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**PRELIMINARY OBSERVATIONS OF THE INTER-AMERICAN
COMMISSION ON HUMAN RIGHTS ON ITS VISIT TO HONDURAS,
MAY 15 TO 18, 2010**

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

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PRELIMINARY OBSERVATIONS OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS ON ITS VISIT TO HONDURAS, MAY 15 TO 18, 2010

I. EXECUTIVE SUMMARY

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "IACHR" or the "Commission")¹ visited Honduras from May 15 to 18, 2010,² as a follow-up to the *in loco* visit it made in August 2009 and to the report titled *Honduras: Human Rights and the Coup d'état*.³

2. The delegation was composed of the President of the IACHR, Felipe González; its First Vice-President, Paulo Sérgio Pinheiro; the Executive Secretary, Santiago A. Canton; the Commission's Special Rapporteur for Freedom of Expression, Catalina Botero; the Coordinator for Meso-America and the Spanish-speaking Caribbean, Isabel Madariaga; the attorney with the Special Rapporteurship for Freedom of Expression, Ramiro Álvarez-Ugarte, and the Documents Technician, Gloria Hansen.

3. During the visit, the IACHR met with officials in the three branches of government: the Minister Special Commissioner for Human Rights; the Office of the Attorney General and the Office of the Special Prosecutor for Human Rights; the Vice Minister of Security and the Bureau of National Police; the Supreme Court of Justice; the officers of the National Congress and the Congressional Human Rights Commission; the Minister of Defense and the Head of the Joint Chiefs of Staff of the Armed Forces; and the Inter-institutional Human Rights Commission. It also met with human rights defenders, members of the media, representatives of civil society and members of the Truth and Reconciliation Commission. It also had an opportunity to meet with representatives of the United Nations system in Honduras and with ambassadors in the Stockholm Declaration Follow-up Group (G 16).

4. The visit was accorded all the necessary tools to conduct its mission. The IACHR would like to thank the representatives of the State, civil society organizations and international agencies for the information and cooperation they provided. The Commission recalls that under the terms of the American Convention on Human Rights and its own Rules of Procedure, no reprisals of any kind are to be taken against any person or entity that has cooperated with the IACHR by providing information or testimony.

5. At the end of its visit, the Commission issued press release 54/10⁴ in which it expressed its deep concern over the continuation of human rights violations in the context of the *coup d'état* that occurred in Honduras on June 28, 2009, notwithstanding the progress made toward the restoration of democratic institutions.

¹ A principal, autonomous body of the Organization of American States (OAS), the IACHR derives its mandate from the Charter of the OAS and the American Convention on Human Rights. The Commission is composed of seven independent members who act in a personal capacity, without representing a particular country. They are elected by the OAS General Assembly.

² IACHR, Press Release 60/09: *IACHR presents preliminary observations on its visit to Honduras*, August 21, 2009. Available at: <http://www.cidh.oas.org/prensa.eng.htm>. Released at a press conference held in Tegucigalpa.

³ IACHR, Press Release 5/10: *IACHR Publishes Report on Honduras*, January 20, 2010. Available at: <http://www.cidh.oas.org/prensa.eng.htm>. See Report: <http://www.cidh.oas.org/countryrep/Honduras09eng/Toc.htm>

⁴ IACHR, Press Release 54/10: *IACHR Expresses Concern about Human Rights Violations at the Conclusion of its Visit*, May 19, 2010. Released at a press conference that IACHR President Felipe González and Executive Secretary Santiago A. Canton held in Tegucigalpa. Available at: <http://www.cidh.oas.org/prensa.eng.htm>.

II. BACKGROUND

6. On June 28, 2009, Honduran Army troopers, acting on orders from the Head of the Joint Chiefs of Staff, entered the presidential residence, took President José Manuel Zelaya Rosales into custody and sent him to Costa Rica aboard a military aircraft. With that, a democratically elected President was ousted and the democratic, constitutional order was interrupted. That same day, the IACHR strongly condemned⁵ the coup d'état and the interruption of the constitutional order, issuing an urgent call to restore the democratic order and to respect human rights, the rule of law and the Inter-American Democratic Charter. It also called for absolute respect for the right to freedom of expression.

7. In keeping with its obligations to promote and protect human rights and given the hundreds of complaints it had received of serious violations of the right to life and the right to humane treatment, that same day, June 28, 2009, the Commission granted precautionary measures to safeguard the lives of hundreds of persons as a consequence of the *coup d'état*.⁶ It requested information on the risk that certain persons faced; it also requested information pursuant to Article 41⁷ of the American Convention on Human Rights and Article XIV of the Inter-American Convention on Forced Disappearance of Persons.⁸ The Commission issued several press releases and on June 30, it filed a request seeking an urgent visit to Honduras.⁹

8. On July 4, 2009, the OAS General Assembly held a special session where it approved resolution AG/RES.2 (XXXVII-E/09) in which it decided to suspend the Honduran State from the exercise of its right to participate in the OAS. In that same resolution the General Assembly resolved "to reaffirm that the Republic of Honduras must continue to fulfill its obligations as a member of the Organization, in particular with regard to human rights; and to urge the Inter-American Commission on Human Rights to continue to take all necessary measures to protect and defend human rights and fundamental freedoms in Honduras."¹⁰

9. The IACHR conducted its *in loco* visit from August 17 to 21, 2009. Along with the loss of institutional legitimacy brought about by the *coup d'état*, during its visit the Commission confirmed that serious human rights violations had been committed, including the killing of at least seven people, an arbitrary declaration of a state of emergency, disproportionate use of force against

⁵ IACHR, Press Release 42/09: *IACHR Strongly Condemns Coup d'État in Honduras*, June 28, 2009. Available at <http://www.cidh.oas.org/prensa.eng.htm>.

⁶ Given the number of complaints received, the IACHR began with precautionary measure 196-09, dated June 28, 2009, on behalf of the Minister of Foreign Affairs of Honduras, Patricia Rodas. It also requested information on other persons. Precautionary measure 196-09 has been amplified several times over. See in this regard: <http://www.cidh.oas.org/medidas/2009.eng.htm>.

⁷ American Convention on Human Rights, Article 41: "The main function of the Commission shall be to promote respect for and defense of human rights. In the exercise of its mandate, it shall have the following functions and powers: (...) d) to request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights."

⁸ Inter-American Convention on Forced Disappearance of persons, Article XIV: "[W]hen the Inter-American Commission on Human Rights receives a petition or communication regarding an alleged forced disappearance, its Executive Secretariat shall urgently and confidentially address the respective government, and shall request that government to provide as soon as possible any other information as to the whereabouts of the allegedly disappeared person together with any other information it considers pertinent, and such request shall be without prejudice as to the admissibility of the petition."

⁹ IACHR, Press Release 45/09: *IACHR Requests to Visit Honduras, Grants Precautionary Measures and Asks for Information*, June 30, 2009. Available at: <http://www.cidh.oas.org/prensa.eng.htm>.

¹⁰ OAS, General Assembly, Special Session, Resolution AG/RES 2 (XXXVII-E/09) of July 4, 2009, operative paragraphs 1 and 2. Available at: <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/Resolucionesextraordinarias.asp>.

public demonstrations, criminalization of public protest, arbitrary detention of thousands of persons, cruel, inhuman and degrading treatment, poor detention conditions, militarization of Honduran territory, an increase in incidents of racial discrimination, violations of women's rights, and severe and arbitrary restrictions on the right to freedom of expression. The Commission also established that judicial remedies were ineffective in protecting human rights in Honduras. On August 21, 2009, the IACHR publicly announced its preliminary observations on the visit in press release 60/09.¹¹

10. Subsequent to the August 2009 visit and in view of the information it had received concerning serious events occurring in Honduras, on September 23 and 29, 2009, the IACHR asked the State if it could conduct another visit. However, it did not receive a reply.

11. The IACHR prepared the report titled *Honduras: Human Rights and the Coup d'état*, and published it on January 20, 2010.¹²

12. On January 27, 2010, Mr. Porfirio Lobo Sosa was sworn in as President of Honduras, following elections held on November 29, 2009, in which mayors, members of municipal councils and deputies were also elected.

13. On February 3, 2010, the IACHR issued press release 14/10¹³ in which it expressed its concern with respect to the ambiguity of the Amnesty Decree approved by the National Congress of Honduras on January 26, 2010. Although the text made provision for certain exceptions in terms of human rights violations, the language was ambiguous and the decree did not spell out precise criteria or concrete mechanisms for its application.

14. On March 8, 2010, the IACHR condemned and lamented the murders of three persons who were active in the resistance to the *coup d'état*. The killings occurred between February and March of 2010. It also deplored the kidnappings, arbitrary detentions, sexual violations and illegal searches to which active members of the resistance to the *coup d'état* and members of their families had been subjected. The IACHR also expressed deep concern over the information received to the effect that children of activists were being threatened and harassed and in two cases had been killed.

15. On March 5, 15 and 16 the IACHR's Special Rapporteurship for Freedom of Expression condemned the murder of three journalists.

16. Based on the information that the Commission received regarding the human rights situation in Honduras and with the purpose to follow up on the *in loco* visit made in August 2009 and the report titled *Honduras: Human Rights and the Coup d'état*, on March 19, 2010 the IACHR asked the Honduran State to agree to another visit by the Commission.¹⁴

17. On March 27, 2010, the IACHR's Special Rapporteurship for Freedom of Expression condemned the murder of journalists from R.Z. Television Channel 4 and Radio Excelsior, Bayardo

¹¹ IACHR, Press Release 60/09: *IACHR presents preliminary observations on its visit to Honduras*. August 21, 2009. Available at <http://www.cidh.oas.org/prensa.eng.htm>.

¹² IACHR, Press Release 5/10: *IACHR Publishes Report on Honduras*, January 20, 2010. Available at: <http://www.cidh.oas.org/prensa.eng.htm>.

¹³ IACHR, Press Release 14/10: *IACHR Expresses Concern about Amnesty Decree in Honduras*, February 3, 2010. Available at: <http://www.cidh.oas.org/prensa.eng.htm>.

¹⁴ On April 22, 2010, the IACHR received a note signed by President Porfirio Lobo Sosa, dated March 26, 2010, in which he consented to the visit. Then, in a note dated May 7, 2010, the President of the Supreme Court informed the IACHR of the name of the person who would serve as government liaison during the visit.

Mairena and Manuel Juárez, on March 26 in the Department of Olancho, Honduras. The Office of the Special Rapporteur expressed its deep concern over the vulnerability of the press in Honduras.¹⁵ On April 22, 2010, another press release was issued when it was learned that yet another journalist had been murdered on April 20, 2010.¹⁶

18. In this context, the IACHR conducted a new visit to Honduras from May 15 to 18, 2010.

III. HUMAN RIGHTS SITUATION

19. During the visit conducted in May 2010, the Commission expressed deep concern over the continuation of human rights violations in the context of the *coup d'état*. In 2010 thus far, the Commission has had to grant a number of precautionary measures on behalf of persons whose lives or personal integrity are at risk. In most cases, the risk is associated with their participation in activities against the *coup d'état*.¹⁷

20. Despite the progress made toward restoring democratic institutions, the IACHR has received information on the murders of a number of people, among them journalists and human rights defenders. It has also received reports of a series of threats and harassment against human rights defenders, journalists, social communicators, teachers, union members and members of the resistance.

