standards to safeguard the life and humane treatment of those who are incarcerated. This obligation to guarantee implies that the State must take all necessary measures to prevent situations of risk, such as this one, that may pose serious threats to the fundamental rights of those in custody and to ensure that prisons have adequate, safe structures and the appropriate measures, action plans, and sufficient, trained staff in place to maintain security in its prisons and to handle these types of emergency situations." The Commission also made the point that overcrowding is a factor that jeopardizes the life and personal integrity of those who are incarcerated in a particular facility and that it was imperative for the "national authorities to take all measures that may be necessary to ensure that prisons do not hold more inmates than they are equipped to house based on their real capacity."⁴³⁶

318. As for the duty to investigate the facts that led to the death of 361 persons in Comayagua, the Commission wrote the following:

These investigations must not only aim to establish the material perpetrators of the crimes, but also the possible intellectual authors, and any degree of responsibility that the authorities might have, either by action or omission. In this line, the IACHR urges the State of Honduras to launch the criminal, administrative and disciplinary investigations necessary to determine responsibilities and sanction those responsible.

⁴³³ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

⁴³⁴ IACHR, Press Release No. 19/12 (Washington, February 15, 2012): *IACHR Deplores Deaths in Fire in Honduras Prison*. Document available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/019.asp.

⁴³⁵ IACHR hearing on the "Human Rights Situation of Persons Deprived of Liberty in Honduras", 144th session of the IACHR. Audio and video of hearings available at: www.iachr.org.

⁴³⁶ IACHR, Press Release No. 19/12 (Washington, February 15, 2012): *IACHR Deplores Deaths in Fire in Honduras Prison*. Document available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/019.asp.

319. The Commission also urged the State “to urgently adopt all measures necessary to avoid the repetition of similar situations.”⁴³⁷

320. The visit ordered by the Inter-American Commission was conducted by its Rapporteurship on the Rights of Persons Deprived of Liberty, April 23 to 27, 2012. During the visit, the IACHR took note of the determination that high-ranking state officials expressed to work to improve the prison conditions of persons deprived of liberty⁴³⁸. However, as the Commission observed in Press Release 43/12⁴³⁹, the Rapporteurship found serious structural deficiencies at the prisons that have led to their collapse and to a widespread situation of human rights violations incompatible with the international obligations assumed by the State under the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. Among the main problems found were: overpopulation and overcrowding; the lack of adequate and safe physical facilities for housing the inmates; the deplorable conditions of hygiene and sanitation; the failure to provide adequate food and drinking water; the failure to provide adequate medical care; the scarcity of educational and work programs; the lack of adequate facilities for receiving visitors, including for conjugal visits; the lack of effective judicial review of the legality of the deprivation of liberty in all its stages; the failure to separate prisoners by category; and judicial backlog. The Rapporteurship observed that this grave structural crisis was the result of the absence, for decades, of comprehensive public policies aimed at getting the prison system to secure the aims established in the American Convention on Human Rights: the reform and social readaptation of convicts.

321. On the matter of the fire at the Comayagua National Penitentiary in which 361 people perished, after the visit the IACHR urged State officials to take the measures necessary to promptly establish whatever responsibilities there might be, both by action and omission, in the events that transpired in the Comayagua National Penitentiary. The IACHR made the point that the State has an obligation to exhaust every avenue of investigation, and to shed light on the events that transpired at the prison, not only to get truth, justice and reparations, but also to ensure that such terrible events never happen again.

322. As for the consequences of the fire, the Commission took note of some of the measures the State had taken to assist the victims’ next of kin. It believed that suitable psychological assistance needed to be provided to survivors and to the next of kin of those who died. It also urged the authorities to relocate the inmates to safe and adequately equipped facilities and said that to attempt to relocate the survivors in the same facility where the fire happened would be to disregard the dignity inherent in every human person and the basic humanitarian principles of a civilized society.

323. The IACHR called upon the State to take urgent steps to remodel the physical facilities of all prisons that do not meet the minimum conditions essential to ensure a quality of life that is consistent with human dignity and that exposes thousands in the State’s custody to obvious peril.

⁴³⁷ IACHR, Press Release No. 19/12 (Washington, February 15, 2012): *IACHR Deplores Deaths in Fire in Honduras Prison*. Document available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/019.asp. The Office of the United Nations High Commissioner for Human Rights (Geneva) issued a February 17 press release in which it repeated what the IACHR had said and called upon the Honduran authorities to to conduct a thorough independent investigation into the causes of the fire and into whether the conditions at the prison contributed to the enormous loss of life. OHCHR. Press Briefing Note, *Prisons in Latin America*. Document available at: <http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11836&LangID=E>.

⁴³⁸ In its reply, the State spoke of the creation of the Interinstitutional Commission for the Attention and Prevention of Situations in the nation’s detention centers. The Commission has already begun to function and has adopted measures with respect to the 24 detention centers. Honduras also said that in order to reduce overcrowding at its prisons, the Secretariat for Justice and Human Rights, in coordination with the justice sector, had analyzed 51 pardon requests that had been granted by the President from a total of no fewer than 432 requests. It also reported that a preliminary draft bill for the new Pardons Law had been submitted to Congress.

⁴³⁹ IACHR, Press Release 43/12 - Rapporteurship on the Rights of Persons Deprived of Liberty Finds Serious Structural Deficiencies in Prisons of Honduras. Tegucigalpa, Honduras, April 27, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/043.asp

324. As for security policies, during its visit the Rapporteurship observed that Honduras, like other countries in the region, have been characterized by an iron-handed criminal justice policy, based on an eminently repressive approach characterized inter alia by the definition of new crimes; stiffer penalties; the abusive use of pretrial detention; and the absence of alternative mechanisms for deprivation of liberty. For the Commission, this repressive approach, accompanied as it is by the State's abandonment of the prisons, results in the aims pursued not being attained; to the contrary, the levels of insecurity have increased. The Citizen security is linked to the interrelated presence of multiple actors, conditions and factors. Among these factors are: the history and structure of the State and society; the policies and programs of the governments; the relevance of economic, social and cultural rights; and the international and regional scenario. Therefore, their attainment cannot be reduced simplistically and falsely to iron-handed or zero tolerance discourses that call for the massive incarceration of persons as the only response to this complex reality.⁴⁴⁰

325. In 2012, the IACHR observed that other episodes of serious violence transpired in Honduran prisons. On March 29, there was a power struggle inside the San Pedro Sula National Penitentiary in which an inmate murdered, with extreme brutality, the so-called "coordinator" of the prison and the twelve inmates who worked with him. Following these events, the inmates took over the prison and for three weeks did not allow the authorities inside to take the necessary steps to investigate these thirteen murders. The following were among the other episodes of violence observed: a fight, again in the San Pedro Sula Prison, left one inmate dead and twelve others injured; a shoot-out in the maximum security section of the Marco Aurelio Soto National Penitentiary; a riot at the "Renaciendo" juvenile correctional facility that left one minor dead, wreaked havoc to the institution's facilities and went on for several days. Likewise, in August the authorities discovered a cache of firearms, explosives and drugs in cellblock 23 (cellblock scorpion) of the Marco Aurelio Soto National Penitentiary, where members of *mara* 18 are housed; ten days later, two dead bodies were discovered of members of *mara* 18, believed to have been strangled to death by fellow gang members for having supplied information that resulted in the confiscation of the weapons cache.

326. With the information received from State officials during the April 2012 visit and from representatives of civil society, including the Committee of Relatives of the Victims of the Comayagua Penitentiary and from the inmates themselves at the prisons, and information received throughout 2012, the Rapporteurship prepared a Draft Special Report on the Situation of Persons Deprived of Liberty in Honduras. The Commission approved that report during its 146th regular session, and forwarded it to the State so that it might submit whatever observations it deemed pertinent. Once the observations are received, the IACHR will examine them and approve a new version of the draft report for subsequent publication.

327. The IACHR believes that the passage of a new National Penitentiary System Law, Decree No. 64-2012,⁴⁴¹ is a first important step toward Honduras' compliance with its international obligations vis-à-vis persons deprived of their liberty and underscores that when this new law enters into force, it must be partnered with its respective regulations and underpinned by an budgetary appropriation to enable its provisions to be enforced. It is essential that the principles of transparency in government be fully respected in the transition to the new institutions and authorities provided under this law.

⁴⁴⁰ IACHR, Press Release 43/12 - Rapporteurship on the Rights of Persons Deprived of Liberty Finds Serious Structural Deficiencies in Prisons of Honduras. Tegucigalpa, Honduras, April 27, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/043.asp.

⁴⁴¹ The Law was approved by Congress on May 30, 2012, and was published in the Official Gazette on December 3, 2012. Article 109 *et seq.* provide for a two-year transition period for the new National Penitentiary Institute to get underway.

C. Women

328. The Inter-American Commission of Human Rights has continued receiving reports during 2012 of the alarming levels of violence against women in Honduras, and how most of these cases end in impunity. For example, during 2012, the current Special Rapporteur on violence against women, its causes, and consequences, Rashida Manjoo, issued a thematic report which addresses the topic of gender-related killings internationally, and highlighted Honduras as one of the countries of concern in Central America.⁴⁴² She underscores how globally, the prevalence of different manifestations of gender-related killings is reaching alarming proportions, and how these forms of violence continue to be accepted, tolerated, and justified, often ending in impunity.⁴⁴³ According to the Rapporteur, available statistics indicate that 60 per cent of femicides⁴⁴⁴ are perpetrated by an intimate partner or male family member.⁴⁴⁵ As follow-up to the report from the UN Special Rapporteur, UN Women issued a press release on June 26, 2012 urging States and stakeholders to take urgent action against femicide, highlighting that femicide is considered the second-highest cause of death of women of reproductive age in Honduras.⁴⁴⁶ In the same press release, UN Women indicates that:

Gender-related killings are not isolated incidents which arise suddenly and unexpectedly, but are the ultimate act in a continuum of violence. They are the tip of the iceberg, rooted in centuries of discrimination and inequality between men and women, resulting from impunity, inaction and tolerance for violence against women and girls.⁴⁴⁷

329. The Women's Rights Observatory of the *Center de Derechos de las Mujeres* in Honduras additionally underscored in 2012 that the media documented the figure of 396 women as victims of violence between January 1st and June 30, 2012.⁴⁴⁸ 113 women were documented as suffering sexual violence, while 225 were reported as having suffered a violent death.⁴⁴⁹

330. In its reply, the State reported that on February 21, 2013, Congress passed an amendment of the Criminal Code; this reform added Article 118A, which establishes the crime of femicide for "men who kill women for reasons of gender, with hatred and disdain toward them as women," when one of the four circumstances set out in that article is also met: sentimental relationship, history of acts of violence, persecution of any kind, or commission with malice.⁴⁵⁰

⁴⁴² United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16, May 23, 2012, pages 1 and 9.

⁴⁴³ United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16, May 23, 2012, page 1.

⁴⁴⁴ In its report, the Special Rapporteur indicates that terms such as femicide, feminicide, honour killings and crimes of passion, among others, have been used to define gender-related killings.

⁴⁴⁵ United Nations, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/20/16, May 23, 2012, para. 33.

⁴⁴⁶ UN Women Press Release, *UN Women Calls on Member States and Stakeholders to Take Urgent Action against Femicide*, June 26, 2012, available at: <http://www.unwomen.org/2012/06/un-women-calls-on-member-states-and-stakeholders-to-take-urgent-action-against-femicide/>

⁴⁴⁷ UN Women Press Release, *UN Women Calls on Member States and Stakeholders to Take Urgent Action against Femicide*, June 26, 2012, available at: <http://www.unwomen.org/2012/06/un-women-calls-on-member-states-and-stakeholders-to-take-urgent-action-against-femicide/>

⁴⁴⁸ Centro de Derechos de Mujeres (CDM), Observatory of the Human Rights of Women, *What Newspapers say between January – June of 2012*, available at: http://www.derechosdelamujer.org/tl_files/documentos/violencia/Violencia%20contra%20las%20mujeres%20primer%20semestre%202012.pdf

⁴⁴⁹ Centro de Derechos de Mujeres (CDM), Observatory of the Human Rights of Women, *What Newspapers say between January – June of 2012*, available at: http://www.derechosdelamujer.org/tl_files/documentos/violencia/Violencia%20contra%20las%20mujeres%20primer%20semestre%202012.pdf

⁴⁵⁰ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

331. In their annual report “The State of the World’s Human Rights”, Amnesty International reported that the 2009 decree criminalizing the use of emergency contraception by women and girls remains in force for all women including “those whose contraceptive method failed or who were at risk of pregnancy resulting from sexual coercion.”⁴⁵¹ The Rapporteurship also received this year information about a legislative bill which was under consideration by the Honduran congress which aimed to criminalize the sale, distribution, and use of the “morning-after pill”, possibly imposing prison terms on the women implicated.⁴⁵² However, in May of 2012, the President of Congress decided to not bring the bill up for debate and the bill is no longer under consideration the Honduran Congress.⁴⁵³

D. Children and adolescents

332. In July the Commission learned of the detention conditions that juveniles endure when housed at the *Renaciendo* Rehabilitation Center in Támara, Francisco Morazán. The media reported that an adolescent 15 years of age had died as a result of gunshots fired by police as they attempted to suppress a riot at the *Renaciendo* facility on July 12, 2012.⁴⁵⁴ Regarding this matter, in its report the State noted that several witness statements have been taken and that the investigation of the case remains ongoing.⁴⁵⁵ The Commission has also learned that after the riot, some inmates threatened to kill a number of the juveniles being held at that facility, whereupon the latter decided to sleep in improvised tents erected on the correctional facility’s patio. Later, the media reported how dangerously unsafe the detention center’s infrastructure had become and that a number of adolescents had escaped.⁴⁵⁶ The

⁴⁵¹ Amnesty International, Annual Report 2012, *The State of the World’s Human Rights*, <http://www.amnestyusa.org/sites/default/files/air12-report-english.pdf>

⁴⁵² Center for Reproductive Rights, *Honduras Supreme Court Upholds Absolute Ban on Emergency Contraception, Opens Door to Criminalize Women and Medical Professionals*, February 13, 2012, <http://reproductiverights.org/en/press-room/honduras-supreme-court-upholds-absolute-ban-on-emergency-contraception-opens-door-to-crim>

⁴⁵³ Center for Reproductive Rights, *Victory in Honduras*, May 18, 2012, <http://reproductiverights.org/en/feature/victory-in-honduras>

⁴⁵⁴ *El Heraldo*, *Muere menor herido en motín de Renaciendo* [Youth dies in riot at Renaciendo]. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Muere-menor-herido-en-motin-de-Renaciendo>; *Tiempo*, *Menores se amotinaron para matar a muchacha* [Juveniles rioted to kill a girl]. Available [in Spanish] at: <http://www.tiempo.hn/index.php/honduras/14524-menores-se-amotinaron-para-matar-a-muchacha>; *La prensa*, *Muere menor herido en motín* [Youth injured in riot dies]. Available [in Spanish] at: <http://eng.laprensa.hn/Secciones-Principales/Sucesos/Muere-menor-herido-en-motin#.UA8beGAWZqs>; *La Tribuna*, *Motín en cárcel de menores* [Riot in juvenile correctional facility]. Available [in Spanish] at: <http://www.latribuna.hn/2012/07/12/amotinamiento-en-renacer/>; *El Heraldo*, *Escapan 18 menores de edad del centro de rehabilitación “Renaciendo”* [18 juveniles escape from the “Renaciendo” rehabilitation center]. Available [in Spanish] at: <http://m.elheraldo.hn/Secciones-Principales/Sucesos/Escapan-18-menores-de-edad-del-centro-de-rehabilitacion-Renaciendo>; *La prensa*, *Destrozos deja motín en correccional de menores* [Riot in juvenile correctional facility wreaks havoc]. Available [in Spanish] at: <http://www.laprensa.hn/Secciones-Principales/Sucesos/Destrozos-deja-motin-en-correccional-de-menores#.UA8d82AwZqs>; RCV, *Otro Amotinamiento en Centro de Internamiento “Renaciendo”* [Another Riot at the “Renaciendo” Correctional Center]. Available [in Spanish] at: <http://www.radiocadenavoces.hn/rcv/todas-las-noticias/sucesos/otro-amotinamiento-en-centro-de-internamiento-renaciendo.html>

⁴⁵⁵ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁵⁶ *El Heraldo*, *A la intemperie duermen más de 60 menores en Renaciendo* [60 juveniles at Renaciendo sleeping outdoors]. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/A-la-intemperie-duermen-mas-de-60-menores-en-Renaciendo>; *El Heraldo*, *Lamentable situación de centros de menores en Honduras* [Regrettable situation in juvenile correctional centers in Honduras]. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Pais/Lamentable-situacion-de-centros-de-menores-en-Honduras>; Proceso Digital, *Se fugan unos 40 internos de centro “Renaciendo”; director del Infha culpa a la Policía* [Some 40 inmates escape from “Renaciendo” correctional facility; INFHA Director blames police]. Available [in Spanish] at: <http://proceso.hn/2012/07/26/Caliente/Se.fugan.unos/55117.html>; *El Heraldo*, *Al menos 28 menores se fugan de centro de internamiento Renaciendo* [At least 28 juveniles escape from the Renaciendo Custodial Facility]. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Muere-menor-herido-en-motin-de-Renaciendo>; *El Heraldo*, *Recapturan a diez “paisas”, pero se fugan al menos 12 pandilleros de Renaciendo* [At least ten “paisas” recaptured, but at least 12 gang members escape from Renaciendo]. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Recapturan-a-diez-paisas-pero-se-fugan-al-menos-12-pandilleros-de-Renaciendo>; *La Prensa*, *Reportan fuga de 12 pandilleros del centro Renaciendo en Támara* [12 gang members reported escaped from Renaciendo facility in Támara]. Available [in Spanish] at: <http://eng.laprensa.hn/Secciones-Principales/Sucesos/Reportan-fuga-de-12-pandilleros-del-centro-Renaciendo-en-Tamara>

Commission had previously spotlighted conditions at *Renaciendo* in its report on Juvenile Justice and Human Rights. The available information indicates that situations of this kind happen as a result of a structural problem of lax control at juvenile custodial facilities, coupled with infighting between different rival groups of juveniles being housed there, a dangerous combination for their lives and personal safety. There are also reports that searches have turned up arms like grenades and other explosives.⁴⁵⁷ In its report the State said it was “aware of the structural limitations of the youth detention centers” and so, in July 2012, the government enacted a 365-day emergency decree for two such facilities: “Renaciendo” in Támara, Francisco Morazán, and “Sagrado Corazón” in Carmen, San Pedro Sula.⁴⁵⁸

333. Again, the IACHR is reminded that States, as guarantors of the rights of persons deprived of liberty, must take all measures necessary to protect the lives and personal integrity of their inmates.⁴⁵⁹ States have an obligations to investigate, on their own initiative and with due diligence, all deaths of persons under their custody, including the identity of those authorities who, by action or omission, may have had some degree of responsibility.⁴⁶⁰ These investigations must also aim to establish the causes of the acts of violence and look for effective responses that will avoid a recurrence of the events.⁴⁶¹ The Inter-American Commission underscores the point that in the case of juveniles, the purpose of a custodial measure that deprives a juvenile of his or her liberty is to enable the juvenile to be reincorporated into society as a fully productive member of his or her community.⁴⁶² Accordingly, because of the State’s special role as guarantor vis-à-vis juveniles, it will have to adopt special measures to achieve that end; this is a role that the State must play with particular care and a heightened sense of responsibility, taking into consideration the principle of the best interests of the child.⁴⁶³

334. With support from UNICEF, in 2012 Honduras’ National Prevention, Rehabilitation and Social Re-assimilation Program did a report titled *Situación de maras y pandillas en Honduras* [Maras and Gangs in Honduras]. The report states that more than 4,700 children and youth belong to some *mara* or gang in Honduras, many of whom are locked up in correctional facilities. The report concludes that social exclusion and lack of opportunity are some of the factors that drive children and youth to join these groups. The report highlights the exclusivity and territorial control that gangs exercise in some cities. There are neighborhoods and areas where there is no police presence, as the *mara*’s control has become so pervasive. These areas are known as “lawless zones”. The study also shows that the gang or *mara* phenomenon is not confined to neighborhoods and families; instead *maras* and gangs are also a presence in schools, and students are often forced to drop out because of threats from gangs. In five secondary schools in the Central District of Tegucigalpa, 91% of teachers surveyed were certain that this type of violence was present in their schools.⁴⁶⁴

⁴⁵⁷ *El Heraldo*, *Muere menor herido en motín de Renaciendo* [Youth dies in riot at Renaciendo]. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/Muere-menor-herido-en-motin-de-Renaciendo>; *El Heraldo*, *A la intemperie duermen más de 60 menores en Renaciendo* [60 juveniles at Renaciendo sleeping outdoors]. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Sucesos/A-la-intemperie-duermen-mas-de-60-menores-en-Renaciendo>; *La prensa*, *Destrozos deja motín en correccional de menores* [Riot in juvenile correctional facility wreaks havoc]. Available [in Spanish] at: <http://www.laprensa.hn/Secciones-Principales/Sucesos/Destrozos-deja-motin-en-correccional-de-menores#.UA8d82AwZqs>

⁴⁵⁸ The State also reported the creation of an interinstitutional commission to supervise the IHNFA reform process. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁵⁹ IACHR, Special Report on the Human Rights Situation at the Challapalca Prison, para. 113; IACHR, Report No. 41/99, Case 11,491, Merits, Minors in Detention, Honduras, March 10, 1999, para. 135.

⁴⁶⁰ IACHR, Juvenile Justice and Human Rights in the Americas, 2011, para. 608.

⁴⁶¹ IACHR, Juvenile Justice and Human Rights in the Americas, 2011, para. 614, B, 21, g.

⁴⁶² IACHR, Juvenile Justice and Human Rights in the Americas, 2011, para. 30.

⁴⁶³ I/A Court H.R., Matter of the Socio-Educational Internment Facility, Order of the Court of November 20, 2012, paragraph 20.

⁴⁶⁴ UNICEF, *Situación de Maras y Pandillas en Honduras* [Gangs and Maras in Honduras]. Available [in Spanish] at: http://www.unicef.org/honduras/Informe_situacion_maras_pandillas_honduras.pdf; see also, *UNICEF-supported study sheds light on gangs in Honduras*. Available at: http://www.unicef.org/infobycountry/honduras_65204.html.

335. The IACHR is reminded that States have an obligation to ensure the protection of children and youth who live in poverty and are socially alienated, and to ensure that these children are not branded as criminals.⁴⁶⁵ As the Inter-American Court wrote in the *Case of the "Street Children"* (Villagrán Morales *et al.*), if States have reason to believe that at-risk children are exposed to factors that may lead them to commit crime, or if they have reason to conclude that, in specific cases, children have committed crimes, then those States must exhaust all possible crime-prevention measures.⁴⁶⁶ The State must assume its special position of guarantor with special care and a heightened sense of responsibility and must take special measures guided by the principle of the best interests of the child.⁴⁶⁷

336. Regarding children and adolescents, in its report the State said that the comprehensive reform bill for children's and family matters had been submitted to Congress. The provisions of this bill include: (a) judges will have specialized jurisdiction over matters involving children at the national level, (b) judges will be required to ground their rulings on the provisions of the Convention on the Rights of the Child, (c) preventive measures to dissuade children and young people from committing crimes, (f) oral trials, and (g) sanctions, execution of judgments, etc. It also reported that the Secretariat for Justice and Human Rights has submitted the preliminary bill for the Law on the National Children's Defense Office, which would create a new lead agency for child and youth public policy to replace the Honduran Children and Family Institute (IHNA). According to the State, the constant institutional crises in the IHNA made it an urgent need to create an agency of the public administration to guide public policies for children in order to provide a structure for efforts with other agencies and with civil society. With the creation of the Children's Defense Office, the 3.7 million children in the country will be covered, instead of the 5,000 served by the IHNA.⁴⁶⁸

337. The State also reported the recent adoption, on February 12, 2013, of the National Policy for the Prevention of Violence toward Children and Youth.⁴⁶⁹

338. Furthermore, this year the United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Najat Maalla M'jid, underscored the point that in Honduras weaknesses in the education system, poverty, socioeconomic disparities, insecurity and violence all contribute to children's vulnerability to multiple forms of economic and/or sexual exploitation and noted that "the scope of the sale and sexual exploitation continues to be difficult to determine due to the lack of systematic denunciation caused by fear of retaliation and stigmatization, as well as social tolerance for violence and the difficulty in accessing mechanisms to guarantee rapid protection and security of children." The Rapporteur also expressed concern over the violation of the rights of children being housed in various institutions in the custodial care of the Honduran Institute of the Child and Family (IHNA). At the conclusion of her visit, she mentioned that many girls under the age of 14 are already mothers due to factors such as sexual abuse by relatives, a lack of sex education, the slow pace of

⁴⁶⁵ Citing I/A Court H.R., *Case of Servellón García et al. v. Honduras*, Judgment of September 21, 2006, para. 116; cf. General Comment No. 4: Adolescent health and development in the context of the Convention on the Rights of the Child, July 21, 2003, UN Document CRC/GC/2003/4.

⁴⁶⁶ Citing I/A Court H.R., *Case of Servellón García et al. v. Honduras*, Judgment of September 21, 2006, para. 116. Cf. *Case of the "Street Children"* (Villagrán Morales *et al.*), supra note 69, para. 197; and United Nations Guidelines for the Prevention of Juvenile Delinquency (Riad Guidelines). Adopted and proclaimed by the United Nations General Assembly in resolution 45/112, December 4, 1990, Chapter III, paragraph 9.

⁴⁶⁷ Citing I/A Court H.R., *Case of Servellón García et al. v. Honduras*, Judgment of September 21, 2006, para. 116. Cf. *Case of the Gómez Paquiyauri Brothers*, supra note 63, paragraphs 124, 163 to 164, and 171; *Bulacio Case*, supra note 54, paragraphs 126, 133 and 134; *Case of the "Street Children"* (Villagrán Morales *et al.*), supra note 69, paragraphs 146 and 195; and Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02, supra note 72, para. 60.

⁴⁶⁸ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

⁴⁶⁹ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

judicial investigations and the impunity of certain exploiters of children.⁴⁷⁰ In connection with this topic, in its report the State said that through Legislative Decree No. 59-2012 of May 30, 2012, the Special Law against Trafficking in Persons was approved.⁴⁷¹

E. Indigenous peoples

339. Indigenous peoples in Honduras continue to wrestle with serious problems associated with human trafficking, the persistent threat posed by megaprojects, and the lack of effective protection of indigenous peoples by the State.⁴⁷²

340. In its report the State spoke of the challenges faced by both indigenous and Afro-Honduran peoples. Honduras nevertheless reported that progress has been made with the adoption of such measures as: “(1) Preliminary draft amendment of Article 117 of the Criminal Code, adding to the aggravating circumstances of the crime of murder its commission ‘with hatred or disdain by reason of sex, gender, religion, national origin, belonging to indigenous and Afro-descendant peoples, sexual orientation’ [...]; (2) Preliminary draft amendment of Article 321 of the Criminal Code, expanding the criminal offense of discrimination to include its commission ‘by reason of [...] belonging to indigenous and Afro-descendant peoples’ [...]; (3) Preliminary draft amendment of Article No. 6 of the Constitution, declaring that the State of Honduras is pluricultural and multilingual in order to progress with the full recognition of the rights of its ancestral peoples by bringing its domestic statutes into line with the provisions of international law.”⁴⁷³

341. The trafficking in indigenous girls is a serious problem for their communities. According to recent research, an ever-increasing number of indigenous girls are either forcibly taken from their communities or are lured away by deceptive promises, only to be taken out of the country and smuggled into Mexico and/or the United States where they are forced into sexual slavery or their organs are trafficked.⁴⁷⁴ The increase in the number of indigenous girls being trafficked in Honduras is very alarming and demands the authorities’ immediate attention. Human trafficking is a continuing violation of multiple rights protected by the American Convention, such as the right to life, the right to personal integrity, the right to personal liberty, and the prohibition of slavery and servitude. The means by which human trafficking is perpetrated places the victim in a completely defenseless position, which leads to other related violations. The Commission underscores the need to adopt a full and culturally relevant approach to combating the trafficking in indigenous persons, which includes preventive measures and measures to protect victims and survivors, and to investigate the facts and punish those responsible.

⁴⁷⁰ *Noticias Terra*, Available [in Spanish] at: <http://noticias.terra.cl/mundo/latinoamerica/onu-recomienda-armonizar-leves-contra-explotacion-infantil-en-centroamerica.47aa1bf0bc2a9310VgnVCM20000099cceb0aRCRD.html>; *El Tiempo*, Relatora de la ONU clama por acciones de protección a la niñez en el país [UN Rapporteur calls for measures to protect children in the country]. Available [in Spanish] at: <http://www.tiempo.hn/portada/17924-relatora-de-la-onu-clama-por-acciones-de-proteccion-a-la-ninez-en-el-pais>; *El Heraldo*, Relatora de ONU pide más acciones para la niñez [UN Rapporteur seeks more measures for children]. Available [in Spanish] at: <http://www.elheraldo.hn/Secciones-Principales/Pais/Relatora-de-ONU-pide-mas-acciones-para-la-ninez>

⁴⁷¹ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁷² In its reply, the State reported that in April 2011, Executive Decree PCM-026-2011 was issued in Bajamar, Cortés department, instructing the Secretariats of State and relevant institutions to draw up an Interinstitutional Plan for contributing to the economic development of Garifuna communities. It also ordered the updating of data on Garifuna and indigenous officials, together with assurances that public positions in the areas of education, public health, and others in indigenous and Afro-Honduran communities be held by Afro-descendants and indigenous women and men. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁷³ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁷⁴ *El Heraldo*, *Aumenta trata de niñas indígenas en Honduras* [Trafficking in indigenous girls on the rise in Honduras], September 22, 2011. Available [in Spanish] at: <http://archivo.elheraldo.hn/Ediciones/2011/09/22/Noticias/Aumenta-trata-de-ninas-indigenas-en-Honduras>

342. Megaprojects continue to pose a threat to the indigenous peoples of Honduras. In April 2012, the Civic Council of Grassroots and Indigenous Organizations of Honduras (COPINH) complained that approximately 15 projects threatened indigenous lands or territories, and that the affected communities were not consulted beforehand, even though Honduras had ratified ILO Convention No. 169 back in 1995⁴⁷⁵ Here, the Commission has affirmed the States' duty to consult with indigenous peoples on any activity or economic project that might affect their lands, territories and natural resources. The right to be consulted includes the positive duty of the State to order suitable and effective mechanisms by which to obtain the indigenous peoples' prior, free and informed consent, carried out in accordance with the indigenous peoples' customs and traditions before undertaking activities that would affect their interests or their rights to the lands, territory or natural resources.⁴⁷⁶

343. The deaths of four Miskito indigenous persons and injuries caused to another four are still under investigation. The fatalities and injuries allegedly occurred in an anti-drug operation conducted in the Municipality of Ahuas, Department of Gracias a Dios, in the Mosquitia area. According to public reports, on the night of May 11, 2012, Honduran and United States police aboard helicopters were alleged to have conducted an operation on the wharf on the Patuca River located in the community of Paptalaya, Department of Gracias a Dios. The information available indicates that a boat carrying sixteen people was nearby, most of whom were Miskito indigenous persons. The boat was hit by shots fired from the helicopters, killing Hasked Brooks Wood (14), Emerson Martínez Henríquez, Candelaria Pratt Nelson and Juana Jackson Ambrocio. The two women were reportedly pregnant. Injured in the incident were Wilmer Lucas Walter (14), Hilda Rosa Lezama Kenreth, Melaño Olopio and Lucio Adán Nelson Queen, who reportedly did not receive immediate medical attention.⁴⁷⁷ According to a spokesperson for the Committee of the Families of the Detained and Disappeared in Honduras, the four bodies will be exhumed a second time to determine whether the two women killed were pregnant. The IACHR is reminded that the State of Honduras has an obligation to conduct an investigation, on its own initiative, into events of this kind. The investigation must be undertaken with due diligence and be effective, serious and impartial, and within a reasonable period of time, punish those responsible and redress the consequences. The IACHR must again make the point that mechanisms must be adopted to avoid excessive use of force by public agents and ensure that operations of this kind are conducted in a manner respectful of human rights and in strict accordance with the principles of legality, necessity and proportionality.

F. Afro-descendants

344. The Commission acknowledges the advances for the inclusion of the afro-descendent population through the creation of the Secretariat for Indigenous Peoples and Afro-Hondurans

⁴⁷⁵ See, for example, <http://hon-line.blogspot.com/2012/04/noticias-denuncian-represion-contra.html>.

⁴⁷⁶ See *inter alia* IACHR, Report on Ecuador, 1997, Conclusions of Chapter IX, human rights issues of particular relevance to the country's indigenous inhabitants and Conclusions of Chapter VIII; IACHR, Report on the situation of human rights in Colombia, Chapter X, 1999, Recommendation No. 4; IACHR, Merits Report No. 75/02, Case 11,140, Mary and Carrie Dann (United States), Annual Report of the IACHR 2002, paragraph 140; IACHR, Merits report No. 40/04, Case 12.053. Mayan indigenous communities of the District of Toledo (Belize), October 12, 2004, paragraph 142. Belize ratified ILO Convention No. 169 in 1991; IACHR, Report on access to justice and social inclusion: the road towards strengthening democracy in Bolivia. Chapter IV, Rights of indigenous peoples and peasant communities, paragraph 248. Bolivia ratified ILO Convention No. 169 in 1991; IACHR, Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources. Norms and Jurisprudence of the Inter-American Human Rights System. OEA/Ser.LV/II.Doc.56/09, December 30, 2009, Chapter IX. See also: I/A Court H.R. *Case of the Saramaka People v. Suriname*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172. I/A Court H.R. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245.

⁴⁷⁷ [Declaración y Demanda Pública](#) de representantes de los Consejos Territoriales de las bases de Masta, Diunat, Rayaka, Batiasta y Bamiasta [Public Declaration and Demand of representatives of the Territorial Councils from the Masta, Diunat, Rayaka, Batiasta and Bamiasta bases], May 14, 2012; [Comunicado público](#) del Consejo Cívico de Organizaciones Populares e Indígenas de Honduras (COPINH) [Press release of the Civic Council of Honduran Grassroots and Indigenous Organizations (COPINH)], May 15, 2012; Press release, *Honduras: exhumarán cuerpos de 4 indígenas muertos tras operación de departamento antidrogas de EE.UU.* [bodies of 4 indigenous persons dead after the U.S. anti-drug operation will be exhumed], July 21, 2012.

(SEDINAFROH) in 2010 and is pleased that the Government helped with the organization of the First World Summit of Afro-Descendants, held in La Ceiba in 2011.⁴⁷⁸

345. However, it is troubled by complaints of threats to disposses the population garifuna and creole from their ancestral lands, and of imprisonment and murder of some of the leaders. Also, for the lack of celerity of the justice system to address the complaints presented by some the organizations. In its report the State indicated that the office of the Prosecutor for Ethnic Groups has followed up on those complaints and has requested the relevant reports.⁴⁷⁹

346. The State also reported that “it has been seen, not only in the Afro-Honduran community but also in other communities, that many of the problems arise from internal conflicts within the same communities: for example, the community transfers land to private individuals, as a result of which the conflict created must be resolved through the civil courts or through the use of the internal jurisdiction of the communities themselves.”⁴⁸⁰

347. The IACHR is also troubled by the persistence of racial discrimination toward Afro-Hondurans in the media, in the labor force, in access to justice, quality of education, health, basic services, and in their scarce political participation.

G. Lesbian, gay, trans, bisexual and intersex persons (“LGTBI”)

348. In 2012, the Commission continued to receive reports on violence against LGBTI persons. In its report *Honduras: Human Rights and the Coup d’état*, the IACHR noted how discrimination and violence against members of the lesbian, gay, bisexual, transgender and intersex (LGBTI) community had intensified.⁴⁸¹

349. Between May and August 2012, the IACHR issued two press releases condemning the murders of LGBTI persons: a gay activist and defender of the rights of LGBTI persons, Eric Alex Martínez Ávila, mentioned earlier, and a trans woman, Barbarita (registered at birth as Marlon Javier Jiménez Alemán), whose lifeless body was discovered with several bullet wounds to the face and head, and evidence suggesting that her hands had at some point been tied.⁴⁸² In September the Commission expressed concern over four homicides,⁴⁸³ involving two trans women: Valeria (registered at birth as Darwin Noé Hernández Díaz); a woman identified only as Sharon, and two gay men: Mario Felipe Rivera Velásquez and Jefry Josué Hernández Alva.⁴⁸⁴ According to the information provided by the State, these

⁴⁷⁸ <http://odecohn.blogspot.com/2012/01/el-racismo-es-un-delito-en-honduras.html>

⁴⁷⁹ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁸⁰ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁸¹ IACHR, *Honduras: Human Rights and the Coup d’état*, OEA/Ser.L/V/II. Doc. 55, December 30, 2009, paragraphs 198 et seq.

