

ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2011

CHAPTER I

INTRODUCTION

1. In 2011, the Inter-American Commission carried on its mission of promoting and monitoring the observance of the rights of all persons in the States of the region. Part of the work conducted this year is recounted on the pages of this Annual Report.

2. Since its last Annual Report, the IACHR has witnessed significant advances in the area of human rights in this hemisphere: Uruguay's enactment of Law No. 18,831, under which crimes committed under the dictatorship shall not be subject to a statute of limitations; the amendments introduced in the Constitution of the United Mexican States in the area of human rights which, *inter alia*, elevated the human rights recognized in international treaties ratified by Mexico to the rank of constitutional law; Peru's enactment of a law requiring prior consultations with indigenous peoples, thus incorporating into Peru's domestic legal code a right long recognized in international human rights law; the amendments introduced to *ampere* relief in Mexico, and the Mexican Supreme Court's adoption of a position with respect to the preclusion of military jurisdiction in those cases in which members of the armed forces commit violations of human rights.

3. This year the IACHR also witnessed acknowledgements of responsibility and public apologies by the States in the case of Manuel Cepeda Vargas in Colombia, the case of the massacres of El Mozote and neighboring locales in El Salvador, the case of the Las Dos Erres massacre in Guatemala, and violations committed against Valentina Rosendo Cantú and her daughter in Mexico.

4. The Inter-American Commission also highlights great advances toward justice for serious human rights violations from the past in countries of the region. In this regard, after a 22-month trial, the courts of Argentina handed down the conviction to life in prison for Jorge "Tigre" Acosta, Alfredo Astiz, Ricardo Miguel Cavallo and several other persons for serious and systematic violations of human rights perpetrated during the military dictatorship in that country. Also, the IACHR took note of information published in December 2011 indicating that the Court of Appeals of Santiago, Chile, convicted three repressors of the Augusto Pinochet military government for the murder of socialist militants in 1973 during the so-called "Caravan of Death"; in its decision, the Court repealed the application of the 1978 amnesty decree-law, considering that the homicides under investigation constitute crimes against humanity and therefore no statute of limitations applies. Also, in November 2011 a trial began in Lima, Peru against Telmo Hurtado, a former lieutenant in that country's army, who is accused of conducting in 1985 a massacre against 69 peasants, among whom were 30 children and 27 women; the case was reopened in the civilian jurisdiction 25 years after a military tribunal convicted 29 persons—including Hurtado—for abuse of authority and negligence, although not for the massacre.

5. These important advances notwithstanding, it has to be said that considerable challenges have yet to be conquered before all persons within this hemisphere will be able to fully exercise their human rights without discrimination. The IACHR observed that in 2011, women continued to encounter serious obstacles to the exercise of their right to live free of violence and discrimination and to have what they require to ensure their right to health, their right to an education and their right to work, thus enabling them to be active members of society. Afro-descendant and indigenous women are especially at risk and have long been the victims of discrimination on three fronts: gender, poverty and race. That discrimination has prevented them from fully exercising their civil, political, economic, social and cultural rights.

6. The IACHR continued to monitor the situation of Afro-descendant men and women in the Americas in 2011, which the United Nations declared to be the "International Year for People of African Descent." Although non-discrimination is one of the pillars of any democratic system and a fundamental principle of the inter-American system for the protection of human rights, persons of African descent in

the Americas have historically experienced and continue to experience exclusion, racism and racial discrimination, and have been invisibilized even in those States of the region where they account for the majority of the population. Afro-descendant persons in the region routinely live in the most impoverished areas with the poorest infrastructure; and they are more exposed to crime and violence. Afro-descendant persons encounter serious difficulties in getting access to health and education services, housing and jobs, especially at the managerial or executive levels. The under-representation and scant participation of Afro-descendants in the political realm are evidence of other obstacles they encounter in getting into the political power structures, which would enable them to play an active role in crafting public policies geared toward eliminating the structural discrimination that denies them equal access.

7. Human rights defenders continue to fall victim to murder, assault, threat, stalking, and searches. High-ranking public officials denounce them and seek to discredit their work and brand them as criminals. The Commission has noticed an increasing sophistication in the techniques used to obstruct or deter the work of defending and promoting human rights. For example, baseless criminal actions are brought against human rights defenders, or human rights organizations are cut off from their sources of funding. These kinds of techniques may be compounded by a lack of adequate and effective systems to protect human rights defenders. Indeed, in some parts of the hemisphere, many human rights advocates are defenseless, with the result that hundreds have lost their lives in recent years.

8. One theme that has been developed by the organs of the inter-American system concerns the protection of indigenous peoples' right to ownership of their ancestral territories. The IACHR would point out that effective enjoyment of this right involves much more than the protection of an economic unit; instead, what is at stake is the protection of the human rights of a group whose economic, social and cultural development hinges upon its relationship to the land. States therefore have an obligation to consult with indigenous and tribal peoples in advance, and to guarantee that they will have a voice in decisions concerning any measures that might affect their territory. Consultations must be carried out in connection with any issue that might affect them, and should be for the purpose of obtaining their free and informed consent and be implemented in accordance with their customs and traditions, through culturally appropriate procedures, while taking into account their traditional methods of arriving at decisions. During this reporting period, the Commission continued to observe the serious consequences of the over-exploitation of natural resources and the toll that mega infrastructure projects are taking on indigenous and Afro-descendant territories, which in many cases put the very survival of these peoples in jeopardy.

9. In 2011, the IACHR published a report on juveniles justice and human rights, which captures the very serious predicament of children and adolescents in conflict with the law in the various States of the region whose laws are not on a par with international standards and that do not have the proper institutions to enable these children and adolescents to be successfully re-assimilated into society. A juvenile justice system must ensure that children and adolescents have the very same rights that all human beings have; however, it must also afford them the special protection to which they are entitled by virtue of their age and stage of personal development, to ensure that they are properly rehabilitated, that they are fully developed in every respect, and that they are able to rejoin society as fully functioning members of it.

10. The Inter-American Commission also followed closely the situation of migrants in the Hemisphere, especially due to alarming reports of acts of violence and even torture and massacres that were perpetrated over the course of this year. It also analyzed information pertaining to several problems that affect this Group of persons, specifically the discrimination they suffer in several States of the region by the use of racial profiling by authorities. In its studies, reports and statements regarding OAS Member States, the IACHR reiterated its position with respect to the use of detention only in exceptional cases for undocumented migrants. The Inter-American Commission Another considers as another matter for preoccupation the systematic and progressive deterioration of working conditions for migrants, both documented and undocumented, in several Member States of the Organization.

11. The IACHR also approved in December 2011 its Report on the situation of persons deprived of liberty in the Americas. In that report, the Inter-American Commission underscores that the

situation of persons deprived of liberty is a complex matter that requires the design and implementation of public policy for the medium and long term, as well as the adoption of those immediate measures necessary to confront current situations that seriously affect fundamental human rights of the prison population. The problems identified in the report reveal serious structural deficiencies that affect inderogable rights, such as the right to life and to physical integrity of the persons detained; in practice, this also keeps the penalty of deprivation of liberty from achieving the essential goal defined in the American Convention: the reform and social readaptation of the convicted prisoners. The Inter-American Commission hopes that its report achieves the purpose of cooperating with Member States of the OAS in the fulfillment of their international obligations, and to provide a useful tool for the work of those institutions and organizations committed to the promotion and defense of the rights of persons deprived of liberty.

12. As to freedom of expression, the main challenges faced by the States of this region during 2011 include the murder, aggression and threats against journalists. States have the duty to protect journalists who are at special risk by exercising of their profession; as well as the duty to investigate, try and convict the persons responsible for such actions, not only as a form of reparation for the victims and their families, but also to prevent future acts of violence and intimidation. Also among the aspects of freedom of expression in the Americas highlighted by the Special Rapporteurship in this area, mention must be made of the application of criminal legislation to prosecute persons who make statements considered offensive by civil servants, or good practices such as the adoption and implementation of access to information laws.

13. Furthermore, in the last few years the Commission has observed the serious *de facto* and *de jure* discrimination that lesbian, gay, transgender, bisexual and intersex (LGTBI) persons face in the countries of the region. The IACHR has received reports of numerous violations of their rights, including murders, rapes and threats committed against LGBTBI persons. They also encounter significant obstacles in terms of their access to health care, jobs, justice and political participation. Given the situation, at its 143rd session the Inter-American Commission decided to create a special unit to bolster its capacity to work to protect and safeguard the rights of LGBTBI persons.

14. A matter that is still unchanged in the region is the death penalty, which remains in effect in the criminal legislation of several OAS Member States. During 2011, the United States continued to impose and apply such penalty in multiple cases. Other States, such as the Bahamas, Barbados, Cuba, Guyana, Jamaica and Trinidad and Tobago, did not carry out any executions during 2011. Cuba commuted the sentence of the 3 persons convicted to the death penalty, and in Guatemala Congress passed legislation that would have opened the possibility of resuming executions, but it was vetoed by the President of the country.

15. As the problems briefly discussed above illustrate, the challenges that the region faces in the area of human rights are varied and not just a question of the basic conditions that every human being requires, such as life, personal integrity and personal liberty. These challenges will not be surmounted until every human being in the region fully enjoys all the rights to which he or she is entitled in recognition of his or her human dignity. The member States, both individually and in partnership, must take positive measures to ensure decent living conditions, equality of opportunity and full participation in decision-making. These must be the basic objectives for the integral development of the individuals and societies within this hemisphere.

16. Cooperation –not economic restrictions and barriers to trade- is the engine that drives socio-economic policies that work to eliminate the disparities in living conditions among the peoples of the various countries of this hemisphere. Accordingly, the Commission would like to make a special appeal to the United States to ask it to lift the economic and trade embargo imposed on Cuba back in 1961. Time and time again, the Commission has underscored the negative impact that the embargo has had on the Cuban people's exercise of their human rights.

17. Although these challenges are complex and call for serious and urgent measures, the Commission is persuaded that if the States partner with civil society, their combined effort will move us in

the right direction. The Commission hopes to continue its collaboration in this process, to answer these challenges and come ever closer to the goal of absolute and full respect for human rights in this hemisphere.

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CHAPTER II

LEGAL BASES AND ACTIVITIES 2011

A. Legal Bases, Functions, and Powers

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

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

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

4. In 1961, the IACHR began a series of visits to several countries for on-site observations of the human rights situation. Since then, the Commission has made more than 106 visits to the Organization’s member states. Based in part on these on-site investigations, to date the Commission has published 94 country reports and thematic reports.

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

6. The American Convention on Human Rights (“the American Convention”) was adopted in 1969 and came into force in 1978. As of December 2011, a total of 24 member states were parties to the Convention: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay, and Venezuela. The Convention defines the human rights that the ratifying states have agreed to respect and guarantee. The Convention also created the Inter-American Court of Human Rights and established the functions and procedures of the Court and of the Commission. In addition to examining complaints of violations of the American Convention committed by the instrument’s states parties, the IACHR has competence, in accordance with the OAS Charter and with the Commission’s Statute, to consider alleged violations of the American Declaration by OAS member states that are not yet parties to the American Convention.

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

- (a) Receives, analyzes and investigates individual petitions alleging human rights violations pursuant to Articles 44 to 51 of the Convention, Articles 19 and 20 of its Statute, and Articles 22 to 50 of its Rules of Procedure.
- (b) Observes the general human rights situation in the member states and, when it deems appropriate, publishes special reports on the existing situation in any member State.

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

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

B. Inter-American Commission's Periods of Sessions Held in 2011

9. In the period referred to in the current report, the Inter-American Commission met on three occasions: from March 21, until April 1, 2011, in its 141st Regular Session; from July 18 until July 22, 2011, in its 142nd Regular Session; and from October 19 until November 4, 2011, in its 143rd Regular Session.¹ During the course of 2011, the Inter-American Commission approved a total of 67 admissibility

¹ See IACHR press releases on its periods of sessions (28/11, 75/11 and 117/11) at the IACHR web page (www.cidh.oas.org).

reports, 11 inadmissibility reports, 8 friendly settlements, 54 archiving decisions, 25 merits, and it published five merits reports. It also held 91 hearings and 58 working meetings.

1. 141st Regular Session

10. The Inter-American Commission held its 141st Regular Session from March 21 until April 1st, 2011. In that occasion the IACHR elected the following Commissioners for its board of officers: Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; and Rodrigo Escobar Gil, Second Vice-President. The IACHR is also composed of Commissioners Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero and María Silvia Guillén. The Executive Secretary is Santiago Canton and the Assistant Executive Secretary is Elizabeth Abi-Mershed.

11. During the Sessions, 44 hearings and 29 working meetings were held. In addition, 68 case reports and individual petitioners were approved: 15 admissibility, 4 inadmissibility, 4 friendly settlements, 10 merits, and one publication of merit report decisions, and 34 archiving decisions.

12. During the sessions, the Inter-American Commission met with the Governor of Oaxaca, Mexico, to discuss the state's policy on human rights, discrimination, access to justice and the rights of indigenous peoples. It also held a meeting with President of the Inter-American Association of Public Defenders (AIDEF), Stella Maris Martinez, and her General Coordinator, André Luis Machado de Castro. The aim of the meeting was to discuss a possible cooperation agreement between the AIDEF and the IACHR to lend a free legal advice service to those using the Inter-American System.

13. In the framework of the said period of sessions, the IACHR welcomed the adoption in Mexico of a constitutional reform project, which, *inter alia*, raised human rights recognized in the international treaties signed by the country to constitutional status. Besides this, during the sessions, the IACHR received new information on the situation of human rights of migrants in Mexico, a subject addressed by the Rapporteur on the Rights of Migrants and their Families made in his visit of the last week of July 2011.

14. At the end of the sessions, the Inter-American Commission mentioned its concern regarding the continuation of human rights violations in Honduras, such as those observed as from the June 28, 2009, *coup d'état*, especially with reference to the disproportionate use of the security forces to suppress public demonstrations against the policies of the current Government; the lack of independence in the judiciary; and the situation of human rights defenders.

15. The Inter-American Commission expressed deep concern at that lack of compliance by various States with its decisions and recommendations. During the sessions, disturbing information came to its attention on the obstacles and significant problems in the implementation of precautionary measures granted to persons at risk in order to prevent irreparable harm, and on the murder and extrajudicial execution of the beneficiaries of such measures.

16. During the sessions, the IACHR also received alarming information on the profound impact that climate change caused by human activities has had on the enjoyment of human rights, and so urged the States to give priority to human rights in the climate change negotiations and in the formation and implementation of remedial and adaptation measures.

17. The Commission expressed its concern at the forced displacements taking place in many countries of the region as a consequence of the construction of mega dams and exploitation of natural resources on indigenous peoples and Afro-descendants' land, in most cases putting at risk the survival of these peoples. In this sense, the IACHR requested that the States adopt measures to overcome the obstacles preventing the full exercise of the right to prior, free and informed consultation with the indigenous and Afro-descendent populations on decisions affecting their lands.

18. At the closing of the sessions, the IACHR also expressed its concern over the application of counter-terrorism laws against children and adolescents; it stated once more that this was contrary to

the international law of human rights; and urged States to strengthen their efforts to guarantee the respect and observance of the rights of children and adolescents.

19. During the period of sessions, the IACHR decided to create a Rapporteurship on the Situation of Human Rights Defenders, in view of the complaints received and in order to provide greater visibility for the importance role of these defenders as well as those involved in the justice system, in strengthening of democracy and the rule of law. Commissioner José de Jesús Orozco Henríquez was appointed as Rapporteur. In this period of sessions the IACHR also adopted the decision to give special thematic emphasis to the rights of lesbians, gays, transgender, bisexual and intersexual individuals (LGTBI).

20. At the sessions, the Inter-American Commission also decided to renew the mandate of Catalina Botero as Special Rapporteur on Freedom of Expression, for a period of three years commencing in October 2011, in accordance with Article 15.4 of its Rules. Finally, the IACHR approved a draft reform of Article 11 of its Rules, and made it available for consultation and comment by States and civil society.

2. 142nd Regular Session

21. The Inter-American Commission held its 142nd Regular Session from July 18 to 22, 2011. The IACHR held sessions of an internal nature and there were no public hearings or working meetings. The Commission adopted 48 reports on cases and individual petition: 18 on admissibility, 3 on inadmissibility, 3 friendly settlements, 8 merits, 4 decisions to publish merits reports and 12 archiving decisions.

3. 143rd Regular Session

22. The Inter-American Commission held its 143rd Regular Session between October 19 and November 4, 2011. During the sessions, 30 admissibility reports, 4 inadmissibility reports, 1 friendly settlement, 10 merits reports and 8 archiving reports were approved. In addition, 47 public hearings and 29 working meetings were held.

23. During this period of sessions, the IACHR received Víctor Abramovich, Executive Secretary of the Mercosur Human Rights Institute for Public Policy, with regard to the presentation of a request for an Advisory Opinion on the protection of migrant children and adolescents.

24. At the conclusion of the sessions, the IACHR welcomed the enactment of Law No. 18.831 in Uruguay, on October 30, 2011, which declares that the crimes committed during the dictatorship are not subject to statutes of limitation. In its Article 1, the new law "re-establishes the State's full capacity to prosecute" those crimes covered by the *Ley de Caducidad de la Pretensión Punitiva del Estado* of December 22, 1986. In this way, Uruguay has significantly furthered compliance with the recommendations in IACHR's Report 29/92 and the Inter-American Court's Judgment in the *Case of Gelman*.

25. The Inter-American Commission also highlighted the State of Peru's commitment to combat impunity of human rights violations perpetrated during the authoritarian period, as stated by the Justice Minister, Francisco Eguiguren, at a public hearing held on October 25. It also welcomed the Attorney General of Peru's decision to reopen the investigation of the Maria Mamerita Mestanza Chávez case, as reported at the friendly settlement report's follow-up meeting. During this meeting, State made a commitment to duly identify and punish those responsible for the forced sterilizations that more than 2,000 women underwent during the Government of Alberto Fujimori government. The Inter-American Commission also held a hearing regarding the situation of the afro Peruvian population, and took note of the information received from civil society, as well as the respective response from the Peruvian State.

26. In relation to Colombia, the Inter-American Commission also welcomed the enactment of Decree 3375 as a step forward in the protection of the rights of women. The Decree stresses the

importance of a differentiated approach taking into account of age, ethnicity, gender, disability, sexual orientation and city and rural backgrounds as factors when recommending and adopting protective measures.

27. At the hearing held during the sessions relating to the situation of the Judiciary in Haiti, the representatives of the State presented a new program of the Justice and Public Security Ministry. Among the aims of the program are those of strengthening the National School of Magistrates; avoiding protracted preventive detention; and establishing mechanisms to improve access to justice. The IACHR hopes for the effective implementation of this program.

28. The Inter-American Commission especially welcomed the presence of María da Penha at the hearing "Impediments to the Effective Implementation of María da Penha's Law in Brazil." This law, which was approved in Brazil in 2006, provides criminal sanctions for acts of domestic and family violence against women, promotes rehabilitation programs for the attackers and creates special police units and courts. The law was, in part, one of the outcomes of a case processed by the IACHR, which led the way to important changes in the legislation and public policies of Brazil.

29. During the hearings, the IACHR continued to receive disturbing information regarding the special situation of risk facing Afro-descendent women who, historically, have suffered triple discrimination based on their gender, poverty and race.

30. The Commission also received information on grave violations of the rights of children and adolescents of the region. The IACHR is specifically concerned at the information received during a hearing on juvenile criminal justice regarding regressive measures by various States which have adopted or attempted to adopt laws aimed at reducing the maximum age of responsibility before the juvenile justice system from 18 to 16, or which increase the duration of detention measures applied to children and adolescents tried for breaking criminal laws.

31. It also received information on the situation of human rights defenders in the region, and the obstacles they continue to face in the exercise of their work to promote and protect human rights. On top of the threats, acts of aggression and attacks on their life and integrity, the Commission received information on the increasing use of criminal proceedings against them, with accusations of, *inter alia*, rebellion, terrorism, sedition and conspiracy.

32. The IACHR expresses its profound concern at the serious security situation prevalent in the Mesoamerica region. The murder rates are among the highest in the world, and in the majority of cases the crimes remain with impunity. The IACHR is especially worried by the situation in Bajo Aguán, in Honduras, where between September 2009 and October 2011, 42 individuals with links to peasant organizations were murdered, as well as a journalist and her partner, in the context of the farming conflict. At a hearing on this situation, information was received as to the criminalization of the peasants' struggle and the militarization of the area, placing in a situation of high risk the farmers and human rights defenders in the Bajo Aguán area.

C. Visits

Argentina

33. Commissioner Luz Patricia Mejía, in her role as country Rapporteur, conducted a working visit to Argentina from April 25 to 27. The visit was aimed at encouraging the fulfillment of friendly settlement agreements and of IACHR recommendations, for which purpose the Rapporteur met with senior officials of the National and Provincial Public Powers, as well as representatives of civil society. The Rapporteur also urged fulfillment of other recommendations of a legislative nature, such as a bill for a new National Code of Criminal Procedure, as well as the law of minimum standards in areas of double instance, and the alignment of the criminal juvenile justice regime with international instruments in this area. In addition, on April 28, 2011, the Rapporteur participated in the High Level Meeting on the Human

Rights Agenda in the 21st Century organized by the National Ministry for Justice and Human Rights International Center for the Promotion of Human Rights.

Paraguay²

34. From August 1 to 5, 2011, the President and First Vice-President, in their roles as Rapporteur for Indigenous Peoples and Country Rapporteur, respectively, conducted a visit to Paraguay. The visit was aimed at carrying out promotional activities, urging the fulfillment of decisions of the Inter-American Commission and the Inter-American Court of Human Rights, and promoting the use of the friendly settlement mechanism for the resolution of pending petitions and cases. The delegation also took advantage of its presence in the country to further its understanding of the human rights situation in Paraguay. To this end, the Commission met with senior officials of the State's public powers, as well as with representatives of civil society organizations. During the visit an important number of working meetings were held among the parties on petitions and cases pending before the IACHR, in which important steps were taken. In five of the cases agreements were reached during the meetings, and in another two cases, the parties signed documents stating their willingness to move forward towards reaching a friendly settlement.

² See IACHR, Press Release No. 89/11, IACHR Concludes Working Visit to Paraguay, Available at: http://www.oas.org/en/iachr/media_center/PReleases/2011/089.asp

Mexico³

35. The Rapporteur for Mexico, Commissioner Escobar Gil, conducted a working visit to Mexico from September 26 to 30, 2011. During the visit, the delegation held a series of meetings with senior State officials, including the President of the Republic, Felipe Calderón Hinojosa, and with civil society organizations. Various working meetings on cases and precautionary measures were held.

D. Thematic and Country Reports

36. During 2011, the Inter-American Commission made public the following thematic reports:

- Report on Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources.⁴
- Report on Immigration in the United States: Detention and Due Process.⁵
- The Road to Substantive Democracy: Women's Political Participation in the Americas.⁶
- Juvenile Justice and Human Rights in the Americas.⁷

37. It also approved the following thematic reports:

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

³ See IACHR, Press Release No. 115/11, IACHR Concludes Working Visit to Mexico. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2011/115.asp

⁴ Available at: <http://www.cidh.org/countryrep/Indigenous-Lands09/Ancestral-Lands.ENG.pdf>

⁵ Available at: <http://cidh.org/pdf%20files/ReportOnImmigrationInTheUnited%20States-DetentionAndDueProcess.pdf>.

⁶ Available at: <http://www.cidh.oas.org/pdf%20files/POLITICAL%20PARTICIPATION.pdf>.

⁷ Available at: <http://www.cidh.org/pdf%20files/JuvenileJusticewcover.pdf>

38. Finally, in December 2011 the IACHR approved the following country report:
- Report on the Situation of Human Rights in Jamaica.

E. Activities of the Rapporteurships⁸

1. Rapporteurship on the Rights of Indigenous Peoples

1. The organs of the Inter-American system have given special importance to the protection of, and respect for, the rights of indigenous peoples. Since 1972, for historic reasons based on moral and humanitarian principles, the Inter-American Commission has held that States have a special and sacred commitment to guarantee the rights of indigenous peoples. In 1990, the Rapporteurship on the Rights of Indigenous Peoples was created, with the aim of focusing attention on those indigenous peoples of the Americas who were especially exposed to human rights violations due to their situation of vulnerability, and to strengthen, promote, and systematize the work of the Inter-American Commission itself in that area. Commissioner Dinah Shelton has served as Rapporteur since the beginning of 2010.

2. On February 17, 2011, the Rapporteur and a Rapporteurship's lawyer took part in an event launching the IACHR's study of "Indigenous and Tribal Peoples' Rights over Their Ancestral Lands and Natural Resources", which took place at the University of Oklahoma's Law Faculty. The study will be published in full as a Special Issue of the American Indian Law Review, edited by the University of Oklahoma. On the occasion of this visit, the Rapporteur, the Dean and Faculty Professors agreed to sign an inter-institutional collaboration agreement between the IACHR and the University of Oklahoma. By virtue of the agreement, each semester Oklahoma University students will take part in internships at the Rapporteurship, conferences with tribal leaders of indigenous peoples of the United States will be organized, and workshops for indigenous lawyers from the United States will be periodically held.

3. On May 5, 2011, the Rapporteur travelled to Tucson, Arizona, to meet with the UN Special Rapporteur for Indigenous Peoples, James Anaya, in order to coordinate the working schedules of both rapporteurships and to discuss other points of mutual interest. On May 16, the Rapporteur also participated in the 10th Session of the UN Permanent Forum on Indigenous Issues. Besides this, in the context of an academic visit to Geneva from July 6, to 7, 2011, the President and Rapporteur met with different functional areas of the UN High Commissioner for Human Rights, *inter alia*, the section in charge of Indigenous and Minority Peoples.

4. The Rapporteurship participated of a meeting of lawyers in the context of the *Rights & Democracy* organization's project called "The Creation of Special Jurisprudence for Indigenous Women in the Inter-American System for the Protection of Human Rights." The meeting took place in Washington, D.C., on August 30 and September 1, 2011.

5. Between September 23 and 27, 2011, the Rapporteurship was invited by the Peruvian Legal Defense Institute to participate in a series of training workshops on the IACHR's report "Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources." The workshops took place in Cuzco and Tarapoto, Peru.

6. On September 27, 2011, the Rapporteurship participated in an International Seminar on Property and Propriety Rights of Indigenous Peoples in the human rights context, organized by the Human Rights Department of the Supreme Court of Justice of Paraguay, in the capital of the country.

7. On November 17, and 18, 2011, the Rapporteurship participated in a Workshop on "The Rights of Indigenous Peoples in the Inter-American System", aimed at indigenous leaders and Government officials working in this sphere, which took place in Lima, Peru. It was organized by the

⁸ The activities of the Special Rapporteurship on Freedom of Expression are part of Volume II of this Annual Report.

International Law Department of the OAS. Indigenous representatives from Argentina, Bolivia, Chile, Colombia, Ecuador, Paraguay, Venezuela and Peru attended the workshop.

2. Rapporteurship on the Rights of Women

8. The Rapporteurship on the Rights of Women, under Commissioner Luz Patricia Mejía, continued with the implementation of various initiatives to gather qualitative and quantitative information for identifying the main progress made and challenges faced by women in exercising their rights without discrimination, particularly in the area of their economic, social, and cultural rights, access to justice by women victims of sexual violence, and reproductive rights. These projects are intended to lead to the publication of thematic reports with recommendations whereby the States can better meet their human rights obligations in those areas. They enjoy financial support from the governments of Finland, Spain and the United Nations Population Fund (UNFPA). The Rapporteurship also continued with the development of a project to promote the evolution of jurisprudence and legal standards on gender equality in the Inter-American human rights system with the support of the government of Canada.

9. In the context of these initiatives, the Rapporteurship prepared six thematic and regional reports on the above topics throughout the year. Among them, on October 21, 2011, the IACHR published the report "The Road to Substantive Democracy: Women's Political Participation in the Americas", which examines the main advances and challenges for the States in fulfilling their obligations to respect and ensure equal participation and representation for women in the political arena from a human rights perspective. Among other important issues, the report examines the main obstacles facing women when exercising their political rights and reaching positions of power, on equal terms; the level of success of special affirmative action measures to boost the participation of women; the challenges ahead; and the OAS Member States' best practices to surmount these challenges.

10. During the current year, the IACHR adopted the following thematic and regional reports:

- "Women's Work, Education and Resources: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights", which offers an examination of the various forms of discrimination confronting women in the exercise of their economic, social and cultural rights in the Americas, with special emphasis on the employment, education, access to and control of economic resources by women, including a series of general and specific recommendations for the States.
- "Access to Information on Reproductive Health from the Human Rights Perspective", which identifies and examines the international and regional standards from the point of view of human rights, on the access to reproductive information, in order that the States eliminate the barriers and guarantee and effectively protect this right for women without discrimination.
- "A Rights-Based Approach to Gender Equality and Women's Rights in the Inter-American Human Rights System: Development and Application", which analyzes the impact of the standards, recommendations and decisions of the Inter-American system on the jurisprudence of the OAS Member States in relation to gender equality and the rights of women. With this aim in mind, the report analyzes and categorizes the judicial decisions issued by courts of the Americas, making explicit reference to the standards of the Inter-American system of human rights in the area of discrimination and violence caused specifically by gender. The analysis aims at promoting the continued use of the standards of the Inter-American system of human rights by the judicial branches of the region.
- "Access to Justice for Women Victims of Sexual Violence in Mesoamerica", which examines the scale of the problem of sexual violence in that region. This report, which was prepared in collaboration with the United Nations Population Fund (UNFPA), deals specifically with the legal and jurisdictional treatment, as well as the obstacles confronting women victims in the access to justice, with special emphasis on Nicaragua, El Salvador, Guatemala and Honduras. The IACHR's analysis centers on the areas of prevention, investigation, trial and punishment of cases of sexual violence, as well as to the treatment provided to the victims and their families by judicial

organs charged with protection. This report is a follow-up to the "Access to Justice for Women Victims of Violence in the Americas", published in 2007, and includes a series of recommendations aimed at encouraging state intervention to swiftly and comprehensively prevent, investigate, punish acts of sexual violence and to provide reparations.

11. During 2011, the Rapporteurship also prepared the report "Access to Justice for Women Victims of Sexual Violence: Health and Education", which analyzes this issue and the main barriers confronting women victims in accessing justice in this context. The report collects registries and information originating from the Member States, international organizations, NGO's, press media and universities of the region, and presents a preliminary assessment of the scope of the issue. From the human rights perspective and the obligations undertaken by the States, the report also deals with the way in which sexual violence against women represents an obstacle to the exercise of their rights to education and health, and prompts a discussion about the main barriers confronting women in their access to effective legal measures to solve this problem. The report was prepared with the financial support of the government of Finland.

12. The Rapporteur visited Colombia between May 2 and 4, 2011, in order to encourage the fulfillment of precautionary measures granted by the IACHR on behalf of women's organizations. The Rapporteur's visit was made at the request of organizations representing women beneficiaries of protective measures granted by the IACHR on account of information on threats, acts of harassment and aggression against women working to defend the human rights of women in Colombia. The delegation met with senior State officials and representatives of civil society organizations in the cities of Bogota and Cartagena.

13. The visit was focused on the follow-up to the Agreement signed by the State of Colombia and the following organizations: Casa de la Mujer, Colectivo de Mujeres al Derecho, Liga de Mujeres Desplazadas, Observatorio Género, Democracia y Derechos Humanos and Ruta Pacífica de las Mujeres. In this document, which was signed in March 2011 during the IACHR's 141st Regular Session, the parties by mutual agreement undertook to define implementation mechanisms for precautionary measures granted by the IACHR in favor of women's organizations, women human rights defenders and activists working for the defense and promotion of the rights of women. The Rapporteur's visit was also aimed at examining the problems and obstacles relating to the implementation of these precautionary measures, and the need to resort to a different approach on protective measures benefiting women, in harmony with the causes and consequences linked to the situation of risk facing them due to their gender.

14. The Rapporteur also visited Lima from July 11 to 12, 2011, in order to participate in a Meeting of Women's Organizations and Magistrates organized by the DEMUS institution, and hold a meeting between the parties in the Case of María Mamérita Mestanza of Peru, as a follow-up to the friendly settlement agreement reached by the parties. The Rapporteur took this opportunity to present the report Access to Maternal Health Services from a Human Rights Perspective on Tuesday July 12, 2011. On July 13, 2011, the Rapporteur also participated in a public hearing on abortion before the Chamber of Deputies of the Argentina National Congress.

15. The Rapporteurship also continued its activities in support of the system of individual petitions and in the examination and processing of precautionary measures, cases and briefs relating to the rights of women. It is appropriate to mention in this context that the Rapporteurship participated in the hearing before the Inter-American Court in the *Case of Karen Atala and her Daughters v. Chile*, on August 23 and 24, 2011. This is the first case decided by the IACHR on discrimination due to sexual orientation, and represents the first opportunity for the Inter-American Court to develop its jurisprudence in that area. Equally, the case presents novel legal issues relating to the right to privacy, to family protection and children's rights.

3. Rapporteurship on the Rights of the Child

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

17. On March 9, 2011, the Rapporteur participated in a panel organized by the Office of the UN High Commissioner for Human Rights relating to the protection and promotion of the rights of children living or working in the streets.

18. On February 21, and March 18, 2011, the Rapporteur also participated in a videoconference and a lecturers' conference, respectively, within the framework of activities organized by the Government of El Salvador relating to the collective memory of the forced disappearances of children during the country's armed conflict.

19. With the United Nations Children's Fund (UNICEF), the Rapporteurship on the Rights of the Child, embarked on developing the preliminary phase of a report into the situation of institutionalized children and adolescents in the Americas. The Rapporteurship also started the preliminary phase of a follow-up on the recommendations issued by the Inter-American Commission to the OAS Member States in its Report on corporal punishment and human rights of children and adolescents.

20. The Rapporteur drafted two letters based on Article 41 of the American Convention on Human Rights: one of February 8, with regard to the situation of three young Mapuche children deprived of their liberty in Chile who were tried for the alleged commission of various offenses, including acts of terrorism; and the other of January 14, related to the situation of children and young persons who were seriously injured or killed in a fire in one of the cells of the Compliance Center for Minors in Tocumen, Panama. With regard to this last situation, on March 4, the Rapporteur visited the facilities in this children's and young person's detention center in Panama.

21. It is also appropriate to mention that thanks to the contribution of Save the Children-Sweden, a consulting lawyer was engaged to support the activities of the Rapporteurship on the Rights of the Child, especially in the preparation of reports on petitions and cases.

22. The Rapporteur participated in an activity on the prevention of sexual abuse of minors and the risks of HIV, which took place in San Agustín, Trinidad and Tobago between April 6 and 9.

23. In conjunction with the United Nations Children's Fund (UNICEF), the Regional Office of the UN High Commissioner for Human Rights and the Special Representative of the UN Secretary General on Violence against Children, the Rapporteurship continued to develop the preliminary stage of the report on the situation of children and adolescents in protection and care institutions in the Americas. Within this stage, the Rapporteurship published on the Inter-American Commission's website the questionnaires sent to the OAS Member States and civil society. The Rapporteurship and UNICEF also undertook two sub-regional consultations: the first between May 3 and 4, 2011, in Port-of-Spain, Trinidad and Tobago; and the second between June 23 and 24, 2011, in Lima, Peru, in order to gauge the perceptions of experts belonging to the States and to civil society and to obtain additional information in the preparation of the report.

24. In the context of the sub-regional consultation in Lima, the Rapporteur held interviews with the press media relating to the content of the Report of Juvenile Justice and Human Rights in the Americas.

25. Also, on May 19, 2011, the Rapporteur participated in a seminar on the legislative experiences against the corporal punishment of children and adolescents organized by the Secretariat for Human Rights of Brazil, in Brasília.

26. In the context of the forum on "Citizen Security and Human Rights" taking place on June 5, 2011, in El Salvador, the Rapporteur emphasized the necessity of incorporating a protective aspect for the rights of children and adolescents into the security policies, underlining the State's best practices.

27. On September 7, 2011, the IACHR published the Report on Juvenile Justice and Human Rights, which identifies the international human rights standards that must be observed by the juvenile justice systems in the Americas. The Inter-American Commission stresses in the report its concern for the weaknesses in the juvenile justice systems, due to the gulf between the discourse and the reality facing children and adolescents accused of breaching the law in the region. In the report, the Member States are urged to abolish sentences involving deprivation of liberty applied to children and adolescents, and it formulates recommendations aimed at strengthening the institutions, laws, policies, programs and practices relating to juvenile justice in the region.

28. The report was prepared on the basis of visits to various countries in the region, on consultations with government, non-governmental and academic sources, on regional consultations and on the responses to a questionnaire from the governments, representatives of civil society and experts. Production of the report was made possible thanks to a memorandum of understanding between the IACHR, the Regional Office for Latin America and the Caribbean of the United Nations Children's Fund (UNICEF), and the Office of the UN High Commissioner for Human Rights (OACNUDH). Financial support was also received from the Inter-American Development Bank (IDB), and the organization Save the Children - Sweden and Luxembourg. The Inter-American Commission also wishes to acknowledge the cooperation of the office of the UN Special Representative on Violence against Children.

29. The Juvenile Justice Report has been presented in the Dominican Republic⁹, Uruguay¹⁰ and Argentina¹¹.

30. On August 24, 2011, the Rapporteurship took part in a conference in San Ignacio, Belize, on the effective guarantee of legal protection for children and adolescents against corporal punishment, in the context of a series of conferences organized by UNICEF in the country. The Rapporteurship also visited the city of San Salvador, El Salvador, from September 1, to 3, 2001, where it participated in various working meetings with authorities of the State of El Salvador and members of civil society, where there were discussions on issues relevant to the Rapporteurship.

31. The Rapporteurship also visited Peru from September 6 to 11, 2011, in order to meet with civil society organizations and UN personnel to exchange information on the main problems affecting children and adolescents. In the context of these activities, the Rapporteur travelled to the city of Puerto Maldonado on the Inter-Oceanic Highway, enabling him to observe the outskirts of the mining settlements.

4. Rapporteurship on the Rights of Persons Deprived of Liberty

32. During 2011 the Rapporteurship on the Rights of Persons Deprived of Liberty in the Americas, under Commissioner Rodrigo Escobar Gil, continued with its activities in support of the individual petitions system and with the study and processing of precautionary measures, cases, and communications involving the rights of persons deprived of their liberty. The Rapporteurship also continued with its efforts to promote recognition and respect for the rights of persons deprived of their liberty in the region.

33. The Rapporteurship organized the first institutional meeting between representatives of international bodies whose mandate embraces the protection of persons deprived of liberty. This meeting was held on March 16, 2011, at the IACHR's headquarters, and involved the participation of the IACHR's Rapporteur on the Rights of Persons Deprived of Liberty; the President of the UN Committee against Torture; the UN Rapporteur on Torture and other cruel, inhuman or degrading treatment; the Vice-

⁹ On November 11, 2011 in Santo Domingo, Dominican Republic.

¹⁰ On November 17, 2011 in Montevideo, Uruguay.

¹¹ On November 18, 2011 in Buenos Aires, Argentina.

President of the UN Sub-Committee against Torture; and the Head of the Americas Section in the Field Operations and Technical Cooperation Branch, Office of the UN High Commissioner for Human Rights.

34. The aim of the meeting was to discuss possible avenues of cooperation between the organs, how to keep open the channels of communication and what specific activities they could undertake jointly in the future. Among those that emerged was the possible publication of a joint report on torture, and cruel, inhumane or degrading treatment of persons deprived of liberty in the Americas. During the meeting, the representatives decided to publish a joint press release on March 18.

35. On April 25, 2011, the lawyer assisting the Rapporteurship participated in the Forum for Citizen Consultation on the System of Penitentiary Centre Administration in Panama through teleconference. This activity was organized by the Ombudsman of Panama.

36. During 2011, the Rapporteurship undertook working visits to Suriname between May 25 to 27, and to Uruguay between July 4 and 8. In both visits, the delegation met with public authorities and with civil society organizations; conducted monitoring visits to detention centers and organized workshops aimed at authorities charged with managing the prison system.

37. Between September 29 and 30, 2011, the Rapporteurship participated in a seminar on the creation of a local mechanism to prevent torture in the state of Minas Gerais, Brazil, in fulfillment of the Optional Protocol to the UN Convention against Torture.

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

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

39. On March 14, 2011, the Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination held the Regional Conference "The Situation of Afro-Descendants in the Americas - Perspective and Challenges", organized jointly with the Office of the UN High Commissioner for Human Rights and the NGO Global Rights - Partners for Justice. The event marked the "International Year of the Afro-Descendants", announced by the UN General Assembly in Resolution A/RES/64/169, and recognized by the OAS General Assembly in its resolution AG/RES.2550 (XL-O/10): "Recognizing the International Year of the Afro-Descendants." International experts participated in the Regional Conference, including government officials, academics and civil society representatives from the U.S., Brazil, Uruguay, Honduras, Colombia and Ecuador. The experts debated the following issues: affirmative action policies in favor of Afro-descendants; collective rights of Afro-descendants, particularly the right to their lands; and racial discrimination in the justice systems, including racial stereotyping, police brutality, and the discriminatory application of criminal law in the trial systems.

40. On March 15, 2011, the Rapporteurship and the NGO Global Rights - Partners for Justice set up a Training Workshop on the Inter-American human rights system for Afro-descendant leaders in the Americas, involving the participation of 17 civil society representatives from 9 countries of the region.

41. In May 2011, the Rapporteurship published a questionnaire sent to States and to civil society, aimed at collecting information on the situation, problems and challenges faced by Afro-descendants in the Americas. To date, the Rapporteurship has received 16 replies, including those of the States of Peru, Saint Kitts and Nevis, Colombia, Uruguay and Mexico; as well as from civil society organizations.

42. During July 14 and 15, 2011, the Rapporteurship organized a technical meeting in order to receive the input and collaboration of international experts to identify the main problems, challenges and best practices with respect to the region's Afro-descendants, and the legislative and institutional progress made towards affirmative action for this group of individuals. The following experts were present: Gay McDougall (U.S.), Ignacio Cano (Brazil), Claudia Mosquera (Colombia), Carlos Augusto Viáfara López (Colombia), Rose-Marie Belle Antoine (Trinidad and Tobago / St. Lucia) and Sir Clare Kamau Roberts (Antigua and Barbuda).

43. On May 10, 2011 in Lima, Peru, the Rapporteur, Commissioner María Silvia Guillén, participated in a conference on the Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination, during the "Afro-Descendant Civil Society Empowerment Workshop in the Inter-American System", organized by the OAS's International Law Department. The Rapporteur presented a paper on the role of the OAS's Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination, during a seminar co-sponsored by the Human Rights Department of the "José Simeón Cañas" Central American University and the NGO Global Rights - Partners for Justice, on June 2, 2011, in San Salvador, El Salvador.

44. Between September 29 and 30, the Rapporteur participated in a conference at the Seminar on the Prevention of Torture in Belo Horizonte, state of Minas Gerais, Brazil, and presented a paper on "Vulnerable Groups: social and historical perspectives." This activity was organized by the Secretariat for Social Development of Minas Gerais (Brazil) and its Under-Secretariat for Human Rights.

45. The Rapporteurship also contributed to the organization and running of the Sixth Training Course "The Inter-American and International Human Rights Systems", which took place in Washington, D.C., between October 17 and 28, 2001, with the participation of 26 human rights activists from 12 countries. This year's fundamental focus was equality and non-discrimination, with emphasis on the rights of Afro-descendants. The Sixth Training Course was co-sponsored by the Inter-American Commission on Human Rights (IACHR) and the American University's Washington College of Law (AU WCL), with the collaboration of the Bernard and Audre Rapoport Center for Human Rights and Justice at the University of Texas.

46. The Rapporteurship also participated in the Workshop "Increasing the Participation and Numbers of Afro-descendants in the Organization of American States and the Summit Processes of the Americas", co-sponsored by the OAS Department of International Affairs and the NGO Global Rights - Partners for Justice, on November 2, 2011, in Washington, D.C., with the participation of 15 Afro-descendant activists coming from 10 countries of the Hemisphere.

47. Lastly, the Rapporteurship participated in the event "Afro XXI - Latin American Congress in the International Year of the Afro-Descendant", held in Salvador, state of Bahia, Brazil, from November 16 to 19, 2011, which had an attendance of 2,500 persons. During the said event, the lawyer working for the Rapporteurship addressed the issue of "National and International Legal Frameworks [on racial discrimination], and access to justice" for Afro-descendant individuals. The event was organized by the *Secretaria General Iberoamericana* (SEGIB), together with the Federal Government of Brazil, the State government of Bahia, the Alexandre de Gusmão Foundation, as well as various specialized UN agencies. The event took place against the background of Resolution A/RES/64/169, which declared the year beginning on January 1, 2011, "International Year of the Afro-Descendant", with a view to strengthening national measures and regional and international cooperation for the benefit of Afro-descendants to fully enjoy their human rights. The general aim of the Latin American Congress was to highlight the presence of Afro-descendants in the hemisphere, the main difficulties facing them, the social, cultural and economic contributions that Afro-descendant communities are making in Latin America, highlighting inclusive public policies and best practices, as well as discussing strategies for social inclusion of Afro-descendants in the various national contexts, and their contributions to development.

48. On December 5, 2011, the IACHR adopted the regional report "The Situation of Afro-Descendants in the Americas", which underlined and emphasized the situation of persons of African descent on the understanding that identifying this population and its needs was the first step towards establishing an adequate legal framework and stimulate the legislative and policy measures required to ensure and protect their human rights. In this sense, the Inter-American Commission hopes that this report will contribute in a meaningful and positive way towards the respect, advancement and protection of the human rights of persons of African descent and provide a useful tool both for the protection of Afro-descendants at the domestic level, as well as for all users of the Inter-American system of human rights. With this report, the IACHR seeks to contribute to the effective enjoyment of human rights by Afro-descendants in the Americas, their strengthening, and the provision of tools of empowerment. In this context, and in particular in the International Year of the Afro-descendant, the Commission considers this regional report a first attempt at a general and systemic approach to the situation of Afro-descendants in the Americas, which will contribute to the mapping of future avenues of work.

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

49. On March 17, 2011, the IACHR published the "Report on Immigration in the United States: Detention and Due Process", which included an analysis of the relevant international standards in the area of the human rights of migrants; the IACHR's views and concerns with regard to immigrant related detentions; certain proceedings applied to migrants; conditions of detention and their impact on due process; and a number of conclusions and final recommendations. In the report, the IACHR lays emphasis on the situation of vulnerable groups in the context migrant related detention such as, *inter alia*, unaccompanied minors, migrant families, asylum seekers, and the disabled or mentally incapacitated persons.

50. On March 18, 2011, the Rapporteurship participated in the Working Meeting on Legislation Regarding Undocumented Immigration - A Comparative Law Study: United States and Spain, which took place at the headquarters of the Executive Secretary of the IACHR in Washington, D.C., in conjunction with the *Instituto Universitario de Investigación en Estudios Norteamericanos "Benjamin Franklin"* of the University of Alcalá, Spain. The aim of the meeting was that of discussing the legal framework in the area of undocumented migrants in the two countries as an object of comparison. The meeting provided an opportunity to discuss the contributions of the regional human rights systems in the area of the protection of the rights of all migrants and their families.

51. Between April 11 and 13, 2011, the Rapporteurship on the Rights of Migrant Workers and their Families made a presentation on the mechanism for the processing of individual petitions before the Inter-American Commission in the context of the Seminar 'Mechanisms and International Experiences to Defend Human Rights Defenders of Migrants in Mexico', which took place in Mexico City, organized by the Project Counseling Service (PCS), the ANSUR Collective and sponsored by the Ford Foundation, Office for Mexico and Central America, and the Interchurch Organization for Development Cooperation (ICCO).

52. On April 13, 2011, the Rapporteurship participated in the Workshop "Learning from Experience: Bilateral Cooperation for Migration Management", organized by the OAS's Migration and Development Program. The role of the Rapporteurship was aimed at presenting the standards for the protection of the human rights of migrants and their families, in order that they are recognized by the States at the moment of defining migration management policies.

53. The Rapporteurship participated in the Round Table on Alternatives to Detaining Migrants, organized by the Office of the UN High Commissioner for Refugees (ACNUR), and the Office of the UN High Commissioner for Human Rights in Geneva, Switzerland, from April 12 and 13, 2011. Commissioner Felipe González, Rapporteur for Migrant Workers and their Families, referred to the possible approaches to alternative programs to detention of refugees, asylum seekers, stateless persons and illegal migrants in the Americas; as well as on the standards set by the organs of the Inter-American system in the area of detention and alternatives to the detention of migrants.

54. The Rapporteurship provided advice to the participants at the Model OAS General Assembly (MOAS) which took place from May 18, to 20, 2001, in San Salvador, El Salvador, as part of the promotional activities prior to the XLI Regular Session of the Organization's General Assembly. The Model's purpose was to raise awareness of the priorities of the Inter-American agenda, including as special issues, the situation of migrant workers and their families, as well as citizen security. The MOAS was jointly organized by the OAS Secretariat for External Relations, the Ministry for External Relations of El Salvador, the Secretariat for Social Inclusion, the Central American University 'José Simeón Cañas', and the University of El Salvador.

55. On June 2, 2011, the Rapporteurship made a presentation about the standards developed by the Inter-American system for human rights in the area of the protection of migrants in the context of the International Seminar on Human Rights and International Humanitarian Law, organized by the Inter-American Defense College, in Washington, D.C., United States.

56. In the context of the Seminar on the Protection of Migrant Women in a Situation of Special Vulnerability, which took place in Madrid, Spain, between June 7, and 8, 2011, the Rapporteur referred to the International Protection of the Rights of Migrant Women on June 7. This seminar was organized by the Research Group on Law and Justice of the University Carlos III of Madrid, and the Research Program on the Culture of Legality.

57. From June 15, to 16, 2011, Commissioner and Rapporteur Felipe González participated in a Joint Colloquium on the role of the regional human rights systems in interpreting and applying the legal norms for the protection of forcibly displaced persons. The joint colloquium that took place in Strasbourg, France, was jointly organized by the Council of Europe and the UN High Commissioner for Refugees. Apart from the Commissioner and Rapporteur on the Rights of Migrant Workers and their

Families, also present at the Joint Colloquium were: the Commissioner and Rapporteur on Human Rights Defenders, José de Jesús Orozco Henríquez; members of the European Court of Human Rights; representatives of the Inter-American Court of Human Rights and the Commission, and of the African Court of Human Rights; and leaders of ACNUR and the Counsel of Europe. Commissioners González and Orozco made presentations in the name of the IACHR and participated, respectively, in panels on the following issues: "Access to human rights systems with emphasis on protection against refoulement", and "Economic and Social Rights of Persons in need of Protection." A lawyer from the Executive Secretariat also participated in the panel on "Protection of Persons Fleeing Conflicts and General Violence."

58. Between July 25, and August 2, 2011, the IACHR's Rapporteurship on the Rights of Migrant Workers and their Families visited Mexico. The delegation was composed of Commissioner Felipe González, Rapporteur on the Rights of Migrant Workers and their Families; OAS Executive Secretary Santiago A. Canton. The main aim of the visit was to observe the situation of the human rights of migrants in Mexico. In the context of the visit, the OAS delegation visited Mexico City; Oaxaca and Ixtepec, in the State of Oaxaca, Tapachula and Ciudad Hidalgo, in the State of Chiapas; Tierra Blanca and Veracruz, in the State of Veracruz; and Reynosa and San Fernando, in the State of Tamaulipas. During the visit, the Rapporteurship held meetings with federal, state and municipal security authorities; with civil society organizations; as well as international organizations based in Mexico. At the end of the visit, the OAS Rapporteur presented his preliminary observations in the light of which he drafted a series of recommendations to be implemented by the State of Mexico as quickly as possible. After the visit, the Rapporteur started with the preparations of the report on the visit to Mexico.

59. On November 15, the Rapporteur was invited to participate in the Working Meeting of the Defense and Dual State Impact Program of the Northern Border Initiative in Tijuana, Mexico. In the context of this activity, the Rapporteurship led a development workshop about the protection mechanisms provided by the Inter-American System on Human Rights to promote and protect the rights of migrants, as well as the mandate and functions of the OAS Rapporteurship of the Rights of Migrant Workers and their Families, and on the impact of Advisory Opinion 18-03. Also present were member of the Pro Migrant Defense Coalition, the Centre for Migrant Resources, and the Centre for Human Rights of the Migrant, YMCA Hostel Network of Young Migrants, all located along the different federated entities forming the Northern Border of Mexico. The Rapporteurship was also present at the Colloquium on Border Security Policies and Migrants' Human Rights, organized by the Frontera Norte College in Tijuana, State of Baja California, Mexico.

60. In the context of the XXX Model OAS General Assembly for High Schools (30th MOAS/HC), organized by the OAS Department of International Affairs, the Rapporteurship collaborated by providing technical assistance to the participants about the issue "Protecting the rights of migrant workers and their families." This event took place on November 30, and December 3, 2011, in Washington, D.C.

61. At present, the Rapporteurship is drafting a report on Inter-American standards of human rights for migrants. The Rapporteurship on the Rights of Migrant Workers and their Families, in conjunction with the Rapporteurship on the Rights of the Child and other sections of the Executive Secretariat, are also working on the observations that the Inter-American Commission will send to the Inter-American Court regarding the request for an advisory opinion referred by the Member States of Mercosur, concerning States' legal obligations towards migrant children.

7. Rapporteurship on Human Rights Defenders

62. During its 141st period of sessions held in March 2011, the IACHR decided to create a rapporteurship on the situation of human rights defenders, in light of the complaints received and the need to highlight the important role played by human rights defenders and justice workers, in the strengthening of democracy and the rule of law. Commissioner José de Jesús Orozco Henríquez has been appointed Rapporteur.

63. The Rapporteurship has held meetings with representatives of civil society during the sessions with public hearings. In the course of those meetings, the participants presented information on the situation of human rights defenders and justice operators in the region, and it was also an opportunity to share the advances of the Second Report on the Situation of Human Rights Defenders in the Americas, and with respect to the other areas of work of the Rapporteurship.

64. The Rapporteur, together with members of the Rapporteurship's team, participated in a seminar entitled 'Mechanisms and International Experiences to Defend Human Rights Defenders of Migrants in Mexico'. This event took place in Mexico, from April 11 to 12, 2011, and was organized by the Projects Commission (PCS) and the ANSUR Collective. The seminar dealt with the challenges faced by defenders of migrants in Mexico as well as the available protection schemes and their application, from a comparative experience between Colombia and Mexico. On April 13, the Rapporteurship met with human rights defenders working in Mexico to discuss the Rapporteurship's projects and activities of mutual interest.

65. A lawyer working for the Rapporteurship, at the invitation of various organizations, also participated in a workshop on the criminalization of defenders, especially in the context of opposition to the activities of multi-national companies and the protection of communities affected by them. The workshop took place on April 28, in Brussels, Belgium, and was convened by the Peace Brigade International (PBI), the International Federation for Human Rights (FIDH), the World Organisation Against Torture (OMCT), among other organizations working with the issues of human rights defenders in the region.

66. Together with the coordinator of the IACHR's Protection Group, the Rapporteur participated in an informal meeting convened by the Council of Europe's Office of the Commissioner for Human Rights and the European Court of Human Rights. The meeting took place in Strasbourg on June 17, after a Colloquium on Refugees, in which Commissioners González and Orozco participated at the invitation of the ACNUR and the European Court, to deal with the issue of the protective mechanisms for journalists and defenders in the Inter-American System.

67. On July 28, 2011, the Rapporteurship held a "Dialogue on the Protection of Human Rights Defenders" organized by the International Peace Brigade in Guatemala City. At the event, representatives of the Office of the High Commissioner for Human Rights and delegates of the European Union also intervened, as well as human rights defenders who explained and shared their experiences of the various international mechanisms for the protection of defenders in the Americas. Between July 27 and 29, 2011, the Rapporteurship of Human Rights Defenders also held informal meetings with civil society organizations, and on July 28, 2011, held a workshop on the protective measures offered by the Inter-American system.

68. Also, at the invitation of the Inter-American Institute of Human Rights, the Rapporteur gave a conference on August 10, 2011 during the XXIX Interdisciplinary Course on Human Rights relating to Justice and Security, which took place in San José, Costa Rica.

69. On September 14 and 15, 2011, the IACHR participated in a panel on protective mechanisms for defenders in the Sixth Platform of Human Rights Defenders, in Dublin, Ireland, at the invitation of the Frontline Organization.

70. The Rapporteur also participated in the joint organized by the IACHR, the Inter-American Institute of Human Rights and American University Washington College of Law, in the Framework of the 143^d regular sessions of the IACHR.

71. From December 5 to 6, 2011, the Rapporteur, together with the Executive Secretary, participated in a "Meeting of Latin American Human Rights Defenders" organized by the Center for Social and Legal Studies (CELS) at the Law Faculty of the University of Buenos Aires, Argentina. Among the participants were representatives of social and human rights organizations from 14 countries of the hemisphere, which discussed the challenges and obstacles to the activity of defending human rights, as

well as the promotional and protective strategies for human rights defenders in Latin America. In the context of this event, the Rapporteur shared with the other participants the preliminary conclusions of the Second Report on the Situation of Human Rights Defenders in the Americas. On December 7, 2011, the Rapporteurship took part in a workshop with the staff of the National General Ombudsman's Office of Argentina, on the protective mechanisms for human rights defenders in the Inter-American system.

72. The Rapporteur and an Attorney from the Rapporteurship participated in the "Second Specialized Human Rights Course" organized by the Commission on Human Rights of the Federal District of Mexico (CDHDF), which took place between December 9 and 11, 2011. This activity was aimed at training the professional career staff of the CDHDF.

73. Finally on December 27, 2011 the IACHR approved the Second Report on the Situation of Human Rights Defenders in the Americas. The report aims at following up on the 2006 report on the same matter, and to update the relevant international standards. In the report there is a follow-up on the recommendations regarding the following matters: problems faced by human rights defenders in the region; human rights defenders at particular risk; independence and impartiality of judges as a guarantee of access to justice; and protection mechanisms for human rights defenders. As is laid out in the report, the States should take the relevant measures in these four areas in order to implement a comprehensive protection policy for human rights defenders, as the IACHR specified in its 2006 report. Each section refers to the Inter-American Commission's recommendations from its prior report that are relevant to each subject and includes measures that some States have taken to implement the recommendations.

F. Other Events and Activities

Inter-American Human Rights Treaties

74. On November 10, 2011, Honduras deposited its instrument of accession to the following Inter-American human rights instruments with the OAS General Secretariat:

- The Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities.
- The Protocol to the American Convention on Human Rights to Abolish the Death Penalty.
- The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador".

Scholarships and Internships

75. The Commission continued with its 'Rómulo Gallegos' Scholarship Program during 2011. The program offers training on the Inter-American system to young lawyers from OAS Member States, who are selected annually by means of tough competition, based on their academic record and commitment to human rights.

2010 – 2011	Adriana Caicedo Trujillo, Rómulo Gallegos Scholarship	Colombia
	Rushelle Amanda Liverpool, Rómulo Gallegos Scholarship	Guyana
	Matias Meza-Lopehandía, Rómulo Gallegos Scholarship	Chile
	Jorge Humberto Meza Flores, Human Rights Defenders Unit Scholarship	Mexico
	Étienne Chénier-Lafèche, Brian Tittmore Scholarship	Canada
2011	Edgar Guatemal Campués, Indigenous Peoples Scholarship	Ecuador
2011 – 2012	Patricia Tarre Moser, Notre Dame Scholarship	Venezuela
	Catherine Lafontaine, Brian Tittmore Scholarship	Canada

76. In addition to its scholarships, the Commission continued with and expanded its program of internships. These internships, which are administered in conjunction with the OAS Student Intern Program, are targeted at university students, graduates, and young professionals, to allow them to gain practical experience with the inter-American system as it relates to their fields of study. Specifically, the goal of the internships is to offer students and recent graduates in law or other related disciplines the opportunity to learn about the Inter-American Commission's work. It also offers professionals an opportunity to acquire practical training in the human rights area and to work alongside the Executive Secretariat's attorneys in the different activities carried out by the IACHR. In 2011, the Inter-American Commission received a total of 35 interns. Additional information on the scholarship and internship programs is available on the Commission's web site at www.cidh.org.

Activities of Cooperation with other Human Rights Institutions

77. On April 18 and 19, 2011, at the invitation of the Office of the UN High Commissioner, the Executive Secretary participated in a meeting of experts on citizen security in Geneva, Switzerland,

where he presented the conclusions and recommendation of the IACHR's report on the subject. On April 20, there was a training workshop for the staff of the Executive Secretariat on forensic investigating, led by the International Committee of the Red Cross and the Center for the Rehabilitation of the Victims of Torture.

78. From April 4 to 5, 2011, the Rapporteur on the Rights of Women and the IACHR's Assistant Executive Secretary participated in the Forum of the Hemisphere "Women's Leadership for Citizen Democracy", organized in Washington, D.C., by the Inter-American Women's Commission.

79. On June 5, 2011, the IACHR, the Office of the UN High Commissioner, the Inter-American Women's Commission and the Inter-American Human Rights Institute, held a forum on citizen security and human rights in San Salvador, El Salvador. The aim of the forum was to encourage a dialogue on the inter-relationship between citizen security and human rights in the context of the OAS General Assembly referred to this issue. Some 100 individuals participated in the forum, including representatives from the member States and observer countries, representatives of civil society, and public authorities of El Salvador. Among the participating panelists were President Dinah Shelton and Commissioner Paulo Sérgio Pinheiro, representing the IACHR.

80. On September 13, 2011, at the invitation of the Office of the UN High Commissioner for Human Rights, the IACHR participated in a panel on peaceful protest. The panel took place in Geneva, Switzerland.

81. On October 12 and 13, 2011, at the invitation of the General Secretariat of the OAS, the IACHR participated in the OAS-African Union Forum on "challenges and opportunities for the promotion and defense of democracy and human rights in Africa and the Americas." This took place in Addis Ababa, Ethiopia, its central thematic focus being the cooperation between the OAS and AU in the protection and promotion of human rights in both regions.

82. On October 12 and 13, 2011, the IACHR also participated in a regional experts workshop on the issue of inciting hatred, which took place in Santiago, Chile, at the invitation of the Office of the UN High Commissioner.

Other Outreach Activities

83. On April, 25, 2011, the IACHR's Executive Secretary participated in a Hemispheric Forum with civil society organized in Washington by the OAS's Department for External Relations, whose aim was to foster participation of civil society in discussions on the central issue of the 2011 OAS General Assembly referred to as citizen security.

84. On April 26 and 27, 2011, the Executive Secretary participated in the V International Meeting of Humanitarian and Military Law in Lima, Peru, at the invitation of the International Association of Military Jurists (AIJM). At the same time, the Executive Secretary was invited by the Legal Defense Institute to present the report "The Rights of Indigenous and Tribal Peoples to their Ancestral Lands and Natural Resources."

85. On May 12, 2011, the Executive Secretary participated in the Subregional Dialogue of the Members of the Central American and Mexican Integration System: "Democracy for Peace, Security and Development", in San Jose, Costa Rica. This event took place to commemorate the 10th Anniversary of the Inter-American Democratic Charter.

86. On June 10, 2011, an initial informal dialogue on friendly settlement proceedings took place at the headquarters of the IACHR with experts in the Inter-American system, with a view to making progress to identify best practices allowing a strengthening of the initiative the IACHR is currently developing in this area.

87. On August 22, 2011, a workshop for the staff of the Executive Secretariat on Alternative Dispute Resolution took place at the IACHR, with the aim of promoting a strengthening of the friendly settlement program. The workshop was led by Prof. Charles Caver of the George Washington University.

88. On September 24, 2011, the Inter-American Commission participated in a series of outreach seminars organized by the Judicial Power of Mexico in the states of León, Puebla and Sinaloa. In the seminars there was an analysis of constitutional reforms in matters of the *amparo* in the country, as well as the recent decision of the Mexican Supreme Court of Justice in the *Radilla Pacheco* case, and this court's recommendations of the outline of constitutional oversight. Commissioner Orozco Henríquez and lawyers from the IACHR's Executive Secretariat participated in simultaneous presentations on the Inter-American human rights system in general, and on the control of constitutionality, led by federal judges, and that was developing in each one of the above-mentioned states.

89. On October 10, 2011, at the invitation of the World Coalition against the Death Penalty, the IACHR participated in a discussion panel on the international jurisprudence in the area of the death penalty and the prohibition against cruel, inhuman or degrading treatment or punishment. This event took place in Geneva, Switzerland.

90. On October 14, 2011, a ceremony took place marking the signing of cooperation agreement between the IACHR and the Supreme Court of Justice of Mexico. Present at the signing were the President and Vice-President of the Inter-American Commission and on behalf of the Supreme Court, Chief Justice Juan Silva Meza.

91. The IACHR was represented at the International Seminar on "Implementation of Sentences and Recommendations in the Inter-American System of human rights", organized by the Ministry of Foreign Affairs of Chile. The seminar took place on November 9, 2011, at the headquarters of the said Ministry in Santiago, Chile, with the purpose of increasing State agents' awareness of the binding nature of the decisions issued by the organs of the Inter-American system. Participants included representatives of the Ministries comprising the Inter-Ministerial Coordination Group; members and lawyers of the Human Rights Commissions of the Senate and Chamber of Deputies; staff of the judicial service, National Attorney General's Office and the Criminal Public Ombudsman's Office and of the National Institute for Human Rights.

92. Commissioner Maria Silvia Guillén participated in the "Dialogue on the Report on Citizen Security and Human Rights: challenges and perspectives for the implementation of the recommendations", organized by the Inter-American Institute of Human Rights, and sponsored by the IACHR. The meeting took place in San Salvador on November 28, and 29, 2011, and involved the participation of the senior police authorities of the OAS Member States of Colombia and the Central American region, as well as civil society representatives.

93. On November 29 and 30 2011 the IACHR held at its headquarters a "Regional consultation for the Americas on enhancing cooperation between UN and regional mechanisms on the prevention of torture and protection of victims of torture, especially persons deprived of liberty". Participating at the event were the President of the IACHR and the Rapporteur on the Rights of Persons Deprived of Liberty, the President of the Committee Against Torture, the Vice-President of the Subcommittee for the Prevention of Torture, the UN Special Rapporteur on Torture, representatives of the IACHR and the Office of the UN High Commissioner on Human Rights, as well as representative of National Mechanisms for the Prevention of Torture (NMP) of the region, national human rights institutions and civil society organizations. During the meeting, the participants identified specific means and tools of cooperation among UN human rights mechanisms and the inter-American system in the combat against torture and ill treatment, taking into account areas of work such as the exchange of information, possible joint activities, and the follow-up of recommendations; they also discussed the role of the MPS and civil society organizations.