21. Notwithstanding the high crime rate that exists in general in Honduras,¹⁸ the IACHR considered that the complaints received may fit the same pattern of violence that the Commission

¹⁵ IACHR, Press Release R39/10: *Special Rapporteurship Condemns Murder of Honduran Journalists*, March 27, 2010. Available at <http://www.cidh.oas.org/prensa.eng.htm>.

¹⁶ IACHR, Press Release R45/10: *Special Rapporteurship Concerned about the Latest Murder Of Journalist in Honduras*, April 22, 2010. Available at <http://www.cidh.oas.org/prensa.eng.htm>.

¹⁷ See in this regard <http://www.cidh.oas.org/medidas/2010.eng.htm>.

- PM 196/09, Amplification – Marbin Emilio Hernández Duarte and his immediate family, Honduras (January 8, 2010).

- PM 196/09, Amplification – Nuclear family of Rasel Antonio Tome, Honduras (January 19, 2010).

- PM 196/09, Amplification - Gilberto Vides and his immediate family, Honduras (January 22, 2010).

- PM 18-10, Indyra Mendoza Aguilar *et al.*, Republic of Honduras (January 29, 2010).

- PM 196/09, Amplification – Anselmo Romero Ulloa and María Brígida Ulloa Hernández, Honduras (February 12, 2010).

- PM 38-10, Manuel de Jesús Varela Murillo *et al.*, Honduras (February 25, 2010).

- PM 91-10, Pedro Brizuela, Mateo Enrique García Castillo and their immediate families, Honduras (March 19, 2010).

- PM 95-10, X and Family, Honduras (March 24, 2010).

- PM 196-09, Amplification – Rebeca Ethel Becerra Lanza and daughters, Honduras (April 13, 2010).

- PM 196-09, Amplification – Inmer Genaro Chévez and Lucy Mendoza, Honduras (May 3, 2010).

¹⁸ “In its various manifestations, violence continues to be one of the main obstacles to human development, social co-existence and democratic governance in Honduras. [...] Violence destroys life expectancy in the country, as young people, in their most productive years of life between ages 15 and 44, are those most affected by the violence, accounting for 80.8% of its victims: a total of 588 children and adolescents were murdered; another 1,974 minors sustained injuries and were examined at the Forensic Clinic of the Public Prosecutor’s Office.” In a presentation of the Report of the Observatory on Violence in Honduras, Violent and Accidental Deaths, Bulletin No. 17, which compiles data from January to December 2009. Tegucigalpa, Honduras: IUDPAS- UNAH, April 2010.

denounced in its report on *Honduras: Human Rights and the Coup d'état*. However, the murders, threats and harassment are not being properly investigated by the judicial system, even though such investigations could clarify the question of whether these are related to the context of the *coup d'état*.

22. During the visit, the IACHR and the Special Rapporteurship expressed deep concern over the lack of effective investigations that would shed light on the facts surrounding these events.

A. Journalists and Social Communicators

1. Murders of journalists in 2010

23. Thus far in 2010, at least seven journalists have been killed in Honduras, for reasons that could be related to the practice of their profession.

24. On March 1, 2010, Joseph Hernández Ochoa, a journalist with Channel 51 in Tegucigalpa, was shot to death. His companion, journalist Karol Cabrera, sustained injuries but survived. David Meza Montesinos was murdered on March 11, 2010; at the time he was a journalist with Radio América and Radio El Patio in the city of La Ceiba. On March 14, 2010, journalist Nahúm Palacios was murdered in the city of Tocoa; Palacios had been news director for Television Channel 5 in Aguán. The IACHR had requested the State to adopt precautionary measures for him. On March 26, 2010, José Bayardo Mairena and Manuel Juárez, journalists for R.Z. Television Channel 4 and Radio Excélsior, were murdered as they were driving down a highway in the vicinity of the city of Juticalpa, in the department of Olancho. On April 13, Luis Antonio Chévez Hernández was killed in San Pedro Sula; he had worked at radio W105 in that city. On April 20, 2010, Jorge Alberto "Georgino" Orellana, a journalist with the *Televisión de Honduras* channel, was murdered in the city of San Pedro Sula. As for journalist Palacios, it is important to note that once the Commission granted precautionary measures on his behalf, the State had a duty to take the measures necessary to protect his life. However, based on what has been reported, it apparently did not comply with its obligation.

25. The Secretariat for Security presented a report before the National Congress on May 5 describing the current status of the investigations into these murders.¹⁹ The report was confidential and its contents are unknown. The Secretariat for Security maintained that the investigations could be obstructed if the contents of the report were to be revealed.²⁰ The Vice Minister of Security, Armando Calidonio, said that "thus far no connection has been established between the journalists' murders and their practice of their profession."²¹ However, both the Office

...continuation

According to that report, in the period from 2004 to 2009, 20,590 individuals were the victims of homicide in Honduras, with the numbers climbing from 2,155 in 2004 to 5,265 in 2009, which is an increase of 144.3%. Starting in 2007, rapid increases are observed in the incidence of homicide, particularly by hired killers, which also saw the highest increases[.] The country's vulnerability was such that it went from a rate of 30.7 to 66.8 homicides per 100,000 inhabitants, which represented an increase of 36.1 points. [...] In 2009, there were 8,154 violent deaths in Honduras, 925 more than in 2008, for an increase of 12.7%. The homicides claimed a total of 5,265 victims, which is an increase of 17.7% over 2008; violent deaths associated with traffic accidents remained virtually the same as the previous year, with 1,200 deaths, which represented a modest decline of -0.6%. Available [in Spanish] at: http://www.undp.un.hn/observatorio_violencia_09.htm "

¹⁹ The report was requested by Representative Augusto Cruz Asensio, in response to the escalation in the violence against journalists in 2010.

²⁰ See *Diario La Tribuna*, "En secretividad investigación sobre asesinatos de periodistas" ["Investigation into the murder of journalists shrouded in secrecy"], available [in Spanish] at: <http://www.latribuna.hn/web2.0/?p=128429>

²¹ *Diario La Tribuna*, "Capturan a implicado en la muerte de periodista" ["Suspect in the death of a journalist captured"], available [in Spanish] at <http://www.latribuna.hn/web2.0/?p=122981>.

of the Special Prosecutor for Human Rights and the nongovernmental organizations that monitor these matters stated that in some of these cases, there is serious discussion of theories that connect the murders to the practice of journalism. Those nongovernmental organizations maintained that no progress has been made in the investigations and are of the view that the authorities are not interested in solving the murders.²² Even the Office of the Special Prosecutor for Human Rights attributed the failings of the investigations to the “limited investigative skills of the police.”²³

26. It is imperative that the Honduran State take urgent action to move forward with investigations conducted by independent, specialized bodies, with a view to ascertaining the facts surrounding these deaths, which includes determining whether in fact the crimes were related to the practice of the profession, so that the persons responsible for the crimes can be tried and convicted. The State must also adopt permanent protective mechanisms to ensure the lives and personal integrity of the journalists and social communicators who are at risk. Perpetuating impunity not only denies justice to the victims’ next of kin; it also affects society as a whole, as it fosters fear and self-censorship, as a number of journalists and social communicators explained at the meetings held with the IACHR during its visit to Honduras in May 2010.²⁴ Furthermore, representatives of civil society were critical of the fact that the authorities were pushing the idea that the murders were unrelated to the practice of journalism, yet offered no evidence of any kind to back up their claims.²⁵

2. Threats, harassment and protective measures

27. The report that the Commission prepared following its *in loco* visit to Honduras in 2009 documented threats, harassment and attacks on the media and journalists during the coup d’état and in the weeks that followed. As of the writing of this report, those attacks against the press continue.

3. Journalists threatened

28. The following is a summary of recent cases of threats made against journalists, which the IACHR was able to document during its visit to Honduras in May 2010. These are not the only cases, but they are emblematic. They are presented here as examples to illustrate the serious situation that the press is experiencing in that country.

29. Journalist Jorge Ott Anderson is the owner of a small cable channel in the city of Colón. By closed circuit television, the channel reaches the municipalities of Bonito Oriental, part of Trujillo and part of Tocoa.²⁶ The threats against Ott Anderson began on June 30, 2009, two days after the *coup d’état*. They were made by phone and were broadcast live, since the journalist takes calls from viewers live and on the air. The military shut down the channel, which was off the air for two and a half months. According to Ott Anderson, the threats have continued unabated ever

²² Information received at a Commission meeting with social communicators, May 16, 2010, in Tegucigalpa, Honduras.

²³ Meeting with the Office of the Special Prosecutor for Human Rights, May 15, 2010, in Tegucigalpa, Honduras.

²⁴ Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa, Honduras.

²⁵ Vilma Rosales, a member of *C-libre*, criticized the fact that, without any offer of evidence, the authorities said that the murders of journalists are unrelated to the practice of their profession. Rosales was of the view that: “Statements like this foster impunity and incite further criminal acts.” Testimony taken in Tegucigalpa, Honduras, on May 15, 2010.

²⁶ Telephone interview with Jorge Ott Anderson on May 14, 2010.

since. The frequency of the calls increased after he reported on the murder of journalist Nahúm Palacios and the detention of a youth in Bonito Oriental, who was allegedly subjected to police brutality in late April 2010. On April 18, 2010, he received a call while his program was on the air; an unknown person warned him that they would kill him at any time.²⁷ On May 13, 2010, he received another threat, this time during the night.

30. Ricardo Oviedo has airtime on a Colón channel, which he leases on a monthly basis. He is also president of the Colón Association of Social Communicators. According to Oviedo, he has been harassed by police and members of the armed forces ever since the *coup d'état*. The situation worsened after the massive deployment of military troops in the Bajo Aguán region, during the conflict between peasant farmers and businessmen in the area. While the Honduran government claimed that these were measures taken by the Armed Forces in the area of domestic security to collaborate in the fight against drug trafficking, Oviedo believes that the purpose of the deployment is to harass the peasant farmers.