⁴⁸² IACHR, Press Release No. 109/12, IACHR Condemns the Murder of a Trans Woman in Honduras. August 28, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/109.asp

⁴⁸³ IACHR, Press Release No. 129/12, *IACHR Urges the States to Adopt Urgent Measures against Homophobic and Transphobic Violence in the Region*, October 29, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/129.asp:

⁴⁸⁴ See in this regard, at the IACHR’s website, *Violence against LGBTI Persons*, available at <http://www.oas.org/en/iachr/lgtbi/activities/violence.asp>

cases are still under investigation⁴⁸⁵. Again in November, the Commission denounced the murder of a trans woman,⁴⁸⁶ whose identity is unknown.⁴⁸⁷

350. Civil society organizations have reported that in the three-year period from June 2008 to June 2012, 81 LGBTI persons have been murdered in Honduras, the vast major in the departments of Francisco Morazán, Cortés, Atlántida, Islas de La Bahía, Choluteca and El Paraíso.⁴⁸⁸ In August 2012, it was reported that 13 LGBTI persons had been murdered in the first seven months of the year: eight trans persons and five gay men.⁴⁸⁹

351. Human Rights Watch also reported during 2012 its concern over bias-motivated attacks on transgender women as a serious problem in Honduras, and the alleged involvement of members of the Honduran police in some of these violent abuses.⁴⁹⁰ These are rarely followed by rigorous investigations or criminal convictions.⁴⁹¹

352. In other violence against LGBTI persons, as previously noted, the Commission learned that in July 2012, LGBTI activist Donny Reyes had been threatened near his home by an armed man on a motorbike.⁴⁹² The IACHR granted precautionary measures to Donny Reyes, a defender of the rights of LGBTI persons.⁴⁹³

353. As for the state's response to these murders, a unit was created under the Office of the Prosecutor for Common Crimes in Tegucigalpa and San Pedro Sula, to investigate murders related to sexual diversity issues. The Commission has no specific information as to what this Unit's work is, particularly as regards the current status of the investigations into the murders. Civil society organizations have complained that the Unit is allegedly investigating only 2010 cases, and then only those involving gay men; murders of lesbian women and trans persons are not being addressed.⁴⁹⁴ During the course of

⁴⁸⁵ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

⁴⁸⁶ IACHR, Press Release No.146/12, IACHR expresses concern regarding homicides and acts of violence against LGBTI persons in the Americas, December 12, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/146.asp

⁴⁸⁷ See in this regard, at the IACHR's website, *Violence against LGBTI Persons*, available at <http://www.oas.org/en/iachr/lgtbi/activities/violence.asp>

⁴⁸⁸ Centro de Monitoreo de Medios de Comunicación, Red Lésbica Cattrachas [Cattrachas Lesbian Network's Center for Monitoring the Media], "Situación de las Muertes Violentas de la Comunidad LGTBI en Honduras" [Violent deaths of women in the LGTBI Community in Honduras], summary as of August 6, 2012. Report presented to the IACHR's LGBTI Unit.

⁴⁸⁹ Centro de Monitoreo de Medios de Comunicación, Red Lésbica Cattrachas [Cattrachas Lesbian Network's Center for Monitoring the Media], "Situación de las Muertes Violentas de la Comunidad LGTBI en Honduras" [Violent deaths of women in the LGTBI Community in Honduras], summary as of August 6, 2012. Report presented to the IACHR's LGBTI Unit. See also, "Solicitud de solidaridad en contra de los asesinatos y violaciones a los derechos humanos de la comunidad LGTTBI Honduras" [Request seeking solidarity against the murders and human rights violations committed against Honduras' LGTTBI community], March 16, 2012. See also, Indyra Mendoza Aguilar, *Violencia en contra de Lesbianas, Gays, Bisexuales, Transgéneros e Intersexuales en Honduras, obstáculos y desafíos* [Violence against Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Honduras: obstacles and challenges]. LASA 2012, available [in Spanish] at: <http://lasa.international.pitt.edu/members/congress-papers/lasa2012/files/36495.pdf>.

⁴⁹⁰ Human Rights Watch, *World Report: Honduras 2012*, available at: <http://www.hrw.org/world-report-2012/world-report-chapter-honduras>

⁴⁹¹ Human Rights Watch, *World Report: Honduras 2012*, available at: <http://www.hrw.org/world-report-2012/world-report-chapter-honduras>

⁴⁹² Front Line Defenders and Amnesty International have denounced the persistence of threats. See: <http://www.frontlinedefenders.org/node/19638> and <http://www.amnesty.org/es/library/info/AMR37/010/2012/en>

⁴⁹³ See PM-196-09, currently PM-403-09. Available at: <http://www.oas.org/en/iachr/lgtbi/protection/precautionary.asp>

⁴⁹⁴ Indyra Mendoza Aguilar, *Violencia en contra de Lesbianas, Gays, Bisexuales, Transgéneros e Intersexuales en Honduras, obstáculos y desafíos* [Violence against Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Honduras: obstacles and challenges]. LASA 2012, available [in Spanish] at: <http://lasa.international.pitt.edu/members/congress-papers/lasa2012/files/36495.pdf>

a hearing held in March 2012, the IACHR was told that crimes committed against trans persons in Honduras go unpunished.⁴⁹⁵ In its reply to the IACHR, the State said that between 2008 and 2011, the Public Prosecution Service had documented “43 cases of deaths involving sexual diversity, of which progress had been made with the investigation of 18 case files, with specific hypotheses and/or, in some cases, identified suspects.” It also stated that of the 18 cases with progress in the investigation, seven had been brought to trial “respectively, for robbery and crime of passion; robbery; enmity and robbery; crime of passion and robbery; robbery; and robbery.” In one of the cases a conviction had been handed down. Honduras also said that in the cases that had been investigated and brought to trial, hate crimes had not been established.⁴⁹⁶

354. On the other hand, one positive development is that the Public Prosecutor’s Office complaint form, which has always asked about the sex of the party filing the complaint, now allows the complainant to identify himself or herself as either “heterosexual, lesbian, gay, bisexual, transsexual or unspecified.”⁴⁹⁷

355. At the public hearing held in March 2012 on “Trans Persons’ Right to Identity”, the IACHR received troubling information on the profound negative impact that the lack of recognition of gender identity has on the full exercise of the rights of transgender persons.⁴⁹⁸ Due to the lack of recognition of their gender identity, transgender persons are subjected to a situation of exclusion and marginalization in all aspects of public life. During the hearing it was reported that civil society had lobbied for a gender identity law, but it did not get the necessary votes. In the view of these organizations, the failure to recognize a trans person’s identity has the effect of limiting that person’s access to such rights as health and education.⁴⁹⁹

356. Also, during the Commission’s 146th session, on the occasion of the hearing on “Homicides of LGBTI Persons and Impunity in the Americas,”⁵⁰⁰ representatives from LGBTI social organizations in Honduras stressed the point that murders involving LGBTI persons are not properly investigated because they are assumed to be crimes of passion, thus ignoring the social milieu of discrimination that leads to violence of this kind. There are no mechanisms by which to identify trans persons, as their gender identities are unknown. Investigations are also problematic because of the authorities’ lack of sensitivity and understanding of these matters and because there are no data systems with which to identify cases involving violence where the motive is the victim’s sexual orientation or gender identity.

H. Migrant workers and their families

⁴⁹⁵ Inter-American Commission on Human Rights. Trans Persons’ Right to Identity. Hearing No. 4. 144th Regular Session. March 23, 2012.

⁴⁹⁶ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, “Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras.”

⁴⁹⁷ Indyra Mendoza Aguilar, *Violencia en contra de Lesbianas, Gays, Bisexuales, Transgéneros e Intersexuales en Honduras, obstáculos y desafíos* [Violence against Lesbian, Gay, Bisexual, Transgender and Intersex Persons in Honduras: obstacles and challenges]. LASA 2012, available [in Spanish] at: <http://lasa.international.pitt.edu/members/congress-papers/lasa2012/files/36495.pdf>

⁴⁹⁸ Inter-American Commission on Human Rights. Trans Persons’ Right to Identity. Hearing No. 4. 144th Regular Session. March 23, 2012.

⁴⁹⁹ Inter-American Commission on Human Rights. Trans Persons’ Right to Identity. Hearing No. 4. 144th Regular Session. March 23, 2012.

⁵⁰⁰ Hearing conducted on November 1, 2008. Organizations in attendance: Colombia Diversa, Caribe Afirmativo, Santamaría Fundación, Red Lésbica Cattrachas and TRANSSA.

357. At the present time, Honduras is a country of origin, transit, destination and return for migrants.⁵⁰¹ Among the reasons why Hondurans migrate abroad, mainly to the United States, are the high rates of poverty and inequality, violence by organized crime groups, and the 2009 *coup*. According to the State, migration allegedly caused by organized crime is a recent phenomenon and no figures are available on the number of people who might have relocated for that reason.⁵⁰² According to the 2010 data compiled by the *Foro Nacional para las Migraciones en Honduras* (FONAMIH), around 100,000 Hondurans migrate to the United States every year; of these 71% are between the ages of 18 and 32.⁵⁰³ The Consular Affairs Office of the Foreign Ministry estimates that 1.2 million Hondurans were living abroad in 2012; of these, only 300,000 had the required documentation to legally reside outside the country.⁵⁰⁴

358. Most Honduran migrants are undocumented, exposing them to the possibility of immigrant detention and deportation in any of the countries through which they travel or their countries of destination, which are mainly Mexico and the United States. In its comments, the State of Honduras reported that in 2012 it signed a cooperation agreement with the Argentine Forensic Anthropology Team, the National Migration Forum, and CIPRODEH, with the aim of establishing a forensic database to identify missing migrants by comparing genetic samples from the relatives of unidentified migrants, mainly in the United Mexican States and in the United States of America.⁵⁰⁵ It also reported that to date, under that agreement, three DNA samplings of unlocated migrants' relatives had taken place,⁵⁰⁶ which are being compared with other forensic databases, and that work is underway in coordination with the families and the consular offices of Honduras in Mexico and the United States.⁵⁰⁷

359. In 2011, over 26,000 Hondurans were placed in immigration detention centers in the United States.⁵⁰⁸ Furthermore, deportations pose serious difficulties in terms of the care and resettlement of persons deported back to Honduras. Over the course of 2012, Mexico's National Institute of Immigration repatriated 18,099 Honduran immigrants.⁵⁰⁹ The government does not have a program in place to facilitate deportees' re-assimilation into society and the work force. Once deported back to Honduras, these Honduran immigrants will be working under tenuous conditions. The Commission is compelled to point out that under Article 16 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, no matter what their immigration status migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or private individuals, groups or institutions.

⁵⁰¹ CENTRO INTERNACIONAL PARA LOS DERECHOS HUMANOS DE LOS MIGRANTES (CIDEHUM), *Desplazamiento forzado y necesidades de protección, generados por nuevas formas de violencia y criminalidad en Centroamérica* [Forced Displacement and the protection needs created by new forms of violence and crime in Central America], 2012, p. 11.

⁵⁰² Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

⁵⁰³ CONSEJERIA EN PROYECTOS (PCS), *Mapeo de actores sociales de la migración en Mesoamérica: desafíos organizativos y oportunidades de incidencia* [Mapping of social actors involved in migration in Mesoamerica: organizational challenges and opportunities to have an impact]. Guatemala, 2010, p. 24.

⁵⁰⁴ *EL HERALDO*, *Honduras, con 1.2 millones de migrantes en el mundo* [Honduras: 1.2 million Honduran immigrants abroad], July 8, 2012.

⁵⁰⁵ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

⁵⁰⁶ In the first, the State reports that 229 samples were taken from 96 relatives; in the second, 26 samples from 7 relatives; and in the third, 73 samples from 30 relatives. Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

⁵⁰⁷ Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

⁵⁰⁸ DEPARTMENT OF HOMELAND SECURITY, *Immigration Enforcement Actions: 2011*. United States. Available at: http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf

⁵⁰⁹ INSTITUTO NACIONAL DE MIGRACIÓN, *Boletín mensual de estadísticas migratorias 2012*. Mexico. Available at: http://www.inm.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_2012 [Consulted on September 14, 2012].

360. As for overland deportations, there is no program to receive deportees at the border, much less to assist their re-assimilation. As a result, on their return to Honduras these people are in an even more vulnerable position. This problem is much more serious in the case of unaccompanied children and adolescents, for whom the protection provided by state institutions is very inadequate.

361. The Commission has learned that in 2011, the Law for Protection of Honduran Migrants and Members of Their Families was approved on the second round of debate. However, the Commission does not know whether that law has entered into force.

362. As for human trafficking, the Commission is aware that women are being trafficked to Honduras from neighboring countries and from rural areas to urban centers for purposes of sexual exploitation⁵¹⁰. It also has information concerning cases of labor exploitation in agriculture and domestic services. The Honduran National Congress approved the Law to Prevent and Punish Human Trafficking, but it has still not entered into force,⁵¹¹ thereby preventing efficient criminal prosecution of this crime. According to information furnished by the State, this law came into force on July 6, 2012, following its publication in official journal *La Gaceta* No. 32,865.⁵¹² The Honduran government has made minimum efforts to identify victims and all shelters specializing in trafficking victims are run and financed by civil society organizations. Where prevention is concerned, there are no reports of efforts to reduce the demand for forced labor or child prostitution.⁵¹³

363. Trafficking in persons is a violation of multiple human rights, and an affront to human dignity and personal integrity. Therefore, in the Commission's view, trafficking in persons is a continuous or permanent violation of multiple rights that are protected by the American Convention. The methods used to traffic persons render the victim utterly defenseless, which in turn involves other related violations. Trafficking in persons is particularly egregious when it happens as part of a systematic pattern or is a practice followed or tolerated by the State or its agents. The Palermo Protocol underscores the need for a comprehensive international approach to combat trafficking in persons, which would include measures to prevent trafficking in persons and to protect victims and survivors, as well as measures to punish the traffickers.

364. The Commission is also troubled by another challenge facing the Central American countries, Honduras among them, which is the forced displacement caused by transnational organized crime.⁵¹⁴ The number of persons from this region seeking refugee status because of the activities of organized crime has increased. Organized crime is causing internal forced displacements within Honduras, and forced international migration of Hondurans. A first step to be taken to address this issue is to implement a recordkeeping system to determine how many people are being driven from their homes by the activities of organized crime. In the meantime, the Commission believes that the Honduran State must take the necessary measures to assist and protect internally displaced persons.

⁵¹⁰ U.S. DEPARTMENT OF STATE, 2012 Trafficking in Person Report. Washington, 2012, p. 178.

⁵¹¹ *La Tribuna*, "Piden al Presidente sancionar la Ley contra la Trata de Personas" [President asked to enact the Law against Trafficking in Persons]. June 12, 2012. Available [in Spanish] at: <http://www.latribuna.hn/2012/06/07/piden-al-presidente-sancionar-ley-contra-la-trata-de-personas/> [Consulted on September 14, 2012].

⁵¹² Communication of the State of Honduras, document No. SP-A-34-2013 of February 22, 2013, "Comments by the State of Honduras on the Draft General Report on the Situation of Human Rights in Honduras."

⁵¹³ DEPARTMENT OF STATE, 2012 Trafficking in Persons Report. June 2012. Available at: <http://www.state.gov/j/tip/rls/tiprpt/2012/> [Consulted on September 14, 2012].

⁵¹⁴ International Center for the Protection of the Human Rights of Migrants (CIDEHUM), Forced Displacement and Need for Protection, caused by new forms of violence and criminality in Central America, 2012, pp. 16-24.

VII. RECOMMENDATIONS

365. Based on this analysis and, most especially, the IACHR's monitoring of the human rights situation in Honduras, the Commission is making the following recommendations to the Honduran State:

Citizen security

- Take comprehensive measures aimed at ensuring citizen security, especially where homicides are concerned;
- Train public servants charged with maintaining law and order in issues related to the protection of and respect for human rights;
- Limit the role that the armed forces play in law enforcement, which is the purview of the police; if the armed forces are called upon to assist in emergency situations, they are to be subordinate to civilian authority;
- Take effective measures to protect the most vulnerable victims from insecurity, especially children.

Administration of justice

- Ensure that the system for administering justice affords everyone effective access to justice.
- Investigate, try and punish those responsible for human rights violations.
- Prevent murders, threats, and intimidation of human rights defenders, journalists, social communicators and community leaders and properly and efficiently implement the precautionary measures granted by the IACHR.
- Using independent specialized services, investigate the murders of human rights defenders, community leaders, journalists, and social communicators. Prosecute and convict those responsible for such murders.

Human rights defenders

- Guarantee the conditions so that defenders of human and labor rights will be able to freely engage in their activities, and refrain from taking any measure or passing any legislation that could limit or obstruct their work.

Prison system

- Take the measures necessary to regain control inside prison walls so that it is the State that maintains security inside prisons and performs all the functions that are its exclusive purview and therefore cannot be delegated to inmates under any circumstances.
- Remodel the prisons so that they are up to the technical safety standards that the Fire Department establishes.
- Conduct a diligent, swift and impartial investigation into the events that occurred at the Comayagua National Penitentiary on February 14, 2012.

Children

- Take the necessary measures to combat impunity, while ensuring that the State has the capacity to prevent, investigate and punish any violation of human rights that is the result of the action or omission of state agents in the juvenile justice system, and of the violence that occurs inside the facilities where children are locked up.
- Ensure that the juvenile justice system and the penalties imposed within it serve the objectives of this special justice system, which is to rehabilitate children and reintegrate them into society.

Women

- Undertake the measures necessary to guarantee due diligence in order for cases of gender-based violence to be promptly, fully and impartially investigated, those responsible properly punished, and the victims offered comprehensive reparations.
- To adopt a comprehensive, coordinated, and properly-resourced state policy to ensure that victims of violence have full access to proper judicial protection, and that acts of violence are properly prevented, investigated, sanctioned, and redressed.

Indigenous Peoples

- Adopt culturally relevant measures to prevent and protect the trafficking in indigenous women, especially girls, as well as measures to investigate the facts and punish those responsible.
- With the indigenous peoples participating, establish the legislative or other measures necessary to enforce the right to prior, free, informed and good faith consultation, in accordance with the standards of international human rights.
- Conduct a serious, diligent and impartial investigation; where appropriate, punish those responsible and redress the consequences of the acts of violence alleged to have occurred during the anti-drug operation conducted on May 11, 2012 in the Department of Gracias a Dios, which reportedly left four Miskito indigenous persons dead and another four injured.

Migrants

- Take measures to identify the number of persons who have been forcibly displaced by the activities of organized crime.
- Adopt the measures necessary to provide assistance and protection to internally displaced persons.
- Order the measures necessary to protect the historically marginalized and most vulnerable sectors of the population, such as children, the LGTBI community, women and the indigenous and Garifuna peoples.

VENEZUELA

I. INTRODUCTION

366. The IACHR decided to include the Bolivarian Republic of Venezuela (hereinafter “Venezuela” or “the State”) in Chapter IV of its 2011 Annual Report pursuant to Article 59(1)(h) of its Rules of Procedure.⁵¹⁵ Of the five criteria presented in the 1997 Annual Report of the IACHR that the Commission takes into account to identify the member states whose human rights practices merit special attention, the IACHR considers that the Venezuelan situation fits within criterion five, which refers to

[...] structural or temporary situations that may appear in member states confronted, for various reasons, with situations that seriously affect the enjoyment of fundamental rights enshrined in the American Convention or the American Declaration. This criterion includes, for example: grave situations of violence that prevent the proper application of the rule of law; serious institutional crises; processes of institutional change which have negative consequences on human rights; or grave omissions in the adoption of the necessary measures which would provide for the effective exercise of fundamental rights.

367. On December 30, 2009, the Commission approved the report titled *Democracy and Human Rights in Venezuela*, in which it examined developments in the area of human rights in the State. Following up on that report, the Commission continued to examine the human rights situation in Venezuela in Chapter IV of its 2010 and 2011 Annual Reports. In this section of its 2012 Annual Report, the Commission carries on its analysis of the general human rights situation in Venezuela.

368. The IACHR’s analysis is based on what it has observed of the general human rights situation over the course of the year, through the information it obtained during its hearings and the information available from other public sources, its petition and case system, and its precautionary measures. The Commission also drew upon information supplied by the State of Venezuela in response to requests concerning the general human rights situation. These requests were made by the IACHR in exercise of its authority under Article 41 of the American Convention on Human Rights (hereinafter “the American Convention”).

369. In keeping with the aforementioned article, on January 23, 2013 the IACHR forwarded to the State a copy of the preliminary draft of this section of its 2012 Annual Report and asked that it present its observations within one month. On February 22, 2013, the Commission received the State’s observations and comments which, whenever relevant, were included in this report.

370. First, the Commission has identified structural situations, such as changes in the law that create legal and administrative restrictions that affect the exercise and enjoyment of human rights in Venezuela. The Commission reports, for example, laws adopted under the “Law authorizing the President of the Republic to issue decrees with the rank, value and force of law, on the subject matters delegated to him”⁵¹⁶, known as the “Enabling Law.” In its previous reports on Venezuela, the Commission has repeatedly pointed to structural issues such as the practice of appointing provisional, temporary or interim judges and prosecutors, which weakens the judicial branch and strips it of its Independence and impartiality, thereby adversely affecting the right of access to justice. It has also pointed to the abuse of

⁵¹⁵ Article 59 of the Commission’s Rules of Procedure reads as follows: “1. The Annual Report presented by the Commission to the General Assembly of the OAS shall include the following: [...] h. any general or special report the Commission considers necessary with regard to the situation of human rights in Member States, and, as the case may be, follow-up reports noting the progress achieved and the difficulties that have existed with respect to the effective observance of human rights; [...] 2. For the preparation and adoption of the reports provided for in paragraph 1.h of this article, the Commission shall gather information from all the sources it deems necessary for the protection of human rights. Prior to its publication in the Annual Report, the Commission shall provide a copy of said report to the respective State. That State may send the Commission the views it deems pertinent within a maximum time period of one month from the date of transmission. The contents of the report and the decision to publish it shall be within the exclusive discretion of the Commission.”

⁵¹⁶ Special Official Gazette No. 6,009 of December 17, 2010.

the criminal law system; the obstacles that human rights defenders encounter in performing their work; the infringement of freedom of expression, and other issues of particular concern to the Commission. Secondly, the Commission identified difficulties like the citizen insecurity and prison violence that continued to be serious problems in 2012 and affected the Venezuelan people's basic human rights, among them the right to life and the right to humane treatment. These situations will be examined in greater detail throughout this chapter.

371. In its Observations regarding the Draft Report of the Inter-American Commission on Human Rights for the year 2012, the State indicated that the criteria that the Commission takes into account to identify the OAS member states whose human rights practices merit special attention do not apply to it⁵¹⁷ and, with respect to the application of criterion five, it maintained that

in Venezuela the actions of the branches of government are governed by the Constitution and the laws, [and] each of those branches enjoys Independence and autonomy and its orders do not violate the American Convention. Furthermore, our Constitution is more advanced in the area of human rights than the American Convention.⁵¹⁸

372. The last Commission's visit to Venezuela took place in May 2002, following the institutional breakdown in April of that year. After that visit, the Commission published the *Report on the Situation of Human Rights in Venezuela* in December 2003, in which it made a number of recommendations. Since then, the Commission has been monitoring the status of implementation of those recommendations and compiling firsthand information on the current human rights situation in Venezuela. Accordingly, it has made a number of overtures to request the State's permission to conduct an observation visit. Thus far, the State has refused to allow the Commission to visit Venezuela, which not only affects the functions assigned to the Commission as one of the OAS' principal organs for the promotion and protection of human rights, but also seriously weakens the system of protection that the member States of the Organization themselves created.

373. The Commission would again point out that it is ever ready to engage in dialogue with the government, to discuss this Report's content and recommendations and to work with it to advance the cause of protecting the human rights of the people of Venezuela.

II. ANALYSIS OF THE SITUATION REGARDING CIVIL AND POLITICAL RIGHTS

A. Government actions to guarantee the right to life and personal integrity and democratic citizen security

374. The Commission has indicated on multiple occasions that States must take steps not only to protect their citizens from human rights violations committed by State agents, but also to prevent and punish acts of violence among private citizens. The Commission has also spoken about States' obligations in connection with the actions of non-state agents involved in organized crime, corruption, drug trafficking, etc. Since a lack of security directly affects the full enjoyment of people's basic rights, the

⁵¹⁷ In addition, Venezuela felt that the purpose of the Annual Report of the IACHR is to achieve a hemispheric review of the human rights situation and not a review of each country in particular. It added that the IACHR only reflects those situations that, in its judgment, "are serious," leaving aside a comprehensive and nuanced analysis of the human rights situation in the hemisphere and setting aside the principles of universality, objectivity, and impartiality. In addition, it indicated that "Venezuela has demonstrated responsibility in compliance with human rights since President Hugo Chávez Frías came to power in 1999, and demonstrates it in cases where the Venezuelan State has accepted responsibility as in: *El Amparo, El Caracazo, Retén de Catia*, and the Disappeared of Vargas." Observations of the Venezuela State to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

⁵¹⁸ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

IACHR has underscored the importance of addressing citizen security and respect for human rights, and of taking effective steps to prevent, control and reduce crime and violence.⁵¹⁹

375. As the Commission indicated in its December 2009 Report on Citizen Security, citizen security requires a strong police force to protect citizens;⁵²⁰ the strengthening of the administration of justice, with the elimination of corruption and impunity; and a prison system aimed at the genuine rehabilitation and social reintegration of prisoners.⁵²¹ In this regard, the Venezuelan situation has been of particular interest to the IACHR and during 2001 the Commission continued to receive information on citizen insecurity as well as specific actions against the population by police forces.

376. According to official figures from the Minister of Interior and Justice, Tareck El Aissami, in January 2012 there were 1,374 reported homicides and 37 kidnappings. The minister said that of that figure 68% of the homicides were due to the settling of scores between gangs, 14% to homicides, 13% to causes yet to be determined, and 4% to brawls. There were also 18 crimes of passion. He also specified that 91% of the homicides were carried out with a firearm and 5%, with blunt instruments.⁵²² The Metropolitan Citizen Security Observatory reported that, by June 2012 there had been a total of 9,510 homicides nationwide,⁵²³ and the Venezuelan Observatory of Violence pointed out that the year 2012 would conclude with 21,692 deceased victims of violence.⁵²⁴ On March 1st, 2013, the Minister of Interior and Justice announced that there were 16,000 victims of homicide throughout the country during year 2012.⁵²⁵

377. During its 144th session, the IACHR received information to the effect that 60% of the victims of the homicides on record as of January 2012 had been shot at least four times. It was said that one barometer of the severity of the violence in Venezuela is the number of officers of the court killed, which by February 2012 had reached 12.⁵²⁶

⁵¹⁹ IACHR. *Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para.672; IACHR. Press Release N°16/07. *IACHR calls upon States to reflect on the importance of public security*. March 15, 2007 and IACHR. *Annual Report 2008*. Chapter I: Introduction.

⁵²⁰ In this regard, in its Observations to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013, Venezuela referred to the creation of the Bolivarian Police of Venezuela that replaced the "inoperative Metropolitan Police."

⁵²¹ IACHR. *Report on Citizen Security and Human Rights*, December 31, 2009, Chapter I, para.2.

⁵²² *Sexto Poder*, "Venezuela: 1.347 homicidios y 37 secuestros solo en enero de 2012 [Venezuela: 1,347 homicides and 37 kidnappings in January 2012 alone]." February 7, 2012. Available at: <http://www.6topoder.com/2012/02/07/venezuela-1-347-homicidios-y-37-secuestros-solo-en-enero-2012/>

⁵²³ *El Universal*, "Entre enero y junio de 2012 se registraron 9.510 homicidios en Venezuela [9,510 homicides in Venezuela in January-June 2012]," August 14, 2012, Available at: <http://www.eluniversal.com/sucesos/120814/entre-enero-y-junio-de-2012-se-registraron-9510-homicidios-en-venezuela>

⁵²⁴ Venezuelan Observatory of Violence (Observatorio Venezolano de Violencia). *Report 2012: Violence does not stop*, December 27, 2012. Available in Spanish at: <http://www.observatoriodeviolencia.org.ve/site/noticias/78-informe-2012-ovv.html>.

⁵²⁵ Minister of Interior and Justice, Néstor Reverol, *in the speech made during the first national meeting of the "Gran Misión A Toda Vida Venezuela"* (according to its website, the "Gran Misión A Toda Vida Venezuela" is a "public comprehensive State policy, which aims to reduce situations linked to the crime, faults, road accidents, disasters or emergencies, so the entire Venezuelan population can enjoy their rights in a peaceful environment," see: <http://www.misionatodavidavenezuela.gob.ve/quienes-somos>) cited in: Últimas Noticias. "Venezuela registered 16,000 homicides en 2012, according to Reverol." March 1, 2013, available at: <http://www.ultimasnoticias.com.ve/noticias/actualidad/sucesos/venezuela-registro-16-000-homicidios-en-2012-segun.aspx>; El Nacional. "MUD: Venezuela has the second highest homicide rate in the World." March 1, 2013, available at: http://www.el-nacional.com/sucesos/MUD-Venezuela-segunda-homicidios-mundo_0_146987795.html and El Tiempo. "Venezuelan Government admits that there were 16,000 homicides in 2012." March 1, 2013, available at: http://www.eltiempo.com/mundo/latinoamerica/16000-homicidios-en-venezuela-en-el-2012_12628183-4, among other media.

⁵²⁶ Information received during the closed hearing on the general human rights situation in Venezuela, held on March 27, 2012, during the IACHR's 144th Session. The hearing was requested by COFAVIC, *Acción Solidaria*, *Caritas Los Teques*, the Human Rights Office of the Archdiocese of Caracas and UCAB.

378. The IACHR also received information of a steady increase in the murder rate reported; while the 2011 murder rate was 49 per 100,000 population,⁵²⁷ in 2012 that figure is expected to climb to 50-73 per 100,000 population.⁵²⁸ In that sense, in accordance with the information made public by the Minister of Interior and Justice on March 1, 2013, violent deaths would have increased approximately 12% and the homicide rate would have increased to 55.2 deaths per 100,000 inhabitants.⁵²⁹ The IACHR also received reports that of the 8,813 new cases of human rights violations that were presented to the Office of the Attorney General in 2012, 97% were either dismissed or closed by the prosecuting authority, while charges were brought in the remaining 3% of the cases.⁵³⁰

379. Given the panorama of citizen security in Venezuela, the Commission is of the view that the measures taken by the State have been insufficient, as it indicated in the 2009 Report on *Democracy and Human Rights in Venezuela* and in its 2010 and 2011 Annual Reports. This adversely affects Venezuelan citizens' enjoyment and exercise of their human rights.

380. In its Report on *Democracy and Human Rights in Venezuela*, the Commission also made reference to the Organic Law of the Bolivarian National Armed Forces (LFANB), enacted in October 2009, which provides that the civilian population may be armed and receive military training to defend the political interests of the government.⁵³¹ In 2010 the State implemented a nationwide plan called the Bicentennial Public Security Program based on the national crime map. It involves the participation of national, state and local police officers and has the backing of the Bolivarian National Armed Forces.⁵³²

381. The State maintained that "citizen insecurity exists to a greater or lesser degree in all countries on earth, and in all countries it is associated with a situation of poverty among a portion of the population, which starting in 1998 has been corrected in exemplary terms as certified by the United Nations Development Program, the OAS General Secretariat, and the report of the Economic Commission for Latin America and the Caribbean (ECLAC)."⁵³³

382. The Commission reiterates its concern about citizens receiving military training through the Bolivarian National Militia and then reentering civilian life to cooperate in maintaining domestic order. Once again, the IACHR emphatically points out that military training is not appropriate for controlling

⁵²⁷ "2011 Global Study on Homicide," prepared by the United Nations Office on Drugs and Crime (UNODC). Available at: http://www.unodc.org/documents/data-and-analysis/statistics/Homicide/Globa_study_on_homicide_2011_web.pdf:

⁵²⁸ The forecast by the Venezuelan Observatory on Violence in August was that by the end of 2012, some 19,000 murders will have been committed, which is a rate of 60 violent deaths per 100,000 population. See: *El Nacional*. "Homicidios siguen en ascenso en una Venezuela cada vez más violenta" [Homicides continue to climb in an increasingly more violent Venezuela]. August 24, 2012. Available [in Spanish] at: http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/231845. However, in its 2012 Report: *Violence does not stop* (Venezuelan Observatory of Violence [Observatorio Venezolano de Violencia]. Report 2012: *Violence does not stop*, December 27, 2012. Available in Spanish at: <http://www.observatoriodeviolencia.org.ve/site/noticias/78-informe-2012-ovv.html>.) the OVV referred to a figure of 21,692 homicides, a rate of 73 violent deaths per 100,000 inhabitants.

⁵²⁹ Últimas Noticias. "Venezuela registered 16,000 homicides en 2012, according to Reverol." March 1, 2013, available at: <http://www.ultimasnoticias.com.ve/noticias/actualidad/sucesos/venezuela-registro-16-000-homicidios-en-2012-segun.aspx>; *El Nacional*. "MUD: Venezuela has the second highest homicide rate in the World." March 1, 2013, available at: http://www.el-nacional.com/sucesos/MUD-Venezuela-segunda-homicidios-mundo_0_146987795.html and *El Tiempo*. "Venezuelan Government admits that there were 16,000 homicides in 2012." March 1, 2013, available at: http://www.eltiempo.com/mundo/latinoamerica/16000-homicidios-en-venezuela-en-el-2012_12628183-4, among other media.

⁵³⁰ Information received during the closed hearing on the general human rights situation in Venezuela, held on November 1, 2012, during the IACHR's 146th Session, at the request of COFAVIC, ACSOL, and the Human Rights Office of the Archdiocese of Caracas.

⁵³¹ See, IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para. 697.

⁵³² Human Rights Council, Working Group on the Universal Periodic Review, 12th session, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 of the Human Rights Council, A/HRC/WG.6/12/VEN/1, July 19, 2011, para. 35, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/150/04/PDF/G1115004.pdf?OpenElement>.

⁵³³ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

domestic security, so that fighting violence domestically must be the exclusive task of a properly trained police force that acts in strict compliance with human rights. In the Commission's view, citizens who receive military training must not be used for internal defense, and neither should the role of society vis-à-vis national security be distorted.

B. Democracy, respect and guarantee of political rights

383. Presidential and regional elections were held in Venezuela in 2012. The presidential election for the 2013-2019 term was on October 7, 2012, while the regional elections were on December 16, 2012.⁵³⁴ President Hugo Chávez Frías was elected to a third consecutive term⁵³⁵ by an eleven-point margin (55.08% - 44.30%), defeating Henrique Capriles Radonski.⁵³⁶ In the regional elections, the candidates for Venezuela's United Socialist Party captured all the governorships; the only municipalities that the PSUV did not carry were in the states of Aragua (2) and Carabobo (2).⁵³⁷

384. On May 9, 2012, the Commission sent the State a request for information on the measures that it would be adopting to guarantee the right to vote for Venezuelans in the United States of America, who are registered in the consular district of Miami, which includes the states of Florida, Georgia, North Carolina, and South Carolina.⁵³⁸ On May 22, 2012, the State asked for more time to reply to the request for information, which was granted. At the date of this writing no response had been received from the State.⁵³⁹

385. As for the presidential elections, the Union of South American Nations (UNASUR) certified, through its head of mission, the transparency of the electoral system two days before presidential election,⁵⁴⁰ and later endorsed the electoral process developed.⁵⁴¹ The Carter Center stated

⁵³⁴ National Electoral Council. Presidential Election Timetable – Sunday, October 7, 2012. Available [in Spanish] at: http://www.cne.gov.ve/web/normativa_electoral/elecciones/2012/presidenciales/documentos/cronograma.pdf and National Electoral Council. Regional Election Timetable – Sunday, December 16, 2012. Available [in Spanish] at: http://www.cne.gov.ve/web/normativa_electoral/elecciones/2012/regionales/documentos/cronograma.pdf.

⁵³⁵ The 2009 constitutional reform in Venezuela eliminated consecutive term limits for the office of the President and for governors and mayors. Cf., Carter Center. Final Report of the Carter Center Study Mission to the October 7, 2012 Presidential Election in Venezuela.