94. On December 1, and 2, 2011, the IACHR participated in Workshop for Lawyers on the "Use of Forensic Evidence in the fight against torture", in Copenhagen, Denmark, and sponsored by the organization International Rehabilitation Council for Torture Victims (IRCT).

95. The IACHR was also represented by Commissioner President Dinah Shelton at a regional seminar on the Association of Southeast Asian Nations Human Rights Declaration which took place in Bali, Indonesia. The participating experts contributed valuable experience from the Inter-American Commission, the African Commission on Human Rights and Peoples Rights, and the Office of the U.N. High Commissioner for Human Rights. The seminar's recommendations highlighted, among others, the importance of the role of civil society in promoting and protecting human rights, and the contribution of independent regional human rights mechanisms towards improvement in international human rights standards.

96. Commissioner President Dinah Shelton participated in the International meeting on "Legal Pluralism in Multicultural Societies" which took place in Lima, Perú between December 12 and 14, 2011. The meeting, which was organized by the Andean Commission of Jurists and sponsored by the Government of France, had the purpose of analyzing experiences of legal pluralism in the Andean Region and how international courts and States have defined standards to address the issue.

G. Financial Contributions

97. The IACHR is thankful for the contributions made during 2011 by the governments of the following member States of the OAS: Canada, Chile, Colombia, Costa Rica and the United States. It is also thankful towards the following Observer Countries for their support of Inter-American Commission activities: Spain, Finland, France, the United Kingdom, Luxembourg, Sweden and Switzerland. The Commission also appreciates and thanks the contributions received from the Canadian International Development Agency, the European Commission, the United Nations Children's Fund, the United Nations Population Fund, the Swedish Foundation for Human Rights, Save the Children/Sweden, and the University of Notre Dame.

98. In order to encourage greater coordination between donors and to optimize their efficiency levels, the IACHR proposed the adoption of a system which permits the results reached to be viewed with transparency, through measurable and realistic indicators. For this purpose, it prepared its 2011-2015 Strategic Plan, and on March 1, and 2, 2011, in Ottawa, Canada, presented it at the "Technical Meeting for Coordinating Support for the Inter-American System of Human Rights -- IACHR". The purpose of the technical meeting was to lay the foundations for a new type of cooperation in a programmatic way for the medium and long term, and with a system based on results, information sharing with all donors in a single and effective manner.

99. A second meeting was convened by the Inter-American Court on June 10, 2011, immediately after the OAS General Assembly. At that time, the Inter-American Court presented its financial requirements, and proposed contributions from donors of 2 million US dollars in the next three years.

100. On October 4, 2011, the Strategic Plan was presented to the observer countries in full. Representatives of the European Union, France, Holland, Portugal, Israel, Morocco and Serbia were present. The Executive Administrator of the Spanish Fund for the OAS, as well as the delegation of the Canadian International Development Agency, were also present.

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

101. Throughout 2011, the Commission continued to exercise its Convention and statutory mandates before the Inter-American Court. Below is a detailed description of the Commission's activities before the Court in the following order: i) referral of contentious cases; ii) requests for provisional measures; iii) appearance and participation in public and private hearings; iv) presentation of written

observations on State reports in cases of supervision of compliance with judgments; and v) presentation of written observations on State reports on the implementation of provisional measures.

1. Referral of contentious cases

102. During 2011 the Commission referred 23 cases to the jurisdiction of the Inter-American Court pursuant to Article 51 of the American Convention and Article 45 of its Rules.

1.1 *García et al. v. Guatemala*

103. On February 9, 2011, the Commission referred the case relating to the forced disappearance of Edgar Fernando García, trade unionist and student leader, who was shot and detained on February 18, 1984, by members of the Special Operations Squad of the National Police of Guatemala. His whereabouts are still unknown. The forced disappearance of Edgar Fernando García occurred in the context of the counterinsurgency policy characterized by terror and systematic human rights violations, which mainly affected individuals or groups labeled as "internal enemies". The present case illustrates this context, whilst at the time of his disappearance Mr. García, among other activities, was a student and trade union leader, causing him to be identified as an enemy of the repressive regime.

104. This case is an example of the use of military intelligence as a form of counter-insurgency. As the IACHR established in its merits report, the document known as the "Military Diary" – containing a registry of operations on kidnappings, secret detentions, assassination, and information on their victims— was made public by the NGO National Security Archive in 1999, after years of remaining in secret. This document was drafted by the Presidential Intelligence Unit of Guatemala known as "The Archive", between August 1983 and March 1985. The so-called Military Diary contains six sections. The sixth section is the most relevant part of the document and in its 53 pages it contains a list of actions committed against some 183 individuals, among them, Edgar Fernando García.

1.2 *Dorzema et al. (Massacre of Guayubín) v. The Dominican Republic*

105. On February 11, 2011, the Commission referred the case relating to the excessive use of force by the army against a group of Haitians, of whom seven people died and various others were injured. The facts were brought to the direct attention of the military courts. After several years of trials and in spite of the request of the family members of those killed that the case be referred to the ordinary courts, the members of the military involved were acquitted. Furthermore, some of the surviving victims suffered a violation of their personal liberty and violations of judicial guarantees and judicial protection, since they were expelled from the Dominican Republic without the due guarantees corresponding to migrants. The Commission emphasized that the facts of this case are part of a more general context of discrimination against Haitians and people of Haitian origin in the Dominican Republic, as well as the deportation of Haitians from the Dominican Republic.

1.3 *Gudiel Alvarez et al. (Military Diary) v. Guatemala*

106. On February 18, 2011, the Commission referred a case relating to the forced disappearance of 26 victims individually listed in the merits report, the forced disappearance and extrajudicial execution of Rudy Gustavo Figueroa Muñoz, and the detention and torture of the girl Wendy Santizo Méndez. The State of Guatemala has neither undertaken a serious and effective investigation nor identified or punished the perpetrators and planners of these crimes. The present case illustrates the counter-insurgent policy characterized by the use of terror and systematic human rights violations during the armed conflict in Guatemala, the impunity that usually follows these violations, and the concealment of information relating to the use of military intelligence as a form of counter-insurgency, during many years.

107. As the IACHR established in its merits report, the document known as the "Military Diary" –containing a registry of operations on kidnappings, secret detentions, assassination, and information on

their victims— was made public by the NGO National Security Archive in 1999, after years of remaining in secret. This document was drafted by the Presidential Intelligence Unit of Guatemala known as "The Archive", between August 1983 and March 1985. The so-called Military Diary contains six sections. The sixth section is the most relevant part of the document, since in 53 pages, it contains a list of actions committed against some 183 individuals, among them being the disappeared in the present case.

1.4 Castillo González *et al.* v. Venezuela

108. On February 22, 2011, the Commission referred the case relating to the attack against the human rights defender, Joe Luis Castillo González, on August 27, 2003, by two unknown individuals travelling on a motorcycle and who shoot him repeatedly while he was driving his car accompanied by his family. As a result of the attack, Joe Luis Castillo González was killed while his wife, Yelizte Moreno de Castillo and his one-and-a-half-year old son, Luis César Castillo Moreno, were seriously injured; to date they continue to suffer the traumatic effects of these events.

109. The attack on Joe Luis Castillo González remains in impunity, since the State did not pursue serious and effective investigations to identify those responsible and in his case, impose the appropriate punishments. The investigation started on account of these events showed serious irregularities and was archived by the Attorney General without undertaking the procedural steps likely to clarify the events in accordance with logical avenues of inquiry. The Commission established that the investigation showed signs of the alleged connivance of, and/or participation by, State agents in the attack on Joe Luis Castillo González, signs which were dismissed without carrying out the respective investigations.

110. This lack of a serious and effective investigation, as well as representing a failure to fulfill the duty of guaranteeing violations of the right to life and personal integrity, and a denial of justice with respect to Mr. Joe Luis Castillo González's family, it had an intimidating effect on those whose task it is to defend human rights in the area of Machiques, Estado Zulia, and particularly, in Vicariato Apostólico.

1.5 Palma Mendoza *et al.* v. Ecuador

111. On February 24, 2011, the Commission referred the case relating to the absence of an effective avenue to lodge a simple and speedy remedy to achieve the legal protection required in the case. Thus, after the kidnapping of Mr. Palma Mendoza, the two *habeas corpus* remedies filed by family members were ineffective in establishing his whereabouts. The competent authorities failed to undertake the minimum necessary procedural steps to immediately establish Mr. Palma's whereabouts. Despite the existence of various witnesses, including personnel of a State agency (Professional Training Service of Ecuador), the state authorities took steps that had no effect and failed to help prevent the murder of Mr. Palma, which occurred five days after his kidnapping.

112. The judicial authorities acquitted the alleged planners of the kidnapping and murder of Mr. Palma, based on the withdrawal from the proceedings of some of his family members and not on elements of proof, despite the fact that it involved crimes subject to public prosecution.

1.6 Vélez Restrepo *et al.* v. Colombia

113. On March 2, 2011, the Commission referred the case relating to the attack suffered by the journalist Luis Gonzalo "Richard" Vélez Restrepo on August 29, 1996 by soldiers of the National Army of Colombia while he was filming a demonstration and documented the moment in which soldiers beat various demonstrators. These events were followed by death threats against the journalist Richard Vélez and his family. The threats worsened when Mr. Vélez tried to pursue judicial proceedings against his attackers, ending up with an attempted kidnapping. Due to the foregoing, on October 9, 1997, Mr. Vélez left Colombia to live in exile. At present, Richard Vélez is unable to exercise his profession as a journalist.

114. The attack on August 29, 1996, and the subsequent acts of harassment against Luis Gonzalo "Richard" Vélez Restrepo and his family remain in impunity, since the State did not initiate serious and effective investigations to identify those responsible and, as the case may be, impose the appropriate punishment. The military criminal courts participated in one of the proceedings. The case reflects various aspects of impunity that apart from having incidence in the actual case, involve more general aspect of the State's duty to pursue, investigate and, as the case may be, punish human rights violations.

1.7 The El Mozote and Neighboring Areas Massacres v. El Salvador Massacres

115. On March 8, 2011, the Commission referred the case relating to the successive massacres committed between September 11 and 13, 1981, in the framework of a military operation of the Atlacatl Battalion, together with other military units, in seven areas of the northern part of the Morazán department. The indiscriminate attack against the civilian population thus began in the El Mozote hamlet, continued in the La Joya canton, the Ranchería, Los Toriles and Jocote Amarillo farmsteads, ending in the Cerro Pando canton, and the Cerro Ortiz cave. As a result of the events, approximately one thousand people were killed. Although an investigation was begun into the events, the same remain in impunity after the dismissal issued on September 27, 1993, based on the General Amnesty Law for Peace and Consolidation, which is still in force in El Salvador. In subsequent years, some exhumations were performed, but these did not result in the reactivation of the investigations, despite the repeated requests to the relevant authorities.

116. The massacres were committed in an indiscriminate and extremely cruel fashion, involving an unfortunate number of approximately one thousand individuals, including an alarming number of boys and girls. The systematic and generalized nature of these actions, aimed at spreading terror in the population, has been acknowledged at various times, permitting the conclusion that the massacres in the present case are one of the most heinous examples of crimes against humanity committed at the time by the military forces in El Salvador. Despite the foregoing, due to the fact that the General Amnesty Law for Peace and Consolidation remains in force, as well as to repeated omissions on the part of the State of El Salvador, these grave events remain in impunity. To date, the massacres have not been legally clarified, the appropriate punishments have not been imposed, despite the fact that an important number of those responsible have been identified from different sources, including the Report of the Truth Commission, 'From Madness to Hope'.

117. The Commission referred to the Court a case relating to the State's acts and omissions occurring subsequent to June 6, 1995, the date on which El Salvador accepted the Court's jurisdiction. As is shown in merits report 177/10, the following thus form part of the combined events which are within the temporal competence of the Court: the validity of the General Amnesty Law for Consolidation of the Peace; the failure to reopen the investigations; the lack of continued and sustained efforts to exhume the largest possible number of human remains; the lack of judicial follow-up on the exhumations undertaken and the information obtained in this context; the lack of response to the requests to reactivate the investigations; the effects of the massacres and of their impunity on the surviving family members; the lack of reparations for the same; and the situation of displacement for some victims.

1.8 Pacheco Teruel *et al.* v. Honduras

118. On March 11, 2011, the Commission referred the case relating to the death on May 17, 2004 of 107 inmates held in jail or cell block No.19 of the San Pedro Sula Central Penitentiary as a direct result of a series of structural deficiencies at the said central penitentiary. The competent authorities were well aware of the structural deficiencies and it was precisely within their duties to deal with them and correct them in good time. There are key factors, such as the fact that the victims were members of 'maras' being held in isolation from the rest of the prison population, confined in an insecure and unhealthy compound.

119. The material events of the case are a consequence of the structural deficiencies of the penitentiary system in Honduras itself, and represent a general context of the public security and prison policies directed toward combating organized criminals known as the 'maras'.

120. The State has failed both to investigate the events complained of and punish those responsible in a diligent way and as a legal duty in itself. The State reduced its investigation to the actions of the then Warden of the San Pedro Sula Central Penitentiary, without consideration of other avenues of enquiry, nor has it enquired about the responsibility of other authorities.

1.9 Furlan and family v. Argentina

121. On March 15, 2011, the Commission referred the case relating to the unjustified delay of more than 12 years in a civil action for an accident occurring at an abandoned Argentinean Army assault course, which caused irreparable brain damage to Sebastián Claus Furlan. As a result of the accident, Sebastián currently suffers from a partial and permanent 70% disability. As regards the civil action, this was begun by compensation claim filed by the petitioner, his father Sebastián Furlan, against the Ministry of Defense for the injuries caused to his son. This trial lasted 10 years before a decision was rendered and more than two years at the enforcement stage. From the proven facts and the IACHR's analysis, it was established that the permanent disability suffered by Sebastián due to the accident was aggravated by the delay in receiving compensation, which, given the precarious financial position of the petitioner, was crucial for the purposes of Sebastián receiving adequate and timely rehabilitation treatment and psychological and psychiatric assistance. In addition, the petitioner received only 33% of the amount corresponding to the compensation claim, due to the execution of the judgment more than two years after it was decided and by way of bonds, despite the order being for payment in Argentine pesos.

1.10 Mohamed v. Argentina

122. On April 13, 2011, the Commission referred the case relating to the trial and criminal conviction of Oscar Alberto Mohamed for the crime of manslaughter as a result of a traffic accident, which took place on March 16, 1992. After an acquittal at first instance, Mr. Mohamed was convicted for the first time on appeal. At trial, a series of guarantees were overlooked, including the principle of legality and non-retroactivity and the right to a defense. Given that Mr. Mohamed was not guaranteed the right to appeal his conviction in the terms set out in the Convention, he also did not have an effective remedy to address these violations.

1.11 Mendoza *et al.* (Life Imprisonment and Detention) v. Argentina

123. On June 17, 2011, the Commission referred the case relating to the arbitrary imposition of sentences of life imprisonment on César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza and Saúl Cristian Roldán Cajal, and life detention on Ricardo David Videla Fernández, for events occurring when they were children. These sentences were imposed by applying juvenile justice system rules permitting the treatment of adolescent offenders as adults. The relevant judicial authorities also ignored the applicable international standards in the area of juvenile criminal justice, in particular, the deprivation of liberty as a measure of last resort and for as short a time as necessary, as well as the duty to guarantee the periodic review of the possibility for release. This situation was exacerbated by the restrictions on the scope of reconsideration in the *cassation* appeals filed by the victims, resulting in their inability to argue questions of fact and evidentiary assessments in the said appeals. This situation was compounded by the injustice generated by the adolescents' sentences of life imprisonment and detention.

124. The case also relates to a series of violations occurring in the context of the carrying out the sentences, under State custody. Thus, Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal were subjected to inhuman conditions of detention incompatible with their human dignity in the Provincial Penitentiary of Mendoza, which finally caused the death of Ricardo David Videla Fernández, who suffered from mental health problems without the State adopting reasonable measures to prevent his death, and subsequently to effectively investigate it. As for Lucas Matías Mendoza, he lost his sight without the State providing medical treatment to prevent a worsening of his condition; whilst Claudio

David Núñez and Lucas Matías Mendoza were victims of acts of torture, which were also not adequately investigated.

1.12 The Santo Domingo Massacre v. Colombia

125. On July 8, 2011, the Commission referred the case relating to a bombardment perpetrated on December 13, 1998, by the Colombian Air Force on the farmstead of Santo Domingo, in the Tame Municipality, Arauca Department. Specifically, a cluster munitions device was fired which, according to the information available at the time its merits report was issued, resulted in the deaths of 17 civilians, among them four boys and two girls. 27 civilians were also wounded, among them 4 boys and five girls. After the device exploded, the Security Forces continued the aerial bombardment of the civilians who tried to help the wounded and escape the village. After the events, the population of Santo Domingo became displaced in their entirety; and in January 1999, it returned in order to rebuild the dwellings. These events remain in impunity since the State did not undertake serious and effective investigations to identify the planners and other perpetrators; and, as the case may be, impose the appropriate punishments. In its merits report, the IACHR concluded that more than 12 years after the events occurred there has only been one first instance conviction of the helicopter crew that fired the device.

1.13 Marino López *et al.* (Operation Genesis) v. Colombia

126. On July 25, 2011, the Commission referred the case relating to the military counter-insurgency operation called "Genesis" and the joint paramilitary raids, which took place between February 24 and 27, 1997, in the Afro-descendant communities of the Cacarica river basin, in the Department of Chocó. The bombardments of "Operation Genesis" and the human rights violations committed in the paramilitary raids, such as the torture and extrajudicial execution of Marino López, death threats, looting, robbery and destruction of property, *inter alia*, intimidated the population and caused the forced displacement of hundreds of members of these communities, primarily women and children.

127. The victims were displaced for more than four years in refugee camps, in overcrowded and precarious living conditions. During the displacement, they were subjected to acts of harassment and threats so that the IACHR issued precautionary measures for their protection. The Commission concluded that these events constituted a crime against humanity since they are part of a pattern of massive, systematic and generalized violence executed in the context of the armed conflict, in violation of the human rights of the Afro-descendant communities in the Cacarica basin - now associated in "Self-Determination, Life and Dignity Communities" (CAVIDA) - and the women head of household living in Turbo.

128. An investigation was opened into the material facts of the case in the ordinary criminal courts against a General, which is at a preliminary stage, and a trial is pending against the same General and five members of the paramilitary. Besides this, seven demobilized members of the self-defense forces have been indicted before the Justice and Peace courts, five of whom are being held in preventive detention. The Commission concluded that the investigations were not pursued quickly and effectively, that there was a failure to examine the multiplicity of violations occurring during "Operation Genesis", the military raids, and the ensuing violations and the forced displacements, which these caused. The Commission also concluded that the courts acted with a lack of diligence to impel the criminal proceedings aimed at clarifying the acts of violence and punishing those responsible, so that the events remain in impunity.

1.14 Artavia Murillo *et al.* (In Vitro Fertilization) v. Costa Rica

129. On July 29, 2011, the Commission referred to the Court the case relating to the violation of the rights to privacy and family life, the right to start a family and the right to equal protection and non-discrimination, enshrined in Articles 11, 17, and 24 of the American Convention on Human Rights, in relation to Articles 1.1 and 2 of the same instrument, to the prejudice of Gretel Artavia Murillo, Miguel

Mejía Carballo, Andrea Bianchi Bruno, German Alberto Moreno Valencia, Ana Cristina Castillo León, Enrique Acuña Cartín, Ileana Henchos Bolaños, Miguel Antonio Yamuni Zeledón, Claudia María Carro Maklouf, Víctor Hugo Sanabria León, Karen Espinoza Vindas, Héctor Jiménez Acuña, María del Socorro Calderón P., Joaquina Arroyo Fonseca, Geovanni Antonio Vega, Carlos E. Vargas Solórzano, Julieta González Ledezma and Oriester Rojas Carranza.

130. These violations occurred as a result of the general prohibition on practicing the assisted reproductive technique of *in vitro* fertilization, a prohibition in force in Costa Rica since the year 2000, after a decision issued by the Constitutional Chamber of the country's Supreme Court of Justice. As merits report 85/10 shows, the Commission considered that this absolute prohibition constituted an arbitrary interference with the rights to private and family life and to start a family. The Commission also considered that the prohibition constituted a violation of the right to equality for the victims, since the State was preventing them from access to a treatment, which would have allowed them to overcome their disadvantageous situation with regard to the possibility of having biological children. This impediment also had a disproportionate impact upon women.

1.15 Quintana Coello *et al.* (Judges of the Supreme Court of Justice) v. Ecuador

131. On August 2, 2011, the Commission referred to the Court the case relating to the arbitrary removal of 27 justices of the Supreme Court of Justice of Ecuador in a parliamentary resolution of December 8, 2004, in the absence of a clear legal framework regulating the grounds and procedures for relieving them from their position, and in disregard of the constitutional rules by which they were indefinitely nominated for their positions and the system of self-selection as a way of filling the possible vacancies. The victims were not allowed the minimum due process guarantees, were not heard and had no opportunity to defend themselves. They also had at their disposal no effective judicial remedy which could protect them against the arbitrary actions of the National Congress. These events occurred in a context of political unrest and institutional fragility for the Judicial Branch in Ecuador.

1.16 Norín Catrimán *et al.* (The Lonkos, Leaders and Activists of the Indigenous People Mapuches) v. Chile

132. On August 7, 2011, the Commission referred the case relating to the violation of the rights enshrined in Articles 8.1, 8.2, 8.2.f, 8.2.h, 9, 13, 23 and 24 of the American Convention on Human Rights, in relation to the obligations established in Articles 1.1 and 2 of this instrument, to the prejudice of Segundo Aniceto Norín Catrimán, Pascual Huentequero Pichún Paillalao, Florencio Jaime Marileo Saravia, José Huenchunao Mariñán, Juan Patricio Marileo Saravia, Juan Ciriaco Millacheo Lican, Patricia Roxana Troncoso Robles and Víctor Manuel Ancalaf Llaupe due to their trial and conviction for alleged terrorist crimes, pursuant to criminal laws incompatible with the principle of legality, and a series of irregularities affecting due process, and their ethnic background being viewed in an unjustifiable and discriminatory way. All this in a context of the selective application of anti-terrorist legislation to the prejudice of the indigenous Mapuche people in Chile.

133. Specifically, the victims were tried and sentenced pursuant to laws containing ambiguities allowing a qualification of alleged conduct as terrorist crimes by taking into account the ethnic origin of the victims and their characteristics as Lonkos, leaders or activists of the indigenous Mapuche peoples. The judicial authorities of Chile based the sentencing of the victims for terrorist crimes on representations of a context called the "Mapuche conflict", without distinguishing between the more general context of the indigenous people's legitimate grievances characterized by various forms of social protest, and the acts of violence committed by certain minority groups in this context. In this way, the reference to the victims' membership or links to the indigenous Mapuche people constituted an act of discrimination through which, at least in part, the social protests by members of the indigenous Mapuche people have been criminalized. These events affected the social structure and the cultural integrity of the people as a whole.

1.17 Gutiérrez *et al.* v. Argentina

134. On August 19, 2011, the Commission referred the case related to the murder of Deputy Commissioner Jorge Omar Gutiérrez on August 29, 1994, who was investigating a case of corruption afterwards known as "the case of the parallel customs office" involving important businessmen and high-level government officials. During the investigation two eyewitnesses confirmed that those responsible were Federal Police agents. These witnesses identified a police officer as the perpetrator of the murder; another witness stated that the Inspector of Police of the Province of Buenos Aires was the mastermind of the events. Besides this, two young people were arrested and stated that they had been tortured by officers of the Superintendency of Railway Security of the Argentine Federal Police so that they would confess their guilt in the death of Deputy Commissioner Gutiérrez. Other witnesses were also threatened to implicate the young people who alleged that they were tortured into assuming responsibility for the death of Mr. Gutiérrez.

135. An investigation into the material facts of the case was opened in the ordinary criminal courts in which a number of fundamental deficiencies were established. In 2006, the presiding judge decided to provisionally dismiss the matter "due to the failure to determine the participation of other actors, accessories or accomplices after the fact under investigation and in which Jorge Omar Gutiérrez lost his life." Deputy Commissioner Gutiérrez's family and the Public Prosecutor lodge appeals, in which the Criminal Appeals and Guarantees Chamber reversed the dismissal. The judge considered that her intervention in the matter could be biased and decided to recuse herself. However, the recusal was denied. In December 2009, the judge decided to provisionally discontinue the case against Francisco Severo Mostajo, considering there was a lack of sufficient evidence to implicate him in Jorge Omar Gutiérrez's death. Although the investigation was beset by irregularities and cover-ups, and in spite of the creation of a special commission established by the Chamber of Deputies, the State did not adopt the necessary measures to clarify the events and appropriate responsibilities.

1.18 García Lucero *et al.* v. Chile

136. On September 20, 2011, the Commission referred to the Court the case relating to the lack of investigation and comprehensive reparation for the various acts of torture suffered by Mr. Leopoldo García Lucero, from the time of his detention on September 16, 1973, until June 12, 1975, the date on which he left the territory of Chile by decree of the Interior Ministry. Mr. García Lucero had been in the United Kingdom since 1975. In particular, the State has failed to provide comprehensive reparation in favor of Mr. García Lucero, from an individual perspective and taking into account his situation of exile, as well as the permanent disability he suffers from as a result of undergoing the torture. The State has also failed to comply with its obligation to investigate *ex officio* these acts of torture, and Decree Law 2191, which is incompatible with the American Convention, remains in force.

1.19 Luna López *et al.* v. Honduras

137. On November 10, 2011, the Commission referred to the Court the case relating to the killing of the environmentalist defender and alderman (*regidor*) Carlos Antonio Luna López, and to the lack of investigation, prosecution and punishment of the perpetrators. Carlos Luna López was a human rights defender that in 1998 was elected as alderman of the town of Catacamas, Olancho Department, in Honduras. From his position as *Regidor*, Carlos Luna exposed the commission of acts of corruption by the Municipal Corporation involving logging permits, and denounced illegal logging by a number of businessmen. In this context, Carlos Luna made several public statements indicating that he had received threats "from different sectors (including some public officials) due to the information released to the public" and due to the complaints filed before the courts and the Attorney General. He also filed a complaint before the Public Defender regarding a death threat and notified it to the members of the Town Council.

138. Carlos Luna López was killed on May 18, 1998, as he was exiting a meeting held at the Catacamas Town Hall. The competent authorities failed to adopt the immediate actions necessary to protect the crime scene, nor did they conduct an adequate autopsy. Subsequently, a process was opened against the perpetrators and some of the planners of the crime. One of the alleged perpetrators was killed in a maximum-security prison after having expressed fear for his life on account of having identified some

of the planners. Moreover, several witnesses were threatened and harassed during the criminal process and several judges excused themselves from the proceedings. The State failed to open an investigation related to the alleged participation of State agents.

1.20 Camba Campos *et al.* (Justices of the Constitutional Tribunal) v. Ecuador

139. On November 28, 2011, the Commission referred to the jurisdiction of the Court a case relating to the arbitrary removal of eight justices of the Constitutional Tribunal of Ecuador by a Congress Resolution of November 25, 2004. This Resolution provided an *ad hoc* mechanism for the removal of magistrates which was not provided for in the Constitution nor in the legislation and seriously affected the principle of independence of the judiciary. Also, on December 1, 2004, after the removal of the magistrates, the National Congress decided upon the impeachment requests against some of them without the necessary votes for a censure motion. Later, on December 8, 2004, based on a calling to extraordinary sessions by the then President of the Republic, the National Congress carried out a second vote relating to the impeachments decided upon on the December 1st, 2004, when the censure motion was adopted.

140. The victims had no access to due process guarantees and the possibility of a defense regarding the removal. No due process guarantees were granted in the second vote for the impeachment. The victims were arbitrarily and unjustifiably prevented from filing *amparo* remedies against the removal resolution and had no access to an effective judicial remedy to protect them from the arbitrary action by the National Congress. These facts took place in an agitated political context and a situation of institutional frailty of the Judiciary in Ecuador.

1.21 Carlos and Pablo Carlos Mémoli v. Argentina

141. On December 3, 2011, the Commission referred the case relating to the violation of the right to freedom of expression of Carlos and Pablo Carlos Mémoli, on account of a criminal conviction issued against the victims because of their public allegations regarding the irregular sale of plots at the local cemetery by the Board of a Union of the town of San Andrés de Giles. The criminal conviction was issued on the basis of the crime of libel and slander then in force in Article 110 of the Argentine Criminal Code, which the Inter-American Court had already found to be incompatible with the strict legality principle which must prevail in cases of this sort.

142. Besides this, the case related to the violation of the reasonable time guarantee to the prejudice of the same victims, in the context of the civil proceedings instituted against them during the last 15 years to enforce the indemnification ordered in the criminal proceedings. According to the proceedings, the victims' possessions have been subject to a charging order for more than 14 years, which in practice has had the impact of a sanction and an inhibition in the exercise of their freedom of expression, and consequently has affected the life plan of Messrs. Mémoli.

1.22 Espinoza Gonzáles *et al.* v. Peru

143. On December 8, 2011, the Commission referred the case relating to the illegal and arbitrary detention of Gladys Carol Espinoza Gonzáles on April 17, 1993, as well as the rape and other torture related acts while she remained under the custody of agents of the then Kidnapping Investigation Division (DIVISE) and the National Directorate against Terrorism (DINCOTE), both belonging to the National Police of Peru. Gladys Carol Espinoza had been accused of belonging to the insurgent group MRTA and of having participated in the kidnapping of businessmen in order to collect funds for the group.

144. Apart from the torture perpetrated at the beginning of 1993, the Commission concluded that Gladys Carol Espinoza was subjected to extremely severe conditions of detention during her incarceration at the Yanamayo prison between January 1996 and April 2001, without access to medical treatment and adequate food and without the possibility of visits from her family members. The IACHR also found that in August 1999, agents from the National Directorate of Special Operations of the National Police of Peru (DINOES) beat her on sensitive parts of her body. These beatings were not investigated

by the competent authorities and the victim had no timely access to medical attention. The Commission established that these acts of violence were not investigated and punished by the competent judicial authorities and they remain in impunity.

1.23 Cruz Sanchez *et al.* v. Peru

145. On December 13, 2011, the Commission referred the case relating to the extrajudicial execution of three MRTA members during the so-called 'Chavín de Huántar' operation in 1997, when the residence of the Ambassador of Japan in Peru was recaptured and 72 hostages rescued, after an armed group took control of it on December 17, 1996. The three persons that were executed were under the custody of State agents and, at the moment of death, they did not pose a threat to their captors. After the operation, the lifeless bodies of the 14 MRTA members were referred to the Police Hospital where no adequate autopsy was performed and hours later they were buried, eleven of them as NNs in several cemeteries of the city of Lima.

146. After complaints filed by family members of those extrajudicially executed, an investigation was initiated before the ordinary jurisdiction in 2002. However, due to a conflict of jurisdiction initiated by the Superior Council of the Military Justice, the Superior Court of Justice referred the investigation to the military jurisdiction to establish the responsibility those involved in the operation. The military jurisdiction case was archived in 2004. The ordinary jurisdiction continued with the investigation against Vladimiro Montesinos Torres, Nicolás de Bari Hermosa Ríos, Roberto Huamán Azcurra and Jesús Zamudio Aliaga, "persons alien to the military operation", due to the fact that the Superior Court considered that "the investigation of the alleged extrajudicial executions of the surrendering terrorists, would constitute a case of human rights violation as a crime against humanity". The investigation in the ordinary criminal jurisdiction is currently at the oral trial stage.

2. Requests for provisional measures

2.1 Judicial Internment of Ciudad Bolívar (Vista Hermosa Prison) - Venezuela

147. On March 25, 2011, the Commission requested provisional measures to protect the life and physical integrity of those deprived of their liberty and other persons present at the Judicial Internment Center of Ciudad Bolívar – Bolivar State, also known as Vista Hermosa Prison. In recent years there has been a number of murdered and severely injured inmates which has increased in the last few months. According to the available information, the factors contributing to this situation include a lack of effective control inside the detention center, the smuggling of weapons despite periodic searches and the high incidence of overcrowding.

148. On May 15, 2011, the Court issued a Resolution granting the provisional measures requested.

2.2 LM – Paraguay

149. On May 18, 2011, the Commission requested provisional measures regarding the fast tracking of domestic proceedings and decisions on the best interests of the child LM, including the corresponding determinations on his relationship with his biological family within the shortest period possible. The request is linked to petition P1474/10, currently pending before the Inter-American Commission, on a serious threat to LM's right to identity, physical and psychological integrity, and to family life, due to the lack of resolution of a number of domestic proceedings regarding custody which could affect them. Considering that the State has failed to comply with the precautionary measures ordered by the IACHR and that in this type of case the passage of time proportionally diminishes the perspective on the determination of effective reparations of the alleged violations by the organs of the Inter-American System, the Commission considers it necessary to activate the mechanism of provisional measures.

150. On July 1, 2011, the Court issued a resolution granting provisional measures on behalf of the child LM.

2.3 Margarita Martínez Martínez *et al.* - Mexico

151. On November 23, 2011, the Commission requested provisional measures to the Court to protect the life and physical integrity of Margarita Martínez Martínez, Adolfo Guzmán Ordaz, and the children Ada Saraí Martínez Martínez and Eduardo Abel León Martínez. Margarita Martínez Martínez and Adolfo Guzmán Ordaz are human rights defenders and had been the target of threats due to their work. Despite the precautionary measures granted on their behalf by the Commission, the State failed to identify and respond to the source of the threat against the proposed beneficiaries. Consequently during October 2011, they continued to receive serious death threats.

152. To date, the Court has yet to adopt a decision on the request.

2.4 Request for the amplification of provisional measures. Mery Naranjo *et al.* – Colombia

153. On March 31, 2011, the Commission requested the amplification of provisional measures to protect the lives and physical integrity of the children, grandchildren and one of the daughters-in-law of human rights defender María del Socorro Mosquera Londoño, beneficiary of the provisional measures granted by the Court since 2006 in the matter of “Mery Naranjo *et al.*” This request referred to a number of attacks against María del Socorro Mosquera’s family members, occurring repeatedly and more intensely during the last few months and involving several threats against them, and ending with the killing of the child Lubin Alfonso, Mrs. Mosquera’s grandson.

154. On March 4, 2011, the Court issued a resolution granting the amplification of the precautionary measures in the terms requested by the Commission.

2.5 Request for amplification of provisional measures. Alvarado Reyes *et al.* – Mexico

155. On March 16, 2011, the Commission requested an amplification of provisional measures in the matter of Alvarado Reyes *et al.* in order to protect the life and physical integrity of family members and representatives of the three disappeared beneficiaries after new threats aimed at silencing public complaints and calls for the investigation of the disappearance of Rocío Irene Alvarado Reyes, Nitza Paola Alvarado Espinoza and José Ángel Alvarado Herrera allegedly by the Mexican Army.

156. On May 15, 2011, the Court issued a resolution rejecting the request for amplification. The individuals on behalf of whom the provisional measures had been requested remain protected by precautionary measures.

2.6 Request for amplification of provisional measures. The Jiguamiandó and Curbaradó Communities – Colombia

157. On April 29, 2011, the Commission requested the amplification of the provisional measures granted to protect the lives and physical integrity of the inhabitants of the following humanitarian areas in Jiguamiandó and Curvaradó: Caracolí, Caño Manso, and Argenito Díaz-Llano Rico, as well as the following biodiversity areas: “*no hay como Dios*”, “Los Caracoles”; “Orlando Valencia”; “El Martirio” and “Lejano Oriente”. It also requested the Court to update and amplify the number of families within the humanitarian areas already protected by provisional measures at: “Nueva Esperanza”, “Pueblo Nuevo”, “Caño Claro” (also known as Andalucía-Caño Claro) and “El Tesoro”, as well as the five biodiversity areas in Curvaradó protected by the measures. The IACHR also requested the Court to order the protection of all the families at El Tesoro-Camelias.

158. The conflict situation in the collective territories of the Jiguamiandó and Curvaradó basins is complex. These communities, predominantly Afro Colombian, have a special relationship with the land historically inhabited by their members. However, after the proceedings for the conveyance of collective title over the communities’ lands in 2001 pursuant to Law 70 of 1993, a context of violence emerged in the region involving forced displacement, irregular groups’ presence, illegal occupation of the land by individuals unrelated to the collective titles mainly for commercial purposes, as well as the participation in judicial proceedings for the restitution of land and the constant accusation of belonging to subversive groups. This has contributed to a situation of extreme gravity, urgency, and irreparable damage to persons which was at the heart of the granting and the maintenance of these provisional measures.

159. In the framework of this context, the IACHR received information on recent events which represent an extremely grave risk for the families that inhabit the humanitarian and biodiversity areas, both the beneficiaries of provisional measures and the potential beneficiaries of the amplification. According to the information received, dozens of paramilitaries allegedly with military acquiescence entered the humanitarian and biodiversity areas while the Brigade XVII fully removed the peripheral protection granted and left the area, leaving the families at the mercy of the paramilitaries. Moreover, the information received indicates that after an absence of eight days, the Army sporadically returned with limited personnel, without offering adequate protection and allowing for the presence of dozens of paramilitaries in the nearby areas.

160. In view of the above, the request for amplification of provisional measures is based on the current and serious facts related, and the risk factors that justified the original request for provisional measures and that affect a significant number of families in the humanitarian and biodiversity areas, as fully identifiable areas, and a mechanism for the protection of the right to life and physical and community integrity.

161. On November 25, 2011, the Inter-American Court issued a resolution rejecting the request for amplification and update of the provisional measures in force.

2.7 Request for the reopening of provisional measures. Mendoza Prisons – Argentina

162. On March 9, 2011, the Commission requested the reopening of the provisional measures lifted by the Court in the matter of the Mendoza prisons. The IACHR brought information to the Court on alleged torture perpetrated against William Vargas and Walter Fabián Correa in June and December, 2010. It also alleged that there is a *prima facie* systematic pattern of torture, cruel, inhuman and degrading treatment perpetrated by Provincial Penitentiary System agents to the prejudice of the inmates held at the San Felipe and Boulonge Sur Mer units of the Mendoza penitentiary, which share their personnel.

163. On July 1, 2011, the Court rejected the request made by the Commission.

3. Appearance and participation in public and private hearings

164. From February 21 to March 5, 2011, the IACHR participated in the hearings scheduled for the Court's 90th regular sessions, held in San Jose, Costa Rica. In this period of sessions, hearings were held in the cases: Barbani *et al.* (Group of Savers of the Banco de Montevideo) (Uruguay), Chocrón Chocrón (Venezuela), Mejía Idrovo (Ecuador), Leopoldo López Mendoza (Venezuela) and Vera Vera (Ecuador). Additionally, the IACHR participated of a public hearing on provisional measures in the matter of Wong Ho Wing (Peru) and in private supervision meetings in the cases of the Ituango Massacres (Colombia), Valle Jaramillo (Colombia) and Gómez Palomino (Peru).

165. From May 16-20 2011, the Inter-American Commission participated in the hearings of the Court's 43rd special sessions held in Panama City, Panama. During those sessions, public hearings were held in the cases Grande (Argentina), Gregoria Herminia Contreras *et al.* (El Salvador), and Torres Millacura *et al.* (Argentina).

166. From June 27 to July 9 2011, the IACHR participated in the Court's 91st special sessions held in San Jose, Costa Rica. During that period of sessions, public hearings were held in the cases González Medina *et al.* (Dominican Republic), Barrios Family (Venezuela) and Kichwa de Sarayaku Indigenous People (Ecuador). The Inter-American Commission participated in the following public hearings on provisional measures: Jiguamiandó and Curbaradó Communities (Colombia), Kankuamo Indigenous People (Colombia), Fernández Ortega *et al.* (Mexico) and Alvarado Reyes *et al.* (Mexico).

167. From August 21 to 24 2011, the IACHR participated in the Court's 92nd special sessions held in Bogota, Colombia. During that period of sessions, public hearings were held in the cases Atala Riffo and daughters (Chile) and Fontevecchia and D'Amico (Argentina). Also, the Inter-American Commission participated in the following public hearings on provisional measures: Urso Branco Prison and *Unidad de Internamiento Socioeducativo* (Brazil).

168. From October 10 to 14, 2011, the Inter-American Commission participated in the hearing on the Fornerón Case (Argentina) during the Court's 44th special sessions held in Barbados.

169. From November 21 to December 2, 2011, the IACHR participated in the hearings held during the Court's 93rd regular sessions held in San Jose, Costa Rica. During that period of sessions, public hearings were held in the cases: Néstor and Luis Uzcátegui *et al.* (Venezuela) and Díaz Peña (Venezuela). The Commission also participated in the public hearings on supervision over compliance with the judgments issued in the cases of the Yakye Axa, Sawhoyamaya and Xákmok Kásek indigenous communities (Paraguay), as well as the private hearing on supervision over compliance with the judgment in the case of the Mapiripán Massacre (Colombia).

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

170. In compliance with the mandate established in Article 57 of the American Convention, and Article 69 of the Court Rules, in the exercise of its role of defense of the Inter-American public order, during 2011 the Commission continued submitting information and observations on state reports on compliance of judgments. In exercise of this function, the Commission submitted 131 briefs to the Inter-American Court.

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

171. In compliance with the mandate established in Article 63.2 of the American Convention, and Article 27.7 of the Court Rules, in the exercise of its role of defense of the Inter-American public order, during 2011 the Commission continued submitting information and observations on state reports on the implementation of provisional measures in force. In exercise of this function the Commission submitted 92 briefs to the Inter-American Court

I. XLI Regular Sessions of the OAS General Assembly

172. During the course of the XLI regular sessions of the General Assembly of the Organization of American States held in the city of San Salvador, El Salvador, between 5- 7 June 2010, the Commission was represented by its Vice-president, Commissioner José de Jesús Orozco Henríquez, and his Executive Secretary, Santiago A. Canton. The Vice-president addressed the General Assembly relating to the situation of human rights in the Member States of the OAS and officially presented the Annual report for 2010.

173. The General Assembly adopted a number of resolutions relating to human rights. These resolutions are available at the OAS web page <http://www.oas.org>. Given their importance for the promotion and defense of human rights in the Americas and for the consolidation of the inter-American System they are listed below:

Resolutions concerning the organs of the Inter-American Human Rights System

AG/RES. 2652 (XLI-O/11)	Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights
AG/RES. 2672 (XLI-O/11)	Observations and Recommendations on the Annual Report of the Inter-American Court of Human Rights
AG/RES. 2675 (XLI-O/11)	Strengthening of the Inter-American Human Rights System Pursuant to the Mandates Arising from the Summits of the Americas

Resolutions containing Requests for the IACHR

AG/RES. 2653 (XLI-O/11)	Human Rights, Sexual Orientation, and Gender Identity.
AG/RES. 2658 (XLI-O/11)	Human Rights Defenders: Support for Individuals, Groups, and Organizations of Civil Society working to Promote and Protect Human Rights in the Americas.
AG/RES. 2662 (XLI-O/11)	The Right to the Truth.
AG/RES. 2668 (XLI-O/11)	Study of the Rights and the Care of Persons under any Form of Detention or Imprisonment.
AG/RES. 2676 (XLI-O/11)	Protecting Human Rights and Fundamental Freedoms While Countering Terrorism.
AG/RES. 2677 (XLI-O/11)	Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance.
AG/RES. 2679 (XLI-O/11)	Right to Freedom of Thought and Expression and the Importance of the Media.
AG/RES. 2680 (XLI-O/11)	Promotion of the Rights to Freedom of Assembly and of Association in the Americas.
AG/RES. 2692 (XLI-O/11)	Mechanism to Follow Up on Implementation of The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention de Belém do Pará".

Other Resolutions concerning Human Rights (without specific requests)

AG/RES. 2651 (XLI-O/11)	Persons who have Disappeared and Assistance to Members of their Families.
AG/RES. 2654 (XLI-O/11)	Protecting the Human Rights of Older Persons.
AG/RES. 2656 (XLI-O/11)	Guarantees for Access to Justice. The Role of Official Public Defenders.
AG/RES. 2666 (XLI-O/11)	Protocol of San Salvador: Presentation of Progress Indicators for Measuring Rights under the Protocol of San Salvador.
AG/RES. 2669 (XLI-O/11)	The Human Rights of All Migrant Workers and their Families.
AG/RES. 2673 (XLI-O/11)	Human Rights Education in Formal Education in the Americas.
AG/RES. 2674 (XLI-O/11)	Draft American Declaration on the Rights of Indigenous Peoples.
AG/RES. 2678 (XLI-O/11)	Protection of Asylum Seekers and Refugees in the Americas.
AG/RES. 2686 (XLI-O/11)	Prevention and Eradication of Commercial Sexual Exploitation and Smuggling of and Trafficking in Minors.
AG/RES. 2689 (XLI-O/11)	Promotion of Women's Human Rights and Gender Equity and Equality.
AG/RES. 2693 (XLI-O/11)	Recognition and Promotion of the Rights of People of African Descent in the Americas

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CHAPTER III

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

1. Precautionary measures granted by the IACHR in 2011

6. The inter-American human rights system has used precautionary measures for over three decades, and has served as a tool for protecting the basic rights of the people of the 35 states that are subject to the Inter-American Commission's jurisdiction.¹ The IACHR's authority to request urgent measures or order precautionary measures is reflective of a common practice in international human rights law. In the particular case of this region, it has been invoked to prevent and protect against potential serious and irreparable harm to persons or groups of persons who are in imminent peril. The Commission has thus been performing its assigned mandate under Article 106 of the OAS Charter, which is "to promote the observance and protection of human rights" and has also been helping the States perform their ineluctable and abiding duty, which is to protect human rights. The precautionary measures mechanism has shown its effectiveness and has been recognized by the beneficiaries, the OAS member states, the users of the inter-American system, and the human rights community as a whole.

The history and legal framework of precautionary measures

7. Precautionary measures are frequently used in international law. The principal international courts and treaty-based bodies are authorized to order precautionary measures so that their decisions and the protection they are intended to afford are not mere abstractions.² Since its establishment, the Commission has requested protective measures from the States, which are urgent measures the States must take to avoid irreparable harm to the beneficiaries' life or personal integrity. In the history of precautionary measures within the inter-American system, the IACHR's 1980 Regulations (as they were then called in English) established a formal procedure for this mechanism.³ Article 26 of the then Regulations provided that "provisional measures" were called for "[i]n urgent cases, when it becomes necessary to avoid irreparable damage to persons." The formal establishment of this mechanism within

¹ The authority of the IACHR to order precautionary measures extends to all the OAS member states, by contrast to the Inter-American Court of Human Rights which has the authority to order provisional measures with respect to those states that have ratified the American Convention and accepted the jurisdiction of the Court. The IACHR has written that "OAS member states, by creating the Commission and mandating it through the OAS Charter and the Commission's Statute to promote the observance and protection of human rights of the American peoples, have implicitly undertaken to implement measures of this nature where they are essential to preserving the Commission's mandate." (See, IACHR, Report No. 52/01, Case 12.243, Merits, Juan Raúl Garza (United States), April 4, 2001, paragraph 117.

² The statutes of the International Court of Justice and the International Tribunal for the Law of the Sea establish the authority to prescribe any provisional measures which ought to be taken to preserve the respective rights of the parties (to the cases before the International Court of Justice, Article 41; the authority is also established in articles 89-95 of the 2009 Rules of the International Tribunal for the Law of the Sea). A number of bodies of the universal system are also authorized to prescribe provisional measures: the Rules of Procedure of the United Nations Human Rights Committee, Rule 86, U.N. Doc. CCPR/C/3/Rev.3 (1994); the Rules of Procedure of the Committee against Torture, Rule 108(1), U.N. Doc. CAT/C/3/Rev.3 (1998); the Rules of Procedure of the Committee on the Elimination of Racial Discrimination, Rule 94, U.N. Doc. CERD/C/35/Rev.3, 01/01/89 (1989); Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Article 5, U.N. Doc. A/54/49 (Vol. I) (2000). All the regional systems have the authority to order interim or provisional measures, such as the Inter-American Court of Human Rights under the American Convention on Human Rights, Article 63(2); the Rules of Court of the European Court of Human Rights, Rule 39; the Protocol of the African Charter on Human and Peoples' Rights, Article 27(2), OAU Doc. AU/LEG/EXP/AFCHPR/PROT (III) (1998), and the [Rules of Procedure of the African Commission on Human and Peoples' Rights, Rule 98 – Provisional Measures](#).

³ The *travaux préparatoires* of the 1980 Regulations reveal the determination of the Commission –then composed of Tom Farer, Andrés Aguilar, Carlos A. Dunshee de Abranches, Luis Demetrio Tinoco Castro, Marco Gerardo Monroy Cabra, César Sepúlveda and Francisco Bertrand Galindo— to add precautionary measures to the formal tools available to them to protect human rights. It is thus consistent with the IACHR's function of ensuring observance of the commitments undertaken by the states parties set forth in Article 18 of the Commission's Statute.

the Commission's Rules of Procedure and its gradual development through application in practice fit the pattern by which the inter-American human rights system has traditionally cultivated its mechanisms of protection. This article follows from the IACHR's duty to ensure compliance with the commitments undertaken by the states parties, a duty set forth in Article 18 of the Commission's Statute and Article 41 of the American Convention, and is based on the states' general obligation to respect human rights and to ensure their free and full exercise to all persons subject to their jurisdiction (Article 1 of the American Convention), to adopt legislative and other measures necessary to give effect to those rights (Article 2), and to comply in good faith with the obligations undertaken in the Convention and the OAS Charter. The states themselves have frequently acknowledged how vital precautionary measures have been to ensuring the effective observance of human rights in very serious and urgent circumstances.

8. Recognizing the intrinsic value of the work that the Inter-American Commission performs, the OAS General Assembly has encouraged the member states to follow up on the Commission's recommendations and precautionary measures.⁴ When the General Assembly adopted the Inter-American Convention on Forced Disappearance of Persons in 1994, the member states acknowledged how effective precautionary measures were for purposes of examining allegations of this nature.⁵

9. The system of precautionary measures has been a feature of the Commission's Rules of Procedure for over 30 years. The most recent amendment of the Rules of Procedure took effect on December 31, 2009. Article 25 describes the procedure for precautionary measures and how a precautionary measure may be related to the subject matter of a petition or case (Article 25.1); the adoption of precautionary measures independently of any pending petition or case (Article 25.2); the individual or collective nature of precautionary measures (Article 25.3); the fact that the IACHR is to request relevant information from the state concerned, unless the urgency of the situation is such that the immediate granting of the measures is warranted (Article 25.5); the procedures for seeking withdrawal of the request for precautionary measures and the grounds for the Commission to withdraw its request for precautionary measures (articles 25.7 and 25.8), and other points. In the amendment process, the Commission gave extensive consideration to the comments and criticisms submitted by many OAS member states, civil society organizations, academics and private citizens from across the hemisphere, in response to the consultations instituted concerning the text of the preliminary draft amendment.⁶

⁴ AG/RES. 2227 (XXXVI-O/06) "OBSERVATIONS AND RECOMMENDATIONS ON THE ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS," (Approved at the fourth plenary session, held June 6, 2006).

⁵ Inter-American Convention on Forced Disappearance of Persons, Treaty A-60, OAS T. S. No. 68. Entered into force on March 28, 1996, Article XIII.

⁶ During the consultations, countries like Colombia, Chile, El Salvador, Mexico and others observed that the proposed amendments to Commission's Rules of Procedure "were a positive step toward clarifying the procedural aspects of precautionary measures" and that "the new information introduced in the text will make for a more complete and accurate assessment of the circumstances warranting the request for precautionary measures" (Observations on the 2009 Amendments to the IACHR's Rules of Procedure. Ministry of Foreign Affairs of Chile, Human Rights Office, June 9, 2009, page 2, and Observations on the 2009 Amendments to the IACHR's Rules of Procedure. Ministry of Foreign Affairs of Colombia, July 13, 2009, page 7).

Precautionary measures: their use as a means of ensuring observance of fundamental rights and preventing irreparable harm

10. In the last 30 years, precautionary measures have been invoked to protect thousands of persons or groups of persons at risk by virtue of their work or affiliation. They include human rights defenders, journalists, trade unionists, vulnerable groups such as women, children, Afro-descendant communities, indigenous peoples, displaced persons, LGBTBI communities and persons deprived of their liberty. They have also been used to protect witnesses, officers of the court, persons about to be deported to a country where they might be subjected to torture or other forms of cruel and inhuman treatment, persons sentenced to the death penalty, and others. The IACHR has also ordered precautionary measures to protect the right to health and the right of the family. It has also resorted to precautionary measures in situations involving the environment, where the life or health of persons or the way of life of indigenous peoples in their ancestral territory may be imperiled, and in other situations.

11. Precautionary measures serve two functions related to the protection of fundamental rights recognized in the provisions of the inter-American system. They serve a "precautionary" function in the sense that they preserve a legal situation brought to the Commission's attention by way of cases or petitions; they also serve a "protective" function in the sense of preserving the exercise of human rights. In practice, the protective function is exercised in order to avoid irreparable harm to the life and personal integrity of the beneficiary as a subject of the international law of human rights. Precautionary measures have, therefore, been ordered for a wide array of situations unrelated to any case pending with the inter-American human rights system.

12. In the case of the precautionary function, the measures ordered may be intended to prevent execution of judicial, administrative or other measures when it is alleged that their execution could render the IACHR's eventual decision on an individual petition moot. The kinds of situations the IACHR has had occasion to address to preserve the subject of a petition or case have included, *inter alia*, requests to suspend deportation or extradition orders when there is a risk that the individual being deported or extradited might suffer torture or other cruel and inhuman treatment in the receiving country; situations in which the IACHR has urged a State to suspend application of the death penalty; situations in which the IACHR's purpose has been to protect an indigenous people's territory from incursions that might break the close relationship that exists between the indigenous people and its ancestral lands and natural resources, or endanger the survival of its culture. When it orders precautionary measures in such circumstances, the IACHR is asking the state to suspend any and all activity that could result in a violation of the party on whose behalf it is requesting those measures, until such time as the organs of the inter-American system have had an opportunity to address the merits of the matter in question.

13. The IACHR has ordered precautionary measures to protect a wide array of rights, such as the rights to health and to family when the conditions of gravity, urgency and a risk of irreparable harm are present. It has also had occasion to order measures to avoid harm to life or health as a result of environmental contamination.

14. When it examines a request seeking precautionary measures, the Commission looks for three essential preconditions: i) gravity; ii) urgency, and iii) the risk of irreparable harm to persons.

15. The Commission's examination of requests seeking precautionary measures looks at the specifics of each situation. Hence, the Commission's analysis cannot be governed by strict criteria that must apply to each and every case; instead, it has to look at the nature of the risk and the harm that the precautionary measure seeks to avert. With this clarification, the following are some examples of the factors that the Commission has weighed when considering requests seeking precautionary measures. These factors ought not to be construed as an exhaustive list of the preconditions that must be met for precautionary measures to be granted.

16. As for the "urgent" nature of the situation for which measures are sought, the risk or threat involved must be imminent, which means that the remediation response must be immediate; hence, when examining this aspect, one has to consider the timing and duration of the precautionary or

protective intervention requested.⁷ The following are among the factors that the IACHR considers when assessing this aspect: a) the existence of cyclical threats and assaults, which strongly suggests the need to take immediate action; b) the continuing nature of the threats and how close one follows upon the other, and other factors.

17. For purposes of assessing the gravity and urgency requirements, the IACHR also considers information describing the events that are triggered the request (telephone threats, written threats, assaults, acts of violence, accusations); the identity of the source of the threats (private parties, private parties with ties to the State, State agents, others); the complaints made to the authorities; the protective measures that the potential beneficiary has already received and information concerning their effectiveness; a description of the context, which is needed to assess the gravity of the threats; the chronology and proximity in time of the threats made; the identity of the persons affected and, where relevant, the group to which they belong and the degree of risk.

18. The IACHR also considers factors related to the setting in the country concerned, such as: a) the existence of an armed conflict; b) the existence of a state of emergency; c) the efficacy of the judicial system and the severity of the problem of impunity; d) indicia of discrimination against vulnerable groups, and e) the control that the executive branch exercises over the other branches of government, and other factors.

19. On the matter of irreparable harm, the events that warrant the request must suggest that there is a reasonable probability that the harm will materialize; the request must not rely on legal rights or interests that can be remedied.⁸

20. It is important to make the point that filing a complaint with local authorities is not a necessary precondition that must be met for precautionary measures to be granted. However, as Article 25(4) of the Commission's Rules of Procedure states, it is a factor that the Commission will consider when deciding whether to request precautionary measures from a State. Correspondingly, when a matter has been brought to the attention of the local authorities, the IACHR can consider the efficacy or inefficacy of the State's response. Likewise, if the party requesting precautionary measures has not filed a complaint with the local authorities, it is important for the Commission to know the reasons for refraining from doing so.

21. Before arriving at a final decision as to whether to grant or reject the request seeking precautionary measures, the IACHR may request additional information from the person applying for precautionary measures or from the State concerned, or from both. Much of what the Commission does is to follow up requests for information from the State and from the petitioners. The failure of the State or of the party requesting precautionary measures to reply to the Commission's request for information is a factor that the IACHR will consider when deciding whether or not to grant the requested measure.

22. If the measure is not granted, this does not prevent the petitioner from filing a new request for protection if he or she believes that there are grounds to grant the request or if new circumstances develop.

23. In compliance with their international obligations, States must provide effective protection to prevent the risk from materializing. The parties are in the best position to know what type of tangible or other measures are called for to address the situation and prevent further danger.

⁷ I/A Court H.R., *Matter of Four Ngöbe Indigenous Communities and Their Members regarding Panama*. Provisional Measures. Order of the Inter-American Court of Human Rights, May 28, 2010, *Consideranda* 9.

⁸ I/A Court H.R., *Matter of Monagas Judicial Confinement Center ("La Pica") regarding Venezuela; Matter of Yare I and Yare II Capital Region Penitentiary Center regarding Venezuela; Matter of the Penitentiary Center of the Central Occidental Region (Uribana Prison) regarding Venezuela; and Matter of Capital El Rodeo I and El Rodeo II Judicial Confinement Center regarding Venezuela*, Provisional Measures, Order of the Inter-American Court of Human Rights, February 8, 2008, *Consideranda* 3.

24. The IACHR has various tools at its disposal for follow-up and monitoring of precautionary measures: exchanges of communications; working meetings or hearings convened during the IACHR's sessions; follow-up meetings during *in loco* or working visits by the Commission or the country rapporteurs; press releases, thematic reports or country reports.

25. The Commission welcomes the States' positive response to the precautionary measures. In carrying out the Commission's requests for precautionary measures, the States have ordered specific protection measures for beneficiaries (for example, bodyguards, security at office buildings, direct lines of communication with the authorities, protection of ancestral territory, and others), taking into account the opinion of the beneficiary and the beneficiary's representative; their active participation by supplying information requested by the IACHR or participating in working meetings or hearings held to follow up on precautionary measures; creating inter-institutional working groups to implement the protection measures requested by the inter-American system; and introducing compliance with precautionary measures into their case law and legislation.

Precautionary measures granted in 2011

26. Below is an overview of the precautionary measures granted in 2011 under Article 25 of the Regulations of the Commission in connection with the Member States of the OAS. It should be clarified that the number of precautionary measures granted does not reflect the number of persons protected by its adoption, and as you can see, many of the precautionary measures issued by the IACHR protect more than one person and in some cases, groups of people such as communities or indigenous peoples.

ARGENTINA

PM 269/08 – Members of the Lof Paichil Antriao Community of the Mapuche Indigenous People, Argentina

27. On April 6, 2011, the IACHR granted precautionary measures for the members of the Lof Paichil Antriao community of the Mapuche indigenous people. The request for precautionary measure alleges that there is a grave and urgent situation involving risk of irreparable harm stemming from acts of harassment; that there is a risk that a sacred place known as a Rewe will be destroyed; that access by members of the Lof Paichil Antriao community to the Rewe is being obstructed; and that families of the community have been displaced from territory they claim as their ancestral land. The request also alleges that while the Rewe is currently being protected by a domestic legal measure, the members of the community have not been able to gain access to the site to practice the rituals called for by their culture. It also indicates that the families that are displaced in areas adjacent to the disputed territory are facing a precarious situation with regard to health and food. The Inter-American Commission asked the State of Argentina to adopt the necessary measures to guarantee that the protective legal measure to prevent alteration of the Rewe located on the property that is the object of the litigation is not lifted until the IACHR has ruled on the merits of Petition 962-08, currently being examined. On this matter, the Commission also requested that the State adopt measures to ensure effective compliance with the aforementioned legal measure so that this sacred place is preserved. In addition, the IACHR asked the State to take the necessary steps to guarantee that members of the Lof Paichil Antriao community who need to access the Rewe to practice their rituals may do so, without police forces or other public or private security or surveillance groups hindering their access or their stay for whatever time they wish, and without episodes of violence, attacks, harassment, or threats on the part of the police or other security groups. Finally, the Commission requested that the State adopt the necessary measures to look after the health of the community families that are displaced in areas adjacent to the disputed territory, in order to guarantee their well-being.

PM 404/10 – Qom Navogoh Indigenous Community of "La Primavera", Argentina

28. On April 21, 2011, the IACHR granted precautionary measures for the members of the Qom Navogoh indigenous community of "La Primavera," in the province of Formosa, Argentina. The

request for precautionary measures alleges that members of the security forces had perpetrated a series of acts of violence against members of the community and that as a result, leader Félix Díaz and his family were forced to move to another region. The petitioners reported that the attackers were continuing to guard the area, creating a climate of tension among area residents. They also added that security measures that would allow the return of Félix Díaz and his family had not been implemented. The Inter-American Commission asked the State of Argentina to adopt any necessary measures to guarantee the life and physical integrity of the members of the Qom Navogoh indigenous community of "La Primavera" against possible threats, attacks, or acts of harassment on the part of members of the police, law enforcement officers, or other State agents, as well as to implement any necessary measures so that Félix Díaz and his family can return to the community under safe conditions.

PM 423/10 – X, Argentina

29. On October 24, 2011, the IACHR granted precautionary measures in favor of X, in Argentina. His identity is being withheld because he is a minor. The application for precautionary measures alleged that the child has a developmental chronic encephalopathy and other diseases, and medical assistance provided by the State would have been inadequate, risking his lives and the development of his muscles and bones. The Commission requested the State to adopt urgent measures to ensure effective and the necessary medical attention so that the beneficiary can develop a quality life and dignity, in which he will not be affected beyond repair to his life, and to coordinate the measures with his family.

PM 425/11 – X, Argentina

30. On November 18, 2011, the IACHR granted precautionary measures in favor of X, in Argentina, whose identity is being withheld at the request of the beneficiary. The application for the precautionary measures alleged that X had been the victim of attacks by agents of the Federal Correctional Complex No 2 of Marcos Paz, where he was detained. He adds that as a result of such attacks, should have been admitted to a hospital in Buenos Aires. The Commission requested the State to adopt the necessary measures to guarantee the life and physical integrity of X, and coordinate the measures to be adopted with the recipient and his representative, and report on actions taken to investigate the events that led to the adoption of this precautionary measure.

BOLIVIA

PM 291/11 – José Antonio Cantoral Benavides y otros, Bolivia

31. On August 8, 2011, the IACHR granted precautionary measures on behalf of José Antonio Cantoral Benavides, a Peruvian national, who have refugee status in Bolivia. The Commission also received a petition referring to José Antonio Cantoral Benavides and others. The application for injunction alleged that Cantoral Benavides had been deprived of their liberty for August 1, 2011 and that during his detention would have been severely beaten. It also states that the August 3, 2011, the National Refugee Commission had issued a resolution which determines his immediate expulsion from the country, allegedly without having heard Cantoral Benavides and without complying with legal requirements. The Commission requested the State to adopt the necessary measures to refrain from expelling José Antonio Cantoral Benavides from Bolivia until the Commission rules on the merits of the petition, adopt the necessary measures to protect his life and personal integrity, and coordinate the measures to be adopted with the beneficiary and his representatives and report regularly to the Commission on actions taken. According to information received later, Mr. José Antonio Cantoral Benavides remains in Bolivia, under house arrest.

BRAZIL

PM 382/10 - Indigenous Communities of the Xingu River Basin, Pará, Brazil

32. On April 1, 2011, the IACHR granted precautionary measures for the members of the indigenous communities of the Xingu River Basin in Pará, Brazil: the Arara of Volta Grande do Xingu; the Juruna of Paquiçamba; the Juruna of "Kilómetro 17"; the Xikrin of Trincheira Bacajá; the Asurini of Koatinemo; the Kararaô and Kayapó of the Kararaô indigenous lands; the Parakanã of Apyterewa; the Araweté of the Igarapé Ipixuna; the Arara of the Arara indigenous lands; the Arara of Cachoeira Seca; and the Xingu Basin indigenous communities in voluntary isolation. The request for precautionary measure alleges that the life and physical integrity of the beneficiaries is at risk due to the impact of the construction of the Belo Monte hydroelectric power plant. The Inter-American Commission requested that the State of Brazil immediately suspend the licensing process for the Belo Monte Hydroelectric Plant project and stop any construction work from moving forward until certain minimum conditions are met. The State must (1) conduct consultation processes, in fulfillment of its international obligations—meaning prior consultations that are free, informed, of good faith, culturally appropriate, and with the aim of reaching an agreement—in relation to each of the affected indigenous communities that are beneficiaries of these precautionary measures; (2) guarantee that, in order for this to be an informed consultation process, the indigenous communities have access beforehand to the project's Social and Environmental Impact Study, in an accessible format, including translation into the respective indigenous languages; (3) adopt measures to protect the life and physical integrity of the members of the indigenous peoples in voluntary isolation of the Xingu Basin, and to prevent the spread of diseases and epidemics among the indigenous communities being granted the precautionary measures as a consequence of the construction of the Belo Monte hydropower plant. This includes any diseases derived from the massive influx of people into the region as well as the exacerbation of transmission vectors of water-related diseases such as malaria.

33. On July 29, 2011, during its 142nd regular session, the IACHR evaluated Precautionary Measure 382/10, based on information submitted by the State and the petitioners, and modified the aim of the measure. The IACHR requested that the State: 1) Adopt measures to protect the lives, health, and physical integrity of the members of the Xingu Basin indigenous communities in voluntary isolation and to protect the cultural integrity of those communities, including effective actions to implement and execute the legal/formal measures that already exist, as well as to design and implement specific measures to mitigate the effects the construction of the Belo Monte dam will have on the territory and life of these communities in isolation; 2) Adopt measures to protect the health of the members of the Xingu Basin indigenous communities affected by the Belo Monte project, including (a) accelerating the finalization and implementation of the Integrated Program on Indigenous Health for the UHE Belo Monte region, and (b) designing and effectively implementing the recently stated plans and programs that had been specifically

ordered by the FUNAI in Technical Opinion 21/09; and 3) Guarantee that the processes still pending to regularize the ancestral lands of the Xingu Basin indigenous peoples will be finalized soon, and adopt effective measures to protect those ancestral lands against intrusion and occupation by non-indigenous people and against the exploitation or deterioration of their natural resources. Moreover, the IACHR decided that the debate between the parties on prior consultation and informed consent with regard to the Belo Monte project has turned into a discussion on the merits of the matter, which goes beyond the scope of precautionary measures.