31. Since then, Oviedo claims that he is being followed by persons on motorcycles and in cars and that on April 13, one of those vehicles cut him off, causing him to fall off his motorcycle. He sustained a number of injuries. On other occasions, shots have been fired at his house and bursts of machinegun fire can be heard outside the studio from which he broadcasts his program. Oviedo filed a complaint with police at the urging of his colleagues from the Association of Social Communicators. On May 1, they offered him a variety of different protective measures, such as increasing the police presence near his home and police patrols. While the patrols were in place for a number of days, Oviedo asked the police to withdraw them when they created a great deal of noise –which he claims was done intentionally to disturb his neighbors and force him to forgo the protection. According to Oviedo, some institutions recommended that he leave the country, but he does not have the means to do so. Oviedo believed that there is a concerted effort to silence him. He lost enormous amounts of advertising in recent months; they have disrupted the transmission of his program and people are afraid to go to the program. “They have set the stage for something to happen to me, just like what happened to Nahúm,” he recalled.²⁸

32. Jessica Pavón is the news anchor on two news programs on Tegucigalpa’s Channel 6: *Notiseis Matutino* [The Channel 6 Morning News] and *Notiseis Nocturno* [The Channel 6 Nightly News]. On Thursday, May 13, 2010, Pavón received a call on her cell phone and then a message to the following effect:

“You feel death. Right, bitch? Because you’re dressed in white, we’re going to kill you, bitch” [sic]

33. Pavón was in fact wearing white that day. Almost ten minutes later, she received another message, which said the following:

“When we see you, we’re going to blow your head off, bitch. Get ready, because it’s channel 6’s turn now. Orlin Castro [one of Pavon’s colleagues at Channel 6 who works in San Pedro Sula and had been a recent target of persecution] got away from us. The luck is for you, JESSICA PAVON. Regards el Chele” [sic]

²⁷ Telephone interview with Jorge Ott Anderson on May 14, 2010. See also, IFEX communiqué, “Two Television Journalists Threatened with Death,” available at: http://www.ifex.org/honduras/2010/05/05/death_threats/es/.

²⁸ Telephone interview with Ricardo Oviedo on May 14, 2010.

34. After contacting the police, at 8:00 p.m. Pavón was taken home in a private car by two police officers sent by the Secretariat for Security.²⁹ Since then she has received a number of calls and similar messages. Pavón filed a complaint with the Office of the Director General of Criminal Investigations and the Public Prosecutor's Office. As a news anchor, she usually reports police news and had recently interviewed persons connected to the teachers union and workers and business people about the negotiations on the minimum wage.³⁰

4. Journalists with *Radio Progreso*

35. The community radio station Radio Progreso, which is in El Progreso in the department of Yoro, was one of media outlets taken over by the armed forces on June 28, 2009. Since then, it has been subjected to pressure of various kinds and a number of journalists who work for the station have received constant threats. Some of them are the beneficiaries of precautionary measures granted by the IACHR.³¹

36. Thus, for example, journalist Gerardo Chévez received a threatening text message on March 29, 2010, at around 3:00 p.m. Early that same day, the journalist received another message with the following text: "*Resistance, we're eliminating the 'Chebes'; the priests are next.*" It is important to note that on April 11, 2010, they had murdered his cousin, social communicator Luis Alberto Chévez.³² Attorney Lucy Mendoza received a threatening text message on April 24, 2010, which said the following: "*Colonel: You think we don't know you? When you go to the park, we know what time you get there and who you're with; you better stop all this resistance business.*" Attorney Mendoza, who has been followed and has received other threats, has worked for ERIC³³ for approximately two years and in recent months has been providing direct support to the journalists from Radio Progreso.³⁴

5. Journalists with *Radio La Voz de Occidente*

37. Arturo Rendón Pineda, the owner of Radio *La Voz de Occidente* in Santa Rosa de Copán, and Manuel Gavarrete, a journalist with that media outlet (and director of the news program "Sucesos"), have both been victims of a number of threatening telephone calls. Thus, for example, on May 17, 2010, while the news program was being broadcast, they received three calls at the station threatening the life of the owner of the station and that of journalist Gavarrete and his family.

38. Rendón Pineda denounced that since the *coup d'état*, he and the journalists who work at his radio station have been the targets of serious acts of harassment, such as bursts of machinegun fire outside the station and at Rendón's home.³⁵ Gavarrete, for his part, complained

²⁹ Telephone interview with Jessica Pavón on May 18, 2010.

³⁰ Telephone interview with Jessica Pavón on May 18, 2010.

³¹ The persons connected to Radio Progreso who are the beneficiaries of precautionary measures of protection are: Ismael Moreno, Rommel Gómez, Gerardo Chévez and Lucy Mendoza. On June 2, 2010, the IACHR amplified precautionary measure PM 196-09, for twelve journalists with Radio Progreso. The beneficiaries are: Karla Patricia Rivas Sánchez, José Pablo Peraza Chávez, Rita Suyapa Santamaría Velásquez, Alfredo Bográn, Iolany Mariela Pérez Parada, Rommel Alexander Gómez, Lesly Castro, José Domingo Miranda, Héctor Hernández, Victor Emilio Borjas, Leticia Castellanos and Pablo Ordóñez.

³² Telephone conversation with Gerardo Chévez on May 12, 2010.

³³ Jesuit Ministries' Team of Reflection, Research and Communication in Honduras [Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús en Honduras] (ERIC)

³⁴ Information received at the meeting the Commission held with social communicators in Tegucigalpa, Honduras, on May 16, 2010.

³⁵ Telephone interview with Arturo Rendón Pineda on May 24, 2010.

that his wife had received a call warning her that her children would be killed unless her husband shut up.³⁶ Rendón Pineda decided to file complaints with the Public Prosecutor's Office and various civil society organizations. According to Rendón Pineda, the harassment and the threats are because of the station's editorial line, which was very critical of the June 28 *coup d'état*. The owner of *La Voz de Occidente* recalled that shortly before receiving the threatening phone calls, they had read an opinion piece over the air that had been published in the newspaper *El Tiempo* in which questions were raised about the figures from the Supreme Electoral Tribunal on the November 2009 elections.³⁷ Rendón Pineda also said that his station sometimes gives airtime to Resistance activists.

6. Attacks on media outlets

39. The 2009 Report on Honduras documented attacks on media outlets' places of business, involving gunfire, incendiary bombs, etc. The people at *C-libre* explained that the attacks continue, but are not necessarily targeted at the media outlets mentioned in the 2009 Report.³⁸

40. Sometime after 3:30 am on January 6, 2010, unknown persons set fire to the community radio station Faluma Bimetu (Coco Dulce), which serves the community of Triunfo de la Cruz in the department of Atlántida. The radio station belongs to the Garifuna community. Since the June 2009 *coup*, the radio station had received a number of threats because of its opposition to the *coup d'état* and to various real estate development projects underway in the region. As a result, the radio station told the Commission that its situation was dangerous.³⁹ Alfredo López, manager of Faluma Bimetu, said that on April 24, shortly before the Commission's visit to Honduras in May 2010, he had made arrangements with the State consisting of two daily police patrols.⁴⁰ However, López said that the patrols stopped within a few days.

41. The IACHR also received information about an attack on members of the radio station *La Voz de Zácate Grande*, which serves the town of Zácate Grande in the Gulf of Fonseca. In April 2010, the station received a visit from a group of individuals in civilian attire with ties to landowner Miguel Facussé; the individuals in the group insulted some of the people who were at the station at the time. Later, on April 17, 2010, they were visited by persons bearing arms, who claimed to have come on behalf of the Public Prosecutor's Office and who asked to see the documents that authorized the radio station to operate. Some days later a delegation from the police went to the station, but the public blocked their entry. Prosecutor Marco Tulio Campos filed a criminal complaint with the Ampala district court accusing Pedro Canales Torres, José Ernesto Laso, Wilmer Rivera Cabrera, Ethel Verónica Corea, Rafael Osorio, and José Danilo Osorio –all members of the radio station– with the crime of usurpation of land and the crime of defrauding the government by setting up a radio station without CONATEL's authorization.⁴¹

³⁶ Telephone interview with Manuel Gavarrete on May 24, 2010.

³⁷ The opinion piece in question is titled "Statistics from the Supreme Electoral Tribunal, 2009," and was published on May 17, 2010, in the Honduran newspaper *El Tiempo*, available [in Spanish] at <http://www.tiempo.hn/web2/noticias/84-editorialesotros/16176-estadisticas-del-tribunal-supremo-electoral-2009.html>.

³⁸ Meeting held with members of *C-libre* on May 15, 2010.

³⁹ On April 28, 2006, the Commission granted precautionary measures (PM 253-05) for the Garifuna Community of Triunfo de la Cruz, which are still in force.

⁴⁰ Information received at the meeting the Commission held with social communicators in Tegucigalpa, on May 16, 2010.

⁴¹ Information received at the meeting the Commission held with social communicators in Tegucigalpa, Honduras, on May 16, 2010. Information was also obtained from the alert that IFEX put out on April 29, 2010, available [in Spanish] at http://www.ifex.org/honduras/2010/04/29/fiscalia_del_ministro/es/. See also <http://conexihon.com/?q=node/26>

7. Legal framework

42. The report titled *Honduras: Human Rights and the Coup d'état*, which the Commission published in 2009 following its *in loco* visit to Honduras, documented the existence of a system of domestic laws that severely restricted civil liberties in general, and freedom of expression in particular. Executive Decree PCM-M-016-2009 suspended constitutional guarantees for a period of 45 days.⁴² That decree was CONATEL's legal basis for closing down Channel 36, Radio La Catracha and Radio Globo and for seizing their equipment (see *infra*).

43. While that decree was eventually revoked, Executive Decision No. 124-2009 is still in force. That decision gives CONATEL the authority to take over media outlets on highly ambiguous grounds.⁴³ According to reports received, this decree was never applied but is still in effect.⁴⁴ This in itself instills fear and inhibits the media, as its members know that the executive decision can be enforced against them at any time. The vague language and breadth of the terms used, and the improper invocation of notions like "national security" imply a blanket license that is incompatible with the provisions of Article 13 of the American Convention.

8. Failure to investigate the closing of media outlets, the detention of journalists and the attacks on the media

44. On June 28, 2009, Channel 36 was taken over by the Armed Forces and was off the air until July 4, when it resumed operation after the Office of the Special Prosecutor for Human Rights intervened. The transmission towers of Radio Globo and Radio La Catracha, located in the area of Cerro Cantagallo, were taken over.⁴⁵

45. According to the information compiled, on the morning of June 28, 2009 Army Lieutenant Colonel José Arnulfo Jiménez took over the facilities of Channel 36, while Army Lieutenant Darvin Ismael Ardón took control of the Radio Globo and Radio la Catracha transmitters.⁴⁶ Both were charged with the crimes of "destroying or damaging the telecommunications service" and "abuse of authority." In the case, brought by the Office of the Special Prosecutor for Human Rights, the defendants argued that they had orders from superiors and had acted in compliance with an order from the Administrative Law Court which allegedly

⁴² The decree includes a 45-day suspension of constitutional guarantees related to personal liberty, freedom of association and assembly, freedom of movement, and freedom of expression, and establishes that the armed forces will participate in operations "to maintain the order and security of the Republic" and to take audiovisual communications media off the air. The decree also prohibits any public meeting not authorized by police or military authorities; restricts freedom of transit, indicating that the *de facto* authorities will announce the duration of curfews and the geographical area in which they will be applied; and orders the detention of anyone who moves about in hours outside the established timetable. In IACHR, Press Release 69/09: *IACHR Condemns Suspension of Guarantees in Honduras*, September 29, 2009. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/69-09eng.htm>.

⁴³ Executive Decision 194-2009, Article 2, which reads as follows: "For the appropriate legal purposes, the National Telecommunications Commission (CONATEL) and other competent organs of the State are hereby instructed to exercise their legal authorities to protect the national security for the sake of the overriding interests of the Nation and to defend the rights and physical and moral integrity of the human person; inasmuch as the State is the owner of the radio frequency spectrum, they may revoke the permits and operating licenses that CONATEL granted to operators of radio and television stations that broadcast messages that seek to justify hatred of the Nation and violation of protected rights and claims and that defend a system of social anarchy as opposed to a democratic State and in so doing violate social peace and human rights."