⁵³⁶ See results [in Spanish] at: National Electoral Council. Available at: http://www.cne.gob.ve/resultado_presidencial_2012/r/1/reg_000000.html. The main rival coalitions in the election were the *Gran Polo Patriótico* (GPP), which supported the re-election of Hugo Chávez, and the *Mesa de la Unidad Democrática* (MUD), whose standard bearer was Henrique Capriles Radonski, the candidate elected in the primaries held on February 12, 2012. At the time of his nomination for the office of the Presidency, Henrique Capriles Radonski was a governor but resigned to campaign for the presidency (since governors who are nominated as presidential candidates are not allowed to remain in office, unlike the President of the Republic). Carter Center. Final Report of the Carter Center Study Mission to the October 7, 2012 Presidential Election in Venezuela. In its Observations to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) the State indicated that there was record participation in the elections by 80.56% of the voters and that President Chávez obtained 55.13% of the votes and candidate Capriles received 44.25%.

⁵³⁷ See results at: National Electoral Council. Available [in Spanish] at: http://www.cne.gob.ve/resultado_regional_2012/r/1/reg_000000.html. See also *El Universal*. “Sólo 4 Municipios en la Región Central votaron contra Chávez [Only 4 municipalities in the region voted against Chávez].” December 20, 2012. Available [in Spanish] at: <http://www.eluniversal.com/nacional-y-politica/elecciones-2012/121220/solo-4-municipios-en-la-region-central-votaron-contra-chavez>

⁵³⁸ It should be noted that in January 2012, the Venezuelan consulate in Miami ceased to operate.

⁵³⁹ In its Observations to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) the State indicated that “the government of the United States expelled our Consul in Miami and the Venezuelan government decided to close the Consulate in Miami. However, the large majority of voters residing in Miami exercised their right to vote at the Consulate in New Orleans.”

⁵⁴⁰ Telesur. “Unasur ratifies transparency of the Venezuelan electoral system.” October 5, 2012. Available in Spanish at: <http://www.telesurtv.net/articulos/2012/10/05/unasur-certifica-transparencia-de-sistema-electoral-venezolano-de-cara-al-7-0-8056.html>.

⁵⁴¹ Europapress. “Unasur endorses the electoral process developed in Venezuela.” October 8, 2012. Available in Spanish at: <http://www.europapress.es/latam/venezuela/noticia-venezuela-unasur-avala-proceso-electoral-desarrollado-venezuela-Continues...>

that “[f]or the most part, the campaign was free of violence, with four exceptions of harassment of the Capriles campaign, including one in which two supporters were killed. Election day was generally peaceful.”⁵⁴² The Carter Center reported there was no significant political violence on Election Day, a positive turn of events when one week earlier two of Henrique Capriles’ followers were shot to death by individuals identified as being Chávez supporters,⁵⁴³ although the IACHR received information about attacks on journalists in the electoral context, which are described in the section on freedom of expression.

386. The OAS Secretary General observed that “the massive voter turnout at the polls for a presidential election, and the public spirit that prevailed throughout the day, speaks to the maturity of a people that knows how to overcome ideological differences when the main objective is the national interest” and that “election days like the one held yesterday by the Bolivarian Republic of Venezuela are good for the region because they show that the only choice for the people is democracy.”⁵⁴⁴

387. As for the regional elections, on December 17, 2012, the International Accompaniment Mission in regional electoral processes, which was composed of 33 representatives from 18 countries, presented accompaniment reports to the National Electoral Council containing its impressions, observations and suggestions based on its visits to various polling stations in the states of Aragua, Miranda and Vargas. The Accompaniment Mission underscored the work done by the electoral body, the work done under the *Plan República* and that accomplished by the public institutions that were instrumental in the process. It welcomed the civic mindedness and peaceful conduct of the Venezuelan people and made specific recommendations pertaining to the electoral system.⁵⁴⁵

388. Since December 2010, the Commission has been following the “Law authorizing the President of the Republic to issue decrees with the rank, value and force of law, on the subject matters delegated to him,”⁵⁴⁶ known as the “Enabling Law.”⁵⁴⁷ In its 2011 report, the IACHR considered the Enabling Law to be an example of the structural situations that it has identified in Venezuela that concern changes in the law which create legal and administrative restrictions that affect the exercise and enjoyment of human rights in Venezuela.⁵⁴⁸ The IACHR received information to the effect that in June 2012 the Enabling Law was used to amend the Organic Code of Criminal Procedure (hereinafter the “COPP”). The change in the law will be discussed at greater length later in this report.

C. State observance and guarantee of the exercise of freedom of expression⁵⁴⁹

389. The Inter-American Commission on Human Rights has received information regarding the status of the right to freedom of expression in Venezuela from both civil society and the State of

...continuation

20121008183903.html; Starmedia. “Unasur recognizes presidential elections in Venezuela.” October 8, 2012. Available in Spanish at: <http://noticias.starmedia.com/politica/unasur-reconoce-elecciones-presidenciales-en-venezuela.html>.

⁵⁴² Cf. Carter Center. Final Report of the Carter Center Study Mission to the October 7, 2012 Presidential Election in Venezuela.

⁵⁴³ Cf. Carter Center. Final Report of the Carter Center Study Mission to the October 7, 2012 Presidential Election in Venezuela.

⁵⁴⁴ OAS. Press Release 357/12. *OAS Secretary General Greets Government and People of Venezuela*, October 8, 2012.

⁵⁴⁵ National Electoral Council. “Acompañantes internacionales: elecciones venezolanas expeditas y transparentes [International Accompaniers: Venezuelan elections swift and transparent].” December 17, 2012. Available [in Spanish] at: http://www.cne.gov.ve/web/sala_prensa/noticia_detallada.php?id=3094.

⁵⁴⁶ Special Official Gazette No. 6,009 of December 17, 2010.

⁵⁴⁷ Four “Enabling Laws” have been enacted during the current President’s term in office (in 1999, 2000, 2007 and 2010). Cf., IACHR, 2008 Annual Report, OEA/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, paragraphs 404 and 405.

⁵⁴⁸ IACHR, Annual Report 2011, Chapter IV on Venezuela, para. 396.

⁵⁴⁹ The Inter-American Commission tasked the Office of the Special Rapporteur for Freedom of Expression with preparation of this section of the report.

Venezuela. On February 22, 2013, the Venezuelan State forwarded official letter No. AGEV/000039 to the IACHR from the Integration and Multilateral Affairs Office of the State Agency for Human Rights before the Inter-American and International Systems. This letter addressed the situation of freedom of expression in Venezuela and provided information on the specific cases that have been reported to the IACHR and which are presented in this report.

1. Attacks and Threats against the Media and Journalists

390. The IACHR is very troubled by the reported attacks on the media and journalists in Venezuela and by the failure to investigate these acts and punish those responsible.⁵⁵⁰ The IACHR was informed of the threats that journalist Luis Carlos Díaz allegedly received in November 2011 and in January 2012 by way of his Twitter account and his mobile phone. The threats were said to have been prompted by his activity on social networks and his comments about the computer attacks that a number of prominent Venezuelan figures allegedly experienced. According to the information reported, on January 7 a group of hackers that calls itself N33 reportedly announced on Díaz' Twitter account that they would call him; when they did, they left a threatening voice message saying "We're going to blow you up." On November 20, Díaz allegedly received messages coming from an account purportedly belonging to a state channel; the messages said "You're a marked man" and "Did you enjoy the little surprise?" The messages were followed by a telephone call in which they insulted him. Díaz is coordinator of the Gumilla Center's Communications and Networks Area. The Gumilla Center is a Jesuit research and social action institution.⁵⁵¹ On January 28, the Twitter accounts of the director of the digital version of the weekly *Sexto Poder*, Alberto Rodríguez (@AlbertoRoPa), and journalist Orian Brito (@OrianTV) were reportedly hacked by the N33 group, as a result of which the two journalists lost access to their accounts. On January 31, Brito's personal files started to turn up on the same account, along with threatening messages against journalists critical of President Hugo Chávez. These incidents were said have happened after the journalists claimed that the Venezuelan Government was recruiting minors for armed activities.⁵⁵² On March 7, the N33 group reportedly hacked into the Twitter account of the director of the newspaper *El Nuevo País*, Edgar C. Otálvora (@ecotalvora), and from there sent out images and messages insulting to the opposition presidential candidate, Henrique Capriles.⁵⁵³

391. On January 18, 2012 unknown persons were said to have fired shots at a team of RCTV journalists and stole their equipment while they were covering the announcement of the results of the student elections at two schools of the Universidad Central de Venezuela. According to what was reported, the journalists caught on tape two hooded men throwing teargas grenades at the door leading out of the auditorium where the election results were announced. Before escaping, the armed men had reportedly fired shots into the air.⁵⁵⁴

⁵⁵⁰ At the hearings the IACHR held on March 27 and November 1, 2012, concerning the situation of freedom of expression in Venezuela, the State was asked to provide information on the investigations conducted into the cases of aggression committed against journalists and media workers. However, the State has to date presented no information in this regard.

⁵⁵¹ IFEX/ Instituto Prensa y Sociedad (IPYS). January 16, 2012. *Journalist Threatened via Twitter*; Instituto Prensa y Sociedad (IPYS). November 25, 2011. *Periodista ciberactivista es amenazado por Twitter y teléfono* [Online activist journalist threatened over Twitter and by telephone].

⁵⁵² Sexto Poder. January 31, 2012. *N33 ataca a los periodistas Orian Brito y Alberto Rodríguez* [N33 attacks journalists Orian Brito and Alberto Rodríguez]; Instituto Prensa y Sociedad (IPYS)/IFEX. February 7, 2012. *Journalists' Twitter accounts hacked after posting controversial photos*; Espacio Público. January 31, 2012. *N33 ataca a Orian Brito y Alberto Rodríguez* [N33 attacks Orian Brito and Alberto Rodríguez]; Knight Center for Journalism in the Americas. February 1, 2012. *More Venezuelan opposition journalists' Twitter accounts hacked*.

⁵⁵³ Espacio Público. March 9, 2012. *N33 ataca a periodista Édgar C. Otálvora* [N33 attacks journalist Edgar C. Otálvora].

⁵⁵⁴ Colegio Nacional de Periodistas. January 20, 2012. *CNP rechaza agresión al equipo de RCTV durante cobertura de elecciones en la UCV* [CNP denounces attack on RCTV team during coverage of UCV elections]; Espacio Público. January 20, 2012. *Manifestantes agreden a equipo reportero de RCTV durante revuelta en la UCV* [Demonstrators attack RCTV news team during turbulence at the UCV].

392. According to the information received, Omar Arévalo, a columnist with *La Prensa de Barinas*, had been receiving threats since February 2012 and was said to be the target of a smear campaign after he published reports of alleged irregularities in the Barinas mayor's office.⁵⁵⁵

393. One report received recounted how, on February 8, 2012 a group known as the "Unified Community Brigades" had allegedly assaulted a *Globovisión* correspondent in the state of Aragua by the name of Carmen Elisa Pecorelli, as she was covering the visit by a commission appointed by the Office of the Attorney General of the Republic to investigate the deaths of a number of newborns at the Maracay hospital.⁵⁵⁶

394. The IACHR learned that on February 19, 2012 a journalist working for the newspaper *Visión Apureña*, Mario Castillo, had allegedly been attacked by a member of the National Guard in a hospital in the city of San Fernando de Apure. According to the information received, the journalist attempted to photograph a member of the military who was being admitted to the hospital after sustaining an accidental bullet wound to the foot, whereupon the National Guardsman reportedly insulted and threatened the journalist.⁵⁵⁷

395. On March 5, 2012 several dozen supposed civil servants and members of a group known as Los Motilones, allegedly appeared at the Barinas radio station called *La Barinense 92.7 FM*, as it was broadcasting the program called 'Punto y Coma', hosted by the journalist and candidate for the Bolívar Mayor's Office, Adolfo Superlano. According to what was reported, the group's presence at the station was intended to intimidate the station director after the station had carried, for several days, a program about the possible contamination of the Barinitas water supply. Superlano had reported the situation to the Public Prosecutor's Office and had asked for protection.⁵⁵⁸

396. On March 11, 2012 unknown persons had reportedly set fire to the home of journalist José Ramón González, General Secretary of the Apure-Amazonas section of the National Association of Journalists [*Colegio Nacional de Periodistas – CNP*]. According to the information received, in the early morning hours the perpetrators had forcibly burst into the home, spread gasoline inside and set it on fire. Some days following the incident, González had received threats and attempts were made to extort money from him.⁵⁵⁹

397. Likewise, on March 11, 2012 alleged members of the La Piedrita Collective, an illegal armed group operating in a low-income neighborhood of Caracas, reportedly drove two hearses to the facilities of *Globovisión*; the coffins inside the hearses were said to contain the remains of two recently assassinated members of the group. According to what was reported, the La Piedrita Collective blamed *Globovisión* for the deaths of the two gang members. The group claimed that the two had been murdered by a paramilitary group. On March 10, another group known as Secretariado Revolucionario de

⁵⁵⁵ IFEX/ Instituto Prensa y Sociedad (IPYS). March 28, 2012. *Column writer denounces smear campaign against him*; El Universal. March 28, 2012. *Investigan a periodistas del diario la Prensa de Barinas* [Journalists with the Barinas Press newspaper under investigation].

⁵⁵⁶ Colegio Nacional de Periodistas (CNP), February 9, 2012. *Periodistas de Aragua denuncian atropellos contra su desempeño profesional* [Journalists from Aragua complain of attacks on the practice of their profession]; Espacio Público. February 9, 2012. *Agredida periodista de Globovisión en el Hospital Central de Aragua* [Attacked *Globovisión* journalist in the Aragua Central Hospital].

⁵⁵⁷ Espacio Público. February 23, 2012. *Agredido periodista por Guardia Nacional en el estado Apure* [Journalist assaulted by National Guardsmen in the state of Apure]; Instituto Prensa y Sociedad (IPYS). February 19, 2012. *Funcionario militar agrede a reportero y luego pide disculpas* [Military officer attacks reporter and then apologizes].

⁵⁵⁸ Instituto Prensa y Sociedad (IPYS)/IFEX. March 9, 2012. *Radio announcer reports being threatened by regional government personnel*; Barinas, March 6, 2012. *Gobernación intenta otro golpe contra la libertad de expresión* [Government attempts to land another blow on freedom of expression].

⁵⁵⁹ Colegio Nacional de Periodistas (CNP). March 12, 2012. *Incendio en la casa del secretario CNP Apure-Amazonas* [Fire at the home of the Apure-Amazonas CNP Secretary]; Noticias 24. March 12, 2012. *Incendiaron la casa del secretario general del CNP, seccional Apure-Amazonas* [Home of CNP General Secretary – Apure-Amazonas section- set ablaze].

Venezuela, demonstrated outside *Globovisión's* facilities and blamed it for creating "violence through the media" and "glorifying" the violence that occurs in Caracas' neighborhoods.⁵⁶⁰ In 2004, the Inter-American Court of Human Rights had ordered precautionary measures for *Globovisión*. In the process, the State was ordered to adopt such measures as might be necessary to "safeguard and protect the lives, safety, and freedom of expression of the reporters, executives and employees of *Globovisión* and of the other persons who are in the facilities of said broadcaster and who are directly linked to the journalistic operation of this broadcaster" as well as "to protect the perimeter of the head offices of the *Globovisión* social communications broadcaster."⁵⁶¹

398. According to information received, journalist Sara Vargas García, with Anzoátegui's channel *Órbita TV*, is alleged to have received threats on March 15 and 16, 2012 delivered by phone and by a written note. The warnings were said to coincide with news the journalist had reported concerning two recent kidnappings.⁵⁶²

399. The IACHR learned that a caricaturist with the newspaper *El Universal*, Rayma Suprani, allegedly received a series of threatening and insulting messages after the host of the state television program "La Hojilla", Mario Silva, had branded her a "racist" and "classist". On March 20, 2012 the caricaturist had reportedly filed a complaint with the Public Prosecutor's Office⁵⁶³ concerning the insults and threats. The program "La Hojilla" is carried on public television and is known for challenging any critics or opponents of the National Government.

400. The IACHR was informed of attacks on five media outlets. According to reports, on the night of March 19, 2012 unidentified persons fired several shots at the newspaper *Nuevo Día*, in Coro, Falcón state. There were no casualties. The police who investigated the incident found that bullets had penetrated the main door to the newspaper's headquarters.⁵⁶⁴ On October 5, unknown persons allegedly tossed an explosive device at the *Nuevo Día* building. One person who happened to be walking by was injured. This would be the third attack against a newspaper since June 2010.⁵⁶⁵

⁵⁶⁰ *El Universal*. March 11, 2012. [Colectivo La Piedrita acusa a Globovisión de estar tras hechos de violencia \[La Piedrita Collective accuses Globovisión of being behind the acts of violence\]](#); *Globovisión*. March 11, 2012. [Colectivo La Piedrita acudió a Globovisión con carrozas fúnebres de miembros asesinados \[La Piedrita Collective turns up at Globovisión with hearses carrying the remains of slain members\]](#); *Sexto Poder*. March 10, 2012. [Globovisión recibió visita del Secretariado Revolucionario Venezolano \[Globovisión receives a visit from the Secretariado Revolucionario Venezolano\]](#); RCTV.net. March 11, 2012. [Colectivo La Piedrita acudió a Globovisión con carrozas fúnebres de miembros asesinados \[La Piedrita Collective went to Globovisión with hearses carrying the bodies of its murdered members\]](#).

⁵⁶¹ I/A Court H.R., *Matter of Globovisión Television Station, Provisional Measures Regarding Venezuela*. Order of the Court of September 4, 2004; I/A Court H.R., *Case of Perozo et al. v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 28, 2009. Series C No. 195, paragraph 69.

⁵⁶² Colegio Nacional de Periodistas (CNP). March 18, 2012. [Amenaza de secuestro a la colega Sara Vargas de El Tigre \[El Tigre's colleague Sara Vargas threatened with kidnapping\]](#); *Crónica Viva*. March 22, 2012. [Felatracs en alarma por amenazas a periodista venezolana \[Felatracs alarmed by threats made against Venezuelan journalist\]](#); Instituto Prensa y Sociedad (IPYS). March 15, 2012. [Amenazan de secuestro a periodista de televisora regional \[Journalist with regional television channel threatened with kidnapping\]](#).

⁵⁶³ *El Universal*. March 20, 2012. [Rayma Suprani denunció a La Hojilla \[Rayma Suprani filed complaint against La Hojilla\]](#); RCTV. March 20, 2012. [La caricaturista Rayma denunció al conductor de La Hojilla ante el MP \[Caricaturist Rayma filed complaint with the Public Prosecutor's Office against the host of La Hojilla\]](#); *Globovisión*. March 21, 2012. [Rayma Suprani denunció a La Hojilla ante el MP \[Rayma Suprani brought complaint against La Hojilla with the Public Prosecutor's Office\]](#); Instituto Prensa y Sociedad (IPYS). March 14, 2012. [Caricaturista recibe amenazas e insultos vía Internet \[Caricaturist receives threats and insults online\]](#).

⁵⁶⁴ Instituto Prensa y Sociedad (IPYS). March 19, 2012. [Atentan contra sede de diario regional \[Offices of regional newspaper attacked\]](#); *Sexto Poder*. March 20, 2012. [Reportan que sede del diario Nuevo Día de Falcón volvió a ser objeto de un atentado \[Reports are that the headquarters of the Falcón newspaper Nuevo Día once again attacked\]](#); *El Carabobeño*. March 21, 2012. [Atentado contra rotativo falcóniano no deja heridos \[No one injured in attack on Falcón newspaper\]](#).

⁵⁶⁵ *El Universal*. October 6, 2012. [Un herido deja explosión de granada en diario Nuevo Día en Coro \[One person injured when grenade explodes at offices of Falcón's Un Nuevo Día in Coro\]](#); *El Mundo*. October 5, 2012. [Lanzan explosivo al diario Un Nuevo Día de Falcón \[Explosive hurled at offices of Falcón's Un Nuevo Día\]](#); Instituto Prensa y Sociedad (IPYS). October 11, 2012. [Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales \[Venezuela: Obstruction in the news business did not let up during presidential elections\]](#).

401. On May 28, an individual was said to have thrown a grenade at the building housing the offices of the newspaper *Qué Pasa*; on May 29, unknown persons reportedly fired shots at the building housing the state television station *Catatumbo Television*, and on June 3 armed men allegedly fired several shots at the facility of the newspaper *Versión Final*. None of these attacks claimed any casualties.⁵⁶⁶ On July 10, unidentified persons reportedly threw an explosive device at a vehicle belonging to the Carabobo newspaper *La Costa*.⁵⁶⁷

402. From the information received, it appears that in early June, María Isoliect Iglesias, Deivis Ramírez, Tomás Ramírez González and Luis García – all journalists with *El Universal* newspaper - had filed a complaint with the Public Prosecutor's Office because of a threatening anonymous message received at the newspaper which warned of an attack on the journalists who reported on the prison crisis that occurred at the La Planta prison.⁵⁶⁸

403. The IACHR was informed that on August 1, alleged members of the National Guard had seized camera equipment belonging to newspaper photographer Huanis Albaro, with the *Diario De Frente*, and had erased the photographs. Apparently, the photographer had shot photographs of violent incidents that occurred in a public place in the city of Barinas.⁵⁶⁹

404. According to information received, on August 22 journalist Delvalle Canelón and a photographer who accompanied her –both from *Globovisión*- were allegedly assaulted by private citizens as they attempted to report on incidents of violence occurring at a prison.⁵⁷⁰

405. Furthermore, on September 12, persons presumed to be military troops attacked journalist Haydeluz Cardozo and photographer Jairo Nieto, both from the newspaper *El Impulso*, as they were searching for information about the seizure of food trucks from the Lara state governor's office. According to reports, the journalists were beaten and their camera equipment damaged when the military struggled with them to block their attempt to enter the facilities where the trucks were being kept.⁵⁷¹

406. According to reports received, Bolivarian National Guardsmen supposedly attacked cameramen from *Globovisión* and *DAT TV* and confiscated their camera equipment when the journalists

⁵⁶⁶ La Nación. June 4, 2012. *Continúan ataques contra medios de comunicación en Zulia* [Attacks on the media in Zulia persist]; Noticia Al Día. May 30, 2012. *Tirotearon la sede de Catatumbo Televisión: Segundo ataque a un medio en Maracaibo* [Shots fired at headquarters of Catatumbo Television: second attack on a media outlet in Maracaibo]; Qué Pasa. May 29, 2012. *Nos tiraron una granada para callarnos* [The grenade was meant to silence us].

⁵⁶⁷ IFEX/Instituto Prensa y Sociedad (IPYS). July 16, 2012. *Regional newspaper target of explosion in Carabobo*; El Universal. July 12, 2012. *Con explosivo atacaron sede del diario La Costa, en Carabobo* [Offices of the newspaper *La Costa*, in Carabobo, attacked with explosives].

⁵⁶⁸ El Universal. June 4, 2012. *Periodista de El Universal denunció amenazas en su contra* [El Universal journalist denounced threats made against him]; El Político. June 5, 2012. *Amenazan a reporteros venezolanos* [Venezuelan reporters threatened]; Inter-American Press Association (IAPA-SIP). June 6, 2012. *IAPA condemns threats, attacks on journalists and media in Venezuela*.

⁵⁶⁹ Colegio Nacional de Periodistas (CNP). August 3, 2012. *Guardia Nacional despoja de equipo a reportero gráfico en Barinas* [In Barinas, National Guard strips photo-journalist of his camera equipment]; Instituto Prensa y Sociedad (IPYS). August 1, 2012. *Efectivos de la Guardia Nacional impidieron trabajo de reportero gráfico* [National Guardsmen stopped photo journalist from reporting the news].

⁵⁷⁰ Globovisión. August 23, 2012. *Equipo de Globovisión fue agredido durante cobertura de sucesos de Yare I* [Globovisión news team attacked during coverage of events at Yare I]; Colegio Nacional de Periodistas (CNP). August 24, 2012. *Comunicado del CNP Caracas: ¡Exigimos respeto al ejercicio de nuestra profesión!* [CNP Caracas Press Release: We demand that our practice of the journalism profession be respected!]

⁵⁷¹ El Impulso. September 13, 2012. *Comunidad enardecida defendió el Programa Regional de Alimentación* [Angry community defended the Regional Food Program]; Espacio Público. September 12, 2012. *Agredido equipo de Diario El Impulso por efectivos militares* [Military troops attack El Impulso's news team].

attempted to film an action taken by the National Guardsmen against persons participating in a student protest against the La Cabrera viaduct in Carabobo state.⁵⁷²

407. On September 20, National Guardsmen were alleged to have harassed Raúl Araque, photographer with the newspaper *Notitarde*, as he was trying to cover the fire at the El Palito refinery in the state of Carabobo. According to accounts, the photographer was doing his job when he was allegedly surrounded by a group of Guardsmen who pointed their guns at him and ordered him to hand over his equipment.⁵⁷³

408. According to information received, César Aponte, a journalist with ANTV public television, was assaulted on October 24 by security personnel at the Universidad Central de Venezuela, as he was trying to cover news about the University Council.⁵⁷⁴

409. The IACHR was told that on November 1, unknown persons allegedly fired shots at the offices of the newspaper *El Regional del Zulia*, in Maracaibo. According to accounts, the authorities conducted investigations at the scene of the events and allegedly claimed that this was an isolated incident.⁵⁷⁵

410. At the public hearings that the IACHR held on March 27 and November 1, 2012, on the subject of freedom of expression in Venezuela, the parties who had requested the hearing described how the assaults and intimidation had a deterrent effect on freedom of expression, which they attributed mainly to public servants or persons associated with the Government. They also underscored the fact that no one is made to answer for these violations. They expressed concern over the fact that the media in Venezuela are being discredited and about the lack of follow-up to the investigations conducted. They observed that the failure of the justice system to take action and the sheer number of attacks on the media in 2012 had an intimidating effect on the practice of journalism. For its part, the State said that the complaints filed in connection with these violations must be duly supported by sufficient evidence. It added that the restrictions on freedom of expression in Venezuela are not the work of the State; instead, they are a function of the power wielded by the private media.⁵⁷⁶

411. In addition, in its observations to this report, the State indicated that information regarding attacks and threats against journalists and the media is asserted in the “publications of Venezuelan media outlets and Venezuelan NGOs,” when “according to Venezuelan law, the only evidence in cases of attacks are the complaints filed before the Office of the Prosecutor General, [which is] the only way for a criminal investigation to be opened.” The State underscored that Venezuela has “a hundred media

⁵⁷² Notitarde. September 18, 2012. *GNB arremete contra estudiantes y periodistas en viaducto La Cabrera* [GNB clashes with students and journalists on the La Cabrera Viaduct]; *Agencia Carabobeña de Noticias* (ACN). September 18, 2012. *GNB detuvo a estudiantes y agredió equipo de Globovisión en protesta en Carabobo* [GNB detained students and attacked Globovisión’s news team during protest in Carabobo].

⁵⁷³ Espacio Público. September 20, 2012. *GNB ataca a reportero gráfico de Notitarde durante cobertura en la Refinería El Palito* [GNB attacks photographer during coverage at the El Palito Refinery]; Globovisión. September 19, 2012. *Se registró incendio en tanques de la refinería El Palito* [Fire broke out in the tanks at El Palito Refinery].

⁵⁷⁴ Noticias 24. October 24, 2012. *Periodista de ANTV denunció agresión. “Es indigno que en la UCV ocurran hechos violentos”* [ANTV journalist denounced the aggression. “It’s an outrage that the UCV should be the scene of violence”]; ANTV. October 25, 2012. *Agredido equipo reportero de ANTV en la Universidad Central de Venezuela* [ANTV news team at the Universidad Central de Venezuela attacked].

⁵⁷⁵ IFEX/ Instituto Prensa y Sociedad (IPYS). 5 November 2012. *Shots fired at newspaper office in Western Venezuela*; Globovisión. November 1, 2012. *Atacan a tiros sede del diario El Regional del Zulia* [Shots fired at the offices of Zulia’s newspaper *El Regional*]; Panorama. November 1, 2012. *Tirotearon sedes del diario El Regional y PDVSA en el estado Zulia* [Gunfire at the headquarters of the newspaper *El Regional* and the PDVSA in the state of Zulia].

⁵⁷⁶ Parties that requested the hearing: Center for Human Rights of the Universidad Católica Andrés Bello (UCAB), *Espacio Público* civic organization, the Colegio Nacional de Periodistas de Venezuela, the Sindicato Nacional de Trabajadores de la Prensa, Venezuela (SNTP). The Venezuelan State was represented at the hearing. IACHR. 144th Session. March 27, 2012. Hearing on *The Situation of the Right to Freedom of Expression in Venezuela*. IACHR. 146th Session. November 1, 2012. *Right to Freedom of Expression in Venezuela*.

outlets, ninety percent of which are politically biased against the government of President Chávez, and their information is mostly false, in violation of the Constitution of the Bolivarian Republic of Venezuela, Article 58 of which [provides], ‘All persons have the right to timely, accurate, and impartial information [...]’⁵⁷⁷

412. Principle 9 of the Declaration of Principles of Freedom of Expression, approved by the IACHR in 2000, states the following: “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.”

2. Election-related assaults

413. The IACHR also received information concerning the spike in attacks on journalists and other media personnel during the electoral process. The IACHR continues to observe a climate of extreme polarization that obstructs and, in many cases, altogether prevents journalists from practicing their profession of keeping the public properly informed. For example, on February 14, 2012 Aragua police officers grabbed photographer Luis Rivas, with the newspaper *El Aragüeño*, and took away his camera equipment as he was covering the commotion related to the seizure of the voting records for the internal elections within the *Mesa de la Unidad Democrática* (MUD), an opposition party, in the municipality of Mario Briceño Iragorry. Later, the police returned the camera equipment, but without the memory card.⁵⁷⁸

414. According to information received, on March 3, 2012 alleged government supporters in Táchira state were said to have attacked journalist Luz Dary Depablos, a reporter from *Globovisión*, the only television channel critical of the Government, when she attempted to approach several government ministers in a political event.⁵⁷⁹ On March 4, in the San José de Cotiza neighborhood of Caracas, men wearing red shirts surrounded journalist Sasha Ackerman and cameraman Frank Fernández –both from *Globovisión*– and stole their equipment and the images they had captured when they filmed an incident in which unidentified persons fired shots into the air as opposition presidential candidate Henrique Capriles was at a march. One person with the politician allegedly sustained an injury to the forearm.⁵⁸⁰

415. According to information received, on March 12, 2012 opposition supporters in the community of Cabimas allegedly attacked a *Catatumbo TV* journalist, Fidel Madroñero, and his cameraman, Ricardo Carrillo, as they were trying to take pictures of supporters of President Hugo Chávez. According to what was reported, the alleged assailants tried to grab the recording equipment and had stolen some of the journalist's personal effects.⁵⁸¹ On March 17, supposed members of the San

⁵⁷⁷ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” Pp 20-21.

⁵⁷⁸ Espacio Público. February 16, 2012. *Despojado de sus equipos por la policía reportero gráfico en Aragua durante disturbios* [Police take away photo-journalist's equipment in Aragua during disturbances]; Colegio Nacional de Periodistas (CNP). February 16, 2012. *Nuevo atropello contra la libertad de informar* [New outrage committed against freedom of to inform].

⁵⁷⁹ Globovisión. March 3, 2012. *Agreden a equipo de Globovisión en acto del PSUV* [Globovisión news team attacked at PSUV event]; Espacio Público. March 5, 2012. *Corresponsal de Globovisión en Táchira agredida por seguidores del PSUV* [Globovisión correspondent in Táchira attacked by PSUV supporters].

⁵⁸⁰ Committee to Protect Journalists (CPJ). March 6, 2012. *Globovisión Journalists Attacked in Venezuela: Globovisión*. March 4, 2012. *Amenazan y roban a equipo de Globovisión que cubría caminata de Capriles en Caracas* [Globovisión team covering Capriles' Caracas walk attacked and robbed].

⁵⁸¹ Correo del Orinoco. March 12, 2012. *Agreden a equipo de Catatumbo TV en marcha de candidato presidencial de la MUD* [Catatumbo TV team attacked in march staged for the MUD presidential candidate]; Instituto Prensa y Sociedad (IPYS). March 12, 2012. *Agreden a camarógrafo en marcha de candidato presidencial* [Photographer attacked on march staged by presidential candidate]; Espacio Público. March 13, 2012. *Agreden a equipo reportero de Catatumbo TV durante acto político* [Catatumbo TV

Agustín de Maracay Community Council in the state of Aragua, allegedly attacked journalist Julie Arévalo and cameraman Fernando Peña, from the network *TVS*, and journalist Lourdes Maldonado and photographer Javier Troconiz from the newspaper *El Siglo*, as they were trying to cover a demonstration staged by an opposition political party. The assailants had allegedly attacked Troconiz and threw stones at the *TVS* team, forcing both teams to leave the scene of the events.⁵⁸²

416. According to reports, on March 19, 2012 Llafrancis Carolina Colina Petit, a journalist from *Ávila TV*, allegedly filed a complaint with the Public Prosecutor's Office against opposition deputy and candidate for the governorship of the state of Aragua, Richard Mardo, claiming that he had physically attacked her during a campaign event in La Victoria, Aragua.⁵⁸³ On March 21, supporters of presidential candidate Henrique Capriles allegedly attacked Carolina Zapata, a journalist from *Venezolana de Televisión*, a state-run television channel, who was recording the statements made by the candidate while at a march in San Cristóbal, Táchira.⁵⁸⁴ On April 17, *Televisión* cameraman Oneiver Rojas was allegedly beaten by an opposition leader, who had also attempted to attack Jorge Amorim, host of the "La Hojilla" program on *Venezolana de Televisión*, as they were covering a Capriles political event in Anzoátegui.⁵⁸⁵ On May 10, Danny Vargas, a cameraman from *Venezolana de Televisión*, was allegedly been beaten and his equipment taken as he was filming a campaign event organized by the candidate for the office of mayor of the municipality of Pedraza in Barinas.⁵⁸⁶ Likewise, on July 26, persons participating in an opposition political meeting in Guárico were alleged to have shoved Giovanina Guillén, a journalist with *Venezolana de Televisión (VTV)* public television, and attempted to grab the camera equipment from the cameraman who accompanied her.⁵⁸⁷

417. On September 4, members of candidate Henrique Capriles' press and security team allegedly attacked journalists Carolina Zapata and Blanca Castejón, correspondents from *Venezolana de Televisión* and *Radio Nacional de Venezuela*, as they were trying to interview the presidential candidate at a political event in Ureña, Táchira state.⁵⁸⁸ Similarly, on September 9, persons presumed to be

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news team attacked during political event]; Catatumbo TV. March 13, 2012. *Equipo de Catatumbo TV relata agresión por parte de seguidores de Capriles Radonski* [Catatumbo TV news team recounts attack by followers of Capriles Radonski].

⁵⁸² Espacio Público. March 22, 2012. *Agreden a dos equipos reporteriles durante acto político en Aragua* [Two teams of reporters attacked during political event in Aragua]; Colegio Nacional de Periodistas (CNP). March 20, 2012. *Urge convivencia y respeto a los periodistas* [Respect for journalists urged]; Instituto Prensa y Sociedad (IPYS). March 16, 2012. *Agreden a comunicadora en acto de campaña de candidato presidencial opositor* [Journalist attacked at campaign event staged by opposition presidential candidate].

⁵⁸³ Public Prosecutor's Office. March 19, 2012. *MP investiga agresión contra reportera de VTV en Aragua* [Public Prosecutor's Office investigating attack against VTV reporter in Aragua]; Agencia Venezolana de Noticias (AVN). March 19, 2012. *MP investiga agresión contra reportera de Ávila TV en Aragua* [Public Prosecutor's Office investigating attack on reporter from Ávila TV in Aragua]; Venezolana de Televisión (VTV). March 22, 2012. *Seguidores de Capriles Radonski agredieron a corresponsal de VTV en Táchira* [Capriles supporters turn on VTV correspondent in Táchira].

⁵⁸⁴ Venezolana de Televisión (VTV). March 23, 2012. *Corresponsal de VTV en Táchira: Radonski se percató de toda la agresión* [VTV correspondent in Táchira: Radonski was aware of the entire attack]; Agencia Venezolana de Noticias (AVN). March 23, 2012. *Corresponsal de VTV en Táchira: Capriles se estaba percatando de toda la agresión* [VTV correspondent in Táchira: Capriles knew everything about the attack]; Inter-American Press Association (IAPA-SIP). April 23, 2012. *Information by Country: Venezuela*.