PM 199/11 – People deprived of their freedom at Professor Aníbal Bruno Prison, Brazil

34. On August 4, 2011, the IACHR granted precautionary measures on behalf of the people deprived of their freedom at Professor Aníbal Bruno Prison, in the city of Recife, state of Pernambuco, in Brazil. The precautionary measure request claims that 97 inmates of Professor Aníbal Bruno Prison have died since January 2008, with 55 of them meeting violent deaths. The request also alleges that several inmates have been tortured, reportedly by the authorities or with their consent. It further reports that there were two prison riots in July 2011, during which two people were killed and another 16 were injured. The Commission asked the State to adopt all the measures necessary to protect the lives, persons, and health of the inmates at Professor Aníbal Bruno Prison, to take the steps necessary to increase the number of security personnel at the facility, and to ensure that agents of the State's security forces were responsible for internal security functions, eliminating the system of trustees known as "chaveiros" and relieving inmates of responsibility for disciplinary, oversight, and security functions. In addition, the IACHR asked the State to ensure adequate medical care was available to the beneficiaries and to report back on the steps taken, *inter alia*, to reduce overcrowding at this prison.

CHILE

PM 321/10 - Rapa Nui Indigenous People, Chile

35. On February 7, 2011, the IACHR granted precautionary measures for the Rapa Nui Indigenous People of Easter Island, Chile. The request for precautionary measure alleges that the Rapa Nui people's life and integrity are at risk due to acts of violence and intimidation reportedly carried out by police in the context of demonstrations and evictions. The Inter-American Commission asked the State of Chile to immediately bring an end to the use of armed violence in the execution of State administrative or judicial actions against members of the Rapa Nui people, including evictions from public spaces or from public or private property; to guarantee that the actions of State agents in the framework of protests and evictions do not jeopardize the life or physical integrity of the members of the Rapa Nui people; to inform the IACHR within 10 days about the adoption of these precautionary measures; and to update this information periodically. On October 31, 2011, the IACHR lifted the precautionary measure and archived the file.

COLOMBIA

PM 61/11 – Members of the Awá Indigenous People of the Departments of Nariño and Putumayo, Colombia

36. On March 16, 2011, the IACHR granted precautionary measures for the members of the Awá indigenous people of the departments of Nariño and Putumayo, Colombia. According to the request for precautionary measure and information from various sources, the Awá people have been the target of numerous attacks, murders, and threats in the context of the armed conflict in Colombia. The information indicates that clashes between the Army and irregular armed groups have taken place recently in territory of the Chinguirito Mira indigenous reserve and of the community of La Hondita, leaving members of the Awá people caught in the middle of the crossfire. The request indicates, moreover, that in 2011 three accidents have reportedly taken place involving antipersonnel landmines planted in Awá ancestral territory by participants in the armed conflict. The Inter-American Commission requested that the State of Colombia adopt measures, agreed upon with the beneficiaries, to guarantee the life and physical integrity of the members of the Awá indigenous people of the departments of Nariño and Putumayo, including

landmine removal their ancestral territory and landmine risk education for the members of the Awá people.

PM 355/10 – 21 Families of the Nonam Community of the Wounaan Indigenous People, Colombia

37. On June 3, 2011, the IACHR granted precautionary measures for 21 families of the Nonam community of the Wounaan indigenous people, in Colombia. The request for precautionary measure alleges that the families have been subject to acts of harassment on the part of the armed forces and illegal armed groups. It indicates that they were forced to move from their territory, and as a result have had serious problems with access to food, housing, and medicine. It also alleges that the families have not received consistent and effective medical and humanitarian care in the nine months since they were displaced, even though a protection order was issued in their favor. This situation allegedly led to the death of an 11-month-old girl from tuberculosis, on May 12, 2011. The Inter-American Commission asked the State of Colombia to adopt necessary measures, agreed upon with the beneficiaries, to guarantee the life and physical integrity of the 21 families of the Wounaan indigenous community; provide humanitarian assistance and medical care to the beneficiaries in a situation of displacement; and guarantee their return to the Guayacán Santa Rosa Indigenous Reserve in conditions of dignity and security.

PM 150/11 – Sandra Viviana Cuéllar, Colombia

38. On June 13, 2011, the IACHR granted precautionary measures in favor of Hildebrando Vélez. According to the information received, Hildebrando Vélez has received threats on account of his involvement in the search for Sandra Viviana Cuéllar. The Commission asked the State to take the necessary steps to protect the life and personal integrity of Hildebrando Vélez, to agree on the measures to be adopted with the beneficiary and his representative, and to report back on the actions carried out to investigate the facts that gave rise to the precautionary measure. On June 22, 2011, the IACHR expanded this precautionary measure to cover Sandra Viviana Cuéllar, in Colombia. The precautionary measure request reports that Sandra Viviana Cuéllar is disappeared and that her alleged disappearance was a consequence of her environmental protection work in Valle del Cauca. Given the seriousness and urgency of the alleged facts and the lack of information on the whereabouts of the suspected disappeared, the IACHR granted precautionary measures to ensure the beneficiary's life and person. The Commission asked the State for the immediate adoption of the measures necessary to determine the situation and whereabouts of Sandra Viviana Cuéllar and to protect her life and person, and it requested that the State report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 359/10 – Members of Justice and Dignity Corporation, Colombia

39. On June 28, 2011, the IACHR granted precautionary measures on behalf of members of Justice and Dignity Corporation, in Colombia. The request for precautionary measures claims that over recent months, there has been a worsening in the threats, harassment, and tailing to which they have been subjected, on account of which they were forced to relocate from Santiago de Cali. It also notes that the authorities have been informed of the situation but have provided no security measures to counter the risk. The Commission asked the State to take the steps necessary to ensure the lives and persons of Alexander Montaña, Sofía López, Walter Mondragón Delgado, and Homero Montaña, to agree on the measures to be adopted with the beneficiaries and their representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 368/10 – María Tirsa Paz and others, Colombia

40. On July 29, 2011, the IACHR granted precautionary measures on behalf of María Tirsa Paz and others, in Colombia. The request for precautionary measures alleges the existence of a situation of risk affecting 27 Afro-Colombian women and their families displaced from the municipalities of El Charco, Barbacoas, and La Tola in the department of Nariño. According to additional information

provided by the applicants, the risks remain in place in the communities to which they relocated. In particular, they reported that in June 2011, in the neighborhood where four of the beneficiaries live, four youths were killed and another six were wounded in clashes between illegal groups. The Commission asked the State to take the steps necessary to ensure the lives and persons of the 27 displaced Afro-Colombian women and their families, to agree on the measures to be adopted with the beneficiaries and their representatives through talks, with due account taken of their particular situation, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 255/11 – Nasa people of Toribio, San Francisco, Tacueyo, and Jambalo Reservations, Colombia

41. On November 14, 2011, the IACHR granted precautionary measures on behalf of the members of the Nasa people of Toribio, San Francisco, Tacueyo, and Jambalo Reservations, in Colombia. The request for precautionary measure claims that the members of the Nasa indigenous people in these four adjacent reservations are facing high levels of risk because of the armed conflict in the north of Cauca department, and that they have suffered murders, forced disappearances, and other acts of violence. The application further states that although the authorities have acknowledged the risks facing the Nasa people, the appropriate measures necessary to protect them have not been adopted. The Commission asked the State to take the steps necessary to ensure the lives and persons of the members of the Nasa people of Toribio, San Francisco, Tacueyo, and Jambalo Reservations, to agree on the measures to be adopted with the beneficiaries and their representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

CUBA

PM 13/11 - Néstor Rodríguez Lobaina and Family, Cuba

42. On January 24, 2011, the IACHR granted precautionary measures for Néstor Rodríguez Lobaina and his family, in Cuba. The request for precautionary measure alleges that on December 9, 2010, Néstor Rodríguez Lobaina was out walking with his 10-year-old daughter, Diana Rodríguez Castillo, when he was intercepted by agents of the political police. According to the request, the agents reportedly hit him with pepper spray and put him in a patrol car, leaving the girl by herself, 15 blocks away from home. The request adds that after being detained for 72 hours at the Department for State Security Operations in the city of Guantánamo, he was apparently transferred on December 12 to the Guantánamo Provincial Prison and that his family has not received any information about his state of health or about any treatment he may or may not be receiving for burns he allegedly suffered as a result of the pepper spray having hit him at close range. The Inter-American Commission asked the State of Cuba to adopt any necessary measures to preserve and guarantee the life and physical integrity of Néstor Rodríguez Lobaina and his family, and to allow access and health treatment and monitoring by a doctor trusted by him or by an international organization.

PM 187/11 – Idania Yanes Contreras and Family, Cuba

43. On June 8, 2011, the IACHR granted precautionary measures on behalf of Idania Yanes Contreras and her family, in Cuba. The request for precautionary measures claims that Idania Yanes Contreras has suffered acts of intimidation and physical attacks at the hands of the security forces, allegedly because of her involvement in protest demonstrations over recent years. It also reports that on April 8, 2011, she was beaten by security officials of the State, an incident that left her in a delicate state of health. The Inter-American Commission asked the State of Cuba to adopt the measures necessary to ensure the life and person of Idania Yanes Contreras and those of the members of her family, to agree on the steps to be taken with the beneficiary and her representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of precautionary measures.

PM 218/11 – Yris Tamara Pérez Aguilera, Cuba

44. On July 6, 2011, the IACHR granted precautionary measures for Yris Tamara Pérez Aguilera, in Cuba. The request for precautionary measure alleges that Yris Tamara Pérez Aguilera, reportedly a leader of the Rosa Parks Feminist Movement and a political dissident, has been a victim of physical attacks, acts of harassment, and threats by agents of the State. It alleges specifically that as a result of a new attack she suffered on May 25, 2011, she is suffering from cervical trauma, memory loss, and headaches, and has not been provided with the medical treatment she needs. The Inter-American Commission asked the State of Cuba to adopt any necessary measures to guarantee the life and physical integrity of Yris Tamara Pérez Aguilera; to reach agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 370/11 - Sara Marta Fonseca Quevedo, Cuba

45. On December 6, 2011, the IACHR granted precautionary measures for Sara Marta Fonseca Quevedo in Cuba. The request seeking precautionary measures alleges that Sara Marta Fonseca Quevedo, Executive Secretary of the Pro Human Rights Party in Cuba and a delegate of the Rosa Parks Feminist Civil Rights Movement in Havana, was harassed when she sought medical treatment at state-run health care institutions, presumably because of her political position and because she is an advocate for human rights. The request also states that Sara Marta Fonseca Quevedo was detained four times in 2011, often by violent means. The parties requesting the precautionary measures state that Sara Marta Fonseca Quevedo was in custody from September 24 to October 24, 2011 and that because of the violence allegedly used on her during her detention, a pre-existing back condition was aggravated, leaving her unable to stand up on her own. The Commission therefore asked the Cuban Government to take the necessary measures to ensure the life and physical integrity of Sara Marta Fonseca Quevedo and to guarantee that she would not be harassed by staff of state-run hospitals; that in concert with the beneficiary and her representative it arrange the measures it will take, and that it report on the measures undertaken to investigate the facts that necessitated adoption of precautionary measures.

DOMINICAN REPUBLIC

PM 393/10 - Luis Álvarez Rentá, Dominican Republic

46. On December 15, 2011, the IACHR granted precautionary measures for Luis Álvarez Rentá. The Commission's decision was based on a request alleging that the personal integrity and health of Luis Álvarez Rentá were in grave danger. It contends that Mr. Rentá is currently incarcerated in the Najayo Model Prison in San Cristóbal, where his health condition is critical. He is being denied the back surgery that specialists have recommended for him. According to a medical report from the Abreu Clinic, dated November 16, 2011, Mr. Rentá has Dejerine-Roussy syndrome caused by lumbosacral stenosis. This condition requires a lumbar laminectomy to decompress the spinal cord. The surgery must be done as soon as possible to avoid severe neurological damage." The Commission therefore requested that the Government of the Dominican Republic: 1) adopt the measures necessary to protect Mr. Álvarez Rentá's personal integrity; 2) instruct the competent authorities to have the proper medical tests done to evaluate the beneficiary's health and authorize proper treatment for his ailments, and 3) adopt these measures in concert with the beneficiary and his representatives.

ECUADOR

PM 185/10 – X, Ecuador

47. On June 20, 2011, the IACHR granted precautionary measures in favor of X in Ecuador in order to protect his life and personal integrity. This precautionary measure is being withheld of publication at the request of the beneficiary and his representatives.

GUATEMALA

PM 87/11 – Blanca Estela Puac Menchú and Family, Guatemala

48. On April 4, 2011, the IACHR granted precautionary measures for Blanca Estela Puac Menchú and her family, in Guatemala. The request for precautionary measures alleges that Mrs. Blanca Estela Puac Menchú and her daughter were victims of an attack on February 12, 2011, which reportedly resulted in the death of agent William Estuardo Orozco Pineda and the wounding of agent Heberto Revolorio, both of whom were fulfilling their duty to protect her. The Inter-American Commission requested that the State of Guatemala adopt the necessary measures to guarantee the life and physical integrity of the beneficiaries, that it reach agreement with the beneficiaries and their representative on the measures to be adopted, and that it inform the IACHR on the steps taken to investigate the facts that led to the adoption of these precautionary measures.

PM 121/11 – 14 Q'echi Indigenous Communities of the Municipality of Panzós, Guatemala

49. On June 20, 2011, the IACHR granted precautionary measures for 14 Q'echi indigenous communities of the municipality of Panzós, in Guatemala. The request for precautionary measure alleges that 14 Q'echi indigenous communities were forcibly evicted in the municipality of Panzós, in Guatemala's department of Alta Verapaz, between March 15 and 23 of 2011. It alleges that the court eviction order had not been communicated to the affected communities and was not carried out in compliance with the law. The information the Commission has received indicates that, more than two months following the eviction, between 700 and 800 families from the community are living in precarious conditions, without access to food and water, and that State agencies have failed to provide them with shelter or nutrition solutions. It is also indicated that acts of violence were perpetrated against the communities on May 13 and 21 and June 4, which reportedly led to the deaths of two individuals. The Inter-American Commission requested that the State of Guatemala adopt any necessary measures to guarantee the life and physical integrity of the members of the 14 Q'echi indigenous communities; adopt any necessary measures to provide humanitarian assistance, including food and shelter, to the members of the 14 displaced communities; and come to an agreement with the beneficiaries and their representatives on the measures to be adopted.

PM 422/11 – Lucía Carolina Escobar Mejía, Cledy Lorena Caal Cumes, and Gustavo Girón, Guatemala

50. On November 14, 2011, the IACHR granted precautionary measures for Lucía Carolina Escobar Mejía, Cledy Lorena Caal Cumes, and Gustavo Girón, in Guatemala. The request for precautionary measures claims that the journalists Lucía Carolina Escobar Mejía and Gustavo Girón, employed by the daily *El Periódico* and other media outlets, have received threats in retribution for publishing articles about alleged acts of violence committed by a group styling itself the “Panajachel Security Commission.” The request further contends that this group operates with the acquiescence of the local authorities. In addition, it claims that Cledy Lorena Caal Cumes has received threats on account of her participating in the investigation into the disappearance of her partner, in which members of that group are suspected of involvement. The Commission asked the State to take the steps necessary to ensure the lives and persons of Lucía Carolina Escobar Mejía, Cledy Lorena Caal Cumes, and Gustavo Girón, to agree on the measures to be adopted with the beneficiaries and their representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

HONDURAS

PM 50/11 – Jimena Castillo *et al.*, Honduras

51. On March 3, 2011, the IACHR granted precautionary measures for Jimena Castillo Canales, Lorena Ruiz, Berta Haydee Canales Alvarado, Gabriela Castillo Morales, and Ana Belia Morales Rivera, in Honduras. The request for precautionary measures alleges that on February 13, 2011, Jimena Castillo Canales and Lorena Ruiz were traveling in a vehicle when two masked individuals reportedly shot at them 15 times. Jimena Castillo was wounded in the arm, and eight bullets hit the vehicle. The Inter-American Commission asked the State of Honduras to adopt the necessary measures to guarantee the beneficiaries' life and physical integrity and to reach agreement with the beneficiaries and their representatives on the measures to be adopted.

PM 57/11 - Pedro Vicente Elvir and Dagoberto Posadas, Honduras

52. On March 9, 2011, the IACHR granted precautionary measures for Pedro Vicente Elvir and Dagoberto Posadas, in Honduras. The request for precautionary measures alleges that Pedro Vicente Elvir and Dagoberto Posadas, President and Director of the Communication Unit of the National Child Protection Workers Union (Sindicato de Trabajadores del Patrono Nacional de la Infancia, SITRAPANI), are in a situation of risk due to their work in the union. They are reported to have been victims of acts of violence in which their assailants used guns to frighten them. The Inter-American Commission asked the State of Honduras to adopt the necessary measures to guarantee the life and physical integrity of the beneficiaries, and to reach agreement with the beneficiaries and their representatives on the measures to be adopted.

PM 72/11 – Leonel Casco Gutiérrez, Honduras

53. On April 4, 2011, the IACHR granted precautionary measures for Leonel Casco Gutiérrez, in Honduras. The request for precautionary measures alleges that Leonel Casco Gutiérrez, Director of the legal area of the Ecumenical Human Rights Observatory in Honduras, is in a situation of risk due to his role in the investigation and public denunciation regarding an alleged plan to murder certain individuals in Honduras. In addition, the petitioner indicates that he and his wife have received threats via telephone messages. The Inter-American Commission asked the State of Honduras to adopt the necessary measures to guarantee the life and physical integrity of the beneficiary, and to come to an agreement with him on the measures to be adopted.

PM 115/11 – Journalists at La Voz de Zacate Grande, Honduras

54. On April 18, 2011, the IACHR granted precautionary measures for the journalists at La Voz de Zacata Grande in Honduras. The request for precautionary measures indicates that since the radio station La Voz de Zacate Grande opened in April 2010, its journalists had been subject to acts of harassment and aggression on the part of private individuals and members of the State security forces. It alleges that on March 13, 2011, Franklin Meléndez was attacked with a firearm by alleged opponents of the radio station's editorial stance, and that other journalists from the station had then been subject to threats. The request alleges that the authorities had not investigated the incidents with due diligence. The Inter-American Commission requested that the State of Honduras adopt the necessary measures to guarantee the life and safety of the journalists at La Voz de Zacate Grande, and that it come to an agreement with the beneficiaries and their representatives on the measures to be adopted.

PM 143/11 – Leo Valladares Lanza and Daysi Pineda Madrid, Honduras

55. On April 26, 2011, the IACHR granted precautionary measures for Leo Valladares Lanza and Daysi Pineda Madrid, in Honduras. The request for precautionary measure indicates that Leo Valladares Lanza and his wife, Daysi Pineda Madrid, have been followed and subjected to acts of harassment by unknown individuals, following comments Valladares Lanza made on a television program in February 2011. It adds that on March 28, 2011, unknown individuals entered the offices of the Asociación por una Ciudadanía Participativa (Association for a Participatory Citizenship), of which Valladares Lanza is executive director, and went through the organization's documents. The request alleges that even though the petitioners had filed a complaint and a request for protection, the State had not adopted measures to ensure their security. The Inter-American Commission asked the State of Honduras to take the necessary measures to guarantee the life and physical integrity of Leo Valladares Lanza and Daysi Pineda Madrid; to ensure that Leo Valladares Lanza can continue his work of promoting and defending human rights under safe conditions; and to reach agreement with the beneficiaries and their representatives on the measures to be adopted.

PM 281/10 – Oscar Siri Zuñiga and Family, Honduras

56. On June 10, 2011, the IACHR granted precautionary measures on behalf of Oscar Siri Zuñiga and his family, in Honduras. The precautionary measure request alleges that since February 2011, armed individuals have been monitoring Siri Zuñiga's home, and that on May 19 an exchange of gunfire took place on his property when three armed individuals attempted to enter his home. It adds that the security detail provided by the State has been reduced to one person. The Commission asked the State to take the steps necessary to ensure the lives and persons of Oscar Siri Zuñiga and his family, to agree on the measures to be adopted with the beneficiaries and their representatives and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 240/11 Eight members of the “Movimiento Autentico Reivindicador de Campesinos Aguan (MARCA) (Pedro Rigoberto Moran, Junior López, Julián Hernández, Antonio Francisco Rodríguez Velásquez, Santos Misael Cáceres Espinales, Eduardo Antonio Fuentes Rossel and Santos Eliseo Pavón Ávila), Honduras

57. On September 8, 2011, the IACHR granted precautionary measures to protect the lives and personal integrity of Pedro Rigoberto Moran, Junior López, Julián Hernández, Antonio Francisco Rodríguez Velásquez, Santos Misael Cáceres Espinales, Eduardo Antonio Fuentes Rossel and Santos Eliseo Pavón Ávila, all members of the “Movimiento Autentico Reivindicador de Campesinos Aguan” (MARCA) in Honduras. The request alleges that on August 20, 2011, Mr. Secundino Ruiz Vallecillos was murdered and Mr. Eliseo Pavón wounded. According to the party requesting the precautionary measures, the two men were on their way to the headquarters of the La Palma Cooperative when they were ambushed by hired gunmen, who allegedly shot them. It also alleged that the incident was part of a pattern of persecution of MARCA members. The Commission therefore asked the Honduran Government: 1) to take the measures necessary to protect the life and personal integrity of Pedro Rigoberto Moran, Junior López, Julián Hernández, Antonio Francisco Rodríguez Velásquez, Santos Misael Cáceres Espinales, Eduardo Antonio Fuentes Rossel and Santos Eliseo Pavón Ávila; 2) in concert with the beneficiaries and their representatives, to arrange the measures to be taken to taken; and 3) to report the measures taken to investigate the facts that necessitated the adoption of precautionary measures.

PM 322/11 – Miriam Miranda, Honduras

58. On September 20, 2011, the IACHR granted precautionary measures on behalf of Miriam Miranda, in Honduras. The precautionary measure request claims that Miriam Miranda has suffered threats and harassment on account of her work defending the rights of Garifuna communities in Honduras. The Commission asked the State to take the steps necessary to ensure the life and person of Miriam Miranda, to agree on the measures to be adopted with the beneficiary and her representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 276/11 – X, Honduras

59. On September 15, 2011, the IACHR granted precautionary measures on behalf of X, in Honduras. X’s identity is being kept confidential since he is a minor. The request for precautionary measures alleges that on June 19, 2011, X and a friend were arrested by three Comayagüela police officers. It reports that the friend was released that same day, but when X’s family went to the police station to locate him, the officers gave them inconsistent information about his whereabouts. The Commission asked the State to take the steps necessary to determine X’s whereabouts and to ensure his life and person, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure. Later, the parties told the IACHR that a body had been found, presumably that of X. The IACHR asked the State to report on the formalities pursued to identify the body.

PM 330/11 – José Reynaldo Cruz Palma, Honduras

60. On October 3, 2011, the IACHR granted precautionary measures on behalf of José Reynaldo Cruz Palma, in Honduras. The application for precautionary measures claims that José Reynaldo Cruz Palma, president of the Colonia Planeta employers’ association, in San Pedro Sula, disappeared on August 30, 2011, as he was traveling to Ciudad Planeta on a bus. In light of the alleged failure of the State to take actions to locate the suspected disapparee, the Commission asked the State to take the steps necessary to determine the situation and whereabouts of José Reynaldo Cruz Palma and to protect his life and person, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 305/11 – Wilmer Nahúm Fonseca and Family, Honduras

61. On October 13, 2011, the IACHR granted precautionary measures to Wilmer Nahúm Fonseca and his family, in Honduras. The precautionary measure request claims that six members of Wilmer Nahúm Fonseca's family were disappeared during 2009 and 2010, allegedly by agents of the National Police. It also reports that his father, Apolonio Fonseca Mejía, was killed on June 27, 2011, and that his brother, Usai Fonseca Rodríguez, was the victim of an attempted homicide on October 3, 2011. The application indicates that the facts were reported to the authorities, but that no timely response was given. The Commission asked the State to take the steps necessary to ensure the lives and persons of Wilmer Nahúm Fonseca, Usai Fonseca Rodríguez, Lidia América Fonseca Rodríguez, Nolvía Suyapa Fonseca Rodríguez, Sarvia Tamar Fonseca Rodríguez, Milvia Sarai Fonseca Rodríguez, and the children of all the above. The Commission also asked the State to agree on the measures to be adopted with the beneficiaries and their representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 17/10 – Inhabitants of the community of Omoa, Honduras

62. On November 8, 2011, the IACHR granted precautionary measures on behalf of the inhabitants of the community of Omoa, in Honduras. The request for precautionary measures claims that the lives and persons of the approximately 8,000 inhabitants of Omoa are at risk because of the liquid petroleum gas storage facility operated by the Gas del Caribe company within the Omoa city limits. The application alleges that the location of the storage facility on a geological fault line in an area that is vulnerable to natural disasters poses the danger of a chain explosion in the gas tanks. According to a study conducted by the Honduran public prosecution service, that situation could lead to the death of between 103 and 1,400 people, a risk that it described as "unacceptable." The Commission asked the State to take the steps necessary to ensure the Gas del Caribe company's effective observance of the environmental regulations and laws in place in Honduras, and to adopt the measures needed to reduce the danger to the lives and persons of the inhabitants of the community of Omoa to an acceptable level.

PM 196/09 HO

63. During the 143 period of sessions; the Commission decided to proceed gradually in separating from MC 196.09, those matters on which information is updated and suggest the continued risk to the beneficiaries. In such situations, it will assign a new number of precautionary measures corresponding to the year 2009. In this process, The IACHR has already separated the following matters: MC 398.09 HO (Esdras Amado Lopez) 399.09 MC (Workers Progress Journal) HO 400.09 (Berta Oliva and members of the Committee of Relatives of Detained and Disappeared in Honduras (COFADEH)); 401.09 HO (Take Rasel Antonio Flores and his family).

JAMAICA

PM 80/11 - Maurice Tomlinson, Jamaica

64. On March 21, 2011, the IACHR granted precautionary measures for Maurice Tomlinson, in Jamaica. The request for precautionary measures alleges that Maurice Tomlinson is facing a situation of risk due to his work as a defender of the rights of lesbian, gay, bisexual, trans, and intersex (LGBTI) persons in Jamaica. It indicates that he has been receiving death threats via e-mail, and that the State authorities have not adopted protection measures. The Inter-American Commission asked the State of Jamaica to adopt, in agreement with the beneficiary, the necessary measures to guarantee his life and physical integrity, and to inform the IACHR on the steps taken to investigate the facts that led to the adoption of these precautionary measures.

PM 153/11 – X and Z, Jamaica

65. On September 21, 2011, the IACHR granted precautionary measures to X and Y, in Jamaica. Their identities are being kept confidential at the request of the beneficiaries and/or their representatives. The request for precautionary measure states that both have suffered aggression, attacks, threats, and harassment on account of their sexual orientation. The Inter-American Commission

asked the State of Jamaica to adopt the measures necessary to ensure their lives and persons, to agree on the steps to be taken with the beneficiaries and their representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of the precautionary measures.

MEXICO

PM 270/10 – Nazareth Migrant House and Human Rights Center, Nuevo Laredo, Mexico

66. On May 16, 2011, the IACHR granted precautionary measures on behalf of the members of Nazareth Migrant House and of the Human Rights Center of Nuevo Laredo, in Mexico. The request for precautionary measures claims that the members of Nazareth Migrant House and the Human Rights Center of Nuevo Laredo, in the state of Tamaulipas, have been followed and threatened. The Commission asked the State to take the steps necessary to ensure the lives and persons of the members of Nazareth Migrant House and the Human Rights Center of Nuevo Laredo, to agree on the measures to be adopted with the beneficiaries and their representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 55/10 – Patricia Galarza Gándara and others, Mexico

67. On May 19 2011, the IACHR granted precautionary measures on behalf of Patricia Galarza Gándara, Oscar Enríquez, Javier Ávila, and Francisca Galván, in Mexico. The request for precautionary measures claims that these individuals are the legal representatives of the families of Rocío Irene Alvarado Reyes, Nitzia Paola Alvarado Espinoza, and José Angel Alvarado Herrera, all of whom disappeared in December 2009. Several relatives and one representative of the disappeared are covered by provisional measures issued by the Inter-American Court. The application states that the beneficiaries have suffered acts of intimidation. The Commission asked the State to take the steps necessary to ensure the lives and persons of Patricia Galarza Gándara, Oscar Enríquez, Javier Ávila, and Francisca Galván, to agree on the measures to be adopted with the beneficiaries and their representatives, and to report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 111/10 – Rosa Díaz Gómez and Other Members of the Jotolá Ejido, Mexico

68. On May 19, 2011, the IACHR granted precautionary measures for Rosa Díaz Gómez and other members of the Jotolá ejido, in Mexico. The request for precautionary measure indicates that Rosa Díaz Gómez and other members of the Jotolá ejido had been subject to attacks and threats by individuals since March 24, 2010. It alleges that the measures adopted by the government were not effective, and that the situation of risk had increased with the release on bail of the alleged attackers in April 2011. The Inter-American Commission asked the State of Mexico to adopt any necessary measures to guarantee the life and physical integrity of Rosa Díaz Gómez, Carmela Sánchez Cruz, César Augusto Sánchez Gómez, Anita Méndez Aguilar, Marcos Moreno Méndez, Francisco Moreno Méndez, Enriqueta Gómez Santis, Maikon Pakal Sánchez Gómez, Sami Santiago Sánchez Gómez, Ricardo Sánchez Luna, Mario Sánchez López, Marcelina Arco Pérez, Débora Sánchez Arco, Marcela Sánchez Arco, Mario Sánchez Arco, Isaías Sánchez Arco, Hilaria Pérez Jiménez, Mario Josué Sánchez Pérez, and Saraí Sánchez Pérez, and that it reach agreement with the beneficiaries and their representatives on the measures to be adopted.

PM 448/10 – Víctor Ayala Tapia, Mexico

69. On June 28, 2011, the IACHR granted precautionary measures on behalf of Víctor Ayala Tapia, in Mexico. The request for precautionary measures claims that Víctor Ayala Tapia disappeared on September 14, 2010, when heavily armed individuals broke into his home, threatened the people present with their weapons, and proceeded to abduct Mr. Ayala Tapia. In light of the alleged failure to take actions to locate the suspected disapparee, the Commission asked the State to take the steps necessary to determine the situation and whereabouts of Víctor Ayala Tapia and to protect his life and person, and to

report back on the actions carried out to investigate the facts that gave rise to the adoption of this precautionary measure.

PM 344/08 – Family of Javier Torres Cruz, Mexico

70. On July 19, 2011, the IACHR granted precautionary measures for the family of Javier Torres Cruz, in Mexico. Those requesting the precautionary measure allege that Javier Torres Cruz was killed on April 18, 2011, near his community of La Morena—located in the municipality of Petatlán, in the Mexican state of Guerrero—purportedly because of his activities to defend the right to a healthy environment in the Sierra de Petatlán. The request indicates that his family continues to be at risk following his murder, and that unidentified vehicles have been seen keeping the family home under surveillance. The petitioners noted that his brother Felipe Torres, who was with Javier Torres the day he was killed and was seriously wounded in the attack, had received a death threat. The Inter-American Commission asked the State of Mexico to take any necessary measures to guarantee the life and physical integrity of the family members of Javier Torres who live in the community of La Morena, located in Petatlán, Guerrero; to come to an agreement with the beneficiaries and their representatives on the measures to be adopted; and to inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures.

PM 262/11 - Ten Persons alleged to have been disappeared, Mexico

71. On December 2, 2011, the IACHR granted precautionary measures for 10 members of the Zapotengo Pacheco Eco-tourism Cooperative Association. The parties requesting the precautionary measures allege that on July 13, 2010, Nemonio Vizarratea Vinalay, Fidel Espino Ruiz, Gregorio Hernández Rodríguez, Andrés Vizarratea Salinas, Luis Vizarratea Salinas, Juan Carlos Vizarratea Salinas, Benito Salinas Robles, Juan Antonio Feria Hernández, Isauro Rojas Rojas and Adelardo Espino Carmona had boarded a bus bound for Matamoros in the state of Tamaulipas, where they were planning to purchase vehicles. On July 14, 2010, the individuals in question reportedly spoke with family members to advise them that they had reached Tamaulipas. The request seeking precautionary measures states that they have not been heard from since. The parties requesting precautionary measures assert that on March 18, 2011, the Office of the Attorney General of the Republic allegedly advised them that the disappeared persons had been detained and were being held in Morelos, but did not indicate exactly where. On July 15, 2011, officials of the city of Morelos allegedly reported that an error had been made in the data and that the persons in question had never been in custody and were never arraigned. The parties seeking the precautionary measures point out that to date, they have no information on the situation or whereabouts of the persons identified as having disappeared. The Commission therefore asked the Government of Mexico: 1) to immediately adopt the measures necessary to determine the situation and whereabouts of Nemonio Vizarratea Vinalay, Fidel Espino Ruiz, Gregorio Hernández Rodríguez, Andrés Vizarratea Salinas, Luis Vizarratea Salinas, Juan Carlos Vizarratea Salinas, Benito Salinas Robles, Juan Antonio Feria Hernández, Isauro Rojas Rojas and Adelardo Espino Carmona; and 2) to report the measures taken to investigate the facts that necessitated the precautionary measures.

PANAMA

PM 105/11 – Communities of the Kuna of Madungandí and Emberá of Bayano Peoples, Panama

72. On April 5, 2011, the IACHR granted precautionary measures for the Kuna of Madungandí and Emberá of Bayano peoples, in Panama. This precautionary measure is connected with Case 12.354, which is being processed by the IACHR and is now in the merits phase. ([Admissibility Report No. 58/09](#) was approved on April 21, 2009.) The request for precautionary measure alleges that in February and March of 2011 there were massive intrusions into the territories of the Kuna of Madungandí and Emberá of Bayano indigenous reserve. It alleges that colonists violently seized and destroyed virgin forests that would have been used by the indigenous communities to ensure their food supply. The petitioners noted that this has been a recurring situation and alleged that the State is not adopting diligent measures to stop such invasions. In order to ensure that the subject of the petition in this case does not

become moot, the Commission requested that the State of Panama adopt any necessary measures to protect the ancestral territory of the communities of the Kuna of Madungandí and Emberá of Bayano peoples from intrusions by third parties and from the destruction of their forests and crops, until such time as the IACHR has adopted a final decision in Case 12.354.

UNITED STATES

PM 5/11 — Gary Resil, Harry Mocombe, Roland Joseph, Evel Camelién, and Pierre Louis, United States

73. On February 1, 2011, the IACHR granted precautionary measures for Gary Resil, Harry Mocombe, Roland Joseph, Evel Camelién, and Pierre Louis, in the United States. The request for precautionary measure alleges that the lives and health of these individuals could be at grave risk if they were to be deported to Haiti, given that once they arrived in the country they would probably remain in custody, without access to food, drinking water, and adequate medical treatment. It also indicates that these individuals have their immediate families in the United States and that most of their family members in Haiti had died in the January 2010 earthquake. The Inter-American Commission asked that the United States suspend the deportation process in the case of the five beneficiaries until such time as: (1) Haiti is able to guarantee that detention conditions and access to medical care for persons in custody comply with applicable minimum standards, and (2) the procedures in place to decide upon and review the deportation of the five beneficiaries adequately take into account their right to family life and their family ties in the United States.

74. On May 31, 2011, the IACHR expanded Precautionary Measure 5/11 in favor of 33 persons facing deportation from the United States to Haiti. The identity of the beneficiaries will be kept under seal at the request of the applicants. The request for precautionary measure alleges that the lives and health of these individuals could be at grave risk if they were to be deported to Haiti, given their health conditions and the lack of relatives in Haiti to assist them in obtaining access to medical treatment, food and drinking water. The Inter-American Commission asked that the United States suspend the deportation process in the case of the 33 additional beneficiaries until such time as: (1) Haiti is able to guarantee that detention conditions and access to medical care for persons in custody comply with applicable minimum standards, and (2) the procedures in place to decide upon and review the deportation of the 33 beneficiaries adequately take into account their right to family life and their family ties in the United States. The IACHR also requested the United States to inform the Commission as to the actions taken in cooperation with the beneficiaries and the petitioners to implement these measures. On June 27, 2011 the IACHR extended the precautionary measures to protect two additional people who has requested their identity be maintained in reserved. On September 29, 2011 the IACHR extended the measures to protect Mr. Louis Raphael.

PM 62/11 – Félix Rocha Díaz, United States

75. On March 10, 2011, the IACHR granted precautionary measures for Félix Rocha Díaz. The precautionary measures are accompanied by a petition concerning the alleged violation of Articles I, XVIII, XXV, and XXVI of the American Declaration, which is being processed under No. P 259-11. The request for precautionary measure alleges that there had been errors in Félix Rocha Díaz's legal representation at trial, and that the 13 years he has spent on death row constitutes cruel and unusual punishment. The Commission asked the United States to refrain from carrying out the death penalty until the Commission has the chance to rule on the petitioner's claim regarding the alleged violation of the American Declaration, so as not to render ineffective the processing of the claim in the inter-American human rights system.

PM 160/11 – Kevin Cooper, United States

76. 45. On August 3, 2011, the IACHR granted precautionary measures in favor of Kevin Cooper, who is detained in the United States pending the execution of the death penalty since 1986. The application for injunction was filed in the context of a communication on the alleged violation of rights

enshrined in the American Declaration. Through the measures, the Commission asked the U.S. State to refrain from executing the death penalty pending the opportunity to decide on the petitioner's claim regarding the alleged violation of the American Declaration.

PM 171/11 – Edwin A. Márquez González, United States

77. On July 5, 2011, the IACHR granted precautionary measures for Edwin A. Marquez Gonzalez, in the United States. The request for precautionary measure alleges that Edwin Marquez Gonzalez, a citizen of El Salvador facing a final deportation order, is in end-stage renal disease and receives hemodialysis treatment three times a week. It indicates that if Edwin Marquez Gonzalez were to be deported, his life would be at risk, since the availability of hemodialysis treatment is limited in El Salvador. The Inter-American Commission asked the United States to urgently adopt any necessary measures to ensure that Edwin Marquez Gonzalez is not deported until assurance is received that in El Salvador he will receive the medical treatment necessary to protect his right to life and physical integrity.

PM 257/11 – Mark Anthony Stroman, United States

78. On July 18, 2011, the IACHR granted precautionary measures in favor of Mark Anthony Stroman, who is detained in the United States pending the execution of the death penalty since 2002. The application for injunction was filed in the context of a communication on the alleged violation of rights enshrined in the American Declaration. Through the measures, the Commission requested the State of the United States to refrain from executing the death penalty pending the opportunity to decide on the petitioner's claim regarding the alleged violation of the American Declaration. The Commission noted that the July 20, Mark Anthony Stroman was executed in Texas.

PM 301/11 – Manuel Valle, United States

79. On August 19, 2011, the IACHR granted precautionary measures for Manuel Valle, in the United States. The request for precautionary measure is accompanied by a petition alleging the violation of rights enshrined in the American Declaration, registered under the number P 1058-11. The Commission asked the United States to refrain from carrying out the death penalty until the IACHR had the opportunity to issue a decision on the petitioners' claims regarding the alleged violations of the American Declaration, in order not to render ineffective the processing of his claim before the inter-American system. Update: The death penalty against Manuel Valle was executed in a prison of the State of Florida on September 28, 2011.

PM 18/09 – Paul Pierre, United States

80. On December 22, the IACHR granted precautionary measures for Mr. Paul Pierre, of Haitian origin, who might be deported back to Haiti at any time now. According to the parties seeking the precautionary measures, Mr. Pierre is suffering from "esophageal dysplasia" and is on a liquid diet ingested through a tube. The Commission therefore asked the United States not to deport Mr. Paul Pierre back to Haiti until the Commission issues its decision on petition P-1431/08, which is currently being processed with the Commission.

PM 463/11 – Nelson Iván Serrano Sáenz, United States

81. On December 15, 2011, the IACHR granted precautionary measures for Mr. Nelson Iván Serrano Sáenz, an Ecuadoran national facing the death penalty in Florida. The request for precautionary measures was accompanied by a petition alleging violation of rights recognized in the American Declaration of the Rights and Duties of Man. That petition was classified as P-1643/11. The Commission requested that the United States refrain from executing the death sentence until the Commission has had an opportunity to reach its decision on the petitioner's claim of violation of the American Declaration, so as not to render moot the filing of that claim with the inter-American system.

PM 465/11 - Virgilio Maldonado Rodríguez, United States

82. On December 21, 2011, the IACHR granted precautionary measures for Virgilio Maldonado Rodríguez, a Mexican national sentenced to death in the state of Texas. The request seeking precautionary measures was filed together with a petition alleging violation of rights protected under the American Declaration. Classified as P-1762/11, the petition specifically alleges that the United States did not take into account Mr. Maldonado's mental disability; it argued that under the American Declaration, the death penalty constituted cruel punishment. Mr. Maldonado was one of the Mexican citizens included in the judgment delivered by the International Court of Justice in 2004 in the Case concerning Avena and other Mexican nationals (Mexico v. United States), in which the ICJ ordered the United States to review and reconsider the guilty verdicts and sentences given to the Mexican citizens named in the judgment. The Commission asked the United States to refrain from executing the death sentence until the Commission has had an opportunity to reach a decision on the petitioner's claim of an alleged violation of the American Declaration, so as not to render moot the processing of that petition with the inter-American system.

PM 470/11 - Iván Teleguz, United States

83. On December 22, 2011, the IACHR granted precautionary measures for Mr. Iván Teleguz, sentenced to death by the Rockingham Circuit Court in the state of Virginia. Accompanying the request for precautionary measures was a petition alleging violation of rights protected under the American Declaration, which the Commission classified as number P-1528-11. The Commission asked the United States to refrain from executing the death sentence until it has had an opportunity to decide the merits of the petitioner's claim alleging violation of the American Declaration, so as not to render moot the processing of that petition with the inter-American system.

PM 471/11 - Jurijus Kadamovas and others, United States

84. On December 27, 2011 the Commission requested the immediate adoption of precautionary measures pursuant to Article 25(1) of its Rules of Procedure in order to avoid irreparable harm of Jurijus Kadamovas, German Sinnistera, Arboleda Ortiz, Robert L. Bolden, Iouri Mikhel, and Alejandro Umana who were sentenced to death penalty. The petitioner alleges, *inter alia*, Vienna Convention claims, discrimination based on nationality, inhumane prison conditions, and lack of medical attention. With regard to the latter, the petitioner alleges that Jurijus Kadamovas has not received psychiatric or psychological support in spite of his requests; and that Robert L. Bolden is not receiving treatment for his type 1 diabetes. The Commission requested the United States take the measures necessary to preserve the life and physical integrity of Jurijus Kadamovas and others so as not to hinder the processing of the case before the inter-American system classified as number P1285-11.

VENEZUELA**PM 219/11 - Relatives of Inmates at the Rodeo I and Rodeo II Prisons, Venezuela**

85. On June 21, 2011, the IACHR granted precautionary measures for relatives of the inmates at the Rodeo I and Rodeo II prisons in Venezuela, as well as for protesters and others who have crowded into the area around the facilities. The request for precautionary measures indicates that relatives of the inmates reportedly went to the area surrounding the Rodeo I and II facilities to ask for information about the prisoners' situation, following an operation carried out by the authorities to regain control of the prisons. The information provided by the petitioners indicates that the security forces launched tear gas canisters and used water cannons against them, in a context of tension. The Inter-American Commission asked the State of Venezuela to guarantee the life and physical integrity of the relatives of the inmates at the Rodeo I and II prisons, as well as others who are in the immediate vicinity of the correctional facilities, until the situation returns to normal.

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2011**

CHAPTER III

THE PETITION AND CASE SYSTEM

A. Introduction

1. This chapter refers to the work of the Inter-American Commission on Human Rights in 2011 in relation to the petition and case system.

2. Section B includes statistical information to provide a general overview of the different activities carried out by the Inter-American Commission on Human Rights. First it presents data concerning the cases and petitions being processed. These comprise the greater volume of the Commission's work. "Cases" is taken as meaning all those petitions declared admissible by means of a report on admissibility. "Petitions" is taken as meaning all those complaints that have been transmitted to the state involved but in which no report on admissibility has been issued. This report includes the statistics of the total number of petitions received by the Commission in 2011, indicating the number of petitions received by country, as well as a comparison of the number of petitions received in 2011 in relation to each of the last fourteen years. It also includes statistical information on the number of petitions it decided to transmit to the States, and the number of petitions being processed, also by country. The statistical information reflects as well the number of requests for precautionary requests received by the Commission in 2011, as well as the number of precautionary measures the Commission decided to grant during that same period. The statistics indicate how many reports on admissibility, inadmissibility, friendly settlement, archive, and the merits the Commission published in 2011. The section also includes statistical tables on the Commission's activity before the Inter-American Court. Finally, statistics are included on the number of hearings the Commission held in 2011.

3. Section C has two parts. The first, section C.1, contains an overview of the precautionary measures granted or extended by the IACHR in 2011, in relation to the various member States, under Article 25 of its Rules of Procedure. The precautionary measures are presented in alphabetical order of the States addressed in the requests, indicating the name of the person or persons on whose behalf they were requested, a summary of the information that was the basis for the request, the rights of the persons exposed to serious and imminent danger, and finally the date of the request and the name of the State referred to, as well as other relevant information.

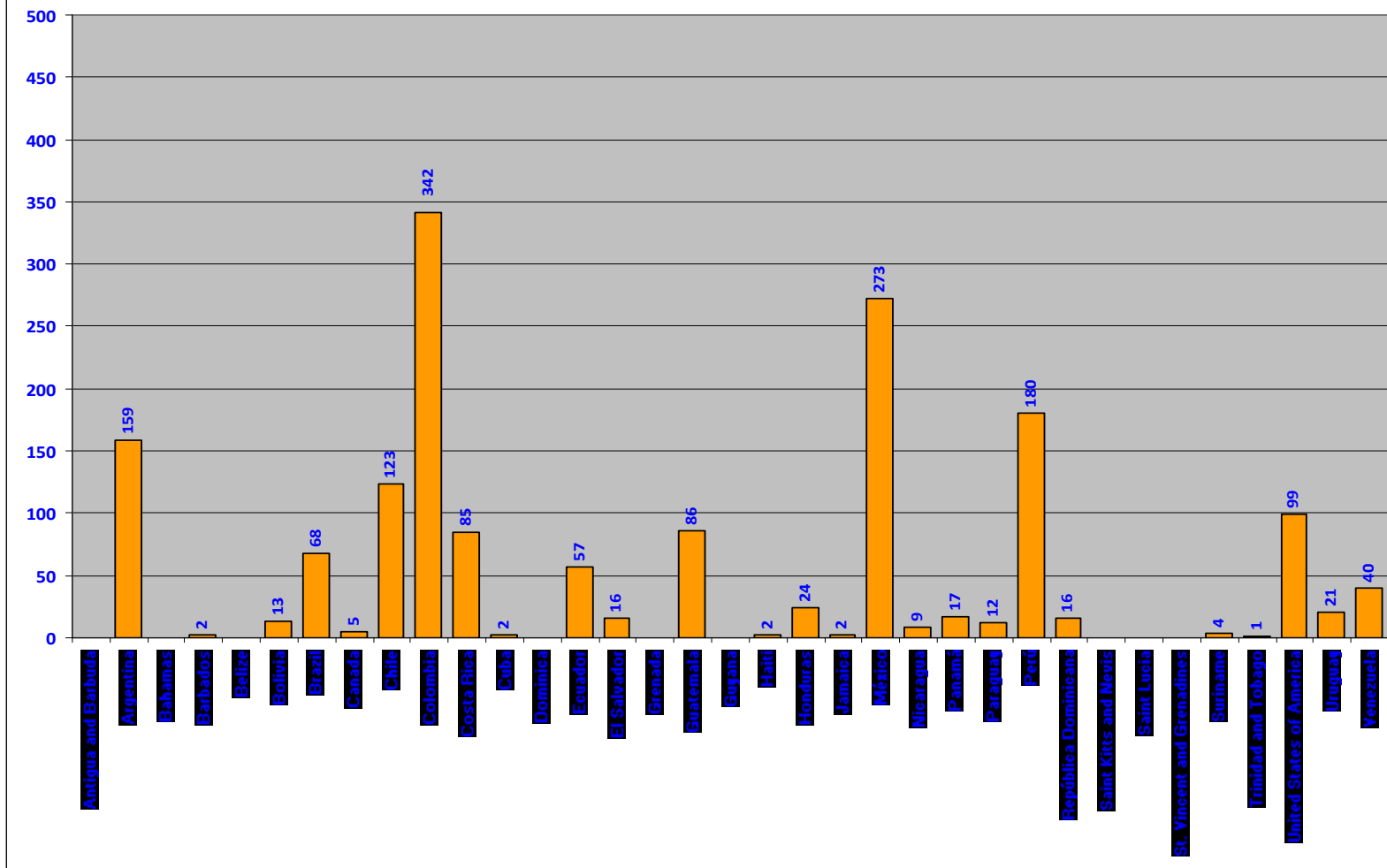
4. The second part, section C.2, includes all the reports on which the Commission adopted a decision on admissibility, inadmissibility, the merits, friendly settlement or archive during the period covered by this report. This section contains a total of 165 reports that include 67 cases found admissible; 11 reports on petitions found inadmissible; 8 reports on friendly settlements; 54 decisions to archive, and 25 reports on the merits.

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

**ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
CHAPTER III
THE PETITION AND CASE SYSTEM**

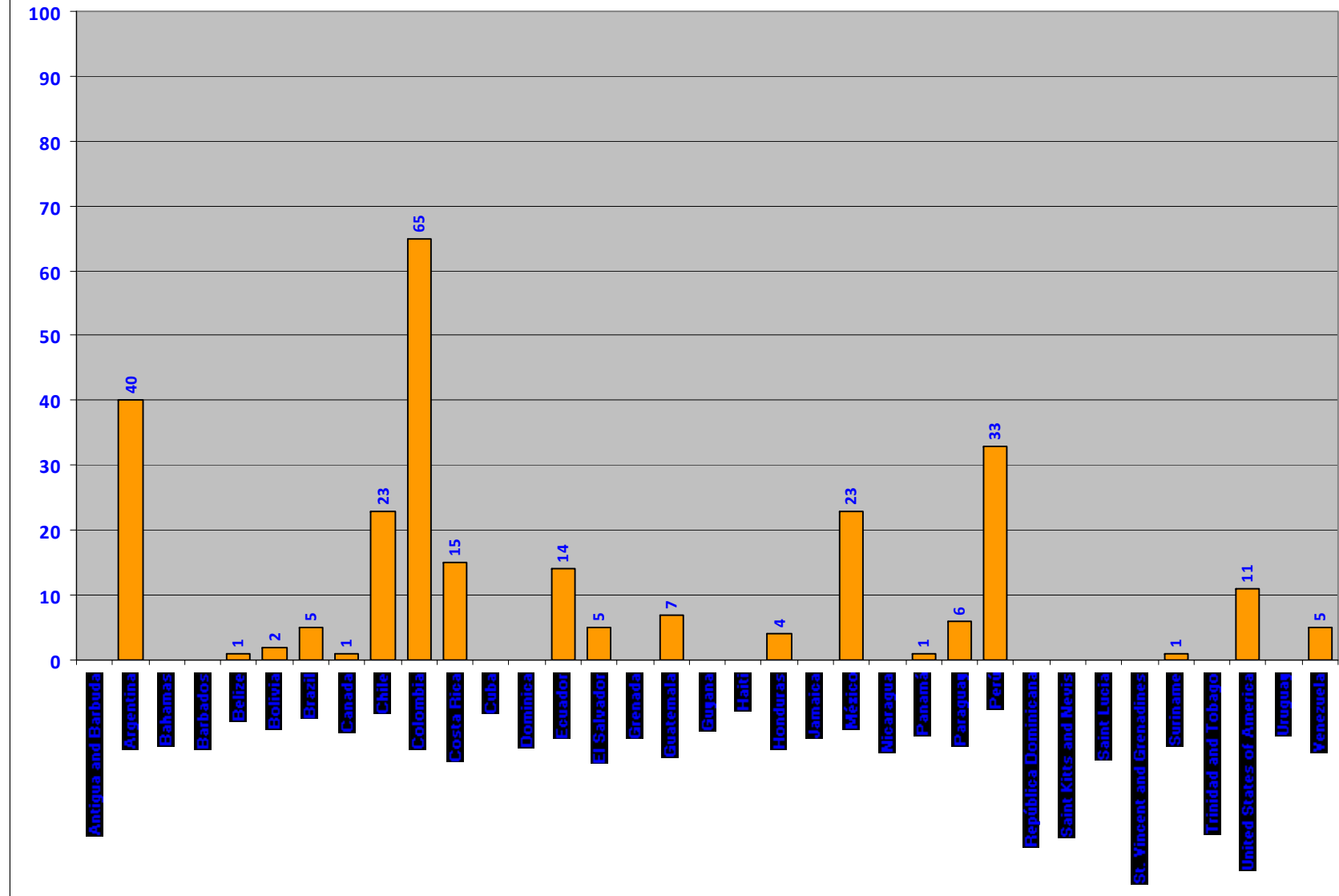
B. STATISTICS

**A) Peticiones recibidas por país (2011) Petitions received by country
TOTAL: 1658**



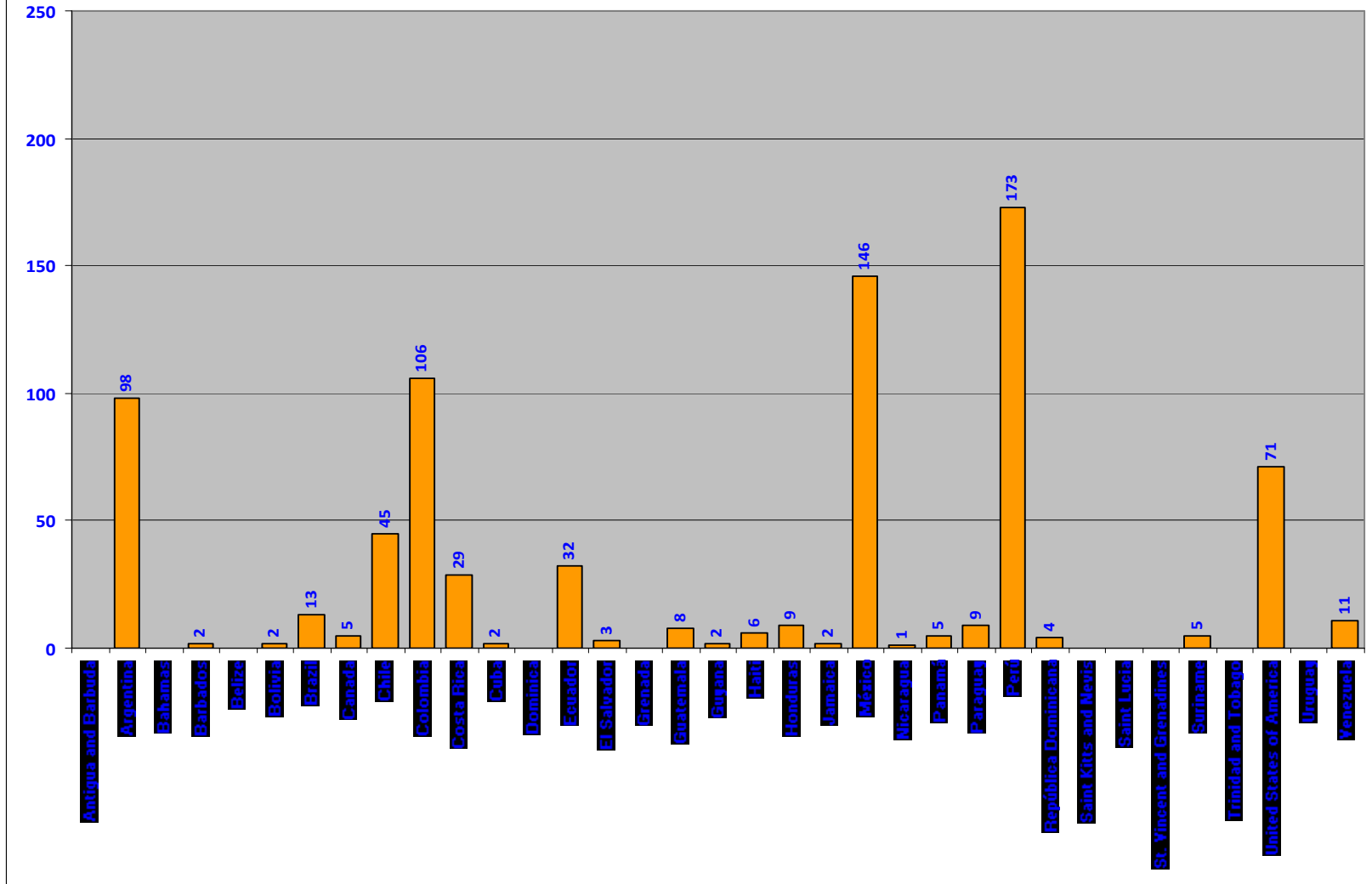
B) Peticiones aceptadas a trámite (2011) Petitions accepted for processing

TOTAL: 262



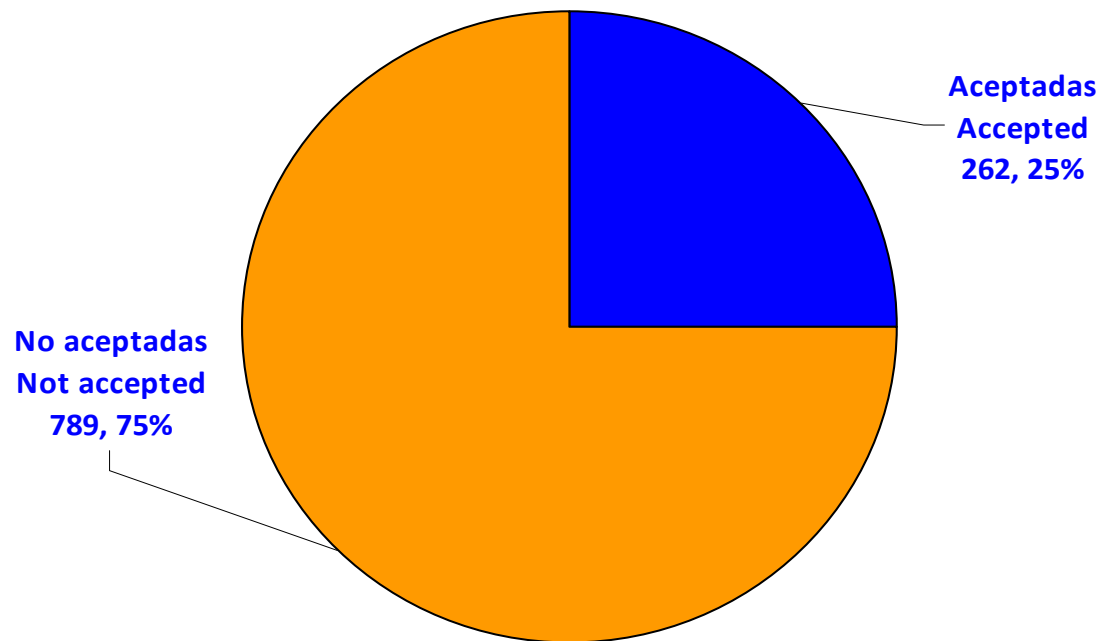
C) Peticiones no aceptadas a trámite (2011) Petitions not accepted for processing

TOTAL: 789

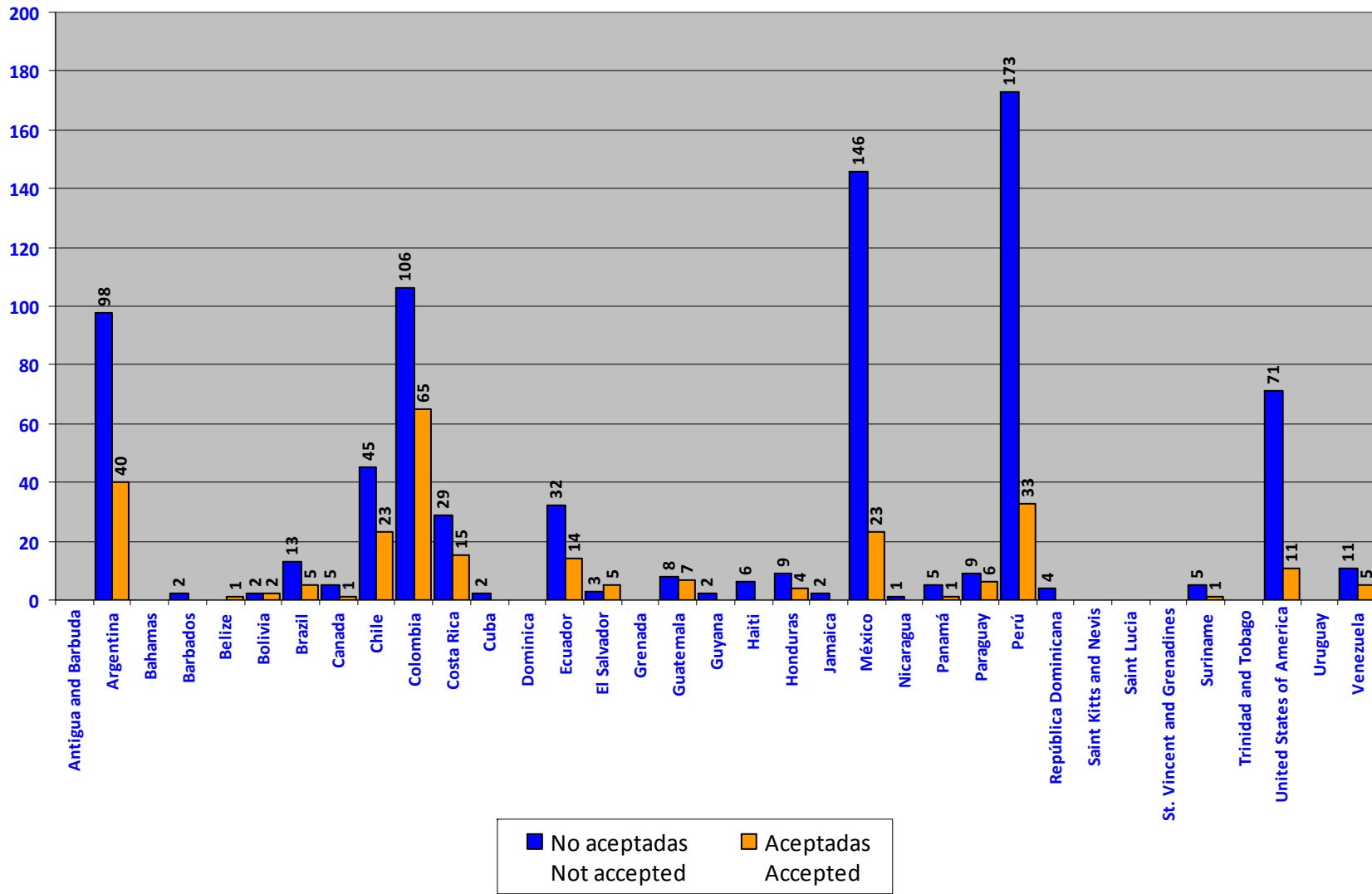


D) Comparación entre peticiones aceptadas a trámite y no aceptadas a trámite
2011

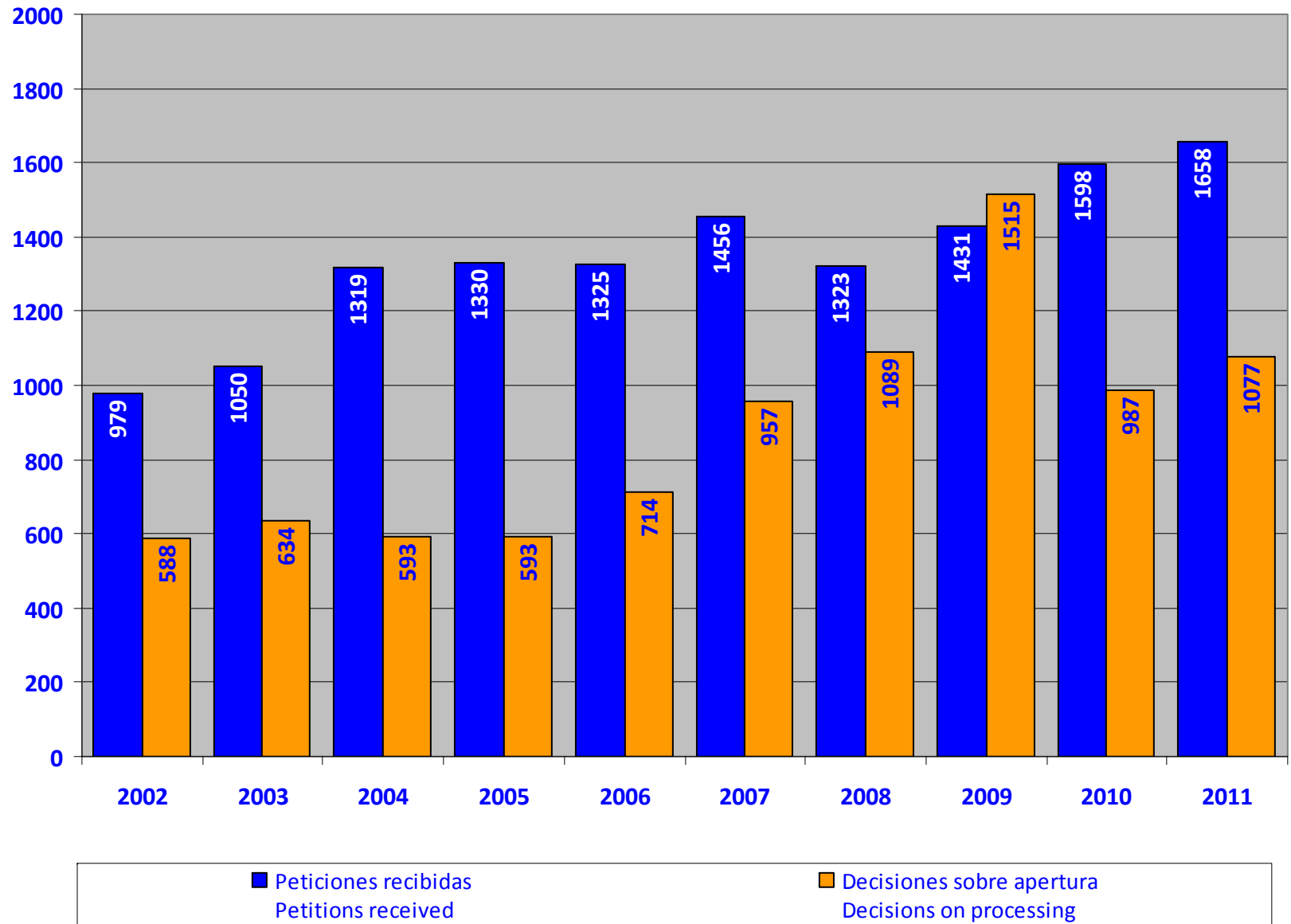
Comparison between petitions accepted for processing and not accepted for processing