⁴⁴ Information supplied by *C-Ilbre* at a meeting held in Tegucigalpa, Honduras, on May 14, 2010.

⁴⁵ See, in this regard, the report titled *Honduras: human rights and the coup d'état*, paragraphs 414 et seq.

⁴⁶ Record from the Initial Hearing, Case No. 0801-2009-48097, before Judge Marta Marlene Murillo Castillo.

ordered confiscation of materials advertising of the so-called “fourth ballot box” and related items.⁴⁷ The two officers argued that they suspected that the two media outlets in question were housing related materials. As the defendants themselves acknowledged at the initial hearing, those materials were never found. However, the takeover of the Channel 36 building lasted eight days. Judge Marta Murillo decided to dismiss the case on the grounds that the military had been following a legitimate order.⁴⁸ The Office of the Special Prosecutor for Human Rights filed an appeal on January 13, 2010. According to the information received, the appeal had not yet been decided.⁴⁹

46. On June 28, 2009, Radio Juticalpa in the department of Olancho, and Radio Progreso in the department of Yoro were also taken over and forced to suspend broadcasting. The Office of the Special Prosecutor for Human Rights filed a formal request with the court seeking indictment of the military officers who led these actions. In the case of the closing of Radio Juticalpa, while the lower court ordered that one of the accused members of the army be taken into custody, the Third Court of Appeals revoked that order and dropped the charges against the accused.⁵⁰ In the case of the takeover of Radio Progress, the charges against the accused were dismissed. As of the date of preparation of this report, the appeal filed by the Office of the Special Prosecutor for Human Rights had not been decided.

47. On September 28, 2009, the equipment of Channel 36, Radio La Catracha and Radio Globo was confiscated, making it impossible for them to go on air. The equipment seizure was the result of a process instituted by CONATEL on the basis of decree PCM-M-016-2009, which had been issued just two days earlier. A number of different security forces took part in the operation, some of whom wore hoods. In October, the State informed the IACHR that the equipment had been returned and that the stations had resumed normal broadcasting, since the decree authorizing the closing of those media outlets had been revoked.⁵¹ On December 15, 2009, the Office of the Special Prosecutor for Human Rights sought indictment of those members of CONATEL who had ordered confiscation of the media outlets’ equipment. However, his request was denied: Judge Marta Murillo ordered that the charges against the CONATEL commissioners who had ordered this shutdown be dropped.⁵² The Office of the Special Prosecutor for Human Rights filed an appeal to challenge the decision on April 15, 2010, but the appeal has still not been decided.⁵³

48. The report that the Commission prepared after its *in loco* visit to Honduras in 2009 described other violations as well, such as assaults on journalists covering demonstrations, arbitrary detentions and attacks on the headquarters of media outlets. However, no punishment of any kind has been ordered for anyone involved in these events.

9. Inefficacy of the protective measures

⁴⁷ See the report titled *Honduras: human rights and the coup d’état*, IACHR, 2009, paragraphs 82 et seq.

⁴⁸ Record of the initial hearing, Case No. 0801-2009-48097, before Judge Marta Marlene Murillo Castillo.

⁴⁹ Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

⁵⁰ Report sent by e-mail to the Commission by the Office of the Special Prosecutor for Human Rights, May 26, 2010.

⁵¹ IACHR, *Honduras: Human Rights and the Coup d’état*, paragraph 421.

⁵² The accused commissioners were Miguel Ángel Rodas Martínez, Héctor Eduardo Pavón Aguilar, Gustavo Lara López, José Antonio López Sanabria and Germán Enrique Marthel Beltrán.

⁵³ Information received from the Office of the Special Prosecutor for Human Rights at a meeting held on May 15, 2010. See also *El Libertador*, “Jueza Martha Murillo falla en contra de la Libertad de Expresión; la sentencia aprueba el saqueo y cierre de Canal 36” [“Judge Martha Murillo rules against Freedom of Expression; the ruling rubberstamps the sacking and shutdown of Channel 36”], available [in Spanish] at <http://ellibertador.hn/Nacional/3929.html>.

49. By the end of May, 2010, 28 journalists in Honduras are the beneficiaries of precautionary measures granted by the Commission. Nahúm Palacios, the journalist murdered on March 14, 2010, was under that protection at the time of his murder. Civil society organizations and the beneficiaries themselves have reported serious problems with the implementation of the precautionary measures. The journalists' mistrust of the police and the lack of an effective response by the authorities appear to be among the reasons for the inadequate implementation of these measures.⁵⁴ The situation is compounded by the impunity that the perpetrators of crimes against social communicators enjoy: according to the information that the Commission requested from the authorities, suspects were in custody in only one of the seven cases involving murdered journalists, but there is good reason to question whether the suspects in custody were actually involved in the journalist's murder.⁵⁵

50. It is worthwhile noting that, thus far, the authorities' response to the precautionary measures, when there has been a response, has consisted in offering to supply identification cards, patrols of homes, escorts to and from work, and personal guard services at night.⁵⁶ However, some journalists said that they were very fearful of the police because of their association with the repression that followed the *coup d'état* and with groups having ties to organized crime.⁵⁷ This creates a problem that requires different solutions. In this sense, it is essential that the State establish special measures of protection that are effective, reinforced and implemented in consultation with the journalists themselves.

10. Other abuses

51. Some media outlets complained of indirect censorship mechanisms, such as pressure exerted on private businesses to convince them to stop advertising on media outlets that were critical of the government immediately after the *coup*. The owner of Channel 36, Esdras Amado López, provided the Commission with letters sent to his business in which CITI Honduras,⁵⁸ Banco Ficohsa,⁵⁹ and the TIGO communications company⁶⁰ cancelled their advertising a few weeks after the military *coup*. The journalists agreed that State-owned Channel 8 continued to operate as it had before the *coup*, in other words, as a channel for propaganda of the government in power.⁶¹

B. Human Rights Defenders and Social Leaders

1. Murders of human rights defenders and social leaders

⁵⁴ Telephone interviews with Jorge Ott Anderson and Ricardo Oviedo on May 14, 2010.

⁵⁵ See *La Tribuna*, May 4, 2010, "Fiscalía no puede acusar a Cockborn por la muerte de 'Georgino' Orellana" ["Prosecutor's Office unable to indict Cockborn for the murder of 'Georgino' Orellana"] available [in Spanish] at <http://www.latribuna.hn/web2.0/?p=127361>, and *El Heraldo*, May 3, 2010, "Cockborn no queda preso por crimen de periodista" ["Cockborn no longer in custody for journalist's murder"], available [in Spanish] at <http://tiny.cc/tr5m1>.

⁵⁶ Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa.

⁵⁷ Information received at the meeting the Commission held with social communicators on May 16, 2010, in Tegucigalpa.

⁵⁸ E-mail of July 13, 2009. The company claimed a regional cut in advertising budgets.

⁵⁹ Letter of July 13, 2009, in which it cancels an order for advertising.

⁶⁰ Letter of July 21, 2009 in which TIGO cancels its orders for advertising and production 000871 and 000872 of the news programs "*Así se Informa Estelar*" and "*Así se Informa Matutino*".

⁶¹ Information received at the Commission's meeting with social communicators on May 16, 2010, in Tegucigalpa.

52. During its May 2010 visit, the Commission received information about a series of threats and acts of harassment targeted at human rights defenders, journalists, social communicators, teachers, union members and members of the Resistance. However, the Honduran system of justice has not taken the measures necessary to shed light on those attacks and to reliably establish whether or not they were in any way related to the context of the *coup d'état*.

53. On December 16, 2009, Walter Orlando Trochez, a human rights defender and activist from the LGBT community who had given testimony to the IACHR during its *in loco* visit in August 2009, was murdered in the city of Tegucigalpa, with two gunshots fired from a moving vehicle. Earlier, on December 4 of that year, Mr. Trochez had allegedly been the target of a kidnapping attempt by four men wearing hoods. While brutally beating Mr. Trochez, the four men had questioned him about the Resistance Front, its leaders and its movements. According to information received during the May 2010 visit, the investigation undertaken by the Public Prosecutor's Office has gone nowhere.

54. In Press Release 26/10,⁶² dated March 8, 2010, the IACHR⁶³ condemned and lamented the murders of three persons in Honduras who were active in the resistance to the *coup d'état*. The murders occurred in February 2010. According to the information received, on February 3, 2010, Vanessa Zepeda Alonzo, age 29, an active member of the Resistance Front and a member of the Social Security Employees Union, was found dead in Tegucigalpa. According to eyewitnesses, her body had been thrown from a car.

55. On February 15, 2010, Julio Fúnez Benítez, an active member of the resistance and a member of the SANAA Workers Union, was shot twice and killed as he was chatting on the sidewalk outside his home in Colonia Brisas de Olancho, by unknown persons traveling on a motorcycle.

56. On February 24, 2010, Claudia Maritza Brizuela, age 36, was killed at home. She was the daughter of union and social leader Pedro Brizuela, who participates actively in the resistance. Two unknown persons came to the door; when Claudia Brizuela opened the door, she was shot and killed in the presence of her two children, ages 2 and 8.⁶⁴

57. After these murders in February, Francisco Castillo⁶⁵ was murdered on March 17, 2010. He was an active member of the resistance. Mr. Castillo and his wife had allegedly been the victims of harassment by persons driving motorcycles and cars.

58. Mr. Juan Manuel Flores Arguijo, leader of the National Resistance Front and a member of the association of secondary-school teachers, was murdered on March 23, 2010, while at Comayagüela's Instituto San José de Pedregal, in the presence of teachers and students.

59. On May 8, 2010, Adalberto Figueroa, a leader of the Olancho environmentalist movement and of his community, was shot several times and killed one kilometer from his home by persons wearing balaclavas. According to the reports received, his death was said to be linked to

⁶² IACHR, Press release 26/10: *IACHR Deplores Murders, Kidnappings and Attacks in Honduras*, March 8, 2010. Available at: <http://www.cidh.oas.org/prensa.eng.htm>

⁶³ Moreover, in exercise of its authority under Article 41 of the American Convention on Human Rights, on March 11, 2010 the IACHR requested information from the State concerning these events.

⁶⁴ IACHR, Press release 26/10: *IACHR Deplores Murders, Kidnappings and Attacks in Honduras*, March 8, 2010. Available at: <http://www.cidh.oas.org/prensa.eng.htm>

⁶⁵ On January 15, 2010, the Commission requested information from the State about the situation of Francisco Castillo. It has yet to receive a reply.

complaints that the victim had filed about illegal exploitation of local forests by businessmen in the lumber industry.

60. Gilberto Alexander Núñez Ochoa, said to have been a member of the security committee of the Resistance, was murdered on May 13, 2010. He was shot 17 times.

61. On May 26, 2010, Pedro Antonio Durón Gómez, brother of Arcadia Gómez -minister to President Zelaya and an active member of the National Resistance Front-, and Oscar Tulio Martínez, an agent with the General Bureau of Special Investigative Services (DGSEI) were shot several times and killed by individuals who intercepted the vehicle they were driving.