⁵⁸⁵ Colegio Nacional de Periodistas (CNP). April 18, 2012. *CNP deplora agresiones contra los reporteros Rojas y Amorim en Anzoátegui* [CNP deploras attacks on reporters Rojas and Amorim in Anzoátegui]; YVKE Radio. April 18, 2012. *Comando Tricolor agrede a camarógrafo de Televen* [Comando Tricolor attacks Televen cameraman].

⁵⁸⁶ Noticias 24. May 10, 2012. *Corresponsal de VTV en Barinas denuncia agresión por parte de simpatizantes de Capriles* [VTV correspondent in Barinas complains of aggression by Capriles supporters]; Venezolana de Televisión (VTV). May 10, 2012. *Cámara VTV robada por gente de Radonski fue hallada en manos de ex alcalde Frenchy Díaz* [VTV camera stolen by Radonski followers found in possession of ex-mayor Frenchy Díaz].

⁵⁸⁷ Noticias Diarias. July 26, 2012. *Partidarios de Capriles agreden por tercera vez a periodista de VTV en Guárico* [In Guárico, Capriles followers attack VTV journalist a third time]; Colegio Nacional de Periodistas (CNP). July 31, 2012. *Agredida corresponsal de VTV en Guárico* [VTV journalist in Guárico attacked].

⁵⁸⁸ Espacio Público. September 5, 2012. *Corresponsales de VTV y RNV agredidas por equipo de Capriles en Táchira* [VTV and RNV correspondents attacked by Capriles' entourage in Táchira]; Venezolana de Televisión (VTV). No date. *Agredidas* Continues...

members of the opposition attacked Lorena Benítez, a journalist with the National Public Media System. According to what was reported, the journalist was covering a campaign event staged by the opposition candidate in a Caracas neighborhood, when her assailants allegedly insulted her and threw some liquid on her. When she attempted to photograph the event, the journalist was reportedly beaten.⁵⁸⁹

418. According to information received, on September 12 persons alleged to be supporters of President Hugo Chávez reportedly attacked the photographer from *Agence France Presse (AFP)*, Geraldo Caso Bizama, as he was attempting to photograph the arrival of opposition candidate Henrique Capriles at the Puerto Cabello airport. According to what was reported, a group of persons wearing red shirts and the insignia of the governing party had allegedly surrounded the photographer to take away his credentials and equipment and threatened him with rocks.⁵⁹⁰ Similarly, on September 30, Cristian Hernández, a photographer with the Caracas newspaper *Tal Cual*, was allegedly verbally and physically assaulted by some 30 persons wearing red shirts, as he was on his way home after covering the march held to mark the close of the opposition candidate's campaign.⁵⁹¹

419. According to the information available, on October 4 and 7, groups of persons identified by the colors and insignia of the party in power, allegedly surrounded the headquarters of *Globovisión*, striking a threatening posture. *Globovisión's* editorial position is critical of the Government.⁵⁹² Against this backdrop, Kelvin Charles, a United States journalist with Miami's *Martí TV* and *Mega TV*, was alleged to have been struck on the leg on October 4, as he was taping the crowd outside *Globovisión's* headquarters.⁵⁹³

420. The IACHR was informed that on the day of the presidential elections, October 7, 2012, photographer Demetrio Caraindro, from the newspaper *Correo del Caroní*, had allegedly been assaulted. According to the reports, persons presumed to be members of the military had reportedly insulted him and attempted to beat him and grab his camera equipment, as the reporter was covering a dispute that broke out while the polls were being closed in Puerto Ordaz, Bolívar state.⁵⁹⁴

421. On October 7, a team from the newspaper *Últimas Noticias* was allegedly attacked and threatened with a gun by persons who reportedly identified themselves as "community communicators",

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corresponsales de VTV y RNV por equipo de Capriles en Táchira [VTV and RNV correspondents attacked by Capriles' people in Táchira].

⁵⁸⁹ Agencia Venezolana de Noticias (AVN). September 9, 2012. *Periodista del SNMP fue agredida por seguidores de Capriles en La Pastora* [SNMP correspondent attacked by Capriles' followers in La Pastora]; Espacio Público. September 12, 2012. *Periodista de YVKE Mundial agredida en manifestación de Henrique Capriles Radonski en La Pastora* [YVKE Mundial journalist assaulted in demonstration staged for Henrique Capriles Radonski in La Pastora].

⁵⁹⁰ Radio Nederland. September 13, 2012. *Agreden a colaborador de AFP en escaramuza entre chavistas y opositores* [AFP collaborator attacked in skirmish between Chavez supporters and the opposition]; *Noticias 24*. September 12, 2012. *Agreden a colaborador de AFP en enfrentamiento entre chavistas y opositores* [AFP collaborator attacked in clash between Chávez supporters and opposition].

⁵⁹¹ Instituto Prensa y Sociedad (IPYS). October 11, 2012. *Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales* [Venezuela: Obstruction in the news business did not let up during presidential elections]; *Llanero Digital*. October 2, 2012. *Empleados públicos en la marcha* [Government employees participate in the march].

⁵⁹² Instituto Prensa y Sociedad (IPYS). October 11, 2012. *Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales* [Venezuela: Obstruction in the news business did not let up during presidential elections].

⁵⁹³ Instituto Prensa y Sociedad (IPYS). October 11, 2012. *Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales* [Venezuela: Obstruction in the news business did not let up during presidential elections].

⁵⁹⁴ Espacio Público. October 10, 2012. *Reportero gráfico del Correo del Caroní agredido durante cobertura electoral* [Photographer for the *Correo del Caroní* attacked while covering elections]; Instituto Prensa y Sociedad (IPYS). October 11, 2012. *Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales* [Venezuela: Obstruction in the news business did not let up during presidential elections].

as the team was attempting to cover news of an episode of violence that occurred outside the polling station in the Kennedy housing development in Macarao.⁵⁹⁵

422. The IACHR was informed that on October 8, Argentine journalist Jorge Lanata and his news team from *Canal 13* were temporarily detained at Maiquetía International Airport, as they were getting ready to leave the country after covering the presidential elections. According to the reports, agents of the Bolivarian National Intelligence Service (SEBIN) allegedly held the journalist and his team *incommunicado* for several hours and seized their journalistic materials. According to Lanata, the agents reportedly interrogated him separately and accused him of “espionage.” When he entered the country on October 3, both the journalist and his news team had allegedly reported a similar situation, in which they were detained and questioned.⁵⁹⁶

423. According to the information received, Luis Alfonso Cabezas, director of Convite, a civil society organization, allegedly received telephone threats on October 11, after publishing an article in the October 7 edition of the newspaper *El Nacional*; the article was about the quality of hospital care in the country. According to what was reported, music from the PSUV election campaign could be heard in the background of the threatening telephone calls he received.⁵⁹⁷

424. During the hearing held on November 1, 2012, the IACHR received information concerning an alleged practice of usurping the identities of human rights defenders, journalists, media outlets, state institutions, politicians and other public figures by way of their e-mail and social networking (Facebook and Twitter) accounts and websites. In most cases, the usurped accounts and websites have allegedly been used to send messages that call into question the activities of the account or website owner and of other public figures in Venezuelan society.⁵⁹⁸ In general, the messages reportedly have political overtones and are intended to drum up support for the government party’s nominee or candidate in the presidential elections. However, other statements reportedly announced the death of public figures, or

⁵⁹⁵ Últimas Noticias. October 7, 2012. *Agreden a reporteros de Últimas Noticias en Kennedy* [Reporters for *Últimas Noticias* attacked in Kennedy]; Espacio Público. October 7, 2012. *Equipo de últimas noticias fue atacado durante cobertura en la urbanización Kennedy* [Últimas Noticias news team attacked during coverage in the Kennedy housing development].

⁵⁹⁶ IFEX/ Inter-American Press Association (IAPA-SIP). October 9, 2012. *Argentinian journalist detained at Venezuelan airport*; FOPEA. October 9, 2012. *FOPEA reclama protesta formal de Gobierno Argentino por retención y destrucción de material a equipo de Canal 13 en Venezuela* [FOPEA demands that Argentine Government files formal protest over the incident in which Channel 13’s team was detained and its news materials destroyed in Venezuela]; ADEPA. October 9, 2012. *Un principio atropellado en Caracas* [A principle trampled in Caracas]; Instituto Prensa y Sociedad (IPYS). October 11, 2012. *Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales* [Venezuela: Obstruction in the news business did not let up during presidential elections].

⁵⁹⁷ Instituto Prensa y Sociedad (IPYS)/IFEX. November 5, 2012. *Rights activist threatened after health study publication in Venezuela*; Red Latinoamericana y del Caribe para la Democracia (REDLAD). October 2012. *Alerta en Venezuela: amenazas contra directivo de CONVITE A.C.* [Alert in Venezuela: threats against executive of CONVITE A.C.]; El Nacional. October 25, 2012. *Amenazas no impedirán investigaciones de Convite* [Threats will not stop Convite’s investigations].

⁵⁹⁸ The following were among the citizens, government representatives and other institutions that allegedly reported having been the victims of this kind of hacking in 2012: the ethical hacker Rafael Nuñez, January 6; the president of the Caracas Metro, Haiman Troudi, January 11; Diego Arria, a candidate in the primaries leading up to the presidential elections, January 12; the president of the Venezuelan Association of University Deans, Rita Elena Añez, on January 27; the Deputy on the Bolívar State legislative council and a primary candidate for the office of mayor of Caroni, Wilson Castro, February 9; the online portal of the Miranda Governor’s Office, February 12; writer Leonardo Padrón, February 24; the Governor’s Office of the state of Zulia, June 2; the website of the weekly *Sexto Poder*, June 7; *Globovisión* news channel, August 5; the president of the National Assembly, Diosdado Cabello, September 8; the online news portal Noticias24.com, September 24; the director of the Venezuelan Observatory of Prisons, Humberto Prado, October 4; the *Mesa de la Unidad Democrática*, around October 4; the Secretary General of the PIEDRA party, Ricardo Koesling, on October 6, and the former presidential candidate María Bolívar, on October 9. Other persons and institutions allegedly reported that their e-mail and social networking accounts had been hacked, but were not subsequently used to spread false statements in the account owner’s name. These included the following: political leader David Smolansky, on January 30; journalist Patricia Poleo and her partner Nixon Moreno, on June 11; the executive director of the *Instituto Prensa y Sociedad* in Venezuela, Marianela Balbi, on July 14; the website of the National Electoral Council; deputy Ismael García; news analyst on *Globovisión*’s program *Buenas Noches*, Ricardo Ríos; political scientist Carlos Valero, and journalist Francisco “Kico” Bautista, all on October 7. IACHR. 146th Session. November 1, 2012. Information supplied during the hearing on the Right to Freedom of Expression in Venezuela. Available at: IACHR Archives.

made homophobic and anti-Semitic comments or insults.⁵⁹⁹ According to the information received, N33 is alleged to be the group behind these activities. In other cases, the perpetrators' identity is unknown. For its part, the State claimed that the Government's own websites had also been hacked.⁶⁰⁰

425. This practice became even more pronounced in the days immediately before and after the presidential election, when multiple attacks were reported on the internet sites and Twitter accounts of public figures. According to information received, on October 6 the news portal *La Patilla* was allegedly the target of a cyber attack that made it impossible for the administrators to update the page; on October 7, as the announcement of the election returns was at hand, the websites of *Globovisión*, *6to Poder*, *Noticiero Digital*, *Radio Nacional de Venezuela (RNV)* and *La Iguana TV* went down.⁶⁰¹

426. Regarding attacks in the context of the elections, the State reiterated in its observations to this report that these "complaints based on news articles do not implicate the Venezuelan State." In its opinion, "If no complaints were filed before the Office of the Public Prosecutor, they do not constitute evidence of any kind, for the reasons stated in the previous chapter."⁶⁰²

427. As previously observed, Principle 9 of the Declaration of Principles of Freedom of Expression, approved by the IACHR in 2000, provides 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."

3. Attacks, threats and preconditions in the context of complaints over contamination of the water supply

428. The IACHR has received information concerning the difficulties that opposition or independent media encounter when trying to cover events of interest to the public, such as alleged the contamination of the water supply in various communities. The IACHR was told that on March 21, 2012 Examining Court 25 of the Caracas Metropolitan Area agreed to a request from the Public Prosecutor's Office to require that "the national and regional print media and radio, television and digital news conduct themselves with the utmost sense of responsibility when reporting information related to the *alleged contamination of the potable water supply* in the country; the court held that any news reported on such subjects *must be based on the proper technical supports, backed by a competent institution.*"⁶⁰³ [italics added]. The request from the Public Prosecutor's Office was prompted by various reports of an oil spill said to have occurred in the Guarapiche River and complaints from a number of media outlets regarding the quality of the water supply in some sectors of Caracas, Valencia and Maracay. On March 20, 2012, one day before the court's decision was delivered, President Hugo Chávez had reportedly urged the

⁵⁹⁹ The following were among the web pages blocked in 2012: Laclase.info, on May 3; the news portal La Pantilla, on May 17 and October 6; the official campaign website for presidential candidate Henrique Capriles Radonski, on August 14; the web portal of *Sexto Poder* and *Noticiero Digital*, both on October 7. IACHR. 146th Session. November 1, 2012. Information supplied during the hearing on the Right to Freedom of Expression in Venezuela. Available at IACHR Archives.

⁶⁰⁰ IACHR. 146th Session. November 1, 2012. Information supplied during the hearing on the Right to Freedom of Expression in Venezuela. Available at: IACHR Archives.

⁶⁰¹ Instituto Prensa y Sociedad (IPYS). October 11, 2012. *Venezuela: Obstrucciones a la labor informativa persistieron durante elecciones presidenciales* [Venezuela: Obstruction in the news business did not let up during presidential elections]; Espacio Público. October 16, 2012. *Ataques informáticos sacuden las redes sociales en el país* [Hacker attacks shake up social networks in the country].

⁶⁰² In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, "Observations of the Venezuelan State to the IACHR Annual Report of 2012." Specific observations to the section on "State respect and guarantee for the exercise of freedom of expression." P. 21.

⁶⁰³ Public Prosecutor's Office, Bolivarian Republic of Venezuela. March 21, 2012. *Acuerdan medida cautelar innominada que exige responsabilidad al difundir información sobre presunta contaminación del agua* [Agreement reached on untitled precautionary measure that demands accountability when circulating information on alleged contamination of the water supply].

Public Prosecutor's Office and the Supreme Court to investigate those who had circulated information concerning the alleged contamination. President Chávez had reportedly said the following: "I'm not a judge, but I am the head of State and am compelled to call upon each and every sector of the government to accept its responsibility. I am urging, demanding that the Attorney General of the Republic, Dr. Luisa Ortega, accept her responsibility. I am respectfully urging the Chief Justice of the Supreme Court, Dr. Luisa Estela Morales, to accept her responsibility. We cannot stand by idly as these campaigns are waged."⁶⁰⁴

429. In its observations to this report, the State of Venezuela maintained that, "We have been telling you for fourteen years that our Constitution is more advanced with respect to human rights than the American Convention on Human Rights. At several hearings we have read and explained to you [that] Articles 57 and 58 define the meaning of freedom of expression and freedom of information. According to our Constitution, it is possible in cases of news that causes social alarm and consternation—such as the articles in all the Venezuelan newspapers that said the drinking water throughout the country was polluted—for a Court of the Republic to require the media [...] to act with extreme responsibility in disseminating information related to the alleged pollution of the country's drinking water supply, and they should have the proper, accurate technical evidence backed by a competent body."⁶⁰⁵

430. The IACHR received information to the effect that on January 19, 2012, Bolivarian National Guardsmen (GNB) held Giselle Almarza, a journalist with *Globovisión*. According to the reports, Almarza and her cameraman Dalí Gómez had taken photographs of a supposed oil spill in the town of La Pica, Monagas state. Peasant farmers from the area warned the journalists that GNB personnel were going to detain them. The journalist was held for 40 minutes by the GNB and personnel from the state-owned *Petróleos de Venezuela (PDVSA)*, who asked her to hand over the taped materials, as she did not have authorization to film. In the end, they allowed her to continue her work.⁶⁰⁶

431. The IACHR received information alleging that on February 14, 2012 reporter Florantonia Singer and her photographer Carlos E. Ramírez, both with the newspaper *Últimas Noticias*—part of the Capriles media group—were stopped as they were seeking information about an oil spill on the Guarapiche River in Monagas state. According to what was reported, military troops had stopped the journalists and held them until officials from the state-owned *Petróleos de Venezuela (PDVSA)* arrived on the scene.⁶⁰⁷

432. On March 15, 2012 purported members of a community council in the region of Isla de la Culebra, in the state of Carabobo, violently disrupted the live broadcast of the *Globovisión* program

⁶⁰⁴ Noticias 24. March 20, 2012. *Chávez pide a la Fiscal y a la presidenta del TSJ investigar campaña de "terrorismo" sobre el agua* (Video) [Chávez asks the Prosecutor and the Chief Justice of the Supreme Court to investigate "terrorism" campaign about the water supply]; Public Prosecutor's Office, Bolivarian Republic of Venezuela. March 22, 2012. *FGR: medida solicitada por el Ministerio Público sobre el agua garantiza derechos de los venezolanos* [FGR: measure requested by Public Prosecutor's Office concerning the water supply guarantees Venezuelans' rights]; Committee to Protect Journalists (CPJ). March 26, 2012. *Venezuelan Court Ruling Limits Coverage of Water Quality*; Espacio Público. March 22, 2012. *Ministerio Público exige "soporte técnico veraz" para hablar sobre el agua potable* [Public Prosecutor's Office demands "reliable technical support" before any talk about the water supply].

⁶⁰⁵ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, "Observations of the Venezuelan State to the IACHR Annual Report of 2012." Specific observations to the section on "State respect and guarantee for the exercise of freedom of expression." Pp. 21-22.

⁶⁰⁶ IFEX/ Instituto Prensa y Sociedad (IPYS). January 27, 2012. *Journalists briefly detained after covering oil spill*. Espacio Público. January 20, 2012. *GNB retiene a periodista de Globovisión durante pauta en el estado Monagas* [National Guard detains *Globovisión* journalist reporting from the state of Monagas]; Colegio Nacional de Periodistas. February 7, 2012. *Retienen a equipo de televisora que cubrió derrame petrolero* [News team covering oil spill detained].

⁶⁰⁷ El Mundo. February 14, 2012. *Liberados periodistas de Cadena Capriles retenidos en Maturín* [Journalists with the Capriles News Organization Detained in Maturín Have Been Released]; *Globovisión*. February 14, 2012. *Sindicato Nacional de la Prensa rechaza "nueva agresión militar" contra periodistas* [National Press Association decries "yet another military attack" on journalists]; Instituto Prensa y Sociedad (IPYS). February 14, 2012. *Retienen a equipo de prensa que investigaba derrame petrolero* [Journalists investigating the oil spill detained].

'Radar de los Barrios', and attempted to grab the microphone from the journalist when people from the area were complaining of problems with the quality of the town's water supply.⁶⁰⁸

433. According to information received, on March 20, 2012 the National Assembly reportedly approved a request from one of its members whereby the Ombudsperson's Office would be ordered to conduct an investigation into the publication of an allegedly racist message in a caricature that appeared in the newspaper *Tal Cual*. The caricature, which appeared against the backdrop of complaints about the oil spill in various sectors of Venezuela, depicted a man in a military beret similar to the one worn by President Hugo Chávez, opening a tap that dispenses dark water, as he explains to two children: "Enough with white supremacy [...] now we have Afro-descendant water."⁶⁰⁹

434. The IACHR was informed that three journalists and one photographer were allegedly held in the town of Freites, by persons presumed to be members of the Bolivarian Army and personnel of the PDVSA's Department to Prevent and Control Losses. The journalists were reportedly returning from covering an oil spill in that community. According to what was reported, the supposed agents had allegedly detained Argel Fernández and Sergio Salazar, reporters from the newspaper *El Tiempo*, and Susana Quijada and photographer José González, both from *Mundo Oriental*. The agents claimed that the journalists had "taken information from a privately-owned oil area" and would therefore be required to make a statement. The journalists were reportedly released an hour and a half later.⁶¹⁰

435. As has been repeatedly stated, Principle 9 of the Declaration of Principles of Freedom of Expression, approved by the IACHR in 2000, provides 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."

4. Journalistic Materials Withheld and Seized

436. On February 8, 2012 officials of the Bolivarian Militias allegedly held journalists Abrahán Carvajal and Jesús García, from the newspaper *Últimas Noticias*, in a Caracas hospital where the journalists were obtaining information for a campaign to prevent traffic accidents. According to the reports received, the journalists had permission from a head of traumatology, but even so the militia members took them away to the hospital's security office, confiscated their equipment and notes, and forced them to take off some of their clothing to search for video memory cards. After holding the journalists incommunicado for three hours, the militia officials had allegedly allowed them to leave with their belongings.⁶¹¹

437. Information received by the IACHR indicates that on April 30, 2012, agents of the Bolivarian National Guard had held two technicians working for the *Globovisión* news organization and

⁶⁰⁸ Espacio Público. March 16, 2012. *Irrumpen en programa en vivo de Globovisión* [Live Globovisión broadcast interrupted]; Knight Center for Journalism in the Americas. March 19, 2012. *Members of community council in Venezuela violently interrupt live broadcast of TV program*; Colegio Nacional de Periodistas (CNP). March 16, 2012. *Irrumpen de forma violenta en grabación de "Radar de los Barrios"* [Violent disruption during taping of "Radar de los Barrios"].

⁶⁰⁹ Últimas Noticias. March 20, 2012. *Tildan al caricaturista Weil de racista* [Caricaturist Weil branded a racist]; Últimas Noticias. March 21, 2012. *Piden sanciones contra caricatura de Weil* [Sanctions sought against caricaturist Weil]; Instituto Prensa y Sociedad (IPYS). March 20, 2012. *Asamblea Nacional pide investigación contra caricaturista* [National Assembly seeks investigation of caricaturist].

⁶¹⁰ La Verdad. August 17, 2012. *Derrame de crudo en Anzoátegui afectó morichales en Freites* [Crude oil spill in Anzoátegui affected moriche palms in Freites]; Mundo Oriental. August 16, 2012. *Detienen a periodista y fotógrafo por cubrir derrame de petróleo* [Journalist and photographer detained for covering oil spill].

⁶¹¹ Instituto Prensa y Sociedad (IPYS)/IFEX. February 14, 2012. *Journalists Detained by Members of Militia*; El Mundo. February 8, 2012. *Periodista de Últimas Noticias relata abusos de la Milicia* [Últimas Noticias Reporter Tells of Militia's Abuses]; Colegio Nacional de Periodistas (CNP), February 9, 2012. *Milicia de Venezuela desnudó a reporteros durante detención* [Venezuelan Militia stripped reporters during detention].

temporarily confiscated their broadcasting equipment. According to the information received, this event took place while the journalists were covering a riot inside the La Planta prison in Caracas. Before the journalists were apprehended, the Minister for Prison Services, Iris Varela, had reportedly told the VTV state television channel that *Globovisión* was staging a “show” and trying to create “anxiety”. She also allegedly warned *Globovisión* to withdraw from the vicinity of the prison and threatened to have its equipment seized.⁶¹²

438. In this same vein, the IACHR received information concerning the alleged detention of Daniel Guillermo Colina, a *Globovisión* journalist, and his cameraman and assistant; it was also told that the news material gathered by that team had been retained. According to what was reported, on the morning of May 17, 2012 Mr. Colina and his team were allegedly stopped by agents of the Caracas Police Force, as they were covering disturbances inside the La Planta preventive detention facility. Furthermore, the news material obtained by the team was confiscated. The authorities allegedly claimed that the purpose of the measure was to protect the journalists by getting them away from the area of the turmoil.⁶¹³ According to information received, similar incidents involving *Globovisión* personnel covering news events at the detention facility had occurred on April 30 and May 8.⁶¹⁴

439. Furthermore, on August 28, supposed agents of the Bolivarian National Guard had held journalist Adriana Rivera and cameraman Raúl Romero from the newspaper *El Nacional*, for at least a half hour when they were trying to report on a fire at the Amuay Refinery Complex in Falcón state.⁶¹⁵

440. According to the information received, on October 22, persons presumed to be members of the Bolivarian National Guard allegedly detained the vehicle carrying a portion of the daily circulation of the newspaper *Extra de Monagas* and confiscated several thousand copies, which took a serious toll on the newspaper’s circulation in the region. According to what was reported, the military had claimed that security agencies were after the vehicle, which the newspaper’s executives denied.⁶¹⁶

441. The State reiterated in its observations that this was a matter of events “summarized in newspaper articles, without the proper complaint having been filed before the Office of the Public Prosecutor.” In its opinion, this information was reported “for purposes of having a false file opened in the

⁶¹² Colegio Nacional de Periodistas (CNP). April 30, 2012. *Ministra Iris Varela amenaza vía telefónica por el sistema de medios públicos a equipo de Globovisión* [In a phone conversation with a public television channel, Minister Iris Varela issues threat against the news team at *Globovisión*]; Espacio Público. April 30, 2012. *Detenidos por la Guardia Nacional operadores de microondas de Globovisión* [Globovisión’s microwave operators detained by National Guard]; *El Universal*. April 30, 2012. *Ministra Varela se pronuncia ante situación en La Planta* [Minister Varela speaks out about the La Planta situation] (see video at 3:35); *El Universal*. April 30, 2012. *Fuego cerrado en la cárcel de La Planta* [Fire at the La Planta prison extinguished].

⁶¹³ Espacio Público. May 17, 2012. *Detenido equipo de Globovisión durante cobertura de conflicto en La Planta* [Globovisión team detained during coverage of the disturbance at La Planta]; *El Universal*. May 17, 2012. *Periodistas de Globovisión llevados a la sede de Policaracas* [Globovisión journalists taken to Policaracas headquarters]; Soy Globovisión / You Tube. May 17, 2012. *Detienen a equipo de Globovisión que cubría situación en La Planta* [Globovisión team covering the situation at La Planta detained].

⁶¹⁴ Noticias 24. April 30, 2012. *Autoridades penitenciarias denuncian supuesta maniobra de Globovisión para generar zozobra* [Prison authorities denounce *Globovisión*’s supposed ploy to generate anxiety]; Provea/Espacio Público. May 8, 2012. *Espacio Público: Camarógrafo de Globovisión despojado a la fuerza de sus equipos por GN* [National Guardsmen take away *Globovisión* cameraman’s equipment by force].

⁶¹⁵ Instituto Prensa y Sociedad (IPYS). August 28, 2012. *Militares retienen a equipo reportero en cobertura de explosión de refinería* [Military detain team of reporters covering refinery explosion]; Espacio Público. August 29, 2012. *Detenido equipo de El Nacional que realizaba cobertura en Amuay* [El Nacional’s team covering events in Amuay detained].

⁶¹⁶ Tal Cual. October 23, 2012. *Sin Extra de Monagas* [Extra de Monagas not on newsstands]; Extra de Monagas. October 22, 2012. *Guardia Nacional decomisó tiraje de Extra de Monagas* [National Guard confiscated copies of Extra de Monagas]; Colegio Nacional de Periodistas (CNJ), Caracas section. October 29, 2012. *Guardia Nacional venezolana incauta 6 mil ejemplares del periódico local Extra de Monagas* [National Guard seizes 6 thousand copies of local newspaper Extra de Monagas].

Inter-American Human Rights System, and still disparaging (*sic*) country, which has committed the offense of failing to obey the government of the United States, the financial backer of the OAS.”⁶¹⁷

442. Principle 8 of the Declaration of Principles of Freedom of Expression, which the IACHR approved in 2000, provides that “[e]very social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential”.

5. Subsequent imposition of liability

443. The IACHR has repeatedly underscored the need to review the framework of laws in which the Venezuelan media operate.⁶¹⁸ In particular, the IACHR has called the authorities’ attention to laws written in ambiguous language and establishing disproportionate penalties, laws that give judicial and administrative authorities too much latitude or discretion, or that fail to offer sufficient guarantees to ensure that freedom of expression can be exercised without fear of reprisals.⁶¹⁹ Against the backdrop of polarization and juridical uncertainty described above, the events described in the following paragraphs were reported in 2012.

444. According to the information received, on October 18, 2011, CONATEL’s Bureau of Social Responsibility allegedly fined *Globovisión* the sum of 9.3 million *bolívares fuertes*, the equivalent of 7.5% of its gross earnings for 2010.⁶²⁰ The official reports asserted that the fine was imposed because of violations of the final paragraph of Article 7, and subparagraphs 1, 2, 4 and 7 of Article 27 of the Law on Social Responsibility in Radio, Television and Electronic Media (*Ley Resorte*),⁶²¹ alleged to be the result of

⁶¹⁷ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” P. 22.

⁶¹⁸ IACHR. Annual Report 2011. OEA/Ser.LV/II. Doc. 69. December 30, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 515. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011printing.pdf>; IACHR. Annual Report 2010. OEA/Ser.LV/II. Doc. 5. March 7, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 508 *et seq.* Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/Informe%202010%20P%20ENG.pdf>

⁶¹⁹ IACHR. Office of the Special Rapporteur for Freedom of Expression. Report on the state of freedom of expression in Venezuela. 2010. Paragraphs 104-110; IACHR. Office of the Special Rapporteur for Freedom of Expression. Special Report on Freedom of Expression in Venezuela. 2009. Para. 520.

⁶²⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. October 21, 2011. Press release R111/11. *Office of Rapporteur Concerned over Fine against Globovisión in Venezuela*; Bolivarian Republic of Venezuela. Bureau of Social Responsibility 201 and 152. October 18, 2011. *Administrative Order No. PADRS-1.913*.

⁶²¹ The final paragraph of Article 7 of the *Resorte* Law reads as follows: “In the messages that the radio and television services broadcast live and direct during the all-users block and the supervised-users block, graphic descriptions or images of real violence may be aired if essential to an understanding of the information, to protect the physical integrity of the persons, or as a consequence of unforeseen situations where the providers of radio or television services are unable to avoid broadcasting them. Graphic descriptions or images shall conform to ethical principles of journalism apropos respect for the human dignity of all users and of those persons who are the subject of the news; yellow journalism techniques shall not be used such as skewing the news in such a way as to affect the users’ right to be correctly informed, in accordance with the corresponding law, and shall in no case engage in sensationalism, scandal mongering or dwell on extraneous details.”

The final paragraph of Article 27 of the *Resorte* Law as cited in Administrative Order No. PADRS-1.913, establishes that: *Radio, television, and electronic media are not permitted to disseminate messages that:*

1. *Incite or promote hate and intolerance for religious, political, gender-related, racist, or xenophobic reasons.*
2. *Incite or promote and/or advocate crime.*
- (...)
4. *Foment anxiety in the population or affect the public order.*
- (...)
7. *Incite or promote disobedience to the established legal order ...”*

Continues...

the news reports the channel aired between June 16 and 19, 2011, in connection with the prison situation at the El Rodeo Penitentiary.⁶²² In its decision, the Bureau of Social Responsibility had reportedly concluded that the television channel transmitted “messages that promote alterations of public order, justify crime, incite the existing legal regime, promote hatred for political reasons and foment panic among the citizenry during the days of June 16, 17, 18 and 19, 2011.”⁶²³ According to what was reported, on January 20, 2012, “a contentious-administrative petition was filed” with the Political-Administrative Chamber of the Supreme Court (TSJ). It was filed “together with a petition for injunctive relief and, secondarily, a petition seeking precautionary measures that would suspend the effects of the decision.”⁶²⁴ These petitions were filed by *Globovisión* to challenge the decision of the Bureau of Social Responsibility. In its petition, *Globovisión* claimed violations of freedom of expression, not simply because a fine was imposed but also because of the size of the fine. According to *Globovisión*, it had simply broadcast a direct report on the events and the relevant government-sourced information. They asserted that the intent of that news was not to foment anxiety or affect the public order. Furthermore, they argued, the information that *Globovisión* imparted had no such effect. They asserted that articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media (*Ley Resorte*), which set forth the conduct that carries a penalty, were unconstitutional and violated the principle of legality, the principle of freedom from *ex post facto* law, the principle of proportionality and the principle of the rationality of public powers. Finally, they alleged that the penalty was imposed “without the benefit of any preliminary proceeding.”⁶²⁵ In a March 6 ruling the Political-Administrative Chamber denied the petition for injunctive relief and, in a March 15 ruling, declared the petition seeking a precautionary measure suspending the effects of the court decision to be out of order. However, as of the date of this report, the court had not yet ruled on the nullity petition.⁶²⁶

445. Then, on June 28, 2012, the Political-Administrative Chamber of the Supreme Court reportedly granted “a petition filed by the National Telecommunications Commission (CONATEL) and the aforementioned Bureau seeking enforcement of the fine.” Accordingly, the court reportedly ordered an enforceable attachment in the amount of 24.4 million bolívares (some 5.6 million dollars) on *Globovisión*’s property. The Court arrived at that figure by doubling the fine and adding the enforcement costs.⁶²⁷ On

...continuation

Article 29 of the *Resorte* Law as cited in Administrative Order No. PADRS-1.913, establishes that those subject to the application of the law shall face punishment of “a fine of up to ten percent (10%) of gross revenues in the year immediately preceding the year when the violation was committed, and/or suspension for up to 72 continuous hours of transmission, when they violate Article 27.

Ministry of the People’s Power for Communications and Information. Official Gazette No. 39.610. February 7, 2011. [Law on Social Responsibility in Radio, Television and Electronic Media](#).

⁶²² Bolivarian Republic of Venezuela. Bureau of Social Responsibility 201 and 152. October 18, 2011. [Administrative Order PADRS-1.913](#). Chapter II.

⁶²³ IACHR. Office of the Special Rapporteur for Freedom of Expression. October 21, 2011. Press Release R111/11. [Office of Rapporteur Concerned over Fine against Globovisión in Venezuela](#); Bolivarian Republic of Venezuela. Bureau of Social Responsibility 201 and 152. October 18, 2011. [Administrative Order PADRS-1.913](#).

⁶²⁴ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0104. Judgment 00220](#). March 15, 2012; Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0104. Judgment 00765](#). 28 June 2012.

⁶²⁵ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0051. Judgment 00165](#). March 6, 2012.

⁶²⁶ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0051. Judgment 00165](#). March 6, 2012; Supreme Court of the Bolivarian Republic of Venezuela, Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Case 2012-0104. Judgment 00220](#). March 15, 2012; El Universal. March 7, 2012. [TSJ ratifica la multa de Bs. 9 millones contra Globovisión](#) [Supreme Court upholds Bs. 9 million fine against *Globovisión*]; Inter-American Press Association (IAPA-SIP). March 7, 2012. [IAPA condemns ratification of multi-million-dollar fine against Globovisión](#).

⁶²⁷ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. [Expediente 2012-0104. Sentencia 00765](#) [Case 2012. Judgment 00765], June 28, 2012; Supreme Court of the Bolivarian Republic of Venezuela. June 28, 2012. [TSJ decreta embargo ejecutivo sobre bienes propiedad de Globovisión Tele, C.A.](#) [Supreme Court orders enforceable attachment of property of *Globovisión Tele, C. A.*]

June 29, *Globovisión* paid the fine of 9.3 million bolívares under protest. On July 3, the Political-Administrative Chamber of the Supreme Court lifted the attachment measure. *Globovisión* reportedly argued, *inter alia*, that the attachment was a new means of pressuring the channel, and that it had been forced to pay the fine even though other judicial actions were still pending.⁶²⁸

446. In its observations to this report, the State indicated with regard to this issue that “the radio spectrum is publicly owned—that is, administered by the Venezuelan State—and there is an institution called CONATEL, which sanctions radio and television stations that fail to comply with the Law on Social Responsibility in Radio, Television and Electronic Media. That law establishes sanctions for the media that violate its provisions. That is perfectly legal, and we have been explaining the situation to the Commission for several years.”⁶²⁹

447. The State further established that “up to the moment this report was presented,” the opposition media “have never been subject to measures involving shut-down, censorship, or the confiscation of publications, in spite of the fact that they have frequently engaged in prolonged campaigns calling for the overthrow of the government and have instigated political assassination, civil war, and ethnic and racial hatred.”⁶³⁰

448. The IACHR was told that on January 26, 2012 in response to a complaint filed by the Ombudsperson’s Office, a court in the Child Protection Section of the Guárico judicial district had reportedly ruled that the newspaper *La Antena de Guárico* was to comply with its obligation under Article 74 of the Organic Child and Adolescent Protection Law, which was to wrap editions that contain reports and images that are inappropriate for children and adolescents.⁶³¹

449. The IACHR also learned of a March 30, 2012 decision by the Barinas Judicial District’s First Juvenile Protection Trial Court of First Instance in which the newspaper *La Prensa* was ordered to pay a fine equivalent to one percent of its gross earnings in fiscal period 2010. The fine was ordered because of the newspaper’s publication of photographs of dead bodies at crime scenes, which were deemed to be a violation of the Organic Child and Adolescent Protection Law. The complaint against the newspaper was brought by the Ombudsperson’s Office.⁶³² The ruling held that “while the law does not prohibit publication of such images, it requires that any publication in which they appear must come in a

⁶²⁸ Supreme Court of the Bolivarian Republic of Venezuela. Political-Administrative Chamber. Justice Evelyn Marrero Ortiz writing. Expediente 2012-0104. Sentencia 00766 [Case 2012-0104. Judgment 00766]. July 3, 2012; *Globovisión*. June 30, 2012. *Globovisión pagó bajo protesta la multa ante el TSJ* [Under protest, *Globovisión* pays fine ordered by Supreme Court].