E) Comparación entre peticiones aceptadas a trámite y no aceptadas a trámite, por país (2011)
Comparison between petitions accepted for processing and petitions not accepted for processing, by country



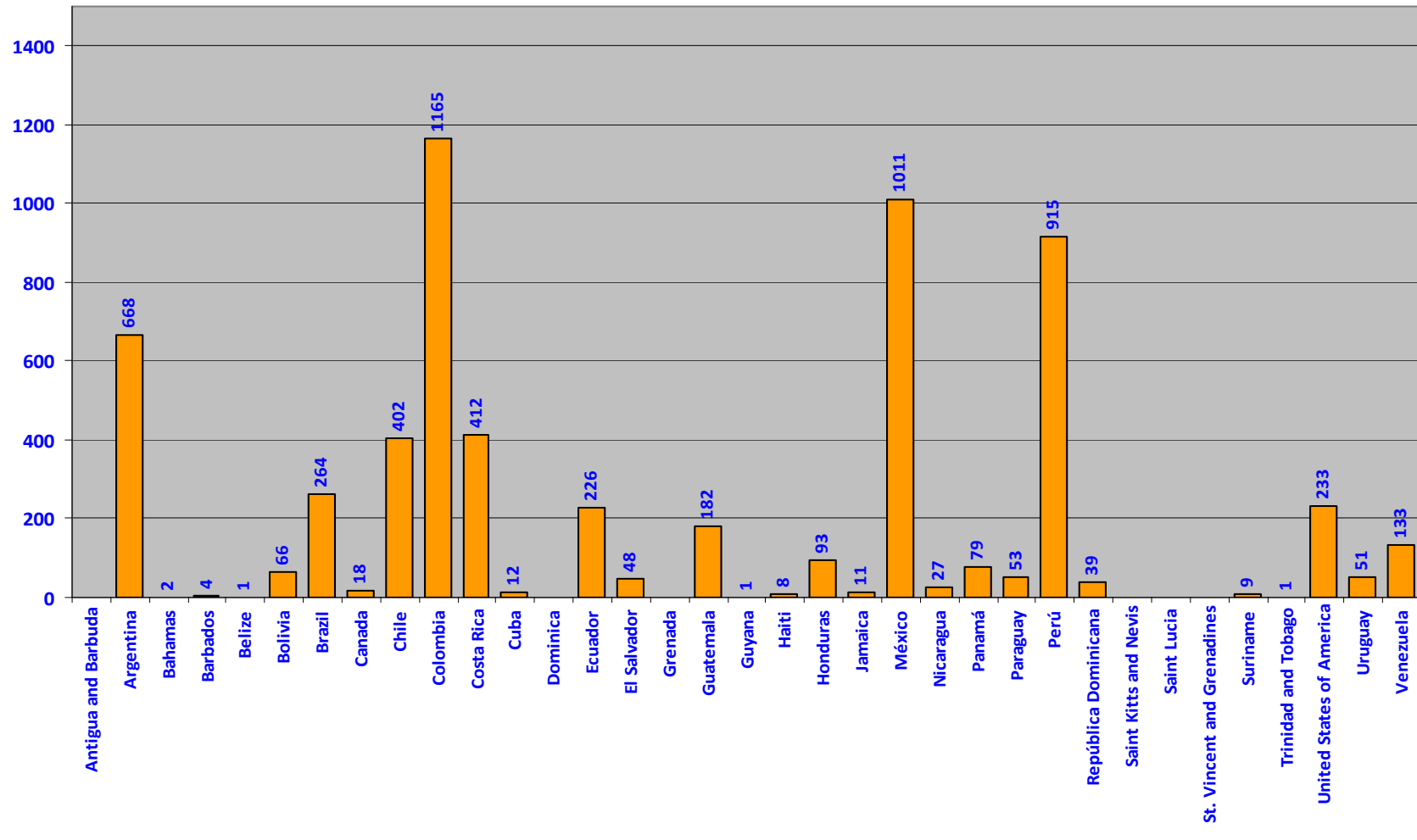
F) Comparación entre peticiones recibidas y decisiones sobre apertura, por año
Comparison between petitions received and decisions on processing, per year



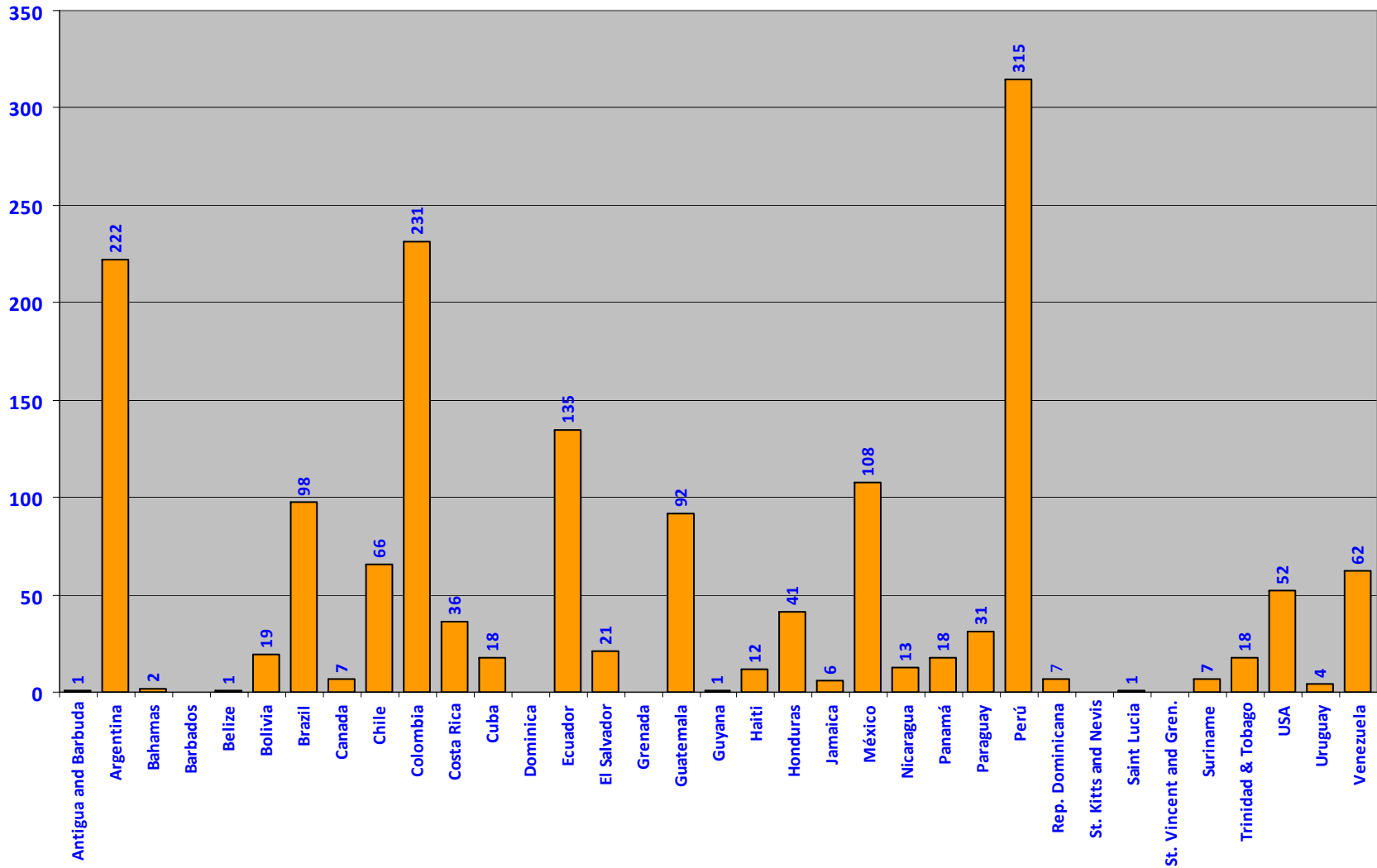
G) Peticiones que continuaban pendientes de estudio inicial a final del año 2011

Petitions pending initial evaluation at the end of the year 2011

TOTAL: 6134

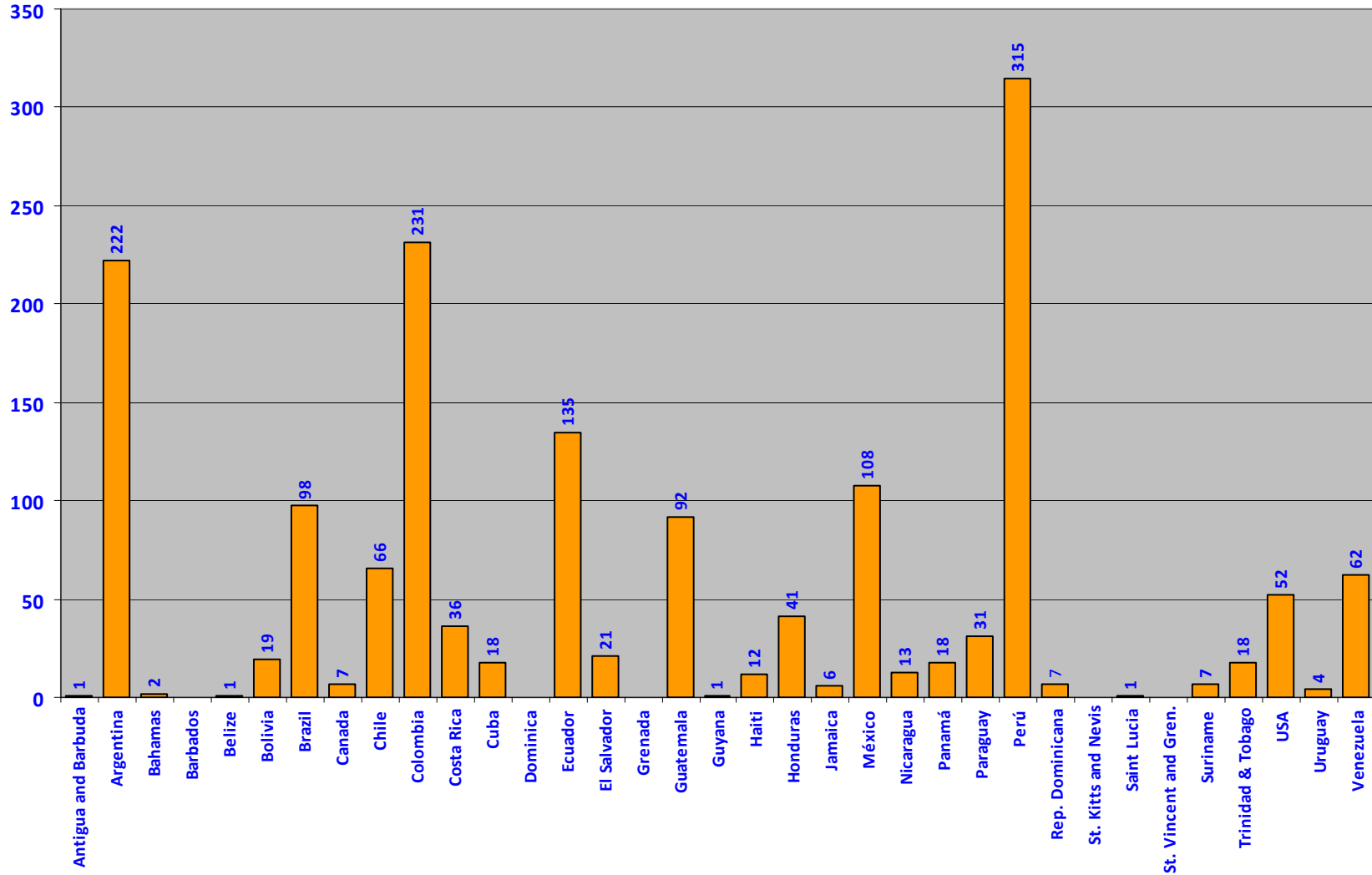


H) Peticiones en admisibilidad y fondo (2011) Petitions in admissibility and merits
TOTAL: 1645



Admisibilidad es la etapa en que la CIDH determina si una petición satisface los requisitos establecidos en los artículos 46 y 47 de la Convención Americana. Fondo es la etapa en la que la CIDH decide sobre los méritos del caso según el procedimiento establecido en los artículos 48 y 50 de la Convención Americana. Admissibility is the stage in which the IACHR determines if a petition meets the requirements set forth in Articles 46 and 47 of the American Convention. Merits is the stage in which the IACHR decides on the merits of the case pursuant to the procedure established in Articles 48 and 50 of the American Convention on Human Rights.

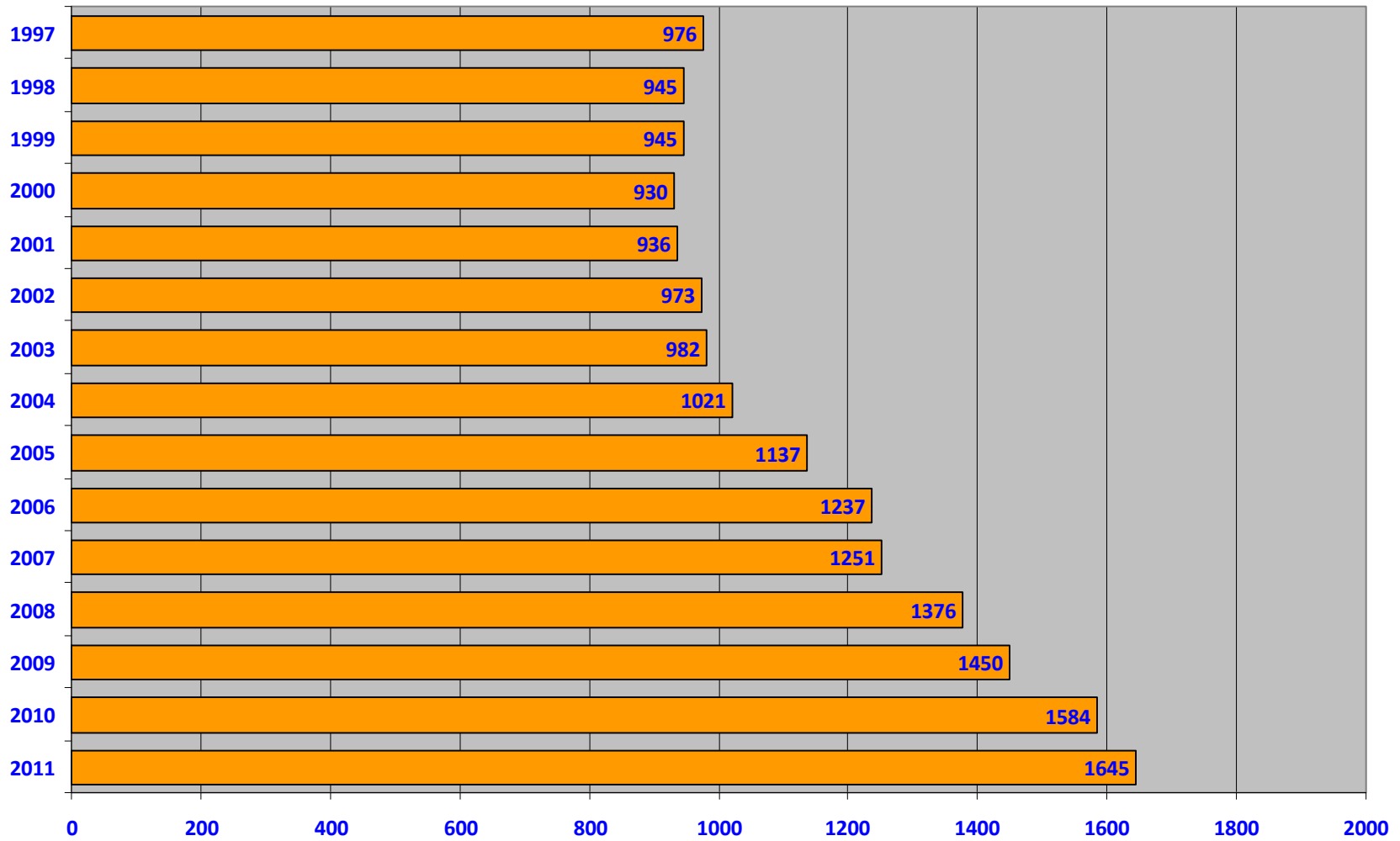
H) Peticiones en admisibilidad y fondo (2011) Petitions in admissibility and merits
TOTAL: 1645



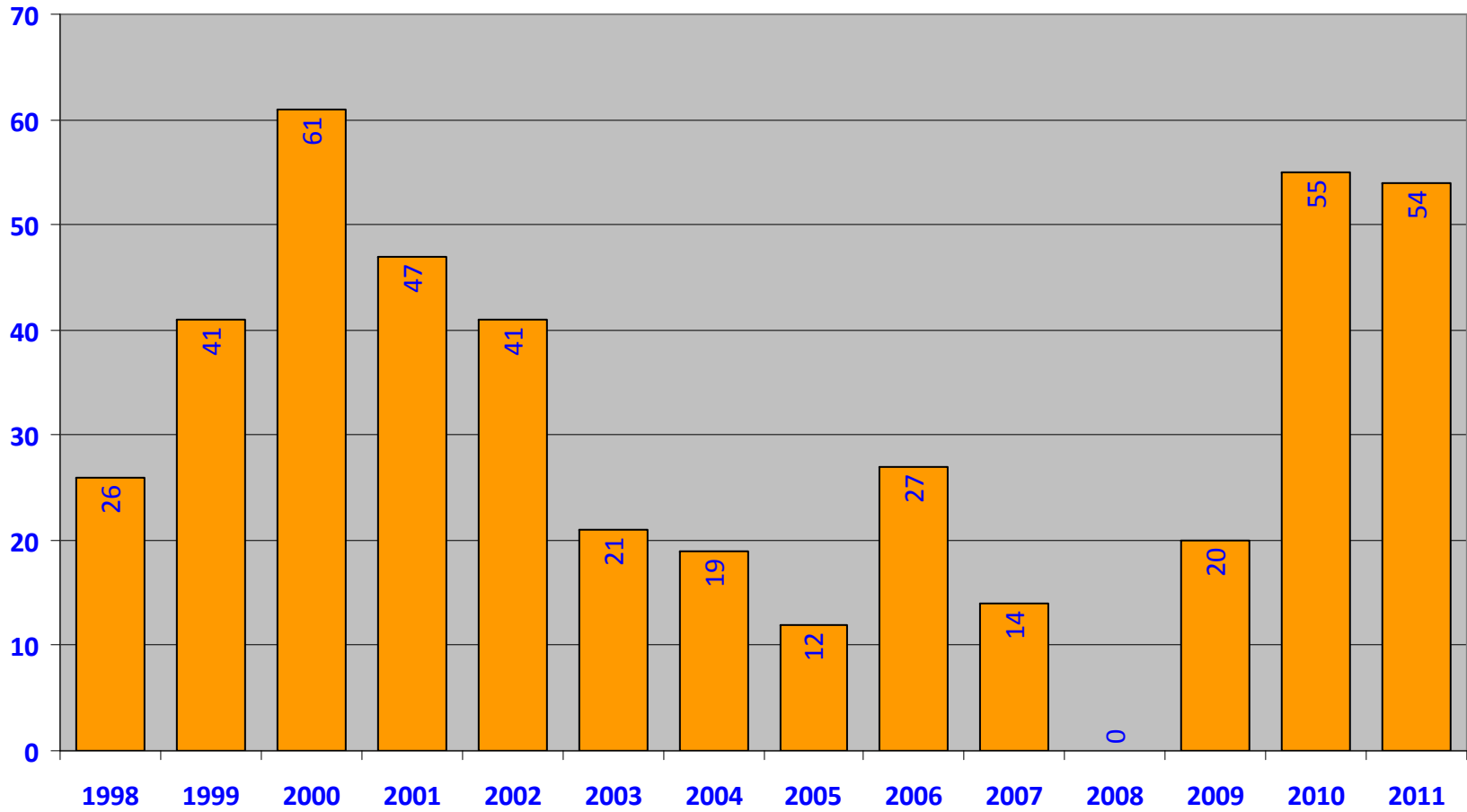
Admisibilidad es la etapa en que la CIDH determina si una petición satisface los requisitos establecidos en los artículos 46 y 47 de la Convención Americana. Fondo es la etapa en la que la CIDH decide sobre los méritos del caso según el procedimiento establecido en los artículos 48 y 50 de la Convención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

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

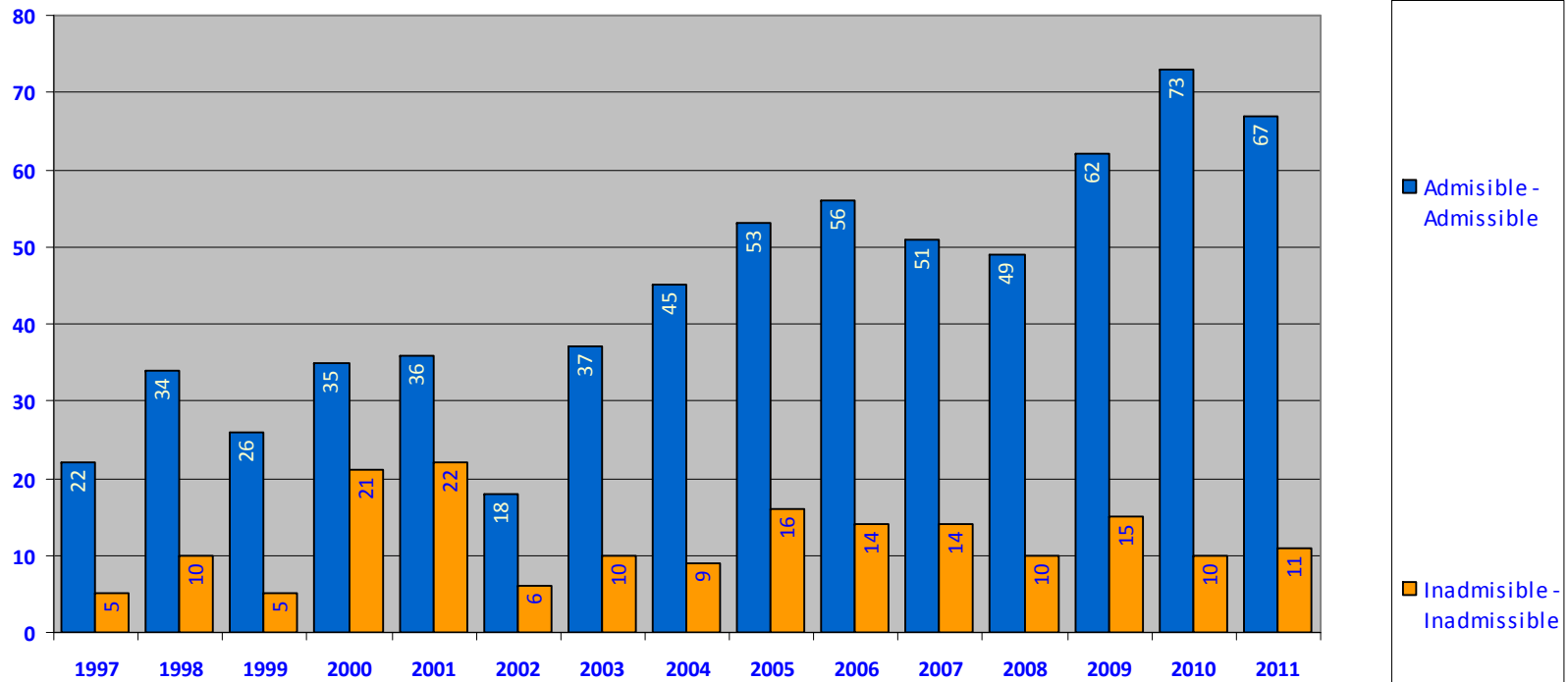
I) Portafolio en trámite (admisibilidad y fondo) al final de cada año
Case docket (admissibility and merits) at the end of every year



J) Casos archivados por año
Cases archived by year



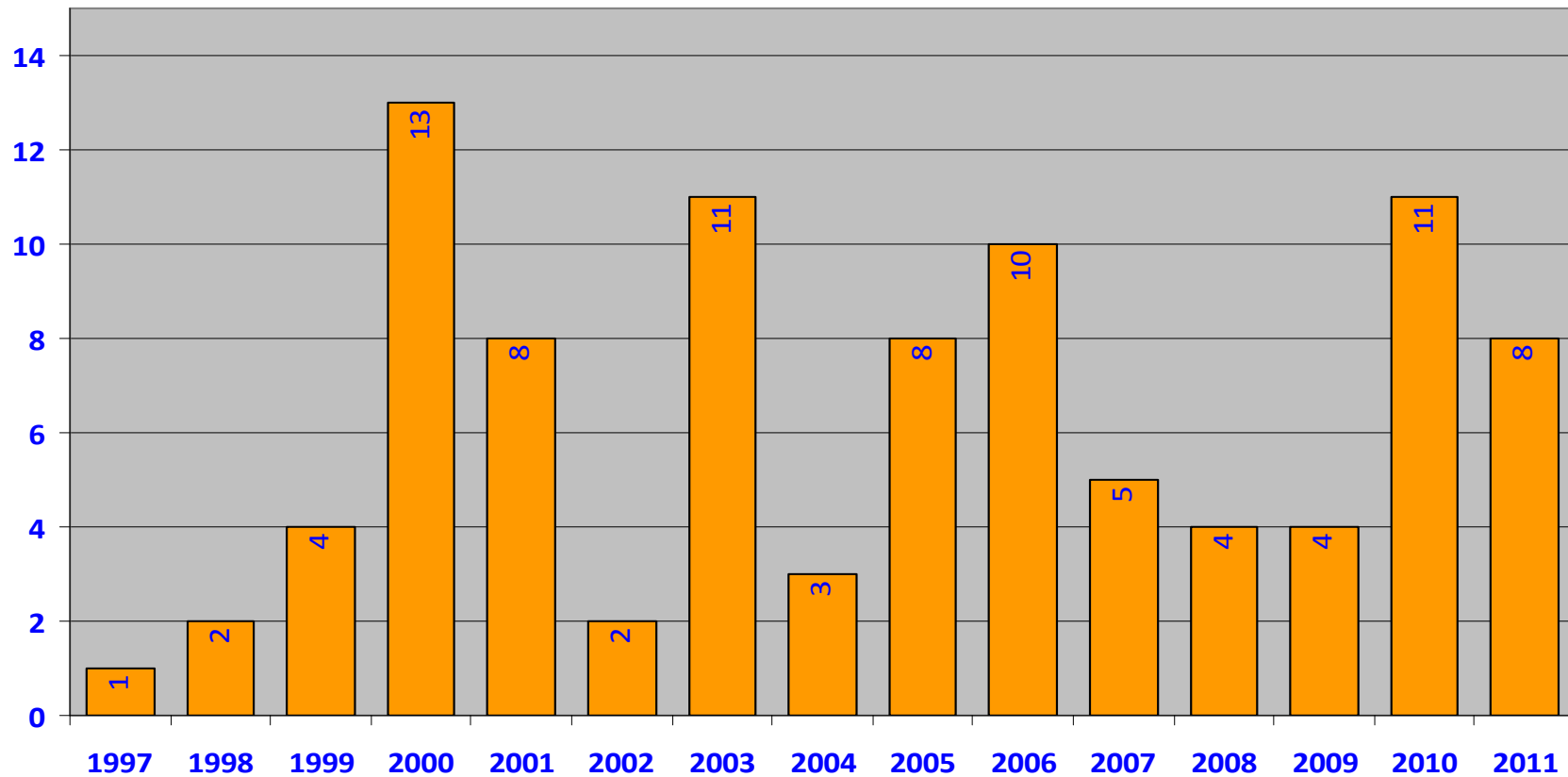
K) Informes sobre admisibilidad publicados por año
Reports on admissibility published by year



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

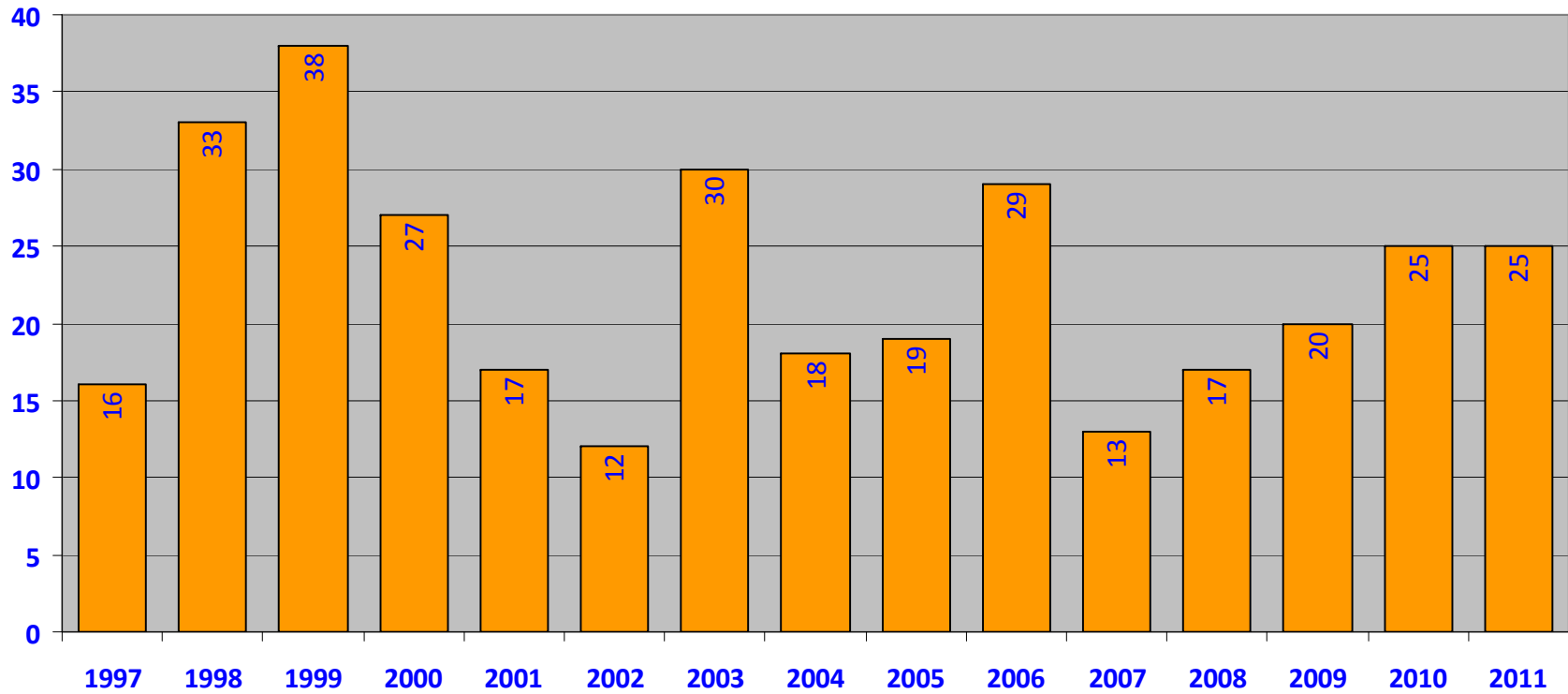
Admissibility is the stage in which the IACHR determines if a petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention on Human Rights, in accordance with the procedure established in Articles 30 and 36 of the Rules of Procedure of the Commission.

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



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

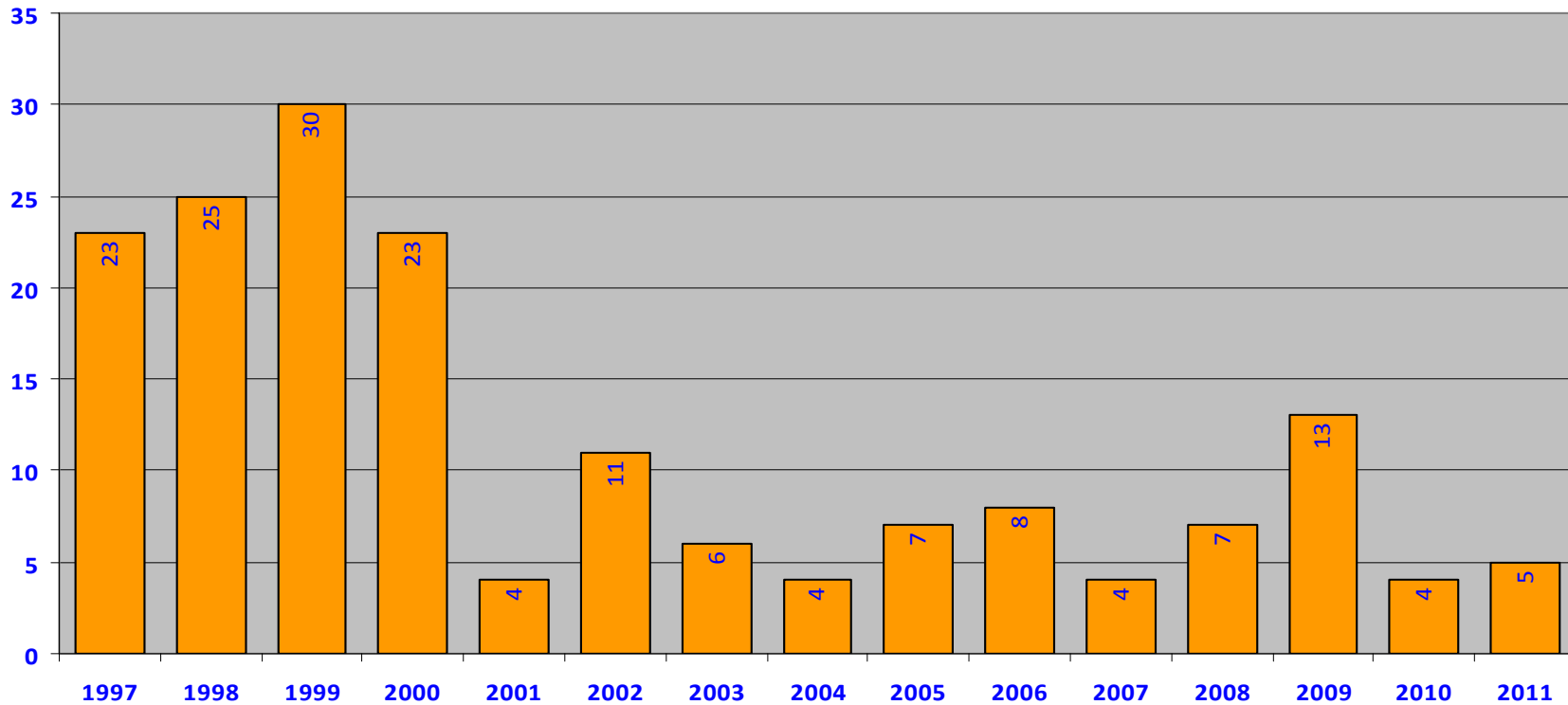
M) Informes de fondo aprobados por año
Reports on the merits approved by year



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

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

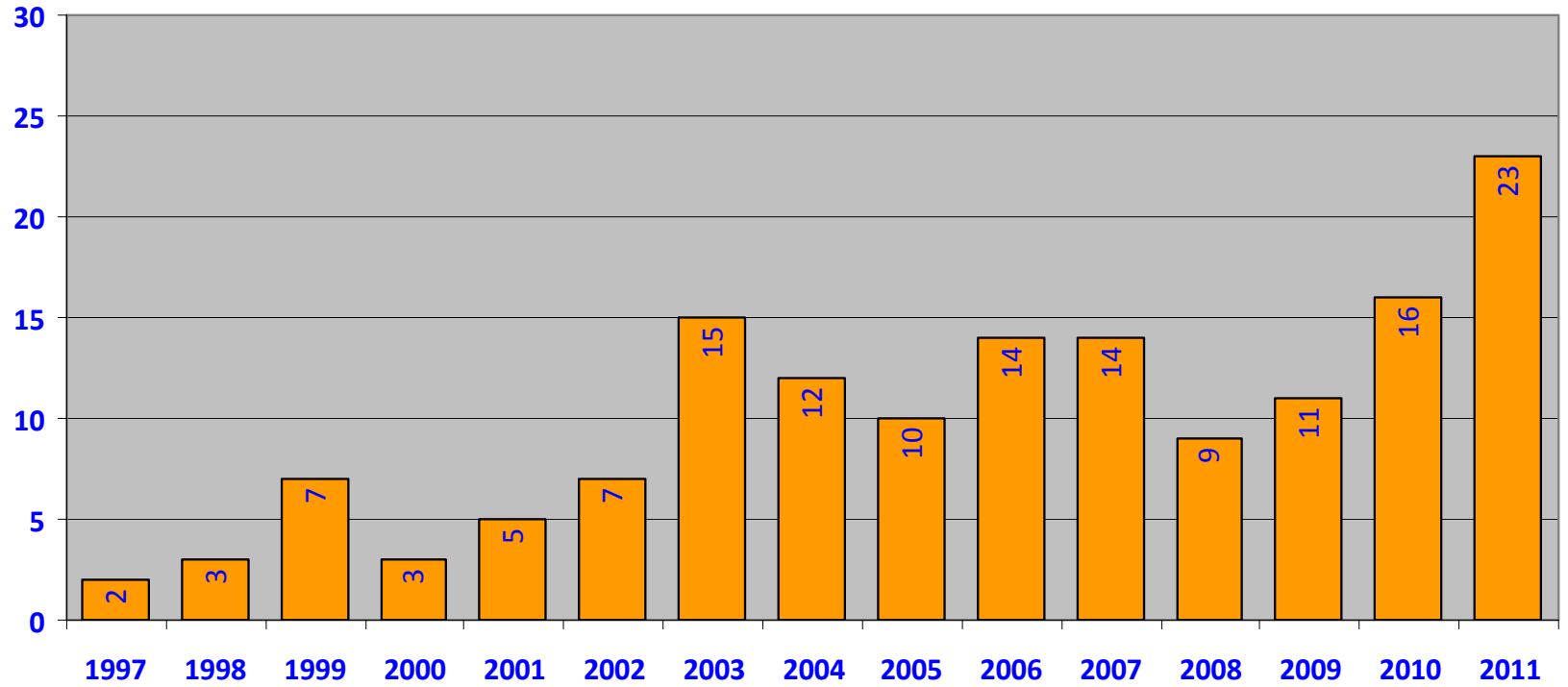
N) Informes de fondo publicados por año
Reports on the merits published by year

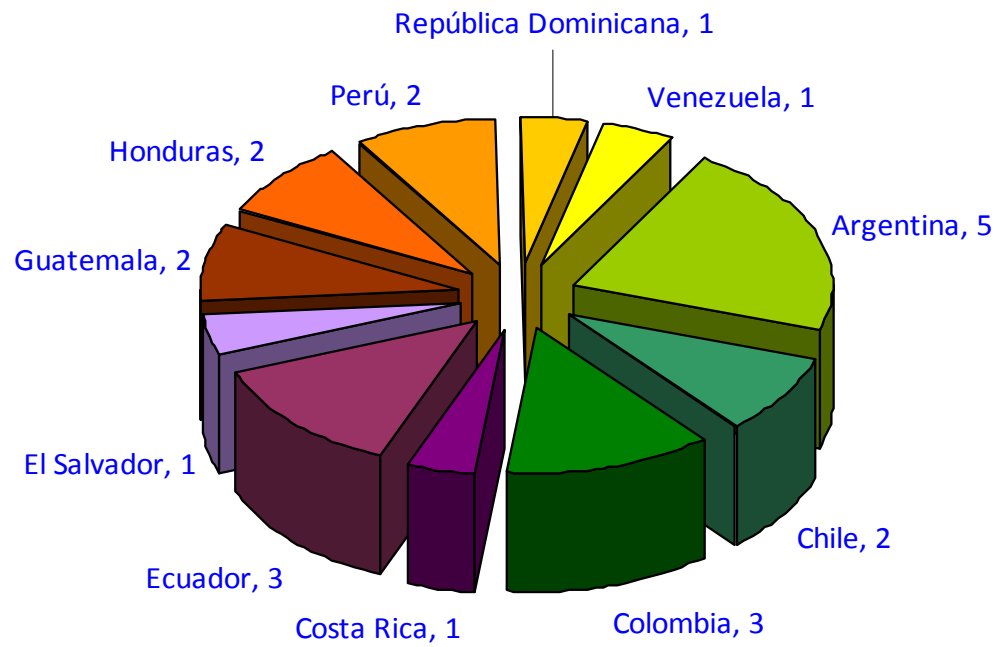


En el año 2001 cambió la regla de remisión de casos a la Corte, lo cual provocó un descenso de los casos en que es pertinente publicar el informe de fondo.

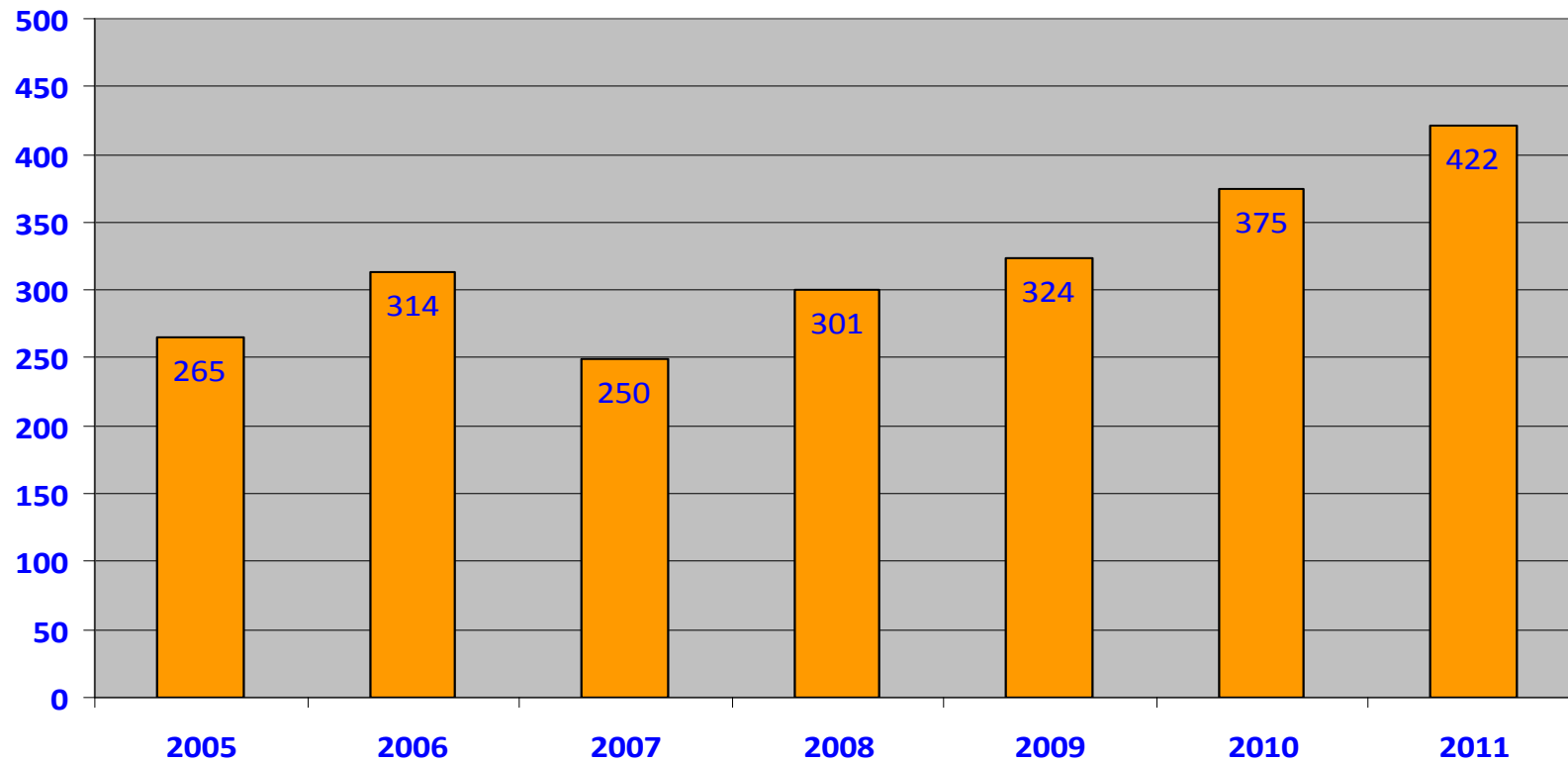
In 2001 the rule of remission of cases to the Court changed; this change decreased the number of cases in which it corresponds to publish a report on the merits.

O) Casos presentados a la Corte cada año
Cases submitted to the Court each year

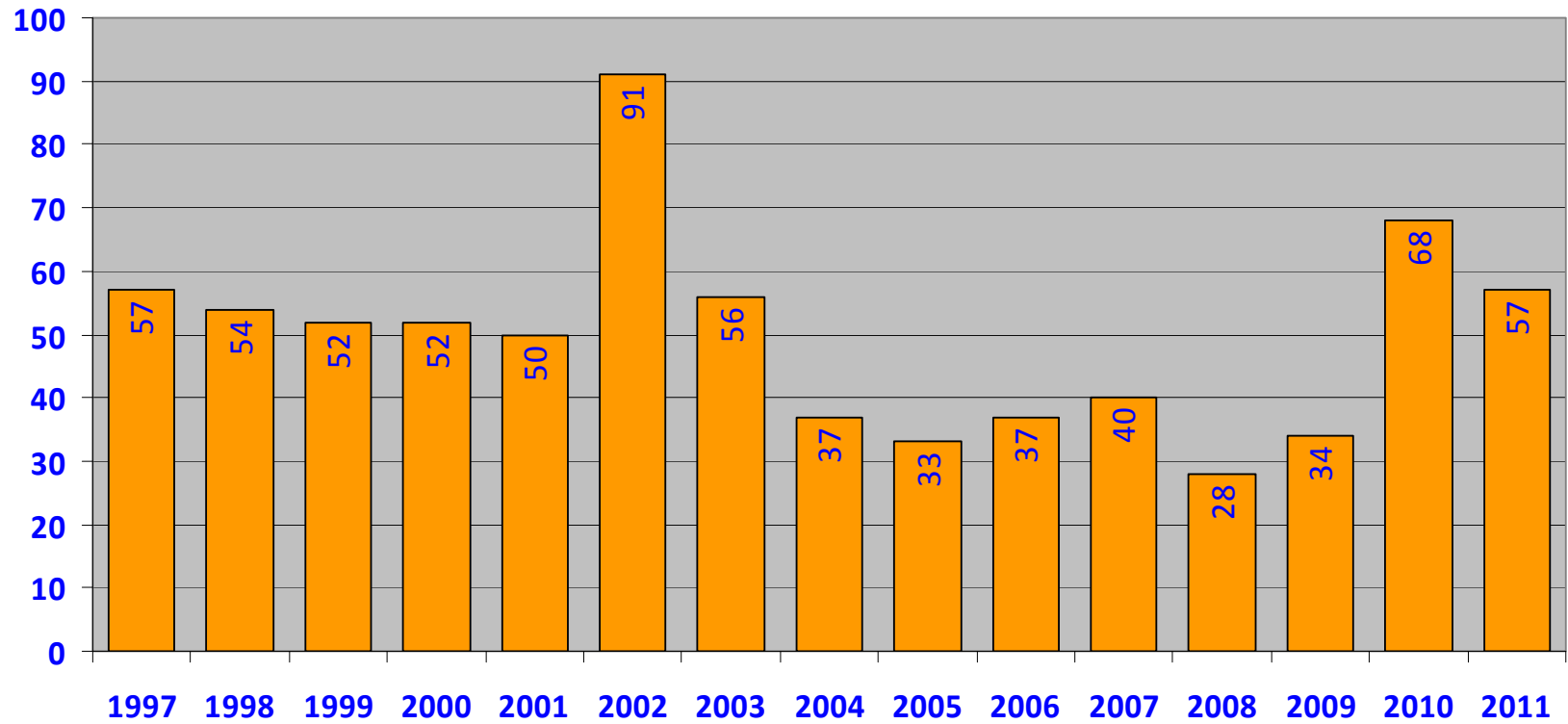


P) Casos presentados a la Corte por país (2011)**Cases submitted to the Court by country****TOTAL: 23**

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



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



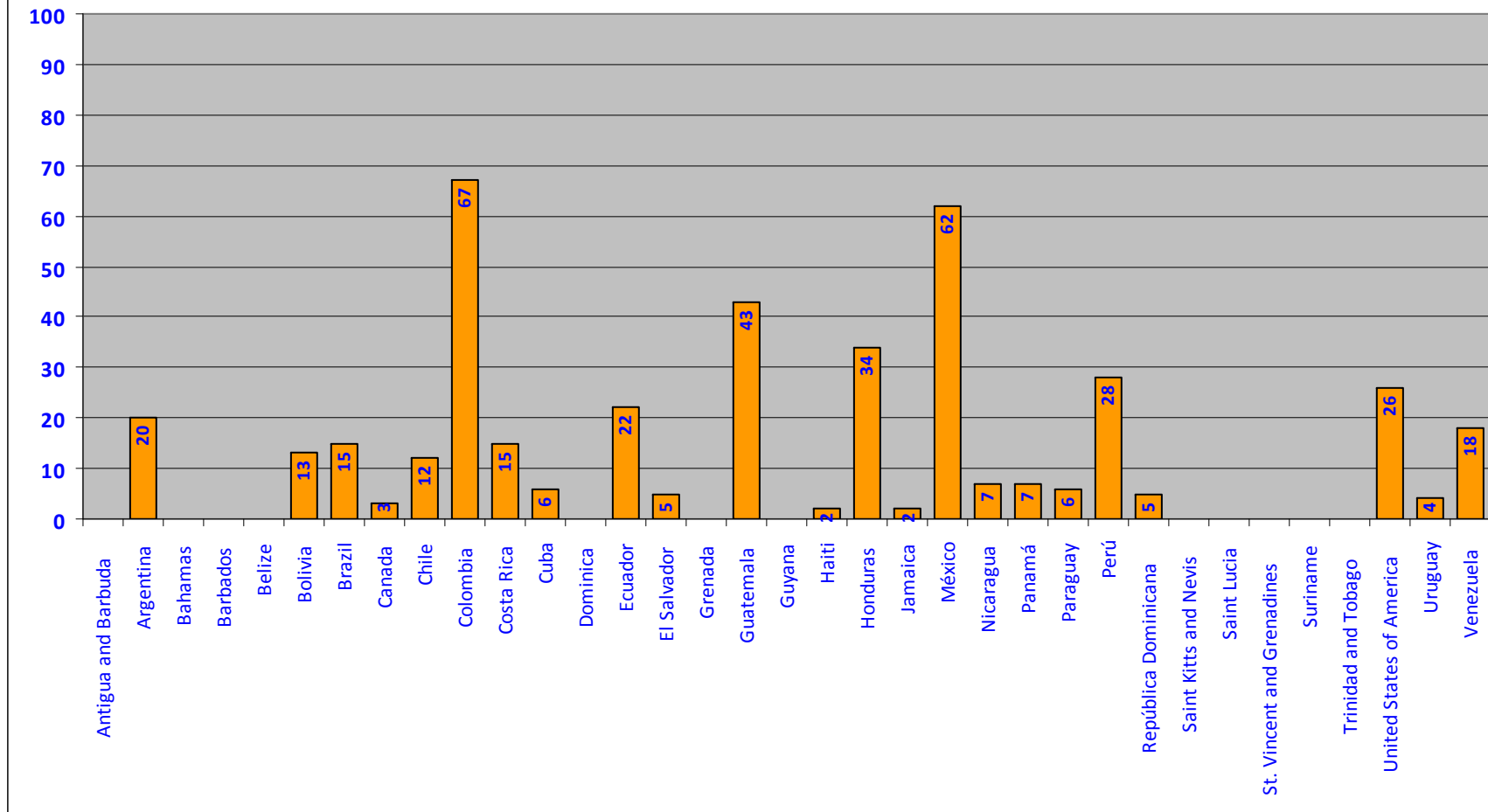
**Las medidas cautelares otorgadas pueden incluir situaciones presentadas en años anteriores*

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

**S) Solicitudes de medidas cautelares recibidas por país
(2011)**

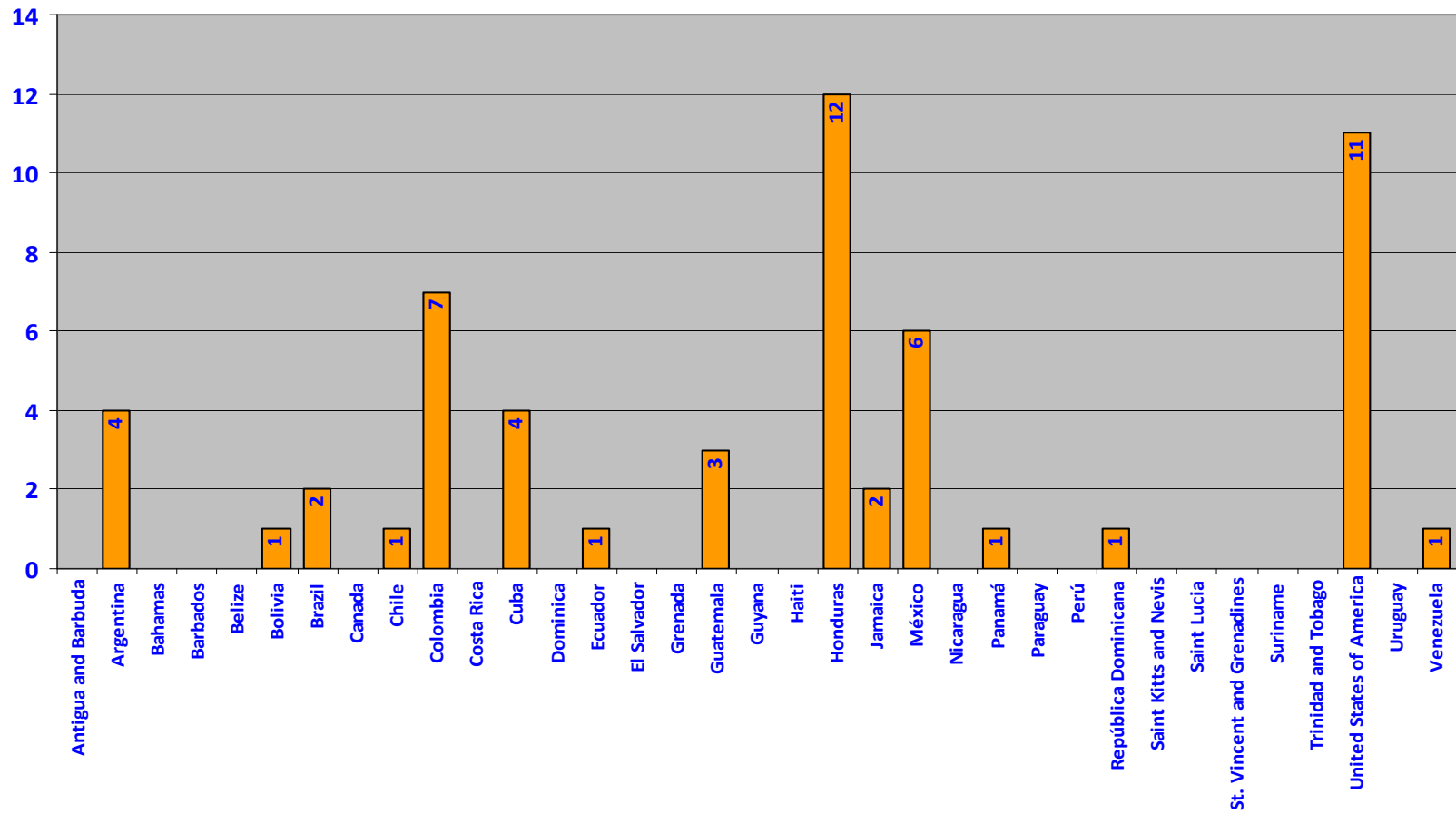
Requests for precautionary measures received by country

TOTAL: 422



T) Solicitudes de medidas cautelares otorgadas (2011) Precautionary measures granted

TOTAL: 57

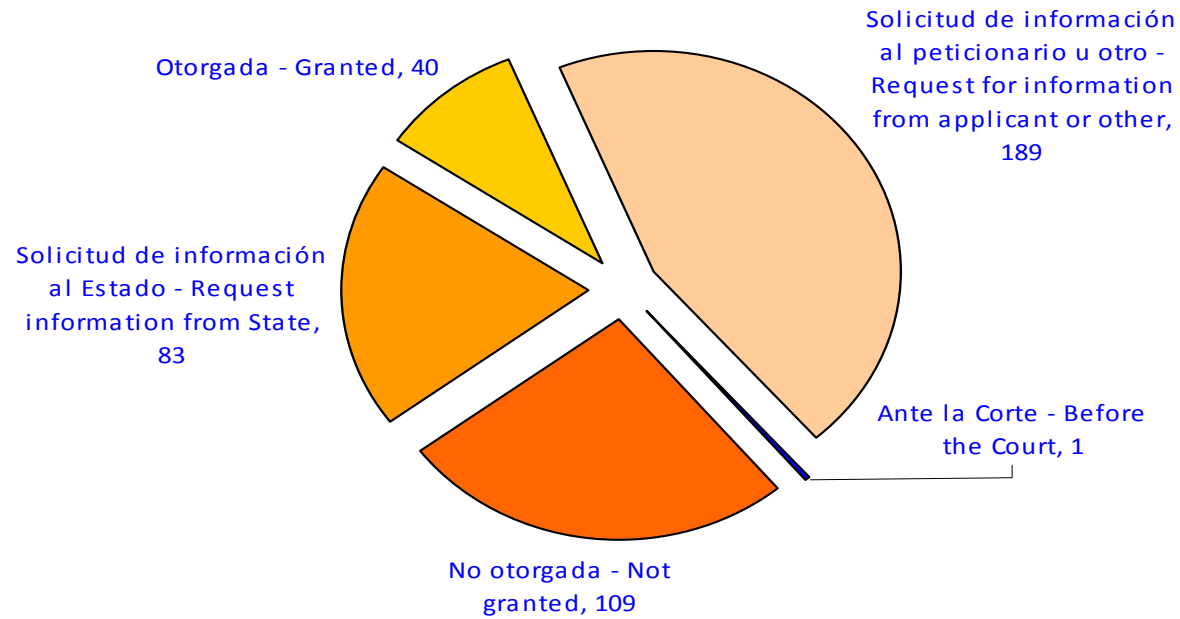


**El total puede incluir decisiones en solicitudes presentadas en años anteriores*

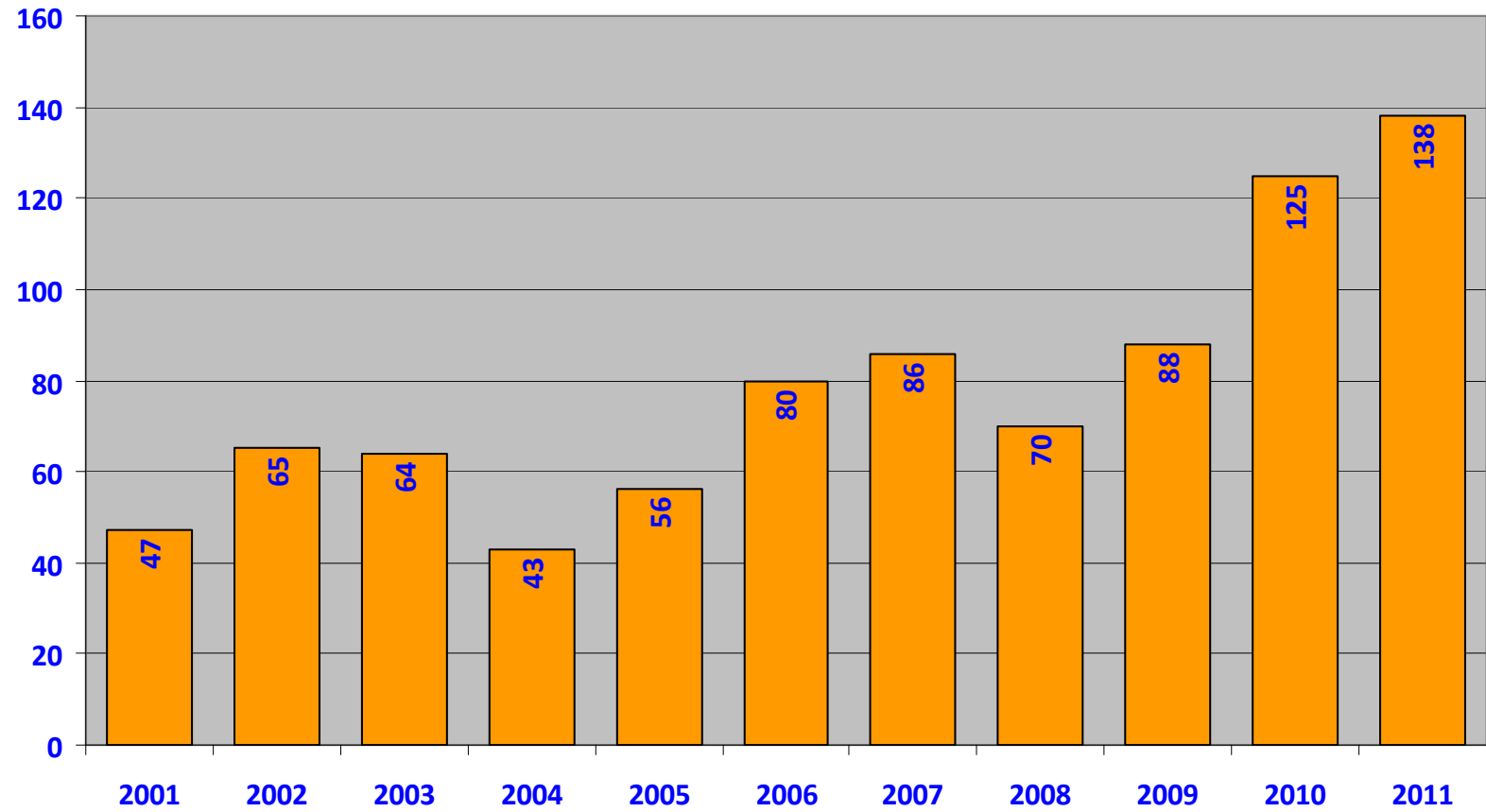
**The total may also include decisions of requests received in previous years*

U) Estátus actual de solicitudes de medidas cautelares recibidas en 2011
Current status of precautionary measures received in 2011

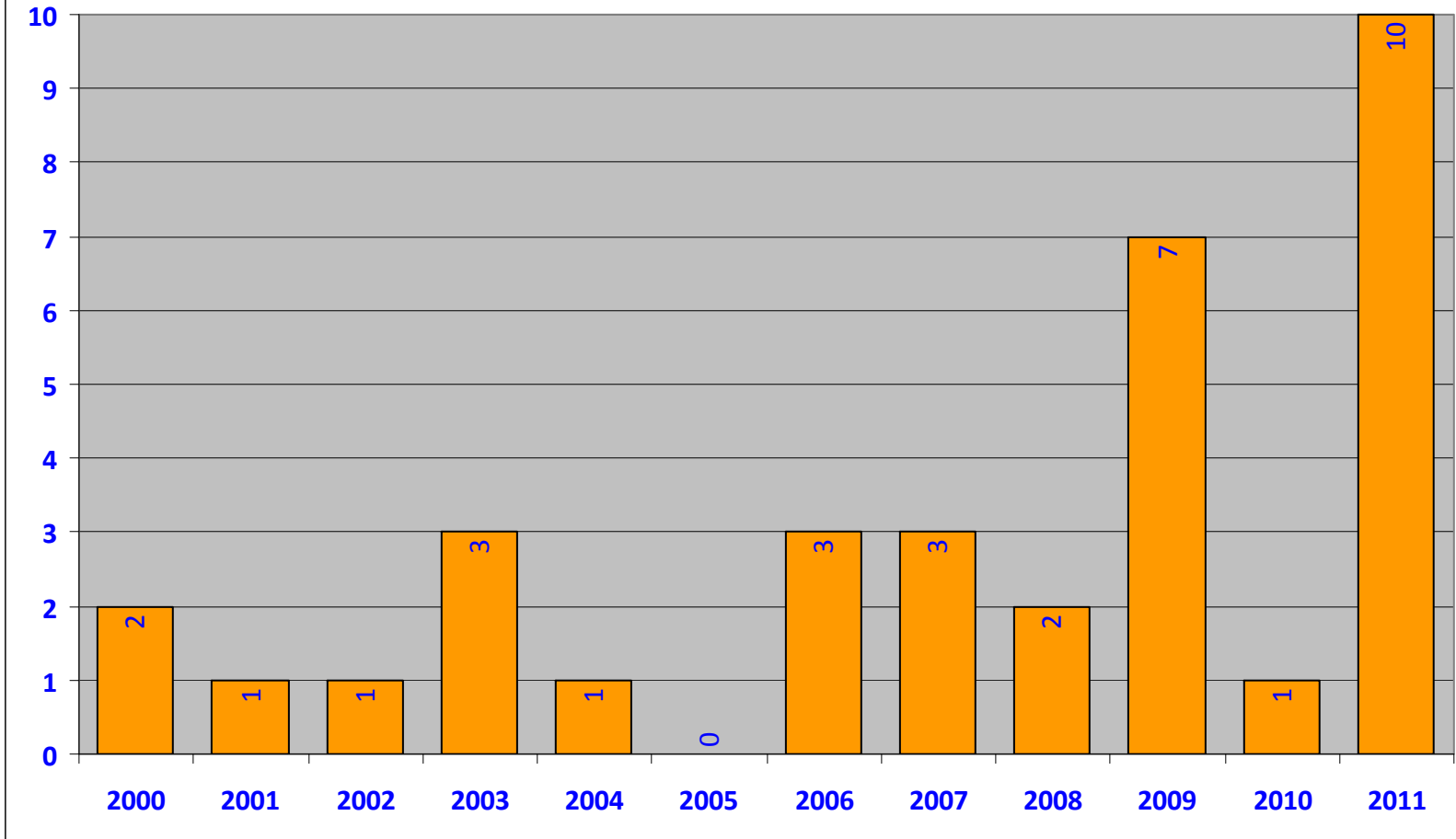
TOTAL: 422



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



W) Informes temáticos aprobados por año
Thematic reports approved each year



ANNUAL REPORT OF THE INTERAMERICAN COMMISSION ON HUMAN RIGHTS 2011

CHAPTER III

D. Status of compliance with the recommendations of the IACHR

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

87. In this regard, the OAS General Assembly, in its resolution AG/RES. 2672 (XLI-O/11), "Observations and Recommendations on the Annual Report of the Inter-American Commission on Human Rights," urged the member states to follow up on the recommendations of the Inter-American Commission on Human Rights (operative paragraph 3.b). Likewise, in its resolution AG/RES. 2675 (XLI-O/11), "Strengthening of Human Rights Systems pursuant to the mandates arising from the Summits of the Americas," it reaffirmed the intent of the OAS to continue taking concrete measures aimed at implementing the mandates of the Third Summit of the Americas, including follow-up of the recommendations of the Inter-American Commission on Human Rights (operative paragraph 1.b), and instructed the Permanent Council to continue to consider ways to promote the follow-up of the recommendations of the Inter-American Commission on Human Rights by member states of the Organization (operative paragraph 3.d).