62. According to information the Commission received during its visit, the administration of justice has not yet solved these murders.

2. Threats against and harassment of human rights defenders and other social leaders

63. In its March 8, 2010 press release,⁶⁶ the Commission deplored the kidnappings, arbitrary detentions, torture, sexual violations and unlawful searches that had victimized persons active in the resistance to the *coup* and their families. The IACHR also expressed its deep concern over the information received to the effect that children of the leaders of the Resistance Front were being kidnapped, attacked and threatened, as a strategy to silence the resistance. It reported that on February 17, 2010, Dara Gudiel, age 17, was found hanged in the city of Danlí, department of El Paraíso. Dara Gudiel was the daughter of journalist Enrique Gudiel, who leads a radio program called "*Siempre al Frente con el Frente,*" which broadcasts news about the resistance. Some days before she was discovered hanged, Dara Gudiel had been released after a two-day abduction, during which time she had been physically mistreated.

64. During the visit, the Commission received information to the effect that the threats and harassment of human rights defenders, teachers, social leaders and members of the Resistance continue. In fact, during the first five months of 2010, the IACHR felt compelled to grant a series of precautionary measures to protect the lives and personal integrity of a considerable number of persons who were in jeopardy, in general because of their activities against the *coup d'état*.⁶⁷

⁶⁶ IACHR, Press release 26/10: *IACHR Deplores Murders, Kidnappings and Attacks in Honduras*, March 8, 2010. Available at: <http://www.cidh.oas.org/prensa.eng.htm>.

⁶⁷ See in this regard <http://www.cidh.oas.org/medidas/2010.eng.htm>.

- PM 196/09, Amplification – Marbin Emilio Hernández Duarte and his immediate family, Honduras (January 8, 2010).

- PM 196/09, Amplification – Nuclear family of Rasel Antonio Tome, Honduras (January 19, 2010).

- PM 196/09, Amplification - Gilberto Vides and his immediate family, Honduras (January 22, 2010).

- PM 18-10, Indyra Mendoza Aguilar *et al.*, Honduras (January 29, 2010).

- PM 196/09, Amplification – Anselmo Romero Ulloa and María Brígida Ulloa Hernández, Honduras (February 12, 2010).

- PM 38-10, Manuel de Jesús Varela Murillo *et al.*, Honduras (February 25, 2010).

- PM 91-10, Pedro Brizuela, Mateo Enrique García Castillo and their immediate families, Honduras (March 19, 2010).

- PM 95-10, X and Family, Honduras (March 24, 2010).

- PM 196-09, Amplification – Rebeca Ethel Becerra Lanza and daughters, Honduras (April 13, 2010).

- PM 196-09, Amplification – Inmer Genaro Chévez and Lucy Mendoza, Honduras (May 3, 2010).

65. Human rights defenders told the Commission that in recent months, illegal groups were said to be operating in secret, using patterns of attack that targeted persons associated with the resistance, persons who filed complaints and persons who shape public opinion. According to the human rights defenders, the situation has worsened in Honduras, because the death squads, which for some years were infamous for their brutal “social cleansing” acts, are reportedly again in operation in Honduras, this time for political persecution.

66. Information was also received to the effect that teachers who demonstrated against the *coup d'état* continue to be harassed. Specifically it was reported that 10 directors and departmental secretaries and district directors of the opposition were unlawfully removed from their posts,⁶⁸ that economic reprisals are being taken⁶⁹ and that dozens of educators in the opposition were said to be subject to the precautionary measures provided under domestic law.⁷⁰ It was also reported that proceedings had been instituted against educational institutions whose teachers participated in the protests.⁷¹ The Commission was also told that Honduran teachers are concerned now that bills have been introduced in the Honduran National Congress that, they contend, could compromise the teaching advances achieved thus far.

67. The IACHR also received reports of reprisals taken against government workers, allegedly for their participation in union activities.

C. Implementation of the Precautionary Measures Granted by the IACHR

68. In keeping with its obligations to promote and protect human rights, the Commission has, from June 28 onward continually observed and followed the human rights situation and has used precautionary measures⁷² and requests for information as a means to protect the human rights of thousands of persons. The IACHR has granted precautionary measures to protect the lives and safety of many people who were and/or are at risk. Precautionary measure 196-09 was a procedure devised to address a variety of situations, all of which can be traced to the *coup d'état* in Honduras on June 28, 2009 and its aftermath.

69. Since the *in loco* visit made in August 2009, the IACHR has received information from all affected sectors, pointing to the failings of the *de facto* authorities' implementation of the precautionary measures and their resulting inefficacy for the protection of the human rights of the persons affected. During the visit in May 2010, the IACHR received information from the beneficiaries of the precautionary measures and from the government bodies charged with

⁶⁸ Information presented by COFADEH during the visit.

⁶⁹ According to the information supplied by COFADEH, teachers' contributions to teacher organizations were being unlawfully withheld; irregularities had been committed in determining the deductions from the salaries of teachers who participated in resistance activities by way of the Honduran Federation of Teachers' Organizations, and that at the urging of the Public Prosecutor's Office and CONADEH, other teachers had been fined.

⁷⁰ The concept of precautionary measures under Honduran criminal procedural law differs from the concept used in the inter-American system. Article 270 of the Honduran Code of Criminal Procedure defines precautionary measures as those whose “purpose is to ensure the efficacy of the proceedings by ensuring that the accused is present and that the sources of evidence are obtained through lawful means.”

⁷¹ Notification of civil liability claims, issued by the Superior Court of Accounts of Honduras on March 8, 2010, against the director of the Instituto Marcial Solís Dacosta, hamlet of San Juancito, Central District.

⁷² Article 25 of the Commission's Rules of Procedure provides for the mechanism of precautionary measures. The provision states that in serious and urgent situations, and if necessary based on the information available, the Commission may, on its own initiative or at the request of a party, request that the State in question adopt precautionary measures to avoid irreparable harm to persons.

implementing the measures and investigating the factors that necessitated precautionary measures. It found that the problems had not changed to any significant degree. The IACHR received reports indicating that the mechanism for inter-institutional coordination to implement the precautionary measures is ineffective.

70. As happened during the 2009 visit,⁷³ the Commission was told that on May 5, 2010 –just days prior to the Commission’s visit- the Secretariat for Security had published an announcement in at least three newspapers with nationwide circulation, in which it summoned the beneficiaries of the IACHR’s precautionary measures to a meeting. The announcement reads as follows:

REPUBLIC OF HONDURAS
SECRETARIAT FOR SECURITY
ANNOUNCEMENT

All persons who are the **beneficiaries of the precautionary measures granted by the Inter-American Commission on Human Rights** are hereby summoned to a meeting whose main purpose is to verify compliance with the resolutions issued by the above-named Commission, and to review the status and adaptation of those measures where necessary, [...] ⁷⁴.

71. The IACHR was able to establish that the efforts the State made to implement the precautionary measures have been few, late in coming, inadequate and in some cases nonexistent. As for the response to the above mentioned summons from the Secretariat for Security, both the State authorities and the beneficiaries of the precautionary measures granted by the IACHR reported that no more than ten people received any form of assistance, despite the fact that hundreds of persons had been named as beneficiaries of those measures. The Commission also received testimony to the effect that some beneficiaries of precautionary measures are afraid to receive any protection from the very persons they regard as the aggressors.

72. In this regard, the State must provide the Inter-Institutional Human Rights Commission –charged with internal coordination of these matters- with the proper staff and sufficient resources so that it can efficiently respond to the Commission’s precautionary measures.

73. The IACHR was particularly disturbed by the fate that befell journalist Nahúm Palacios, who was under the protection of precautionary measures when he was murdered; the State had never implemented the precautionary measures granted on his behalf.

74. The mechanism of precautionary measures granted by the Commission is one of the most effective instruments for protecting the work of human rights defenders and their rights in the inter-American system. Like the provisional measures granted by the Inter-American Court, precautionary measures act as a safeguard in terms of preserving a legal situation vis-à-vis the exercise of jurisdiction by the Commission; they also serve a “protective function” in the sense of preserving the exercise of the human rights recognized in the provisions of the inter-American system and preventing irreparable harm to persons in serious and urgent situations. In practice,

⁷³ At the initiative of the Supreme Court, on Saturday, August 15 –just two days before the IACHR’s official visit would begin- a list was published in the four newspapers with nationwide circulation, naming all the beneficiaries of the precautionary measures granted by the IACHR. At the foot of the page, the persons named there were told to appear, either in person or through their attorneys, at the offices of the Supreme Court to report and/or receive information concerning the application of those measures. Not included on the list were the names of the persons who were named as beneficiaries in the communication dated July 24, 2009.

⁷⁴ Announcement that appeared in *El Tiempo*, *La Tribuna* and another newspaper with nationwide circulation, on May 5, 2010.

precautionary and provisional measures have been recognized by the member states of the OAS, the individuals who use the system, and the human rights community as a whole as an important tool for protecting human rights in the inter-American system.⁷⁵

75. Precautionary measures are an important working mechanism of the Inter-American Commission on Human Rights that has contributed to saving numerous lives throughout the hemisphere. Precautionary measures are issued in compliance with the Commission's functions to promote and defend human rights, as set forth in Article 106 of the OAS Charter, Article 41 of the American Convention on Human Rights, and Article 18 of the Statute of the IACHR. The juridical basis for precautionary measures is found in the obligation of States to respect and ensure the human rights of all persons subject to their jurisdiction, and the general practice of compliance with them on the part of the great majority of States is based on the existing understanding of their binding nature.⁷⁶

76. Therefore, the IACHR urges the Honduran State to comply effectively and as soon as possible with each precautionary measure granted by the Commission. The State has a duty to protect the country's inhabitants, especially those who for one reason or another find themselves in a situation of particular risk.

D. Harassment and Persecution of Magistrates and Judges

77. Particularly troubling are the acts of harassment targeted at judges who have been identified as opponents of the *coup d'état*. During the visit, the Commission met with members of the Association of Judges for Democracy, who reported on the situation of judges whom the Supreme Court had dismissed from the tribunal. It also met with the plenary of the Supreme Court, and brought up this situation during the meeting.

78. According to the information received during the visit, in the wake of the June 28, 2009 *coup d'état* the Office of the Inspector General of Judges and Courts undertook, on its own initiative, investigations into supposed violations committed by Tirza del Carmen Flores, Magistrate on the Court of Appeals of San Pedro Sula; and Guillermo López Lone, Judge of the San Pedro Sula Sentencing Court; Ramón Enrique Barrios, Judge of the San Pedro Sula Sentencing Court; and Luis Alonso Chévez de la Rocha, Judge for Cases of Domestic Violence, all of whom were members of the Association of Judges for Democracy.