⁶²⁹ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” P. 22.

⁶³⁰ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” General observations regarding a section named “Statements supported on assumptions and presumptions and not in documented facts – Freedom of Thought and Expression”, in the State Communication. P. 40.

⁶³¹ Article 74 reads as follows: “Printed or audiovisual materials, books, publications, videos, illustrations, photographs, readings and chronicles that are inappropriate for children and adolescents must have a wrapping to seal their content and a warning label stating that the material is not for children and adolescents. When the covers or packaging of these materials contain pornographic information or images, they must have an opaque wrapping.” National Assembly of the Bolivarian Republic of Venezuela. *Organic Law for the Protection of Children and Adolescents*. Official Gazette No. 5.859, Special Edition. December 10, 2007. Ombudsperson’s Office. April 26, 2012. *A solicitud de la DdP Diario La Antena no podrá publicar imágenes cruentas* [At the request of the Ombudsperson’s Office, *La Antena* newspaper may not publish crude images]; *Últimas Noticias*. April 26, 2012. *Diario La Antena no podrá publicar fotos cruentas* [*La Antena* newspaper can no longer publish crude photos].

⁶³² Ombudsperson’s Office. April 4, 2012. *Con lugar acción de protección a la niñez interpuesta por la Defensoría* [Court upholds child protection petition filed by Ombudsperson’s Office]; Colegio Nacional de Periodistas (CNJ). April 9, 2012. *Condenan al diario La Prensa de Barinas por publicar fotografías de sucesos* [Barinas’ *La Prensa* convicted of publishing photographs of events]; IFEX / Instituto Prensa y Sociedad de Venezuela (IPYS). April 13, 2012. *Court rules against regional newspaper*.

wrapping with a label warning that the publication contains printed materials, illustrations or photographs inappropriate for children and adolescents.”⁶³³

450. The Commission is not unaware of the duty of special protection that States have with respect to children and adolescents. However, an authority’s invocation of that obligation of special protection and of the principle of the child’s best interest as grounds for restricting another Convention-protected right must be based on objective reasons that have a clearly identified relationship to those obligations and principles in each specific case. In addition, such restrictions must abide by a regulatory framework that has the safeguards necessary to ensure that no discretionary use is made of excessively broad categories and that, in all instances, the sanctions are strictly proportionate.

451. According to what was reported, on October 10 Councilman Nelson Urbina of the Carirubana Municipality was convicted of defaming [*difamación e injurias*] the mayor of that community. He was sentenced to three years in prison. The criminal case against him reportedly started in 2007, when the mayor filed a complaint in response to articles critical of his performance in office, which the town councilmen reportedly published in an editorial opinion piece. Urbina was taken to the Coro Prison in the state of Falcón, to serve his sentence.⁶³⁴

452. Principle 10 of the Declaration of Principles of Freedom of Expression, which the IACHR approved in 2000, provides 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.” Likewise, Principle 11 of this Declaration reads as follows: “[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.”

453. For its part, the Inter-American Court has addressed the issue of civil liability and wrote that civil penalties in matters involving freedom of expression must be proportional so that they do not have a chilling effect on that freedom, since “the fear of a civil penalty, considering the claim [...] for a steep civil reparation, may be, in any case, equally or more intimidating and inhibiting for the exercise of freedom of expression than a criminal punishment, since it has the potential to affect the personal and family life of an individual who accuses a public official, with the evident and very negative result of self-censorship both in the affected party and in other potential critics of the actions taken by a public official.”⁶³⁵

6. Access to information

454. When the topic of access to public information came up in the public hearings that the IACHR held in March and November 2012 on the situation of freedom of expression in Venezuela, the petitioners spoke about the difficulties that journalists have in getting access to information that the State

⁶³³ Barinas Judicial District Superior Court in Civil, Commercial, Traffic and Child Protection Matters. Expediente 12-3452. Imposición de sanción por infracción a la protección debida [Case 12-3452. Penalty for violating child protection law]. June 25, 2012.

⁶³⁴ Nuevo Día. October 11, 2012. Concejal Nelson Urbina condenado a tres años de prisión [Councilman Nelson Urbina sentenced to three years’ prison]; El Universal. October 12, 2012. Por difamación condenan a concejal de Punto Fijo [Punto Fijo Councilman convicted of defamation]; Notifalcón. October 10, 2012. Condenan a concejal Nelson Urbina por difamación [Councilman Nelson Urbina convicted of defamation].

⁶³⁵ I/A Court H.R., *Case of Tristán Donoso v. Panama. Preliminary Objection, Merits, Reparations and Costs*. Judgment of January 27, 2009. Series C No. 193. Para.129.

has in its possession, and to government events and offices.⁶³⁶ They also made the point that Venezuela does not have a law on access to public information and expressed concern over a Supreme Court decision that would require journalists to explain why they were requesting public information and how they planned to use the information they were seeking.⁶³⁷ The State, for its part, said that these limitations were legitimate; that journalists cannot be provided with every piece of information they ask for. It also argued that not every media outlet can be accommodated at every event, and access to information is guaranteed because Venezuela has public radio and television and official press releases are issued following government events and are accessible to everyone.⁶³⁸

455. The IACHR received information concerning a petition filed with the Constitutional Chamber of the Supreme Court seeking nullification of the Internal Rules of Procedure and Debate of the National Assembly. The petition was filed by journalist organizations when amendments were introduced in December 2010 under which the National Assembly's *Fundación Televisor* would be the only one authorized to be present for legislative sessions and provide the signal to private broadcasters.⁶³⁹

456. According to the information received, in 2012 various *amparo* petitions were brought by members of civil society in connection with requests for information filed with government agencies and never answered. In this connection, on March 16 a petition seeking constitutional relief for failure to answer a request for information filed with *Petróleos de Venezuela* concerning alleged oil spills in 2010 and 2011, was declared inadmissible by the Capital Region's Sixth Superior Contentious-Administrative Law Court.⁶⁴⁰ Likewise, on May 23, the Constitutional Chamber of the Supreme Court dismissed a petition for *amparo* relief that was based on the fact that a request filed with the Ministry of the People's Power for Women and Gender Equality seeking information on plans to treat and prevent violence

⁶³⁶ Petitioners at the hearing: Center for Human Rights of the Universidad Católica Andrés Bello (UCAB), *Espacio Público* Civic Association, *Colegio Nacional de Periodistas de Venezuela*, *Sindicato Nacional de Trabajadores de la Prensa* (SNTP). The Venezuelan State was represented. IACHR. 144th Session. March 27, 2012. Hearing on *The Situation of the Right to Freedom of Expression in Venezuela*. IACHR. 146th Session. November 1, 2012. *Right to Freedom of Expression in Venezuela*.

⁶³⁷ Constitutional Chamber of the Supreme Court. July 15, 2010. *Expediente. 745-15710-2010-09-1003* [Case 745-15710-2010-09-1003]. See also, IACHR. Annual Report 2011. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 520. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

⁶³⁸ IACHR. 144th Session. March 27, 2012. Hearing on *The Situation of the Right to Freedom of Expression in Venezuela*. IACHR. 146th Session. November 1, 2012. *Right to Freedom of Expression in Venezuela*.

⁶³⁹ Article 56 of the new Internal Rules of Procedure and Debate of the National Assembly of Venezuela appears in a chapter on the Operating System of the National Assembly and provides that: "In order to guarantee access to information in accordance with Article 108 of the Constitution of the Republic, plenary sessions shall be transmitted by the National Assembly's *Fundación Televisora* (ANTV) and the State television station may provide support for transmission. Conditions shall be provided so that media outlets interested in transmitting the information produced in the course of the session may do so through the ANTV signal." Article 87 of the previous Rules provided that: "All sessions shall be public. In view of the content of Article 108 of the Constitution, audiovisual communications media may partially or totally transmit the development of the sessions." National Assembly of the Bolivarian Republic of Venezuela. December 22, 2010. *Reglamento Interior y de Debates de la Asamblea Nacional*. [Internal Rules of Procedure and Debate of the National Assembly]; National Assembly of Venezuela. September 5, 2000. *Reglamento Interior y de Debates de la Asamblea Nacional* [Internal Rules of Procedure and Debate of the National Assembly]. *Espacio Público*. April 20, 2012. *Espacio Público. CNP y SNTP interpusieron recurso de nulidad por inconstitucionalidad del reglamento de la AN* [Espacio Público, CNP and SNTP file petition for nullification of the National Assembly's Rules of Procedure on the grounds that they are unconstitutional], IACHR. Annual Report 2011. OEA/Ser.L/V/II. Doc. 69. December 30, 2011. *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 521. Available at: <http://www.oas.org/en/iachr/expression/docs/reports/annual/2012%2003%2021%20Annual%20Report%20RELE%202011pirnting.pdf>

⁶⁴⁰ *Espacio Público*. March 16, 2012. Caracas Capital Region's Sixth Contentious-Administrative Law Court. *Expediente 12-3217*. [Case 12-3217] Final section; *Espacio Público*. Information presented to the IACHR. 146th Session. November 1, 2012. Hearing on the Right to freedom of Expression in Venezuela. Available at: IACHR archives.

against women went unanswered.⁶⁴¹ On June 5, the Constitutional Chamber dismissed a petition seeking *amparo* relief where the petitioner wanted information turned over on the amount that the Ministry of the People's Power for Communications and Information had spent on government advertising.⁶⁴² On June 18, a petition seeking *amparo* relief because the Ministry of the People's Power for Health had failed to answer a request seeking information on the importation, preservation and distribution of medications from Cuba, was also dismissed by the Constitutional Chamber.⁶⁴³ In all these cases, the court held that the petition seeking *amparo* relief was not the proper avenue to pursue to request access to public information.

457. According to reports received, on August 6 journalists from private media outlets were excluded from a Chávez campaign event in Guacara, Carabobo state. According to what was reported, the journalists had their credentials taken away and were told that they could not get into the event because it was being broadcast via the National Public Media System.⁶⁴⁴

458. On October 2, the Second Contentious-Administrative Law Court handed down a decision blocking access to crime figures for 2008, 2009, 2010 and the first half of 2011. According to what was reported, the Court held that the Laboratory, Criminal and Forensic Investigation Corps (CICPC) does not have the authority to release that information to the public. The Court concluded that while the CICPC Law provides that one of this institution's functions is to prepare statistics on crime, "there is nothing to suggest that one of the CICPC's functions is to provide that information to private parties."⁶⁴⁵

459. On October 23, the Second Contentious-Administrative Law Court reportedly agreed to hear the petition that *Espacio Público* filed against the National Telecommunications Commission (CONATEL) for refusal to provide information. In a request dated April 30, 2012, *Espacio Público* had allegedly requested information concerning the proceedings prescribed under the Law on Social Responsibility in Radio, Television and Electronic Media (*Resorte* law) for administrative sanctions, and a list of the persons or organizations that pay taxes, rates and contributions under the Organic Telecommunications Act, and other information. As of the date of this report, the court had not yet issued its decision on the merits. It had asked CONATEL to issue a report explaining the reasons for the delay in handing over the information.⁶⁴⁶

⁶⁴¹ Constitutional Chamber of the Supreme Court. May 23, 2012. [Decisión No. 679. Expediente 12-0389](#) [Decision No. 679, Case 12-0389]; *Espacio Público*. Information presented to the IACHR. 146th Session. November 1, 2012. Hearing on the Right to freedom of Expression in Venezuela. Available at: IACHR archives.

⁶⁴² Constitutional Chamber of the Supreme Court. June 5, 2012. [Decisión No. 782. Expediente 12-0281](#) [Decision No. 782, Case 12-0281]; *Espacio Público*. Information presented to the IACHR. 146th Session. November 1, 2012. Hearing on the Right to freedom of Expression in Venezuela. Available at: IACHR archives.

⁶⁴³ Constitutional Chamber of the Supreme Court. June 18, 2012. [Decisión No. 805. Expediente 12-0355](#) [Decision No. 805, Case 12-0355]; *Espacio Público*. Information presented to the IACHR. 146th Session. November 1, 2012. Hearing on the Right to freedom of Expression in Venezuela. Available at: IACHR archives.

⁶⁴⁴ Noticias 24. August 6, 2012. [Denuncian el retiro de las credenciales a los medios privados que iban a cubrir evento de Chávez](#) [Private media intending to attend Chávez event have their credentials taken away; complaints filed]; 6to Poder. August 6, 2012. [Prohíben a medios privados cubrir acto de campaña de presidente Chávez en Carabobo](#) [Private media not permitted to cover President Chávez' campaign event in Carabobo].

⁶⁴⁵ Second Contentious-Administrative Law Court. October 2, 2012. [Expediente No. AP42-O-2012-000070](#) [Case No. AP42-O-2012-000070]; Office of the Public Prosecutor of the Bolivarian Republic of Venezuela. [Ley del Cuerpo de Investigaciones Científicas, Penales y Criminalísticas](#) [Law on the Laboratory, Criminal and Forensic Science Corps] (G.O. 38.598 of 01/05/07). Under Article 11.3, it is the function of the CICPC, "[t]o prepare and analyze crime statistics in coordination with the National Institute of Statistics, and then present those statistics to the ministry with competence in police affairs and justice, when so requested for the purpose of adopting policy on prevention and applying the measures necessary to ensure achievement of the State's goal in the area of security."

⁶⁴⁶ Second Contentious-Administrative Law Court. October 23, 2012. [Expediente No. AP42-G-2012-000844](#) [Case No. AP42-O-2012-000844]; *Espacio Público*. November 2, 2012. [Corte conocerá caso de Acceso a la Información Pública contra CONATEL](#) [Court will hear access-to-public-information case against CONATEL].

460. With regard to access to information, the State asserted that the issue had been “sufficiently explained in the hearings and memoranda presented since 2003.”⁶⁴⁷ At the hearing on the right to freedom of expression in Venezuela held at the IACHR on March 27, 2012, the petitioners argued, among other things, that only those media outlets in Venezuela that are part of the State and very few private media outlets are able to participate in press conferences and are granted access to information in the power of the Government. In their view, these limitations on the right to access to public information constitute a pattern of restrictions that characterizes a State policy. In this regard, the representative of the State maintained that, “every time there is a public ceremony, a press release is issued about what is taking place. It is also broadcast by State media and television stations, so that anyone who wishes to be informed of these public ceremonies in the most sufficient, complete, and total manner can redistribute it and even rebroadcast what airs on the public networks. And they do this, in fact, and the public system, which is very limited, has also in fact re-broadcast content from private media, and thus in this sense, there is no restriction of information.”⁶⁴⁸ At the hearing held on November 1, 2012, the petitioners again raised the absence of institutional mechanisms to guarantee the right to public information in Venezuela. The State’s representative held that “The Inter-American Convention on Human Rights itself says that there is a set of circumstances under which, for the security of the State, among other reasons, information can be restricted. It is not—in no State in the world is there a situation in which information requested by a journalist must necessarily be surrendered.”⁶⁴⁹

461. Principle 4 of the IACHR’s Declaration of Principles of Freedom of Expression provides 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.”

7. Other related developments

462. The IACHR received information to the effect that the authorities have shut down a number of radio and television stations for noncompliance with or violation of the established regulations. The IACHR is asking the authorities to meticulously apply the rules of due process given the impact that the enforcement of sanctions can have on the exercise of freedom of expression. According to the information received, between November and December 2011, the National Telecommunications Council (CONATEL) allegedly shut down at least 11 radio stations. In a number of these cases, the broadcasting equipment and materials used in broadcasting were also seized. CONATEL claimed that the stations were shut down because they were operating illegally.⁶⁵⁰ The IACHR was told that on orders from CONATEL, agents of the Venezuelan National Guard took over four radio stations in the state of Monagas on March 30, 2012 claiming that they were “enforcing an administrative penalty” because the radio stations in question were “allegedly broadcasting on a frequency without having the necessary permit and concession.” The authorities suspended the radio stations’ broadcasting and their equipment and materials were confiscated. One of the affected radio stations is *Caicareña 100.5 FM*, owned by the brother of the governor of Monagas. The other stations shut down that day were *Venezuela Olímpica 97.9 FM*, *Única 104.9 FM* and *Líder 100.7 FM*. *Caicareña* was allegedly shut down by force, and at least one person was injured. CONATEL announced that two of its employees had been injured during the

⁶⁴⁷ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” P. 22.

⁶⁴⁸ IACHR. 144th Period of Sessions. March 27, 2012. *Hearing on the Right to Freedom of Expression in Venezuela*. [31:00 – 32:00].

⁶⁴⁹ IACHR. 146th Period of Sessions. November 1, 2012. *Hearing on the Right to Freedom of Expression in Venezuela*. [23:30 – 23:57].

⁶⁵⁰ Espacio Público. E-mail received on February 24, 2012. Available at: IACHR Archives; El Nacional. February 16, 2012. *Conatel inicia procedimientos sancionatorios contra las emisoras Xtrema y Cosmo* [CONATEL institutes proceedings to impose penalties on *Xtrema* and *Cosmo* stations].

operation.⁶⁵¹ The Venezuelan Broadcasting Chamber supported the shutdown of the “clandestine” stations.⁶⁵²

463. In this respect, the State indicated that the aforementioned situation “refers to the shutdown of several radio and television stations by the competent authorities. We responded to the Commission about this at the proper time; they are stations that were operating without the proper authorization from CONATEL.”⁶⁵³

C. Guarantees for judicial independence, due process of law, and effective access to justice

464. The Commission has stated on multiple occasions that the observance of rights and freedoms in a democratic system requires a juridical and institutional order, in which the law takes precedence over the will of the governing, and in which the courts scrutinize the constitutionality and legality of government acts; in other words, it presupposes respect for the rule of law.⁶⁵⁴

465. The Venezuelan State has said that the Constitution of the Bolivarian Republic of Venezuela provides the mechanisms necessary to ensure the independence of the branches of government. Specifically, Title IV, “Public Power,” establishes the independence of the country’s branches of government; in the rationale section, it sets forth the principle of restrictive competence, whereby those agencies that wield public power may only perform those functions that the Constitution and the law expressly assigns to them.⁶⁵⁵

466. Using the Venezuelan Constitution as its frame of reference, in its 2009 report the Commission examined – and again examines in this chapter – whether sufficient guarantees are in place to ensure the judicial branch’s independence from the political branches of government in Venezuela.

467. The Inter-American Court has emphasized that one of the main purposes of the separation of powers is to guarantee the independence of judges.⁶⁵⁶ An independent judicial branch is

⁶⁵¹ National Telecommunications Commission (CONATEL). March 30, 2012. *CONATEL inició procedimientos administrativos sancionatorios a emisoras Venezuela Olímpica, Caicareña, Única y Líder por presuntamente funcionar de forma clandestina* [CONATEL acted to penalize radio stations *Venezuela Olímpica, Caicareña, Única* and *Líder* for alleged clandestine operation]; National Telecommunications Commission (CONATEL). March 30, 2012. *Al cerrar emisora ilegal Caicareña 100.5 FM Turba comandada por hermano del gobernador Briceño atacó a funcionarios de Conatel* [In shutting down Caicareña 100.5 FM for operating illegally, mob led by brother of Governor Briceño attacks CONATEL employees]; Espacio Público. March 31, 2012. *CONATEL cierra cuatro emisoras en Monagas* [CONATEL shuts down four radio stations in Monagas]; El Universal. March 31, 2012. *Conatel cerró emisora del hermano del "Gato" Briceño* [CONATEL shuts down radio station owned by brother of “Gato” Briceño]; El Universal. March 31, 2012. *Toma de la emisora La Caicareña en Monagas* . [Seizure of *La Caicareña* station in Monagas].

⁶⁵² Globovisión. March 30, 2012. *Cámara de Radio respaldó el cierre de emisoras por parte de Conatel en Monagas* [Venezuelan Broadcasting Association supported CONATEL’s move to shut down stations in Monagas]; Agencia Venezolana de Noticias (AVN). July 26, 2012. *Cámara Venezolana de Radio respalda cierre de emisoras clandestinas* [Venezuelan Broadcasting Association supports the closing of clandestine broadcasting stations]; Cámara Venezolana de la Industria de la Radiodifusión (CVIR). July 16, 2012. *Enza Carbone, Pdta Cámara Venezolana de Radiodifusión* [Enza Carbone, President of the Venezuelan Broadcasting Association].

⁶⁵³ In communication from the State of Venezuela No. AGEV/ 000039 to the Executive Secretary of the IACHR, dated February 22, 2013, “Observations of the Venezuelan State to the IACHR Annual Report of 2012.” Specific observations to the section on “State respect and guarantee for the exercise of freedom of expression.” P. 23.

⁶⁵⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 180; IACHR. *Second Report on the Situation of Human Rights in Peru*, June 2, 2000, Chapter II, para. 1; IACHR. *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, para. 150.

⁶⁵⁵ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

⁶⁵⁶ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, para. 73; and *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Judgment of August 5, 2008, Series C No. 182, para. 55.

vital in overseeing the constitutionality of the actions taken by the other branches of government and in its role as the branch of government charged with administering justice.

468. The Commission has devoted particular attention to the administration of justice in Venezuela, particularly in its 2009 report on *Democracy and Human Rights in Venezuela*, the Follow-up Report on its 2003 report on Venezuela, the reports included under Chapter IV of its Annual Reports, the hearings held during its sessions, and the cases submitted to the Inter-American Court.⁶⁵⁷ Through these mechanisms the Commission has expressed its concern over issues affecting the independence and impartiality of the judicial branch, particularly the high percentage of judges and prosecutors who are provisional appointees and the failure to comply with some legal and constitutional procedures when appointing and removing judges and prosecutors. The Commission has also received reports on the executive branch's alleged interference in court rulings.

469. In April 2012, the IACHR became aware of statements made by⁶⁵⁸ the former president of the Criminal Cassation Chamber of the Supreme Court of Justice, Eladio Aponte Aponte,⁶⁵⁹ in which he referred to the workings of the judicial branch in Venezuela and said that while he had served in the judiciary he would receive instructions from senior government officials on decisions in cases under his cognizance.⁶⁶⁰

470. On April 24, 2012, the National Assembly adopted a "decision on redress for the dignity of the Venezuelan people for the nefarious remarks made by the erstwhile judge."⁶⁶¹ For his part, the Prosecutor General, Luisa Ortega Díaz, announced that the Public Prosecution Service would not open an investigation into the irregularities described by Mr. Aponte as it was a charge made in the media and an investigation could not be opened "because of sensational facts publicly reported in the media."⁶⁶²

⁶⁵⁷ 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; *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C. No. 197, and *Case Chocrón Chocrón v. Venezuela*. Judgment of July 1, 2011. Series C. No. 227.

⁶⁵⁸ The interview was granted to a foreign television network and broadcast by *Globovisión* on April 18, 2012.

⁶⁵⁹ On April 11, 2011, Rafael Rodríguez Mudarra, President of the Democratic Republican Union party, lodged a complaint with the Republican Morality Council against former judge Eladio Aponte Aponte, claiming that he had acted against "public ethics and administrative morality" by allegedly issuing a "credential" that accredited Walid Makled as a "commissioner" of the court offices under his direction. Walid Makled is on trial in Venezuela for drug trafficking after being extradited to that country from Colombia. In a decision dated March 7, 2012, the Republican Morality Council decided that Mr. Aponte Aponte had committed a serious fault and requested the National Assembly to dismiss him from his judgeship. In keeping with the proceeding envisaged for dealing with that request, the representatives of the Republican Morality Council, Mr. Aponte, and his defense counsel were to appear before the National Assembly. However, in statements to the media on March 14, 2012, Mr. Aponte's defense counsel announced that the former judge would not appear before the Assembly because he had applied to the judiciary for retirement. On March 20, 2012, the National Assembly approved the request of the Republican Morality Council and decided to remove Mr. J Subsequently, it came to light that Mr. Aponte had left Venezuela. See: Bolivarian Republic of Venezuela. Citizen Power. Republican Morality Council, Decision of March 7, 2012. Available at: www.asambleanacional.gob.ve; *El Universal*, "Consejo Moral solicita a la AN destituir al Magistrado Aponte Aponte [Morality Council asks AN to remove Judge Aponte Aponte], March 7, 2012. Available at: <http://www.eluniversal.com/nacional-y-politica/120307/consejo-moral-solicita-a-la-an-destituir-al-magistrado-aponte-aponte>; *El Universal*, "Magistrado Aponte no comparecerá ante la Asamblea Nacional [Judge Aponte will not appear before the National Assembly]." March 14, 2012. Available at: <http://www.eluniversal.com/nacional-y-politica/120314/magistrado-aponte-no-comparecera-ante-la-asamblea-nacional>; *El Universal*, "Asamblea Nacional aprueba remoción del Magistrado Aponte [National Assembly approves removal of Judge Aponte]." March 20, 2012 Available at: <http://www.eluniversal.com/nacional-y-politica/120320/asamblea-nacional-aprueba-remocion-del-magistrado-aponte>; *Notitarde*. "Ex magistrado Aponte Aponte salió a EEUU en avión de la DEA [Former judge Aponte Aponte leaves for USA on DEA plane]." April 17, 2012. Available at: <http://www.notitarde.com/Seccion/Ex-magistrado-Aponte-Aponte-sali%C3%B3-a-EEUU-en-avi%C3%B3n-de-la-DEA/2012/04/17/102086>

⁶⁶⁰ *Últimas Noticias*. "LEA: Las declaraciones completas de Eladio Aponte [READ: Eladio Aponte's statements in full]". April 19, 2012. Available at: <http://www.ultimasnoticias.com.ve/noticias/actualidad/politica/lea-las-declaraciones-completas-de-eladio-aponte.aspx>

⁶⁶¹ National Assembly. Decision of April 24, 2012. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=search_result&Itemid=185&lang=es

⁶⁶² *Agencia venezolana de noticias*. *Declaraciones de Aponte son insuficientes para iniciar investigación en Venezuela* [Aponte's statements insufficient to launch investigation in Venezuela]. April 26, 2012. Available at: <http://www.avn.info.ve/contenido/declaraciones-aponte-son-insuficientes-para-iniciar-investigaci%C3%B3n-venezuela>

471. The Inter-American Commission has held that the guarantees necessary to ensure correct and independent operation of the judicial branch include the mechanisms whereby judges are appointed, the tenure they enjoy in their positions, and their proper professional preparation. Another guarantee that the courts are autonomous from the other branches of government is that they are free from influence, threats or interference, whatever the source.⁶⁶³

472. As indicated in the Report on Democracy and Human Rights in Venezuela,⁶⁶⁴ the Commission learned that during 2011⁶⁶⁵ the appointment of provisional, temporary and interim judges continued and most of these appointments have been justified by establishing a permanent state of emergency. While the various resolutions appointing or transferring judges cite Articles 255 and 267⁶⁶⁶ of the Constitution of the Bolivarian Republic of Venezuela and the final part of Article 20 of the Organic Law of the Supreme Court of Justice, appointments are being made based on "...the urgent need to cover vacancies arising in the nation's various courts, in order to prevent the paralysis of judicial proceedings and after an examination of the candidates' relevant credentials..."

473. As the Commission previously observed, the failure to follow the procedures prescribed in the Constitution and the law for judicial appointments and the vacuum in the law as regards the categories of judges exposes these officials to possible undue pressure in the exercise of the important function they perform and thus pose a serious threat to the independence of Venezuela's judiciary.⁶⁶⁷ The Commission has also identified another issue that undermines judicial independence: the mechanism whereby judges' appointments can be revoked. A significant number of judges have been removed from the bench by that method, which means that the terms of the Constitution and the corresponding administrative proceedings have not been observed.⁶⁶⁸

474. The Inter-American Court has held that the condition *sine qua non* for the independence of the judiciary is, in addition to the appointment process, the tenure of judges in their seats on the bench.⁶⁶⁹ In this regard, the United Nations Basic Principles on the Independence of the Judiciary stipulate that "the term of office of judges [...] shall be adequately secured by law" (Principle 11) and that "judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists" (Principle 12).

475. As far back as 2009, in its report on *Democracy and Human Rights in Venezuela*, the IACHR observed that along with the guarantees of stability, a regime must be established for determining the responsibility of judges and prosecutors for those cases in which, by means of fair and correct

⁶⁶³ IACHR. *Report on Terrorism and Human Rights*. October 22, 2002, para. 229.

⁶⁶⁴ See IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, paras. 202-205.

⁶⁶⁵ See http://www.tsj.gov.ve/designaciones/designaciones_lista.asp?ano=2011&mes=1.

⁶⁶⁶ Article 267 of the Constitution of the Bolivarian Republic of Venezuela reads as follows: "The Supreme Court shall direct, govern and administer the Judicial Branch, inspect and monitor and courts of the Republic and the Public Defenders Offices. It shall also prepare and execute its own budget and the budget of the Judicial Branch.

Discipline within the judicial system shall be the responsibility of the disciplinary tribunals that the law determines.

The disciplinary system for magistrates and judges will be based on the Code of Ethics for the Venezuelan Judge, which the National Assembly shall enact. Disciplinary proceedings shall be public, oral and swift, in keeping with due process, and under the terms and conditions that the law establishes.

To discharge these functions, the Supreme Court *en banc* shall create an Executive Directorate of the Judiciary, with regional offices."

⁶⁶⁷ IACHR, *Annual Report 2007*. Chapter IV. Venezuela, paragraph 281; *Annual Report 2008*. Chapter IV. Venezuela, paragraph 393.

⁶⁶⁸ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 269.

⁶⁶⁹ I/A Court H.R. *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75; *Case of Apitz Barbera et al. v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 138.

proceedings, their poor performance can be determined.⁶⁷⁰ Here, the Commission recalls that in June 2009, the Code of Ethics for Venezuelan Judges was approved. This Code provided that the organs with disciplinary competence over judges would be the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court.⁶⁷¹ Nonetheless, the Commission reiterates its concern regarding the amendment of Article 61 of the Code of Ethics on August 23, 2010, providing that “[d]uring the investigation, and if deemed advisable for purposes of the investigation, the Judiciary Disciplinary Tribunal may order, on a precautionary basis, a judge’s provisional removal from the bench [...]”⁶⁷² As it indicated in Chapter IV of its 2010 Annual Report, the Commission considers that the possibility of removing a judge based on “advisability” as determined by the Judicial Disciplinary Tribunal could raise the issue of potential abuse of discretion and engender legal insecurity regarding the decisions adopted by this Tribunal.⁶⁷³

476. The Commission has done a detailed analysis of the type of judges on the bench in 2012, based on the information available at the online portal of the Supreme Court of Justice of Venezuela (TSJ).⁶⁷⁴ However, the Supreme Court’s website did not provide that information in the case of 78 courts.⁶⁷⁵ So the Commission’s figures are based only on the information made available. It found that of a total of 2002 courts, with 2,950 judges, only 775 are tenured judges; the others are temporary,

⁶⁷⁰ IACHR. *Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 239.

⁶⁷¹ IACHR. *Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 242.

⁶⁷² In the Observations of the Venezuelan State to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013, the State reported that the judges of the Judiciary Disciplinary Tribunal were appointed by the National Assembly and it is this jurisdiction that will be responsible for ensuring the disciplinary regime within the Venezuelan justice system.

⁶⁷³ IACHR. *2010 Annual Report*. Chapter IV. Venezuela, para. 626.

⁶⁷⁴ Supreme Court of Justice of Venezuela. At: <http://www.tsj.gov.ve/>

⁶⁷⁵ The courts for which that information was not reported were the following: in Anzoátegui, the First Superior Transitory Labor Court, the First, Second, and Third Labor Courts of First Instance for Trial, Mediation and Enforcement under the Transitory Procedural Regime, and the First Labor Trial Court under the Transitory Procedural Regime; in Apure, the Second Criminal Court of First Instance for Enforcement of Judgments, the Second Labor Trial Court of First Instance, the Second Court of Achaguas Municipality; in Aragua, the First Labor Superior Court under the Transitory Procedural Regime, the First Labor Trial Court of First Instance; in Barinas, the First Juvenile Protection Court and the Second Juvenile Protection Court; in Bolívar, the First Superior Civil, Commercial, Traffic, Juvenile Protection and Contentious-Administrative Law Court, with its seat in Puerto Ordaz; in Carabobo, the Sixth Court of First Instance with Oversight Functions, the Fourth Juvenile Protection Court of First Instance for Mediation and Trial. Valencia Extension, the Fifth Juvenile Protection Court of First Instance for Mediation and Trial. Valencia Extension; in the metropolitan Caracas area, the Fourth Superior Civil, Commercial, and Traffic Court, the Second Superior Transition Court in Civil and Contentious-Administrative Law, Third Superior Transition Court in Civil and Contentious-Administrative Law, First Superior Labor Court under the Transitory Procedural Regime, Second Superior Labor Court under the Transitory Procedural Regime, Third Superior Labor Court under the Transitory Procedural Regime, Fourth Superior Labor Court under the Transitory Procedural Regime, Fifth Juvenile Protection Trial Court, Second, Fourth and Fifth Labor Trial Courts under the Transitory Procedural Regime, Third Superior Labor Court under the Transitory Procedural Regime, Sixth, Seventh, Eighth, Ninth, Tenth and Twentieth Labor Courts of First Instance under the Transitory Procedural Regime, Fourth, Fifth, Seventh, Eleventh, Twelfth, Thirteenth, Fourteenth, Sixteenth, and Nineteenth Courts of First Instance for Trial, Mediation and Enforcement under the Transitory Procedural Regime; in Falcón, the First Criminal Court of First Instance with Oversight Functions under the Organic Child and Adolescent Protection Law (LOPNA), the Second Criminal Court of First Instance with Oversight Functions under the Organic Child and Adolescent Protection Law (LOPNA), the First Criminal Court of First Instance with Oversight Functions under the Organic Child and Adolescent Protection Law (LOPNA); in Guárico, the First Traffic and Labor Court of First Instance. San Juan de Los Morros Extension and the First Juvenile Protection Mediation and Trial Court of First Instance; in Lara, the First Court of First Instance Acting as Trial Court, the First Court of First Instance for Enforcement, and the Juvenile Protection Court. Torres Municipality; in Mérida, the Third Trial Court of First Instance under the new Regime and the Transitory Procedural Regime, Juvenile Protection Court El Vigía Extension, Fourth Trial Court of First Instance under the new Regime and the Transitory Procedural Regime, Third Labor Court of First Instance for Trial, Mediation and Enforcement under the new Regime and the Transitory Procedural Regime, El Vigía Extension, and the Third Court for Enforcement of Measures of the municipalities of Alberto Adriani, Andrés Bellow, Obispo Ramos de Lora and Caracciolo Parra Olmedo; in Miranda, the First, Second and Third Labor Courts of First Instance for Trial, Mediation and Enforcement and the Second Labor Trial Court of First Instance; in Monagas, the First Labor Court for Trial, Mediation and Enforcement under the Transitory Regime; in Nueva Esparta, the First Labor, Traffic, and Agrarian Court of First Instance, Juvenile Protection Court of First Instance, the First, Second and Third Juvenile Protection Courts of First Instance under the Transitory Procedural Regime; and in Zulia, the Superior Traffic and Labor Court, the Fifth, Sixth and Seventh Labor Courts of First Instance for Trial, Mediation and Enforcement under the Transitory Procedural Regime, the Third Labor Court of First Instance, the First Labor Trial Court under the Transitory Procedural Regime, and the First, Second and Third Labor Courts of First Instance for Trial, Mediation and Enforcement under the Transitory Procedural Regime.

interim, or special alternates; the largest number are provisional judges most of whom are serving on the criminal bench. In this regard, the State has indicated that 43% of Venezuelan judges are tenured judges, which means that they have passed the school of judges program and their competitive examinations, and thus enjoy job stability. It also indicated that the remaining judges are provisional, alternate, and temporary judges.⁶⁷⁶

477. As for the prosecutors with the Public Prosecutor's Office, who are freely appointed and removed, the Commission has consistently pointed out that the provisional status of prosecutors and their resulting lack of job stability could translate into a lack of resolutions and a failure to follow-through and pursue certain lines of investigation in criminal inquiries and to meet deadlines in the investigative phase.⁶⁷⁷ The Commission believes that the provisional status of judges and prosecutors in Venezuela could have negative consequences for victims' rights in criminal proceedings involving human rights violations.⁶⁷⁸

478. In 2012, the Commission continued to receive information on provisional appointments of prosecutors. Many provisional prosecutors were appointed in the period from October 10, 2011 to March 14, 2012.⁶⁷⁹ In 2012, the decisions through which the Public Prosecutor's Office appointed various persons as prosecutors were published in the Official Gazette of the Bolivarian Republic of Venezuela; however, the notices did not explain the reasons for the appointments.⁶⁸⁰

479. In addition to the importance of appropriate mechanisms for appointing judges, the right to an independent judiciary requires that the same principles or mechanisms apply to the appointment of prosecutors. Thus, the Commission has underscored the importance of a correctly implemented prosecutorial career service given the essential role that the Public Prosecutor's Office plays in conducting criminal investigations, which means that the independence, impartiality, and suitability of prosecutors must be ensured so as to guarantee that investigations are effective and that the risk of impunity is eliminated, particularly in cases of human rights violations.⁶⁸¹

480. The Commission recalls that among the protections afforded under Article 8 of the American Convention (right to a fair trial) are certain requirements that must be observed to guarantee the independence of the officers of the court. In keeping with the jurisprudence of the European Court⁶⁸² and the United Nations Basic Principles on the Independence of the Judiciary,⁶⁸³ the Inter-American Court

⁶⁷⁶ The State indicated that with respect to the appointment process for judges and prosecutors, the Constitution establishes that they "must be appointed through competitive examinations, which have been gradually conducted, although in recent years they have been affected by political situations, due to the destabilization process attempted by the opposition coup parties, halted during the years 2002, 2003, 2004." Observations of the Venezuelan State to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

⁶⁷⁷ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 265.