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

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

89. In compliance with its powers under the Convention and the Statute and with the above-cited resolutions, and pursuant to Article 48 of the Rules of Procedure, the IACHR requested information from the States on compliance with the recommendations made in the reports published on individual cases included in its annual reports from 2000 through 2010.

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

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

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

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.307, Report No. 103/01, María Meriadri de Morini (Argentina) ¹	X		
Case 11.804, Report No. 91/03, Juan Ángel Greco (Argentina)		X	
Case 12.080, Report No. 102/05, Sergio Schiavini and María Teresa Schnack (Argentina)		X	
Case 12.298, Report No. 81/08 Fernando Giovanelli (Argentina)		X	
Case 12.159, Report No. 79/09, Gabriel Egisto Santillán Reigas (Argentina)		X	
Case 11.732, Report No. 83/09, Horacio Aníbal Schillizzi (Argentina)		X	
Case 11.758, Report No. 15/10, Rodolfo Correa Belisle (Argentina)		X	
Case 11.796, Report No. 16/10, Mario Humberto Gomez Yardez (Argentina)	X		
Case 12.536, Report No. 17/10, Raquel Natalia Lagunas and Sergio Antonio Sorbellini (Argentina)		X	
Petition 242-03, Report No. 160/10, Inocencia Luca Pogoraro (Argentina)		X	
Petition 4554-02, Report No. 161/10, Valerio Castillo Báez (Argentina)		X	
Cases 12.067, 12.068 and 12.086, Report No. 48/01, Michael Edwards, Omar Hall, Brian Schroeter and Jeronimo Bowleg (Bahamas)			X
Case 12.265, Report 78/07 Chad Roger Goodman (Bahamas)			X

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

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 12.513, Report 79/07 Prince Pinder (Bahamas)			X
Case 12.053, Report No. 40/04, May Indigenous Community of the Toledo District (Belize)			X
Case 12.475, Report No. 97/05, Alfredo Díaz Bustos (Bolivia)		X	
Case 12.516, Report No. 98/05, Raúl Zavala Málaga and Jorge Pacheco Rondón (Bolivia) ²	X		
Petition No. 269-05, Report No. 82/07, Miguel Angel Moncada Osorio and James David Rocha Terraza (Bolivia) ³	X		
Petition No. 788-06, Report No. 70/07, Víctor Hugo Arce Chávez (Bolivia) ⁴	X		
Case 12.051, Report No. 54/01, Maria da Penha Maia Fernandes (Brazil)		X	
Cases 11.286, 11.406, 11.407, 11.412, 11.413, 11.415, 11.416 and 11.417, Report No. 55/01, Aluísio Cavalcante <i>et al.</i> (Brazil)		X	
Case 11.517, Report No. 23/02, Diniz Bento da Silva (Brazil)		X	
Case 10.301, Report No. 40/03, Parque São Lucas (Brazil)		X	
Case 11.289, Report No. 95/03, José Pereira (Brazil)		X	
Case 11.556, Report No. 32/04, Corumbiara (Brazil)		X	
Case 11.634, Report No. 33/04, Jailton Neri da Fonseca (Brazil)		X	
Cases 12.426 and 12.427, Report No. 43/06, Raniê Silva Cruz, Eduardo Rocha da Silva and Raimundo Nonato Conceição Filho (Brazil) ⁵	X		
Case 12.001, Report No. 66/06, Simone André Diniz (Brazil)		X	
Case 12.019, Report No. 35/08 Antonio Ferreira Braga (Brazil)			X
Case 12.310, Report No. 25/09 Segastião Camargo Filho (Brazil)			X

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

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

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

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

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 12.440, Report No. 26/09 Wallace de Almeida (Brazil)			X
Case 12.308, Report No. 37/10, Manoel Leal de Oliveira (Brazil)			X
Case 11.771, Report No. 61/01, Samuel Alfonso Catalán Lincoleo (Chile)		X	
Case 11.715, Report No. 32/02, Juan Manuel Contreras San Martín <i>et al.</i> (Chile) ⁶	X		
Case 12.046, Report No. 33/02, Mónica Carabantes Galleguillos (Chile) ⁷	X		
Case 11.725, Report No. 139/99, Carmelo Soria Espinoza (Chile)		X	
Petition 4617/02, Report No. 30/04, Mercedes Julia Huenteaño Beroiza <i>et al.</i> (Chile)		X	
Case 12.142, Report No. 90/05, Alejandra Marcela Matus Acuña <i>et al.</i> (Chile) ⁸	X		
Case 12.337, Report No. 80/09, Marcela Andra Valdés Díaz (Chile) ⁹	X		
Petition 490-03, Report No. 81/09 "X"(Chile) ¹⁰			
Case 12.469, Report No. 56/10, Margarita Barberia Miranda (Chile)		X	
Case 12.281, Report No. 162/10, Gilda Rosario Pizarro <i>et al.</i> (Chile)	X		
Case 12.195, Report No. 163/10, Mario Alberto Jara Oñate (Chile)	X		
Case 11.654, Report No. 62/01, Ríofrío Massacre (Colombia)		X	
Case 11.710, Report No. 63/01, Carlos Manuel Prada González and Evelio Antonio Bolaño Castro (Colombia)		X	
Case 11.712, Report No. 64/01, Leonel de Jesús Isaza Echeverry (Colombia)		X	
Case 11.141, Report No. 105/05, Villatina Massacre (Colombia)		X	

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

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

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

⁹ See IACHR Annual Report 2010, <http://www.cidh.org/annualrep/2010eng/TOC.htm>

¹⁰ See IACHR Annual Report 2010, <http://www.cidh.org/annualrep/2010eng/TOC.htm>

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 10.205, Report No. 53/06, Germán Enrique Guerra Achuri (Colombia) ¹¹	X		
Case 12.009, Report No. 43/08, Leydi Dayan Sanchez (Colombia)		X	
Case 12.448, Report No. 44/08, Sergio Emilio Cadena Antolinez (Colombia) ¹²	X		
Petition 477-05, Report No. 82/08 X and family (Colombia) ¹³	X		
Petition 401-05, Report No. 83/08 Jorge Antonio Barbosa Tarazona <i>et al.</i> (Colombia)		X	
Case 12.476, Report No. 67/06, Oscar Elias Biscet <i>et al.</i> (Cuba)			X
Case 12.477, Report No. 68/06, Lorenzo Enrique Copello Castillo <i>et al.</i> (Cuba)			X
Case 11.421, Report No. 93/00, Edison Patricio Quishpe Alcívar (Ecuador)		X	
Case 11.439, Report No. 94/00, Byron Roberto Cañaveral (Ecuador)		X	
Case 11.445, Report No. 95/00, Ángelo Javier Ruales Paredes (Ecuador) ¹⁴	X		
Case 11.466, Report No. 96/00, Manuel Inocencio Lalvay Guamán (Ecuador)		X	
Case 11.584, Report No. 97/00, Carlos Juela Molina (Ecuador)		X	
Case 11.783, Report No. 98/00 Marcia Irene Clavijo Tapia, (Ecuador)		X	
Case 11.868, Report No. 99/00, Carlos Santiago and Pedro Andrés Restrepo Arismendy (Ecuador)		X	
Case 11.991, Report No. 100/00, Kelvin Vicente Torres Cueva (Ecuador)		X	
Case 11.478, Report No. 19/01, Juan Clímaco Cuellar <i>et al.</i> (Ecuador)		X	
Case 11.512, Report No. 20/01, Lida Ángela Riera Rodríguez (Ecuador)		X	
Case 11.605, Report No. 21/01, René Gonzalo Cruz Pazmiño (Ecuador)		X	
Case 11.779, Report No. 22/01 José Patricio Reascos (Ecuador)		X	

¹¹ See IACHR Annual Report 2010, <http://www.cidh.org/annualrep/2010eng/TOC.htm>

¹² See IACHR Annual Report 2009, <http://www.cidh.oas.org/annualrep/2009eng/Chap.III.i.eng.htm>

¹³ See IACHR Annual Report 2010, <http://www.cidh.org/annualrep/2010eng/TOC.htm>

¹⁴ See IACHR Annual Report 2008, <http://www.cidh.oas.org/annualrep/2008eng/Chap3.h.eng.htm>

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.992, Report No. 66/01, Dayra María Levoyer Jiménez (Ecuador)		X	
Case 11.441, Report No. 104/01, Rodrigo Elicio Muñoz Arcos <i>et al.</i> (Ecuador)		X	
Case 11.443, Report No. 105/01, Washington Ayora Rodríguez (Ecuador)		X	
Case 11.450, Report No. 106/01, Marco Vinicio Almeida Calispa (Ecuador)		X	
Case 11.542, Report No. 107/01, Angel Reiniero Vega Jiménez (Ecuador)		X	
Case 11.574, Report No. 108/01, Wilberto Samuel Manzano (Ecuador)		X	
Case 11.632, Report No. 109/01, Vidal Segura Hurtado (Ecuador)		X	
Case 12.007, Report No. 110/01 Pompeyo Carlos Andrade Benítez (Ecuador)		X	
Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda (Ecuador)		X	
Case 12.188 , Report No. 64/03, Joffre José Valencia Mero, Priscila Fierro, Zoreida Valencia Sánchez, Rocío Valencia Sánchez (Ecuador)		X	
Case 12.394, Report No. 65/03, Joaquín Hernández Alvarado, Marlon Loor Argote and Hugo Lara Pinos (Ecuador)		X	
Case 12.205, Report No. 44/06, José René Castro Galarza (Ecuador)		X	
Case 12.207, Report No. 45/06, Lizandro Ramiro Montero Masache (Ecuador)		X	
Case 12.238, Report No. 46/06 Myriam Larrea Pintado (Ecuador)		X	
Petition 533-01, Report No. 47/06 Fausto Mendoza Giler and Diógenes Mendoza Bravo (Ecuador)		X	
Case 12.487, Report No. 17/08, Rafael Ignacio Cuesta Caputi (Ecuador)			X
Case 12.525, Report No. 84/09, Nelson Iván Serano Sáñez (Ecuador)			X
Case 12.249, Report No. 27/09, Jorge Odir Miranda Cortez <i>et al.</i> (El Salvador)		X	
Case 12.028, Report No. 47/01, Donnason Knights (Grenada)		X	

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.765, Report No. 55/02, Paul Lallion (Grenada)		X	
Case 12.158, Report No. 56/02 Benedict Jacob (Grenada)		X	
Case 11.625, Report No. 4/01, María Eugenia Morales de Sierra (Guatemala)		X	
Case 9207, Report No. 58/01, Oscar Manuel Gramajo López (Guatemala)		X	
Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay <i>et al.</i> ; Case 10.799 Catalino Chochoy <i>et al.</i> ; Case 10.751 Juan Galicia Hernández <i>et al.</i> and Case 10.901 Antulio Delgado, Report No. 59/01 Remigio Domingo Morales <i>et al.</i> (Guatemala)		X	
Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo <i>et al.</i> (Guatemala)		X	
Case 11.382, Report No. 57/02, Finca "La Exacta" (Guatemala)		X	
Case 11.312, Report No. 66/03, Emilio Tec Pop (Guatemala)		X	
Case 11.766, Report No. 67/03, Irma Flaquer (Guatemala)		X	
Case 11.197, Report No. 68/03, Community of San Vicente de los Cimientos (Guatemala)		X	
Petition 9168, Report No. 29/04, Jorge Alberto Rosal Paz (Guatemala)		X	
Petition 133/04, Report No. 99/05, José Miguel Mérida Escobar (Guatemala)		X	
Case 10.855, Report No. 100/05, Pedro García Chuc (Guatemala)		X	
Case 11.171, Report No. 69/06, Tomas Lares Cipriano (Guatemala)		X	
Case 11.658, Report No. 80/07, Martín Pelicó Coxic (Guatemala)		X	
Case 12.264, Report No. 1/06, Franz Britton (Guyana)			X
Case 12.504, Report 81/07 Daniel and Kornel Vaux (Guyana)			X
Case 11.335, Report No. 78/02, Guy Malary (Haiti)			X
Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique y Dalton Daley (Jamaica)		X	
Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)		X	
CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE

Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)		X	
Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)		X	
Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)		X	
Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)			X
Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)		X	
Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)		X	
Case 11.565, Report No. 53/01, González Pérez Sisters (Mexico)			X
Case 11.807, Report 69/03, José Guadarrama (Mexico) ¹⁵	X		
Petition 388-01, Report 101/05 Alejandro Ortiz Ramírez (Mexico) ¹⁶	X		
Case 12.130, Report No. 2/06, Miguel Orlando Muñoz Guzmán (Mexico)			X
Petition 161-02, Report No. 21/07, Paulina del Carmen Ramírez Jacinto (Mexico)		X	
Case 11.822, Friendly Settlement Report No. 24/09, Reyes Penagos Martínez <i>et al.</i> (Mexico)		X	
Case 12.228, Informe No. 117/09, Alfonso Martín del Campo Dodd (Mexico)			X
Case 12.642, Report No. 90/10, Jose Ivan Correa Arevalo (Mexico)		X	
Case 12.660, Report No. 91/10, Ricardo Ucan Seca (Mexico)		X	
Case 12.623, Report No. 164/10, Luis Rey Garcia (Mexico)	X		
Case 11.381, Report No. 100/01, Milton García Fajardo (Nicaragua)		X	
Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay)			X
Case 11.607, Report No. 85/09, Víctor Hugo Maciel (Paraguay)		X	
Case 11.800, Report No. 110/00, César Cabrejos Bernuy (Peru) ¹⁷	X		

¹⁵ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, available at: <http://www.cidh.oas.org/annualrep/2007eng/Chap.3p.htm#11.807>

¹⁶ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, available at: <http://www.cidh.oas.org/annualrep/2007eng/Chap.3p.htm#388/0>

¹⁷ See IACHR Annual Report 2010, <http://www.cidh.org/annualrep/2010eng/TOC.htm>

CASE	TOTAL COMPLIANCE	PARTIAL COMPLIANCE	PENDING COMPLIANCE
Case 11.031, Report No. 111/00, Pedro Pablo López González <i>et al.</i> (Peru)		X	
Cases 10.247 and others, Report No. 101/01, Luis Miguel Pasache Vidal <i>et al.</i> (Peru)		X	
Case 11.099, Report No. 112/00, Yone Cruz Ocalio (Peru)		X	
Case 12.035; Report No. 75/02, Pablo Ignacio Livia Robles (Peru) ¹⁸	X		
Case 11.149, Report No. 70/03 Augusto Alejandro Zúñiga Paz (Peru) ¹⁹	X		
Case 12.191, Report No. 71/03, María Mamerita Mestanza (Peru)		X	
Case 12.078, Report No. 31/04, Ricardo Semoza Di Carlo (Peru)		X	
Petition 185-02, Report No. 107-05, Roger Herminio Salas Gamboa (Peru)		X	
Case 12.033, Report No. 49/06, Rómulo Torres Ventocilla (Peru) ²⁰	X		
Petition 711-01 <i>et al.</i> , Report No. 50/06, Miguel Grimaldo Castañeda Sánchez <i>et al.</i> (Peru); Petition 33-03 <i>et al.</i> , Report No. 109/06, Héctor Núñez Julia <i>et al.</i> (Peru); Petition 732-01 <i>et al.</i> , Report 20/07 Eulogio Miguel Melgarejo <i>et al.</i> ; Petition 758-01 and others, Report No 71/07 Hernán Atilio Aguirre Moreno <i>et al.</i> ; Petition 494-04 (Peru)		X	
Petition 494-04, Report No. 71/07, Hernan Atilio Aguirre Moreno et al. (Peru)		X	
Petition 494-04, Report No. 20/08 Romeo Edgardo Vargas Romero (Peru)		X	
Case 11.753, Report No. 52/02, Ramón Martínez Villarreal (United States)			X
Case 12.285, Report No. 62/02, Michael Domingues (United States) ²¹	X		
Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States)			X
Case 11.193, Report No. 97/03, Shaka Sankofa (United States)		X	
Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)			X

¹⁸ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 332-335.

¹⁹ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 336 and 337.

²⁰ See IACHR, *Annual Report 2007*, Chapter III, Section D: Status of compliance with the recommendations of the IACHR, paras. 613-616.

²¹ See IACHR Annual Report 2005, <http://www.cidh.oas.org/annualrep/2005eng/chap.3f.htm>.

Case 11.331, Report No. 99/03, Cesar Fierro (United States)			X
Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)		X	
Case 12.412, Report No. 101/03, Napoleon Beazley (United States)		X	
CASE 12.430, Report No. 1/05 Roberto Moreno Ramos, (United States)			X
Case 12.439, Report No. 25/05, Toronto Markkey Patterson (United States)		X	
Case 12.421, Report No. 91/05, Javier Suarez Medina (United States)			X
Case 12.534, Report No. 63/08 Andrea Mortlock (United States)			X
Case 12.644, Report No. 90/09 Medellín, Ramírez Cárdenas and Leal García (United States)			X
Case 12.562, Report No. 81/10, Wayne Smith, Hugo Arnedariz et al. (United States)			X
Case 9903, Report No. 51/01, Rafael Ferrer Mazorra <i>et al.</i> (United States)			X
Case 12.243, Report No. 52/01, Juan Raul Garza (United States)			X
Case 11.500, Report No. 124/06, Tomás Eduardo Cirio (Uruguay)	X		
Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay)		X	
Petition 12.555 , Report No. 110/06, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola (Venezuela)			X

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

92. On October 22, 2003, by Report No. 91/03, the Commission approved a friendly settlement agreement in the case of Juan Ángel Greco. In summary, the petitioners alleged that on June 25, 1990, Mr. Greco, 24 years of age, was illegally detained and mistreated when he sought to obtain police assistance when lodging a complaint regarding an assault. The petitioners indicated that while Mr. Greco was detained at the police station in Puerto Vilelas, province of Chaco, there was a fire in his cell in circumstances that were not clarified that led him to suffer serious burns. In addition, they argued that the police were responsible for provoking the fire and for delaying the transfer of the victim to the hospital for several hours. Mr. Greco was hospitalized until his death on July 4, 1990, and buried, according to the petitioners' complaint, without an adequate autopsy. The petitioners also noted that the state did not perform an adequate investigation to clarify the facts adduced, with which it denied the family its right to have justice done, and to obtain compensation.

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

1. Provide economic reparation to the family members of Juan Ángel Greco in the sum of three hundred thousand pesos (\$300,000) that shall be paid to Mrs. Zulma Basitanini de Greco in the amount of thirty thousand (\$30,000) per month in the time period specified in point 3 of the present item, that amount comprising material damages, moral damages, lost wages, costs, fees and any other classification that would arise from the responsibility assumed by the Province of Chaco.

2. Provide the petitioners and the Inter-American Commission on Human Rights, through the Office for Human Rights of the Foreign Ministry, a legalized and certified copy of two cases for which the Province of Chaco has requested reexamination.
 3. Within the framework of its competences, encourage the reopening of the criminal case and the corresponding investigations.
 4. Direct the reopening of the administrative case N° 130/91-250690-1401 once the criminal case has been reopened.
 5. Commit itself, in the framework of its competences, to ensuring that the victim's family members have access to the judicial and administrative investigations."
 6. Publish the agreement in the principle written press sources of the nation and the Province of Chaco."
 7. Continue pursuing legislative and administrative measures for the improved protection of Human Rights. Specifically, it was placed on record that a draft law creating a Criminal Prosecutor's Office for Human Rights has been developed and transmitted to the Provincial Chamber of Deputies for its study and approval.
 8. Strengthen the work of the Permanent Commission for Control of Detention Centers, created by Resolution No. 119 of the Ministry of Government, Justice and Labor of the Province of Chaco, on February 24, 2003.
 9. Further emphasize the work of the Organ of Institutional Control (O.C.I) created by Article 35 of the Organic Police Law of the Province of Chaco N° 4.987, directing it toward the more effective protection of human rights on the part of the Provincial Police. At the initiative of the Executive, the Provincial Counsel for Education and Promotion of Human Rights created by Law N° 4.912 was constituted in the sphere of the Chamber of Deputies. The representatives of the distinct intervening organs and powers have already been designated and convoked.
94. On November 13, 2009, the Commission asked the parties to submit up-to-date information on the status of compliance with the recommendations.
95. Regarding the monetary reparations, as indicated in previous submissions, the State reported in its reply that through Decree 19/2004, the provincial executive authorized the Administration Directorate of the Ministry of the Government, Justice, and Labor to pay Mrs. Zulma Bastianini de Greco the amount of three hundred thousand pesos (\$300,000), to be delivered in ten equal, monthly, and consecutive payments of thirty thousand pesos (\$30,000) within the first ten (10) business days of each month. In addition, on March 1, 2005, the Minister of Government, Justice, and Labor of the province of Chaco reported that the tenth of the payments ordered by Decree 19/04 had been made on October 29, 2004. In that decree, the provincial executive expressly stated that the compensation payments would be subject to no current or future tax, levy, or duty.
96. Regarding the nonmonetary reparations, the State reported that as stipulated by Decree 19/2004, the friendly settlement agreement was published in two national daily newspapers (*Clarín* and *Ámbito Financiero*) and four local papers (*Norte*, *El Diario*, *Primera Línea*, and *La Voz del Chaco*). Regarding the commitment to continuing to pursue legislative and administrative measures for the better protection of human rights, the State spoke of the creation, on May 16, 2006, of the Special Criminal Prosecutor's Office for Human Rights (Law 5702), which is currently operational. Finally, the State again notes that in this case, it reopened the criminal trial and administrative summary proceedings pursued against Principal Police Commissioner Juan Carlos Escobar, Deputy Police Commissioner Adolfo Eduardo Valdez, and First Sergeant Julio Ramón Obregon, in order to identify the corresponding responsibilities, and it also states that the case files are at the evidentiary phase.
97. On November 23, 2010, the Commission requested updated information from the parties as to the status of compliance with the pending recommendations.

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

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

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

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

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

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

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

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

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

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

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

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

110. With respect to the commitments acquired by the State, the Commission has already identified the aspects of the friendly settlement agreement dealing with the monetary compensation and with the publication of the agreement as having been met. The Commission values the efforts of the State and celebrates the advances that have been made during 2011. However, based on the information received, the Commission believes that the aspects relating to the duty of investigating and punishing those responsible for violating the human rights violations of Juan Ángel Greco, together with those relating to the affording the victim's next-of-kin access to the judicial and administrative investigations, still remain pending.

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

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

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

persecution to which María Teresa Schnack has been subjected since the death of her son, Sergio Schiavini, for giving impetus to the investigation.

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

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

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

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

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

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

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

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

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

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

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

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

h) Development of draft reforms setting forth the procedures for processing and responding to petitions under study by the Commission and before the Inter-American Court of Human Rights,

that include the establishment of a specific entity with jurisdiction in the decision-making process—including the institution of “friendly settlement”—and a mechanism to ensure compliance with the recommendations and/or judgments of the Commission and/or the Inter-American Court of Human Rights.

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

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

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

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

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

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

119. On October 25, 2011, the Commission requested updated information from the parties regarding the state of compliance with the friendly settlement agreement. Regarding the non-pecuniary measures, particularly the legislative reforms, the State updated information on three issues: the execution of autopsies, remedies and citizen security. In regards to point 3.a) of the agreement, it indicates that it is obligatory to conduct autopsies for all cases involving suspicious and violent death, as set forth “ *in the Criminal Procedure Code of the Province of Buenos Aires (Código Procesal Penal de la Provincia de Buenos Aires, CPPBA) and the National Procedure Code (Código de Procedimientos de la Nación, CPPN) provide the required obligation to execute autopsies in such cases*”. Likewise, the State of Argentina stated that such codes also provide room for objection based on the same grounds

applicable to judges, which could be used in considering it necessary to question the appointment of an expert because of his or her alleged partiality. Regarding point 3.b) of the agreement, it emphasized that in accordance with the existing legislation, family members could participate and control the production of evidence based on the procedural concept of the individual victim, which allows the family to propose the participation of an expert. Finally, concerning point 3.c) of the agreement on the rules that regulate the activities of the forensic medical team, the State stressed that the Supreme Court of Argentina (Corte Suprema de Justicia Nacional) adopted measures in accordance to Agreements 16/08, 47/09 and 22/10. (...). In this framework, by fulfillment of Agreement 47/09, the State issued general rules of procedure that control the general aspects of the activities related to the Medical Staff.

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

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

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

123. Based on the available information, the Commission concludes that there are non-pecuniary reparation measures that are pending completion.

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

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

125. On October 30, 2008, by means of Report No. 81/08, the Commission approved the friendly settlement agreement signed by the parties in Case 12.298, Fernando Horacio Giovanelli. To summarize, the petitioners had lodged claims alleging the State's responsibility for the death of Fernando Horacio Giovanelli, who at around 9:45 p.m. on October 17, 1991, in the close vicinity of his home, was approached by officers of the Buenos Aires Provincial Police who asked him for his ID, detained him, and took him in an unmarked vehicle to the Third Police Station in Quilmes. The petitioners claimed that at that police facility, the alleged victim was brutally beaten and then taken to the 14 de Agosto Bridge in Quilmes district, a few meters from the police station, where he was thrown onto the footpath and killed by one of the police officers who shot him in the head (with the bullet entering through his left earlobe). They also claimed that the victim's body was later taken to Villa Los Eucaliptos, a shanty town that is under the jurisdiction of that police station, where it was dumped approximately two and a half hours after his death. The petitioners maintained that the version of events contained in the police report, which was used as the basis for the criminal proceedings, was plagued with inconsistencies; that the police investigation was deliberately geared toward covering up the truth of the killing; and that the different judges that heard the case merely produced evidence that was largely irrelevant for clarifying the facts of Mr. Giovanelli's death and failed to address the confusing, suspicious, and contradictory evidence in the proceedings.

126. By means of a friendly settlement agreement signed on August 23, 2007, the government of the Argentine Republic expressed its willingness to assume objective international responsibility as a

state party to the Convention and asked the Commission to accept its acknowledgment of the alleged violations as set out in the petition.

127. Under that agreement, the State agreed to:

a. Economic reparation

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

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

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

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

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

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

b. Measures of non-monetary reparation

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

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

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

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

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

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

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

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

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

131. On November 22, 2010, the Commission requested updated information on the status of compliance with the recommendations. On December 16, 2010, the petitioner sent a record of the note she sent on January 13 of that year to the Foreign Ministry, notifying it of the identity of Horacio José Giovanelli’s legal heirs for purposes of payment of the arbitral award. For its part, in a note dated January 12, 2010, the State reported that subsequent to the IACHR’s approval of the arbitral award ordered by the

Ad Hoc Tribunal for Fixing Pecuniary Damages in the instant case, it instituted the administrative measures aimed at making payment of the amount ordered by the Tribunal.

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

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

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

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

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

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

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

III. Measures to be adopted

a. Pecuniary damages

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

b. Non-pecuniary damages

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

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

a. Case 5-231148-2, entitled “Perpetration of Crime and Resisting Authority, along with Assault with Weapons, Homicide, and Discovery of Vehicle. Victim: Santillán, Gabriel Egisto,” before the Second Transitional Court of the Court of First Instance for Criminal and Correctional Matters of the Morón Judicial District, Buenos Aires Province.

b. Cases 3001-2014/99, entitled “Ministry of Justice. Santillán, Gabriel Egisto. Case report No. 23.148/91,” and 3001-465/05, entitled “Executive Power of Buenos Aires Province – Sub-Secretariat of Justice Remits Case 12.159—Santillán, Gabriel Egisto,” both before the Supreme Court of Justice of Buenos Aires Province.

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

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

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

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

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

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

IACHR reasonably at US\$3,800.00 (three thousand, eight hundred U.S. dollars), granting US\$1,900 to COFAVI and US\$1,900 to Mariana Bordones. In addition, it allocated US\$2,000 for expenses with the IACHR, granting US\$500 to COFAVI and US\$1,500 to Mariana Bordones, plus US\$2,000 granted to the latter for fees related to the proceeding before the Arbitration Tribunal.

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

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

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

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

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

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

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

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

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

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

151. On October 26, 2011 the IACHR asked the parties for updated information regarding the status of compliance with its recommendations.

152. With respect to the first recommendation, the Commission has no information beyond that provided by the petitioners in December 2010, according to which they had lost contact with Mr. Schillizzi since 2006. In this regard, the IACHR repeats its appeal to both parties to do their best to locate Mr. Horacio Aníbal Schillizzi Moreno and comply with that recommendation. At the same time and considering the information provided by the State, the Commission concludes that the second recommendation has been implemented.

153. Based on the above, the Commission concludes that the Argentine State has partially complied with the recommendations made in Report No. 83/09. Accordingly, the Commission will continue to monitor the pending item.

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

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

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

1. Recognition of international responsibility

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

2. Non-monetary reparation measures

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

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

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

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

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

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

c) Publication of the friendly settlement agreement

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

156. On November 10, 2010 the IACHR asked the parties for updated information on the status of compliance with the friendly settlement agreement. In a communication dated December 21, 2010 the petitioners reported that Law 26.394, approved on August 6, 2008, repealed the Code of Military Criminal Justice and all related internal regulatory rules, resolutions, and provisions. That same

law created a new system of military justice respectful of due process and Argentina's Penal Code and Criminal Procedure Code were amended. The petitioners also reported that the only item pending compliance was point II.2.c of the friendly settlement agreement relating to publication of the content of the agreement.

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

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

159. Based on the above, the Commission concludes that the friendly settlement agreement is partially implemented. As a result, the Commission will continue to monitor the items pending compliance.

Case 11.796, Report No. 16/10, Mario Humberto Gómez Yárdez (Argentina)

160. In Report No.16/10 dated March 16, 2010, the Commission approved the friendly settlement agreement signed by the parties in Case 11.796, Mario Humberto Gómez Yárdez. In summary, the petitioning party indicated that the alleged victim endured arbitrary detention and torture inflicted by police officers in the course of an investigation regarding aggravated robbery, aggravated rape, and attempted homicide in 1990. They also asserted that the Argentine State was responsible for the various violations of the alleged victim's right to a fair trial and due process during the proceeding conducted against him by the Mendoza provincial judiciary in 1990. The petitioners added that the competent authorities had allowed a good deal of time to elapse after the commission of the crime without handing down any decision, so that the statute of limitations ran out, to the benefit of the accused police officers.

161. On December 5, 2006, the State of Argentina and the petitioning party signed a friendly settlement agreement. The main points of the agreement are as follows:

The petitioner and the Government of the Province of Mendoza agree to sign a friendly settlement agreement containing the State's acknowledgement of its responsibility in this matter and the establishment of an Ad Hoc Arbitration Tribunal to determine reparations, measures of non-repetition, and compensation.

The petitioner and the Government of the Province of Mendoza agree to convey the aforesaid Agreement to the Ministry of Foreign Affairs, International Trade, and Worship, within a period of no more than five business days, with the composition and regulations of the Arbitration Tribunal, for it to be forwarded to the Inter-American Commission on Human Rights for its approval.

The Government of the Province of Mendoza reserves the right to refer the Agreement as approved by the Inter-American Commission on Human Rights to the Provincial Legislature for its assent.

162. On May 24, 2007, the provincial government of Mendoza published Decree 1107, ratified by Law No. 7.710 of May 30, 2007, which contained the friendly settlement agreement between the parties, establishing as follows:

Article 1: Approve the resolutions of the Advisory Commission appointed under the Deed in pursuit of friendly settlement in case No. 11796 of the Inter-American Commission on Human Rights, titled "Mario Gómez Yardez v. Argentina," comprising Drs. Susana Albanese, Aida Kemelmajer de Carlucci, and José L. Sabatini, appearing on pp. 36/42 of case file No. 932-S-2007-00100 from the Interior Ministry, titled Under Secretariat for Justice, REF/Case No. 11796, "YARDEZ MARIO GOMEZ," and of which a certified copy is attached to this decree as an integral part thereof.

Article 2: Authorize the payment of a total amount of ONE HUNDRED AND TEN THOUSAND PESOS (\$110,000), comprising:

- a) Compensation in the amount of SEVENTY THOUSAND PESOS (\$70,000), on behalf of the children Natalia Carolina Gómez Álvarez and Tamara Andrea Fernández, in their capacity as sole and universal heirs of Mr. Mario Gómez Yardez, of 50% (fifty percent) for each one. Said amount shall be deposited at the order of the corresponding Family Judge;
- b) The amount of TEN THOUSAND PESOS (\$10,000), to cover the costs arising from the domestic and international proceedings;
- c) The amount of THIRTY THOUSAND PESOS (\$30,000) to cover the professional fees of the attorneys Carlos Varela Álvarez and Diego Jorge Lavado;

Article 3: Request the National State, that in compliance with the express mandate set out in Articles 99.11 and 126 of the National Constitution and according to the provisions of Article 28 of the American Convention on Human Rights, to convey this Agreement to the Inter-American Commission on Human Rights for the purposes of its approval by the report established in Article 49 of the aforesaid Convention.

Article 4: Determine that the payment of the sums of money indicated in Article 2 of this decree shall be made, once the assent of the Legislature has been obtained, by the issuance of the corresponding administrative deed in compliance with applicable law.

Article 5: This decree is issued ad referendum of the Legislature.

Article 6: For communication, publication, entry into the Official Register, and archive.

163. In a note received on January 7, 2011, the State reported on the payment made for compensation, costs, and fees, totaling ONE HUNDRED TEN THOUSAND PESOS (\$110,000), in compliance with the friendly settlement agreement. The State submitted payment vouchers prepared by the Office of the General Comptroller of Mendoza Province in December 2010.

164. On November 3, 2011 the IACHR asked the parties for updated information on the status of compliance with the friendly settlement agreement.

165. Based on the information provided by the State, the Commission concluded that the friendly settlement agreement has been implemented.

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

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

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

III. Measures to be adopted

A. Measures of non-pecuniary reparation

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

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

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

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

B. Measures of pecuniary reparation

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

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

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

II. Conclusions

In consideration of the accession stated above, the petitioners and the Government of the Province of Río Negro agree to forward this additional protocol to the Ministry of Foreign Affairs, International Commerce, and Worship, for the purposes of having it attached, as an integral part thereof, to the friendly settlement agreement signed on November 19, 2007, requesting, consequently, its ratification in the international jurisdiction and that it be submitted to the Inter-American Commission on Human Rights for the purposes set forth in Article 49 of the American Convention on Human Rights. In that

sense, it is noted for the record that it must first be forwarded to the Argentine Foreign Ministry; this agreement shall be approved in keeping with the corresponding legal provisions by the Province of Río Negro.

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

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

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

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

173. The information previously submitted by the parties indicates that the measures of pecuniary reparation agreed to by the parties in the friendly settlement agreement were pending compliance. As of now, the IACHR has not received information regarding the results achieved by the "Commission to Follow-up the Double Crime of Río Colorado," nor the results of the competition for the position of Overseer for the city of Río Colorado. Regarding the measures of pecuniary reparation, the Commission notes that the State has fulfilled the commitment assumed under the agreement.

174. Based on the information provided by the State, the Commission concludes that the friendly settlement agreement has been partially implemented.

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

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

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

1. Recognition of facts. Adoption of measures

The Government of the Argentine Republic recognizes the facts presented in Petition 242/03 of the registry of the Inter-American Commission on Human Rights. In this regard, and without prejudice to the legal debate that emerges regarding the collision of legally protected assets presented by the case and the decision adopted by the Supreme Court of Justice of the Nation, the State agrees with the petitioner on the need to adopt suitable measures that could effectively contribute to obtaining justice in those cases in which it is necessary to identify persons using scientific methods that require that samples be obtained.

2. Non-monetary reparation measures.

2.1. On the right to identity

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

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

2.2. On the right of access to justice

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

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

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

2.3. On the training of judicial actors

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

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

2.4. Regarding the task force

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

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

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

2.5. On publicity

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

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

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

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

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

181. The Commission emphasizes the achievements made in compliance with the friendly settlement agreement and urges the parties to submit information regarding items pending compliance, particularly matters relating to the training of judicial employees in the appropriate treatment of victims.

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

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

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

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

III. Measures to be adopted

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

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

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

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

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

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

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

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

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

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

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

- Grant Messrs. Edwards, Hall, Schroeter and Bowleg, an effective remedy which includes commutation of sentence and compensation;
- Adopt such legislative or other measures as may be necessary to ensure that the death penalty is imposed in compliance with the rights and freedoms guaranteed under the American Declaration.
- Adopt such legislative or other measures as may be necessary to ensure that the right to petition for amnesty, pardon or commutation of sentence is given effect in The Bahamas.
- Adopt such legislative or other measures as may be necessary to ensure that the right to an impartial hearing and the right to judicial protection are given effect in The Bahamas in relation to recourse to Constitutional Motions.
- Adopt such legislative or other measures as may be necessary to ensure that the right to be tried without undue delay is given effect in The Bahamas.
- Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment and the right not to receive cruel, infamous, or unusual punishment are given effect in The Bahamas.

192. On October 25, 2011, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The Inter-American Commission has not received any response to those communications from the parties within the established time period.

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

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

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

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

195. On October 25, 2011, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The Inter-

American Commission has not received any response to these communications from the parties within the established time period.

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

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

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

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

198. On October 25, 2011, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The Inter-American Commission has not received a response to these recommendations from the parties within the established time period.

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

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

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

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

1. Adopt in its domestic law, and through fully reported consultations with the Maya people, the legislative, administrative, and any other measures necessary to delimit, demarcate and title or otherwise clarify and protect the territory in which the Maya people have a communal property right, in accordance with their customary land use practices, and without detriment to other indigenous communities.

2. Carry out the measures to delimit, demarcate and title or otherwise clarify and protect the corresponding lands of the Maya people without detriment to other indigenous communities and, until those measures have been carried out, abstain from any acts that might lead the agents of the State itself, or third parties acting with its acquiescence or its tolerance, to affect the existence, value, use or enjoyment of the property located in the geographic area occupied and used by the Maya people.

3. Repair the environmental damage resulting from the logging concessions granted by the State in respect of the territory traditionally occupied and used by the Maya people.

202. On February 1, 2006, the Commission wrote to both the State and the Petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report No. 40/04. The Petitioners responded to the Commission by letter of March 01, 2006, stating that the State of Belize had so far failed to comply with the Commission's recommendations. The Petitioners also requested the Commission to grant precautionary measures aimed at enforcing compliance of the recommendations. In July 2006, the Commission considered the Petitioners' request and declined to grant precautionary measures.

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

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

205. The report goes on to mention attempts by the Government of Belize at "delimiting, demarcating, titling or otherwise protecting Mayan communal property rights based on customary use and practices", including meetings held on December 2007 and January 2008, but clarifies that "the attempts failed". According to the State, such failure could be attributed to a lack of information by the affected Community, the intervention by Maya organizations and the disagreement regarding common boundaries. Further, it mentions that after the general elections and the change of government, the parties in this case met on April 10th 2008 and agreed to develop a framework for the implementation of the Cal judgment. Among the interim measures adopted by the Government of Belize, a blanket cease-and-desist order was issued by the Attorney General on March 27, 2008 with respect to land in the Toledo District. Shortly after the measure was reconsidered because it had the effect of a shut-down on

land-related activities in the Toledo District, the timber industry was completely halted with serious economic implications, and the laborers --most of whom belong to the Maya communities of the Toledo District-- suddenly found themselves out of their jobs. The order was modified to apply only to lands in the villages of Santa Cruz and Conejo, and according to the State of Belize the parties continued communication despite not reaching a consensus.

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

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

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

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

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

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

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

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

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

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

216. In their December 2010 document, the petitioners hold that the State of Belize “remains unwilling to acknowledge the rights of the Maya people to their lands, despite the findings of numerous international human rights institutions and its own Supreme Court”. They mention that the Supreme Court issued a decision on June 28, 2010 which favors the Maya villages of Toledo “in a constitutional

action to enjoin all government dealings in Maya lands until a mechanism for demarcating and titling those lands exists”, but that the State appealed the judgment. The petitioners further indicate that the appeal is scheduled to be heard in February or March of 2011.

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

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

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

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

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

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

222. On October 25, 2011, the IACHR asked both parties for information on compliance with the above-mentioned recommendations, pursuant to Article 48(1) of its Rules of Procedure. The State did not respond by the deadline but the petitioners submitted a communication on November 22, 2011 submitting the information requested by the Inter-American Commission.

223. Regarding the first recommendation, the petitioners indicated that since their previous report of 2010 the Court of Appeals held hearings on an appeal during March and June of 2011 and the parties are awaiting a decision. With respect to the legislative measures, they explained that in July 2011 the Toledo Alcaldes Association (TAA) had submitted a draft law for consideration by the government and added that so far this aspect of the process seemed quite promising to them. In this regard, they indicated that the questions from the National Council for Supervision of Local Governments (NLGM) had been constructive and there was no resistance to including reference to traditional Mayan title and resource rights within the scope of authority of the alcaldes. In the petitioners' opinion, if the alcaldes contribution regarding the central topics were accepted, the draft law would represent a great step toward formal recognition of traditional Mayan rights, including the right to territory.

224. In addition, the petitioners reported that the government of Belize has not formally demarcated or titled the lands of the Mayan villages, nor has it created any mechanism for doing so in accordance with the IACHR recommendation. Moreover, they explained that the national policy initiative of the local government also includes the preparation of a draft law on the demarcation of villages. However, they make it clear that the alcaldes have not yet received any such draft law, which would be applied to all of Belize's villages, not just the Maya. Since in most cases the limits of the Mayan villages are identical to those of the traditional titles, this draft law could result in the official demarcation of the Mayan lands, but again without recognizing the traditional titles. With respect to the consultation recommended by the IACHR, the petitioners emphasize that this has not occurred and they assume this is because the process has been suspended while awaiting the result of the aforementioned litigation.

225. Regarding the second recommendation, the petitioners indicate that the State has not yet taken any action to delimit, demarcate, or title Mayan lands. They emphasize that the language used in the judicial orders from the courts of Belize to prevent any assignment of land is identical to the language used in the related recommendation from the IACHR, which they see as "significant formal compliance" even though the government is not fully complying with the judicial orders. In effect, they maintain that the number of licenses granted and the exploitation of Mayan lands has fallen, but that the government continues to take actions affecting the rights of the Mayan people, including subdividing Mayan village lands for individuals and granting licenses to exploit timber, petroleum, and hydroelectric resources on traditional lands. In addition, the petitioners indicate that construction and paving work is proceeding on the Jalacte highway that will connect Belize to Guatemala and will pass through various Mayan villages, including Santa Cruz. They emphasize in particular that the inhabitants of this last village were never consulted about construction of the highway, despite the injunctions issued by the courts in 2007 and 2010. In addition, they were not notified of any expropriation and did not receive any compensation.

226. With respect to the third recommendation, the petitioners indicate that large scale illegal logging on Mayan lands has restarted, at the instigation of governmental authorities themselves, and that the State has never taken any affirmative action to repair the damage caused by logging and removing other resources on those lands.

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

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

228. On October 27, 2005, by Report No. 97/05, the Commission approved a friendly settlement agreement in the case of Alfredo Díaz Bustos. In summary, the petitioner alleged that Mr.

Alfredo Díaz Bustos was a Jehovah's Witness in respect of whom the State violated the right to conscientious objection to military service, directly affecting the right to freedom of conscience and religion. In addition, the petition indicated that Mr. Díaz Bustos suffered discrimination based on his status as a Jehovah's Witness given that the very Law on National Defense Service of Bolivia established inequality between Catholics and those who follow other religions, such that exemption from military service was possible for Catholics, but not for others. The petitioner also alleged that the Bolivian State had violated the right to judicial protection of the alleged victim since, by final judgment of the Constitutional Court, it was established that the matters concerning the right to conscientious objection to compulsory military service cannot be submitted to any judicial organ.

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

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

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

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

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

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

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

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

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

237. During 2011, the IACHR received information from the parties on the status of compliance with points (d) and (d), which are pending compliance with respect to Report No. 97/05. In this regard, the State reported in communications dated February 18, April 12, and May 20, 2011 that the draft Military Service Law submitted by the Executive Branch on January 16, 2008 has already been approved by the Chamber of Deputies and is pending debate in the Senate Chamber of the Plurinational Legislative Assembly. The State also reported that the Ministry of Defense, through Ministerial Resolution No. 1062 of December 28, 2010, ordered that the Reserve Officer Passbook be granted to personnel providing Outreach and Social Integration Service in the context of Paid Military Service. This represents significant progress in modernization of the armed forces in that it gives young people the opportunity to serve their country according to their aptitudes and academic training and with respect for their professed beliefs. As a result, the State indicated that it has complied with the commitments assumed under Report No. 97/05.

238. In a communication dated June 6, 2011, the petitioner reported that the proposed Law on Compulsory Military Service, Law No.17/08 of January 16, 2008, does not specifically include conscientious objector status. For this reason, the petitioner approached the Ministry of Defense and the Chamber of Deputies but received no commitment in this regard. He stated that the proposed law is not moving through the legislative process and thus there is fear that it will be approved hastily without allowing any opportunity for observations from the Ombudsman's Office. In addition, the petitioner reported that as a result of approval of the text of the Constitution, in 2009 the Ministry of Defense developed a series of preliminary drafts, including one referring to the Security and Integrated Defense of the Plurinational State, which omits conscientious objector status in Article 61 prescribing Compulsory Military Service. Consequently, the petitioner feels that to date the Bolivian State has not complied with commitments (d) and (e) of Friendly Settlement Report No. 97/05.

239. The Commission appreciates the measures the State has adopted to comply with the commitments made in the Friendly Settlement Agreement. At the same time, it notes that some measures are still pending compliance. On this basis, the Commission concludes that there is partial compliance with the friendly settlement agreement. Consequently, the Commission will continue to monitor the pending items. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has been implemented in part. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

240. In Report No. 54/01 of April 16, 2001, the Commission concluded that (a) the Federative Republic of Brazil was responsible for violating the rights to judicial guarantees and judicial protection, guaranteed by Articles 8 and 25 of the American Convention, in keeping with the general obligation to

respect and ensure the rights provided for in Article 1(1) of that instrument, due to the unwarranted delay and negligent processing of this case of domestic violence in Brazil; (b) the State had taken some measures aimed at reducing the scope of domestic violence and state tolerance of it, although those measures have not succeeded in significantly reducing the pattern of state tolerance, in particular in the wake of the ineffectiveness of police and judicial action in Brazil, with respect to violence against women; and (c) the State had violated the rights and failed to carry out its duties as per Article 7 of the Convention of Belém do Pará to the detriment of Ms. Fernandes; and in connection with Articles 8 and 25 of the American Convention and in relation to its Article 1(1) for its own omissions and tolerance for the violence inflicted.

241. The IACHR made the following recommendations to the Brazilian State:²²:

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

242. Within the framework of its 143rd session, the IACHR conducted a thematic hearing requested by the petitioners in this case regarding “obstacles to the effective implementation of the Maria da Penha Law,” in which various aspects relating to recommendation No. 4 above were discussed. In addition, in a note received on November 23, 2011, the State informed the Commission that the report submitted during the above-mentioned hearing referred to recommendations. 2 and 4 above, and should be used as the basis for the IACHR’s examination of compliance with those recommendations. For their

²² The IACHR notes that it had previously considered recommendations Nos. 1 and 3 to have been fully discharged, in its Annual Report of 2008 (IACHR. *Annual Report 2008*. Chapter III.D, paras. 101 and 103).

part, during that hearing the petitioners referred to various obstacles existing in Brazil to effective implementation of the Maria da Penha Law. They also submitted the respective information in writing on December 2, 2011.

243. With respect to recommendation No. 2 *supra*, both the State and the petitioners reiterate that the Secretariat for Human Rights of the Office of the President brought the matter to the attention of the National Council of Justice (hereinafter the “CNJ”), which found no irregularities inasmuch as the prisoner was convicted and was serving the sentence he was given. In addition, both parties state that the victim, Maria da Penha Maia Fernandes, submitted a new petition seeking reinvestigation of responsibility due to unwarranted delay in the proceeding against her assailant and that that proceeding (No. 0005296-18.2009.2.00.0000)²³ has been pending since September 25, 2009

244. With respect to recommendation No. 4 *supra*, particularly with respect to the effective implementation of the Maria da Penha Law, the State reports that the “National Pact to Curb Violence against Women” and the “National Policy to Curb Violence against Women” have been expanded and consolidated through numerous actions. Those actions include: expansion of the “Women’s Call Center - Call 180,” which has recorded more than two million calls; expansion of the specialized women’s care network, which since 2007 has received R\$73,873,679.34 for construction/rehabilitation/equipment for 540 specialized services/facilities, R\$8.5 million of which were intended for specialized services in the state of Ceará. The State also emphasizes that it created 46 courts specializing in domestic violence in 22 states of the federation, 26 specialized defender’s offices, and 16 gender prosecutor’s offices in the Office of the Attorney General and that the precincts specializing in women’s care received R\$2,062,432.40. For their part, the petitioners reiterated that there are still significant practical and institutional obstacles to the effective implementation of the Maria da Penha Law throughout the country.

245. According to the State, the Ministry of Health issued Decree No. 104 of January 25, 2011, establishing mandatory reporting of cases of domestic and sexual violence against women. The State notes the following specialized services throughout the country: 359 specialized precincts, 111 women’s care centers, 187 referral centers, 72 shelters, 57 specialized defender’s offices, 48 special prosecutor’s offices, and 42 domestic and family violence courts. In this regard, the petitioners note as an example that the number of specialized precincts has declined since 2007, when there were 397. They also note that there are deficiencies in the creation and coordination of the women’s care network. The petitioners also note the lack of precise information regarding inclusion in the State’s teaching plans for curriculum units on understanding the importance of respect for women and their rights as recognized in the Convention of Belém do Pará. According to the petitioners, this measure is essential for overcoming cultural problems in society in terms of violence against women.

246. Based on the above, the State feels that it has made gradual progress in adopting public policies to address violence against women. The State also recognizes that, despite this progress, it has encountered limits and obstacles in implementing the Maria da Penha Law. For example, women’s policy makers should be given greater power to negotiate along with appropriate budgetary allocation; the culture of machismo and patriarchy in society must be combatted; there are challenges in implementing the technical standardization of the specialized precincts for women’s care; and there are no reliable data on violence against women, given that the national data and statistics system on violence against women provided in the Maria da Penha Law has not been implemented yet. Along the same lines, the petitioners also observe that the implementation of the Maria da Penha Law has been insufficient to address the phenomenon of domestic violence against women in Brazil. The petitioners identified in particular the failure to raise awareness in the Judicial Branch and among judicial authorities in general as a significant obstacle impeding the implementation of that law. In this regard, both parties have referred to judicial challenges that have been filed regarding the constitutionality of specific aspects of the law, which are pending decisions from the Federal Supreme Court.

²³ En su comunicación, los peticionarios han identificado el proceso pendiente con el No. 20091000052964.

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

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

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

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

1. That it carry out a serious, impartial, and effective investigation into the facts and circumstances of the deaths of Aluísio Cavalcanti, Clarival Xavier Coutrim, Delton Gomes da Mota, Marcos de Assis Ruben, and Wanderlei Galati, and of the assaults on and attempted homicides of Cláudio Aparecido de Moraes, Celso Bonfim de Lima, Marcos Almeida Ferreira, and Carlos Eduardo Gomes Ribeiro, and that it duly prosecute and punish the persons responsible.
2. That such investigation include the possible omissions, negligence, and obstructions of justice that may have resulted from the failure to convict the persons responsible in a final judgment, including the possible negligence and mistakes of the Public Prosecutor's Office and of the members of the judiciary who may have decided to waive or reduce the corresponding sentences.
3. That the necessary measures are taken to conclude, as soon as possible and in the most absolute legality, the judicial and administrative proceedings regarding the persons involved in the above-noted violations.
4. That the Brazilian State makes reparation for the consequences of the violations of the rights of the victims and their families or those who hold the right for the harm suffered, described in this report.
5. That the necessary measures be taken to abolish the jurisdiction of the military justice system over criminal offenses committed by police against civilians, as proposed by the original bill, introduced in due course, to repeal Article 9(f) of the Military Criminal Code, and to approve, to take its place, the single paragraph proposed in that bill 27.
6. That the Brazilian State takes measures to establish a system of external and internal supervision of the military police of São Paulo that is independent, impartial, and effective.

250. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Therefore, the Commission repeats its conclusion from 2010, to the effect that the State has partially carried out the recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

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

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

1. Conduct a serious, effective, and impartial investigation through the ordinary justice system to determine and punish those responsible for the death of Diniz Bento da Silva, punish those responsible for the irregularities in the investigation by the military police, as well as those responsible for the unjustifiable delay in conducting the civil investigation, in accordance with Brazilian law.
2. Take the necessary steps to ensure that the victim's family receives adequate compensation for the violations established herein.
3. Take steps to prevent a repetition of such events and, in particular, to prevent confrontations with rural workers over land disputes, and to negotiate the peaceful settlement of these disputes.

253. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Therefore, the Commission repeats its conclusion from 2010, to the effect that the State has partially carried out the recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

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

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

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

256. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Therefore, the Commission repeats its conclusion from 2010, to the effect that the State has partially carried out the recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

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

258. Pursuant to that agreement, the State undertook to:²⁴

1. Publicly recognize its responsibility by the solemn act of creating the National Commission for the Eradication of Slave Labor – CONATRAE (created by Presidential Decree of July 31, 2003), which will take place on September 18, 2003.
2. Keep under reserve the identity of the victim at the moment of the solemn act recognizing State responsibility and in public declarations about the case.
3. Continue with the efforts to carry out the judicial arrest warrants against the persons accused of the crimes committed against José Pereira. To this end, the friendly settlement agreement will be forwarded to the Director-General of the Department of the Federal Police.
4. Compensate José Pereira for material and moral damages suffered.
5. Implement the actions and proposals for legislative changes contained in the National Plan for the Eradication of Slave Labor, drawn up by the Special Commission of the Council for the Defense of Human Rights, and initiated by the Government of Brazil on March 11, 2003, in order to improve the National Legislation aimed at prohibiting the practice of slave labor in Brazil.
6. Make every effort to secure the legislative approval (i) of Proposed Law No. 2130-A, of 1996, which includes among the violations of the economic order the use of “unlawful means of reducing production costs such as the non-payment of labor and social taxes, exploitation of child, slave, or semi-slave labor”; and (ii) the version presented by the Deputy Zulaiê Cobra to take the place of the proposed law No. 5,693 of Deputy Nelson Pellegrino, which amends Article 149 of the Brazilian Criminal Code.
7. Defend the establishment of federal jurisdiction over the crime of reduction to conditions analogous to slavery, for the purpose of preventing impunity.
8. Strengthen the Public Ministry of Labor; ensure immediate compliance with the existing legislation, by collecting administrative and judicial fines, investigating and pressing charges against the perpetrators of the practice of slave labor; strengthen the Mobile Group of the MTE; take steps along with the Judiciary and its representative entities to guarantee that the perpetrators of the crimes of slave labor are punished.
9. Revoke, by the end of the year, by means of the appropriate administrative acts, the Cooperation Agreement signed between the owners of estates and authorities of the Ministry of Labor and Public Ministry of Labor, signed in February 2001, and which was denounced in this proceeding on February 28, 2001.
10. Strengthen gradually the Division of Repression of Slave Labor and Security of Dignitaries (STESD), established under the Department of the Federal Police by means of Administrative ruling (*Portaria*)-MJ No. 1,016, of September 4, 2002, so as to give the Division adequate funds and human resources for the proper performance of the functions of the Federal Police in the actions to investigate reports of slave labor.
11. Take initiatives *vis-à-vis* the Federal Public Ministry to highlight the importance of Federal Prosecutors according priority to participating in and accompanying the actions to perform inspections for slave labor.

²⁴ Regarding points 1, 2, and 4 of the referenced friendly settlement agreement, the Commission already considered those obligations to have been fully discharged (IACHR. *Annual Report 2008*. Chapter III.D, para. 137).

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

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

259. With respect to items 1, 2, and 4 *supra* regarding the friendly settlement agreement, the Commission has previously considered that said obligations had been fully discharged.²⁵

260. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Therefore, the Commission repeats its conclusion from 2010, to the effect that the State has partially carried out the recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

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

²⁵ IACHR, Annual Report 2008. Chapter III.D, para. 137.

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

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

263. Neither the State nor the petitioners presented information on compliance with the recommendations set forth above this year. Therefore, the Commission repeats its conclusion from 2010, to the effect that the State has partially carried out the recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

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

265. The Commission made the following recommendations to the State:²⁶

1. That it make full reparations, in consideration of both moral and material damages, to the next-of-kin of Jailton Neri da Fonseca, for the human rights violations determined in this report, and, more specifically, that it do the following:
2. Ensure a full, impartial, and effective investigation into the crime conducted by nonmilitary organs, with a view to establishing responsibility for the acts related to the detention and murder of Jailton Neri da Fonseca and punishing the responsible parties.
3. Pay the next-of-kin of Jailton Neri da Fonseca compensation computed in accordance with international standards, in an amount sufficient to make up for both the material damages and the moral damages suffered on the occasion of his murder. Such compensation, to be paid by the Brazilian State, should be computed in accordance with international standards, and should be in an amount sufficient to make up for both the material damages and the moral damages suffered by the next-of-kin of Jailton Neri da Fonseca on the occasion of his murder and other violations of his human rights referred to in this report.
4. Amend Article 9 of the Military Criminal Code and Article 82 of the Code of Military Criminal Procedure, in addition to any other domestic legal provisions that need to be amended to abolish the competence of the military police to investigate human rights violations committed by members of the military police, and transfer that competence to the civilian police.

²⁶ Regarding recommendations Nos. 1 and 3, as indicated in the 2009 Annual Report of the IACHR, both parties agreed that there had been compliance (IACHR. *Annual Report 2009*. Chapter III.D, para. 181).

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

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

266. As of the date this annual report is adopted, the State has not submitted information regarding compliance with the above recommendations. The petitioners submitted the respective information on November 28, 2011.

267. Regarding recommendation No. 2 *supra*, the petitioners note that they are unaware of any measure adopted by the State. Regarding the recommendations related to the measures to ensure non-repetition (Nos. 4, 5 and 6 *supra*), the petitioners indicate that the meeting planned for the second half of January 2011 to address the subject of implementing the proposals submitted by the petitioners did not take place.

268. Therefore, the Commission concludes that the State has partially carried out the recommendations. Accordingly, the Commission will continue to monitor the items still pending compliance.

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

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

270. The Commission made the following recommendations to the State of Brazil:²⁷

1. Fully compensate the victim, Simone André Diniz, in both moral and material terms for human rights violations as determined in the report on the merits, and in particular,
2. Publicly acknowledge international responsibility for violating the human rights of Simone André Diniz;
3. Grant financial assistance to the victim so that she can begin or complete higher education;
4. Establish a monetary value to be paid to the victim as compensation for moral damages;
5. Make the legislative and administrative changes needed so that the anti-racism law is effective, in order to remedy the limitations indicated in paragraphs 78 and 94 of this report;
6. Conduct a complete, impartial and effective investigation of the facts, in order to establish and sanction responsibility with respect to the events associated with the racial discrimination experienced by Simone André Diniz;

²⁷ With regards to recommendations 1, 2 and 4, as indicated in the IACHR annual report of 2009, both parties coincided that they had been complied with (IACHR, Annual Report 2009, Capítulo III.D, para. 187). This year the petitioners specified that the consider recommendation 12 fully complied with.

7. Adopt and implement measures to educate court and police officials to avoid actions that involve discrimination in investigations, proceedings or in civil or criminal conviction for complaints of racial discrimination and racism;

8. Support a meeting with organizations representing the Brazilian press, with the participation of the petitioners, in order to draw up an agreement on avoiding the publicizing of complaints of racism, all in accordance with the Declaration of Principles on Freedom of Expression;

9. Organize government seminars with representatives of the judicial branch, the Public Ministry and local Public Safety Secretariats in order to strengthen protection against racial discrimination or racism;

10. Ask state governments to create offices specializing in the investigation of crimes of racism and racial discrimination;

11. Ask Public Ministries at the state level to create Public Prosecutor's Offices at the state level specializing in combating racism and racial discrimination;

12. Promote awareness campaigns against racial discrimination and racism.

271. The State has not submitted information regarding compliance with the above-mentioned recommendations from the IACHR to date. The petitioners submitted the related information on November 30, 2011.

272. Regarding recommendations Nos. 3, 6, 7, 8, 9, 10, and 11 *supra*, the petitioners state that they are pending compliance by the State. In addition, regarding recommendation No. 5 *supra*, the petitioners indicate that the State made certain legislative changes, such as Law 12.033/2009 establishing that criminal action for the crime of racial injury is public contingent upon the offended party's representation. In addition, the petitioners took note of promulgation of the "Racial Equality Statute" (Law 12.288/2010), which they consider an important tool against racial discrimination, although they stress that many of its provisions depend on additional regulations and that the law did not consider important demands of the black movement.

273. Therefore, the Commission reiterates that the recommendations have been partially implemented. In consequence, the Commission will continue to monitor the pending items.

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

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

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

1. That it adopt the necessary measures to give legal effect to the obligation to effectively investigate and punish those who unlawfully detained and tortured Antonio Ferreira Braga; in this regard, the State must ensure due criminal process so as to prevent the statute of limitations from being invoked as grounds for annulling criminal punishment for crimes such as torture, and from any unjustified procedural delays in this regard.

2. That it open an investigation to determine the civil and administrative responsibility for the unreasonable delay in the criminal proceeding regarding the torture inflicted on Antonio Ferreira Braga, especially among those judicial authorities who had knowledge of the file, in order to appropriately punish those who are found to be responsible, with a view to determining whether said judicial authorities acted with negligence.

3. That it make appropriate reparations to Antonio Ferreira Braga for the above-cited violations of his human rights, including the payment of reparations.

4. That it provide training to Civil Police officers to provide them with basic knowledge regarding the fundamental rights enshrined in the American Convention, particularly with respect to proper treatment.

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

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

277. In Report No. 15/09 of March 19, 2009, the IACHR concluded that the Brazilian State breached its obligation to ensue the right to life of Sebastião Camargo Filho, provided for at Article 4 of the American Convention, on not preventing the victim's death, despite being aware of the imminent risk to the workers who had settled on the *Boa Sorte* and *Santo Ângelo* estates, and on failing to duly investigate the facts and punish those responsible. In addition, the IACHR established that the Brazilian State is responsible for violations of judicial guarantees and judicial protection, under Articles 8 and 25 of the American Convention, due to lack of due diligence in the process of investigating and collecting evidence, without which judicial proceedings cannot go forward. Finally, the Inter-American Commission concluded that the State breached the general obligation established at Article 1(1) of the Inter-American Convention.

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

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

279. The State has not submitted information regarding compliance with these IACHR recommendations to date. The petitioners submitted the related information on November 27, 2011.

280. Regarding recommendation No. 1 *supra*, the petitioners indicate that 14 years after the victim's death, the criminal process against four defendants is pending a final decision. They also note that the crime was obviously committed by more than four people and that the others involved are not even being criminally prosecuted. With respect to recommendations Nos. 2, 3, 4 and 5 *supra*, the petitioners note that they are pending compliance. The petitioners note in particular that, according to recent data from the Pastoral Land Commission, the number of murders in rural areas increased by 30% in 2010.

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

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

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

283. As of result of those facts, the Inter-American Commission found violations of the rights to life, humane treatment, judicial guarantees, equality, and judicial protection, enshrined respectively at Articles 4, 5, 8, 24, and 25 of the American Convention. State responsibility for violations of Articles 4, 5, and 24 of the American Convention has been to the detriment of Wallace de Almeida, whereas in relation to the violations of Articles 8 and 25, in conjunction with Article 1(1) of the American Convention, the violations run to the detriment of his next-of-kin. The Inter-American Commission also determines that there were violations of the obligations imposed by the American Convention at its Article 1(1) to respect and ensure the rights enshrined therein; at Article 2, which establishes the duty to adopt provisions of domestic law for the purpose of upholding the rights contained in the American Convention; and at Article 28, regarding the obligation of both the federal State and the state of Rio de Janeiro to implement the provisions of the American Convention.

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

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

285. Neither the State nor the petitioners presented information on compliance with the recommendations of the IACHR. Therefore, the Commission concludes that the recommendations are still pending compliance.

Case 12.308, Report No. 37/10 Manoel Leal de Oliveira (Brazil)

286. In Report No. 37/10 of March 17, 2010, the IACHR concluded that the Brazilian State was responsible for violating, to the detriment of Mr. Manoel Leal de Oliveira and his family members, the rights to life, freedom of thought and expression, due process, and judicial protection, as established in Articles 4, 13, 8 and 25, respectively, of the American Convention, all in connection with the obligation imposed by Article 1.1 of the same instrument.

287. The Inter-American Commission made the following recommendations to the Brazilian State:

1. Recognize its international responsibility for the violations of human rights established in this report by the Inter-American Commission;
2. Conduct a thorough, impartial, and effective investigation into the events, so as to identify and punish all of the material and intellectual authors of the murder of Manoel Leal de Oliveira;
3. Conduct a thorough, impartial, and effective investigation into the irregularities that occurred throughout the police investigation of the homicide of Manoel Leal de Oliveira, including actions to impede the identification of its material and intellectual authors;
4. Make reparations to the family of Manoel Leal de Oliveira for the damages suffered. Such reparation should be calculated in keeping with international parameters, and must be in an amount sufficient to compensate the material and moral damages suffered by the victim's family members;
5. Adopt, on a priority basis, a global policy of protecting the work of journalists and centralize, as a matter of public policy, efforts to combat impunity for the murders, attacks, and threats perpetrated against journalists, through exhaustive and independent investigations of such occurrences and the punishment of their material and intellectual authors.

288. Neither the State nor the petitioners presented information on compliance with the recommendations of the IACHR. Therefore, the Commission concludes that the recommendations are still pending compliance.