79. The Commission observes that, according to the information received, an official investigation of Magistrate Tirza Flores Lanza and Judge Guillermo López Lone was launched on July 1, 2009, because on June 30, 2009, they had filed a petition seeking *amparo* relief on behalf of President José Manuel Zelaya Rosales, with the Office of the Secretary of the Constitutional Chamber of the Supreme Court.⁷⁷ In the case of Magistrate Flores Lanza, the Office of the Director of Personnel for the Judicial Career Service applied administrative sanctions: "1.- for her absence from her office on June 30, 2009, because she was in the capital of the Republic engaging in activities that are not part of the functions of her post, without having requested the necessary leave; 2.- for performing activities that are incompatible with her office by engaging in attorney conduct in the nullification filed in case No. SCO-896-2009 (action seeking *amparo* relief) on August

⁷⁵ IACHR, *Report on the situation of human rights defenders in the Americas*, OEA/Ser.L/V/II.124, Doc. 5 rev.1, March 7, 2006, paragraphs 233 and 234.

⁷⁶ IACHR, Resolution 1/05 from March 8, 2005.

⁷⁷ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy Director for Personnel Management, Judicial Career Service, dated November 20, 2009.

12, 2009; 3.- for giving the offices of the San Pedro Sula Court of Appeals as the address to which notifications were to be sent in proceedings that have nothing to do with her sole function, which is to impart and administer justice impartially; 4.- for engaging in activities that, because she is a magistrate, she is not permitted to perform, by having appeared before the Office of the Attorney General of the Republic and having filed a complaint against State officials for the alleged commission of crimes, and for making comments on the judicial conduct of other courts and the Supreme Court itself.”⁷⁸

80. Judge Guillermo López Lone, President of the Association of Judges for Democracy, was found guilty of a “failure to perform the duties of his office when he engaged in activities offensive to the dignity of the Administration of Justice by having actively participated in the demonstration held near Toncontín International Airport on July 5, 2009 [...]”⁷⁹ Judge Luis Alonso Chévez de la Rocha was found guilty of “having been detained by the National Police on August 12, 2009, when he was present at events that disrupted public order; for having discussed rebellion against the established Government with various employees of the Judicial Branch (*sic*). And for having said that he ‘feels ashamed of his association with the Judicial Branch’. Incurring in acts that offend dignity in the administration.”⁸⁰ Judge Ramón Enrique Barrios was investigated “for having made a statement in a press conference which was then published in an editorial opinion that appeared in the August 28, 2009 issue of *El Tiempo* under the titled “THE HANDOVER WAS NOT CONSTITUTIONAL” in which he is identified as a Sentencing Judge and censures the actions of the Supreme Court in processing a prosecution request presented against Mr. JOSE MANUEL ZELAYA ROSALES, and then proceeding to specify what procedure he believed should have been followed [...]”⁸¹

81. According to the affected judges, due process was not observed in the proceedings conducted against them.⁸² At the May 18, 2010 meeting with plenary of the Supreme Court, the President of the Court informed the Commission that the dismissal decision had been confirmed by the Supreme Court; that in the days ahead the full membership of the Court would be discussing the wording of the bases for the respective judgments and that, once notified, the judges in question would be able to file a challenge.

82. Whatever formal reasons the Supreme Court may cite as the grounds for its rulings, the case and the final decision were undoubtedly driven by the fact that the judges in question had participated in demonstrations protesting the *coup d'état* or had expressed their dissent. Time and time again the inter-American human rights system has underscored the central role that the Judicial Branch plays in the democratic system of government. It is unacceptable that individuals charged with administering justice, who opposed the break with the democratic, constitutional order, are being charged and dismissed because of their defense of democracy.

⁷⁸ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy Director for Personnel Management, Judicial Career Service, dated November 20, 2009.

⁷⁹ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy Director for Personnel Management, Judicial Career Service, dated October 30, 2009.

⁸⁰ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy director of Personnel Management, Judicial Career Service, dated November 11, 2009.

⁸¹ Citation, Judicial Branch, Republic of Honduras, Office of the Deputy Director of Personnel Management, Carreer Service, dated October 27, 2009.

⁸² In the briefs that the magistrate and judges Guillermo López Lone, Ramón Enrique Barrios and Luis Alonso Chévez de la Rocha submitted to the Supreme Court *en banc* on April 13, 2010, requesting “that the Court be persuaded by the file submitted for its consideration; that the action be declared time barred and that the proceedings be closed. That the constitutional principle of non-retroactivity be applied, and that the observations of the Office of the United Nations High Commissioner for Human Rights be taken into consideration.”

83. The Commission observes that the very same institution that investigated the magistrate and the judges for their opposition to the *coup d'état*, called upon officials and employees of the judicial branch to participate in marches in support of the *coup d'état*. The Commission received the following copy of an announcement:

JUDICIAL BRANCH
OFFICE OF THE DIRECTOR OF PERSONNEL MANAGEMENT
OFFICE OF THE CHIEF OF PERSONNEL
ANNOUNCEMENT

On orders from above, the officials and employees of the Judicial Branch are hereby invited to participate in the "**March for Peace in Honduras**" which will be held in the central park of Tegucigalpa, today, June 30, 2009, between 9:30 a.m. and 1:00 p.m.

Cordially,

(Signature Illegible)
Chief of Staff⁸³

84. The Commission also observes that subsequent to the June 28, 2009 *coup d'état*, a number of judges and magistrates made public statements in support of the *coup*, but were never investigated for their remarks.⁸⁴

85. In press release 54/10,⁸⁵ the IACHR issued an urgent call to reverse this situation, which seriously undermines the rule of Law. On May 28, 2010, by virtue of the authority it is given in Article 41 of the American Convention, the Inter-American Commission asked the Supreme Court to provide information on the situation of the judges who were subjected to disciplinary actions for their participation in activities protesting the *coup d'état*.⁸⁶

86. On June 1, 2010, the Supreme Court of Honduras confirmed the decision to dismiss Magistrate Tirza del Carmen Flores and judges Guillermo López Lone, Ramón Enrique Barrios and Luis Alonso Chévez de la Rocha.⁸⁷ That same day, President Porfirio Lobo stated that he was "completely against the decision; it seems to me that it does nothing to contribute to the reconciliation of the Honduran family. With all due respect to the Judicial Branch as a independent branch of government, I have to say that their decision does nothing to unify the country."⁸⁸

⁸³ Document supplied to the IACHR. See also "*Multitudinaria marcha en Tegucigalpa*" ["Massive March in Tegucigalpa]. *La Prensa*, June 30, 2009; "*Plantón por la paz y la Democracia*" ["Demonstration for Peace and Democracy"]. *La Tribuna*, June 30, 2009; and "*Somos siete millones y medio de soldados*" ["We are seven and a half million soldiers"] . *La Tribuna*, June 30, 2009.

⁸⁴ For example, the newspaper "*La Prensa*", Monday July 6, 2009, *Apertura* 23.

⁸⁵ IACHR, Press Release 54/10, "IACHR Concerned about Human Rights Violations in Honduras," May 19, 2010.

⁸⁶ In exercise of its authority under Article 41 of the American Convention on Human Rights, on May 28, 2010 the IACHR repeated in writing its request for information on the situation of the magistrates and judges subjected to disciplinary actions.

⁸⁷ See newspaper *El Heraldo*, "The Supreme Court, *en banc*, confirms judges' dismissal," available [in Spanish] at: <http://www.elheraldo.hn/Pa%C3%ADs/Ediciones/2010/06/01/Noticias/Pleno-de-la-Corte-ratifica-despido-de-jueces>

⁸⁸ See newspaper *El Heraldo*, "The Supreme Court, *en banc*, confirms judges' dismissal," available [in Spanish] at: <http://www.elheraldo.hn/Pa%C3%ADs/Ediciones/2010/06/01/Noticias/Pleno-de-la-Corte-ratifica-despido-de-jueces>

E. Sectors of the population that have historically been marginalized and are the most vulnerable

87. Human rights violations affect with particular strength those sectors of the population that have historically been marginalized, discriminated and are the most vulnerable, such as children, the LGBT community, women and the indigenous and Garifuna peoples.

88. In its report on "*Honduras: Human Rights and the Coup d'état*," the IACHR confirmed that the situation of the Garifuna people and members of the LGBT community had worsened with the *coup d'état*,⁸⁹ and documented serious violations of women's rights.⁹⁰

89. On this visit, the IACHR received information indicating that the LGBT Community has suffered a particularly harsh impact since the *coup d'état*. A number of its leaders have been murdered, and others are in constant danger. On multiple occasions, the IACHR has granted precautionary measures for its members.

90. In this connection, the Commission is issuing a special appeal to the State to act immediately to solve the murder of Walter Trochez, who provided essential testimony to the Commission during its August 2009 visit.

91. As for the situation of children, in Press Communiqué 26/10, issued on March 8, 2010, the Commission expressed particular concern over the information received to the effect that children of activists are being harassed and threatened and that in two cases the children had been murdered.⁹¹ During the Commission's recent visit, the Public Prosecutor's Office did not respond to the IACHR's requests for information on the status of the investigations into these events.

92. According to the information supplied by UNICEF and COIPRODEN (Coordinator of Private Institutions Protecting Children, Adolescents, Youth and Their Rights), the rights of children and adolescents have been severely affected, as their age makes them more vulnerable. According to *Casa Alianza*, the violent deaths and/or executions of children and young people are alarming:

The records of Honduras' *Casa Alianza* on the violent deaths and/or executions of children and youth in the country during the various administrations show that from January 1998 to February 2010, a total of 5,265 children and youth under the age of 23 have been murdered. Many of these killings have the characteristics and patterns typical of lawless systematic executions.

During the administration of former president Zelaya Rosales from February 2006 to June 28, 2009, and in the six-month regime of Micheletti Bain (June 29, 2009 to January 27, 2010) the statistics on violent deaths and/or executions were dramatic. A total of 2228 children and young people under the age of 23 met violent deaths and/or executions, which was 252 more than the number killed and/or executed under the previous administration of former president Ricardo Maduro. By the end of his administration, a total 1976 children and young people under the age of 23 had been murdered.

⁸⁹ IACHR: *Honduras: Human Rights and the Coup d'état*. OEA/Ser.L/V/II., Doc. 55, December 30, 2009, paragraph 198.

⁹⁰ IACHR: *Honduras: Human Rights and the Coup d'état*. OEA/Ser.L/V/II., Doc. 55, December 30, 2009, Chapter V, Title G.