⁶⁷⁸ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 265, and IACHR. *2006 Annual Report*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 167.

⁶⁷⁹ Information received during the 144th regular session, March 2012.

⁶⁸⁰ See, *inter alia*: Official Gazette of the Bolivarian Republic of Venezuela for January 10, 11, 12, 13 and 25, February 3, 6, 16 and 22, and March 9, 12, 13 and 14, 2012.

⁶⁸¹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 119; IACHR. *Access to Justice and Social Inclusion; the Road towards Strengthening Democracy in Bolivia*. June 28, 2007, para. 96.

⁶⁸² Cf. European Court of Human Rights (ECHR). *Case of Campbell and Fell v. United Kingdom*, Judgment of June 28, 1984, Series A No. 80, para. 78; ECHR. *Case of Langborger v. Sweden*, Judgment of January 22, 1989, Series A No. 155, para. 32.

⁶⁸³ United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

has held that States are required to ensure an adequate appointment process,⁶⁸⁴ freedom from outside pressure,⁶⁸⁵ and tenure in positions.⁶⁸⁶

481. Based on these guarantees, the Commission observes that the stability of the officers of the court is one of the essential guarantees of due process of law protected under the American Convention. Thus, in accordance with the United Nations Basic Principles on the Independence of the Judiciary, all procedures for the adoption of disciplinary measures, suspension or removal shall be determined in accordance with established standards of judicial conduct.⁶⁸⁷

482. In 2011, the IACHR underscored the State's acknowledgement on the occasion of the Universal Periodic Review to the effect that

We must continue to improve the promotion and protection of human rights through awareness-raising and training for the police, judges, prosecutors, and public defenders. We have therefore established or expanded the National School of Prosecutors, the National School of the Judiciary and the National Experimental University for Security Services, all of which include human rights as a cross-cutting theme in their curricula to ensure these rights are effectively realized.⁶⁸⁸

483. On December 7, 2011, the Working Group of the United Nations Human Rights Council published its report, which contained 97 recommendations to the Venezuelan State.⁶⁸⁹ In February 2012, the State submitted its observations and rejected 52 of the recommendations, including those on ensuring the independence of the judiciary in Venezuela.⁶⁹⁰

Removal and persecution of judges with political connotations

484. In its 2009 *Report on Democracy and Human Rights in Venezuela*, the Commission examined the situation of various judges who were removed from the bench after adopting decisions that affected the government's interests. Available public information indicated political interference in the decision to remove them.⁶⁹¹ In addition, the IACHR has given follow-up this situation in its annual reports.

485. In 2012, the Commission continued to receive information on the 31st Judge of the Court of Preliminary Proceedings of the Caracas Metropolitan Area, María Lourdes Afiuni Mora, who on December 10, 2009, decided to replace the detention measure against citizen Elegio Cedeño with a less

⁶⁸⁴ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para. 75.

⁶⁸⁵ Cf. I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75.

⁶⁸⁶ Cf. I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75.; *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Judgment of August 5, 2008. Series C No. 182, para. 138.

⁶⁸⁷ Cf. Principles 18 and 19 of the United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

⁶⁸⁸ Human Rights Council, Working Group on the Universal Periodic Review, Twelfth Session. National report submitted in accordance with paragraph 15 a) of the annex to resolution 5/1 of the Human Rights Council, A/HRC/WG.6/12/VEN/1, July 19, 2011, para. 144, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/150/04/PDF/G1115004.pdf?OpenElement>.

⁶⁸⁹ Human Rights Council, Working Group on the Universal Periodic Review, 19 Session, Bolivarian Republic of Venezuela. Report of the Working Group on the UPR, A/HRC/19/12, December 7, 2011.

⁶⁹⁰ Human Rights Council, Working Group on the Universal Periodic Review, 19 Session, Bolivarian Republic of Venezuela. Report of the Working Group on the UPR, A/HRC/19/12, December 7, 2011. Opinions about the conclusions and/or recommendations, voluntary commitments and responses submitted by the examined State. A/HRC/Add.1, February 16, 2012.

⁶⁹¹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 285–301.

onerous precautionary measure,⁶⁹² since by that time he had already been held in pre-trial detention for over two years (more than the maximum preventive detention of two years allowed under the Organic Code of Criminal Procedure).⁶⁹³ Judge Afiuni Mora based her decision on Opinion No. 10/2009 (Venezuela) of the UN Human Rights Council's Working Group on Arbitrary Detention, dated September 1, 2009. In that opinion, the Working Group on Arbitrary Detention declared that Mr. Cedeño's incarceration was arbitrary based on his extended period of preventive detention.

486. As the Commission observed in the *Report on Democracy and Human Rights in Venezuela* and as the United Nations Working Group on Arbitrary Detention pointed out in its opinion of September 3, 2010, Judge Afiuni was arrested along with bailiffs Rafael Rondón and Carlos Lotuffo at the offices of the court, minutes after issuing her decision. The arrests were made by agents with the Public Security Police Force, part of the Directorate of Intelligence and Prevention Services (DISIP, now called SEBIN). The arresting officers did not state the cause for the arrest and did not disclose what authority had ordered the arrest, nor did they show an arrest warrant.⁶⁹⁴ The following day, speaking in a national radio and television broadcast, the President of the Republic, Hugo Chávez, branded the judge a "bandit" and said the following: "I call for toughness against this judge, I even told the president of the Supreme Court [of Justice, Luisa Estela Morales], and I tell the National Assembly: a law must be passed because a judge who frees a bandit is much worse than the bandit himself. It is infinitely more serious than an assassination; therefore, we must apply the maximum penalty against this judge and against others who do this. I call for thirty years in prison in the name of the dignity of the country."⁶⁹⁵ On December 11, 2009, the day after her arrest, Judge Afiuni was advised of the arrest warrant, which noted the commission of irregularities that allowed Mr. Cedeño's release.⁶⁹⁶

487. At the IACHR's request and taking into account the threats against the judge, on December 10, 2010 the Inter-American Court of Human Rights ordered urgent measures. In his order, the President of the Inter-American Court called upon the Venezuelan State to: 1) adopt, immediately, the measures necessary to guarantee the life and physical, psychiatric, and moral integrity of Ms. María Lourdes Afiuni and that it inform the Court, by December 20, 2010, of the measures adopted; 2) adopt the measures necessary for Ms. Afiuni to be located in a place of detention that is adequate to her specific circumstances in light of the position she held as a criminal judge, particularly through granting full guarantees of security while not affecting her right to gain access to relatives and visitors, her attorneys, and the doctors who come examine her, under the terms of Considering clause 12; and, 3) In the event that Ms. Afiuni needs specialized medical attention and without prejudice to the care that can be provided by doctors who form part of State institutions, [...] to make the necessary provisions for Ms. Afiuni to be attended to by doctors of her choosing.

488. Since February 2011 Judge Afiuni has been under house arrest, where she was taken after undergoing emergency surgery.⁶⁹⁷ On March 2, 2011, the Inter-American Court decided to lift the urgent measures ordered. This was done after receiving information that the 26th Court of First Instance

⁶⁹² According to Opinion No. 20/2010 of September 3, 2010 of the United Nations Human Rights Council's Working Group on Arbitrary Detention, Judge Afiuni Mora ordered the conditional release on bail of Mr. Cedeño, in full exercise of her jurisdictional authority; in place of his preventive detention, she ordered less severe measures, among them prohibiting him from leaving the country, withholding his passport, and requiring him to make a court appearance every 15 days.

⁶⁹³ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 297.

⁶⁹⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 297; United Nations Human Rights Council's Working Group on Arbitrary Detention, Opinion No. 20/2010 (Bolivarian Republic of Venezuela) adopted on September 3, 2010 in the case of the detention of Judge María Lourdes Afiuni Mora in Venezuela, para. 7 (translation ours).

⁶⁹⁵ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 298.

⁶⁹⁶ United Nations Human Rights Council's Working Group on Arbitrary Detention, Opinion No. 20/2010 (Bolivarian Republic of Venezuela), adopted on September 3, 2010, in connection with the case of the detention of Judge María Lourdes Afiuni Mora in Venezuela, para. 9 (translation ours).

⁶⁹⁷ News article. *Globovisión*. Afiuni se apega al artículo 350 y se niega a ir a juicio [Afiuni invokes Article 350 and refuses to stand trial], July 6, 2011, available at: <http://historico.globovision.com/news.php?nid=194469>.

in and for Caracas considered accepting the recommendations and ordered Ms. Afiuni to be placed under house arrest, and that the operation that Judge Afiuni underwent was performed, among others, by a physician whom she trusted.⁶⁹⁸

489. As for the criminal proceeding against Judge Afiuni, according to information known to the public Judge Afiuni sought the protection of Article 350 of the Constitution, which provides that “the people of Venezuela, true to their republican tradition and their struggle for independence, peace and freedom, shall disown any regime, legislation, or authority that violates democratic values, principles, and guarantees or encroaches upon human rights” and decided not to participate in the trial being conducted against her.⁶⁹⁹ According to the information received, on December 13, 2011, Judge Paredes decided to extend Judge Afiuni’s house arrest by another two years.⁷⁰⁰

490. In March 2012, the judge's defense attorneys, José Amalio Graterol and Thelma Fernández, denounced to the media that they were receiving threats, allegedly from officials of the Public Prosecution Service and the judiciary. In his statements, Mr. Graterol claimed to have received a warning that “something evil was being cooked up against him at the Public Prosecution Service, such as the planting of drugs or firearms, in order to deprive him of his liberty and prevent the Afiuni case from moving forward.”⁷⁰¹

491. On June 4, 2012, Mr. Graterol was arrested at the seat of the Criminal Judicial Circuit of Vargas State where he was providing legal representation for a man accused in the Fourth Trial Court of that Circuit. The information available indicates that the lawyer had refused to hold a trial without his client present. According to statements from the Attorney General, Luisa Ortega Díaz, Mr. Graterol was arrested because “he sought to avoid the conviction” of his client and attempted to obstruct justice with “dilatatory tactics.”⁷⁰² Various national and international NGOs spoke out, condemning the incident and demanding Mr. Graterol’s release.⁷⁰³

492. On June 8, the Vargas First Court of Control decided to proceed against Mr. Graterol for the crime of “obstruction of justice” as recognized at Article 110 of the Judicial Branch Organizational Law. At the arraignment hearing, the Court granted him release on bail with instructions to appear every 15 days and prohibited him from leaving the country and talking to the media about cases in which he was involved in the State of Vargas.⁷⁰⁴ A release order was issued on June 12 and Mr. Graterol was

⁶⁹⁸ Order of the Inter-American Court of Human Rights of March 2, 2011. Provisional measures with respect to Venezuela. María Lourdes Afiuni, *consideranda* 8 and 9.

⁶⁹⁹ Press release. *Globovisión*. Afiuni adheres to Article 350 and refuses to attend trial, July 6, 2011, available at: <http://historico.globovision.com/news.php?nid=194469>.

⁷⁰⁰ Newspaper article. *El Universal*. Preocupa a la ONU extensión de la detención de la jueza Afiuni. [UN troubled by the extension of Judge Afiuni’s house arrest. December 28, 2011. Available [in Spanish] at: <http://www.eluniversal.com/nacional-y-politica/111228/preocupa-a-la-onu-extension-de-la-detencion-de-la-jueza-afiuni> and at <http://www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=11745&LangID=S> .

⁷⁰¹ *El Universal*. “Abogados de Afiuni denuncian plan para privarlos de libertad [Afiuni lawyers denounce plan to deprive them of liberty].” March 15, 2012, Available at: <http://www.eluniversal.com/nacional-y-politica/120315/abogados-de-afiuni-denuncian-plan-para-privarlos-de-libertad>. In the Observations of the Venezuelan State to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013, the State rejected the allegation stating that it represents a “telenovela script.”

⁷⁰² *El Universal*. “Ortega Díaz: Detención de Graterol es por obstaculizar la justicia [Ortega Díaz: Graterol arrested for obstructing justice].” June 7, 2012. Available at: <http://www.eluniversal.com/nacional-y-politica/120607/ortega-diaz-detencion-de-graterol-es-por-obstaculizar-la-justicia>

⁷⁰³ See statements by the Venezuelan Prisons Observatory, *Federación de Abogados*, *Federación Nacional de Abogados*, *Foro por la Vida*, International Jurists Commission, Human Rights Watch, Permanent Secretariat of the Latin American and Caribbean Democracy Network, Ibero-American Lawyers Federation, International Bar Association Human Rights Institute (IBAHRI), Inter-American Lawyers Federation, Lawyers for Lawyers (Dutch Foundation), and the Law School of Universidad Valle del Mombuy (UVM). Available at: <http://www.ucab.edu.ve/cddhh.html>

⁷⁰⁴ Universidad Católica Andrés Bello, Center for Human Rights. “Tribunal abre proceso judicial contra José Amalio Graterol [Court opens judicial proceeding against José Amalio Graterol].” Undated. Available at: Continues...

freed.⁷⁰⁵ On December 18, 2012, the Third Trial Judge of the Vargas Judicial Circuit sentenced Judge María Lourdes Afiuni's attorney, José Amalio Graterol, to six months in prison for the crime of "obstruction of justice."⁷⁰⁶

493. In addition, despite the fact that more than three years have passed since the pre-trial detention of Judge Afiuni was ordered, the judicial proceedings continue without a final decision adopted on her situation. In this connection, in August 2012, the United Nations Secretary-General, Ban Ki-moon, referred in the "Report on reprisals against persons who cooperate with the United Nations in the field of human rights" to the situation of Judge Afiuni. In particular, he expressed concern that "after two years of pre-trial detention, at the request of the Public Prosecution Service, Judge Afiuni was given another two years under house arrest."⁷⁰⁷

494. On September 16, 2012, it was learned that over 20 shots had been fired at the building in which Judge Afiuni is being held, presumably from a rifle.⁷⁰⁸ The property and specific premises where Judge Afiuni is being held did not sustain much in the way of damage, unlike the apartment one floor up, where a number of shots came through the window.⁷⁰⁹

495. With respect to the Judge Afiuni proceeding, the State reported that this involves a case of "prevarication" that has been delayed

because Dr. Afiuni has for two years refused to appear at the hearings and, until the reform of the Organic Code of Criminal Procedure of July 15, 2012, our criminal procedure system prohibited the conduct of a public hearing without the presence of the person being charged. With the new reform, the hearing can be conducted with the presence of the defense for the person being charged, so that this case can now move forward.⁷¹⁰

496. The Commission reiterates that the case of Judge Afiuni sends a strong signal to Venezuelan society and to the remaining judges that the judicial branch is not free to adopt decisions contrary to the interests of the government,⁷¹¹ since by doing so they run the risk of being removed from their positions, prosecuted and being subjected to sanctions.

...continuation

http://www.ucab.edu.ve/tl_files/CDH/Lineamaticas/Tribunal%20abre%20proceso%20judicial%20contra%20Jose%20Amalio%20Graterol.pdf

⁷⁰⁵ *El Universal*, "Juez libera al abogado José Amalio Graterol, tras presentar fianza [Judge frees lawyer José Amalio Graterol after posting bail]." June 12, 2012. Available at: <http://www.eluniversal.com/nacional-y-politica/120612/juez-libera-al-abogado-jose-amalio-graterol-tras-presentar-fianza>

⁷⁰⁶ A number of media outlets reported the matter. For example: *El Universal*. "Condena contra Graterol criminaliza el derecho [Graterol's conviction makes law a crime]." December 20, 2012. Available at: <http://www.eluniversal.com/nacional-y-politica/121220/condena-contra-graterol-criminaliza-el-derecho>; *Analítica.com*. "Seis meses de cárcel para abogado José Amalio Graterol [Attorney José Amalio Graterol gets six months in prison]." December 19, 2012. Available at: <http://www.analitica.com/va/sintesis/nacionales/4411437.asp>; *Informe21.com*. "Abogado de Afiuni condenado por "obstruir la justicia [Afiuni's attorney convicted of "obstruction of justice]." December 19, 2012. Available at: <http://informe21.com/jose-amalio-graterol/abogado-de-afiuni-condenado-por-obstruir-la-justicia>.

⁷⁰⁷ Office of the High Commissioner on Human Rights. *UN experts alarmed at continued detention of Venezuelan Judge Afiuni*, December 27, 2011. In: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11745&LangID=E

⁷⁰⁸ In its Observations to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013, the State reported that those allegations would be "another chapter in the telenovela they've staged in this case."

⁷⁰⁹ *Ultimas Noticias.com* *Disparan a la Residencia de la Juez María Afiuni* [Shots fired at residence of Judge María Afiuni]0. At: <http://www.ultimasnoticias.com.ve/noticias/actualidad/sucesos/la-foto--el-disparo-en-la-casa-de-afiuni.aspx>

⁷¹⁰ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

⁷¹¹ IACHR. *Report on Democracy and Human Rights in Venezuela, December 30, 2009*, Chapter III, para. 301.

Situation of the alleged political prisoners

497. In its follow-up of the situation of the alleged political prisoners, that are purportedly persons known for their personal criticisms or who have served in government where they have taken measures not to the liking of the Executive Branch,⁷¹² the IACHR received information to the effect that in Venezuela imprisonment for political reasons would remain a repressive tool of the State. In addition, alleged political prisoners tend to be labeled, even on nationwide presidential broadcasts, as “criminals”, “murderers”, “corrupt” or “terrorists” and, therefore, the treatment they have received at the hands of the authorities is discriminatory treatment in the eyes of the law. The reports indicate that following protests, strikes and petitions underpinned by international pressure, political prisoners are set free on conditional release or paroled; they continue to face criminal prosecution, which affects the work that many such prisoners do in the social organizations of which they are members.⁷¹³

498. La Foundation for Due Process (*Fundación para el Debido Proceso-Fundepro*) has reported that “there have been 173 prisoners for political reasons in Venezuela in the past 13 years, 14 of which remain behind bars [⁷¹⁴], however, there is a significant number with alternative measures [...] and that seems to dilute the number of political prisoners”⁷¹⁵.

499. The information suggests that the detentions of alleged political prisoners are arbitrary, effected without any arrest warrant signed by a judge and that the majority of such prisoners are victims of the same human rights violations, such as: violations of the right to personal liberty and security, the right to humane treatment, the right to access to an independent and impartial court and to be brought before a court without delay, the right to equal protection, the right to an impartial and objective prosecutor; the right to be informed of the reasons for one’s arrest, and the right to an effective defense.⁷¹⁶ It has also been reported that a particular group of magistrates and prosecutors has been identified who repeatedly participate in the cases brought against these alleged political prisoners. One of these is, for example, Magistrate Eladio Ramón Aponte Aponte⁷¹⁷.

500. In this regard, the State has indicated that “there were some political prisoners, but political prisoners are understood as those who are detained for an extended period of time without a trial. That does not happen in this country.” Regarding the alleged existence of political exiles, the State responded that they do not exist in Venezuela but there are some politicians accused of corruption in the courts who “decided to flee the country, to seek political asylum in other countries, and have been accepted by some governments.”⁷¹⁸

⁷¹² During the 141st session, the IACHR received information on the situation of the alleged political prisoners in Venezuela. There, it was reported that the authorities in the three branches of government, particularly the Judicial Branch, “have become even more blatantly disrespectful of domestic laws and of international covenants and treaties.” The Commission was told that there have been some prominent cases of.

⁷¹³ The *Fundación para el Debido Proceso A.C.* (Fundepro) [Foundation for Due Process A. C.] contends that there have been 172 political prisoners in the last 13 years; of these, 14 are currently deprived of their liberty, as in the case of former judge María Lourdes Afiuni Mora. Fundepro. *Presos Políticos Venezolanos* [Venezuelan political prisoners], July 2012.

⁷¹⁴ According to the list submitted by Fundepro, the alleged political prisoners that remain “in prison” (to July 2012) would be: 1) Erasmo Bolívar, 2) Luis Molina Cerrada, 3) Arube Pérez Salazar, 4) Marcos Hurtado, 5) Héctor Rovain, 6) Iván Simonovis, 7) Juan Bautista Guevara, 8) Otoniel José Guevara Pérez, 9) Rolando Jesús Guevara Pérez, 10) Antonio Márquez, 11) César Ramón Medina, and 12) César Carnejo Blanco. In addition the list identifies two persons in “house arrest” which are: Mario Ricardo Dickson Gutiérrez and María Lourdes Afiuni.

⁷¹⁵ Fundepro. *Presos Políticos Venezolanos*, July, 2012.

⁷¹⁶ Fundepro. *Presos Políticos Venezolanos* [Venezuelan political prisoners], July 2012.

⁷¹⁷ Fundepro. *Magistrados, jueces y fiscales en casos de presos políticos* [Magistrates, judges and prosecutors in cases involving political prisoners].

⁷¹⁸ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

Reform of the Organic Code of Criminal Procedure

501. Amendments to the Venezuelan Code of Criminal Procedure were adopted in 2012. The reform was enacted by Executive Decree 9.042 with the rank, value, and force of law, based on the “Law Authorizing the President of the Republic to the Issue Decrees with the Rank, Value, and Force of Law on Delegated Matters,” published in Special Official Gazette of the Bolivarian Republic of Venezuela No. 6.009 of December 17, 2010, known as the “Enabling Law.”⁷¹⁹ In a decision of June 15, 2012, the Constitutional Chamber of the Supreme Court of Justice ruled that the “organizational aspect” of the Decree was constitutional. The decision was published in Special Official Gazette No. 6.078, of June 15, 2012.⁷²⁰

502. A number of organizations have complained that the amendments introduce significant changes with respect to the due process guarantees under the code of criminal procedure. For example, the victim’s right to a hearing by the court before the latter delivers any decision that either closes the case or conditionally suspends it is eliminated.⁷²¹ They indicated that even though the victims’ right to be informed of the progress of the proceedings and the outcome is recognized, it must be at the victim’s request; the Judiciary is not required to inform a victim automatically, which limits the right of access to justice.⁷²² Likewise, victims may no longer assign a human rights organization to represent their rights; instead, such right of representation may only be assigned to the Ombudsperson’s Office or the Public Prosecutor’s Office,⁷²³ thereby limiting the role that nongovernmental organizations play in representing victims’ interests.⁷²⁴ This new Code has also eliminated any possibility that organizations might file complaints accusing State agents of human rights violations.⁷²⁵

⁷¹⁹ During the 141st regular session of the IACHR, in a hearing on the Enabling Law and human rights in Venezuela, the Commission received information about the promulgation of this law. In its 2011 report, the IACHR considered the Enabling Law to be an example of the structural situations that it has identified in Venezuela that concern changes in the law which create legal and administrative restrictions that affect the exercise and enjoyment of human rights in Venezuela. See: IACHR, Annual Report 2011, Chapter IV on Venezuela, par. 396.

⁷²⁰ TSJ, Constitutional Chamber, Judgment No. 795 of June 15, 2012. Available at: <http://www.tsj.gov.ve/decisiones/scon/Junio/795-15612-2012-12-0700.html>

⁷²¹ Information received during the hearing on the general human rights situation in Venezuela, held during the Commission’s 146th Session at the request of *Acción Solidaria* (ACSOL), the Human Rights Office of the Archdiocese of Caracas, *Comité de Familiares Víctimas de los sucesos de febrero y marzo de 1989* [Committee of Family Members of the Victims of the Events that occurred between February 27 and the first days of March 1989] (COFAVIC). See also, the July 19, 2012 statement of the Justice and Peace Support Network. At: http://www.redapoyo.org.ve/index.php?option=com_content&task=view&id=564&Itemid=6, Universidad Católica Andrés Bello (UCAB). Center for Human Rights. *Impacto del nuevo código orgánico procesal penal en derechos de procesados y privados de libertad* [The impact of the New Organic Code of Criminal Procedure on the rights of those on trial and incarcerated]. Study prepared by Ligia Bolívar, Caracas, June 2012.

⁷²² Information received at the hearing on the general situation of human rights in Venezuela, which the IACHR held during its 146th session of *Acción Solidaria* (ACSOL), the Human Rights Office of the Archdiocese of Caracas, *Comité de Familiares Víctimas de los sucesos de febrero y marzo de 1989* [Committee of Family Members of the Victims of the Events that occurred between February 27 and the first days of March 1989] (COFAVIC). See also July 18, 2012 statement by the *Red de Apoyo por la Justicia y La Paz*. At: http://www.redapoyo.org.ve/index.php?option=com_content&task=view&id=564&Itemid=6, Universidad Católica Andrés Bello (UCAB). Center for Human Rights. *Impacto del nuevo código orgánico procesal penal en derechos de procesados y privados de libertad* [The impact of the New Organic Code of Criminal Procedure on the rights of those on trial and incarcerated]. Study prepared by Ligia Bolívar, Caracas, June 2012.

⁷²³ 2012 COPP. Art. 122 paragraph 3.

⁷²⁴ Information received at the hearing on the general situation of human rights in Venezuela, which the IACHR held during its 146th session, at the request of *Acción Solidaria* (ACSOL), the Human Rights Office of the Archdiocese of Caracas, *Comité de Familiares Víctimas de los sucesos de febrero y marzo de 1989* [Committee of Family Members of the Victims of the Events that occurred between February 27 and the first days of March 1989] (COFAVIC). See also July 18, 2012 statement by the *Red de Apoyo por la Justicia y La Paz*. At: http://www.redapoyo.org.ve/index.php?option=com_content&task=view&id=564&Itemid=6, Universidad Católica Andrés Bello (UCAB). Center for Human Rights. *Impacto del nuevo código orgánico procesal penal en derechos de procesados y privados de libertad* [The impact of the New Organic Code of Criminal Procedure on the rights of those on trial and incarcerated]. Study prepared by Ligia Bolívar, Caracas, June 2012.

⁷²⁵ 2012 COPP. Art. 123. Information received at the hearing on the general situation of human rights in Venezuela, which the IACHR held during its 146th session, at the request of *Acción Solidaria* (ACSOL), the Human Rights Office of the Archdiocese
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503. Furthermore, the new Organic Code of Criminal Procedure has limited the rights of the accused, as they no longer have any opportunity of contacting a legal aid society to report their detention and denounce violations of their human rights. The right not to be tried *in absentia* has also been eliminated.⁷²⁶ This could put persons deprived of their liberty in an even worse predicament, since their appearance in court, accompanied by defense counsel, is no longer a condition precedent for trial, since the State can now proceed to try them *in absentia* with the defense counsel that the State assigns.⁷²⁷

504. In this regard, in its observations regarding the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012, the State indicated that under the new Code the absence of the accused will not be an obstacle suspending the trial as happened under the old Code, since defense counsel can now represent the accused and guarantee due process. It added that the new COPP effectively ensures citizens' right to a defense and will in the short term eliminate procedural delays, helping to relieve overcrowding in the prisons.

505. Furthermore, the new Organic Code of Criminal Procedure is said to add still more exceptions to the principle requiring that criminal proceedings be public in nature. One of the new exceptions that would allow the court to close the proceedings to the public is "[a]ny other circumstance that, in the judge's opinion, might be disruptive to the normal course of the trial proceedings."⁷²⁸ This exception could lead to a violation of Article 8(5) of the American Convention. The new Organic Code of Criminal Procedure would eliminate jurors in criminal trials and allow courts to order the definitive confiscation of the property of the person standing trial, even in the absence of a conviction,⁷²⁹ which in practice could be a violation of the principle of presumption of innocence recognized in Article 8(2) of the American Convention.⁷³⁰

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of Caracas, *Comate de Familiares Victims de los sucesos de fearer y matzo de 1989* [Committee of Family Members of the Victims of the Events that occurred between February 27 and the first days of March 1989] (COFAVIC). See also July 18, 2012 statement by the *Red de Apoyo por la Justicia y La Paz*. At: http://www.redapoyo.org.ve/index.php?option=com_content&task=view&id=564&Itemid=6, see Center for Human Rights. *Impacto del nuevo código orgánico procesal penal en derechos de procesados y privados de libertad* [The impact of the New Organic Code of Criminal Procedure on the rights of those on trial and incarcerated]. Study prepared by Ligia Bolívar, Caracas, June 2012.

⁷²⁶ 2012 COPP. Art. 127. Eliminates Article 123, paragraph 12 of the 2009 COPP.

⁷²⁷ In its July 18, 2012 statement, the *Red de Apoyo por la Justicia y la Paz* complained that the amendment was regressive and antithetical to the principle of the progressive nature of human rights, recognized in the Venezuelan Constitution. In July, a group of deputies in the National Assembly filed a petition with the Supreme Court seeking nullification of the amendment. See at: http://www.redapoyo.org.ve/index.php?option=com_content&task=view&id=564&Itemid=6. *El Nacional*. "Piden por tercera vez nulidad del COPP [For the third time, nullification of the COPP sought]". July 20, 2012. Available at: <http://www.el-nacional.com/noticia/43469/16/piden-por-tercera-vez-nulidad-del-copp.html>

⁷²⁸ 2012 COPP. Art. 316, paragraph 5. Cf. UCAB, Center for Human Rights. *Impacto del nuevo código orgánico procesal penal en derechos de procesados y privados de libertad* [The impact of the New Organic Code of Criminal Procedure on the rights of those on trial and incarcerated]. Study prepared by Ligia Bolívar, Caracas, June 2012

⁷²⁹ 2012 COPP. Art. 111, paragraph 18. Cf. UCAB, Center for Human Rights. *Impacto del nuevo código orgánico procesal penal en derechos de procesados y privados de libertad* [The impact of the New Organic Code of Criminal Procedure on the rights of those on trial and incarcerated]. Study prepared by Ligia Bolívar, Caracas, June 2012

⁷³⁰ Furthermore, the Center for Human Rights of the Universidad Andrés Bello (UCAB) has observed that the new Organic Code of Criminal Procedure

represents significant setbacks vis-à-vis the precedence of the civil courts over the military courts, as evident in Article 381, which now includes members of the Military High Command among the high-ranking officials listed therein in connection with the special proceeding to try high-ranking officials and in the article pertaining to the applicable procedure. On this second point, the previous COPP provided that in the military criminal jurisdiction, the rules of procedure in the ordinary court system would be a secondary source of law; Article 517 of the new Organic Code of Criminal Procedure provides that "military criminal jurisdiction shall be governed by the provisions established in its special laws and the provisions of this Code, where applicable.

With respect to persons deprived of liberty, the UCAB also observes that:

Article 374 of the new COPP provides that the decision that orders the defendant's release is to be enforced immediately. However, unlike the previous COPP, the new COPP lists exceptions based on the type of crime and not the length of sentence. In some cases, reference is made to crimes that cause "severe harm" or claim

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506. The State indicated that the COPP was reformed because the old Code was not adapted to the current Constitution of the Bolivarian Republic of Venezuela, and this produced lengthy procedural delays. Regarding the “lay judges,” it maintained that “they caused delays in the criminal proceedings. This model failed because those who were selected always made excuses and did not appear at trial.” The State indicated that since the reform, the Supreme Court of Justice is responsible for forming the municipal courts of first instance that will have oversight functions with jurisdiction over less serious crimes and an expedited procedure depending on the gravity of the case.⁷³¹

507. The 2012 COPP gives the courts more time in which to grant or deny sentences that are non-custodial alternatives to incarceration in the case of those already sentenced, and stiffens the preconditions that must be met to grant a non-custodial alternative to imprisonment.⁷³²

508. Here the Commission is reminded of an observation first made in its 2009 Report:⁷³³ in Venezuela, both the constitutional provision and the delegating law have failed to set the limits necessary to serve as a real check on the executive branch’s legislative authority and there is no mechanism to enable a genuine system of checks and balances to operate among the three branches of government and thereby ensure that human rights are respected and enforced. By permitting delegations of overly-broad legislative authority, which may even include criminal matters, the principle of legality that must be observed in order to impose any limitations on human rights, is weakened.⁷³⁴

509. Finally, the IACHR recalls that in Advisory Opinion OC-6/86, the Inter-American Court of Human Rights wrote that

the word “laws” would not make sense without reference to the concept that such rights cannot be restricted at the sole discretion of governmental authorities. To affirm otherwise would be to recognize in those who govern virtually absolute power over their subjects. On the other hand, the word “laws” acquires all of its logical and historical meaning if it is regarded as a requirement of the necessary restriction of governmental interference in the area of individual rights and freedoms. The Court concludes that the word “laws,” used in Article 30, can have no other meaning than that

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“multiple victims”, which could lead to a reinterpretation of the crime and the penalty for it. This is not a matter that the COPP should address; its proper place is the Criminal Code. The President, therefore, legislated on crimes, in violation of the principle of the nondelegation of legislative powers.

Furthermore, the same article gives the Public Prosecutor’s Office the authority to file an oral appeal in the course of the very hearing in which the decision ordering the defendant’s release is handed down, and eliminates the clause under which the Appellate Court decides an appeal (and not an oral appeal) within 48 hours, after hearing defense counsel’s arguments. The new COPP does not set any deadline by which the Appellate Court must deliver its decision, and contains no clause stipulating that the Appellate Court must hear the defense counsel’s arguments. Summarizing, a person may remain in custody, even after a decision has been handed down ordering his release, if the Public Prosecutor’s office enters an oral appeal. Under the new COPP, the accused loses his right to be heard by an appellate court; the latter is no longer up against a fixed deadline for issuing its decision.

UCAB, Center for Human Rights. *Impacto del nuevo código orgánico procesal penal en derechos de procesados y privados de libertad* [The impact of the New Organic Code of Criminal Procedure on the rights of those on trial and incarcerated]. Study prepared by Ligia Bolívar, Caracas, June 2012.

⁷³¹ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

⁷³² Compare, for example, Article 488 of the 2012 COPP and Article 500 of the 2009 COPP. Cf. UCAB, Center for Human Rights. *Impacto del nuevo código orgánico procesal penal en derechos de procesados y privados de libertad* [The impact of the New Organic Code of Criminal Procedure on the rights of those on trial and incarcerated]. Study prepared by Ligia Bolívar, Caracas, June 2012.

⁷³³ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, para. 331.