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

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

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

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

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

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

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

294. In a note dated December 30, 2010, the State observed that the Special Visiting Judge from the Temuco Appeals Court had presided over case No. 113,958 (Catalán Lincoleo), which is in the preliminary inquiry phase; no one is currently standing trial or has been convicted. At the present time, investigative measures still need to be carried out. The State observed that in this proceeding, the Law No. 19.123 Continuation Program of the Ministry of the Interior is a coadjutor party.

295. Regarding the second recommendation, related to amending its domestic law, the State reported that since 1990, Chile's democratic governments have made great efforts to leave Decree Law

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

296. In its communication of December 30, 2010, the State reiterated this information and reported that the bill was currently in the Senate for the second reading required under the Constitution. It had been sent to the Senate on May 6, 2009. The State said that another bill had reportedly been introduced to establish a new mechanism of review for cases involving human rights violations. That bill was currently in its first reading.

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

298. On October 25, 2011, the Commission asked the parties for updated information on the status of compliance with the recommendations made in Report No. 61/01. In a note dated January 17, 2012, the State responded to the request for information as follows: With respect to the first recommendation, it reiterated the information provided on earlier occasions to the effect that the Temuco Appeals Court was examining case No. 113.958, which is in the preliminary inquiry phase, and said that as of that date some investigative measures still had to be carried out. Regarding the second recommendation, on adapting legislation to the provisions of the Convention, the State did not report any progress in the processing of the bills introduced in 2009. As concerns the bill on interpretation of Article 93 of the Criminal Code, said bill was still in the Senate for the second reading required under the Constitution, and the bill on the new review mechanism for cases involving human rights violations was still in the constitutionally mandated first reading. Finally, as concerns the third recommendation, on reparations to the victim's next-of-kin, it recalled that the IACHR, in its 2010 Annual Report, had deemed that recommendation implemented.

299. This notwithstanding, the IACHR notes with concern that its recommendation to determine who was responsible for the murder of Samuel Alfonso Catalán Lincoleo has not been complied with and that, despite the time elapsed, case No. 113.958 is still in the preliminary inquiry phase and that no one has been charged. Finally, the Commission observes that despite the efforts made to adapt Chile's legislation to the American Convention, an international obligation that the State has not yet met, in 2011 no progress was made in the constitutional procedures for processing the bills that the Executive submitted to Congress beginning in 2009. Since adapting domestic legislation to the American Convention requires the cooperation of all branches of government of the Chilean State, the legislative branch is urged to comply with the IACHR recommendations.

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

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

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

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

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

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

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

- a) Issue a public declaration recognizing the responsibility of the State, through the action of its agents, for the death of Mr. Carmelo Soria Espinoza.
- b) Erect a monument of remembrance to Mr. Carmelo Soria Espinoza in a location designated by his family in Santiago.

c) Pay a single lump sum of one million five hundred thousand United States dollars as compensation to the family of Mr. Carmelo Soria Espinoza.

d) Declare that Mr. Carmelo Soria Espinoza had the status of an international official of the United Nations, assigned to the Economic Commission for Latin America, ECLAC, as a senior staff member, and that he therefore had the status of a senior international staff official.

e) Present before the Courts of Justice of Chile an application to reopen criminal proceedings that were initiated to prosecute those who killed Mr. Carmelo Soria Espinoza.

305. For their part, the petitioners agreed to:

a) Terminate the action before the Inter-American Commission on Human Rights and expressly declares that all the recommendations contained in the Commission's report 133/99 have been complied with.

b) Desist from the suit for extra-contractual liability of the State, in the case "*Soria con Fisco*" now before the Fourth Civil Court of Santiago under case N° C-2219-2000, declaring that it agrees to terminate judicial proceedings initiated and that the reparations agreed before the Inter-American Commission on Human Rights are all that will be demanded of the State and that, consequently, the family will not pursue further judicial action for State liability, whether in connection with action of its agents or for physical or non physical damages, including moral damages. An authenticated copy of the judicial decision approving the withdrawal of action must be presented before the Commission by the petitioner, for purposes of demonstrating compliance with this agreement.

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

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

308. Subsequently, on October 21, 2008, the State reported that the Human Rights Program of the Ministry of Interior, created by Law 19,123, became a party to case No. 7.891-OP "C", which is investigating the crimes of illicit association and obstruction of justice, under the responsibility of the Judge Alejandro Madrid, of the Court of Appeals of Santiago, carrying out what was indicated by the IACHR in its Report No. 133/99. The State indicates that the previous case was begun on October 25, 2002, upon complaint submitted by Ms. Carmen Soria González-Vera against four members of the

Dirección de Inteligencia Nacional (DINA) and any others who turn out to be responsible, as perpetrators, accomplices, or aiders and abettors in the crimes of obstruction of justice and illicit association to the detriment of Carmelo Soria, for the homicide of DINA chemist Eugenio Berríos Sagredo, who was taken out of the country to Uruguay to keep him from testifying in some judicial proceedings, including in the case of Mr. Carmelo Soria.

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

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

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

312. In November 2010, the Commission requested updated information from the parties. The State sent its response by note dated December 30, 2010. It reaffirmed the information reported in the preceding paragraph as to the proceedings and current status of the case prosecuted into the murder of Carmelo Soria. As to Case No. 7.981, prosecuted for the crimes of conspiracy to commit crime and obstruction of justice in the case that investigated the murder of Carmelo Soria, the State indicated that it had been underway since September 7, 2009, with seven defendants.

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

314. On October 25, 2011, the Commission asked the parties for updated information on the status of compliance with the recommendations made in Report No. 139/99.

315. In a note dated January 18, 2012, the State responded to the request for information on compliance with the recommendations. With respect to the first recommendation, on the establishment of criminal responsibility for the murder of Carmelo Soria, the State indicated as additional information on the case of aggravated homicide that, in view of the refusal of the Supreme Court of Justice to reopen the preliminary inquiry, the Ministry of the Interior's Human Rights Program was taking all available legal measures to implement the Commission's recommendation, but the State did not indicate which measures. Regarding Case No. 7.981, prosecuted for the crimes of conspiracy to commit crime and obstruction of justice in the case that investigated the murder of Carmelo Soria, the State said that it was about to be informed of the final ruling.

316. Concerning the second recommendation, the State reiterated that it was gathering information to enable it to comply with the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons. Likewise, it reiterated the information regarding the third recommendation, on the bill interpreting Article 93 of the Penal Code, which was still under consideration in Congress.

317. The Commission notes that the recommendations aimed both at investigating Carmelo Soria's murder and punishing those responsible for it, as well as at bringing legislation into line with the provisions of the American Convention on Human Rights, have yet to be implemented.

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

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

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

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

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

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

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

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

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

321. In 2011, the IACHR asked the parties for updated information on compliance with the preceding recommendations.

322. With regard to the measures to improve legal institutions that protect the rights of indigenous peoples, the State provided information in notes dated January 5, 2011, and December 21, 2011. In the first note, it explained that the reform under consideration in the Constitution, Legislation, and Regulation Committee of the Senate was the outcome of a political agreement reached in April 2009 among all groupings represented in the National Congress. It added that, before reaching such an agreement, the Senate Committee had received and listened to more than 50 indigenous organizations and leaders. After a consensus was reached on the reform text, the Executive held a "Consultation on Constitutional Recognition," whose results were transmitted to the Senate Committee. In the second note, the State said that the Chilean Government maintained its commitment to push for a constitutional amendment in the National Congress and, to that end, on March 8, 2011, it announced that the "Consultation on Indigenous Institutions" would be held in seven stages, on three thematic areas: (1) definition of the procedure for consultation and participation, including participation regulations of the Environmental Impact Assessment System (EIAS); (ii) the draft constitutional amendment recognizing the indigenous peoples; and (iii) the establishment of an Agency for Indigenous Development and a Council of Indigenous Peoples. Likewise, it reported that between March and August 2011 the first two stages,

i.e., dissemination and information, had been successfully carried out. The State pointed out that the second stage took the form of 124 workshops at the national level, in which a total of 5,582 indigenous leaders participated. According to information provided by the State, the consultation process concluded between September and November 2011 and an ad hoc committee was set up to propose a mechanism and roadmap for the first thematic area. Said committee's preliminary conclusions were submitted to CONADI on November 23, 2011.

323. Regarding commitment 2(a) of the agreement, the State had already reported that on September 15, 2008, it ratified ILO Convention 169, which entered into force in September 2009, in keeping with Article 38(3) of that Convention. With that commitment 2(a) of the above agreement was fulfilled.

324. The State reported that commitment 3(a) was carried out back in July 2004. Concerning commitment 3(b), the State reported that lands had been bought for almost all the Pehuenche communities that belonged to the *Comuna* of the Upper Bío Bío and that in the three-year period from 2008 through 2010, an area of 180 hectares was purchased for the Butaleibun indigenous community and an area of 353.7 hectares was purchased for the Newen Mapu community of Malla Malla. It added that henceforth, every land-grant will be coupled with an agreement to provide productive support and technical assistance. In its note of January 2012, it said that in 2011 CONADI had invited tenders for a preinvestment study on land acquisition in the Cajón de Queuco sector of the Upper Bío Bío region.

325. As for commitment 3(c), the State indicated that in June 2009 the technical board for monitoring public investment in the Area of Indigenous Development of the Upper Bío Bío was launched. With regard to that commitment, in its note dated January 12, 2012, the State referred to the consultation process under way on indigenous institutions and to the activities carried out by CONADI to ensure participation by the sector's families in said consultation.

326. As for commitment 3(d), the State observed that an agreement was concluded with the National Forestry Corporation (CONAF) under which members of the indigenous communities would be able to enter and make use of the Reserve. That agreement includes the communities of Quepuca Ralco and Ralco Lepoy. In the January 2012 report, the State confirms that that commitment has been met.

327. In connection with commitment 4(a) of the Friendly Settlement Agreement, the State indicated that necessary measures had been taken to transmit the audit results to the municipalities of Santa Bárbara and Upper Bío Bío, among others, for public consultation and that the audit results had been published on the CONAMA web page, but that no comments whatsoever had been received from said municipalities. Moreover, it said that the Office of the Executive Director of CONAMA and the public utilities had followed up on and monitored the project, as established in the environmental qualification resolution. With regard to the impacts of the Ralco dam in the Upper Bío Bío sector, the State reported that it would conduct an independent audit three years after the hydroelectric plant had started to operate, in order to propose necessary measures to correct any possible unforeseen effects, in particular on tourism development along the banks of the reservoir. In that regard, in its note of January 2012, the State reports that the "Independent Environmental Audit Report for the Ralco Hydroelectric Plant Project" for the second half of 2011 has been sent by the Environmental Assessment Service to the Edensa Chile firm, which presented its observations on December 14, 2011.

328. As for commitment 4(b), the State reported that CONADI prepared the "Productive Development Plan for relocated families on the *El Porvenir* estate, Quilaco, province of Bío Bío"; working in conjunction with the relocated families and the National Agricultural Development Institute (INDAP), it is preparing a work plan for the communities in the Upper Bío Bío sector. According to information provided by the State, two meetings were held with the petitioners in 2011 to review the commitments in the Friendly Settlement Agreement: one in the city of Los Angeles on May 10 and the other in Santiago on May 15. Likewise, in letter No. 477, dated September 9, 2011, the National Director of CONADI informed the petitioners of the decision of the Ministry of Planning to make CONADI responsible for implementing and following up on the commitments under the Friendly Settlement Agreement.

329. As for commitment 4(c), the State reported that tourism projects on the banks of Lake Ralco had been funded. Works had been promoted and financed to strengthen the ability to service the tourism trade with a particular interest in the Southern Andes. Regarding commitment 4(d), the State indicated that the national laws were being observed; accordingly, the limits set by the current laws and regulations must be respected. In its most recent report, the State reported that an independent audit of the Ralco Hydroelectric Plant had been conducted in 2011 and that, on October 6, its results had been transmitted for analysis to CONADI and the Indigenous Affairs Coordination Unit of the General Secretariat of the Presidency. As concerns commitment 4(d), the State indicated that that was covered by national legislation; consequently implementation of that commitment must fall within the bounds established by the provisions in force. In its most recent report, the State indicates that this commitment had been met.

330. As for commitment 5, the State indicated that “this particular point concerns the case of don Víctor Ancalaf LLaupe, who is currently at liberty.” In its most recent report, the State indicates that this commitment had been met.

331. As for commitment 6, concerning measures to meet the specific demands of the affected Mapuche Pehuenche families, the State reported that in late 2006 each individual had received parcels of land, drawn by lot. Each person received land in the zone intended for residential, agricultural, tourism development, or forest management use; it clarified that three parcels still had to be distributed, because of demarcation problems. It reported that the charitable pensions had been paid out and that scholarships had been awarded in June 2009. The State updated the previous information, indicating that in February 2011 title had been given free and clear to three beneficiaries for the pending real estate of lot A of the Porvenir Fund. Likewise, it reported on the execution of a project to upgrade access roads to the Porvenir Fund properties.

332. In 2011, the petitioners did not provide any additional information concerning compliance with the pending commitments. In 2007, the petitioners sent a communication in which they discussed each point of the agreement in detail. In that communication they highlighted compliance with that point of the agreement that concerned creation of a municipality [*comuna*] in the Upper Bío Bío sector; they were of the view that the provision of the agreement concerning the mechanism to ensure the indigenous communities’ participation in the administration of the Ralco Forestry Reserve had been complied with, and reported that a memorandum of understanding had been signed with the Government and the Pehuenche families with measures to meet the particular demands of the affected Mapuche Pehuenche families.

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

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

Case 12.469, Report No. 56/10, Margarita Cecilia Barbería Miranda (Chile)

335. In Report No. 56/10 of 18 March 2010, the Commission found that the State of Chile is liable for violation of Margarita Barbería Miranda's right to equal protection, as set forth in Article 24 of the American Convention, by applying to her case a discriminatory provision that prohibited her from practicing as a lawyer in Chile solely because she was a foreigner. Because of this situation, the IACHR found that the State also violated its general obligations to respect and guarantee all human rights of the victim, without any discrimination whatsoever, as set forth in Article 1(1) of the American Convention, further violating its duty to adopt domestic legal provisions that would align its law with its international commitments in this matter, as enshrined in Article 2 of the Convention.

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

1. That measures are to be taken to amend the Chilean law that precludes individuals from the practice of the law solely on the grounds that they are aliens, and in particular the norms contained in the Organic Code of Tribunals of Chile.
2. That Margarita Barbería Miranda is to be adequately compensated for the violations established in the present report.
3. That Margarita Barbería Miranda is to be permitted to take the oath of an attorney and practice the law in Chile.

337. In Report No. 56/10, the Commission gave a very positive assessment to actions taken by the State of Chile related to compliance with the first and third recommendations, to wit, passing Law 20.211 that modified Article 526 of the Organic Code of the Courts; and swearing in Margarita Barbería Miranda as an attorney on 16 May 2008, before the Supreme Court of Chile.

338. On 29 November 2010 the IACHR sent a communication requesting information of the parties on the status of compliance with the second recommendation, which had to do with reparations for the violations established in the Commission's report. In a communication dated 29 December 2010, the State reported that at the end of 2008 it held a meeting with Ms. Margarita Barbería and suggested the possibility that she press for satisfaction of her financial claims by pursuing recognized domestic procedures under Chilean law. The State also indicated that the petitioner rejected this proposal, reiterating her expectation that she be compensated for material and moral injury suffered as a result of the legal prohibition that had hindered her from being sworn in as an attorney. Additionally, the State of Chile stated that Ms. Barbería had not introduced adequate evidence of the injury to sustain the following requests: university scholarships for each of her three children; a full scholarship for graduate studies at the doctoral, master's or professional degree level in a law-related subject of interest to the petitioner; a furnished office; an automobile; and a lump-sum payment of US\$ 90,000.00.

339. On 25 October 2011, the Commission requested that the parties provide updated information on the status of compliance with the recommendations made in Report No. 139/99.

340. In a note date 16 November 2011 the petitioner reported to the IACHR that the State of Chile had not provided adequate compensation for the violations she had suffered. For its part, on 21 December 2011, the State of Chile sent a communication in which it reiterated in the same terms the information it had provided in its note submitted on 29 November 2010.

341. The Commission observes that, for the reasons set forth by the State, the recommendation has not been fulfilled that adequate reparations be made to Ms. Margarita Barbería Miranda for violations established in the prior report.

342. Therefore, the Commission concludes that the State of Chile has partially complied with the recommendations made. Consequently, the Commission will continue to supervise the matter still pending.

Petición 12.281, Informe No. 162/10, Gilda Rosario Pizarro y otras (Chile)

343. In Report No. 162/10, dated November 1, 2010, the Commission adopted a friendly settlement agreement in the petition of Mrs. Gilda Rosario Pizarro et al. In summary, the petitioners contended that the alleged victims had protested against a decree with the force of law issued by the Government of Chile, whereby the interests of the members of their families were affected. They added that, after promulgation of the decree, the alleged victims had protested peacefully but were violently attacked by members of the Carabinero special forces. The alleged victims then filed a criminal complaint against the Carabineros, but the respective judge declared himself incompetent to hear the case because the charges made were directed at members of the Carabineros Corps and therefore had to be resolved by military courts. The case was then transferred to the Sixth Military Court, where it remains in the preliminary criminal inquiry phase.

344. On January 20, 2010, representatives of the Chilean State and the petitioners signed a friendly settlement agreement, which basically established the following:

PROPOSED FRIENDLY SETTLEMENT AGREEMENT

**I. Case N° 12.195 Mario Jara Oñate et al
Case N° 12.281-- Gilda Pizarro Jiménez et al**

II. PARTIES.

The parties to this agreement are:

First, The Chilean State, represented by the Office of the Assistant Secretary of the Carabineros, Ms. Javiera Blanco Suárez; The General Alternative Assistant Director of the Carabineros, General Inspector of the Carabineros, Mr. Samuel Cabezas Fonseca and the Human Rights Director of the Foreign Ministry, Carmen Hertz Cádiz.

Second, the *Corporación de Interés Público*, as petitioner in the cases and representative of the victims—represented by Sergio Espejo Yaksic y Domingo Lovera Parmo; and Mario Alberto Jara Oñate, Julio Cesar Cid Deik, Marcelino Esteban López Andrade, José Exequiel Tobar Muñoz, Fernando Antonio Villa Molina, Cilio Elías Rodríguez Uribe, Mario Eduardo Araya Marchant, Sergio Iván González Bustamante, Gilda Rosario Pizarro Jiménez, Patricia Ponce Jorquera, Gloria Ponce Jorquera, Myrna Ponce Jorquera, Elizabeth Fuentes Ruiz and Soledad Pérez Fernández, as victims.

III. FACTS.

1. On August 4, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition against the Republic of Chile (hereinafter “the State” or “the Chilean State”) filed by CEJIL and the Clínica Jurídica de Acciones de Interés Público y Derechos Humanos of the Universidad Diego Portales, in which Messrs. Mario Alberto Jara Oñate, Julio Cesar Cid Deik, Marcelino Esteban López Andrade, José Exequiel Tobar Muñoz, Fernando Antonio Villa Molina, Ciro Elías Rodríguez Uribe, Mario Eduardo Araya Marchant, and Sergio Iván González Bustamante, all of whom were members of the Carabineros de Chile when the events underlying the complaint occurred, alleged that they were victims of a grading system applied by the Carabineros de Chile, which resulted in their dismissal from the institution and a violation of their rights.

2. The petitioners specifically allege that the State was responsible for violating their right to a fair trial, right to privacy, rights of the family, and right to equal protection and to judicial protection in connection with the State’s obligation to respect and protect human rights, and its duty to adopt provisions of domestic law, as set forth in Articles 1(1), 2, 8, 11, 17, 24 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention.”).

3. At that time the State denied that any provisions of the American Convention had been violated, and it requested that the petition be declared inadmissible on the grounds that it did not meet the requirements established in Articles 46 (1) (a) (b) and 47 (b) and (c). The State specifically pointed out that the grading process was in accord with the rules in force when the events occurred, and that the rating authorities of the Carabineros de Chile had found the petitioners’ job performance to be deficient. Furthermore, the administrative and judicial review mechanisms had been applied, and these did not overturn the decision by the institution.

4. On March 7, 2003, after analyzing the positions of the parties, the Inter-American Commission on Human Rights concluded that it had jurisdiction to hear the petition filed and that it was admissible under Articles 46 and 47 of the American Convention.

5. On December 20, 1999 the Inter-American Commission on Human Rights received a complaint against the Republic of Chile filed by Mses. Gilda Rosario Pizarra Jiménez, Patricia Ponce Jorquera, Gloria Ponce Jorquera, Myrna Ponce Jorquera, Elizabeth Fuentes Ruiz, and Soledad Pérez Fernández, all of whom had been spouses of police officers in the Carabineros de Chile on the date in which the events underlying their complaint took place.

6. These victims specifically alleged that the State was responsible for violating their rights to humane treatment, to a fair trial, to privacy, to freedom of thought and expression, to assembly, rights of the family, and rights to equal protection and to judicial protection, which constitutes a failure of the State to fulfill the obligation to respect and protect human rights, and its duty to adopt provisions of domestic law, as set forth in Articles 1(1), 2, 5, 8, 11, 13, 15, 17, 24, and 25 of the American Convention.

7. The State in turn argued that there had been no violation of the rights in the American Convention, since the demonstration in the public thoroughfare had exceeded the limits authorized by the laws in force, which generated alterations of public order and caused some demonstrators to be arrested.

8. Later, on March 7, 2003, after analyzing the positions of the parties, the Commission concluded that it had jurisdiction to examine the petition filed by the victims and that it was admissible under Articles 46 and 47 of the American Convention.

9. While the complaints were being processed, the petitioners and the State expressed their desire, willingness, and interest in submitting to a friendly settlement procedure, as established in Articles 48(1)(f) of the Convention and 41 of the Rules of Procedure of the IACHR (hereinafter the Rules of Procedure). They undertook a process of dialogue and understanding aimed at laying the foundations and establishing the elements of such agreement, founded on respect for the human rights established in the Convention and other inter-American instruments.

10. Pursuant to the above, the undersigned parties have agreed to the following proposed friendly settlement, based on the terms indicated below:

III. PUBLIC ACKNOWLEDGEMENT OF RESPONSIBILITY.

11. Through this friendly settlement agreement the Chilean State acknowledges that according to international standards, there was a violation of the petitioners' rights.

IV. MEASURES OF NON-REPETITION.

12. The Chilean State undertakes to conduct a review of the legal and regulatory provisions applicable to performance evaluations of the Carabineros. The purpose is to verify whether rules governing evaluations of staff performance respect the principle of objectivity, allow both sides to be heard, allow for rebuttal, and generally afford proper protections of the rights of the Carabinero employees, in accordance with international human rights standards.

The Chilean State also undertakes to inform the IACHR, within one year's time, of the results of that analysis, and to report on progress in implementing measures that may be recommended as a result of said review.

V. SPECIFIC REPARATIONS.

13. Within three months of signing this agreement, the Chilean State is obliged to remove or clean up the administrative files of the victims in this case, eliminating all records of the events which gave rise to these complaints.

14. The Chilean State undertakes to publish a summary of this friendly settlement agreement, one time only, in the Official Gazette of the Republic of Chile, and to post it for six months on the websites of the Foreign Ministry, the Ministry of Defense, and the Carabineros de Chile.

15. Through a letter sent by the Office of the Assistant Secretary of the Carabineros, Ms. Javiera Blanco Suárez, to each of the victims in both cases, the Chilean State will give a formal apology for the reported violations and the repercussions these had on their lives and personal and family relationships. The letter will indicate the measures proposed to remediate the consequences and inconveniences the victims suffered.

16. The petitioners may have direct access to the health services offered by both the Carabineros' Hospital DEL GENERAL HUMBERTO ARRIAGADA VALDIVIESO," and the Hospital of the Carabineros Social Security Department "HOSPITAL TENIENTE HERNÁN MERINO CORREA",

interchangeably, according to the rates set by each hospital and the rates in effect for the health system in the aforementioned beneficiaries' institutions when health services are rendered, and according to whether the beneficiaries are enrolled in the FONASA or SAPRE health insurance systems. To this end, they are understood to be authorized by the authorities of the aforementioned hospitals to receive services without the sponsorship of an active or passive contributor into the Carabineros Social Security system, which is taking financial responsibility for the medical benefits received.

In order to accomplish this, the corresponding offices within the aforementioned hospitals will incorporate the petitioners into their databases, allowing them to use the hospitals by simply showing a current citizen's identification card. This will be implemented within one month of the date of this agreement.

VI. REPARATIONS.

17. The following sums shall be paid to compensate for material damages and for pain and suffering: US\$17,000 each (**Case N° 12.195 - Mario Jara Oñate, et al**) to the former employees of the Carabineros individually mentioned in this document, and US\$3,000 for each of the petitioners individually mentioned herein who were not employees of the Carabineros (**Case N° 12.281 Gilda Pizarro Jiménez, et al**). The aforementioned payments will be made in the equivalent of Chilean pesos at the time payment is made.

Payment will be made through a non-transferable check payable to the order of each of the victims, within three months of the date of this agreement. These checks shall be picked up by the petitioners at the Human Rights Department of the Foreign Ministry of Chile, upon presentation of the party's national identification card.

VII. FOLLOW-UP COMMITTEE

18 In order to monitor compliance with the commitments made in this agreement, the parties agree to form a Follow-up Committee coordinated by the Human Rights Department of the Ministry of Foreign Affairs of Chile. This Committee will be comprised of one representative of the Human Rights Department of the Foreign Ministry of Chile, one representative of the Ministry of Defense, and one representative of the petitioners. The methodology and frequency of said Committee's meetings will be decided by its members. The Committee will periodically report to the Executive Secretariat of the IACHR on progress being made fulfilling the commitments undertaken in this agreement.

345. In its Report No. 162/10, dated November 1, 2010, the Commission declared that paragraphs 11, 13, 14, 15, 16, and 17 of the agreement had been complied with and that paragraphs 12 and 18 remained pending.

346. In a note received on August 17, 2011, the petitioner *Ciro Rodríguez* said that he was unaware of whether the Follow-up Committee had been formed; they said that no action whatsoever had been taken to review the regulatory provisions on evaluations and rankings applicable to the Carabineros de Chile; all that had been done was to modify their educational system. The petitioner said that the Chilean State had not shown any interest at all in implementing the friendly settlement agreement signed by the parties and therefore asked the Commission to terminate it.

347. For its part, the State, in a note dated October 19, 2011, affirmed that the friendly settlement agreement was fully implemented. As concerns the non-repetition measures, it said that the review of the provisions had been conducted and that the results of that analysis had been transmitted to the petitioners' representatives in January 2011. Further, it reported that the petitioners' files had been cleaned up and that the text of the friendly settlement agreement had been published in the *Diario Oficial* dated March 17, 2010, had been posted for six months on the web pages of both the Ministry of Foreign Affairs and the Carabineros de Chile, and was still posted on the page of the Human Rights Department. It added that on April 14, 2010, a note containing a public apology had been sent to each of the petitioners and that the system giving petitioners access to health services had been functioning since April 2010. With regard to reparations, it said that compensation had been paid to each of the victims for material and nonmaterial damages.

348. As concerns the Follow-up Committee, the State reported that said committee had been established with all of the institutions mentioned in the friendly settlement agreement, including the petitioners, and that the Committee had already met three times since October 2010.

349. On October 28, 2011, the IACHR asked the parties for updated information on the status of implementation of the friendly settlement agreement.

350. In a note received on December 28, 2011, the *Corporación de Interés Público*, the petitioners' representative in this case, confirmed the information provided by the State regarding compliance with the general reparation measures included in the friendly settlement agreement, in particular in connection with the payment of compensation to the victims. Likewise, with respect to the establishment of the Follow-up Committee, it confirmed that said committee had met on three occasions. Regarding the non-repetition measures, it said that the review of legal and regulatory changes to the rules of the Carabineros de Chile on evaluations had been the main subject addressed in the Follow-up Committee meetings and that suggestions for regulatory changes had been included in a memorandum. It noted that the Carabineros de Chile had already submitted observations on the memorandum as well as a list of the regulatory provisions they would be prepared to change. In this connection, they indicated that as of the date of the note the petitioners had not been informed about the effective implementation of said changes.

351. With regard to commitments pending implementation by the State, the Commission notes that the review of the legal and regulatory provisions applicable to the Carabineros regarding evaluations was conducted and transmitted to the petitioners, and that the Follow-up Committee on the friendly settlement agreement was set up, has held meetings, and has identified provisions that might be subject to revision. The Commission therefore considers that the friendly settlement agreement has been implemented in accordance with the terms signed by the parties. However, the Commission urges the State to report on the effective implementation of the regulatory changes that the Carabineros de Chile announced to the petitioners.

Petition 12.195, Report No. 163/10, Mario Alberto Jara Oñate et al. (Chile)

352. In Report No. 163/10, dated November 1, 2010, the Commission adopted a friendly settlement agreement in the case of Mario Alberto Jara Oñate et al. In summary, the petitioners contended that because of the protests that the wives of the Carabineros de Chile mounted against their husbands' low wages, the alleged victims had been subjected to an evaluation process conducted by the authorities of the Carabineros that had led to their names being placed on the institution's Elimination List and to a violation of their fundamental rights.

353. On January 20, 2010, representatives of the Chilean State and the petitioners signed a friendly settlement agreement, which basically established the following:

V. MEASURES OF NON-REPETITION

15. The Chilean State shall undertake to submit for review the laws and regulations applicable to the rating or evaluation of Carabineros, with a view to verifying that the rules pertaining to the performance evaluation of its staff members are in compliance with the principles of objectivity, adversarial action, and opposability, and that they generally provide for due protection of their employment rights, in accordance with international human rights standards.

Similarly, the State of Chile shall undertake to report to the IACHR within one year on the results of this review, and to inform it of progress made with regard to any measures that it may have adopted as a result of that review.

VI. MEASURES OF SPECIFIC REPARATIONS

16. Within three months of the signing of this agreement, the State of Chile is required to proceed to withdraw or clear the administrative record of the victims in the case, by removing any

reference to the acts that motivated the present complaints.

17. The Chilean State shall undertake to publish once a summarized version of the present friendly settlement agreement in the Official Gazette of the Republic of Chile, and to publish for six months said version on the web pages of the Ministry of Foreign Affairs, Ministry of Defense, and the Chilean Carabineros.

15. The Chilean State, in a letter sent by the Carabineros Under-Secretary, Javiera Blanco Suárez, shall present its formal apologies to each of the victims of both cases for the acts that are the subject of the complaint and for the consequences they had on their lives and on their privacy and their families, and indicate at the same time the measures established to remedy the consequences and difficulties they caused.

16. The petitioners may have direct access to the health services provided both by the Carabineros' Hospital, "HOSPITAL DEL GENERAL HUMBERTO ARRIAGADA VALDIVIESO," and by the Hospital of the Carabineros' Social Welfare Department, [*Dirección de Previsión de Carabineros*], "HOSPITAL TENIENTE HERNÁN MERINO CORREA", indiscriminately, in accordance with the fees of each hospital center and the rates of the health system of the welfare entity indicated, as appropriate, which are in force on the date of the health services provided, in accordance with the health care system applicable to the interested parties, FONASA or ISAPRE, as the case may be. To this end, they are understood to be authorized by the authorities of these two hospital centers, and thus do not require sponsorship of an active or passive contributor from the Carabineros Social Welfare Department to assume economic responsibility for the medical services granted.

For the purpose of implementing the foregoing, the responsible institutions of the hospitals shall include the petitioners in their data bases, so that they only need show their current identification card in order to receive the services of those centers.

VII. REPARATIONS

17. The victims shall be paid, by way of reparations for the material and nonmaterial damages caused, the amount of US\$17,000 to each one (**Case No. 12195 - Mario Jara Oñate et al**) of the former employees names in this document, and the amount of US\$3,000 to each one of the petitioners who are not employees of the Carabineros listed in this document (**Case N° 12281 Gilda Pizarro Jiménez et al**). The aforesaid amounts shall be paid in their equivalent in pesos at the time of payment.

The payment shall be made by means of a check made out in the name of each of the victims, within 3 months counting from the date of this agreement; these documents shall be given to the petitioners at the Human Rights Department of the Ministry of Foreign Affairs of Chile, after showing their national identification card.

VIII. FOLLOW-UP COMMITTEE

18. For the purpose of monitoring compliance with the commitments made in this agreement, the parties agree to set up a Follow-up Committee coordinated by the Human Rights Department of the Ministry of Foreign Affairs of Chile. This Committee shall be made up of a representative of the Ministry of Foreign Affairs of Chile, a representative of the Chilean Foreign Ministry, a representative of the Chilean Carabineros, a representative of the Ministry of Defense, and a representative of the petitioners. The procedures and frequency of the meetings of this Committee shall be agreed by its members. The Committee shall periodically submit a report to the IACHR's Executive Secretariat, showing the progress made in fulfilling the obligations under this agreement.

354. In its Report No. 163/10, dated November 1, 2010, the Commission declared that paragraphs 11, 13, 14, 15, 16, and 17 of the agreement had been complied with and that paragraphs 12 and 18 remained pending.

355. In a note received on August 17, 2011, the petitioner *Ciro Rodríguez* said that he was unaware of whether the Follow-up Committee had been formed; they said that no action whatsoever had been taken to review the regulatory provisions on evaluations and rankings applicable to the Carabineros

de Chile; all that had been done was to modify their educational system. The petitioner said that the Chilean State had not shown any interest at all in implementing the friendly settlement agreement signed by the parties and therefore asked the Commission to terminate it.

356. For its part, the State, in a note dated October 19, 2011, affirmed that the friendly settlement agreement was fully implemented. As concerns the non-repetition measures, it said that the review of the provisions had been conducted and that the results of that analysis had been transmitted to the petitioners' representatives in January 2011. Further, it reported that the petitioners' files had been cleaned up and that the text of the friendly settlement agreement had been published in the *Diario Oficial* dated March 17, 2010, had been posted for six months on the web pages of both the Ministry of Foreign Affairs and the Carabineros de Chile, and was still posted on the page of the Human Rights Department. It added that on April 14, 2010, a note containing a public apology had been sent to each of the petitioners and that the system giving petitioners access to health services had been functioning since April 2010. With regard to reparations, it said that compensation had been paid to each of the victims for material and nonmaterial damages.

357. As concerns the Follow-up Committee, the State reported that said committee had been established with all of the institutions mentioned in the friendly settlement agreement, including the petitioners, and that the Committee had already met three times since October 2010.

358. On October 28, 2011, the IACHR asked the parties for updated information on the status of implementation of the friendly settlement agreement.

359. In a note received on December 28, 2011, the *Corporación de Interés Público*, the petitioners' representative in this case, confirmed the information provided by the State regarding compliance with the general reparation measures included in the friendly settlement agreement, in particular in connection with the payment of compensation to the victims. Likewise, with respect to the establishment of the Follow-up Committee, it confirmed that said committee had met on three occasions. Regarding the non-repetition measures, it said that the review of legal and regulatory changes to the rules of the Carabineros de Chile on evaluations had been the main subject addressed in the Follow-up Committee meetings and that suggestions for regulatory changes had been included in a memorandum. It noted that the Carabineros de Chile had already submitted observations on the memorandum as well as a list of the regulatory provisions they would be prepared to change. In this connection, they indicated that as of the date of their note the petitioners had not been informed about the effective implementation of said changes.

360. With regard to commitments pending implementation by the State, the Commission notes that the review of the legal and regulatory provisions applicable to the Carabineros regarding evaluations was conducted and transmitted to the petitioners, and that the Follow-up Committee on the friendly settlement agreement was set up, has held meetings, and has identified provisions that might be subject to revision. The Commission therefore considers that the friendly settlement agreement has been implemented in accordance with the terms signed by the parties. However, the Commission urges the State to report on the effective implementation of the regulatory changes that the Carabineros de Chile announced to the petitioners.

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

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

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

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

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

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

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

365. As for observance of the principles developed by Colombia's Constitutional Court, the State emphasized the work done by the High Council of the Judiciary to carry out the Constitutional Court's 1997 judgment C-358 regarding the regular courts' jurisdiction in matters involving serious violations of human rights. It also reported that the military criminal judges had voluntarily referred cases involving violations of human rights and international humanitarian law committed by members of the armed forces to the regular courts. On October 24, 2011, the IACHR asked both parties for information on compliance measures adopted. Neither the State nor the petitioners responded to the request for information.

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

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

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

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

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

369. On October 25, 2011, the IACHR asked both parties to supply information on the measures taken to comply with the points of the agreement. The State submitted information regarding the measures it has taken to comply with all three recommendations. In the case of the first recommendation, the State reiterated that the investigation had moved to trial, which was being conducted in the Turbo (Antioquia) District's First Criminal Court. At this stage of the proceedings, a ruling on an appeal was pending. The State pointed out that six persons were in custody by order of the court and that the aforementioned court had held a number of public hearings during which the defendants had been questioned with a view to crafting a well-founded decision. The State was of the view that the second recommendation had been fulfilled with payment of the compensatory damages to the next of kin of Carlos Manuel Prada and Evelio Antonio Bolaño, by virtue of Defense Ministry resolution No. 4600, 4601, 4602 and 4603 of October 27, 2009, pursuant to the decision of March 26, 2009 by the Third Section Chamber of the Council of State. In the case of the third recommendation, the State submitted information concerning the introduction of policies and lines of action in human rights and international humanitarian law intended for all members of law enforcement, emphasized the work of the Superior Council of the Judiciary to implement the doctrine developed by the Constitutional Court on the definition of the competence of ordinary courts when dealing with serious human rights violations and reported on the measures taken to transfer cases involving possible human rights violations from the military justice system to the regular courts. Given the importance of the topic and its heavy impact on the evaluation of the duty to guarantee and protect human rights, and inasmuch as all branches of government were constantly monitoring this problem, the State asked the Commission once again to find that recommendation No. 3 had been fully carried out. The petitioners did not reply to the request for information.

370. Based on the foregoing, and given that the criminal process is pending the Commission concludes that there has been partial compliance with the recommendations. Therefore, the Commission will continue to monitor pending items.

Case 11.712, Report No. 64/01, Leonel de Jesús Isaza Echeverry (Colombia)

371. In Report No. 64/01 of April 6, 2001, the Commission concluded that the State was responsible for violating the right to life of Leonel de Jesús Isaza Echeverry, enshrined in Article 4 of the American Convention; the right to human treatment of Ms. María Fredesvinda Echeverry, enshrined in Article 5 of the American Convention; the right to humane treatment and the breach of the obligation to adopt special measures of protection with regard to the child Lady Andrea Isaza Pinzón, established in Articles 5 and 19 of the American Convention; as well as the breach of the duty to afford effective judicial protection to the victims of this case, in keeping with Articles 8 and 25, in conjunction with Article 1(1) of the Convention. This case has to do with the responsibility of state agents for the death of Mr. Leonel de Jesús Isaza Echeverry, the harm to the personal integrity of Ms. María Fredesvinda Echeverry and the child Lady Andrea Isaza Pinzón, and the failure to clarify these events judicially.

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

1. Conduct an impartial and effective investigation before ordinary jurisdiction for the purpose of judging and sanctioning those responsible for the extrajudicial execution of Mr. Leonel de Jesús Isaza Echeverry.
2. Adopt the measures necessary to redress the consequences of the violations committed against María Fredesvinda Echeverry and Lady Andrea Isaza Pinzón, as well as providing due indemnity for the relatives of Leonel de Jesús Isaza Echeverry.
3. Take the steps necessary to prevent any future occurrence of similar events in accordance with its duty to prevent and guarantee the basic rights recognized in the American Convention, as well as adopting the measures necessary to give full force and effect to the doctrine developed by the Constitutional Court of Colombia and by the Inter-American Commission in investigating and prosecuting similar cases through the ordinary criminal justice system.

373. On October 24, 2011, the IACHR asked both parties for information on measures adopted to comply with its recommendations. On November 25, 2011, the State reiterated that the Superior Military Court resolved the appeal filed by the Judicial Prosecutor and the Military Criminal Prosecutor before the Court of First Instance, confirming in its entirety the acquittal applying the principle of *in dubio pro reo*. In addition, the State reported that it repeated to the Coordinator of Specialized Criminal Judicial Prosecutors the request to study the possibility of bring an action to review that ruling, given the scope of Decision C-004/03 of the Constitutional Court and the latter responded that such action is legally not feasible. The Commission reiterates its concern regarding the fact that the case that ended absolving the members of the National Army in teh military jurisdiction has not yet been transferred to the ordinary criminal jurisdiction.

374. The State reiterated that by Payment Resolution No. 2512 the conciliation agreement was carried out, as the payment of compensation was made to María Fredesvina Echeverri de Isaza and Lady Andrea Isaza Pinzón. The State submitted information concerning the measures taken by the Ministry of Defense to permanently introduce policies in human rights and international humanitarian law for all members of law enforcement. Specifically, it said that the integral policy on human rights and international humanitarian law was being implemented in order to develop the system for teaching human rights and international humanitarian law, to tailor the teaching methods to the needs of law enforcement in the current context, and to combine the tools that law enforcement has to fulfill its obligations in the area of human rights and international humanitarian law.

375. As for observance of the principles developed by the Constitutional Court, the State emphasized the work done by the High Council of the Judiciary to carry out the Constitutional Court's 1997 judgment C-358 regarding the regular courts' jurisdiction in matters involving serious violations of human rights. It also reported that the military criminal judges had voluntarily referred investigations into violations of human rights and international humanitarian law committed by members of the armed forces to the regular courts.

376. On November 30, 2011, the petitioners reported that the State has failed to comply with its obligation to investigate, judge, and sanction those responsible for the extrajudicial execution of Leonel de Jesús Isaza and has not adopted the measures needed to prevent the recurrence of such violations. They stated that after more than 17 years, the impunity surrounding these events remains absolute. They felt that the State's response regarding the non-viability of an action to review is contrary to international human rights law, which has established that military criminal justice is not competent to investigate serious human rights violations such as extrajudicial executions. They maintained that when they fail to honor that prohibition, the decisions of military courts do not become *res judicata*. They based their argument on the jurisprudence of Colombia's Supreme Court of Justice, which has declared the admissibility of the action to review and the invalidity of decisions handed down by military criminal justice.²⁸ They asserted that the State's response is contrary to its obligation to comply in good faith with the recommendations of the IACHR and to give them useful effect within the domestic legal system.

²⁸ The petitioners cite the Supreme Court of Justice, Criminal Cassation Chamber, Judgment of October 14, 2009.

377. They felt that the State has not implemented measures to ensure non-repetition given the persistence in Colombia of extrajudicial executions, directives from the Ministry of Defense that may create incentives for the commission of extrajudicial executions, and the failure to fulfill the obligation to diligently and seriously investigate such violations. The petitioners referred in general terms to factors they see as affecting the independence of investigations and stated that the large majority of investigations regarding extrajudicial executions are in the preliminary stage with no link made to the alleged perpetrator.

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

Case 11.141, Report No. 105/05, Villatina Massacre (Colombia)

379. On July 29, 2002, by Report No. 105/05²⁹, the Commission approved and recognized the partial implementation of a friendly settlement agreement signed on July 29, 1998, in the case known as the “Villatina Massacre.” In summary, the petition alleged the responsibility of state agents in the massacre of children Johana Mazo Ramírez, Johny Alexander Cardona Ramírez, Ricardo Alexander Hernández, Giovanni Alberto Vallejo Restrepo, Oscar Andrés Ortiz Toro, Ángel Alberto Barón Miranda, Marlon Alberto Álvarez, Nelson Dubán Flórez Villa, and the youth Mauricio Antonio Higueta Ramírez, perpetrated on November 15, 1992 in the Villatina neighborhood of the city of Medellín.

380. That friendly settlement agreement incorporates the terms of an agreement originally signed on May 27, 1998, in the course of an initial attempt to reach a friendly settlement in the matter. The agreement recognizes the responsibility of the State for the violation of the American Convention, the right to justice and individual reparation for the victims’ next-of-kin, as well as an element of social reparation with components related to health, education, and a productive project. In addition, it provides for erecting a monument in a park in the city of Medellín so as to recover the historical memory of the victims. The Commission observes that the operative part of the agreement reflects the recommendations of the Committee to Give Impetus to the Administration of Justice (Comité de Impulso para la Administración de Justicia) created in the context of the agreement originally signed on May 27, 1998.

381. In Report No. 105/05, the Commission highlighted the implementation by the State of a large part of the commitments assumed in the agreement, and it called on it to continue carrying out the rest of the commitments assumed, in particular the commitment to provide effective guarantees and judicial protection to the victims and their next-of-kin, as prescribed in Articles 8(1) and 25 of the American Convention, by continuing the investigation into the facts so as to allow for the identification, prosecution, and sanction of the persons responsible.

382. On October 27, 2011, the IACHR asked both parties for information on measures adopted to ensure compliance. On November 25, 2011, the State reported with respect to the commitments pending implementation. It indicated that at present a preliminary investigation is under way in the Human Rights Unit of the Office of the Attorney General, and that the office in charge ordered a series of measures be taken to make progress in determining the possible perpetrators and accomplices of the events that are the subject matter of the case. It also reported that the entities with jurisdiction are studying the possibility of presenting a complaint seeking a review of the proceedings that concluded favorably for the persons being investigated. As for the publication and dissemination of the friendly settlement agreement, the State reported that measures were being taken to comply with that commitment. The petitioners did not respond to the request for information.

383. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission shall continue to monitor pending items.

²⁹ Report No. 105/05, Case 11.141, Villatina Massacre, Colombia, October 27, 2005, available at <http://www.cidh.oas.org/annualrep/2005eng/Colombia11141.eng.htm>.

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

384. On February 28, 2006, the Commission approved a report pursuant to Article 50 of the American Convention by which it concluded that the State was responsible for violating the rights to life, judicial guarantees, rights of the child, and right to judicial protection, corresponding to Articles 4, 8, 19, and 25 of the American Convention in relation to its Article 1(1), to the detriment of the child Leydi Dayán Sánchez Tamayo, and that the State had violated the rights to judicial guarantees and judicial protection corresponding to Articles 8 and 25 of the American Convention in relation to Article 1(1) of that international instrument, to the detriment of the next-of-kin of Leydi Dayán Sánchez Tamayo. This case has to do with the responsibility of state agents in the death of the child Leydi Dayán Sánchez Tamayo, which occurred on March 21, 1998, in Ciudad Kennedy, Bogotá, and the failure to clarify the facts of the case judicially.

385. With the approval of the referenced report, the Commission established a series of deadlines for the State to carry out the recommendation made therein in relation to truth, justice, and reparation. After considering the information provided by both parties and the actions carried out by the State in furtherance of the recommendations on promoting an action for review before the regular courts, the ceremonies to recover the historical memory of Leydi Dayán Sánchez, the trainings for the National Police on the use of firearms in keeping with the principles of necessity, exceptionality, and proportionality; and the payment of compensation to the victim's next-of-kin, it decided to issue Report 43/08 pursuant to Article 51 of the American Convention, and to publish it.

386. In its Report, the Commission indicated that while the investigation that is currently under way before the regular courts had not yielded results, one should value the impetus given to the action for review, specifically, the decision of the Chamber of Criminal Cassation of the Supreme Court of Justice, which declared the grounds for review that set aside the judgments of acquittal handed down by the military criminal courts based on the conclusion adopted in the Article 50 report, and ordered that the case be removed to the Office of the Attorney General so that a new investigation could be initiated before the regular courts. Nonetheless, given that the information provided by the State did not indicate that the review process had produced any results in relation to implementation of the recommendation on administration of justice, on July 23, 2008, by Report No. 43/08, the IACHR made the following recommendation to the State:

1. Carry out an impartial and effective investigation in the general jurisdiction with a view to prosecuting and punishing those responsible for the death of Leydi Dayán Sánchez Tamayo.

387. On October 27, 2011, the IACHR asked both parties for information on measures adopted to ensure compliance. On November 25, 2011, the State reported that the proceeding was reassigned to Criminal Court 55 of the Bogota Circuit and is pending continuation of the public hearing. The petitioners did not respond the information request.

388. Based on the foregoing, the Commission concludes that there has been partial compliance with the recommendation. Therefore, the Commission will continue to monitor compliance.

Petition 401-05, Report No. 83/08, Jorge Antonio Barbosa Tarazona (Colombia)

389. On October 30, 2008, in its Report No. 83/08³⁰, the Commission approved and recognized partial compliance of a friendly settlement agreement signed on September 22, 2006 regarding Petition 401-05 of Jorge Antonio Barbosa Tarazona. Briefly stated, the petition claimed that agents of the State were responsible for the disappearance of Jorge Antonio Barbosa Tarazona on October 13, 1992 in the Department of Magdalena, and that the judicial authorities were unjustifiably delayed in investigating, prosecuting, and punishing those allegedly responsible.

³⁰ Report No. 83/08, Petition 421-05, Jorge Antonio Barbosa Tarazona, Colombia, October 30, 2008, available at <http://www.cidh.oas.org/annualrep/2008eng/Colombia401-05.eng.htm>

390. The aforementioned friendly settlement includes the terms of the agreement signed on September 22, 2006. It recognizes the responsibility of the State for the facts of the petition, for pecuniary damages to be paid to the victim's next of kin, as well as non-pecuniary damages including components related to health and education, the presenting of a plaque to the memory of Jorge Antonio Barbosa Tarazona and formal document with the same content, signed by an officer of the Ministry of National Defense. The agreement also includes the undertaking of judicial action towards the identification of those responsible for the disappearance and subsequent death of Jorge Antonio Barbosa Tarazona and for the search of the victim's remains.

391. In its Report No. 83/08 the Commission underscored the State's compliance with the commitments made in the agreement and recognized efforts made by the Republic of Colombia and the next of kin of Jorge Antonio Barbosa to reach a friendly settlement. The Commission also stated that it will give a special follow-up to compliance with the commitments related to the clarification of the facts, the recovery of the victim's remains, and the prosecution and punishment of those responsible.

392. On October 27, 2011, the IACHR asked both parties for information on measures adopted to ensure compliance. On November 25, 2011, the State reported that the agreement had been authorized, steps were initiated pursuant to Law 288 of 1996 and that Decision No. 01 was issued in December 2008, issuance of which the petitioner was notified on February 4, 2009. It added that enforcement of that Resolution was achieved through administrative act No. 3438 of July 14, 2011 which acknowledged moral damages to the victim's mother, wife and daughter.

393. The State reported that the Attorney General's Office was pursuing the investigation into the facts and several suspects had been found and that there had been convictions in the case. It reported that the Supreme Court of Justice has not yet ruled on the action for review submitted by the Office of the Prosecutor General of the Nation regarding preclusion of the investigation. The petitioners did not respond to the request for information.

394. As for the search to find Mr. Jorge Antonio Barboza Tarazona's mortal remains, the State reported that this case was included in the national Unit of the Attorney General's Office, to be compared with the remains that such Unit could receive and that the inclusion of the case in the Unified Virtual Identification Center (CUVI) is been processed.

395. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

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

396. In Report No. 67/06 of October 21, 2006, the IACHR concluded that the Cuban State was responsible for violations of Articles I (right to life, liberty, personal security), II (right to equality before the law), IV (right to freedom of investigation, opinion, expression, and dissemination), V (right to protection of honor, personal reputation, and private and family life), VI (right to a family and to protection thereof), IX (right to inviolability of the home), X (right to the inviolability and transmission of correspondence), XI (right to preservation of health and well-being), XVIII (right to justice), XX, (right to vote and to participate in government), XXI (right of assembly), XXII (right of association), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration, to the detriment of Messrs. Nelson Alberto Aguiar Ramírez, Osvaldo Alfonso Valdés, Pedro Pablo Álvarez Ramo, Pedro Argüelles Morán, Víctor Rolando Arroyo Carmona, Mijail Bárzaga Lugo, Oscar Elías Biscet González, Margarito Broche Espinosa, Marcelo Cano Rodríguez, Juan Roberto de Miranda Hernández, Carmelo Agustín Díaz Fernández, Eduardo Díaz Fleitas, Antonio Ramón Díaz Sánchez, Alfredo Rodolfo Domínguez Batista, Oscar Manuel Espinosa Chepe, Alfredo Felipe Fuentes, Efrén Fernández Fernández, Juan Adolfo Fernández Saínez, José Daniel Ferrer García, Luís Enrique Ferrer García, Orlando Fundora Álvarez, Próspero Gaínza Agüero, Miguel Galbán Gutiérrez, Julio César Gálvez Rodríguez, Edel José García Díaz, José Luís García Paneque, Ricardo Severino González Alfonso, Diosdado González Marrero,

Léster González Pentón, Alejandro González Raga, Jorge Luís González Tanquero, Leonel Grave de Peralta, Iván Hernández Carrillo, Normando Hernández González, Juan Carlos Herrera Acosta, Regis Iglesias Ramírez, José Ubaldo Izquierdo Hernández, Reynaldo Miguel Labrada Peña, Librado Ricardo Linares García, Marcelo Manuel López Bañobre, José Miguel Martínez Hernández, Héctor Maseda Gutiérrez, Mario Enrique Mayo Hernández, Luís Milán Fernández, Rafael Millet Leyva, Nelson Moline Espino, Ángel Moya Acosta, Jesús Mustafá Felipe, Félix Navarro Rodríguez, Jorge Olivera Castillo, Pablo Pacheco Ávila, Héctor Palacios Ruiz, Arturo Pérez de Alejo Rodríguez, Omar Pernet Hernández, Horacio Julio Piña Borrego, Fabio Prieto Llorente, Alfredo Manuel Pulido López, José Gabriel Ramón Castillo, Arnaldo Ramos Lauzurique, Blas Giraldo Reyes Rodríguez, Raúl Ramón Rivero Castañeda, Alexis Rodríguez Fernández, Omar Rodríguez Saludes, Martha Beatriz Roque Cabello, Omar Moisés Ruiz Hernández, Claro Sánchez Altarriba, Ariel Sigler Amaya, Guido Sigler Amaya, Miguel Sigler Amaya, Ricardo Enrique Silva Gual, Fidel Suárez Cruz, Manuel Ubals González, Julio Antonio Valdés Guevara, Miguel Valdés Tamayo, Héctor Raúl Valle Hernández, Manuel Vázquez Portal, Antonio Augusto Villareal Acosta, and Orlando Zapata Tamayo.

397. The international responsibility of the Cuban State derived from the events of March 2003, when there were massive detentions of human rights activists and independent journalists based on the argument that they had engaged in subversive, counterrevolutionary activities against the State and that they had disseminated illicit propaganda and information. Subsequently, all of them were tried in very summary proceedings, in which their rights to defense were violated, and they were convicted and subjected to prison terms ranging from six months to 28 years.

398. The Commission made the following recommendations to the Cuban State:

1. Order the immediate and unconditional release of the victims in this case, while overturning their convictions inasmuch as they were based on laws that impose unlawful restrictions on their human rights.
2. Adopt the measures necessary to adapt its laws, procedures and practices to international human rights laws. In particular, the Commission is recommending to the Cuban State that it repeal Law No. 88 and Article 91 of its Criminal Code, and that it initiate a process to amend its Constitution to ensure the independence of the judicial branch of government and the right to participate in government.
4. Redress the victims and their next of kin for the pecuniary and non-pecuniary damages suffered as a result of the violations of the American Declaration herein established.
5. Adopt the measures necessary to prevent a recurrence of similar acts, in keeping with the State's duty to respect and ensure human rights.

399. On October 26, 2011, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case. The Cuban State did not submit any information.

400. According to the information received by the IACHR, between July 2010 and March 2011, the Cuban Government released the victims in Case 12.476 who had been deprived of freedom since 2003. Most of those released were transferred to Spain and those who refused to leave the country after being released were granted "*licencia extrapenal*." (conditional release amounting to house arrest).³¹

401. However, the convictions handed down against the victims in Case 12.476 were not declared null, despite having been based on laws imposing unlawful restrictions on their human rights. With regards to the second, third and fourth recommendation of the IACHR, the Cuban State has not yet adopted measures of compliance.

³¹ Nota de Prensa en Diario El País, *Cuba deja quedarse a los ex presos que no quieren exiliarse*, de fecha 23 de septiembre de 2010.

402. Because of the above, the Commission concludes that compliance with the recommendations that were indicated continues to be pending. As a result, it shall continue to monitor its compliance.

Case 12.477, Report No. 68/06, Lorenzo Enrique Copello Castillo *et al.* (Cuba)

403. In Report No. 68/06 of October 21, 2006, the IACHR concluded that the Cuban State was responsible for: (1) violations of Articles XVIII and XXVI of the American Declaration to the detriment of Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac; (2) violations of Article I of the American Declaration to the detriment of Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac. The responsibility of the Cuban State derives from submitting the victims to very summary trials that did not guarantee respect for the procedural guarantees of a fair trial, and the subsequent execution of the victims on April 11, 2003, pursuant to a judgment handed down in a procedure that did not have the proper guarantees of protection.

404. The Commission made the following recommendations to the Cuban State:

1. Adopt the measures necessary in order to adapt its laws, proceedings, and practices in line with international human rights law, especially those that relate to situations described in the present report. In particular, the Commission recommends the Cuban State reform its Constitution to ensure the independence of its judiciary.
2. Make reparations to the families of the victims for the material and psychological damages they have suffered by virtue of the violations of the American Declaration established here.
3. Adopt all measures necessary to ensure that similar events may not occur again, in accordance with the duty of the State to protect and guarantee human rights.

405. On October 26, 2011, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case. The Cuban State did not submit any information. As for the petitioners, on November 23, 2011, they reported that there is no evidence that the Cuban State has complied with the recommendations made by the IACHR.

406. Because of the above, the Commission concludes that compliance with the recommendations that were indicated continues to be pending. As a result, it shall continue to monitor its compliance.

Case 11.421, Report No. 93/00, Edison Patricio Quishpe Alcívar (Ecuador)

407. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The incident that led to the agreement was the death of Edison Patricio Quishpe at a police station on September 7, 1992, after he had been arrested and subjected to torture and other forms of inhuman, cruel, and degrading treatment.

408. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 93/00³², in which it acknowledged that the State had complied with the payment of a compensation in the amount of US\$30,000, and decided:

³² Report No. 93/00, Case 11.421, Edison Patricio Quishpe Alcívar, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.421.htm>

2. To urge the State to take the necessary measures to carry out the commitment to pursue civil and criminal proceedings and to seek to impose punishment on those persons who, in the performance of government functions or under the color of public authority, are considered to have participated in the alleged violation, and the payment of interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise implementation of the friendly settlement, and in that context to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months as to performance of the obligations assumed by the State under this friendly settlement.

409. On October 26, 2011, the IACHR asked both parties to report on compliance with the items still pending. On December 7, 2011, the petitioners reported that the State had not issued a judicial decision punishing those directly responsible nor the judicial authorities whose negligent conduct had allowed the violations reported to the Commission to go unpunished. The State did not respond to the request for information.

410. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

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

411. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Mr. Byron Roberto Cañaverl on May 26, 1993, at the hands of state agents who subjected him to torture and other forms of cruel and inhumane treatment.

412. On November 19, 2000, the IACHR adopted Friendly Settlement Report No. 94/00³³, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$7,000, and decided:

2. To urge the State to take the measures needed to carry out the pending commitment to bring civil, criminal, and administrative proceedings against those persons who, in the performance of state functions, participated in the alleged violations, and to pay interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise implementation of the friendly settlement agreement, and in this context to remind the Ecuadorian State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on progress in carrying out the obligations assumed by the State under this friendly settlement.

413. The IACHR requested information from both parties regarding compliance with the pending items on October 26, 2011. On December 7, 2011, the petitioners reported that the Ecuadorian State had not initiated any civil, criminal, or administrative actions to punish those responsible for the actions alleged before the Commission. The State did not respond to the request for information.

414. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 11.466, Report No. 96/00, Manuel Inocencio Lalvay Guamán (Ecuador)

415. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with a series of arrests of Mr. Manuel Inocencio Lalvay Guamán that took place between 1993 and 1994 at the hands of state agents, who subjected him to torture and other forms of cruel and inhumane treatment.

416. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 96/00³⁴, in which it acknowledged that the State had complied with the payment of a compensation in the amount of US\$25,000, and decided:

2. To urge the State to take the measures needed for carrying out the commitments still pending with respect to bringing to trial the persons considered responsible for the facts alleged.

3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR, every three months, as to the performance of the obligations assumed by the State under this friendly settlement agreement.

417. On October 26, 2011, the IACHR asked both parties to report on compliance with the items still pending. On December 7, 2011, the petitioners reiterated that the police jurisdiction declared action to have lapsed in 1999, without having initiated any action so far to punish the judges who delayed processing of the case nor an investigation to exact punishment for the tortures endured by the victim, allowing those actions to go unpunished. Once again, the State failed to respond to the request for information.

³³ Report No. 94/00, Case 11.439, Byron Roberto Cañaveral, Ecuador, October 5, 2000, available at: <http://cidh.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.439.htm>

³⁴ Report No. 96/00, Case 11.466, Manuel Inocencio Lalvay Guzmán, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.466.htm>

418. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

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

419. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of the minor Carlos Juela Molina on December 21, 1989, by an agent of the State who subjected him to torture and other forms of cruel and inhumane treatment. The investigation of the police officer involved in the incident was taken up by the police criminal justice system, which sent the proceedings to the archive.

420. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 97/00³⁵, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$15,000, and decided:

2. To urge the State to take the measures needed to comply with the pending commitments to punish the persons responsible for the violation alleged.
3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreement, and in this context to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months regarding performance of the obligations assumed by the State under this friendly settlement agreement.

421. On October 26, 2011, the IACHR requested information from both parties regarding compliance with pending items. On December 7, 2011, the petitioners reported that the police jurisdiction declared action against those responsible to have lapsed, allowing their actions to remain unpunished. This declaration led the State to accept its international responsibility and to sign the friendly settlement agreement, although so far it has not sanctioned the judges responsible for allowing the case to lapse nor adopted any type of punishment against those responsible. Once again, the State failed to respond to the request for information.

422. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

³⁵ Report No. 97/00, Case 11.584, Carlos Juela Molina, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.584.htm>.

Case 11.783, Report No. 98/00, Marcia Irene Clavijo Tapia (Ecuador)

423. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Marcia Irene Clavijo Tapia, carried out without an arrest warrant on May 17, 1993. The victim was subjected to torture and other forms of cruel and inhumane treatment at the time of her arrest, kept in preventive custody for four years, and then the charges against her were dismissed.

424. On October 5, 2000³⁶, the IACHR adopted Friendly Settlement Report No. 98/00, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$63,000, and decided:

2. To urge the State to take the measures necessary to carry out the commitments pending with respect to bringing to trial and punishing the persons responsible for the violations alleged, and to paying interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State of its commitment to report to the IACHR every three months regarding performance of the obligations assumed by the State under this friendly settlement agreement.

425. On October 26, 2011, the IACHR asked both parties for information on compliance with pending items. Neither of the parties submitted any information.

426. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 11.868, Report No. 99/00, Carlos Santiago and Pedro Restrepo Arismendy (Ecuador)

427. On May 14, 1998, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged that “the domestic judicial proceeding was characterized by unjustified delays, excessive technicalities, inefficiency, and denial of justice. The Ecuadorian State could not demonstrate that it was not its official agents who illegally and arbitrarily detained brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy, to the point of torturing them and taking their lives, nor could it refute that those actions were at odds with the Constitution, with our country’s legal framework, and with respect to the international conventions that guarantee human rights.” The State also agreed to pay compensatory damages, to conduct a search for the bodies, and to prosecute the guilty. The case deals with the detention and subsequent disappearance of the brothers Carlos Santiago and Pedro Andrés Restrepo on January 8, 1988, at the hands of officers of the National Police.

428. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 99/00³⁷, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$2,000,000, and decided:

2. To urge the State to take the measures needed to comply with the commitments still pending to carry out the total, definitive, and complete search for the bodies of the two brothers,

³⁶ Report No. 98/00, Case 11.783, Marcia Irene Clavijo Tapia, Ecuador, October 5, 2000, available at <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.783.htm>

³⁷ Report No. 99/00, Case 11.868, Carlos Santiago and Pedro Restrepo Arismendy, Ecuador, October 5, 2000, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.868.htm>

and the criminal trial of the persons considered to have participated in the torture, disappearance, and death of the Restrepo Arismendy brothers, as well as in covering up those acts.

3. To continue to monitor and supervise compliance with the settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report “periodically, upon request of the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights, as to the performance of the obligations assumed by the State under this friendly settlement.”

429. On October 25, 2011, the IACHR asked both parties to report on the steps taken in compliance with the pending items; however, no replies were received.

430. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor the items pending.

Case 11.991, Report No. 100/00, Kelvin Vicente Torres Cueva (Ecuador)

431. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Kelvin Vicente Torres Cueva, detained without an arrest warrant on June 22, 1992. The victim was subjected to torture and other forms of cruel and inhumane treatment, kept incommunicado for 33 days, and held in preventive custody for more than six years, after which he was released.

432. On October 5, 2000, the IACHR adopted Friendly Settlement Report No. 100/00³⁸, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$50,000, and decided:

2. To urge the State to make the decisions needed to carry out the pending commitments to bring to trial the persons considered responsible for the facts alleged, and to pay interest for the delinquency in payment of the compensation.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in that context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on performance of the obligations assumed by the State under this friendly settlement agreement.

433. On October 25, 2011, the IACHR asked both parties for information on compliance with the pending items. On December 7, 2011, the petitioners reported that, despite the amount of time that has passed since the agreement, the State has not fulfilled its obligation in terms of the investigation, prosecution, and punishment of those responsible. On the contrary, they indicated that “the judicial system illegally issued a conviction against the victim, without allowing him to defend himself, since he was tried in absentia, which is expressly prohibited by law.” For its part, the State did not submit the information requested.

434. In consideration whereof, the IACHR concludes that the State has only partially complied with the friendly settlement agreement. Therefore, the Commission will continue monitoring the items pending.

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

³⁸ Report No. 100/00, Case 11.991, Kelvin Vicente Torres Cueva, October 5, 2000, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.991.htm>

435. On June 25, 1998, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals the arrests of Froilán Cuéllar, José Otilio Chicangana, Juan Clímaco Cuéllar, Henry Machoa, Alejandro Aguinda, Demetrio Pianda, Leonel Aguinda, Carlos Enrique Cuéllar, Carmen Bolaños, Josué Bastidas, and Harold Paz, which were carried out without arrest warrants between December 18 and 21, 1993, by hooded members of the Army. The victims were kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment; they were then held in preventive custody for between one and four years, after which they were released.

436. On February 20, 2001 the IACHR adopted Friendly Settlement Report No. 19/01³⁹ in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$100,000 to each of the victims, and decided:

2. To urge the State to adopt the measures needed to comply with the commitments pending with respect to the trial of the persons presumed to be responsible for the facts alleged.
3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR every three months of compliance with the obligations assumed by the State under this friendly settlement.