⁹¹ IACHR, Press release 26/10: *IACHR Deplores Murders, Kidnappings and Attacks in Honduras*, March 8, 2010. Available at: <http://www.cidh.oas.org/prensa.eng.htm>

In February 2010, under the current administration of President Porfirio Lobo Sosa, a total of 42 persons under the age of 23 were murdered; of these, 16 victims (38%) were minors under the age of 18 (who, under our laws and Constitution, are classified as children).⁹²

93. As to the situation of women, in the report on *Honduras: Human Rights and the Coup d'état*, the IACHR compiled numerous testimonies revealing that when the demonstrations against the *coup d'état* were being repressed and in the unlawful detentions conducted, women became the victims of verbal assaults and sexual violence at the hands of the security forces. Early in 2010, the Commission was particularly disturbed by the fact that on February 9, 2010, a young woman was abducted along with four members of her family. In August 2009, this same young woman had complained that she had been raped by four police officers after being detained in a demonstration against the *coup d'état*. The kidnappers were said to have been seven heavily armed men dressed in military uniform, with their faces masked by balaclavas. They forced the kidnap victims to walk into the mountains, where two of the women were raped; the third victim was robbed and threatened with death. The two men were physically tortured.⁹³ During the Commission's May 2010 visit, the Public Prosecutor's Office did not supply information on advancements in the investigation into these events. During that same visit, the Commission received information indicating that women pursued or detained by security forces continue to be the victims of degrading treatment and are verbally and even sexually assaulted. Furthermore, the Commission has been told that in recent months, a number of government institutions have adopted decisions that have reversed some of the advances made in the area of women's effective exercise of their rights.⁹⁴

94. As for the indigenous peoples and the Garifuna people, the Commission was informed that those indigenous and Garifuna organizations that demonstrated against the *coup d'état* continue to be the victims of assault and harassment. Specifically, the Commission received information about threats and assaults against members of the Civic Council of the Grassroots Indigenous Organizations of Honduras (OCPINH) as well as an attempt made on January 6, 2010, against the Faluma Bimetu (Coco Dulce) community radio station, which serves the Garifuna community of Triunfo de la Cruz.⁹⁵

F. Impunity

95. The Commission was able to confirm that the human rights violations continue: both those documented by the Commission in its own reports⁹⁶ and by the Office of the United Nations High Commissioner for Human Rights,⁹⁷ as well as violations that occurred subsequent to those reports. The Commission was informed that only one person is incarcerated for human rights violations and only 12 have been indicted. Furthermore, the cases are not moving forward, in part

⁹² *Casa Alianza Honduras*, Report on Executions and/or Violent Deaths among Children and Youth in Honduras, January-February 2010.

⁹³ IACHR, Press Release 26/10: *IACHR Deplores Murders, Kidnappings and Attacks in Honduras*, March 8, 2010. Available at: <http://www.cidh.oas.org/prensa.eng.htm>

⁹⁴ By way of example, Secretariat of Health Decision No. 2744, dated October 21, 2009 (published in the Official Gazette of October 24, 2009) prohibited the "promotion, use, sale and purchase of the Emergency Contraceptive Pill and the distribution, either paid or *gratis*, and marketing of emergency contraceptive drugs."

⁹⁵ IACHR, Press Release 02/10: *Office of the Special Rapporteur Expresses Concern at the Attack Suffered by a Community Radio Station in Honduras*, January 11, 2010. Available at: <http://www.cidh.org/relatoria/showarticle.asp?artID=778&IID=2>

⁹⁶ IACHR, Report *Honduras: Human Rights and the Coup d'état*.

⁹⁷ United Nations, Report of the United Nations High Commissioner for Human Rights on the violations of human rights in Honduras since the coup d'état on 28 June 2009, March 3, 2010.

because the various organs of the State are not investigating, especially the security forces charged with conducting the investigations. The widespread impunity that attends human rights violations is due in part to the Supreme Court's decisions, which undermine the rule of law. Apart from the questionable role that the Supreme Court played during the *coup d'état*, since then it has acquitted the military accused of participating in the *coup* but has dismissed judges and magistrates that endeavored to avert the *coup* by democratic means.

96. According to the information compiled during the May 2010 visit, both from State authorities and from civil society, the measures undertaken to investigate human rights violations committed in the context of the *coup d'état* have been inadequate. The Office of the Special Prosecutor for Human Rights made public a document titled "Complaints of human rights violations subsequent to the events of June 28, 2009, in which the accused are members of the Armed Forces, law enforcement or the National Bureau of Criminal Investigation."⁹⁸ That document reveals that various proceedings have been conducted, yet only one person is incarcerated for violations of human rights and only 12 have been indicted.

97. The Office of the Special Prosecutor for Human Rights suggested that the problem was a lack of institutional resources, which in itself is an obstacle for investigations. He also suggested another problem, which was a lack of the kind of cooperation from other State authorities that would enable a proper investigation of the facts denounced.

98. The Inter-American Court has defined impunity as follows:

the lack of investigation, pursuit, arrest, prosecution, and conviction of those responsible for human rights violations. To fulfill this obligation, the State has to fight impunity through all legal means available, given that it is conducive to chronic repetition of the human rights violations and total defenselessness of the victims and their next of kin. Likewise, the State has to organize its governmental apparatus and, in general, all structures through which public power is exercised, so as to legally ensure the free and full exercise of human rights.⁹⁹

99. Impunity constitutes non-compliance with the State's duty that is harmful to the victim, his or her next of kin and society as a whole, as impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives.¹⁰⁰ To prevent impunity, the State has the obligation, by virtue of Article 1 of the American Convention, to respect and ensure the rights recognized therein:

The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention.¹⁰¹

⁹⁸ Available [in Spanish] at: <http://www.mp.hn/INFORME%20DERECHOS%20HUMANOS.pdf>

⁹⁹ I/A Court H.R., *Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, paragraph 234.

¹⁰⁰ I/A Court H.R., *Case of Loayza Tamayo*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 170, citing I/A Court H.R., *Case of the "White Van" (Paniagua Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, para. 173.

¹⁰¹ I/A Court H.R., *Case of Velásquez-Rodríguez v. Honduras, Merits*. Judgment of July 29, 1988, Series C No. 4, para. 176.

100. Under the American Convention on Human Rights, which Honduras ratified in 1977, the State has an international obligation to prevent human rights violations; should they occur, the State has an obligation to investigate them and prosecute and punish those responsible. During the *coup d'état*, the *de facto* authorities and the Supreme Court systematically denied the existence of human rights violations, which resulted in inaction and tolerance that enabled these violations to be repeated with impunity.

101. As the Commission found during its May 2010 visit, the human rights violations persist, as does the impunity. From what the Commission observed, the situation is due to a number of factors. The authorities charged with investigating, prosecuting and punishing the guilty continue to systematically deny the existence of human rights violations, which has resulted in inaction, tolerance and even dismissal of any charges against those who carried out the *coup d'état* and the aforementioned violations.

102. The Commission observes in this regard that the courts have ordered definitive dismissal of cases against persons who fostered, promoted and enabled the *coup d'état* or who committed crimes during the *coup*. On January 6, 2010, the Public Prosecutor's Office brought charges against the Military High-Command composed at the time of the head and deputy head of the Joint Chiefs of Staff, generals Romeo Vásquez and Venancio Cervantes. It also included the heads of the Army, General Miguel Ángel García Padgett; of the Air Force, General Luis Javier Prince; of the Navy, Rear Admiral Juan Pablo Rodríguez, and the Inspector General of the Armed Forces, General Carlos Cuéllar Castillo.¹⁰² The Public Prosecutor's Office deemed that a crime had been committed in the order to expatriate Zelaya to Costa Rica after the *coup d'état*. The military chiefs were also accused of noncompliance with the court order to hand over the former president to the competent authority.

103. On January 26, 2010, hours before Porfirio Lobo was sworn in as Honduras' new President, the special judge and President of the Supreme Court, Jorge Rivera, dismissed the charges against the accused military chiefs. The decision stated that "In the present hearing, the party bringing the charges has failed to show that the accused willfully engaged in malicious acts that are punishable offenses; in the absence of the element of malicious intent, the actions cannot be classified as crimes. Therefore, while there is a reasonable presumption, which the accused have acknowledged, that they are responsible for the acts that the Public Prosecutor's Office has classified as criminal offenses, given the absence of malicious intent, the commission of crimes cannot be fully proven, with the result that no order for imprisonment can be issued. Furthermore, since none of the actions can be classified as a crime, the proper course of action is to order definitive dismissal of the charges."¹⁰³ On February 18, 2010, the Court of Appeals, composed of three magistrates of the Supreme Court, confirmed the definitive dismissal of charges against the military chiefs.

104. The Commission was also informed that in the cases instituted at the request of the Office of the Special Prosecutor for Human Rights¹⁰⁴ against the military authorities for abuse of authority, damages and crimes against the media committed against the backdrop of the *coup d'état*, the lower court judges have ordered that the charges be definitively dismissed; the decisions

¹⁰² "On February 25, 2010, President Porfirio Lobo Sosa swore in General Carlos Cuéllar Castillo as new Head of the Joint Chiefs of Staff of the Armed Forces, replacing Romeo Vásquez Velásquez." Available [in Spanish] at: <http://www.presidencia.gob.hn/noticias/general-carlos-antonio-cuellar-castillo-nuevo-jefe-del-estado-mayor-conjunto>.

¹⁰³ Decision delivered by the President of the Supreme Court of Justice, in his capacity as Special Judge, dated January 26, 2010.

¹⁰⁴ See in this regard, the decisions in cases: SEDI 0801-2009-48097; SEDI 0801-2009-48097; SEDI 0801-2010-5200; SEDI 0801-2009-51009.

on the respective appeals filed by the Office of the Special Prosecutor for Human Rights are still pending.

105. Furthermore, the Commission observed that in this context of impunity, there is no proceeding calculated to ensure a public and transparent procedure for the selection and election of candidates for high positions within the system for the administration of justice. Although some officials in the justice system may want to conduct a proper investigation, they do not have the necessary means because the National Police, which is in charge of criminal investigation, has neither the capacity nor the preparation needed, and corruption is said to be rampant within its ranks.

G. Amnesty

106. The Amnesty Decree was approved by the Honduran National Congress on January 26, 2010 and signed by President Porfirio Lobo on January 27, 2010, immediately upon taking office.¹⁰⁵ The decree was published in the Official Gazette on February 2, 2010, and entered into force on February 22 of that year.¹⁰⁶

107. On February 3, 2010, the IACHR issued press release 14/10¹⁰⁷ where it observed with concern that the Amnesty Decree approved by the Honduran Congress on January 26, 2010, contained concepts that were either confusing or ambiguous.

108. The Commission observed the “doctrinaire reference made to political crimes, the amnesty for conduct of a terrorist nature, and the inclusion of the concept of abuse of authority with no indication of its scope. Although the text contemplates certain exceptions in terms of human rights violations, the language is ambiguous, and the decree does not establish precise criteria or concrete mechanisms for its application.

109. The Commission is again calling upon the authorities to review the decree, having regard to the State’s obligations under international treaties and, in particular, its obligation to investigate and punish serious violations of human rights.

110. During the Commission’s May 2010 visit, it was told that at the time, the decree in question was not being applied.

H. Truth and Reconciliation Commission

111. On October 30, 2009, during the Guaymuras dialogue to resolve the political crisis in Honduras, representatives of then President Zelaya and the *de facto* authorities signed the Tegucigalpa/San José Accord¹⁰⁸ for national reconciliation and strengthening of democracy in

¹⁰⁵ Decree No. 2 of the National Congress of Honduras, January 26, 2010 – Amnesty Decree.

¹⁰⁶ According to statements provided by Attorney General Luís Rubí, since then the amnesty has been applied as follows: i) those investigations and other proceedings that the Public Prosecutor’s Office had underway on the date of the decree’s approval, are to be closed; ii) in the case of judicial proceedings being conducted for some political or related common crime, the judges with jurisdiction must end the proceedings and issue the order dismissing the charges once and for all; and iii) in cases of subsequent indictments for any of the crimes covered by the amnesty decree, the accused must make a statement in the presence of the competent judge to the effect that the action or crime with which he or she is accused is included in the decree in question.