⁷³⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, para. 331.

of formal law, that is, a legal norm passed by the legislature and promulgated by the Executive Branch, pursuant to the procedure set out in the domestic law of each State.⁷³⁵

III. ANALYSIS OF THE SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

510. In its 2009 Report on Democracy and Human Rights in Venezuela, the Commission analyzed the legal framework for protection of economic, social, and cultural rights in Venezuela as well as the status of such rights, taking particular account of poverty, education, and health indicators, in the light of the American Convention on Human Rights, the San Salvador Protocol and the Inter-American Democratic Charter. Within that legal framework of protection for economic, social and cultural rights, the Commission gave particular consideration to the protection of the rights of indigenous peoples and trade union rights.⁷³⁶

511. On February 6, 2012, Venezuela explained its humanistic alternative development model to the United Nations (UN), which it said had transformed Venezuela into the least unequal country in Latin America according to the Economic Commission for Latin America and the Caribbean (ECLAC).⁷³⁷ The president of the National Institute of Statistics (INE) announced that Venezuela was on track to achieve the Millennium Development Goals before 2015, having wiped out extreme poverty⁷³⁸ and hunger and having achieved gender equality, access to drinking water and sanitation, and other goals.⁷³⁹ He explained that the social policy was aimed at repaying the historical social debt and achieving massive and accelerated social inclusion through the “social missions.” Their main objective is to serve the needs of those living in poverty by providing assistance in such areas as health, food, education, housing, social security, labor, social development, culture, communications, science and technology.⁷⁴⁰

512. The Venezuelan State also told the United Nations that in 2012, Venezuela is launching a related social policy strategy under which specific groups in society will receive monetary assistance. One such program is the “Sons of Venezuela” Mission, which targets households living in extreme

⁷³⁵ I/A Court H.R. Advisory Opinion OC-6/86 of May 9, 1986, Series A No. 6, para. 27

⁷³⁶ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter VII, paras. 953-956.

⁷³⁷ AVN. “*Cepal: Venezuela es el país que más disminuyó la desigualdad en la última década*” [ECLAC: Venezuela is the country that has made the greatest headway toward reducing inequality in the last decade]. October 4, 2012. Available [in Spanish] at: <http://www.avn.info.ve/contenido/cepal-venezuela-es-pa%C3%ADs-que-m%C3%A1s-disminuy%C3%B3-desigualdad-%C3%BAltima-d%C3%A9cada>

⁷³⁸ The Venezuelan Program of Education-Action in Human Rights (PROVEA) acknowledged in its report “15 years about human rights in Venezuela: Social Inclusion, political exclusion” that one of the main achievements of the governance of Chávez is the reduction of poverty. Also diagnosed weaknesses of policies aimed at poverty reduction, namely: (a) lack of approach to human rights and non-universal application by discriminatory practices for political reasons; (b) not having a full and active participation of the population in its design and implementation, being passive recipients of the benefits thereof; (c) overcoming poverty is almost exclusively based on the implementation of programmes of subsidies to the population without other complementary measures of a structural nature, which is not sustainable or enduring in time; (d) the inefficiency and corruption in the management of resources to overcome poverty and hunger threaten the own achievement of goals and discourage the participation and control of citizen management initiatives. See: Marino Alvarado, *Pobreza en Venezuela y América*, December 21, 2012, available at: <http://www.derechos.org.ve/2012/12/21/marino-alvarado-pobreza-en-venezuela-y-america/>

⁷³⁹ In this regard, the IACHR notes that ECLAC found that for 2012, “[t]he Bolivarian Republic of Venezuela recorded an uptick in poverty and indigence rates, by 1.7 percentage points and 1.0 percentage points, respectively.” ECLAC observed that

[t]his trend does not coincide with that reported by the National Statistical Institute of the Bolivarian Republic of Venezuela. The discrepancy is due basically to the fact that the price deflator used by the Institute to adjust the indigence line—which reflects the variation in the prices of the specific products that make up the basic consumption basket—rose less than the deflator used by ECLAC, which reflects changes in food inflation and is therefore composed differently.

United Nations, ECLAC. “Social Panorama of Latin America (2012),” p. 13. Available at: <http://www.cepal.org/publicaciones/xml/4/48454/SocialPanorama2012Docl.pdf>

⁷⁴⁰ Embassy of the Bolivarian Republic of Venezuela. “President of National Institute of Statistics: Venezuela to achieve the UN Millennium Goals ahead of schedule.” February 6, 2012. Available at: <http://venezuela-us.org/2012/02/06/venezuela-to-achieve-the-un-millennium-goals-ahead-of-schedule/>.

poverty with children under the age of 18, family members with disabilities -where there is no age limit-, as well as pregnant women. It also said that the “Higher Love” Mission would be launched for women over the age of 55 and men over the age of 60 who live in extreme poverty and are not receiving Social Security pensions (IVSS).⁷⁴¹

513. During the Commission’s 146th session, a hearing was held at the State’s request on the general human rights situation. There, the State explained what had been accomplished, particularly with respect to the exercise of economic, social and cultural rights. The State provided information on what it had accomplished with respect to the United Nations’ Millennium Development Goals, described the improvements effected by the Government and underscored the fact that the social and economic policy pursued by the Bolivarian Government had enabled further progress toward those goals.⁷⁴²

514. The IACHR received information to the effect that unemployment was down in Venezuela. The National Institute of Statistics (INE) reported that the number of persons employed in the formal sector of the economy rose by 188,498, from 56.3% in November 2011 to 57.5% for the same period in 2012. The number of those employed in the informal sector, which includes those working in businesses with fewer than five employees, domestics, the nonprofessional self-employed, had reportedly dropped by 119,308 persons over the year, going from 43.7% in November 2011 to 42.5% in November 2012.⁷⁴³

515. According to INE representatives, the increase that the Venezuelan economy is said to be on the rise “because of the new uses to which oil revenues are being put, in productive investment, social missions in health, food, education, social protection, housing and others that enable members of the worker class to contribute their work to national development.”⁷⁴⁴ The IACHR has learned of the Venezuelan Government’s Missions to address various issues, like the food crisis, the aging, poverty and social security, unemployment, indigenous peoples, children and adolescents, education and housing.⁷⁴⁵

516. For its part, in its report on Social Conflict in Venezuela 2012, the Venezuelan Observatory on Social Conflict (Observatorio Venezolano de Conflictividad Social [OVCS]) spotlighted the 15 daily protests nationwide in 2012. According to the study, the protests are demanding the following: 1) labor rights, 2,256 (41.15%); 2) decent housing, 1,874 (34.17%); 3) citizen security, rights of persons deprived of liberty, political participation and the right to justice, a total of 1,124 (20.49%), and 4) educational demands, 229 (4.17%). It also highlighted the frequency of protests in the last quarter of 2012 and reiterated the need to establish comprehensive public policies from a human rights perspective, in order to ensure the full development of Venezuelan society. It also observed the prompt and effective response to the community’s demands must be a priority for the various government offices.⁷⁴⁶

⁷⁴¹ Embassy of the Bolivarian Republic of Venezuela. “President of National Institute of Statistics: Venezuela to achieve the UN Millennium Goals ahead of schedule.” February 6, 2012. Available at: <http://venezuela-us.org/2012/02/06/venezuela-to-achieve-the-un-millennium-goals-ahead-of-schedule/>.

⁷⁴² Information received during the hearing on the Human Rights Situation in Venezuela, 146th regular session, November 1, 2012.

⁷⁴³ Government of Venezuela. “INE: Desempleo descende a 6,4% en noviembre” [INE: Unemployment down 6.4% in November 2012]. December 20, 2012, available at: http://www.gobiernoenlinea.gob.ve/home/noticia_detalle.dot

⁷⁴⁴ Remarks of the President of the INE, Elías Eljuri, in: Government of Venezuela. “INE: Desempleo descende a 6,4% en noviembre” [INE: Unemployment down 6.4% in November 2012]. December 20, 2012, available at: http://www.gobiernoenlinea.gob.ve/home/noticia_detalle.dot

⁷⁴⁵ Government of Venezuela, Missions. Available [in Spanish] at: <http://www.gobiernoenlinea.gob.ve/home/misiones.dot>

⁷⁴⁶ *Observatorio venezolano de conflictividad social. “Informe conflictividad social venezolana en 2012* [Social Conflict In Venezuela in 2012], available at: <http://www.observatoriodeconflictos.org.ve/oc/wp-content/uploads/2013/01/Conflictividad-Social-en-Venezuela-en-2012.pdf>; see also: PROVEA. *Informe 2012 de OVCS destaca aumento de las protestas sociales* [OVCS 2012 Report highlights increase in social protests], January 17, 2013. Available at: <http://www.derechos.org.ve/2013/01/17/informe-2012-de-ovcs-destaca-aumento-de-las-protestas-sociales/>.

517. Based on the information received and on the recommendations made by the Human Rights Council of the UN as a result of the Universal Periodic Review (which in the field of ESCR have been mostly accepted by the State,) the Commission continues analyzing the situation and acknowledges and appreciates the progress made in the area of economic, social and cultural rights through policies and measures designed to correct the problems plaguing broad sectors of the Venezuelan population as well as the progress that Venezuela has made in instituting laws that protect and guarantee these rights. The priority that the State assigns to these measures is essential in guaranteeing a decent life for the Venezuelan population and an important basis for preserving democratic stability.

518. On the other hand, the Commission is compelled to point out that Venezuela has not yet completed 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), an instrument in which the States parties undertake to adopt the necessary measures, to the extent allowed by their available resources, and taking into account their degree of development, for the purpose of achieving progressively and pursuant to their internal legislations, the full observance of the economic, social and cultural rights.⁷⁴⁷ Venezuela signed the Protocol of San Salvador on January 27, 1989; it was then discussed and approved by the Venezuelan National Assembly in March 2005, and published in the Official Gazette of the Bolivarian Republic of Venezuela on May 23, 2005, under number 38,192. However, the State has not yet ratified the Protocol and deposited the instrument of ratification with the Organization of American States. Therefore, the IACHR is calling upon the Venezuelan State to complete its ratification of the Protocol of San Salvador.

IV. COMPLIANCE WITH THE DECISIONS OF THE IACHR

519. In October 2011, Venezuela appeared before the United Nations to undergo its Universal Periodic Review, and on December 7, 2011, the Working Group of the United Nations Human Rights Council published its report, which contained 97 recommendations to the Venezuelan State.⁷⁴⁸ In February 2012, the State submitted its observations and rejected 52 of the recommendations, including those on compliance with its international obligations and implementation of the recommendations and decisions of international and regional systems for protection of human rights.⁷⁴⁹

520. In the framework of the hearing held during the 144th session on "Venezuela's Compliance with International Obligations of the American Convention", the State's representative announced that Venezuela would not implement the recommendations of the IACHR and the judgments handed down by the Inter-American Court because the Supreme Court of Justice (TSJ) had pronounced on them and it had been determined that they ran contrary to the Constitution.⁷⁵⁰ In that connection, he

⁷⁴⁷ See: PROVEA, *Programa de Exigibilidad / Protocolo de San Salvador: sin el chivo y sin el mecate*, December 18, 2012, available at: <http://www.derechos.org.ve/2012/12/18/programa-de-exigibilidad-protocolo-de-san-salvador-sin-el-chivo-y-sin-el-mecate/>

⁷⁴⁸ Human Rights Council, Working Group on the Universal Periodic Review, 19th Session, Bolivarian Republic of Venezuela. Report of the Working Group on the UPR, A/HRC/19/12, December 7, 2011.

⁷⁴⁹ Human Rights Council, Working Group on the Universal Periodic Review, 19th Session, Bolivarian Republic of Venezuela. Report of the Working Group on the UPR, A/HRC/19/12, December 7, 2011. Opinions about the conclusions and/or recommendations, voluntary commitments and responses submitted by the examined State. A/HRC/Add.1, February 16, 2012.

⁷⁵⁰ It should be noted that in a judgment of December 18, 2008, the Constitutional Chamber of the TSJ ruled on a motion for constitutional interpretation of the Inter-American Court's judgment of August 5, 2008, in the *Case of Apitz-Barbera et al. ("First Court of Administrative Disputes")*. In that judgment, the TSJ declared that the verdict of the Inter-American Court in the above case was "unenforceable" and it requested the country's executive branch

based on the principle of collaboration of powers (Article 136 of the Constitution of the Bolivarian Republic of Venezuela) and in keeping with the provisions contained in Article 78 of the American Convention on Human Rights, [...] to proceed to denounce this treaty or convention, given the Inter-American Court of Human Rights' manifest overreaching of its functions with the ruling that is the subject of this decision.

See: Supreme Court of Justice, Constitutional Chamber, Judgment No. 1939/2008 of December 18, 2008. Available at: <http://www.tsj.gov.ve/decisiones/scon/diciembre/1939-181208-2008-08-1572.html>

questioned the way in which the Commission acted with regard to the system of individual cases and petitions and reiterated that the IACHR was "biased" against his country. He said that time and again Venezuela had denounced the Commission's "lack of objectivity" before the Committee on Juridical and Political Affairs of the Permanent Council of the OAS, without a "positive result" and he announced that he might formalize the denunciation of the American Convention.⁷⁵¹

521. On May 24, 2012, the European Parliament issued a resolution concerning Venezuela's possible withdrawal from the IACHR in which it deplored the decisions of the Venezuelan legislature and judiciary to support President Chávez's attempt to withdraw from the IACHR, which highlight the country's non-compliance with the principle of the separation of powers and the absolute submission of the legislature and judiciary to the political decisions of the President.⁷⁵²

522. On September 10, 2012, the Secretary General of the OAS received the formal notice of denunciation of the American Convention by the Bolivarian Republic of Venezuela.⁷⁵³ In a note dated September 6, 2012, from the Ministry of Foreign Affairs to the OAS Secretary General, the Venezuelan Foreign Ministry, communicated to the Secretary General:

the sovereign decision of the Bolivarian Republic of Venezuela to denounce the American Convention on Human Rights. Therefore, in keeping with the provisions of Article 78 thereof, I would greatly appreciate it if you would consider this note a Notice of Denunciation, so that, at the conclusion of the term established in that article, its international effects and the competence of its organs--the Inter-American Commission on Human Rights as well as the Inter-American Court of Human Rights--shall cease insofar as our country is concerned.⁷⁵⁴

523. On September 11, 2012, the United Nations High Commissioner for Human Rights energetically urged Venezuela to reconsider its decision to withdraw from the American Convention on Human Rights and warned that it could be a serious setback for human rights protection in Venezuela and the region as a whole.⁷⁵⁵ For its part, Amnesty International observed that Venezuela's decision to denounce the American Convention is an affront to the victims of human rights violations and to future generations of Venezuelans.⁷⁵⁶

524. On September 12, 2012, the IACHR issued a press release in which it regretted Venezuela's decision and expressed concern about the effects of the decision on the country's inhabitants. The IACHR also said that, despite the denunciation, the Venezuelan state, as a member

⁷⁵¹ IACHR. Hearing of March 27, 2012, 144th Regular Session. Audio available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=125> See also: *El Universal*, "Venezuela no cumplirá con decisiones de la Comisión Interamericana [Venezuela will not comply with decisions of Inter-American Commission]," March 27, 2012. Available at: <http://rayma.eluniversal.com/nacional-y-politica/120327/venezuela-no-cumplira-con-recomendaciones-de-la-comision-interamericana> *El Universal*. "Venezuela amenaza con denunciar la Convención Americana [Venezuela threatens to denounce American Convention]." March 27, 2012. Available at: <http://cine.eluniversal.com/nacional-y-politica/120327/venezuela-amenaza-con-denunciar-la-convencion-interamericana> *El Nacional*. "Representante de Venezuela en la CIDH amenazó con denunciar a la Convención Americana [Venezuelan representative at IACHR threatened to denounce American Convention]." Available at: <http://www.el-nacional.com/audio/3243/16/>

⁷⁵² European Parliament resolution of 24 May 2012 on the possible withdrawal of Venezuela from the Inter-American Commission on Human Rights 2012/2653 (RSP) of May 24, 2012. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0227+0+DOC+XML+V0//EN>

⁷⁵³ Organization of American States, News Center. Press release of September 10, 2012. Available at: http://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=C-307/12

⁷⁵⁴ Ministry of Foreign Affairs, Note No. 980125 of September 6, 2012.

⁷⁵⁵ UNOHCHR. Pillay urges Venezuela to reconsider withdrawal from the American Convention on Human Rights, September 11, 2012. At: <http://acnudh.org/en/2012/09/pillay-urges-venezuela-to-reconsider-withdrawal-from-american-convention-on-human-rights/>

⁷⁵⁶ Amnesty International. Public Declaration. *Venezuela's break with regional human rights court 'an affront to victims'*, September 13, 2012.

state of the OAS, will continue to be subject to the Commission's jurisdiction and be bound by the obligations established in the OAS Charter and the American Declaration.⁷⁵⁷

V. SITUATION OF GROUPS OR COLECTIVITIES IN SITUATIONS OF VULNERABILITY

A. Indigenous Peoples

525. The Commission has monitored the situation of indigenous peoples in Venezuela with special concern. In that regard, the IACHR has received information that illegal mining is seriously impairing the right of indigenous peoples to peaceful enjoyment of their ancestral lands. Despite the fact that this activity has been prohibited by law, in the form of Decree 8413 of 2011, available information suggests that the law is flouted in practice and that even agents of the state, among them members of the armed forces, are reportedly involved in illegal mining for personal profit. According to a number of testimonies, members of the military demand payment of a so-called "vaccine" (around 30 grams of gold per week) and "use military uniforms and weapons to commit injustices against indigenous peoples." Similar acts have been reported by civil society organizations.⁷⁵⁸

526. Likewise, with regard to the second situation, concretely the Office of the Rapporteur has received troubling information regarding the persecution suffered by Sabino Romero, chief of the Yukpa indigenous people located in Sierra de Perijá, who has received death threats and been arrested on multiple occasions as a result of his fight to protect the ancestral lands. On this point, the State reported that "the inquiries with respect to complaints of the alleged presence of contract killers in the area" had been initiated.⁷⁵⁹ Information was also received about the murder of members of the Yukpa people for opposing the occupation of their land by "cattle farmers and smallholders" supported by state authorities, including the alleged killing of Wilfrido Romero de Shuata-Toromo on April 16, 2012. More recently, the Rapporteurship was advised that members of various Yukpa indigenous communities had asked the government to intervene in the conflict brought about by the demarcation of land in the Sierra de Perijá, in southern reaches of Zulia state.⁷⁶⁰ In this regard, the State reported that the territories of the Yukpa people are being demarcated and "they are being given collective title to their lands."⁷⁶¹

527. On March 4th, 2013 the IACHR received press information which establishes that:

approximately at 7:00 p.m. [of the Sunday, March 3, 2013] Sabino Romero, yukpa Chief, was murdered on the road of the Tukuko, parish Liberty, Municipality Machiques de Perijá, Zulia State. While the authorities determine the causes of the event, it transpired that the Chief Sabino Romero was killed by two persons wearing hoods, on motorcycles, who intercepted the unit where the

⁷⁵⁷ IACHR, IACHR Regrets Decision of Venezuela to Denounce the American Convention on Human Rights. Washington, D.C., September 12, 2012.

⁷⁵⁸ IWGIA. *The Indigenous World 2012*. pp. 33-34. Also see: "Venezuela: El Plan Caura persigue a los indígenas, no a los mineros", Ecoamazonia, October 23, 2012, available in Spanish at: <http://www.ecoamazonia.org.br/2012/10/venezuela-el-plan-caura-persigue-los-indigenas-los-mineros/>; "Mineros esperan permisos para ejercer la actividad", El Universal, January 23, 2012, available in Spanish at: <http://www.eluniversal.com/economia/120123/mineros-esperan-permisos-para-ejercer-la-actividad>; and "Indígenas y mineros mantienen cerrado el paso hacia Brasil", Código Venezuela, May 21, 2012, available in Spanish at: <http://www.codigovenenezuela.com/2012/05/noticias/pais/indigenas-mineros-mantienen-cerrado-paso-brasil>.

⁷⁵⁹ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

⁷⁶⁰ "Pueblos Yukpa solicitan al presidente Chávez intervenir en conflicto sobre demarcación de tierras [Yukpa Peoples ask President Chávez to intervene in dispute over demarcation of lands]", November 10, 2012. Available at: <http://www.blosodi.com.ve/2012/11/10/pueblos-yukpa-solicitan-al-presidente-chavez-intervenir-en-conflicto-sobre-demarcacion-de-tierras/>.

⁷⁶¹ The State also reported that implementation began in November 2008 on the Comprehensive Plan for the Defense, Development, and Consolidation of the Border Municipalities of Machiques de Perijá, Rosario de Perijá, and Jesús María Semprúm in the State of Zulia. Observations of the Venezuelan State to the Draft Report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

indigenous leader was being transferred and shot him a burst [...]. Apparently, the wife of Sabino Romero, Lucía Martínez de Romero was also injured.⁷⁶²

528. In addition, the press release indicates that:

The Minister of Communication and Information, Ernesto Villegas, informed [on Monday 4 March 2013] that investigations into the death of the yukpa Chief Sabino Romero, in Zulia State, are underway. He explained that committees of the army, the Bolivarian National Guard (GNB) and the body of scientific research, criminal and Criminalistics (CICPC), were mobilized on Sunday night from Machiques to the area of the CSC to perform the expertise and necessary inquiries, according to the information supplied by the relatives of the deceased indigenous leader. "The investigation is underway (...) We can not forward hypothesis about this reprehensible and repugnant fact from every point of view, but in general puts on the table the struggle for a fair distribution of land," he said.⁷⁶³

529. In late August 2012, information was received to the effect that in July, approximately 80 members of the Yanomami Community of Irotatheri, in the state of Amazonas, were massacred in early July, presumably by Brazilian prospectors. The news was reported by a number of media outlets and denounced by several international organizations, based on a complaint that the Yanomami Horonami organization filed with the Office of the Superior Prosecutor and the Office of the Ombudsperson in Puerto Ayacucho, capital of Amazonas state, and also with the 52nd Brigade at the Military Garrison. On August 29, 2012, the Ministry of the People's Power for Communication and Information reported that the Amazonas State Superior Prosecutor's Office commissioned the Deputy Director of Investigations in the Common Crimes Division of the Public Prosecutor's Office and the Fourth Prosecutor of Amazonas to investigate the facts denounced.⁷⁶⁴ According to state authorities, the scene where the massacre was alleged to have occurred was visited and no evidence was found of any massacre.⁷⁶⁵

⁷⁶² El Universal. "Government investigates death of yukpa Chief in Zulia." March 4, 2013. Available at: <http://www.eluniversal.com/nacional-y-politica/130304/gobierno-investiga-muerte-de-cacique-yukpa-en-el-zulia>. See also, Radio Nacional de Venezuela (RNV). "Authorities are investigating the death of the Chief Sabino Romero". March 4, 2013, available at: http://www.rnv.gov.ve/index.php?option=com_content&view=article&id=8549:autoridades-investigan-la-muerte-del-cacique-sabino-romero-&catid=48:regionales&Itemid=72; El Nacional. "MP investigates death of Chief Sabino Romero". March 4, 2013, available at: http://www.el-nacional.com/sucesos/MP-investiga-cacique-Sabino-Romero_0_147586738.html; and El Carabobeño. "Multidisciplinary team investigates death of Chief Sabino Romero". March 4, 2013, available at: <http://www.el-carabobeno.com/portada/articulo/53398/equipo-multidisciplinario-investigar-muerte-de-cacique-sabino-romero>.

⁷⁶³ El Universal. "Government investigates death of yukpa Chief in Zulia." March 4, 2013. Available at: <http://www.eluniversal.com/nacional-y-politica/130304/gobierno-investiga-muerte-de-cacique-yukpa-en-el-zulia>. See also, Radio Nacional de Venezuela (RNV). "Authorities are investigating the death of the Chief Sabino Romero". March 4, 2013, available at: http://www.rnv.gov.ve/index.php?option=com_content&view=article&id=8549:autoridades-investigan-la-muerte-del-cacique-sabino-romero-&catid=48:regionales&Itemid=72; El Nacional. "MP investigates death of Chief Sabino Romero". March 4, 2013, available at: http://www.el-nacional.com/sucesos/MP-investiga-cacique-Sabino-Romero_0_147586738.html; and El Carabobeño. "Multidisciplinary team investigates death of Chief Sabino Romero". March 4, 2013, available at: <http://www.el-carabobeno.com/portada/articulo/53398/equipo-multidisciplinario-investigar-muerte-de-cacique-sabino-romero>.

⁷⁶⁴ Ministry of the People's Power for Communication and Information. "Ministerio Público designó una comisión para investigar presunto ataque a Yanomamis en Amazonas [Public Prosecutor's Office appointed commission to investigate alleged attack on the Yanomamis in Amazonas]", August 29, 2012. Available at: <http://www.minci.gob.ve/2012/08/29/ministerio-publico-designo-una-comision-para-invetigar-presunto-ataque-a-yanomamis-en-amazonas/>.

⁷⁶⁵ See: Ministry of the People's Power for Communication and Information. "FANG: En Irotatheri no hay rastros de masacre de yanomamis [FANG: No trace of Yanomami massacre in Irotatheri]". September 7, 2012. Available at: <http://www.minci.gob.ve/2012/09/07/fanb-en-irotatheri-no-hay-rastros-de-masacre-de-yanomamis>. Ministry of the People's Power for Communication and Information. "Fiscalía desmiente supuesta masacre de indígenas Yanomami [Prosecutor's Office denies Yanomami indigenous massacre]". September 6, 2009. Available at: <http://www.minci.gob.ve/2012/09/06/fiscalia-desmiente-supuesta-muerte-de-indigenas-yanomami/>; Ministry of the People's Power for Communication and Information, "Ministra Maldonado: No hay evidencias de ninguna muerte de compañeros Yanomami [Minister Maldonado: No evidence of any Yanomami deaths]". September 5, 2012, Available at: <http://www.minci.gob.ve/2012/09/05/ministra-maldonado-no-hay-evidencias-de-ninguna-muerte-de-companeros-yanomami/>.

530. On September 5, 2012, the IACHR issued a press release in which it urged the authorities to conduct a thorough investigation to conclusively determine what happened.⁷⁶⁶ In its press release, the IACHR took into account the official information on the investigation launched by the Public Prosecutor's Office and the investigative measures taken at the site where the massacre is alleged to have occurred. That same day, the IACHR requested information from Venezuela and Brazil (because of the alleged involvement of Brazilian nationals), pursuant to Article 41 of the American Convention.

531. Cultural Survival, one of the international organizations that denounced the events, subsequently withdrew its complaint. The Commission has not received or found any information confirming the violent events said to have occurred in Irotatheri.

532. On the other hand, the Rapporteurship was gratified to receive information on the activities that the Venezuelan authorities have planned in connection with the rights of indigenous peoples, one of which is a forum on territorial demarcation, and activities that would emphasize the rights to education, political participation, and prior consultation.⁷⁶⁷ The *Agencia Venezolana de Noticias* [Venezuelan News Agency] reported that a seminar held in Caracas in October underscored the importance of territorial demarcation, following a process of prior consultations about the kinds of activities that might have some impact on indigenous peoples' lands.⁷⁶⁸ In addition, the Venezuelan State reported that a series of actions to provide assistance in the area of health were carried out among indigenous communities as part of the "Misión Barrio Adentro" program, including checkups, sonograms, endoscopies, and dental and eye exams.⁷⁶⁹ The Rapporteurship is again urging that activities of this type always be conducted with unqualified observance of the indigenous peoples' right of self-determination.

533. The Rapporteurship also received specific information indicating that the demarcation of territories in the state of Amazonas has moved slowly, despite the domestic and international laws on the subject. The Rapporteurship recalls that Venezuela has ratified ILO Convention 169, and has enacted domestic provisions pertaining to the demarcation of indigenous territories, including the 2005 Organic Law on Indigenous Peoples and Communities. The Rapporteurship welcomes the ratification and adoption of these laws and underscores how important it is that they be enforced in practice so that indigenous peoples are able to exercise and enjoy their rights.

534. Finally, the Rapporteurship observes that the Indigenous Parliament of the Americas (Venezuelan Section) has conducted discussions and taken other steps to generate input for the Venezuelan Government's next plan.⁷⁷⁰ The Rapporteurship stresses how important activities of this type are to ensure that the rights of indigenous peoples are taken seriously in the country's public administration.

B. Persons deprived of liberty

535. Venezuela continues to be, by far, the country with the highest levels of violence in prisons in the region. According to information received by the Commission at the hearing on the

⁷⁶⁶ IACHR Urges to Investigate Information on Massacre of a Community of the Yanomami Indigenous Peoples in Venezuela, Washington, D.C., September 5, 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/114.asp

⁷⁶⁷ "Legislativo venezolano a favor de derechos de pueblos indígenas [Venezuelan Legislature favors rights of indigenous peoples]," *Prensa Latina*, November 15, 2012. Available at: http://www.prensa-latina.cu/index.php?option=com_content&task=view&idioma=1&id=710771&Itemid=1.

⁷⁶⁸ "Demarcación de tierra es un factor fundamental para pueblos indígenas [Demarcation of territory is a fundamental concern for indigenous peoples]," *Agencia Venezolana de Noticias*, October 18, 2012. Available at: <http://www.avn.info.ve/node/138316>

⁷⁶⁹ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

⁷⁷⁰ "*Parlamento Indígena impulsa jornadas de debate en Venezuela* [Indigenous Parliament promotes discussion groups in Venezuela]," *Prensa Latina*, November 7, 2012. Available at: http://www.prensa-latina.cu/index.php?option=com_content&task=view&idioma=1&id=685331&Itemid=1.

situation of persons deprived of liberty in Venezuela, held during the IACHR's 146th session, 304 persons deprived of liberty died during the first half of 2012, and another 671 were injured in different acts of violence in prisons across Venezuela. For the period between 1999 and 2012, the total death toll in Venezuelan prisons was 5,370; in that same period, another 15,131 were injured.

536. At that hearing, the Commission learned information that the Venezuelan prisons were built to accommodate 16,539 inmates, but the actual prison population is 45,620, leaving a deficit of 29,081 beds. Of the total prison population, 61% of the inmate population is either awaiting or standing trial, but has not been convicted.

537. It was also noted that in 2012 numerous protests were staged in Venezuelan prisons: 31 hunger strikes, 20 incidents in which visitors were taken captive; 12 incidents of contempt of court; 6 incidents in which prison staff were taken hostage; 3 incidents in which prison personnel were barred from entering the premises, and one takeover of the female inmates' wing. These incidents were mainly triggered by procedural delays and demands for improved prison conditions.

538. The IACHR obtained information indicating that members of the Bolivarian National Guard have been serving as bailiffs since June 12, 2012. Bailiffs will no longer be in charge of inmates being held in court lockups while they are on duty in the courtroom. It was reported that for the first few days this provision was in effect, which does not appear in the new COPP, the inmates were lined up nude in the Palace of Justice with the permission of the court authorities.⁷⁷¹

539. As for the violence in prisons, on January 2 the bodies of five inmates were discovered in the *Centro Penitenciario de Occidente* or "Santa Ana prison." The five inmates perished in attacks specifically targeted at them. In its press release, the IACHR underscored that the State has an obligation to investigate on its own initiative and with due diligence, all deaths of persons under its custody and that these investigations "must not only aim to establish the material perpetrators of the crimes, but also the possible intellectual authors, and any degree of responsibility that the authorities might have, either by action or omission."⁷⁷²

540. The Venezuelan State informed the IACHR that the five inmates who perished in these events were shot to death, and had multiple bullet wounds. It also reported that the Public Prosecutor's Office had launched investigations by way of its Office of the Third Prosecutor for the Táchira State Judicial District.⁷⁷³

541. Between April 27 and May 17 of this year, a security crisis erupted in the "El Paraíso" Re-education and Rehabilitation Home and Court Lockup, known as the "La Planta Prison" in downtown Caracas. In the security crisis, inmates and the authorities exchanged fire on three different occasions: April 30, May 8 and May 17. At least two people died in these exchanges and seven were seriously injured. The fact that the La Planta inmate population was armed, that the prison itself was overcrowded and located in a densely populated area of Caracas, precipitated a serious security crisis in the city that lasted over three weeks. Given the gravity of these events, the IACHR issued a press release in which it again stressed the fact that the State must take measures to disarm the prison population and exercise effective controls over the entry of weapons into prisons in order to reduce prison violence and keep similar events from happening again.⁷⁷⁴

542. Between January and August 2012, the number of deaths at Yare I prison rose to 19 and the number of wounded to 48. On August 19, 2012, a riot broke out in the prison that left 25 dead and 45

⁷⁷¹ UCAB, Center for Human Rights, *Tribunales militarizados* [Militarized courts], June 12, 2012.

⁷⁷² IACHR. Press Release No. 1/12. *IACHR Deplores Violent Deaths in Venezuelan Prison*. January 6, 2012.

⁷⁷³ Note from the State's Agent for Human Rights to the Inter-American and International System, No. AGEV/000137 of March 21, 2012, addressing the IACHR's January 6, 2012 press release.

⁷⁷⁴ IACHR. Press Release No. 55/12. *IACHR Concerned about Security Crisis at Venezuelan Prison*. May 6, 2012.

injured. These were troubling developments for the IACHR, which issued a press release in which it recalled that

The State, as guarantor of the fundamental rights of the persons deprived of liberty, has the unavoidable legal duty to take concrete actions to ensure the rights to life and to humane treatment of prisoners, particularly measures to prevent and control outbreaks of violence in prisons. This obligation exists not only in relation to actions of the State itself, but also in relation to actions by third parties. The proper control by the authorities of the internal order in prisons is the necessary precondition to guarantee the human rights of persons deprived of their liberty. In this regard, States have a fundamental duty to ensure control and internal security of prisons and cannot in any way waive this inherent duty by limiting itself to the external custody of the prison's perimeter.⁷⁷⁵

543. The Commission also urged the Venezuelan State to investigate the violent events in Yare I prison, to punish those responsible and take measures to avoid a recurrence of similar events. It recalled that the State has an obligation to investigate and punish those responsible for getting weapons and ammunition into the prison and into the hands of inmates.⁷⁷⁶

544. Yare I houses some 3,150 inmates, although it was built to accommodate just 750. In 2006, the Inter-American Court ordered provisional measures to protect the inmates at Yare I.

545. The IACHR learned that one of the so-called "pranes" or gang leaders, known as "El Niño Guerrero", escaped from the Aragua Judicial Lockup or "Tocorón Prison." The inmates at the facility have been the beneficiaries of provisional measures ordered by the Inter-American Court back in 2010. The escape exposes the fact that the State authorities are not exercising proper control at that institution.

546. The *Centro Penitenciario de la Región Andina* [Andean Region Penitentiary] (hereinafter "CEPRA") in the Municipality of Sucre, Miranda state, houses 1,461 inmates, but has a capacity for 850. Despite an occupancy rate of 171.88%, the entire facility has only 30 guards (15 per shift). Between January and June 2012, 33 inmates were reportedly murdered in separate incidents of violence. In August of this year, the IACHR asked the Inter-American Court to order provisional measures for the inmates of CEPRA. The Court ordered those provisional measures on September 6, 2012, and wrote the following:

The State must take the effective measures necessary to prevent the loss of life or injury of every person incarcerated in the Andean Region Penitentiary, and any other person inside that institution.⁷⁷⁷

547. On September 17, 2012, it was learned that at least ten female inmates reportedly sustained buckshot wounds during a cell and body search at the Los Teques Women's Rehabilitation Institute (hereinafter "INOF"). The operation was said to have been conducted by male prison staff. Relatives of the inmates complained that the female inmates were mistreated during the operation and that teargas was used. The general coordinator of the NGO "*Una Ventana a la Libertad*", Carlos Nieto, said that the body search included a vaginal examination of all the women inmates at the prison.⁷⁷⁸

548. Regarding the situation of persons deprived of liberty, the State indicated that "the Venezuelan State has reported that we do not have the best prisons but we do not have the worst ones

⁷⁷⁵ IACHR. Press Release 106/12. *IACHR Deplores Death of 25 Persons at the Yare Prison, State of Miranda, Venezuela*. August 24, 2012.

⁷⁷⁶ IACHR. Press Release 106/12. *IACHR Deplores Death of 25 Persons at the Yare Prison, State of Miranda, Venezuela*. August 24, 2012.

⁷⁷⁷ I/A Court H.R., Matter of the Andean Region Penitentiary, Order of the Inter-American Court of Human Rights, September 6, 2012, Operative paragraph 1 [Translation ours].

⁷⁷⁸ *Globivision.com. Extraoficial: 10 reclusas heridas en el INOF por impacto de perdigones* [10 INOF inmates injured by buckshot]. At: <http://globivision.com/articulo/denuncian-malos-tratos-a-reclusas-en-requisa-en-el-inof>

either. The situation of Venezuelan prisons is exaggerated for political reasons.” It also indicated that “no country in Latin America and the Caribbean could pass a human rights test in the penitentiary system, and referred to statements made by the Special Rapporteur on torture or cruel, inhuman, or degrading treatment. The Rapporteur indicated that “overcrowding and the conditions in prisons in Latin America are generally grim as a result of governments’ limited attention and investment in improving them” as well as the “tendency to punish everything and imprison large numbers of people.”⁷⁷⁹

549. Given the foregoing considerations and the previous situations that the IACHR has examined involving imprisoned persons, the Commission is concerned that the most serious problem continues to be the control that gangs or mafias exercise inside the country’s prisons, led by gang leaders called “*pranes*”. It is alarming that weapons, drugs and other illegal products are making their way into the prisons, and are directly related to the skyrocketing rates of violence recorded year after year in Venezuela’s prisons. The Commission is struck not just by the number of weapons that inmates have in most Venezuelan prisons, but also by the fact that this is heavy weaponry and even explosives. This kind of weaponry cannot be flowing into the prisons without the tolerance or acquiescence of the National Guard, the force charged with security outside the prisons. The Commission, therefore, must again remind the State of its obligation to punish those authorities or third parties who are responsible for the flow of weaponry and other illegal materials into prisons.