437. On October 25, 2011 the IACHR asked both parties to report on compliance with the items still pending. Neither the State nor the petitioners responded to the request for information.

438. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.512, Report No. 20/01, Lida Ángela Riera Rodríguez (Ecuador)

439. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals the duration of the preventive custody in which Lida Ángela Riera Rodríguez was held in her trial for abetting the crime of embezzlement. The victim was detained on January 7, 1992, on June 26, 1995, she was convicted to a two-year prison term as an as an accessory after the fact, when she had already been in custody for three years and six months.

440. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 20/01⁴⁰, in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$20,000 to the victim, and decided:

2. To urge the State to adopt the necessary measures to conclude implementation of the commitment regarding the trial of persons implicated in the facts alleged.

³⁹ Report No. 19/01, Case 11.478, Juan Clímaco Cuéllar *et al.*, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.478.htm>

⁴⁰ Report No. 20/01, Case 11.512, Lida Ángela Riera Rodríguez, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.512.htm>

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR, every three months, of its compliance with the obligations assumed by the State under this friendly settlement agreement.

441. On October 25, 2011, the IACHR asked both parties to report on compliance with the items still pending. On December 7, 2011, the petitioners reported that the State had imposed no judicial or administrative sanctions on the perpetrators of the facts alleged before the Commission. The State did not respond to the request for information.

442. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.605, Report No. 21/01, René Gonzalo Cruz Pazmiño (Ecuador)

443. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This was in connection with the death of René Gonzalo Cruz Pazmiño, which took place on June 20, 1987, at the hands of a member of the Army.

444. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 21/01⁴¹, in which it acknowledged that the State had complied with the payment of compensation damages in the amount of US\$30,000 to the victim, and decided:

2. To urge the State to adopt the necessary measures to conclude implementation of the commitment to prosecute the persons implicated in the facts alleged.

3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR every three months of compliance with the obligations assumed by the State under this friendly settlement.

445. On October 25, 2011 the IACHR asked both parties to report on compliance with the items still pending. The petitioners reported on December 7, 2011 that the State has not imposed any judicial or administrative punishment on the person responsible for murdering the victim. The State did not respond to the request for information.

446. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.779, Report No. 22/01, José Patricio Reascos (Ecuador)

447. On June 11, 1999, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This was in connection with the duration of the preventive custody in which José Patricio Reascos was held during his prosecution for narcotics use. The

⁴¹ Report No. 21/01, Case 11.605, René Gonzalo Cruz Pazmiño, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.605.htm>

victim was detained on September 12, 1993, and, on September 16, 1997, he was sentenced to an 18-month prison term, when he had already been in custody for four years.

448. On February 20, 2001, the IACHR adopted Friendly Settlement Report No. 22/01⁴², in which it acknowledged that the State had complied with the payment of indemnification in the amount of US\$20,000 to the victim, and decided:

2. To urge the State to adopt the measures needed to comply with the commitments pending with respect to the trial of the persons presumed to be responsible for the facts alleged.
3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to inform the IACHR every three months of compliance with the obligations assumed by the State under this friendly settlement.

449. On October 25, 2011 the IACHR requested information from both parties regarding the state of compliance with pending items. The petitioners responded on December 7, 2011, by saying that the State had not initiated any judicial or administrative proceeding towards the investigation and punishment of those responsible for the alleged facts and that the delay had led the matter to lapse within the domestic jurisdiction. The State did not respond to the request for information.

450. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.992, Report No. 66/01, Dayra María Levoyer Jiménez (Ecuador)

451. In Report No. 66/01 of June 14, 2001, the IACHR concluded that the Ecuadorian State had violated, with respect to Mrs. Dayra María Levoyer Jiménez, the following rights enshrined in the American Convention: the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in conjunction with the general obligation of respecting and ensuring those rights. This was in connection with the violations of physical integrity and the denial of liberty suffered by Mrs. Levoyer Jiménez, who was detained on June 21, 1992, without an arrest warrant, and kept incommunicado for 39 days, during which time she was subjected to psychological torture. She was held in custody without a conviction for more than five years, and finally all the charges against her were dismissed.

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

1. Proceed to grant full reparations, which involves granting adequate compensation to Mrs. Dayra Maria Levoyer Jimenez;
2. Order an investigation to determine responsibility for the violations detected by the Commission and eventually to punish the individuals responsible;
3. Take such steps as are necessary to reform *habeas corpus* legislation as indicated in the present report, as well as to enact such reforms with immediate effect.

453. On October 25, 2011 the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on December 7, 2011 that the State had not complied at all with recommendations 1 and 2. They also referred to what the State indicated in 2010 to the effect that it planned to compensate and make a public apology to the victim sometime during the first quarter of 2011, and noted that the State had not done so despite the amount of time that had passed. For its part, the State failed to submit the information requested by the IACHR

⁴² Report No. 22/01, Case 11.779, José Patricio Reascos, Ecuador, February 20, 2001, available at: <http://www.cidh.oas.org/annualrep/2000eng/ChapterIII/Friendly/Ecuador11.779.htm>

454. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

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

455. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, to equal protection, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with arrest of the Colombian citizens Rodrigo Elicio Muñoz Arcos, Luis Artemio Muñoz Arcos, José Morales Rivera, and Segundo Morales Bolaños, who were detained without an arrest warrant on August 26, 1993, by officers of the National Police. The victims were kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment.

456. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 104/01⁴³, in which it acknowledged that the State had complied with paying each victim the amount of US\$10,000 as indemnification, and decided:

2. To remind the State that it must comply fully with the friendly settlement agreement by instituting judicial proceedings against the persons implicated in the violations alleged.
3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreements, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months as to compliance with the obligations assumed by the State under these friendly settlements.

457. On October 26, 2011, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on December 7, 2011 by saying that the State had not complied with the element requiring the commencement of a judicial or administrative proceeding to investigate, identify, and punish the police officers responsible for the facts alleged before the Commission. The State did not respond to the request for information.

458. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.443, Report No. 105/01, Washington Ayora Rodríguez (Ecuador)

459. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Washington Ayora Rodríguez, detained without an arrest warrant on February 14, 1994. The victim was kept incommunicado and subjected to torture and other forms of cruel and inhumane treatment, after which he was released on the grounds that there was no motive for his arrest.

⁴³ Report No. 104/01, Case 11.441, Rodrigo Elicio Muñoz Arcos *et al.*, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11441.htm>

460. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 105/01⁴⁴, certifying that the victim had been paid compensatory damages in the amount of US\$30,000, and decided:

2. To remind the State that it should fully implement the friendly settlement by beginning judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise the implementation of each and every point of the friendly settlement agreement, and in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR, every three months, on the implementation of the obligations assumed by the State under this friendly settlement agreement.

461. On October 25, 2011, the IACHR asked both parties to submit information on compliance with the pending items. In response, the petitioners reported on December 7, 2011 that “despite the amount of time that has passed since the friendly settlement agreement in which the State committed to punish those responsible was signed, so far there is no decision imposing punishment on those guilty of the facts alleged before the Commission.” The State did not respond to the request for information.

462. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.450, Report No. 106/01, Marco Vinicio Almeida Calispa (Ecuador)

463. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the death of Marco Vinicio Almeida Calispa, which occurred on February 2, 1988, while he was in the custody of police officers, and with the failure of the courts to clear up the incident.

464. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 106/01⁴⁵, certifying that the amount of US\$30,000 had been paid as compensatory damages to the victim’s next-of-kin and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

465. On October 25, 2011, the IACHR asked both parties to report on compliance with the items still pending. The petitioners responded on December 7, 2011 and expressed that “since 2004 when the State, through the police jurisdiction, issued a final order of acquittal in favor of the accused, which was confirmed on appeal the following year, no action has been taken to date to impose any civil or administrative sanction on the two police officers responsible nor has there been any investigation of the police magistrates of the First District Court whose conduct allowed this murder to go unpunished.” the petitioners reported that the State had taken no action toward the imposing civil or administrative

⁴⁴ Report No. 105/01, Case 11.443, Washington Ayora Rodríguez, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11443.htm>

⁴⁵ Report No. 106/01, Case 11.450, Marco Vinicio Almeida Calispa, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11450.htm>

sanctions on the police officers responsible, nor had it investigated the actions of the police magistrates of the First District Court involved in acquitting the state agents involved and that allowed the case to remain unpunished. The State did not respond to the request for information.

466. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.542, Report No. 107/01, Ángel Reiniero Vega Jiménez (Ecuador)

467. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the arrest of Ángel Reiniero Vega Jiménez, violently detained in his home by state agents without an arrest warrant on May 5, 1994. After being subjected to torture and other forms of cruel and inhumane treatment, the victim died in a hospital. The charges against the officers involved were dismissed by the police criminal justice system.

468. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01⁴⁶, certifying that the amount of US\$30,000 had been paid as indemnification to the victim's next-of-kin, and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

469. On October 26, 2011 the IACHR asked both parties to report on compliance with the items still pending. Neither of the parties submitted the information requested.

470. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.574, Report No. 108/01, Wilberto Samuel Manzano (Ecuador)

471. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the death of Wilberto Samuel Manzano as a result of the actions of state agents on May 11, 1991. The victim was wounded with a firearm and then illegally detained by police officers in civil clothing, following which he died in a hospital. The charges against the officers involved were dismissed by the police criminal justice system.

⁴⁶ Report No. 107/01, Case 11.542, Ángel Reiniero Vega Jiménez, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11542.htm>

472. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 107/01⁴⁷, certifying that the amount of US\$30,000 had been paid as compensatory damages to the victim's next-of-kin, and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

473. On October 25, 2011 the IACHR asked both parties to report on compliance with the items still pending. Neither of the parties submitted the information requested.

474. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.632, Report No. 109/01, Vidal Segura Hurtado (Ecuador)

475. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to life, to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the arrest of Vidal Segura Hurtado, detained without an arrest warrant by officers of the National Police in civilian clothing on April 8, 1993. The victim was subjected to torture and other forms of cruel and inhumane treatment; he was then executed and his body was found on May 8, 1993, on the beltway surrounding the city of Guayaquil.

476. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 109/01⁴⁸, in which it acknowledged that the State had complied with the payment of compensatory damages in the amount of US\$30,000 to the victim's next-of-kin, and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

477. On October 26, 2011, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported on December 7, 2011 that the State had begun no criminal or administrative investigation with a view to punishing the police officers responsible for Vidal Segura Hurtado's murder. The State submitted no information.

⁴⁷ Report No. 108/01, Case 11.574, Wilberto Samuel Manzano, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11574.htm>

⁴⁸ Report No. 109/01, Case 11.632, Vidal Segura Hurtado, October 11, 2001, available at: <http://www.cidh.oas.org/annualrep/2001eng/Ecuador11632.htm>

478. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 12.007, Report No. 110/01, Pompeyo Carlos Andrade Benítez (Ecuador)

479. On August 15, 2001, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Pompeyo Carlos Andrade Benítez, detained without an arrest warrant on September 18, 1996. After he had been held for ten months, the preventive custody order was canceled and a dismissal order was issued; however, the victim remained in detention.

480. On October 11, 2001, the IACHR adopted Friendly Settlement Report No. 110/01⁴⁹, in which it acknowledged that the State had complied with paying the victim the amount of US\$20,000 as compensatory damages, and decided:

2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.

3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on compliance with the obligations assumed by the State under this friendly settlement.

481. On October 26, 2011, the IACHR requested both parties to report on the state of compliance with pending items. Neither of the parties submitted the information requested.

482. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 11.515, Report No. 63/03, Bolívar Franco Camacho Arboleda (Ecuador)

483. On July 17, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the duration of the preventive custody in which Bolívar Franco Camacho Arboleda was held during his trial for illegal possession of cocaine. The victim was placed in detention on October 7, 1989. On January 24, 1995, he was acquitted and, in February 1995, he was released, after he had been imprisoned for more than five years (63 months).

484. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 63/03⁵⁰, in which it acknowledged that the State had complied with paying the victim the amount of US\$30,000 as compensatory damages, and decided:

⁴⁹ Report No. 110/01, Case 12.007, Pompeyo Carlos Andrade Benítez, October 11, 2001, available at <http://www.cidh.oas.org/annualrep/2001eng/Ecuador12007.htm>

⁵⁰ Report No. 63/03, Case 11.515, Bolívar Franco Camacho Arboleda, October 10, 2003, available at: <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.11515.htm>

2. To remind the State that it must comply fully with the friendly settlement agreement by initiating judicial proceedings against the persons involved in the alleged violations.

3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlement, and in this context to remind the State, through the Attorney General, of its commitment to report every three months to the IACHR on compliance with the obligations assumed by the State under this friendly settlement.

485. On October 26, 2011, the IACHR asked both parties to report on compliance with the pending points. The petitioners reported on December 7, 2011 that the State had not instituted any judicial or administrative proceeding to investigate, identify and punish the police, judges and prosecutors responsible for the facts alleged to the Commission. The State did not reply to the Commission's request for information.

486. Based on the foregoing, the Commission concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

Case 12.188, Report No. 64/03, Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, Rocío Valencia Sánchez (Ecuador)

487. On November 12, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, and Rocío Valencia Sánchez, detained without an arrest warrant by police officers on March 19, 1993. On March 28, 1993, the victims were placed in preventive custody as part of their prosecution for the crimes of drug trafficking and asset laundering. The victims were kept in preventive custody for more than five years, following which they were acquitted.

488. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 64/03⁵¹, in which it acknowledged that the State had complied with paying each victim the amount of US\$25,000 as indemnification, and decided:

2. To remind the State that it must comply fully with the Friendly Settlement Agreement by initiating judicial proceedings against the persons involved in the alleged violations.

3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlement; and, in this context, to remind the State, through the Attorney General, of its commitment to report every three months to the IACHR on compliance with the obligations assumed by the State under these friendly settlements.

489. On October 26, 2011, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners reported on December 7, 2011, that the State had not yet initiated any civil, criminal or administrative actions to punish the police officers, judges, and prosecutors responsible for the facts alleged. The State did not respond to the request for information.

490. In consideration whereof, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. Therefore, the Commission will continue to monitor pending items.

⁵¹ Report No. 64/03, Case 12.188, Joffre José Valencia Mero, Priscila Zoreida Valencia Sánchez, Rocío Valencia Sánchez, October 10, 2003, available at <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.12188.htm>

Case 12.394, Report No. 65/03, Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos (Ecuador)

491. On November 26 and December 16, 2002, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. This case deals with the firearm attack on the vehicle carrying Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos on May 22, 1999, perpetrated by officers of the National Police. Following the attack the victims were taken into custody, without arrest warrants, and subjected to torture and other forms of cruel and inhumane treatment; they were later released, on the grounds that the attack and arrest were the result of a “police error.”

492. On October 10, 2003, the IACHR adopted Friendly Settlement Report No. 65/03⁵², in which it acknowledged that the State had complied with paying compensation in the amounts of US\$100,000 to Mr. Hernández, US\$300,000 to Mr. Loor, and US\$50,000 to Mr. Lara, and decided:

2. To remind the State that it must comply fully with the friendly settlement agreements by initiating judicial proceedings against the persons involved in the alleged violations.

3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlements; and, in this context, to remind the State, through the Attorney General, of its commitment to report every three months to the Commission on compliance with the obligations assumed by the State under these friendly settlements.

493. On October 26, 2011, the IACHR asked both parties to report on compliance with the items still pending, but received no response.

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

⁵² Report No. 65/03, Case 12.394, Joaquín Hernández Alvarado, Marlon Loor Argote and Hugo Lara Pinos, October 10, 2003, available at: <http://www.cidh.oas.org/annualrep/2003eng/Ecuador.12394.htm>

Petition 12.205, Report No. 44/06, José René Castro Galarza (Ecuador)

495. On October 10, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights, the right to humane treatment, to personal liberty, to a fair trial, and to judicial protection, and the duty of adopting domestic legal provisions, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty.

496. This case deals with the duration of the preventive custody in which José René Castro Galarza was held during his prosecution for drug trafficking, acting as a front, and illegal enrichment. The victim was detained, without an arrest warrant, on June 26, 1992. He was then kept incommunicado for 34 days. On November 22, 1996, the illegal enrichment charges against the victim were dismissed; on March 23, 1998, the fronting charges were dismissed; and he was sentenced to an eight-year prison term for drug trafficking, which was reduced to six years on September 15, 1997. The victim was kept in prison even though he had been in custody for six years, and he was released on June 16, 1998.

497. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 44/06⁵³, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$80,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation.

498. On October 26, 2011, the IACHR asked both parties to report on compliance with the items still pending. In response, the petitioners indicated on December 7, 2011, that the State had not initiated any action to punish the police officers and prosecutors responsible for the facts, nor had it carried out all necessary reparations measures and lifted the prohibition against transferring ownership of the property of the of Mr. José René Castro Galarza. They added that on June 28, 2011, they asked the State to order the lifting of the precautionary measures prohibiting transfer of the victim's property and to correct information against him held by the Armed Forces and that on July 20 the Minister of Justice and Human Rights responded that the agreement provides only for compensation, investigation, and punishment, right of repetition, and tax-exempt payments but does not provide for lifting the prohibition on transferring property or any other measure not contained therein.

499. On this subject, the representatives pointed out that in the second paragraph of the Third Chapter on the Responsibility of the State, the friendly settlement agreement clearly states that "Given the above, the Ecuadorian State accepts the facts in Case 12.205 before the Inter-American Commission on Human Rights and undertakes the necessary reparative steps to compensate the victims for the damages caused by those violations." They maintained that the "violations of unlawful arrest and arbitrary prosecution against the victims led to the issuance of prohibitions on transferring their property; the State, by accepting responsibility for these facts and undertaking to take the necessary reparative measures to compensate for damages, obviously assumes the obligation to lift property-related precautionary measures that were issued in the proceedings that were the subject of the complaint filed before the [...] Commission, so that saying the opposite now means that the State is openly failing to carry out an obligation that it undertook voluntarily." The State did not respond to the request for information.

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

Petition 12.207, Report No. 45/06, Lisandro Ramiro Montero Masache (Ecuador)

⁵³ Report No. 44/06, Case 12.205, José René Castro Galarza, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12205eng.htm>

501. On September 20, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty. The case deals with the arrest of Lisandro Ramiro Montero Masache, detained without an arrest warrant on June 19, 1992. The victim was held in preventive custody for more than five years, following which the charges were dismissed.

502. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 45/06⁵⁴, in which it acknowledged that the State had complied with the payment of compensation to the victim in the amount of US\$60,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation.

503. On October 26, 2011 the IACHR asked both parties to report on compliance with the pending points. In reply, On December 7, 2011, the petitioners asserted that the State had not instituted any actions (civil, criminal or administrative) to punish all those responsible for the facts covered in the complaint. The State did not reply to the Commission's request for information.

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

Case 12.238, Report No. 46/06, Myriam Larrea Pintado (Ecuador)

505. Following the adoption of Admissibility Report No. 8/05, the parties reached a friendly settlement agreement on February 23, 2005. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to personal liberty, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages, to remove her name from the public criminal records, to publish its acknowledgment of responsibility, and to prosecute the guilty. The case deals with the duration of the preventive custody in which Myriam Larrea Pintado was held during her prosecution for an alleged fraudulent transfer of property. The victim was imprisoned from November 11, 1992, to May 6, 1994, and was acquitted on October 31, 1994.

506. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 46/06⁵⁵, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$275,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation.

507. On October 26, 2011 the Commission asked both parties to report on compliance with the pending points. On December 7, 2011, Mrs. Larrea indicated that the State only complied fully with the economic compensation established in the agreement but not with the other points, despite the number of years that have passed since the agreement was signed. For its part, the State did not submit the requested information.

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

⁵⁴ Report No. 45/06, Case 12.207, Lizandro Ramiro Montero Masache, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12207eng.htm>

⁵⁵ Report No. 46/06, Case 12.238, Myriam Larrea Pintado, March 15, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/ECUADOR.12238eng.htm>

Petition 533-01, Report No. 47/06, Fausto Mendoza Giler and Diógenes Mendoza Bravo (Ecuador)

509. On September 20, 2005, through the good offices of the Commission, the parties reached a friendly settlement agreement. In that agreement, the Ecuadorian State acknowledged its responsibility for violating, through the actions of its state agents, the general obligation of respecting and ensuring rights and the right to life, to a fair trial, and to judicial protection, in breach of the American Convention on Human Rights. The State also agreed to pay compensatory damages and to prosecute the guilty.

510. This case deals with the arrest of Fausto Mendoza Giler and Diógenes Mendoza Bravo on March 19, 2000, by members of the Special Operations Group (GOE) of the police. The victims were beaten, following which Fausto Fabricio Mendoza died. Diógenes Mendoza Bravo lodged a private suit against the police officers involved in the arrest and, on July 20, 2000, a generalized trial commencement deed was adopted in which none of those officers was named.

511. On March 15, 2006, the IACHR adopted Friendly Settlement Report No. 47/06⁵⁶, in which it acknowledged that the State had complied with the payment of compensatory damages to the victim in the amount of US\$300,000; in addition, it said would continue to follow up on and monitor all the points in the friendly settlement agreement and, in that context, reminded the parties of their commitment to keep the IACHR apprised regarding its implementation.

512. On October 26, 2011 the IACHR requested both parties to report on the state of compliance with the pending items. On December 7, 2011, the petitioners responded that they have no knowledge that the State has punished the persons directly responsible of the facts of the case, nor the judges for attributing themselves jurisdiction they did not have. The State did not respond.

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

⁵⁶ Report No. 47/06, Petition 533-01, Fausto Mendoza Giler *et al.*, March 15, 2006, available at <http://www.cidh.oas.org/annualrep/2006eng/Ecuador533.01eng.htm>

Case 12.487, Report No. 17/08 Rafael Ignacio Cuesta Caputi (Ecuador)

514. In Report No. 17/08⁵⁷ of March 14, 2008, the Commission concluded that the Ecuadorian State had incurred international responsibility for violation of Rafael Ignacio Cuesta Caputi's rights to judicial guarantees, to judicial protection and to freedom of expression, set forth in articles 8(1), 25 and 13 of the American Convention, in conjunction with its general obligation under Article 1(1) to respect and ensure the Convention-protected rights. The present case concerns the Ecuadorian State's responsibility for failure to properly investigate the facts surrounding the explosion of a bomb that Mr. Cuesta Caputi was holding in the course of practicing his profession of journalism.

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

1. Publicly acknowledge international responsibility for the human rights violations established by the IACHR in the present report.
2. Carry out a complete, impartial, and effective investigation into the attack on Rafael Ignacio Cuesta Caputi.
3. Grant adequate reparation to Mr. Rafael Ignacio Cuesta Caputi for the violations of his right to judicial guarantees, to judicial protection, to personal integrity, and to freedom of thought and expression.

516. On October 26, 2011 the IACHR requested both parties to report on the state of compliance with the pending items

517. By note dated November 1, 2011, the State reported on the measures taken to comply with the recommendations made in Merits Report No. 36/08. Regarding the first recommendation it reiterated that on October 20, 2010, the parties signed two agreements: a) an Agreement on Compliance with Recommendations, and b) an Agreement on Fulfillment of Public Apologies. It also reiterated that on November 29, 2010, the Ministry of Justice and Human Rights had published the State's public apologies to Rafael Cuesta Caputi in the *Diario El Universo*. It pointed out that on January 10, 2011 "a plaque commemorating the violation of the Mr. Rafael Cuesta's rights" was installed at the Ministry of Culture of the city of Guayaquil, with the prior consent and approval of the victim and his attorney, and maintained that this action fully complied with the first recommendation made by the IACHR. Regarding the second recommendation, the State indicated that in 2010 the Ministry of Justice and Human Rights and Worship asked the Office of the General Prosecutor of the State to reopen the investigation process in the case and that office is now taking the necessary actions to investigate and sanction those responsible for the attack on Mr. Cuesta. Regarding the third recommendation, the State stated that it was planning to set up a meeting to establish the amount and make the payment.

518. On November 10, 2011, the petitioner reported that the situation regarding compliance with the recommendations "remained unchanged" since 2010 in the sense that the State "has only partially complied with one of the recommendations made by the Commission [...] i.e., the publication of public apologies and the placement of a commemorative plaque." He added that the investigation has not been efficient and that the time limit the law allows for investigation in the preliminary inquiry is about to run out. Finally, he pointed out that despite the commitment expressed by the State to comply with the recommendation on economic compensation in the first four months of 2011, compliance with the third recommendation of the IACHR remains pending.

519. The Commission therefore concludes that the recommendations made in Report 17/08 have not been carried out. Accordingly, it will continue to monitor for compliance.

Case 12.525, Report No. 84/09 Nelson Iván Serrano Sáenz (Ecuador)

⁵⁷ Report No. 17/08, Case 12.497, Rafael Ignacio Cuesta Caputi, March 14, 2008, available at: <http://www.cidh.oas.org/annualrep/2008eng/Ecuador12487eng.htm>

520. In Report No. 84/09⁵⁸ of August 6, 2009, the Commission concluded that the State was responsible for violation of the rights to humane treatment, personal liberty, due process, nationality, freedom of movement and residence, and judicial protection, recognized in articles 5, 7, 8, 20, 22 and 25, respectively, of the American Convention, in relation to articles 1(1) and 2 thereof, by virtue of the unlawful detention of Nelson Iván Serrano Sáenz, a citizen with dual Ecuadorian and United States citizenship, and his immediate deportation to the United States to face trial for the murder of four people in the state of Florida, where he was subsequently convicted and sentenced to die.

521. The IACHR made the following recommendations to the Ecuadorian State:

1. Continue granting legal assistance to Nelson Iván Serrano Sáenz according to international law.
2. Modify domestic legislation to ensure simple and effective recourse to courts pursuant to Article 25 of the American Convention for anyone subject to deportation proceedings.
3. Provide adequate reparations for the violations of Nelson Iván Serrano Sáenz's rights established in this report.

522. On October 26, 2011 the IACHR requested information from both parties on the compliance measures adopted. On December 12, the petitioners reported that the State had not effectively complied with the recommendations made by the Commission and noted that although the State offered to provide adequate means to provide an adequate defense to prevent Mr. Serrano Sáenz from being executed in the United States, it had not hired the services of defense attorneys for the full defense of Mr. Serrano Sáenz. They also indicated that although reforms were introduced in 2009 with the promulgation of the Organic Code of the Judiciary, under which police superintendents should have ceased to exercise judicial functions, that reform has not been implemented in practice, since the competence of such administrative authorities persists. As a result, they maintained that the State has not fulfilled its duty to provide adequate judicial protection and with it a simple and effective remedy for those subject to deportation proceedings. For its part, the State did not submit the requested information.

523. Concerning its obligation to provide legal assistance, on December 30, 2011, the State informed the Commission that it had made efforts to guarantee that Mr. Serrano Saéenz had specialized legal counsel. For this purpose, it had hired the professional services of a death penalty specialist to file an appeal, and that appeal having been denied, had also authorized the hiring of that same attorney to petition for a writ of certiorari. The State also indicated that, aware of the need to revise its legal framework so that persons subject to deportation can appeal the decisions, it has undertaken to comply with the IACHR recommendation and referred to the inclusion of the action of protection – whose object would be to directly safeguard the rights recognized in the Ecuadorian Constitution – as a step forward resulting from the promulgation of the new magna carta. Finally, the State reported that it had created the Commission to Investigate the Deportation of Nelson Iván Serrano Saéenz and that the investigation was in the preliminary phase.

524. The Commission therefore concludes that the recommendations made in Report 84/09 have not been carried out. Accordingly, it will continue to monitor compliance with those recommendations.

Case 12.249, Report No. 27/09, Jorge Odir Miranda Cortez *et al.* (El Salvador)

525. In Report No. 47/03, of October 8, 2003, the IACHR concluded that the Salvadoran State was responsible for: i) violation of Article 25 of the American Convention on Human Rights, to the

⁵⁸ Report No. 84/09, Case 12.535, Nelson Iván Serrano Sáenz, August 6, 2009, available at: <http://www.cidh.oas.org/annualrep/2009eng/Ecuador12525eng.htm>

detriment of Jorge Odir Miranda Cortez and 26 other persons identified in the processing of the petition, by virtue of the fact that a petition they attempted to file seeking *amparo* relief was not the simple and effective remedy required under the international human rights obligations undertaken by the Salvadoran State; ii) violation of Article 2 of the Convention, by virtue of the fact that El Salvador's *amparo* law did not meet the requirements set forth in Article 25 of the American Convention, as it was not the simple and prompt recourse required under Article 25 of the Convention; and iii) violation of Article 24 of the Convention, to the detriment of Mr. Jorge Odir Miranda Cortez. The Commission did not find a violation of Article 26 of the Convention.

526. According to the complaint, the State had failed to provide the 27 victims –all of whom were infected with the HIV/AIDS virus- the medications that together constitute the HIV/AIDS triple therapy needed to save their lives and improve their quality of life, thereby placing them in a situation that, in their judgment, constituted cruel, inhuman and degrading treatment. They also alleged that they were discriminated against by the Salvadoran Social Security Institute because they had HIV/AIDS. They said that the almost two years that passed before a decision was handed down on the petition they filed seeking *amparo* relief in order to claim violation of their rights was an unreasonable period and violated their rights to judicial guarantees and judicial protection.

527. The IACHR made the following recommendations to the Salvadoran State:

- a) Implement legislative measures to amend the provisions governing *amparo*, in order to make it the simple, prompt and effective remedy required under the American Convention, and
- b) Make adequate reparations to Jorge Odir Miranda Cortez and the other 26 victims mentioned in the record of Case 12,249 –or their beneficiaries, as appropriate- for the human rights violations herein established.

528. In its Merits Report No. 42/04 (Article 51), dated October 12, 2004, the IACHR evaluated the measures that El Salvador had taken to comply with the recommendations made. It concluded that those recommendations had not been fully carried out. Accordingly it reminded the Salvador State of its previous recommendations.

529. Subsequently, the IACHR adopted its Merits Report No. 27/09 (Article 51 – Publication), of March 20, 2009. There, the Commission concluded that the Salvadoran State had complied with the second recommendation made in Report No. 47/03, but observed that the recommendation it had made suggesting legislative amendment of the *amparo* laws had still not been carried out. Accordingly, it reiterated this recommendation.

530. On October 26, 2011, the IACHR asked the parties to provide updated information on the status of compliance with the pending recommendation.

531. Regarding the first recommendation from the IACHR, the Salvadoran State reported that the Constitutional Procedure bill – introduced in the Legislative Assembly in 2002 - was still being studied by the Commission on Legislation and Constitutional Provisions.

532. In addition, it reported that the funds handed over to the National Anti-AIDS Commission (CONASIDA) in accordance with the Agreement on Compliance with Recommendations in Case 12.249, signed between the parties on November 30, 2007, have helped to strengthen the Commission's efforts on behalf of those living with HIV/AIDS. It added that during 2011 CONASIDA and the Ministry of Health have continued their HIV/AIDS prevention efforts; improved healthcare for the population living with HIV/AIDS; and promoted the elimination of discrimination and the stigma against persons with HIV/AIDS and their families. It indicated that other aspects have been taken up to make progress in the area of human rights for this sector of the population and reported that in April 2011 the Ministry of Health published the "2011-2015 Multisectoral National Strategic Plan in Response to HIV/AIDS and STDs," which seeks to organize a joint response by Salvadoran society to the HIV/AIDS epidemic; to respond to the challenges posed by the epidemic in El Salvador; and address international commitments in the area

of the human rights of people living with HIV/AIDS. It specified that society participated in the process of designing the Strategic Plan. It indicated that the Strategic Plan includes five strategic pillars summarized as: prevention with an emphasis on educating the vulnerable population; comprehensive care for persons living with HIV/AIDS, which assumes strengthening the health services; sustainability of the response; a strategic information system; and a human rights and gender approach component. It indicated that 331 million dollars were allocated for this plan.

533. The Commission therefore concludes that the recommendations made in the present case have been partially carried out. Accordingly, the Commission will continue to monitor compliance.

Case 9903, Report No. 51/01, Rafael Ferrer Mazorra et al. (United States)

534. In Report No. 51/01 dated April 4, 2001 Commission concluded that the State was responsible for violations of Articles I, II, XVII, XVIII and XXV of the Declaration with respect to the petitioner's deprivations of liberty.

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

1. Convene reviews as soon as is practicable in respect of all of the Petitioners who remained in the State's custody, to ascertain the legality of their detentions in accordance with the applicable norms of the American Declaration, in particular Articles I, II, XVII, XVIII and XXV of the Declaration as informed by the Commission's analysis in the report; and
2. Review its laws, procedures and practices to ensure that all aliens who are detained under the authority and control of the State, including aliens who are considered "excludable" under the State's immigration laws, are afforded full protection of all of the rights established in the American Declaration, including in particular Articles I, II, XVII, XVIII and XXV of the Declaration as informed by the Commission's analysis in its report.

536. In its 2006, 2007 and 2008 Annual Reports, the Commission indicated that compliance with its recommendations transcribed above was still pending. By letters dated March 6, 2007, and January 6, 2009, the State reiterated its arguments of December 15, 2005, in which it disagreed with and declined the Commission's recommendations and denied any violations of the American Declaration of the Rights and Duties of Man in this case.

537. On October 25, 2011, the IACHR requested both parties to submit updated information on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The State sent a reply dated October 28, 2011, in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission and that it reiterates its prior responses; in particular, the response submitted in 2005.

538. The Commission concludes that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 12.243, Report No. 52/01, Juan Raul Garza (United States)

539. In Report No. 52/01 dated April 4, 2001, the Commission concluded that the State was responsible for violations of Articles I, XVIII and XXVI of the American Declaration in condemning Juan Raul Garza to the death penalty. The Commission also hereby ratified its conclusion that the United States will perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration, should it proceed with Mr. Garza's execution based upon the criminal proceedings under consideration.

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

1. Provide Mr. Garza with an effective remedy, which includes commutation of sentence; and

2. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.

541. In its 2006, 2007, 2008 and 2009 Annual Reports, the IACHR indicated that compliance with its recommendations transcribed above was still pending. By letters dated March 6, 2007, and January 6, 2009, the State reiterated its arguments of December 15, 2005, in which it disagreed with and declined the Commission's recommendations and denied any violations of the American Declaration of the Rights and Duties of Man in this case.

542. On October 28, 2011, the State submitted a note dated October 28, 2011, indicating that it has carefully reviewed the recommendations of the Inter-American Commission and that it reiterates its prior responses.

543. The Commission concludes that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 11.753, Report No. 52/02, Ramón Martínez Villarreal, (United States)

544. In Report No. 52/02 dated October 10, 2002, the IACHR concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Ramón Martínez Villarreal; and, b) should the State execute Mr. Martínez Villarreal pursuant to the criminal proceedings at issue in this case, the State would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

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

1. Provide Mr. Martinez Villareal with an effective remedy, which includes a re-trial in accordance with the due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Martinez Villareal's release.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

546. In its 2006 and 2007 Annual Reports, the Commission declared that there had been partial compliance with its recommendations. In line with the foregoing, on March 6, 2007, the State informed the IACHR that Mr. Martínez Villareal was considered incompetent to stand trial, and subsequently, the death sentence was vacated. According to the State, as of February 5, 2007, Mr. Martínez Villareal was undergoing treatment at an Arizona State Hospital, and was still determined to be incompetent to be re-sentenced.

547. In relation to recommendation No. 2, the State declared that it is fully committed to meeting its obligations under the Vienna Convention on Consular Relations. In this regard, it is conducting on-going efforts to improve compliance with the obligation to respect the right to consular assistance of detained foreign nationals. For instance, the Department of State's Bureau of Consular Affairs has carried out an aggressive program of awareness. In addition to that, the State affirmed that since 1998, the State Department has distributed to federal, state and local law enforcement agents over one thousand training videos, booklets and pocket cards regarding arrests and detention of foreign nationals; as well as has conducted over 350 training seminars on the right to consular assistance throughout the United States and its territories, and has created an online training course on the topic.

548. The petitioners sent a communication dated May 1st, 2008 in which they submit that compliance by the United States in this case is still pending. They hold that there has been no compliance with the first recommendation, because "despite Mr. Martinez Villareal's release from death row, the United States government has neither freed him nor taken steps to remedy the due process and fair trial violations outlined by the Commission's Report No. 52/02". They further hold that "the U.S. has made little progress in complying with the Commission's second recommendation in Report No. 52/02, and has in fact weakened consular notification rights by withdrawing from the Vienna Convention's optional protocol and failing to implement the ICJ's *Avena* judgment".

549. The petitioners' letter was forwarded to the State with a request for information on August 20, 2008, and another letter requesting updated information was submitted to it on November 5, 2008. The State responded on January 6, 2009 that it reiterated the position set forth in letter of March 5, 2007, summarized above.

550. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

551. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline. However, a letter was sent by the State on June 23, 2010 in which it "provides measures taken around the nation in implementation of the obligations of the United States under the Vienna Convention on Consular Relations (VCCR)". The State declares that it takes its VCCR obligations very seriously and then proceeds to describe several initiatives that include outreach, guidance and training on consular notification and access to law enforcement

agents, prosecutors and judges at the federal, state and local levels. It further refers to the publication and massive distribution of a manual prepared by the State Department with instructions and complete and useful information for agents who detain or arrest foreign nationals. Other means used by the state to distribute this information include pocket cards for law enforcement agencies, prisons, and other entities throughout the country, as well as social media websites, training sessions, and briefings, all aimed at "rais[ing] awareness of and increas[ing] compliance with consular notification and access obligations, and how alleged violations are remedied or resolved".

552. The June 2010 submission by the State makes no reference to the first recommendation.

553. The State sent a communication dated October 28, 2011 in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission, and that it reiterates its prior responses.

554. As to the first recommendation, the State reiterates its prior communications, in particular the response sent in December 2003, in which it indicated that Mr. Villarreal suffered from a mental disability and that his death sentence had been voided. Since that communication, the State considers that there have been no developments to report, and that Mr. Villarreal has had access to the due process required under the Constitution of the United States and domestic legislation, as well as in the American Declaration of the Rights and Duties of Man.

555. As to the second IACHR recommendation, the United States reiterates that it is a party to the Vienna Convention on Consular Relations and that it is fully committed to meeting its obligations under that instrument. In this regard, the State alludes to its communication sent June 23, 2010, in which it details its ongoing efforts to improve compliance with respect to consular notification and the provisions of that Convention.

556. Based on the available information, the Commission concludes that the State has partially complied with the recommendations set forth in Report N° 52/02. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 11.140, Report No. 75/02, Mary and Carrie Dann (United States)

557. In Report No. 75/02 dated December 27, 2002, the IACHR concluded that the State failed to ensure the Dannels' right to property under conditions of equality contrary to Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.

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

1. Provide Mary and Carrie Dann with an effective remedy, which includes adopting the legislative or other measures necessary to ensure respect for the Dannels' right to property in accordance with Articles II, XVIII and XXIII of the American Declaration in connection with their claims to property rights in the Western Shoshone ancestral lands.
2. Review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration, including Articles II, XVIII and XXIII of the Declaration.

559. The State has not provided the Commission with updated information regarding compliance with the recommendations in this case. However, in a working meeting that took place during the Commission's 127th ordinary period of sessions in March of 2007, the State reiterated its long-standing position that the Western Shoshonian land claims were appropriately resolved by the Indian Claims Commission in 1962, thus it considers the present matter closed. The State added that this case is related to a dispute within the community, and that there are several Executive Orders regarding protection for indigenous peoples' rights. On the subject of recent mining projects on the land at issue, the State affirmed that it has taken mitigating measures.

560. In communications dated November 21, 2007, and December 12, 2007, the petitioners vehemently asserted that the United States has done nothing to comply with the Commission's recommendations in this case. Besides, the petitioners indicated that the United States has further violated the rights of the victims in this case, by implementing the following measures: continuing with plans to store nuclear waste on Western Shoshone ancestral lands; moving forward with a water pipeline that would drain water from aquifers beneath Western Shoshone lands; continuing approval processes of gold mining expansions and allowing grazing in spiritually and culturally significant areas; moving forward with the sale of Western Shoshone ancestral lands from mining expansion plans and oil and gas leasing; approving the construction of a coal fired electric power plant on Western Shoshone lands; and threatening controlled burning of almost 60,000 acres of Western Shoshone ancestral lands. In view of the aforementioned, the Petitioners requested the Commission to conduct a fact-finding on-site visit to Western Shoshone territory and to recommend a training workshop for public officials on the international human rights of indigenous peoples.

561. The IACHR requested updated information to both parties on November 5, 2008. The United States responded by letter dated January 6, 2009 reiterating its previous position on this matter. For their part, the petitioners sent a letter on December 5, 2008 where they described the "disturbing developments concerning the United States' lack of compliance" with the Commission's recommendations.

562. Among other matters, the petitioners mention that on November 12, 2008 the United States Bureau of Land Management officially approved the Cortez Hills Expansion Project, a plan by the company Barrick Gold to "construct and operate the open pit cyanide heap leach mine on the edge of Mount Tenabo" considered "of great cultural and spiritual significance to the Western Shoshone". Besides the lack of access to the site by the Shoshone, the petitioners hold that this would "result in a new 2,200 foot hole in the actual mountain itself, in addition to cyanide emissions, dewatering, mercury contamination and other harmful byproducts". They add that "the decision to expand mining operations on Mount Tenabo is directly significant to the Danna given that it is in their traditional use area" and that they have "filed a complaint in the Reno Federal District Court seeking declaratory and injunctive relief to stop the mine".

563. The petitioners also consider that the United States is harassing Carrie Dann by sending her a debt collection notice in the amount of U.S.\$ 6,433,231.40 on behalf of the U.S. Department of the Interior for "non-payment of cattle grazing fees, an activity that is a traditional and customary use of her ancestral lands". They have refused to pay this debt for considering that they cannot be charged for "livestock trespass" on their own land.

564. Further, the petitioners mention that "in addition to the Cortez Hills Expansion Project at Mt. Tenabo, the U.S. continues to move forward on additional gold mining expansions throughout Western Shoshone territory" without their consent. In this regard they note that the State is "moving ahead with plans to store high-level nuclear waste at Yucca Mountains, Nevada" and that "plans are underway to conduct exploratory drilling for uranium on the foothills of Merritt Mountain in Western Shoshone territory" and that such exploration would "involve the drilling of 150 wells and creation of containment ponds near three Native American sites". The petitioners also mention other projects that would affect the Western Shoshone's ancestral lands, such as geothermal leases, the building of a 234-mile transmission line across Nevada and a plan to tap aquifers to pipe down water to Las Vegas.

565. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year.

566. For their part, on December 11 2009 the petitioners submitted a detailed communication, including several annexes, with "observations on non-compliance with the recommendations set forth in Report No. 75/02". As part of the observations, the petitioners reiterate and update the information they

submitted in December 2008. With regard to events that happened during the period covered by this Annual Report, the petitioners mention that over the past year the United States has continued to “move forward on additional massive open pit gold mining expansions throughout Western Shoshone territory without Western Shoshone consent”. They also indicate that “on August 1, 2009 a public news source reported that radioactive water has been discovered leaking out beyond the Nevada Test Site boundary where 928 nuclear tests were conducted between 1951 and 1992” and that despite the fact that the areas where the radioactive water is leaking lie within Western Shoshone territory, there was no record of any representative of these indigenous people being consulted on the actions to be taken to address the situation.

567. The petitioners also mention in their most recent communication that there is a “massive push for energy extraction” from Western Shoshone lands, without their consent. Reference is made to several projects of oil and gas extraction, energy leases, and transmission corridors that were underway during 2009. According to the petitioners, with the permission of the United States Government, during 2009 “Barrick Gold started explosive blasting and dewatering of Mt. Tenabo” and that full operations could begin as early as the first quarter of 2010 with serious consequences to this area, which is of great significance to the Western Shoshone as explained above. The petitioners add that the United States has threatened legal action against a member of the Dann family for interfering with “federally permitted” removal of traditional objects from this area. They also mention that a complaint was filed “seeking declaratory and injunctive relief to stop the mine pending a full hearing on the merits of the case”, and that on appeal the 9th Circuit Court granted the injunction on December 3, 2009. However, the petitioners point out that “the decision was limited to violations of federal environmental law – not out of concern for the protection of indigenous peoples’ rights” and that Barrick Gold has indicated that it would continue its operations until the lower court issues a formal order to implement the injunction.

568. Another issue raised by the petitioners is that the United States continues to issue debt collection notices to Carrie Dann, her extended family and other Western Shoshone. Specifically, they mention that “on June 23, 2009 five representatives of the U.S. BLM came to Ms. Dann’s home, provided oral reaffirmation of her outstanding ‘debt’ of almost 6.5 million dollars and stated that the same policies currently remain in effect that in the past have resulted in the confiscation of her livestock”.

569. On November 18, 2010 the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. No response was received from the State within the deadline, but the petitioners submitted their “observations on non-compliance” on December 17, 2010.

570. In their submission, the petitioners express that “it has been eight years and still the United States has done nothing to comply with these recommendations but has escalated actions and additional threats against the Danns and other Western Shoshone and the lands they traditionally use and occupy”. They also express their concern because they consider that “the current administration has recently taken the position that they will limit the application of international human rights norms to its existing domestic laws and policies with respect to indigenous peoples”.

571. The petitioners submit that the State has not complied with the first recommendation, and they present in that regard information on the authorization of an open-pit gold mine in Mount Tenabo, which is described as having “great cultural and spiritual significance to the Dann family and Western Shoshone people overall”. The petitioners indicate that “escalation of mining operations on and around Mount Tenabo is directly significant to the Danns, as it is within their traditional use area” and that the “operations have already closed access to a ceremonial and gathering site previously used by the Danns, threaten plant life essential to Western Shoshone customs, and may damage an adjacent sacred spring”.

572. In their latest communication, the petitioners also indicate that “the U.S. continues resource extraction and other destructive activities”, which includes gold and lithium mining on Western Shoshone traditional lands and spiritual sites. They also allude to the continued project of using Yucca Mountain as a nuclear waste site, and to the projected construction of a pipeline for a project in Western Shoshone lands to supply water to the Las Vegas Valley. The petitioners indicate that during July 2010

the state of Nevada approved the construction of a 235-mile electricity transmission line, and that seven other transmission projects are awaiting approval. They also refer to the construction of a 678-mile natural gas pipeline, which began on July 31, 2010, which will impact at least 4,854 acres in Nevada; the petitioners hold that this will “damage and restrict access to numerous Western Shoshone spiritual and cultural sites in addition to using over 210 million gallons of Nevada groundwater”.

573. With respect to the second recommendation, the petitioners express:

It is unlikely that the US will “review its laws, procedures and practices to ensure that the property rights of indigenous persons are determined in accordance with the rights established in the American Declaration...”, considering its recent position on the United Nations Declaration on the Rights of Indigenous Peoples (“UN Declaration”) which limits the inherent rights it recognizes to existing US policy towards indigenous peoples.

In its recent statement on the UN Declaration, the United States makes several references to implementation of rights in accordance with existing federal laws and policies including: [the Declaration] expresses aspirations of the United States, aspirations that this country seeks to achieve within the structure of the U.S. Constitution, laws, and international obligations, while also seeking, where appropriate, to improve our laws and policies.” The US position also reduces the right of free prior and informed consent to “consultation” as per existing US policy.

If this is any indication of the United States’ position on bringing their laws into conformity with international human rights standards then there is little hope of compliance with the Commission’s recommendation that the United States ensure their laws are consistent with indigenous property rights as defined by the American Declaration. The United States must raise its own laws and policies up to the minimum standard contained in the UN Declaration and American Declaration.

574. The State sent a reply dated October 28, 2011, in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission and that it reiterates its prior responses; in particular, the response published in the Web page of the IACHR to explain the decision to decline the recommendations of the Commission”. No response was received from the petitioners within the period of time granted by the IACHR for that purpose.

575. Based upon the information available, the Commission considers that compliance with its recommendations set forth in Report No. 75/02 remains pending. Therefore, it will continue to monitor compliance with its recommendations.

Case 11.193, Report No. 97/03, Shaka Sankofa (United States)

576. In Report No. 97/03 dated December 29, 2003, the Commission concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Shaka Sankofa; b) by executing Mr. Sankofa based upon these criminal proceedings, the State was responsible for a violation of Mr. Sankofa’s fundamental right to life under Article I of the American Declaration; and c) the State acted contrary to an international norm of *jus cogens* as encompassed in the right to life under Article I of the America Declaration by executing Mr. Sankofa for a crime that he was found to have committed when he was 17 years of age.

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

1. Provide the next-of-kin of Shaka Sankofa with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that violations similar to those in Mr. Sankofa’s case do not occur in future capital proceedings.
3. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

578. In its 2006 and 2007 Annual Reports, the Commission stated that based upon the information available, it considered that there had been partial compliance with its recommendations set forth in Report No. 97/03. In a communication dated March 6, 2007, the State reiterated that it disagreed with the first two recommendations of the IACHR. With respect to the third recommendation, the State reminded the Commission of the Supreme Court's ruling in *Roper v. Simmons* (125 S. Ct. 1183 [2005]), which held that imposing the death penalty on offenders who were under the age of 18 when the crime was committed was unconstitutional, since it violated the Eight and Fourteenth Amendments.

579. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year.

580. For their part, the International Human Rights Clinic at American University Washington College of Law (IHRLC) responded on December 7, 2009 indicating that they had ended their representation of the family because they were unable for many years to contact them. Accordingly, the IHRLC representatives mentioned that they were not in a position to inform on compliance with the first recommendation involving an effective remedy for the family that includes compensation. However, IHRLC representatives did express their view that compliance with the second and third recommendations is mixed: notwithstanding the *Roper v. Simmons* precedent, they were unaware of any efforts by the United States to "review its procedures and practices to ensure that violations similar to those in Mr. Shankofa's case do not occur in future capital proceedings" as recommended by the IACHR in the report on this case.

581. On November 18, 2010 the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. No response was received from either party within the deadline established.

582. On October 25, 2011 the IACHR sent a new communication to both parties requesting that they submit updated information within one month on the status of compliance with the recommendations. No response was received from the petitioners within the period stipulated by the IACHR. The State, for its part, sent a communication dated October 28, 2011 in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission.

583. As to the first recommendation, the State maintains that neither domestic nor international law requires it to provide remedies to the families of persons whose execution was legal at the time it was carried out. As to the second, the State reiterates its prior communications in which it maintains its justification for declining earlier recommendations in which the IACHR requested the commutation of sentences like that of the present case. As to the third recommendation, the State reiterates that in the precedent of *Roper v. Simmons*, the Supreme Court of that country held that the Eighth and Fourteenth Amendments to the Constitution of the United States prohibit the imposition of the death penalty on persons who were under the age of 18 at the time the crimes for which they were sentenced were committed.

584. Therefore, the Commission concludes that compliance with the recommendations in Report No. 97/03 remains partial. The Commission takes special note of the aforementioned Supreme Court sentence in *Roper v. Simmons* which prohibited the imposition of the death penalty to minors under the age of 18 at the time their crime was committed, in line with the Commission's third recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 11.204, Report No. 98/03, Statehood Solidarity Committee (United States)

585. In Report No. 98/03 dated December 29, 2003, the Commission concluded that the State was responsible for violations of the petitioners' rights under Articles II and XX of the American Declaration by denying them an effective opportunity to participate in their federal legislature.

586. The IACHR issued the following recommendation to the State:

Provide the petitioners with an effective remedy, which includes adopting the legislative or other measures necessary to guarantee to the petitioners the effective right to participate, directly or through freely chosen representatives and in general conditions of equality, in their national legislature.

587. In its 2006, 2007 and 2008 Annual Reports, the IACHR stated that compliance with its recommendation in this case was pending. By notes dated March 6, 2007 and January 6, 2009, the State reiterated that it disagreed with and declined the Commission's recommendation and denied any violations of the American Declaration of the Rights and Duties of Man based upon its previous responses in this case. In letters dated December 5, 2007 and December 28, 2008, the petitioners stated that the United States had failed to comply with the Commission's recommendation, since to date the residents of the District of Columbia remain disenfranchised, without the right to equal representation in the United States Senate and House of Representatives.

588. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

589. On November 18, 2010 the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. No response was received from the State within that time period. For their part, the petitioners responded by a letter dated December 7, 2010, in which they indicate that "the United States had failed to grant the residents of Washington, D.C. representation in the U.S. Senate and House of Representatives in general conditions of equality as recommended by the Commission".

590. On October 25, 2011 the IACHR requested information to both parties on compliance with the recommendations listed above, in conformity with Article 48.1 of its Rules.

591. The State sent a reply dated October 28, 2011, in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission and that it reiterates its prior responses; in particular, the response published in the Web page of the IACHR to explain the decision to decline the recommendations of the Commission".

592. For their part, the petitioners sent a communication dated December 1, 2011 in which they informed the Commission that the State had not provided an effective remedy in compliance with the recommendation transcribed above. They therefore maintain that "to date, the residents of the District of Columbia remain without the right to equal representation in the country's Senate and House of Representatives."

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

Case 11.331, Report No. 99/03, Cesar Fierro (United States)

594. In Report No. 99/03 dated December 29, 2003, the Commission concluded that: a) the State was responsible for violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Cesar Fierro; and, b) should the State execute Mr. Fierro pursuant to the criminal proceedings at issue in this case, the State would perpetrate a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

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

1. Provide Mr. Fierro with an effective remedy, which includes a re-trial in accordance with the due process and fair trial protections prescribed under Articles XVIII and XXVI of the American Declaration or, where a re-trial in compliance with these protections is not possible, Mr. Fierro's release.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

596. In its 2006 and 2007 Annual Reports, the Commission concluded that compliance with its recommendations in this case was still pending. In a note dated March 6, 2007, the State reiterated that it disagreed with and declined the first recommendation of the Commission based upon its previous responses in this case. With regard to the second recommendation, the State declared that it is fully committed to meeting its obligations under the Vienna Convention on Consular Relations. In this regard, it is conducting on-going efforts to improve compliance with the obligation to respect the right to consular assistance of detained foreign nationals. For instance, the Department of State's Bureau of Consular Affairs has carried out an aggressive program of awareness. In addition to that, the State affirmed that since 1998, the State Department had distributed to federal, state and local law enforcement agents over one thousand training videos, booklets and pocket cards regarding arrests and detention of foreign nationals; as well as had conducted over 350 training seminars on the right to consular assistance throughout the United States and its territories, and had created an online training course on the topic.

597. In a letter dated November 5, 2007, the petitioners informed the Commission that the State had not complied with the Commission's recommendations. In breach of the first recommendation, the Petitioners claim that Mr. Fierro has not been re-tried or released, and he remains on death row without an execution date currently scheduled. That is notwithstanding the fact that the petitioners have further attempted to have the courts review Mr. Fierro's conviction. In this regard, the Texas Court of Criminal Appeals rejected Mr. Fierro's subsequent application for post-conviction writ of Habeas Corpus, on March 7, 2007. A petition for a writ of certiorari was also filed on Mr. Fierro's behalf in the Supreme Court of the United States on June 4, 2007, but the tribunal has yet to rule on this petition. According to the Petitioners, the victim's prior conviction and the possibility of its judicial review, along with that of the other Mexican nationals named in the ICJ *Case of Avena and Other Mexican Nationals v. the United States* is also a matter of discussion in the context of a pending case in which the Supreme Court has already granted certiorari (*Medellin v. Texas*).

598. By letter dated December 1, 2008, the petitioners updated the information and mentioned that Mr. Fierro remains on death row in Texas; that he has not been re-tried or released; and that no date has been scheduled for his execution. The petitioners mention that in its decision of March 31, 2008 the Supreme Court of the United States denied relief to Mr. Fierro on the basis of the *Medellin v. Texas* case, where it was determined that U.S. courts are not bound by the *Avena* judgment of the ICJ; and that a petition for successive habeas corpus relief was denied by the U.S. Court of Appeals on June 2, 2008. The petitioners are concerned that despite the ICJ decision of July 16, 2008 not to execute Mr. Fierro and other Mexican nationals including Jose Medellin absent review and reconsideration, Mr. Medellin was executed on August 5, 2008. They hold that "in the wake of Mr. Medellin's execution, federal authorities have apparently done nothing to prevent Mr. Fierro's execution, even though legal remedies are available to them".

599. As regards the second recommendation, the petitioners acknowledged that the United States made information available to local authorities about their obligation in regard to consular access. Nevertheless, the petitioners argued that the United States had not reviewed its laws, procedures and practices in this regard. On the contrary, according to the petitioners, the most recent formal advice issued by the Department of State on this matter remained that of 1999, in which it advised that the Vienna Convention on Consular Relations was not intended to create a right of private judicial enforcement. The petitioners claim that the State continues to argue that the Vienna Convention negates

any right for a foreign national whose right to consular assistance is violated. The petitioners emphasized that courts of the United States continue to refer to the aforementioned communication as an authoritative interpretation of the Vienna Convention on Consular Relations.

600. In their December 2008 submission, the petitioners add that they do not know of any review of the laws, procedures or practices of the United States that would be in compliance with the IACHR report's second recommendation. They add that "no noticeable improvement has occurred in compliance in the United States in notifying detained foreign nationals about consular access".

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

602. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

603. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. The State did not provide the Inter-American Commission with updated information within the deadline. However, it had previously sent a letter dated June 23, 2010 in which it "provides measures taken around the nation in implementation of the obligations of the United States under the Vienna Convention on Consular Relations (VCCR)". The State declares that it takes its VCCR obligations very seriously and then proceeds to describe several initiatives that include outreach, guidance and training on consular notification and access to law enforcement agents, prosecutors and judges at the federal, state and local levels. It further refers to the publication and massive distribution of a manual prepared by the State Department with instructions and complete and useful information for agents who detain or arrest foreign nationals. Other means used by the state to distribute this information include pocket cards for law enforcement agencies, prisons, and other entities throughout the country, as well as social media websites, training sessions, and briefings, all aimed at "rais[ing] awareness of and increas[ing] compliance with consular notification and access obligations, and how alleged violations are remedied or resolved".

604. The June 2010 submission by the State makes no reference to the first recommendation.

605. The petitioners, for their part, responded on December 15, 2010 and provided information which leads them to conclude that the United States has not complied with either of the recommendations. Regarding the first recommendation, they inform that Mr. Fierro remains on death row in Texas; that no state or federal authorities have taken actions aimed at his retrial or release; that no date has been scheduled for his execution; and that no court decisions in regard to him have been issued during the past year.

606. With respect to the second recommendation, the petitioners hold that there has been no review of the laws, procedures or practices of the United States to ensure consular assistance in the circumstances highlighted in the IACHR report. Further, the petitioners submit that the courts of that country have refused to grant relief for violations of consular access, and that since November 2009 no new case has reached the Supreme Court of the United States on a consular access issue. The petitioners indicate that they have surveyed all reported cases that have been decided by the federal courts of appeal, federal district courts, and state courts, and that in every one of them the ruling was against consular access claims. They add that "neither at the state nor at the federal level have the executive branches of government stepped in to provide a remedy in the face of the failure of the courts to do so".

607. In their submission, the petitioners further express:

The Government of the United States continued during the past year its policy of avoiding legal recourse when consular access is violated. It has taken no steps to accede to the Vienna Convention's Optional Protocol Concerning Compulsory Settlement of Disputes, from which it purported to withdraw in 2005. The Optional protocol contains no denunciation clause, hence the purported withdrawal is questionable in its legality under the Vienna Convention on the Law of Treaties. Even apart from its legality, the withdrawal bespeaks a refusal by the United States to allow third-party scrutiny of its compliance with consular access obligations.

608. According to the petitioners, the United States "continues to refrain from bringing legal action against local authorities who fail to comply with consular access obligations". They add that even though the Department of State expresses in its 2010 manual on this matter that it will seek consular access if the foreign national is still in detention, it makes no commitment to sue local authorities to secure redress for the foreign national, or other instances of such violation. The petitioners mention that there is also no legislation adopted by the Congress of the United States to require implementation of the *Avena* decision of the International Court of Justice, and that "the courts do not view themselves as under an obligation to review and reconsider the convictions or sentences of the Mexican nationals involved in the *Avena* case, which includes Mr. Fierro".

609. The State sent a communication dated October 29, 2011 in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission and reiterates its prior responses.

610. As to the IACHR's first recommendation, the State expresses its "respectful disagreement" with the first recommendation and "declines" it. The State adds that Mr. Fierro has had access to the due process mandated by the Constitution of the United States and the American Declaration on the Rights and Duties of Man. As to the second recommendation, the United States reiterates that it is a party to the Vienna Convention on Consular Relations and that it is fully committed to meeting its obligations under that instrument. In this regard, the State alludes to its communication sent June 23, 2010, in which it details its ongoing efforts to improve compliance with respect to consular notification and the provisions of the Convention.

611. The petitioners, for their part, sent a communication dated November 25, 2011, in which they maintain that the State has failed to comply with the recommendations in question.

612. As to the first recommendation, they state that Mr. Fierro has not received a new trial nor has he been released; furthermore, no action whatsoever in this respect has been taken by the executive, legislative, or judicial authorities. On the contrary, they indicate, the decisions of the Supreme Court of the United States in the cases of other foreign nationals continue to lead to the conclusion that the likelihood of such a decision is remote.

613. The petitioners point out that, as it has in the past, the federal government continues to furnish information to the states on compliance with the obligations of consular access. Law enforcement agencies can likewise access information on their obligations and obtain contact information for consulates on a Department of State website; nevertheless, the petitioners underscore that the police continue to violate these obligations with "a certain frequency" and in such cases the federal authorities oppose any corrective judicial action.

614. On the other hand, the petitioners believe that the federal government has taken action to meet its obligations to respect consular access, specifically with regard to the Mexican citizens included by the International Court of Justice in the *Avena* case. However, they consider that such efforts are undermined by the position taken by the State in the *Leal García* case, when it argued before the Supreme Court that that person was not harmed by the lack of consular notification. The petitioners also note that the United States continues to refuse to ratify the Optional Protocol to the Vienna Convention on Consular Relations, having withdrawn from that commitment in 2005, and believe that it thereby seeks to avoid the possibility of being sued in the International Court of Justice for its continued violations of

consular access. They therefore state that the refusal to comply with the recommendations of the IACHR in the case of Mr. Fierro is not an isolated incident but the reflection of a generalized attempt to avoid being brought before the international courts.

615. The petitioners add that in the past year, several foreign nationals filed suit in the United States to denounce the lack of consular access, but that as far as they knew, no court in that country had ruled in their favor; the same held true in civil actions in which compensation was demanded for violations of consular access. They further indicate that in criminal cases, the courts have used a variety of justifications for denying the claims, basing their rulings on decisions of the Supreme Court as well as the United States Courts of Appeals. They conclude their remarks with clarifications of the grounds for rejecting suits for consular access, the majority of them because the foreign national had not reported the violation in the stage of the legal proceedings required under local regulations.

616. Based upon the foregoing information provided by the parties, the Commission considers that there has been partial compliance with its second recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.240, Report No. 100/03, Douglas Christopher Thomas (United States)

617. In Report No. 100/03 dated December 29, 2003, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Douglas Christopher Thomas to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

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

1. Provide the next-of-kin of Douglas Christopher Thomas with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

619. In its 2006, 2007 and 2008 Annual Reports, the Commission stated that there had been partial compliance with its recommendations. In a note dated March 6, 2007, the United States maintained its previously stressed position of disagreement with the Commission's first recommendation. With regard to the IACHR's second recommendation, the State reminded the Commission of the Supreme Court's ruling in *Roper v. Simmons* (125 S. Ct. 1183 [2005]), which held that imposing the death penalty on offenders who were under the age of 18 when the crime was committed was unconstitutional, since it violated the Eight and Fourteenth Amendments.

620. On November 19, 2007, the petitioner acknowledged the aforementioned decision of the Supreme Court in *Roper v. Simmons*. However, the petitioner reiterated that the victim in this case was executed prior to that decision. In addition to that, the petitioner stressed that the State has not complied with the Commission's first recommendation. For its part, the State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

621. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

622. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. The State did not provide the Inter-American Commission with updated information within the deadline. For its part, the petitioner responded by a letter dated November 26, 2010 in which he expressed that he was not aware of any

action taken by the United States to “address or acknowledge the recommendations of the Commission” or of any “plan, intent, or potential for action of any kind” to do so.

623. On October 25, 2011, the IACHR sent a new communication to both parties requesting that they submit updated information within one month on the status of compliance with the recommendations. No response was received from the petitioners within the period stipulated by the IACHR. The State, for its part, sent a communication dated October 28, 2011 in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission.

624. As to the first recommendation, the State maintains that neither domestic nor international law requires that remedies be provided to the families of persons whose execution was legal at the time it was carried out. As to the second, the State reiterates its prior communications in which it maintains its justification for declining the earlier recommendations in which the IACHR requests the commutation of sentences like the one in this case. As to the third recommendation, the State reiterates that in the precedent of *Roper v. Simmons*, the country’s Supreme Court held that the Eighth and Fourteenth Amendments to the Constitution of the United States prohibit the imposition of the death penalty on persons who were under the age of 18 at the time the crimes for which they were sentenced were committed.

625. In view of the above, the Commission declares that compliance with the recommendations in Report No. 100/03 remains partial. The Commission takes special note of the aforementioned Supreme Court sentence in *Roper v. Simmons* which prohibited the imposition of the death penalty to minors under the age of 18 at the time their crime was committed, in line with the Commission’s second recommendation. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.412, Report No. 101/03, Napoleon Beazley (United States)

626. In Report No. 101/03 dated December 29, 2003, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Napoleon Beazley to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

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

1. Provide the next-of-kin of Napoleon Beazley with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age a

628. In its 2006, 2007 and 2008 Annual Reports, the Commission considered that the State had partially complied with the recommendations in this case. In a letter dated March 6, 2007, the United States reiterated its previously stressed position of disagreement with the Commission’s first recommendation. With regard to the IACHR’s second recommendation, the State reminded the Commission of the Supreme Court’s ruling in *Roper v. Simmons* (125 S. Ct. 1183 [2005]), which held that imposing the death penalty on offenders who were under the age of 18 when the crime was committed was unconstitutional, since it violated the Eight and Fourteenth Amendments. The Petitioner has not presented updated information regarding compliance. For its part, the State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

629. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

630. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline. However, a letter was sent by the State on June 23, 2010 in which it “provides measures taken around the nation in implementation of the obligations of the United States under the Vienna Convention on Consular Relations (VCCR)”. The State declares that it takes its VCCR obligations very seriously and then proceeds to describe several initiatives that include outreach, guidance and training on consular notification and access to law enforcement agents, prosecutors and judges at the federal, state and local levels. It further refers to the publication and massive distribution of a manual prepared by the State Department with instructions and complete and useful information for agents who detain or arrest foreign nationals. Other means used by the state to distribute this information include pocket cards for law enforcement agencies, prisons, and other entities throughout the country, as well as social media websites, training sessions, and briefings, all aimed at “rais[ing] awareness of and increas[ing] compliance with consular notification and access obligations, and how alleged violations are remedied or resolved”.