¹⁰⁷ IACHR, Press Release 14/10 “IACHR Expresses Concern about Amnesty Decree in Honduras,” February 3, 2010. : <http://www.cidh.oas.org/prensa.eng.htm>.

¹⁰⁸ Under that accord, the parties agreed to the formation of a National Unity and Reconciliation Government composed of representatives from the various political parties and social organizations; they also agreed to explicitly
Continued...

Honduras. Under that accord, a Truth Commission was to be constituted in the first half of 2010. The agreement signed by Porfirio Lobo and the President of the Dominican Republic, Leonel Fernández¹⁰⁹ on January 20, 2010, urged that international cooperation be provided to ensure that the commitments undertaken in that regard would be fulfilled, one of which was the Truth Commission.

112. The Truth and Reconciliation Commission (CVR) was created by executive decree PCM-011-2010, dated April 13, 2010. The executive decree provided that the purpose of the Truth and Reconciliation Commission would be “clarify the events that occurred before and after June 28, 2009, in order to identify the factors that led to the crisis and provide the Honduran people with the information they need to ensure that these events will not be repeated.”¹¹⁰

113. Truth and reconciliation commissions have been of enormous importance in many countries of the region. However, given the purpose established in the decree creating the Honduran CVR, the Commission is reminded that the right to know the truth in cases of serious human rights violations, and the right to know the identity of those who had a hand in those violations, is an obligation that every State party to the American Convention must honor, both with respect to the relatives of the victims and with respect to society in general. Public acknowledgment by identifying the victims and the events that affected their lives, their freedom and their security, is a necessary point of departure on the road to reconciliation.

114. The IACHR has been supportive of Truth Commissions in the various countries of the hemisphere in which they have been created and to the extent that they represent a suitable mechanism for ensuring the right to the truth. The Commission has held that:

The right possessed by all persons and by society to have means of satisfaction and guarantees that the acts will not be repeated, of knowing the full, complete, and public truth on incidents which have occurred, their specific circumstances, and who participated in them, are part of the right to reparation for violations of human rights. The right of a society to know, in full, its past is not only to be found in the methods of reparation and elucidation of the incidents which have occurred, but in the objective of preventing future violations.¹¹¹

115. The IACHR has written that the right to the truth is also related to Article 25 of the Convention, which establishes the right to a simple and prompt recourse for protection of the rights recognized in the Convention. The presence of factual or legal impediments (such as the amnesty law or domestic laws governing access to information) to accessing and obtaining important information pertaining to the facts and circumstances surrounding the violation of a fundamental right, constitutes a blatant violation of the right recognized in Article 25, and prevents one from

...continuation

renounce convocation of a National Constituent Assembly or amendment of the constitution and called upon the Honduran people to participate in the elections; the parties agreed to transfer supervision of the Armed Forces to the Supreme Electoral Tribunal one month prior to the elections and to create a Verification Commission composed of two members from the international community and two members from the national community and coordinated by the Organization of American States, in order to ensure compliance with the commitments undertaken in the Accord. They also agreed to the formation of a Truth Commission in the first half of 2010. Tegucigalpa/San José Accord. Available at: <http://www.in-honduras.com/Files/guaymurasfirmado.pdf>

¹⁰⁹ Agreement for National Reconciliation and Strengthening of Democracy in Honduras, January 20, 2010. The agreement was signed by Porfirio Lobo Sosa and the President of the Dominican Republic, Leonel Fernández. The following persons served as witnesses of honor: Elvin Santos, former candidate of the Partido Liberal; Cesar Ham, Partido Unificación Democrática; Felicitó Ávila, former candidate of the Partido Demócrata Cristiano; Ricardo Álvarez, Mayor of Tegucigalpa and president of the Partido Nacional, and Mario Canahuate, former presidential candidate of the Partido Nacional in the primaries.

¹¹⁰ Executive Decree PCM-011-2010, Article 1.

¹¹¹ IACHR, Report No. 1/99, Case 10,480 Lucio Parada Cea *et al.* (El Salvador), January 27, 1999, para. 155.

having the remedies under domestic law that allow judicial protection of the basic rights established in the Convention, the Constitution and the laws.¹¹²

116. The CVR in Honduras launched its operations on May 4, 2010. It is currently in the process of issuing its own internal rules of procedure, work program and methodology. It is vital that the CVR have sufficient resources, personnel and independence to do its work effectively. It is also essential that its rules of procedure, work plan and methodology make the investigation of complaints of human rights violations alleged to have occurred in the context of the *coup d'état* the centerpiece of the CVR's mission. The IACHR will closely follow the work of the CVR.

117. Regardless of what actions the CVR ultimately takes, they will not relieve the State of its international responsibility to investigate, prosecute and punish, through the courts, any State agents who have committed human rights violations.

I. The Bajo Aguán Situation

118. On the other hand, during its May, 2010 visit the IACHR received information about the situation of the Bajo Aguán, where there exists a long-standing land conflict between peasants and businesspersons. During the visit the IACHR was informed that, since the month of December, 2009, the conflict was intensified due to the militarization of the area. In this regard, the Commission was informed about the signature of an agreement on April 14, 2010, between the Honduran Government and the *campesino* organizations presumably affected, through which a solution to the problem was sought.¹¹³

119. Nevertheless, during its follow-up visit, civil society informed the Commission of certain outrages alleged to have been committed against the peasants organizations and their members, both before and after the signing of the agreement, and related to the militarization of the conflict area. However, in the meetings held with authorities from the Ministry of Defense and Security, the National Police, the Head of the Joint Chiefs of the Armed Forces of Honduras, the government representatives stated that the military forces in the area in question were subordinate to the civilian authority, which was the National Police, and that measures had allegedly been taken intended as social assistance.

120. The Commission again expresses its concern over the involvement of the armed forces in matters related to citizen security; as such matters should be the exclusive purview of the civilian law enforcement.

121. In same line of thought, the IACHR is particularly troubled by the approval of Executive Decree PCM-014-2010, published in the Official Gazette of May 14, 2010. Under this Executive Decree, the Secretariat of National Defense is instructed to provide cooperation "in the form of Armed Forces personnel and equipment that is strictly necessary, according to how each situation evolves, so that the National Police is able to efficiently and promptly perform the functions of restoring the peace and preventing, controlling and combating crime."¹¹⁴ The Commission urges the Honduran authorities to review the content of that decree and to adjust it to conform to the international standards on the subject.

¹¹² IACHR, Report No. 1/99, Case 10,480 Lucio Parada Cea *et al.* (El Salvador), January 27, 1999, para. 152.

¹¹³ The commitment agreement was signed on April 14, 2010.

¹¹⁴ Executive Decree PCM-014-2010, Article 1.

IV. THE PROGRESS MADE TOWARD RESTORING DEMOCRATIC INSTITUTIONS AND THE CHALLENGES THAT LIE AHEAD

122. The Commission applauds the appointment of the Minister Advisor on Human Rights. However, it observes that thus far she has not received the resources, mandate and structure that would enable her to perform effectively and to transform the State so that it embraces a culture of respect for human rights. With the existing structure, it is virtually impossible for the Minister to have any significant impact on the observance of human rights.

123. At the meeting held with the Minister advisor on human rights, Ana Pineda, she stated that while the levels of aggression between those who opposed the *coup d'Etat* and those who supported it are not as high as they had been under the *de facto* government, the country is still polarized. She underscored the fact that while there are no systematic human rights violations, the main problem is the high rate of impunity. She insisted that investigation must be done by trained professionals and that the investigating body (the police), which depends on the Secretariat of Security, should, as far as possible, be subordinate to the Public Prosecutor's Office again.

124. In this effort to restore democratic institutions, the Commission observes with concern that high-ranking Army officers or former members of the Army against whom complaints were brought for their participation in the *coup d'état*, are occupying executive positions in government offices under the administration of Porfirio Lobo. Thus, Division General Venancio Cervantes is Director General of the Bureau of Immigration and Alien Affairs (he was Deputy Head of the Joint Chiefs at the time of the *coup d'état*); Brigade General Manuel Enrique Cáceres is Director of Civil Aeronautics; former General Nelson Wily Mejía is in charge of the Bureau of the Merchant Marine, and former General Romeo Vásquez Velásquez is manager of the Honduran Telecommunications Company (Hondutel) (he was Commander-in-Chief of the Armed Forces at the time of the *coup d'état*).

125. The Commission is grateful for the letter that President Lobo sent to OAS Secretary General José Miguel Insulza on May 12, 2010, extending an open invitation for the inter-American system for the protection of human rights -in the form of its organs, especially the Inter-American Commission on Human Rights- to conduct official visits to Honduras whenever they deem such visits pertinent.

V. RECOMMENDATIONS

126. In light of the preceding analysis and considering the *in loco* visit made in August 2009, the report on *Honduras: Human Rights and the Coup d'état*, the visit made in May 2010 and the Commission's follow-up of the human rights situation in Honduras since the *coup d'état* on June 28, 2009, the Commission formulates the following recommendations to the Honduran State:

1. Investigate, try and punish those responsible for human rights violations.
2. Conduct immediate investigations, run by independent, specialized bodies, which can lead to clarify the facts and determine whether the murders of journalists, social communicators, human rights defenders and members of the Resistance, are related to the practice of their professions or to the context of the *coup d'état*. Also, bring those responsible for these murders to trial and convict them.
3. Make reparations to the victims of human rights violations.
4. Prevent illegal groups from acting outside the law with impunity. In particular, the State has the duty to disband armed civilian groups that might be operating outside

the law and to punish the unlawful actions they commit, in order to prevent the recurrence of acts of violence in the future.

5. Prevent the murders, threats and intimidations against human rights defenders, journalists, social communicators and social leaders. In particular, adopt the measures necessary to protect their life and personal integrity.
6. Efficiently and promptly implement the precautionary measures granted by the Commission.
7. Provide the Inter-institutional Human Rights Commission with adequate personnel, support and sufficient resources so that it is able to respond to and implement efficiently the precautionary measures granted by the Commission.
8. Guarantee the conditions necessary to enable defenders of human rights and union rights to engage in their activities freely, and refrain from taking any action and adopting any law that would limit or obstruct their work.
9. Ensure that the system for the administration of justice provides all people with effective access to justice.
10. Enhance the security and safety of the citizenry and order the Armed Forces and military intelligence units to refrain from any participation in citizen security activities; when exceptional situations arise, the military units shall be subordinate to the civilian authority.
11. Order the necessary measures so that female victims of violence have full access to adequate judicial protection, and adopt the legal, judicial and other mechanisms necessary to investigate complaints of violence against women, punish those responsible and compensate the victims.
12. Order the necessary measures to protect those sectors of the Honduran population that have been traditionally marginalized and more vulnerable, such as children, the LGBT community, women, the indigenous peoples and the Garifuna people.
13. Ensure that the Truth and Reconciliation Commission incorporates in its rules of procedure, work plan and methodology the investigation of complaints of human rights violations alleged to have occurred in the context of the *coup d'état* as a centerpiece of its mission.