C. Lesbian, gay, trans, bisexual and intersex persons (LGTBI)

550. The Commission has received reports on the progress observed, mainly in the Ombudsperson’s Office, in encouraging respect for the human rights of lesbian, gay, trans, bisexual and intersex persons (LGTBI). The IACHR is particularly encouraged by the campaigns that the Ombudsperson’s Office has waged in past years (especially in 2010 and 2011) in various parts of Venezuela in an effort to promote the rights of LGTBI persons.⁷⁸⁰ The IACHR learned that in 2010, the Ombudsperson, Gabriela Ramírez, did not discount the possibility that a marriage equality act could eventually be approved.⁷⁸¹

551. The Commission has also noted that civil society organizations have applauded the efforts of the Ombudsperson’s Office, which created a roundtable involving a number of organizations that advocate for the rights of LGTBI persons (July 2009), the work of the Ministry of the People’s Power for the Interior and Justice, which issued a directive that included provisions concerning equality for LGTBI persons who are on the police forces (November 2010), and other efforts.⁷⁸² In this regard, in its response the State of Venezuela indicated that the Ombudsperson’s Office, together with the Venezuelan police forces, “are doing promotions to ensure respect” for the human rights of such persons.⁷⁸³

552. In 2012, however, the IACHR received disturbing reports concerning murders, other acts of violence and discrimination committed against LGTBI persons in Venezuela, including complaints received from civil society organizations about incidents involving public officials.

⁷⁷⁹ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

⁷⁸⁰ See, for example, *El Diario de Guayana*, “Defensoría del Pueblo dictó Taller sobre Diversidad Sexual [Ombudsperson’s Office gave workshop on sexual diversity],” June 29, 2011, Ciudad Bolívar, available at: <http://eldiariodeguayana.com.ve/cdad-bolivar/3589-defensoria-del-pueblo-dicto-taller-sobre-diversidad-sexual-.html>.

⁷⁸¹ Sentido G, “*Defensora del Pueblo no Descarta Matrimonio Gay en Venezuela* [Ombudsperson not discounting the possibility of gay marriage in Venezuela],” May 5, 2010, available at: <http://www.sentidog.com/lat/2010/05/defensora-del-pueblo-no-descarta-matrimonio-gay-en-venezuela.html>.

⁷⁸² *Venezuela Diversa A.C.*, Informe presentado en el marco del Examen Periódico Universal (UPR) [Report presented in connection with the Universal Periodic Review (UPR)], November 2011, available at: <http://lib.ohchr.org/HRBodies/UPR/Documents/session12/VE/Venezuela%20Diversa-spa.pdf>

⁷⁸³ Observations of the Venezuelan State to the draft report on the General Situation of Human Rights in the Bolivarian Republic of Venezuela for the year 2012 (AGEV/000039) of February 22, 2013.

553. Regarding acts of discrimination, in April 2012 the Commission learned that, during a public broadcast, Foreign Minister Nicolás Maduro used expressions that LGTBI social organizations in Venezuela interpreted as pejorative.⁷⁸⁴ In response to the reaction of those social organizations, the Foreign Minister publicly retracted his remarks.⁷⁸⁵

554. As for acts of violence, the IACHR has received information concerning serious acts of police abuse against LGTBI persons, particularly trans women. In April 2012, social organizations complained that Bolivarian National Guardsmen in the Sabana Grande sector of Caracas had, using “threats and insulting and discriminatory language, shoved and pushed a large number of lesbian, gay and trans youth to throw them out of local nightspots.”⁷⁸⁶

555. In July 2012, organizations complained that members of the Chacao Police Force in Caracas verbally assaulted trans women who were working as sex workers or in situation of prostitution, with death threats and pejorative remarks making reference to their sexual orientation and gender identity.⁷⁸⁷ The organizations argued that this violence is ongoing and has included physical assaults by public officials, even with toxic gas.⁷⁸⁸

556. On October 25 and 26, 2012, human rights organizations complained that members of the Scientific, Criminal and Forensic Investigation Corps (CICPC) had reportedly arbitrarily detained 23 trans women in Caracas. They had used excessive force and their firearms to intimidate the women.⁷⁸⁹ According to the information available, the trans women were taken to a CICPC police station to be questioned about the murder of a man back in early September.⁷⁹⁰ The organization *Venezuela Diversa A.C.* filed a complaint to the effect that four of the trans women had been tortured using electric shock, and subjected to physical mistreatment and verbal abuse because of their gender identity and expression.⁷⁹¹

⁷⁸⁴ Two of the organizations, *Radio Reflejos de Venezuela* and *Venezuela Diversa*, voiced their discomfort with the remarks made by the Venezuelan Foreign Minister. *Venezuela Diversa*, “Homofobia en la Política incita el Odio hacia la Diversidad Sexual [Homophobia in politics incites hatred of sexual diversity], April 15, 2012, available at: <http://venezueladiversaac.blogspot.com/search?updated-max=2012-05-08T00:22:00-04:30&max-results=7>

⁷⁸⁵ *Noticias 24*, “Maduro se disculpa con la comunidad gay del país por el adjetivo usado contra Capriles [Maduro apologizes to the country’s gay community for the adjective used to slur Capriles]”, April 17, 2012. Available at: <http://www.noticias24.com/venezuela/noticia/102664/canciller-nicolas-maduro-se-disculpa-por-adjetivo-homofobico-dirigido-a-capriles-radonski/>

⁷⁸⁶ *Venezuela Diversa*’s complaint. “Guardia Nacional arremete contra LGBTI en Sabana Grande [National Guard turns on LGBTI in Sabana Grande]”, April 13, 2012, available at: <http://venezueladiversaac.blogspot.com/search?updated-max=2012-05-08T00:22:00-04:30&max-results=7>

⁷⁸⁷ *Venezuela Diversa A.C.*, “Policías de Chacao agreden y amenazan de muerte personas trans [Chacao police attack trans persons and threaten to kill them]”, July 19, 2012, available at: http://venezueladiversaac.blogspot.com/2012_07_01_archive.html

⁷⁸⁸ *Venezuela Diversa A.C.*, “Policías de Chacao agreden y amenazan de muerte personas trans [Chacao police attack trans persons and threaten to kill them]”, July 19, 2012, available at: http://venezueladiversaac.blogspot.com/2012_07_01_archive.html

⁷⁸⁹ *Venezuela Diversa A.C.*, “Detención Arbitraria de Mujeres Trans por parte del CICPC [Trans women arbitrarily detained by CICPC]”, October 29, 2012, available at: <http://venezueladiversaac.blogspot.com/2012/10/detencion-arbitraria-de-mujeres-trans.html>. This article was also carried by the ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association), available at: <http://ilga.org/ilga/es/article/nNQaGU71Q6>

⁷⁹⁰ *El Nacional*, “Riña de transgéneros y policías dejó heridos [Persons injured in scuffle between trans persons and police]”, October 28, 2012, available at: http://www.el-nacional.com/sucesos/Riña-transgeneros-policias-dejo-heridos_0_71392887.html.

⁷⁹¹ *Venezuela Diversa A.C.*, “Detención Arbitraria de Mujeres Trans por parte del CICPC [Trans women arbitrarily detained by CICPC]”, October 29, 2012, available at: <http://venezueladiversaac.blogspot.com/2012/10/detencion-arbitraria-de-mujeres-trans.html>. This article was also carried by the ILGA (International Lesbian, Gay, Bisexual, Trans and Intersex Association), available at: <http://ilga.org/ilga/es/article/nNQaGU71Q6>.

557. The IACHR also learned that six trans women were reportedly murdered in 2012, and that serious acts of violence had been committed against lesbian, gay and trans persons over the course of this year.

558. The bullet-riddled body of a trans person was discovered in the Municipality of Machiques, in the state of Zulia,⁷⁹² on January 6, 2012. The person was registered at birth as Jaime Antonio López and was 35 years old. The body of Brilli, registered at birth as Ramón Antonio Olivera, was discovered in San Félix, Bolívar state,⁷⁹³ on January 23, 2012. The victim had been shot seven times. Daniela, registered at birth as David Oswaldo Pantoja Churion, was murdered in Ocumare del Tuy, Municipality Tomás Lander, in Miranda state, on March 25, 2012. She was 21 years old and had been shot in the left eye.⁷⁹⁴

559. Lulú (registered at birth as José Antonion Suárez García) was murdered on June 3, 2012. She was a trans woman who engaged in prostitution or sex work in Caracas.⁷⁹⁵ The Commission learned that this murder occurred against the backdrop of violence against trans women and called on the State to investigate these events at its own initiative. It also expressed the view that the ineffectiveness of the justice system fosters high rates of impunity. The IACHR particularly urged the state to open lines of investigation to ascertain whether the murder was committed because of the victim's sexual orientation, gender identity, or gender expression.⁷⁹⁶

560. On September 7, 2012, the organization *Alianza Lambda de Venezuela* reported the murder of another trans woman in Aragua state, identified as Juana Paola.⁷⁹⁷ Her body was discovered in a landfill in the cemetery in the city of La Victoria; she had been beaten, her throat had been cut and she had a bullet wound in the head.⁷⁹⁸ The IACHR condemned this murder in a press release about the murders of LGBTI persons that occurred during September.⁷⁹⁹ Ronny Ortega, national spokesperson for sexual diversity with the *Gran Polo Patriótico*, asked the authorities not to allow this crime to go unpunished because the victim was a transgender person, and maintained that while the policies fostering social inclusion have been growing, much remains to be done to improve the lives of LGBTI persons.⁸⁰⁰ Again in the state of Aragua, this time in November 2012, two lesbian women, age 18, were

⁷⁹² *Noticias24*, *Travesti fue asesinado en el Zulia* [Travesti murdered in Zulia], January 6, 2012, available at: <http://www.noticias24.com/venezuela/noticia/67301/travesti-fue-asesinado-en-el-zulia/>.

⁷⁹³ *Globovisión*, "Asesinaron de siete disparos a transformista en San Félix" [Trans person shot seven times in San Félix], January 23, 2012, available at: <http://globovision.com/articulo/asesinaron-de-siete-disparos-a-transformista-en-san-felix>.

⁷⁹⁴ *La Región: el diario de Miranda*, "Matan a Mujer y Transformista [A woman and a trans person murdered]", March 26, 2012, available at: <http://www.diarioregion.net/seccion.asp?pid=29&sid=1560¬id=122262>

⁷⁹⁵ *El Universal*, "Acribillan a un Transexual en la Avenida Libertador [Transsexual riddled with bullets on Avenida Libertador]", June 4, 2012, available at: <http://www.eluniversal.com/sucesos/120604/acribillan-a-un-trasexual-en-la-avenida-libertador>.

⁷⁹⁶ IACHR, Press Release No. 59/12, "IACHR Condemns Murder of Trans in Venezuela", June 7, 2012, available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/059.asp.

⁷⁹⁷ Complaint brought by, *inter alia*, the *Alianza Lambda de Venezuela*. *Juana Paula Transgénero Golpeada, degollada y con disparo de gracia asesinada* [Trans person, Juana Paula, murdered: she was beaten, her throat was slashed, and she was shot, September 7, 2012, available at: <http://kaosenlared.net/america-latina/item/29910-venezuela-juana-paula-transgenero-golpeada--degollada-y-con-disparo-de-gracia-asesinada.html>.

⁷⁹⁸ *El Aragueño*, "Transgénero fue degollado y tiroteado [Trans person's throat slashed; victim shot multiple times]", September 6, 2012, available at: <http://www.elaragueño.com.ve/sucesos/articulo/11496/transgenero-fue-degollado-y-tiroteado>. See also *El Periodiquito*, "Ultimaron a un Travesti en la Vía a Zuata [Transvestite killed on road to Zuata]", September 5, 2012, available at: <http://www.elperiodiquito.com/article/71690/Ultimaron-a-un-travesti-en-la-via-a-zuata>.

⁷⁹⁹ IACHR, "IACHR Urges the States to Adopt Urgent Measures against Homophobic and Transphobic Violence in the Region," October 29, 2012, available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/129.asp. The details of the information the IACHR received are available at the page for "Violence against LGBTI Persons" at the IACHR's website for the Unit on the Rights of LGBTI Persons, available at: <http://www.oas.org/en/iachr/lgtbi/activities/violence.asp>.

⁸⁰⁰ *El Aragueño*, "Transgénero fue degollado y tiroteado [Transgender person killed: throat slashed and shot], September 6, 2012, available at: <http://www.elaragueño.com.ve/sucesos/articulo/11496/transgenero-fue-degollado-y-tiroteado>.

shot twice for refusing to allow two men to grope and fondle them. They were taken to Maracay's Central Hospital.⁸⁰¹

561. The body of Ivonne, a trans woman registered at birth as Antonio, was discovered in Villa Tablita, Brisas del Sur, Bolívar state. According to the information reported, she was bludgeoned to death when her assailant struck her in the head with a cement block.⁸⁰²

562. On October 30, 2012, in the Municipality Francisco Linares Alcántara in Aragua state, Angello Alfredo Prado Perdomo, a gay young man (18) was doused with gasoline and set on fire, causing third-degree burns over 30% of his body.⁸⁰³ The *Coalición Venezolana de Organizaciones LGBTI*⁸⁰⁴ expressed its concern over these homophobic acts and urged the authorities to investigate the events that had occurred and to punish those responsible.⁸⁰⁵ One source of information indicated that when this act of violence occurred, the young man was reportedly being bullied because of his sexual orientation.⁸⁰⁶

563. The IACHR reminds the Venezuelan State that it has an obligation to investigate acts of this nature on its own initiative and to punish those responsible. The Commission is urging the State to open lines of investigation that consider whether these murders or others acts of violence occurred because of the victims' sexual orientation, gender identity or gender expression. This year, the OAS General Assembly adopted AG/RES. 2721 "Human Rights, Sexual Orientation, and Gender Identity," where the OAS member states resolved "[t]o condemn acts of violence and human rights violations committed against persons by reason of their sexual orientation and gender identity; and to urge states to strengthen their national institutions with a view to preventing and investigating these acts and violations and ensuring due judicial protection for victims on an equal footing and that the perpetrators are brought to justice."⁸⁰⁷

564. The IACHR again reminds the Venezuelan Government that the right of every person to be free from discrimination is guaranteed under international human rights law, the American Declaration and the American Convention. The IACHR therefore urges Venezuela to take measures to prevent and respond to these human rights abuses, including through the adoption of laws, public policies and campaigns to stop discrimination based on sexual orientation, gender identity and gender expression.

⁸⁰¹ "La Asamblea Nacional debe aprobar leyes para terminar con la homo/lesbo/transfobia en Venezuela [National Assembly must approve laws to end homo/lesbo/transphobia in Venezuela]", November 11, 2012, available at: <http://www.kaosenlared.net/america-latina/item/37093-la-asamblea-nacional-debe-aprobar-leyes-para-terminar-con-la-homo/lesbo/transfobia-en-venezuela.html>.

⁸⁰² *Primicia*, "Matan Travesti con un Bloque [Transvestite bludgeoned to death with cement block]", September 9, 2012, available at: <http://www.primicia.com.ve/index.php/sucesos/item/33350-matan-travesti-con-un-bloque>. This and a number of other murders mentioned earlier were also reported by Carsten Balzer and Jan Simon Hutta, Transmurder Monitoring Project, a project on Transrespect versus Transphobia Worldwide, "List of 265 reported murdered trans persons from November 15th, 2011 to November 14, 2012 (in chronological order)", available at: <http://www.transrespect-transphobia.org/uploads/downloads/TMM/TvT-TMM-TDOR2012-NameList-en.pdf>

⁸⁰³ *El Siglo*, "Delincuentes rociaron gasolina a un joven y le prendieron fuego [Thugs douse youth with gasoline and set him on fire]", November 2, 2012, available at: <http://www.elsiglo.com.ve/modules.php?name=News&file=article&sid=36523>.

⁸⁰⁴ This coalition is a combination of the *Comunidad Metropolitana de Caracas A.C.*, *Colectivo Almas*, *Diversidad Sexual JCV*, *Fundación Venezolana de Apoyo a la Diversidad Sexual* and *Venezuela Diversa A. C.*

⁸⁰⁵ *Coalición Venezolana de Organizaciones LGBTI*, "Comunicado contra Actos de Homofobia en Municipio Francisco Linares Alcántara, Estado Aragua [Press release protesting homophobic acts in the Municipality of Francisco Linares Alcántara, Aragua state]", November 4, 2012, available at: <http://venezueladiversaac.blogspot.com/2012/11/coalicion-venezolana-de-organizaciones.html>.

⁸⁰⁶ "La Asamblea Nacional debe aprobar leyes para terminar con la homo/lesbo/transfobia en Venezuela [National Assembly must approved laws to end homo/lesbo/transphobia in Venezuela]", November 11, 2012, available at: <http://www.kaosenlared.net/america-latina/item/37093-la-asamblea-nacional-debe-aprobar-leyes-para-terminar-con-la-homo/lesbo/transfobia-en-venezuela.html>.

⁸⁰⁷ OAS, AG/RES. 2721 (XLII-O/12) "Human Rights, Sexual Orientation and Gender Identity", adopted on June 4, 2012, operative paragraph 3.

VI. SITUATION OF HUMAN RIGHTS DEFENDERS

565. In 2012, the IACHR continued to receive information on the situation human rights defenders in Venezuela, indicating that they continue to be the target of attacks, threats and harassment. The IACHR has taken particular note of the fact that the work of human rights defenders continues to be discredited, which feeds the hostility that these defenders encounter in carrying out their mission. In Addendum 2 of her Annual Report, the United Nations Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, expressed her concern over alleged attempts to discredit and threaten human rights defenders which, if confirmed, would suggest that the climate in Venezuela is becoming increasingly dangerous for human rights defenders.⁸⁰⁸

566. During the hearing on the situation of human rights in Venezuela, held during its 146th session, the organizations that had requested the hearing provided the IACHR with general information pertaining to alleged attacks on human rights organizations in that country. According to the information that the parties that requested the hearing supplied, the attacks reportedly follow a pattern featuring, *inter alia*, threats, arbitrary detentions, court-ordered measures, efforts to discredit the work of human rights defenders, tapping their phones and tampering with their mail, outright attacks and measures taken to limit what they can do to defend human rights.⁸⁰⁹

567. The IACHR has closely followed developments in Venezuela's Universal Periodic Review in the United Nations, which began in October 2011.⁸¹⁰ On December 7, 2011, the Human Rights Council's Working Group published its report, which contained 97 recommendations to the Venezuelan State; in March 2012, the State presented its observations, rejecting 52 of the recommendations, among them those recommending that the independence of the Judicial Branch in Venezuela and the work of human rights defenders be guaranteed.

568. As for attacks on the lives of human rights defenders, the IACHR has received information reporting an increase in violence against union leaders. According to the information available, 48 labor leaders were allegedly assassinated in the first half of 2012 alone,⁸¹¹ 36 more deaths than in all of 2011.⁸¹² While the Commission has been told that a significant percentage of these murders are committed in disputes over jobs, mainly in the construction and oil business,⁸¹³ it nonetheless believes

⁸⁰⁸ Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders*, Margaret Sekaggya. Addendum. Document A/HRC/19/55/Add.2, p. 44, 23 February 2012. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/107/45/PDF/G1210745.pdf?OpenElement>

⁸⁰⁹ IACHR. *Hearing on the situation of human rights in Venezuela*. 146th session, November 1, 2012.

⁸¹⁰ United Nations. *Universal Periodic Review Venezuela*. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/172/43/PDF/G1117243.pdf?OpenElement>

⁸¹¹ *Observatorio Venezolano de la Conflictividad Social, Informe Primer Semestre 2012: Se incrementa el descontento social con 14 protestas diarias* [Report for the First Half of 2012: Social discontent on the rise with 14 daily protests], July 2, 2012, p. 3. Available at: <http://observatoriodeconflictos.org.ve/oc/wp-content/uploads/2012/07/Tendencias-de-la-conflictividad-social-en-Venezuela-1er-semester-2012.pdf>; *El Nacional, Contabilizan 48 sindicalistas muertos en el primer semestre* [48 labor leaders killed in first six months of 2012], July 2, 2012. Available at: <http://m.eluniversal.com/nacional-y-politica/120702/contabilizan-48-sindicalistas-muertos-en-el-primer-semester>

⁸¹² PROVEA, *Situación de los Derechos Humanos en Venezuela, Informe Anual octubre 2010- Septiembre 2010* [Human Rights Situation in Venezuela, Annual Report October 2010-September 2010], December 8, 2010. Available at: <http://www.derechos.org.ve/pw/wp-content/uploads/27AnexosLaborales.pdf>. *La Clase, 36 sindicalistas fueron asesinados en Venezuela en el último año* [36 labor leaders killed in Venezuela last year], December 31, 2011. Available at: <http://laclase.info/nacionales/36-sindicalistas-fueron-asesinados-en-venezuela-en-el-ultimo-ano>

⁸¹³ *Plataforma Interamericana para los Derechos Humanos, Democracia y Desarrollo, PROVEA: 122 sindicalistas han sido asesinados en los últimos dos años en un contexto de impunidad* [122 labor leaders murdered in the last two years; no one made to answer for these crimes], August 19, 2010. Available at: http://www.pidhdd.org/index2.php?option=com_content&do_pdf=1&id=1936; COFAVIC, *Foro por la Vida exige al Estado investigar intento de homicidio contra Víctor Martínez y prestarle protección* [Foro por la Vida demands that State investigate the murder of Víctor Martínez and provide it with protection], January 24, 2012. Available at: http://www.cofavic.org/det_comunicados.php?id=54; PROVEA, *Padre de defensor de derechos humanos asesinado, relata intento de asesinato en su contra* [Father of human rights

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that in order to guarantee that labor leaders will be able to defend the rights of workers, the State has an obligation to protect the rights of labor leaders, including vis-à-vis third parties.

569. The IACHR continued to receive reports of attacks, threats and statements made to discredit the work of human rights defenders and whose effect is to expose them to even greater peril. For example, it received information concerning an attempt made on the life of Víctor Martínez, a former deputy in Lara's State Legislative Assembly and a human rights defender who works with the Lara State Anti-Impunity Victims Committee (COPIVIL). Martínez had allegedly filed a complaint alleging local police officers' involvement in the murder of his son, Mijail Martínez, in November 2009. According to the information available, on January 23, 2012, as he and his daughter were entering their home on the western side of Barquisimeto, in the state of Lara, Víctor Martínez was approached by an unidentified person, who pointed a firearm at him and ordered him to go into the house. After shoving his assailant and ordering his daughter to hide in the house, Víctor Martínez had managed to run to the street to ask for help, whereupon his assailant escaped and was picked up by an accomplice driving a black pickup.⁸¹⁴

570. The IACHR has continued to monitor the situation of Humberto Prado, director of the Venezuelan Observatory of Prisons, who was allegedly the victim of a smear campaign waged by government authorities using several media outlets.

571. Then, in an interview on January 23, 2012, published in the newspaper *Ciudad CCS*, the Minister of the Prison Service reportedly asserted that the NGOs could not have access to relevant information concerning conditions in the prison system, because she herself had issued an order that they were not to be allowed inside the prisons. She claimed that Humberto Prado was behind an alleged political campaign favoring the opposition and orchestrated by foreign interests.⁸¹⁵ According to the information available, the Minister in question reportedly mentioned Mr. Humberto Prado on October 18, 2012, in a telephone interview with the program "La Hojilla", carried by Venezuelan State Television. She reportedly referred to Mr. Prado as a "mafia" type, and said that "it was when Mr. Prado was director of Yare that the business of mafias started; weapons and even drugs began infiltrating the prison... The Cuarta government that named him director of Yare ultimately removed him, and by the time he was removed, he already had a police record because he was a mafia type."⁸¹⁶ In another interview, this one with the Actualidad Unión Radio station on November 8, 2012, the Minister of the Prison Service also allegedly claimed that "the inmates have said that they want nothing to do with Humberto Prado's NGO (the Venezuelan Observatory of Prisons) because it interferes in and manipulates events inside the prison walls."⁸¹⁷

572. Finally, on November 1, 2012, during the public hearing on persons deprived of liberty in Venezuela, which the Commission held during its 146th session, Mr. Humberto Prado described the

...continuation

defender murdered; defender recounts his own attempted murder], February 15, 2012. Available at: <http://www.derechos.org/ve/2012/02/15/bqto-padre-de-defensor-ddhh-asesinado-relata-intento-de-asesinato-en-su-contra/>

⁸¹⁴ *Front Line Defenders*, Venezuela: Assassination attempt against human rights defender Mr. Víctor Martínez, January 25, 2012. Available at: <http://www.frontlinedefenders.org/node/17160>; *Foro por la Vida: Foro por la Vida exige al Estado investigar intento de homicidio contra Víctor Martínez y brindarle protección* [Foro por la Vida demands that State investigate the assassination attempt on Víctor Martínez and provide him with protection]. January 24, 2012. Available at: [http://www.cofavic.org/images/AtentadoVM2412012\(1\).pdf](http://www.cofavic.org/images/AtentadoVM2412012(1).pdf)

⁸¹⁵ World Organization against Torture, Venezuela: *Minister Iris Varela forbids NGOs to have access to prisons and stigmatises the Venezuelan Prison Observatory*, January 26, 2012. Available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/venezuela/2012/01/d21603/>

⁸¹⁶ *Venezolana de Televisión. Ministra Iris Varela: Mentirosos sobre situación en Coro están molestos porque pierden sus negocios* [Minister Iris Varela: The liars about the situation in Coro are upset because they're losing their businesses]. Available at: <http://www.vtv.gob.ve/articulos/2012/10/19/varela-mentirosos-sobre-situacion-en-coro-estan-molestos-porque-pierden-sus-negocios-5661.html>

⁸¹⁷ *El Nacional: Ministra Varela: el señor Humberto Prado conoce muy bien como operan las mafias carcelarias* [Minister Varela: Mr. Humberto Prado is well acquainted with the way that prison mafias operate]. November 8, 2012. Available at: http://www.el-nacional.com/politica/Ministra-Varela-Humberto-Prado-carcelarias_0_77992362.html

overcrowding in Venezuelan prisons, whereupon an official from the Ministry for the Prison Service called Mr. Prado a “liar”, and denied the overcrowded conditions about which the petitioner organizations were complaining.⁸¹⁸

573. The information received by the IACHR indicates that Mr. Humberto Prado was allegedly the target of other forms of illegal interference and harassment. According to what the Commission was told, on May 20, 2012 a journalist had reportedly alerted Humberto Prado about a telephone call in which the journalist was told that he was being followed and his telephone was being tapped.⁸¹⁹ Likewise, on October 5, 2012 Mr. Prado had reportedly filed a complaint with the Attorney General of the Republic asking for an investigation into an alleged computer hacking and identity theft from his official Twitter account. According to the information available, the following day the host of the program “La Hojilla” had reportedly displayed Mr. Prado’s inbox page.⁸²⁰ Back in 2010, the Inter-American Court issued an order for provisional measures for Mr. Prado, stating that the State was to take protective measures and grant effective and adequate guarantees to ensure that Mr. Humberto Prado can conduct his activities freely; it also ordered the State to refrain from any measures that would constrain or obstruct his work.⁸²¹

574. The IACHR also received information concerning the threats received by Marianela Sánchez Ortiz, coordinator of the Venezuelan Observatory of Prisons and a defender of the human rights of persons deprived of liberty in Venezuela. Those threats concerned other members of her family. According to the information the Commission received, while she was monitoring a number of violent events that had allegedly broken out in the “La Planta” prison in Caracas, Mrs. Sánchez Ortiz reportedly observed that an unidentified man was following her to take photographs of her; he never asked questions nor did he identify himself as a member of the press. Then on May 30, 2012, between 11:00 and 11:30 a.m., four armed men reportedly approached Hernán Antonio Bolívar, Mrs. Sánchez Ortiz’ husband, just as he was getting into his car; according to Mr. Bolívar’s testimony, one of the four pointed a gun at his head and “threatened to kill him and his family if his wife continued to file complaints of violations of prisoners’ human rights.”⁸²² Weeks later, on June 22, 2012, while Mrs. Sánchez Ortiz was returning from the Judicial Circuit of the Caracas Criminal Court, two subjects had allegedly approached her, while another two waited for her at the entrance to the building housing the offices of the Venezuelan Observatory of Prisons. One of the men allegedly blocked the entrance, while another told her, in a loud voice, “That’s it”, looking at her with an intense, threatening stare. When the man left, Mrs. Sánchez Ortiz reportedly stepped quickly into the building and was very frightened.⁸²³ Based on these events, the IACHR asked the Inter-American Court to order provisional measures for Mrs. Sánchez Ortiz and her family, which the Court did on September 6, 2012.⁸²⁴

575. According to the information received, an article that appeared in the August 23 edition of the newspaper *Tal Cual* had drawn increased threats against human rights defender Rocío San Miguel.

⁸¹⁸ IACHR. Hearing on the situation of persons deprived of liberty in Venezuela. 146th session, November 1, 2012.

⁸¹⁹ *Front Line Defenders*, Venezuela: Attack and death threats against the family of Ms Marianela Sánchez Ortiz, in relation to the Venezuelan Prisons Observatory’s work. Available at: <http://www.frontlinedefenders.org/node/18520>.

⁸²⁰ Complaint filed with the Crime Bureau of the Office of the Attorney General of the Republic. Attachment to the communication that Mr. Humberto Pardo Sifontes sent to the IACHR, received by the Executive Secretariat on October 6, 2012.

⁸²¹ Order of the Inter-American Court of Human Rights, July 6, 2010. Provisional measures with regard to the Bolivarian Republic of Venezuela. Matters at certain Venezuelan prisons. Paragraph 28.

⁸²² Amnesty International, Venezuela: *Venezuelan activist threatened: Marianela Sánchez Ortiz*, June 01, 2012. Available at: <http://www.amnesty.org/en/library/info/AMR53/004/2012/en> ; *Front Line Defenders*, Venezuela: Attack and death threats against the family of Ms Marianela Sánchez Ortiz, in relation to the Venezuelan Prisons Observatory’s work. Available at: <http://www.frontlinedefenders.org/node/18520>

⁸²³ *Front Line Defenders*, Venezuela-update: *Human Rights Defender Ms. Marianela Sánchez Ortiz threatened*, 27 June 2012. Available at: <http://www.frontlinedefenders.org/node/18755>

⁸²⁴ Order of the Inter-American Court of Human Rights of September 6, 2012. Amplification of provisional measures with regard to the Bolivarian Republic of Venezuela in the matter of Marianela Sánchez Ortiz and family. Matters related to certain prisons in Venezuela.

The threats were received via email and San Miguel's Twitter account. On January 18, 2012 the IACHR granted precautionary measures for Rocío San Miguel and her daughter, who had been harassed and had received threats, including death threats, at their home. The threats and harassment were said to be related, *inter alia*, to San Miguel's activities in the nongovernmental organization *Control Ciudadano* [Citizen Control]. In her request seeking precautionary measures, San Miguel alleged that "the authorities have not conducted any investigations into the source of the threats and harassment and have not taken any measures to guarantee [her] life, integrity and safety."⁸²⁵ The IACHR asked the Venezuelan government to adopt the measures necessary to protect the life and physical integrity of Rocío San Miguel and her daughter, who was a minor; it also asked it to take measures in consultation with the beneficiary and her representative, and to inform the Commission of the measures taken to investigate the facts that necessitated the adoption of precautionary measures.⁸²⁶

576. Finally, during 2012, the IACHR continued to monitor the passage and/or application of laws in Venezuela that could obstruct exercise of the right to freedom of association of human rights defenders. The IACHR notes that the "Law on Defense of Political Sovereignty and National Self-Determination", published on December 23, 2010,⁸²⁷ provides, *inter alia*, that "the assets and other income of organizations with political purposes or organizations for the defense of political rights must be made up exclusively of national assets and resources."⁸²⁸ Civil society reported that the law had had two negative effects: a) it had reduced the opportunities for civil society to mount a unified defense against restrictions on freedom of association, as organizations that clearly are not defending or advocating causes related to political rights had steered clear of a united reaction for fear that the restrictive regulation might eventually be extended to include them; b) the ambiguous language and the failure to spell out what the expression "promoting, disseminating, reporting on or defending the full exercise of the citizenry's full rights"⁸²⁹ encompasses, have made organizations hesitant about defending rights of this type, for fear that their funding might be cut or otherwise restricted.

577. Furthermore, according to the information supplied by the organizations that had requested the hearing on the situation of human rights in Venezuela, which the Commission held during its 146th session, the Organic Law on the People's Power, approved by the National Assembly on December 9, 2010, had had a chilling effect on the freedom to associate for the pursuit of legitimate ends, among them the defense of human rights. Under this law, membership would be compulsory for persons in certain institutions of the people's power, whereupon the independent activity of civil society organizations would eventually be compromised and discredited and the organizations would be left out and criminalized. The consequences would be dramatic. For example, spaces for dialogue with the State would be closed down.⁸³⁰

VII. RECOMMENDATIONS

1. Guarantee the full exercise of political rights to all individuals, irrespective of their positions on government policies, and adopt the measures necessary to promote tolerance and pluralism in the exercise of political rights.

⁸²⁵ IACHR. Precautionary Measures 2012. PM349/11.

⁸²⁶ IACHR. Precautionary Measures 2012. PM349/11; *Analítica.com*. September 23, 2012. *Caso Rocío San Miguel* [Rocío San Miguel Case].

⁸²⁷ Art. 1. Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available [in Spanish] at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>.

⁸²⁸ Art. 4. Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available [in Spanish] at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>.

⁸²⁹ Art. 3(2). Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available [in Spanish] at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

⁸³⁰ IACHR. Hearing on the situation of human rights in Venezuela. 146th session, November 1, 2012.

2. Refrain from taking reprisals or using the punitive power of the State to intimidate or sanction individuals based on their political opinions, and guarantee the plurality of opportunities and arenas for democratic activity, including respect for gatherings and protests held in exercise of the right of assembly and peaceful protest.

3. Effectively guarantee the separation and independence of the branches of government and, in particular, adopt urgent measures to ensure the independence of the judicial branch, by strengthening the procedures for appointing and removing judges and prosecutors, affirming their job stability and eliminating the provisional status in which the large majority of judges and prosecutors find themselves.

4. From the highest levels of government, continue to publicly condemn acts of violence against social communicators, communications media, human rights defenders, unionists, and political dissidents, with the aim of preventing actions that foment these crimes and of avoiding continued cultivation of a climate of stigmatization towards those who maintain a stance critical of government actions.

5. Promote a climate of tolerance that encourages and is conducive to the active participation of and an exchange of ideas among the various sectors of society, and design institutions that promote rather than inhibit or thwart public discourse.

6. Adopt the necessary measures to protect the life and personal integrity of all persons, and the specific measures needed to protect journalists, human rights defenders, members of organized labor, persons who participate in public demonstrations, persons deprived of their liberty, indigenous peoples, afro descendants and the LGTBI community. Also, strengthen judicial institutions' capacity to combat impunity in cases of violence and to ensure that investigations into acts of violence are conducted effectively and with due diligence.

7. Guarantee the conditions necessary for defenders of human rights and union rights to be able to engage freely in their activities, and refrain from taking any action or adopting any legislation that would limit or impede their work.

8. Urgently adopt the measures necessary to correct the procedural delays and the high percentage of persons deprived of liberty without a final verdict, thereby avoiding the excessive, unnecessary and disproportionate reliance on preventive detention or detention pending trial. Also, take measures to reduce prison overcrowding and improve detention conditions so that they are in line with international standards in this area, while taking particular care to ensure safety inside prisons, effective control of weapons inside prisons, proper segregation of the inmate population to conform to the categories and criteria established in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, and to prohibit prisons from holding more prisoners than they have space for.

9. Step up efforts so as to gradually give full effect to economic, social and cultural rights while ensuring that that this does not come at the cost of the people's other basic rights. Furthermore, adopt public policies that allow for long-term continuity of efforts to guarantee economic, social and cultural rights, thereby ensuring that full enjoyment of these rights will not depend on the resolve of any future administration.