631. The June 2010 submission by the State makes no reference to the first recommendation.

632. On October 25, 2011, the IACHR sent a new communication to both parties requesting that they submit updated information within one month on the status of compliance with the recommendations. No response was received from the petitioners within the period stipulated by the IACHR. For its part, the State sent a communication dated October 28, 2011 in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission.

633. As to the first recommendation, the State maintains that neither domestic nor international law requires that remedies be provided to the families of persons whose execution was legal at the time it was carried out. As to the second, the State reiterates its prior communications in which it maintains its justification to decline the earlier recommendations in which the IACHR requests the commutation of sentences like the one in this case. As to the third recommendation, the State reiterates that in the precedent of *Roper v. Simmons*, the Supreme Court of that country held that the Eighth and Fourteenth Amendments to the Constitution of the United States prohibit imposition of the death penalty on persons who were under the age of 18 at the time the crimes for which they were sentenced were committed.

634. On the basis of the available information, the Commission states that compliance with the recommendations in Report N° 101/03 remains partial. The Commission takes special note of the aforementioned Supreme Court sentence in *Roper v. Simmons* which prohibited the imposition of the death penalty to minors under the age of 18 at the time their crime was committed, in line with the Commission’s second recommendation. Accordingly, the IACHR will continue to monitor the item still pending compliance.

Case 12.430, Report No. 1/05 Roberto Moreno Ramos, (United States)

635. In Report No. 1/05 dated January 28, 2005, the IACHR concluded that: a) the State was responsible for violations of Articles II, XVIII and XXVI of the American Declaration in the criminal proceedings against Mr. Moreno Ramos; and, b) should the State execute Mr. Moreno Ramos pursuant to the criminal proceedings at issue in this case, the State would commit a grave and irreparable violation of the fundamental right to life under Article I of the American Declaration.

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

1. Provide Mr. Moreno Ramos with an effective remedy, which includes a new sentencing hearing in accordance with the equality, due process and fair trial protections prescribed under Articles II, XVIII and XXVI of the American Declaration, including the right to competent legal representation.

2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.

3. Review its laws, procedures and practices to ensure that defendants in capital proceedings are not denied the right to effective recourse to a competent court or tribunal to challenge the competency of their legal representation on the basis that the issue was not raised at an earlier stage of the process against them.

637. In its 2006, 2007 and 2008 Annual Reports, the Commission presumed that its recommendations in this case were pending compliance. In a letter dated March 6, 2007, the State reiterated that it disagreed with and declined the first and third recommendations of the Commission based upon its prior submissions in this case. As regards the second recommendation, the State declared that it is fully committed to meeting its obligations under the Vienna Convention on Consular Relations. In this regard, it is conducting on-going efforts to improve compliance with the obligation to respect the right to consular assistance of detained foreign nationals. For instance, the Department of State's Bureau of Consular Affairs has carried out an aggressive program of awareness. In addition to that, the State affirmed that since 1998, the State Department had distributed to federal, state and local law enforcement agents over one thousand training videos, booklets and pocket cards regarding arrests and detention of foreign nationals; as well as had conducted over 350 training seminars on the right to consular assistance throughout the United States and its territories, and had created an online training course on the topic. The petitioners have not provided the Commission with updated information regarding implementation of its recommendations. For its part, the State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

638. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

639. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline. However, a letter was sent by the State on June 23, 2010 in which it "provides measures taken around the nation in implementation of the obligations of the United States under the Vienna Convention on Consular Relations (VCCR)". The State declares that it takes its VCCR obligations very seriously and then proceeds to describe several initiatives that include outreach, guidance and training on consular notification and access to law enforcement agents, prosecutors and judges at the federal, state and local levels. It further refers to the publication and massive distribution of a manual prepared by the State Department with instructions and complete and useful information for agents who detain or arrest foreign nationals. Other means used by the state to distribute this information include pocket cards for law enforcement agencies, prisons, and other entities throughout the country, as well as social media websites, training sessions, and briefings, all aimed at "rais[ing] awareness of and increas[ing] compliance with consular notification and access obligations, and how alleged violations are remedied or resolved".

640. The June 2010 submission by the State makes no reference to the first recommendation.

641. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations mentioned above, in conformity with Article 48.1 of its Rules.

642. The State submitted a note dated October 28, 2011, in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission and that it reiterates its prior responses.

643. With regard to the first and third recommendation, the State refers to its responses sent on March 5, 2007; and prior communications dated February 13, 2003, March 5, 2004, October 13, 2004. United States refers also to the document presented in the Avena case to the IACHR, as well as to the oral before this organ in a hearing on the Moreno Ramos case in March 5, 2004.

644. Regarding the second recommendation of the IACHR, the State reiterates that it is part of the Vienna Convention on Consular Relations and that it is fully committed to comply with its obligations under this instrument. In this regards, the State refers to a note submitted in June 23, 2010, in which it details the continuing efforts to improve compliance with consular notification and the provisions of such Convention.

645. Based upon the abovementioned information, the Commission considers that there has been partial compliance with its second recommendation. Accordingly, the IACHR will continue to monitor the item still pending compliance.

Case 12.439, Report N° 25/05, Toronto Markkey Patterson (United States)

646. In Report N° 25/05 dated March 7, 2005, the Commission concluded that the State acted contrary to an international norm of *jus cogens* as reflected in Article I of the American Declaration by sentencing Toronto Markkey Patterson to the death penalty for crimes that he committed when he was 17 years of age, and executing him pursuant to that sentence.

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

1. Provide the next-of-kin of Toronto Markkey Patterson with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that capital punishment is not imposed upon persons who, at the time his or her crime was committed, were under 18 years of age.

648. In its 2006, 2007 and 2008 Annual Reports, the Commission considered that there had been partial compliance with its recommendations in this case. In a letter dated March 6, 2007, the United States reiterated its previous position of disagreement with the Commission's first recommendation. With regard to the Commission's second recommendation, the State reminded the Commission of the Supreme Court's ruling in *Roper v. Simmons* (125 S. Ct. 1183 [2005]), which held that imposing the death penalty on offenders who were under the age of 18 when the crime was committed was unconstitutional, since it violated the Eight and Fourteenth Amendments.. The State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

649. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year.

650. Mr. J. Gary Hart, petitioner in this case, responded on November 30, 2009 and indicated that he had not been in contact with Mr. Patterson's family since his execution, and that he did not know whether his next of kin had been compensated. He also mentioned that he did not know whether any other remedy was afforded in the case by the United States, and made reference to the 2005 *Roper v. Simmons* precedent cited above. Finally, Mr. Hart mentions that "Texas has not executed any such offender since that time, nor to my knowledge has any other state in the United States".

651. On November 18, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline.

652. On October 25, 2011 the IACHR sent a new communication to both parties requesting that they submit updated information within one month on the status of compliance with the recommendations. No response was received from the petitioners within the period stipulated by the IACHR. The State, for its part, sent a communication dated October 28, 2011 indicating that it has carefully reviewed the recommendations of the Inter-American Commission.

653. As to the first recommendation, the State holds that neither domestic nor international law requires that remedies be provided to the families of persons whose execution was legal at the time it was carried out. As to the second, the State reiterates its earlier communications in which it maintains its justification to decline the earlier recommendations in which the IACHR requests the commutation of sentences like the one in this case. As to the third recommendation, the State reiterates that in the precedent of *Roper v. Simmons*, the Supreme Court of that country held that the Eighth and Fourteenth Amendments to the Constitution of the United States prohibit imposition of the death penalty on persons who were under the age of 18 at the time the crimes for which they were sentenced were committed.

654. Consequently, the Commission asserts that compliance in this case remains partial. In particular, the Commission takes note of the aforementioned Supreme Court sentence in *Roper v. Simmons* which prohibited the imposition of the death penalty to minors under the age of 18 at the time their crime was committed, in line with the Commission's second recommendation. Accordingly, the IACHR will continue to monitor the item still pending compliance.

Case 12.421, Report N° 91/05, Javier Suarez Medina (United States)

655. In Report N° 91/05 issued on October 24, 2005, the Commission concluded that the State was responsible for: a) violations of Articles XVIII and XXVI of the American Declaration in the trial, conviction and sentencing to death of Javier Suarez Medina, by permitting the introduction of evidence of an unadjudicated crime during Mr. Suarez Medina's capital sentencing hearing and by failing to inform Mr. Suarez Medina of his right to consular notification and assistance; and b) violations of Article I, XXIV and XXVI of the American Declaration, by scheduling Mr. Suarez Medina's execution on fourteen occasions pursuant to a death sentence that was imposed in contravention of Mr. Suarez Medina's rights to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration, and by executing Mr. Suarez Medina pursuant to that sentence on August 14, 2002 notwithstanding the existence of precautionary measures granted in his favor by this Commission.

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

1. Provide the next-of-kin of Mr. Suarez Medina with an effective remedy, which includes compensation.
2. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.
3. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
4. Review its laws, procedures and practices to ensure that requests for precautionary measures granted by the Commission are implemented so as to preserve the Commission's functions and mandate and to prevent irreparable harm to persons.

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

658. In its letter of March 6, 2007, the State reiterated that it disagreed with the first and second recommendations of the Commission for the reasons articulated in its previous submissions in this case. With respect to the Commission's third recommendation, the State declared that it is fully committed to meeting its obligations under the Vienna Convention on Consular Relations. In this regard, it is conducting on-going efforts to improve compliance with the obligation to respect the right to consular assistance of detained foreign nationals. For instance, the Department of State's Bureau of Consular Affairs has carried out an aggressive program of awareness. In addition to that, the State affirmed that since 1998, the State Department had distributed to federal, state and local law enforcement agents over one thousand training videos, booklets and pocket cards regarding arrests and detention of foreign nationals; as well as had conducted over 350 training seminars on the right to consular assistance throughout the United States and its territories, and had created an online training course on the topic. The petitioners have not provided the Commission with updated information regarding implementation of its recommendations. As regards the fourth recommendation, the State informed the Commission that it had mechanisms in place to allow for the expeditious transmittal of precautionary measures to the appropriate governmental authorities. For its part, the State sent a letter on January 6, 2009, by which it reiterates its previous position on this matter.

659. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. The petitioners did not respond within the time period established.

660. On November 22, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. Neither party provided the Inter-American Commission with updated information within the deadline.

661. On October 25, 2011 the IACHR again requested information from both parties on compliance with the aforementioned recommendations, pursuant to article 48(1) of its Regulations. The petitioners did not respond by the deadline.

662. The State, for its part, sent a communication dated October 28, 2011 in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission.

663. As to the first and second recommendation, the State reiterates the content of its prior responses. As to the IACHR's third recommendation, the United States reiterates that it is a party to the Vienna Convention on Consular Relations and that it is fully committed to meeting its obligations under that instrument. In this regard, the State alludes to its communication sent June 23, 2010, in which it details its ongoing efforts to improve compliance with the obligation to respect the right to consular notification and the provisions of that Convention.

664. As to the fourth recommendation, the United States informs the Commission that it has mechanisms to permit expeditious transmission of the precautionary measures of the Inter-American Commission to the pertinent government authorities in each case. The State adds that "these authorities have the expertise to know when to implement the measures and how to implement them when necessary."

665. The Commission concludes that there is partial compliance with the aforementioned recommendations. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 12.534, Report N° 63/08, Andrea Mortlock (United States)

666. In Report N° 63/08 issued on July 25, 2008, the Inter-American Commission concluded that the United States is responsible for the violation of Article XXVI of the American Declaration to the prejudice of Andrea Mortlock, a Jamaican national who was under threat of deportation from the United States to her country, the result of which would deny her medication critical to her treatment for AIDS/HIV.

667. As a consequence of that conclusion, the Inter-American Commission recommended to the United States that it “refrain from removing Ms. Andrea Mortlock from its jurisdiction pursuant to the deportation order at issue in this case”.

668. By note dated March 3, 2008, the United States expressed that it “respectfully disagrees with and declines the recommendations of the Commission in the above-referenced case and denies any violation of the protections set forth in the American Declaration of the Rights and Duties of Man.” That position was reiterated by the representative of the State during the working meeting that took place on March 11, 2008, during the Commission’s 131st regular period of sessions.

669. On November 12, 2009, the IACHR requested both parties to submit updated information within one month on compliance with the recommendations. The State requested an extension on December 14, 2009 but it was not possible to grant it due to the timetable for the preparation of the Annual Report for this year. For their part, the petitioners responded on December 7, 2009 that they were “unaware of any efforts by the United States to remove [Andrea] Mortlock from its jurisdiction pursuant to the deportation order at issue in the case”.

670. On November 22, 2010, the IACHR again requested both parties to submit updated information within one month on compliance with the recommendations. The State did not respond within the deadline. For their part, the petitioners responded on December 20, 2010 and indicated that they were not aware of any plans for the United States to remove Andrea Mortlock from its jurisdiction pursuant to the deportation order at issue in the case.

671. On October 25, 2011, the IACHR again requested information from both parties on the status of compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Regulations.

672. The State sent a communication dated October 28, 2011 in which it reiterates the content of its prior communications concerning this case.

673. The petitioners, for their part, sent a communication dated November 23, 2011 in which they again report that they have “no knowledge of any plan by the Government of the United States to remove Mrs. Mortlock from its jurisdiction in compliance with the deportation order issued in this case.” They add, however, that they continue to fear for Mrs. Mortlock’s life should the U.S. authorities decide not to comply with the IACHR’s recommendation; and that they will report any untoward event to this body.

674. The information available to the IACHR indicates that, apparently, there has been compliance with its recommendation. However, in light of the position previously adopted by the State with respect to the recommendations in the report, the Inter-American Commission cannot reach a determination on compliance until it receives conclusive information. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

Case 12.644, Report N° 90/09, José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García (United States)

675. In Report N° 90/09 issued on August 7, 2009, the IACHR concluded that the United States is responsible for the violations of the rights of José Ernesto Medellín, Rubén Ramírez Cárdenas and Humberto Leal García under Articles I, XVIII and XXVI of the American Declaration in respect of the criminal proceedings leading to the imposition of the death penalty against them. With respect to Mr. Medellín, who was executed on August 5, 2008 while he was the beneficiary of precautionary measures, the Inter-American Commission additionally concluded that “the United States failed to act in accordance with its fundamental human rights obligations as a member of the Organization of American States”. In Report N° 90/09, the IACHR also concluded that should the State execute Messrs. Medellín, Ramírez Cardenas and Leal García, it would commit an irreparable violation of their right to life as guaranteed in Article I of the American Declaration.

676. Accordingly, the IACHR issued the following recommendations to the State:

1. Vacate the death sentences imposed on Messrs. Ramírez Cardenas and Leal García and provide the victims with an effective remedy, which includes a new trial in accordance with the equality, due process and fair trial protections, prescribed under Articles I, XVIII and XXVI of the American Declaration, including the right to competent legal representation.
2. Review its laws, procedures and practices to ensure that foreign nationals who are arrested or committed to prison or to custody pending trial or are detained in any other manner in the United States are informed without delay of their right to consular assistance and that, with his or her concurrence, the appropriate consulate is informed without delay of the foreign national's circumstances, in accordance with the due process and fair trial protections enshrined in Articles XVIII and XXVI of the American Declaration.
3. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII and XXVI of the Declaration, and in particular by prohibiting the introduction of evidence of unadjudicated crimes during the sentencing phase of capital trials.
4. Review its laws, procedures and practices to ensure that persons who are accused of capital crimes can apply for amnesty, pardon or commutation of sentence with minimal fairness guarantees, including the right to an impartial hearing.
5. Provide reparations to the family of Mr. Medellín as a consequence of the violations established in this report.

677. On January 18, 2011 the IACHR requested both parties to submit, within one month, updated information on compliance with the recommendations. Neither party submitted the information requested.

678. On October 25, 2011, the IACHR again requested information from both parties on the status of compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Regulations.

679. The State sent a communication dated October 28, 2011 in which it indicates that it has carefully reviewed the recommendations of the Inter-American Commission. The State points out that, as the IACHR is aware, Mr. Medellín was executed on August 5, 2008 and that Mr. Leal García was executed on July 7, 2011. The State alludes to the communication sent July 15, 2011 in which it explains in detail the steps taken by the United States to comply with its international obligation to ensure that Mr. Leal was not executed without a judicial review of his case, and to reconsider his petition concerning the effect that the failure to comply with Article 38 of the Vienna Convention on Consular Relations had had on his conviction and sentencing.⁵⁹

680. The State declares that "it respectfully disagrees" with the first recommendation and "declines it." As to the IACHR's second recommendation, the United States reiterates that it is a party to the Vienna Convention on Consular Relations and that it is fully committed to meeting its obligations

⁵⁹ Among other matters, the communication sent by the State on July 17, 2011 indicates the actions carried out to fully support the draft legislation on compliance with consular notifications. Also, it highlights the efforts adopted to comply with its obligations in the case of Mr. Leal, including the letter sent on July 2010 by the Legal Counsel of the Department of State to the court that had set the execution date, which would have resulted in that date being postponed to July 7, 2011. In addition, the Legal Counsel sent communications to the Governor of Texas and to other authorities from that state, in which it urged them to take all measures possible to suspend the execution of Mr. Leal so that the aforementioned law could be approved. The State adds that it sent an *amicus* brief with the same supporting arguments to the Supreme Court to back the suspension of the execution, in which it highlighted the national interest at stake, including "the protection of U.S. citizens abroad, the promotion of cooperation among nations, and respect for the international rule of law". The State submits that, in spite of such efforts, the Supreme Court rejected the request on July 7, 2011 in a 5 to 4 decision, and that Mr. Leal was executed on that same day. The State concludes its letter affirming the seriousness with which it assumes these obligations, as well as its commitment to continue working toward compliance, and to achieve the timely approval of the law on consular notification.

under that instrument. In this regard, the State alludes to its communication sent June 23, 2010, in which it details its ongoing efforts to improve compliance with the obligation to respect the right to consular notification and the provisions of that Convention.

681. Based on these considerations, the Commission concludes that the State failed to comply with the recommendation issued by the Commission regarding Messrs. Medellín and Leal García and is pending compliance with the recommendations regarding Mr. Ramírez Cárdenas. Consequently, the Commission will continue its supervision of the matters pending compliance.

Case 12.562, Report No. 81/10, Wayne Smith, Hugo Armendariz et al. (United States)

682. In its Report No. 81/10, approved August 7, 2009, the IACHR concluded that in light of the deportation of Wayne Smith and Hugo Armendariz from the United States, that the State is responsible for violating the rights of Messrs. Wayne Smith and Hugo Armendariz enshrined in Articles V, VI, VII, XVIII, and XXVI of the American Declaration. The IACHR pointed out, moreover, that it is well-recognized under international law that a Member State must provide non-citizen residents an opportunity to present a defense against deportation based on humanitarian and other considerations, such as the rights protected under Articles V, VI, and VII of the American Declaration. The administrative or judicial bodies charged with reviewing deportation orders in each Member State must be permitted to give meaningful consideration to a non-citizen resident's defense, examine it, and balance it against the State's sovereign right to enforce reasonable, objective immigration policy, and provide effective relief from deportation if merited. In Case 12.562 the United States did not follow these International norms.

683. Consequently, the IACHR issued the following recommendations to the State:

1. Permit Wayne Smith and Hugo Armendariz to return to the United States at the expense of the State.
2. Reopen Wayne Smith and Hugo Armendariz's respective immigration proceedings and permit them to present their humanitarian defenses to removal from the United States.
3. Allow a competent, independent immigration judge to apply a balancing test to Wayne Smith and Hugo Armendariz's individual cases that duly considers their humanitarian defenses and can provide meaningful relief.
4. Implement laws to ensure that non-citizen residents' right to family life, as protected under Articles V, VI, and VII of the American Declaration, are duly protected and given due process on a case-by-case basis in U.S. immigration removal proceedings.

684. In 2011, the petitioners sent a communication informing the IACHR that Mr. Wayne Smith had died on July 16, 2011 in Trinidad, the country of his birth, to which he was deported by the U.S. authorities. Mr. Smith's family informed it that he had contracted some type of food poisoning and had been rushed to the hospital dehydrated and in serious condition, dying shortly thereafter. The petitioners indicated that they were in the process of gathering additional information and would shortly send a more complete report on Mr. Smith's death and the current situation of his family. They state that Mr. Smith left behind a wife, three children, and two grandchildren—a family that was forced to live apart due to the unjust application of compulsory deportation regulations. They conclude by expressing their hope that no other family will be forced to live apart because of laws contrary to international human rights law, as the IACHR concluded.

685. On October 25, 2011, the IACHR again requested information from both parties on the status of compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Regulations. The State responded through a communication dated October 28, 2011, in which it stated that it had carefully reviewed the recommendations of the Inter-American Commission in this case. It then indicated that it "respectfully declined" to implement the recommendations in this case for the reasons noted in its prior communications and during the working meeting of March 26, 2011."

686. Based on the preceding information, the Inter-American Commission concludes that the State has failed to comply with the recommendation issued. The IACHR particularly regrets the death of Mr. Smith, which occurred far from the place where his family resides due to the circumstances of this case, causing the State to have fatally lost the opportunity to meet its international obligation to him. However, the Inter-American Commission deems that the obligation of "significant redress" to Mr. Smith's family remains, under the terms of the third recommendation of Report 81/10.

687. The Commission likewise urges the State to take expeditious steps to comply with the recommendation concerning Mr Armendariz and will continue its supervision of the matters pending compliance

Case 12.028, Report No. 47/01, Donnason Knights (Grenada)

688. In Report No. 47/01 dated April 4, 2001, the Commission concluded the State was responsible for: a) violating Mr. Knights' rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Knights to a mandatory death penalty; b) violating Mr. Knights' rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Knights' with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Knights' rights under Article 5(1) and 5(2) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of Mr. Knights' conditions of detention; and d) violating Mr. Knights' rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

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

1. Grant Mr. Knights an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) and Article 5(2) of the American Convention in respect of the victim's conditions of detention is given effect in Grenada.

690. On December 23, 2002, the petitioner wrote to the Commission and reported of the following: On May 2001, Anselm B. Clouden, Attorney-at-Law had written to the Attorney General of Grenada requesting adoption of the necessary measures in compliance with the Commission's recommendations. To date, as far as we are aware, there has been no response from the Attorney General, and Mr. Knights remains on death row, and we are unaware of any legislative measures, or any measures being adopted in relation to conditions of detention. In March 2002, the Judicial Committee of the Privy Council delivered landmark decisions in 3 cases, Patrick Reyes, Peter Hughes & Bertil Fox. They declared that the mandatory death penalty imposed on all those convicted of murder in the Eastern Caribbean and Belize is unconstitutional. The effect of this decision means that Mr. Knights' sentence will have to be reviewed as he was automatically sentenced to death upon conviction. Mr. Knights will now have an opportunity to place before the courts mitigating circumstances as to why the death penalty may

not be appropriate in his case. Whilst the adoption of new legislative measures were as a result of the appeal to the Privy Council in the trilogy of cases mentioned above, and, not as a result of the Commission's recommendations in this case, the views of the Commission in relation to the mandatory issue were an important aspect of the arguments before the courts. The Commission's recommendations and its decisions have played an instrumental role in these decisions." Based on these considerations, the IACHR presumes that the Government of Grenada has not complied with the Commission's recommendations.

691. By communications of November 9, 2004, the Commission requested information from the parties about compliance with the recommendations set forth in Report No. 47/01, pursuant to Article 46.1 of the Commission's Rules of Procedure. To date, the Commission has not received any response from the State.

692. By letters of January 10, 2005, the Petitioners reported the Commission that the Judicial Committee of the Privy Council ruled in March 2002, that the mandatory death penalty was unconstitutional for certain Caribbean countries, including Grenada. The Petitioners added that all of the alleged victims remain on death row, awaiting judicial hearings to allow the Grenadian courts to re-sentence the alleged victims after hearing submission in mitigation of sentence. The petitioners stated that it is unlikely that any of the alleged victims will be re-sentenced to death; they have all been on death row for a period in excess of five years. According to the petitioners, execution of the alleged victims would, in these circumstances, be unconstitutional.

693. The petitioners submitted that apart from the judicial abolition of the mandatory death penalty, Grenada has not taken any steps to comply with the recommendations of the Commission.

694. On November 2, 2007 and on November 5, 2008 the Commission wrote to both the State and the petitioners and requested updated information concerning compliance with the Commission's Recommendations in Report No. 47/01. The request made in 2007 was not responded by either party, but on January 6, 2009 the petitioners forwarded a communication in response to the most recent request. Among other considerations, the petitioners mention that by February 2008 the State of Grenada "had still failed to quash and reconsider the sentences of those sentenced to the mandatory death penalty (including Donnason Knights)". As a result of the delay in providing Mr. Knights with a remedy, the petitioners had to request the Judicial Committee of the Privy Council the quashing of the death sentence followed by an individualized sentence hearing. On June 11 2008 the Privy Council quashed the mandatory death sentence and ordered the case to be sent back to the Supreme Court of Grenada for the appropriate sentence. The petitioners add that the mandatory death penalty is clearly unconstitutional in Grenada by virtue of the jurisprudence of the Privy Council, whereby the law of that country has been brought into conformity with the American Convention on Human Rights. However, they submit that Grenada failed to grant Mr. Knights a remedy in relation to the mandatory death penalty, since his death sentence was quashed as a result of his own petition to the Privy Council. Finally, the petitioners mention that they "have requested further information on the present conditions of confinement on death row in Grenada" and that they would forward it to the IACHR as soon as they received it.

695. The Commission observes that the legal situation of Mr. Knights has improved substantially in 2008 by virtue of the actions filed by his representatives, in partial compliance with the recommendations issued in the report on his case. However, there is no information on legal recourses established to guarantee the rights that were violated in this case, or on the measures taken to ensure Mr. Knights' right to humane treatment in Grenada.

696. On November 22, 2010 the Commission again requested both parties updated information concerning compliance with the Recommendations in Report No. 47/01. Neither party responded within that time period.

697. On October 25, 2011, the IACHR again requested information from both parties on the status of compliance with the aforementioned recommendations, pursuant to Article 48(1) of its

Regulations. The Inter-American Commission has not received any response from the parties to these communications.

698. The IACHR concludes that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 11.765, Report No. 55/02, Paul Lallion (Grenada)

699. In Report No. 55/02 dated October 21, 2003, the IACHR concluded that the State of Grenada was responsible for: a) violating Mr. Lallion's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Lallion to a mandatory death penalty; b) violating Mr. Lallion's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Lallion with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Lallion's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of its failure to respect Mr. Lallion's right to physical, mental, and moral integrity by confining him in inhumane conditions of detention; d) for violating Mr. Lallion's rights under Articles 8 and 25 of the Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to Mr. Lallion to pursue a Constitutional Motion; and e) violating Mr. Lallion's right to personal liberty as provided by Article 7(2), 7(4), and 7(5) of the Convention, in conjunction with Article 1(1) of the Convention by failing to protect his right to personal liberty, and to be brought promptly before a judicial officer.

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

1. Grant Mr. Lallion an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in Grenada.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) of the American Convention in respect of Mr. Lallion's conditions of detention is given effect in Grenada.
6. Adopt such legislative or other measures as may be necessary to ensure that the right to personal liberty under Article 7(2), Article 7(4), and 7(5) of the American Convention in respect of Mr. Lallion is given effect in Grenada.

701. By letters of January 10, 2005, the petitioners reported the Commission that the Judicial Committee of the Privy Council ruled in March 2002, that the mandatory death penalty was unconstitutional for certain Caribbean countries, including Grenada. The petitioners added that all of the alleged victims remain on death row, awaiting judicial hearings to allow the Grenadian courts to re-sentence the alleged victims after hearing submission in mitigation of sentence.

702. The petitioners stated that it is unlikely that any of the alleged victims will be re-sentenced to death; they have all been on death row for a period in excess of five years. According to the Petitioners, execution of the alleged victims would, in these circumstances, be unconstitutional.

703. The petitioners submitted that apart from the judicial abolition of the mandatory death penalty, Grenada has not taken any steps to comply with the recommendations of the Commission. To date the Commission has not received any information from the State.

704. On November 2, 2007 and November 5, 2008, the Commission wrote to both the State and the petitioners and requested up-dated information concerning compliance with the Commission's Recommendations in Report No. 55/02. The request made in 2007 was not responded by either party, but on January 6, 2009 the petitioners forwarded a communication in response to the most recent request. Among other considerations, the petitioners mention that by February 2008 the State of Grenada "had still failed to quash and reconsider the sentences of those sentenced to the mandatory death penalty (including Paul Lallion)". As a result of the delay in providing Mr. Jacob with a remedy, the petitioners had to request the Judicial Committee of the Privy Council the quashing of the death sentence followed by an individualized sentence hearing. On June 11 2008 the Privy Council quashed the mandatory death sentence and ordered the case to be sent back to the Supreme Court of Grenada for the appropriate sentence. The petitioners add that the mandatory death penalty is clearly unconstitutional in Grenada by virtue of the jurisprudence of the Privy Council, whereby the law of that country has been brought into conformity with the American Convention on Human Rights. However, they submit that Grenada failed to grant Mr. Lallion a remedy in relation to the mandatory death penalty, since his death sentence was quashed as a result of his own petition to the Privy Council. Finally, the petitioners mention that they "have requested further information on the present conditions of confinement on death row in Grenada" and that they would forward it to the IACHR as soon as they received it.

705. The Commission observes that the legal situation of Mr. Lallion has improved substantially in 2008 by virtue of the actions filed by his representatives, in partial compliance with the recommendations issued in the report on his case. However, there is no information on legal recourses established to guarantee the rights that were violated in this case, or on the measures taken to ensure Mr. Lallion's right to humane treatment in Grenada.

706. On November 22, 2010 the Commission again requested both parties updated information concerning compliance with the recommendations in Report No. 55/02. Neither party responded within the one month time period established.

707. On October 25, 2011, the IACHR again requested information from both parties on the status of compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Regulations. The Inter-American Commission has not received any response from the parties to these communications.

708. The IACHR concludes that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 12.158, Report No. 56/02 Benedict Jacob (Grenada)

709. In Report No. 56/02 dated October 21, 2003, the Commission concluded that the State was responsible for: a) violating Mr. Jacob's rights under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with a violation of Article 1(1) of the American Convention, by sentencing Mr. Jacob to a mandatory death penalty; b) violating Mr. Jacob's rights under Article 4(6) of the Convention, in conjunction with a violation of Article 1(1) of the American Convention, by failing to provide Mr. Jacob with an effective remedy to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Jacob's rights under Article 5(1) of the American Convention, in conjunction with a violation of Article 1(1) of the American Convention, because of its failure to respect Mr. Jacob's rights to physical, mental, and moral integrity by confining him in inhumane conditions of detention; and d) violating Mr. Jacob's rights under Articles 8 and 25 of the

Convention, in conjunction with a violation of Article 1(1) of the Convention, by failing to make legal aid available to him to pursue a Constitutional Motion.

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

1. Grant Mr. Jacob an effective remedy which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5, and 8, and in particular, to ensure that no person is sentenced to death pursuant to a mandatory sentencing law in Grenada.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the American Convention to apply for amnesty, pardon or commutation of sentence is given effect in Grenada.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the American Convention and the right to judicial protection under Article 25 of the American Convention are given effect in Grenada in relation to recourse to Constitutional Motions.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to humane treatment under Article 5(1) of the American Convention in respect of Mr. Jacob's conditions of detention is given effect in Grenada.

711. By letters of January 10, 2005, the petitioners in Case 12.158 (Benedict Jacob) reported the Commission that the Judicial Committee of the Privy Council ruled in March 2002, that the mandatory death penalty was unconstitutional for certain Caribbean countries, including Grenada. The petitioners added that all of the alleged victims remain on death row, awaiting judicial hearings to allow the Grenadian courts to re-sentence the alleged victims after hearing submission in mitigation of sentence.

712. The petitioners stated that it is unlikely that any of the alleged victims will be re-sentenced to death, as they have all been on death row for a period in excess of five years. According to the petitioners, execution of the alleged victims would, in these circumstances, be unconstitutional.

713. Finally, the petitioners submitted that apart from the judicial abolition of the mandatory death penalty, Grenada has not taken any steps to comply with the recommendations of the Commission. The IACHR has not received any information from the State.

714. On November 2, 2007 and on November 5, 2008 the Commission wrote to both the State and the petitioners and requested updated information concerning compliance with the Commission's Recommendations in Report No. 55/02. The request made in 2007 was not responded by either party, but on January 6, 2009 the petitioners forwarded a communication in response to the most recent request. Among other considerations, the petitioners mention that by February 2008 the State of Grenada "had still failed to quash and reconsider the sentences of those sentenced to the mandatory death penalty (including Benedict Jacob)". As a result of the delay in providing Mr. Jacob with a remedy, the petitioners had to request the Judicial Committee of the Privy Council the quashing of the death sentence followed by an individualized sentence hearing. On June 11 2008 the Privy Council quashed the mandatory death sentence and ordered the case to be sent back to the Supreme Court of Grenada for the appropriate sentence. The petitioners add that the mandatory death penalty is clearly unconstitutional in Grenada by virtue of the jurisprudence of the Privy Council, whereby the law of that country has been brought into conformity with the American Convention on Human Rights. However, they submit that Grenada failed to grant Mr. Jacob a remedy in relation to the mandatory death penalty, since his death sentence was quashed as a result of his own petition to the Privy Council. Finally, the petitioners mention that they "have requested further information on the present conditions of confinement on death row in Grenada" and that they would forward it to the IACHR as soon as they received it.

715. The Commission observes that the legal situation of Mr. Jacob has improved substantially in 2008 by virtue of the actions filed by his representatives, in partial compliance with the recommendations issued in the report on his case. However, there is no information on legal recourses established to guarantee the rights that were violated in this case, or on the measures taken to ensure Mr. Jacob's right to humane treatment in Grenada.

716. On November 22, 2010 the Commission again requested both parties for updated information concerning compliance with the Recommendations in Report No. 56/02, and set a one month period to that effect. Neither party responded within that time period.

717. On October 25, 2011, the IACHR again requested information from both parties on the status of compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Regulations. The Inter-American Commission has not received any response from the parties to these communications.

718. The IACHR concludes that there is partial compliance with its recommendations in this case. Accordingly, the IACHR will continue to monitor the items still pending compliance.

Case 11.625, Report No. 4/01, María Eugenia Morales de Sierra (Guatemala)

719. In Report No. 4/01 of January 19, 2001, the IACHR concluded that the Guatemalan State was responsible for having violated the rights of María Eugenia Morales de Sierra to equal protection, respect for her family life, and respect for her private life, established at Articles 24, 17, and 11 of the American Convention on Human Rights in relation to the title and section 1 of Article 110 and Article 317(4), and that accordingly the State was responsible for breaching the obligation imposed by Article 1 to respect and ensure those rights enshrined in the Convention, as well as the obligation imposed on it by Article 2 to adopt legislation and other measures necessary for upholding those rights of the victim.

720. The Commission made the following recommendations to the Guatemalan State:

1. Adapt the pertinent provisions of the Civil Code to balance the legal recognition of the reciprocal duties of women and men in marriage and take the legislative and other measures necessary to amend Article 317 of the Civil Code so as to bring national law into conformity with the norms of the American Convention and give full effect to the rights and freedoms guaranteed to María Eugenia Morales de Sierra therein.
2. Redress and adequately compensate María Eugenia Morales de Sierra for the damages done by the violations established in this Report.

721. On March 3, 2006, the petitioners and the Guatemalan State signed an “Agreement for Specific Compliance with Recommendations” for the purpose of formalizing the obligations of the State. In that agreement, María Eugenia Morales de Sierra expressly waived the economic reparation that the IACHR recommended be paid to her in her status as victim because “her struggle consists of uplifting the dignity of women.”

722. On October 26, 2011 the Commission asked the parties to provide updated information on the status of compliance with the recommendations.

723. Based on the information provided by the parties during 2011, the Commission notes that the relevant provisions of the Civil Code have not been amended to provide balance in the legal recognition of the reciprocal duties of men and women in marriage and that Article 317 of the Civil Code has not been amended.

724. Regarding reparations, during 2011 the petitioners reported that several of the commitments undertaken by the State in the “Agreement for Specific Compliance with Recommendations,” are still pending, particularly those related to the creation of a foundation to be named the “Foundation for Dignity,” because the State has not appointed the accountant, and the consultancies on the subject of women because the State has not taken the actions needed to implement them. In addition, they reported that they disagreed with the method for complying with the commitments on awareness campaigns and the “Academic Contest for Mayan, Garifuna, Xican and Mestizo Women.”

725. For its part, the State indicated that it had carried out the last two commitments mentioned. As regards the petitioners’ comment concerning the “Academic Contest for Mayan, Garifuna, Xican and Mestizo Women,” they noted that Mrs. María Eugenia Morales de Sierra herself had participated in developing the bases for the contest that she later criticized.

726. Because of this, the IACHR concludes that the Guatemalan State has partially complied with the recommendations indicated. As a result, it shall continue monitoring the items that are pending.

Case 9207, Report No. 58/01, Oscar Manuel Gramajo López (Guatemala)

727. In Report No. 58/01 of April 4, 2001, the IACHR concluded that the Guatemalan State had violated the rights of Mr. Oscar Manuel Gramajo López to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), and judicial protection (Articles 8 and 25), in conjunction with the obligation to ensure the rights protected in the Convention, established at its Article 1(1). According to the

antecedents, on November 17, 1980, Oscar Manuel Gramajo López and three companions were detained by members of the National Police, who had the help of members of the Treasury Police and some members of the military. The detention took place in circumstances in which the victim and his friends were in the home of one of the latter, listening to the radio with the volume turned all the way up, having a few drinks, when a neighbor reported them to the police because of the noise they were making.

728. In Report No. 58/01 the Commission made the following recommendations to the Guatemalan State:

1. Conduct an impartial and effective investigation of the facts reported to determine the circumstances and fate of Mr. Oscar Manuel Gramajo López, which would establish the identity of those responsible for his disappearance and punish them in accordance with due process of law.
2. Adopt measures for full reparation of the violations determined, including: steps to locate the remains of Mr. Oscar Manuel Gramajo López; the necessary arrangements to accommodate the family's wishes in respect of his final resting place; and proper and timely reparations for the victim's family.

729. On October 26, 2011, the Commission asked the parties to supply updated information on the status of compliance with the recommendations made in this case. Neither party responded.

730. The Commission therefore concludes that the recommendations have been partially fulfilled. Accordingly, the Commission will continue to monitor for compliance with the pending points.

Case 10.626 Remigio Domingo Morales and Rafael Sánchez; Case 10.627 Pedro Tau Cac; Case 11.198(A) José María Ixcaya Pixtay *et al.*; Case 10.799 Catalino Chochoy *et al.*; Case 10.751 Juan Galicia Hernández *et al.*; and Case 10.901 Antulio Delgado, Report No. 59/01 Remigio Domingo Morales *et al.* (Guatemala)

731. In Report No. 59/01 of April 7, 2001, the IACHR concluded that the Guatemalan State was responsible for violating the following rights: (a) the right to life, to the detriment of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, José María Ixcaya Pixtay, José Vicente García, Mateo Sarat Ixcay, Celestino Julaj Vicente, Miguel Calel, Pedro Raguez, Pablo Ajiataz, Manuel Ajiataz Chivalán, Catrino Chanchavac Larios, Miguel Tiu Imul, Camilo Ajquí Gimón, and Juan Tzunux Us, as established at Article 4 of the American Convention; (b) the right to personal liberty in the case of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, and Camilo Ajqui Gimón, as established at Article 7 of the American Convention; (c) right to humane treatment, to the detriment of Messrs. Remigio Domingo Morales, Rafael Sánchez, Pedro Tau Cac, and Camilo Ajqui Gimón, as established at Article 5 of the American Convention and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; in addition, in the case of the attempts to extrajudicially execute Messrs. Catalino Chochoy, José Corino, Abelino Baycaj, Antulio Delgado, Juan Galicia Hernández, Andrés Abelino Galicia Gutiérrez, and Orlando Adolfo Galicia Gutiérrez, the Commission concluded that the Guatemalan State was responsible for violating the right to humane treatment, as established at Article 5 of the American Convention; (d) the rights of the child in the case of children Rafael Sánchez and Andrés Abelicio Galicia Gutiérrez, as established at Article 19 of the American Convention; (e) judicial guarantees and judicial protection, to the detriment of all the victims, both those extrajudicially executed and those who suffered attempted extrajudicial execution, as established at Articles 8 and 25 of the American Convention. (f) In addition, the IACHR considered the Guatemalan State responsible in all cases for having breached the obligation to respect and ensure the rights protected in the American Convention on Human Rights, as established at Article 1 thereof.

732. According to the background information, the IACHR determined that each of cases 10,626; 10,627; 11,198(A); 10,799; 10,751; and 10,901 referred to complaints in which it was indicated that the alleged material perpetrators of the various human rights violations were the Civil Self-Defense Patrols (PAC) or the Military Commissioners, and after considering the nature of the operations of the PAC and the Military Commissioners, the chronological framework of the various complaints, and the

modus operandi used in each of the facts alleged, the Commission decided, in keeping with Article 40 of its Regulations in force at the time, to join the cases and refer to them in a single report.

733. In Report No. 59/01, the Commission made the following recommendations to the States:

1. That it conduct a thorough, impartial and effective investigation to determine the circumstances of the extrajudicial executions and attempted extrajudicial executions of each victim and the attendant violations, and punish those responsible.
2. That it takes the necessary measures so that the next-of-kin of the victims of the extrajudicial executions might receive adequate and prompt compensation for the violations herein established.
3. That it takes the necessary measures so that the victims of the attempted extrajudicial executions might receive adequate and prompt compensation for the violations herein established.
4. That it effectively prevents a resurgence and reorganization of the Self-defense Civil Patrols.
5. That in Guatemala the principles established in the United Nations "Declaration on the right and responsibility of individuals, groups and institutions to promote and protect universally recognized human rights and fundamental freedoms" be promoted and that the necessary measures be taken to ensure that the right of those who work to secure respect for fundamental rights is respected and that their life and personal integrity are protected.

734. By a communication dated October 26, 2011, the Commission requested the parties to provide updated information on compliance with the recommendations contained in Report No. 59/01. Neither party responded.

735. The Commission therefore concludes that the recommendations have been partially fulfilled. Accordingly, the Commission will continue to monitor for compliance with the pending points.

Case 9111, Report No. 60/01, Ileana del Rosario Solares Castillo et al. (Guatemala)

736. In Report on the Merits No. 60/01 of April 4, 2001, the IACHR concluded that the Guatemalan State had violated the rights of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández to life (Article 4), humane treatment (Article 5), personal liberty (Article 7), judicial guarantees (Article 8), and judicial protection (Article 25), all in conjunction with the obligation to ensure the rights protected in the Convention, as established in Article 1(1) of the same Convention. These violations occurred as a result of the detention and subsequent forced disappearance of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández at the hands of agents of the Guatemalan State on September 25, 1982, in the case of Ms. Solares Castillo; and on November 21, 1982, in the case of Ms. López Rodríguez and Ms. Hernández.

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

1. Conduct an impartial and effective investigation into the facts of this complaint to determine the whereabouts and condition of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, to identify the persons responsible for their disappearance, and to punish them in accordance with the rules of due legal process.
2. Take steps to make full amends for the proven violations, including measures to locate the remains of Ileana del Rosario Solares Castillo, María Ana López Rodríguez, and Luz Leticia Hernández, the arrangements necessary to fulfill their families' wishes regarding the final resting place of their remains, and adequate and timely compensation for the victims' relatives.

738. On October 25, 2011, the Commission requested the parties to provide updated information on compliance with the recommendations set forth in Report No. 60/01.

739. On October 25, 2011, the Commission asked the parties for updated information on compliance with the recommendations contained in Report No. 60/01.

740. According to the information provided by the parties in previous years, the commemorative and reparative commitments were fulfilled. The ceremony uncovering the plaque was held on December 12, 2008 and at the ceremony the President of the Presidential Steering Committee for Executive Policy on Human Rights (COPREDEH) asked the family's forgiveness for the violations committed against Ileana Solares and delivered a letter with public apologies signed by the President of the Republic, Álvaro Colom Caballeros, and a large portrait of the victim to be installed at municipal headquarters. In addition, on September 22, 2009 the State fulfilled its commitment on printing copies and inclusion of the subjects requested has also been arranged with the Ministry of Education. With respect to economic reparation, the State indicated that it fully satisfied this commitment. In 2011, the State reported that on October 28, 2011 testimony on the establishment of the Ileana del Rosario Solares Foundation was presented to the Ministry of the Interior and it remains only to be published. It added that the seed capital for the Foundation was provided by the State.

741. With respect to Ileana del Rosario Solares Castillo, on December 19, 2007, the family's representative and the State signed an "Agreement on Compliance with Recommendations" issued by the IACHR, wherein the State made a series of commitments, which included various measures to honor the memory of the victim, among them a ceremony in her memory; the installation of a plaque in her honor; the printing of 5,000 copies of a summary of Case 9.111; the State's commitment to take steps to include the subject of the armed conflict and the peace process in the content of social studies courses taught in primary and basic education; the establishment of a foundation; and economic compensation.

742. With respect to Ana María López Rodríguez, on October 14, 2010 the family's representatives and the State signed an "Agreement on Compliance with Recommendations" issued by the IACHR, wherein the State undertook a series of commitments, including various measures to honor the memory of the victim, among them a ceremony of public apology; placing the name of the victim in a classroom at an educational center; developing and producing 5,000 copies of an educational brochure; publishing a summary of the case in the official journal and a newspaper with national circulation; establishing the Ana María López Rodríguez Foundation; incorporating the subject of the armed conflict in the curriculum; and economic reparations.

743. According to the information provided by the State on December 6, 2011, a ceremony was held on January 20, 2011. It was a private ceremony at the request of the victim's relatives, at which the President of COPREDEH delivered a letter seeking forgiveness signed by the President of the Republic, Álvaro Colom Caballeros, asking forgiveness in the name of State from the relatives of the victim for the violations committed against the victim.

744. Regarding the commitment to include the subject of the armed conflict in the curriculum, the State indicated that as in the previous case it had met the commitment and that the summary of the case was published on February 14, 2011. As reported by the State, the other commitments are pending compliance. The State also reported with respect to the commitment to promote approval of the Law on the National Search Committee for the Disappeared that a series of steps had been taken but that the bill has been before the National Congress since 2006.

745. Regarding the case of Luz Leticia Hernández Agustin, the State reiterated that the relatives of the victim indicated that before agreeing on economic reparations or moral reparations measures the State should hand over Luz Leticia's remains.

746. Regarding the investigation into the forced disappearance of the victims, the Commission notes that according to the information provided by the State in 2011 [text missing].

747. Based on the above, the Commission concludes that there has been partial compliance with the recommendations summarized above. As a result, the Commission will continue to monitor the pending items.

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

748. In Report No. 57/02, of October 21, 2002, the IACHR concluded that the Guatemalan State had failed to carry out the obligations imposed on it by Article 1(1) of the Convention, and had violated, in conjunction with Article 1(1) of the Convention, the right to life, enshrined at Article 4 of the Convention, as regards Efraín Recinos Gómez, Basilio Guzmán Juárez, and Diego Orozco; the right to humane treatment, enshrined in Article 5 of the Convention, in relation to Diego Orozco, the whole group of workers/occupants and their families, who suffered the attack of August 24, 1994, and especially the 11 persons who suffered grievous injuries: Pedro Carreto Loayes, Efraín Guzmán Lucero, Ignacio Carreto Loayes, Daniel Pérez Guzmán, Marcelino López, José Juárez Quinil, Hugo René Jiménez López, Luciano Lorenzo Pérez, Felix Orozco Huinil, Pedro García Guzmán, and Genaro López Rodas; the right of freedom of association, enshrined in Article 16 of the Convention, in relation to the workers at the La Exacta farm who organized a labor organization to put forth their labor demands to the landowners and administrators of the La Exacta farm, and to the Guatemalan courts, and who they suffered reprisals for this reason; the right of the child to special protection stipulated in Article 19 of the Convention, as regards the minors who were present during the August 24, 1994 incursion; the right to due process and judicial protection, protected by Articles 8 and 25 of the Convention, in relation to the organized workers who sought access to judicial remedies in relation to their labor demands, and in relation to the victims of the events of August 24, 1994, and their family members who sought justice in relation to those events. In addition, it concluded that the Guatemalan State had violated Articles 1, 2, and 6 of the Convention on Torture in relation to the torture suffered by Diego Orozco.

749. The Commission made the following recommendations to the Guatemalan State:

1. That it begins a prompt, impartial and effective investigation of the events that took place on August 24, 1994 to be able to detail, in an official report, the circumstances of and responsibility for the use of excessive force on that date.
2. That it takes the necessary steps to subject the persons responsible for the acts of August 24, 1994 to the appropriate judicial proceedings, which should be based on a full and effective investigation of the case.
3. That it makes reparations for the consequences of the violations of the rights listed, including the payment of fair compensation to the victims or their families.
4. That it takes the necessary measures to ensure that violations of the type that took place in this case do not recur in future.

750. By means of a communication dated October 26, 2011, the Commission requested the parties to provide updated information on the status of compliance with the recommendations made in the present case.

751. On November 22, 2011, the petitioners reported with respect to the commitment to provide housing that in June 2011 they finished delivering to COPREDEH the files on the housing beneficiaries, which were in turn submitted to the Guatemalan Housing Fund (FOGUAVI) and are now being evaluated and reviewed.

752. Regarding the Economic Reparation Agreement signed with the State on October 24, 2003, the petitioners reported that since that date they have been negotiating with the State on the scope of those commitments with respect to school infrastructure; housing; construction of a monument to honor the memory of the victims; and access to drinking water. However, so far a specific reparations agreement has not been signed.

753. The IACHR did not receive any information regarding the investigation during 2011.

754. Because of the above, the Commission concludes that the recommendations as indicated were partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

Case 11.312, Report on Friendly Settlement No. 66/03, Emilio Tec Pop (Guatemala)

755. On October 10, 2003, by Report 66/03, the Commission approved a friendly settlement agreement in the case of Emilio Tec Pop. In summary, the petitioners had alleged that on January 31, 1994, Emilio Tec Pop, 16 years of age, was heading from the municipality of Estor, department of Izabal, to the departmental capital of Cobán, Alta Verapaz, and in the early morning hours was detained by unknown individuals. Thirty-two days later, on March 3, 1994, the authorities from the military garrison at Estor handed Emilio Tec Pop over to his family members. The petitioners in this case stated that he was detained against his will and physically and psychologically abused; the soldiers are alleged to have threatened to kill Emilio, they beat him and cut up his hands with a knife.

756. Through this agreement the State undertook to:

- a. Pay compensation.
- b. To provide seed capital in the form of basic grains to Emilio Tec Pop with the aim of improving his standard of living.
- c. Take steps to get the investigation into these events back on course and to be able to punish those responsible.

757. By means of a communication dated October 26, 2011, the Commission requested the parties to provide updated information on the status of compliance with the agreements that were signed with the State in the present case.

758. As indicated in the follow-up on this case, the State acknowledged international responsibility for the acts committed, as established in section III of the "Friendly Settlement Agreement" and economic reparations equal to US\$2,000.00 were paid.

759. On November 22, 2001, the petitioners reported, with respect to the State's commitment to provide basic grains seed capital to Mr. Manuel Emilio Tec Pop in order to improve his standard of living, that on April 14, 2011 the State of Guatemala, through officials from the Ministry of Agriculture, Livestock and Nutrition and COPREDEH, delivered seed to Mr. Manuel Emilio Tec Pop for chard, tomato, eggplant, jalapeño peppers, chili pepper, cilantro and melon, "which we consider very positive because it fulfills this commitment." They added that particular appreciation and recognition are due because the State made the effort not only to provide the victim with seeds but "did more by informing him about the entire process of establishing the vegetable gardens and committing to train him in the growing phase up to the harvest, as well as expanding the project to establish vegetable gardens to include 11 more families in the community where Mr. Manuel Emilio Tec Pop lives. These families will also be given training by the Ministry of Agriculture, Livestock, and Nutrition, which will benefit them and give them the opportunity to improve their standard of living."

760. Regarding the commitment to investigate and sanction those responsible, the petitioners indicated that the State has not provided the IACHR with information on this aspect. They indicated that in its reports the State did not submit relevant information that could be used to establish concrete and specific progress in the investigation, prosecution, and punishment of those responsible for violating the victim's human rights.

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

Case 11.766, Report No. 67/03, Irma Flaquer (Guatemala)

762. On October 10, 2003, by report No. 67/03, the Commission approved a friendly settlement agreement in the case of Irma Flaquer. By way of background, on October 16, 1980, journalist Irma Flaquer Azurdia was kidnapped while driving in a vehicle accompanied by her son Fernando Valle Flaquer in Guatemala City. In the incident Fernando Valle Flaquer was injured; he subsequently died at the Hospital General San Juan de Dios. As of that same date, the whereabouts of Irma Flaquer have not been known. The petitioners also argue that during the investigation of the case by the Guatemalan authorities, it was noted that while the government of that period formally lamented Flaquer's presumed death, there were few official efforts to investigate the incident. In addition, the minimal efforts made in the official investigation were excused by an amnesty law that in 1985 granted a general pardon, diluting both the responsibility and the participation of some sector of the state apparatus.

763. On March 2, 2001, the parties agreed on a friendly settlement of the case. By means of the friendly settlement agreement, the State recognized its institutional responsibility for the facts of the case and recognized the need "to continue with and vigorously reinforce administrative and legal measures

aimed at identifying those responsible, determining the whereabouts of the victim and applying the appropriate criminal and civil punishment.” In addition, at the third item in that agreement, the State undertook to study the petitions put forth by the petitioners as reparations, which consisted of the following points:

- (a) Establishment of a committee to expedite the judicial proceeding composed of two representatives each from COPREDEH and IPS;
- (b) Establishment of a scholarship for the study of journalism;
- (c) Erection of a monument to journalists who sacrifice their lives for the right to freedom of expression, symbolized in the person of Irma Marina Flaquer Azurdia;
- (d) Designation of a wing of a public library as a repository for all material related to the works of the journalist in question;
- (e) Naming of a public street after her;
- (f) Establishment of a university chair in journalism history;
- (g) Writing of letters to the relatives asking for forgiveness;
- (h) Organization of a course for the training and social rehabilitation of inmates in the Women's Correctional Centre (COF);
- (i) Compilation and publication of a book containing a selection of the best columns, writings and Articles of the disappeared journalist;
- (j) Production of a documentary;
- (k) Holding of a public ceremony to honor her memory.

764. In conformity with the friendly solution agreement, the parties agreed to “establish an Impetus Commission” and set March 19, 2001 as the date for starting activities, after a public ceremony to be held in the city of Fortaleza, Brazil, in the framework of the half-yearly meeting of the Inter-American Press Association (Sociedad Interamericana de Prensa—SIP). As of that date and in the subsequent 30 days, the State and the petitioners agreed that the Commission must begin the task and process of investigating the case of Irma Marina Flaquer Azurdia, as well as set up a timetable and calendar of activities for restoring the dignity of the missing journalist, previously setting the date, that is, September 5, 2001, which is the birth date of the missing journalist, to hold a public ceremony with the parties involved in Guatemala City.

765. In the Friendly Settlement Report, the Commission indicated that it had been informed about the satisfaction of the petitioners regarding the SIP for compliance with the large majority of the items of the agreement. Nevertheless, compliance with the following was still pending: a) creation of a scholarship for journalism studies; b) establishment of a university chair on the history of journalism, and c) presentation of a letter extending apologies to next-of-kin. The State’s obligation to investigate the forced disappearance of the journalist Irma Flaquer Azurdia and the extrajudicial execution of Fernando Valle Flaquer is still pending.

766. By a communication dated October 26, 2011, the Commission asked the parties to report updated information on the status of compliance with the pending points of the agreement reached in this case.

767. Regarding the State of Guatemala informe don December 2, 2011, that it has complied with the commitment related to the delivery of the letter of pardon to the family members of Irma Flaquer and that therefore, that aspecto has been fulfilled. Regarding the creation of a scholarship, the State reported that a scholarship was requested from the Secretariat of Planning and Programming of the Office of the President (SEGEPLAN), which indicated its willingness to fulfill the State’s commitments in the area of education through its National Scholarship and Educational Loan Trust Fund (FINABECE). It added that the commitment would take shape in 2012 because of a lack of funds for granting new scholarships this year.

768. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue monitoring the items that are pending.

Case 11.197, Report on Friendly Settlement Agreement No. 68/03, Community of San Vicente de los Cimientos (Guatemala)

769. On October 10, 2003, by Report No. 68/03, the Commission approved a friendly settlement report in the case of the "Community of San Vicente de los Cimientos." In summary, on August 24, 1993, the Centro para la Acción Legal en Derechos Humanos (CALDH) and the Consejo de Comunidades Étnicas Runujel Junam (CERJ), in representation of 233 indigenous families, filed a complaint with the IACHR in which they alleged that during the armed conflict the sector called Los Cimientos, located in Chajul, department of Quiché, where 672 indigenous families lived who were the owners in the sector, was invaded in 1981 by the Guatemalan Army, which established a garrison in the area. After threats of bombardment of the community and the assassination of two community members, the community of Los Cimientos was forced to abandon its lands in February 1982, leaving behind harvests of corn, beans, and coffee, and animals. One month after they fled, some families returned to the place, and found their homes had been burned and their belongings stolen. Subsequently, the community of Los Cimientos was expelled once again in 1994. On June 25, 2001, the community was violently evicted from their lands, of which they were the legal owners, by neighbors and other persons, apparently supported by the Government.

770. On September 11, 2002, the parties agreed on a friendly settlement in the case and established the following commitments:

1. Purchase, on behalf of all the members of the Los Cimientos Quiché community comprising the civic association "Community Association of Residents of Los Cimientos Xetzununchaj," the San Vicente Osuna estate, and its annex, the Las Delicias estate, which are adjacent to each other and are located in the municipality of Siquinalá, Escuintla department.
2. The community of Los Cimientos, through the Community Association of Residents of Los Cimientos Xetzununchaj civic association, and the Government, shall identify and negotiate, within sixty days following the settlement of the community, urgent projects to reactivate its productive, economic, and social capacities, with a view to fostering the community's development and wellbeing, and in consideration of the agrological study carried out and the record of the landmarks and limits of the San Vicente Osuna estate and its annex, the Las Delicias estate.
3. The individual land owners, land holders, and assigns of the estates comprising the Los Cimientos community, as a part of the commitments arising from the government's purchase on their behalf of the estates known as San Vicente Osuna and its annex, the Las Delicias estate, shall cede their current rights of ownership, holding, and inheritance to the Land Fund, in compliance with the provisions of Article 8(h) of the Land Fund Law, Decree No. 24-99.
4. The State shall be responsible for relocating the 233 families of the community of Los Cimientos, Quiché, together with their property, from the village of Batzulá Churranch, Santa María Cunén municipality, Quiché department, to the San Vicente Osuna estate and its annex, the Las Delicias estate, located in Siquinalá municipality, Escuintla department.
5. The government shall provide the resources necessary to feed the 233 families during their transfer to and settlement in their new homes, and it shall accompany them with a duly equipped mobile unit for the duration of the transfer and until such time as a formal health facility is established in their settlement, in order to cater for any emergency that may arise.
6. For the community's location and resettlement, the government of the Republic will provide humanitarian assistance, minimal housing, and basic services.
7. The government of Guatemala agrees to organize the creation of a promotion committee that will be responsible for monitoring progress with the legal proceedings initiated against the individuals involved in the events of June 25, 2001, perpetrated against the owners of the Los Cimientos and Xetzununchaj estates.

771. By a communication dated October 26, 2011, the Commission asked the parties to supply updated information on the status of compliance with those points of the agreement that were still pending in this case.

772. Regarding compliance with the agreement during 2011, the petitioners indicated that 103 files were reviewed, organized, and completed on an equal number of beneficiaries for the housing to be provided by the State. They added that COPREDEH had not yet sent the files to the Guatemalan Housing Fund (FOGUAVI) to continue with the respective processing.

773. With regards to the processes of concession of the rights of property, they reiterated that they are waiting for COPREDEH, as coordinating instancante, to take pertinente actions and that the beneficiaries are in disposition to collaborate in the process of ceding their rights of the property located in the Department of Quiché in favor of the State of Guatemala.

774. Regarding the investigation of the facts and those responsible for them, the petitioners indicated that a public oral hearing was conducted on April 27, 2011 in the case against the person alleged to be responsible and the defense filed two motions on violation of due process and lapse of the statute of limitations. The court decided to admit the motion on violation of due process and the right of defense, dismissed the case and ordered release of the accused. As of now, the petitioners do not know whether a special appeal was filed.

775. The petitioners also indicated that they held various meetings with the State to agree on the content of the Specific Agreement. However, the final versión has not been submitted for signing. They also indicated that the State has not followed up the requests for technical assistance that the petitioners made to the Ministry of Agriculture, Livestock and Nutrition on cultivation of the land, as well as to move ahead on fulfilling the commitments related to water, market, and waste removal services for the San Vicente Los Cimientos Community.

776. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue monitoring the items that are pending.

Petition 9168, Report No. 29/04, Jorge Alberto Rosal Paz (Guatemala)

777. On March 11, 2004, by Report 29/04, the Commission approved a friendly settlement agreement in the petition of “Jorge Alberto Rosal Paz.” In this matter, on August 12, 1983, Mr. Jorge Alberto Rosal Paz was detained while driving between Teculután and Guatemala City; his whereabouts are unknown to this day. On August 18, 1983, the IACHR received a petition submitted by Ms. Blanca Vargas de Rosal, alleging that the Guatemalan State was responsible for the forced disappearance of her husband.

778. On January 9, 2004, the parties agreed on a friendly settlement in the case. In the agreement, the State recognized its institutional responsibility for breaching its obligation, under Article 1(1) of the American Convention on Human Rights, to respect and ensure the rights enshrined in the American Convention, in addition to Articles 4, 5, 7, 8, 11, 17, 19, and 25. In addition, it stated that the main basis for reaching a friendly settlement was the search for the truth and the administration of justice, restoring dignity to the victim, reparations resulting from the violation of the victim’s human rights, and strengthening the regional human rights system.

779. On February 15, 2006, Ms. Blanca Vargas de Rosal reported that the only commitment carried out by the State was economic reparation; the commitments regarding education, actions to restore the victim’s name, housing, investigation, and justice were still pending.

780. In a communication dated October 25, 2011, the Commission asked the parties to provide updated information on the status of compliance with the pending points of the agreement in this case.

781. On December 2, 2011, the State reported that financing had been provided through FINABECE to María Luisa Rosal Vargas to allow her to take preparatory French classes before entering a master's program at McGill University in Montreal, Canada. However, on October 26, 2011 the beneficiary reported that she was not accepted in the master's program and asked that the scholarship be continued and the place of study be changed to National University of San Martín in Buenos Aires, Argentina. On this subject, the State indicated that it was impossible to transfer the funds because a new scholarship contract would have to be drawn up with FINABECE and that several meetings were being scheduled with the petitioners to resolve this situation. It added that a non-reimbursable funding contract was signed for Jorge Alberto Rosal on February 16, 2011 for a scholarship amounting to US\$48,382.70. In addition, in response to a request from the petitioners, the scholarship was expanded on July 18, 2011 to include a non-reimbursable item for food and housing for the period April to December 2011 in the amount of US\$857.50.

782. As for the grant of a plot of land to Mrs. Blanca Elvira Vargas Córdón de Rosal, the State reported that thus far it had been unable to make good on this commitment. In April of this year, Mrs. Blanca Vargas was sent a draft of the commitment for her comments but did not respond even though she was sent a reminder to continue with the process. On this subject, the State reported earlier that it needed to amend the friendly settlement signed on January 9, 2004 to justify payment by the Ministry of Public Finances of an amount equal to the current value of the land. The State indicated that the petitioners approached it in November of this year to resume discussion of the housing and they agreed to hold a meeting on December 12, 2011

783. The Commission therefore concludes that the friendly settlement agreement has been partially complied with. Accordingly it will continue to monitor for compliance with those points still pending.

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

784. On October 27, 2005, by Report No. 99/05, the Commission approved a friendly settlement agreement in the petition in the matter of "José Mérida Escobar." In summary, on February 19, 2004, the IACHR received a petition submitted by Amanda Gertrudis Escobar Ruiz, Fernando Nicolás Mérida Fernández, Amparo Antonieta Mérida Escobar, Rosmel Omar Mérida Escobar, Ever Obdulio Mérida Escobar, William Ramírez Fernández, Nadezhda Vásquez Cucho, and Helen Mack Chan alleging that the Guatemalan State was responsible for the extrajudicial execution of José Miguel Mérida Escobar on August 5, 1991. According to the petition, Mr. Mérida Escobar worked as Chief of the Homicide Section of the Department of Criminological Investigations of the National Police, and was in charge of the criminal investigation into the assassination of anthropologist Myrna Mack Chang. In the context of this criminal investigation, on September 29, 1990, he concluded that the main suspect in the assassination of Myrna Mack Chang was a member of the Security Department of the Presidential High Command of the Guatemalan Army. On August 5, 1991, Mr. Mérida Escobar was assassinated with gunshot wounds to the head, neck, left torso, and left arm; he died instantly.

785. On July 22, 2005, the parties agreed on a friendly settlement of the case. In the friendly settlement agreement, the State recognized its international responsibility for the violation of the rights enshrined in Articles 4, 5, 8, and 25 of the American Convention. Among the main commitments assumed in friendly settlement agreement No. 99/05 are:

- To take steps to ensure that the *Ministerio Público* conducts a serious and effective investigation.
- To make appropriate arrangements to establish a fellowship for police studies abroad.
- To look into the feasibility of drawing up a letter of recognition of the international responsibility of the State of Guatemala for the extrajudicial execution of José Miguel Mérida Escobar, which will be circulated to international organizations by way of the Official Gazette and the Internet.

- To take the relevant steps for the placement of a plaque in honor of police investigator José Miguel Mérida Escobar at the facilities of the Palace of the Civil National Police, in memory of José Miguel Mérida Escobar.
- To ensure that the appropriate authorities will take steps to determine the viability of changing the name of the Santa Luisa district in the Municipality of San José del Golfo, department of Guatemala, to the name of José Miguel Mérida Escobar.
- To take steps to ensure that the Executive Agency provides a life pension to the parents of José Miguel Mérida Escobar, Amanda Gertrudis Escobar Ruiz, and Fernando Nicolás Mérida Hernández, and a pension to his youngest son, Edilsar Omar Mérida Alvarado, until he completes his advanced technical studies.
- To take the relevant steps to ensure that the Ministry of Public Health provide for psychological treatment for Mrs. Rosa Amalia López, the widow of the victim, and for the youngest of his sons, Edilsar Omar Mérida Alvarado.
- The Government of the Republic pledges to take the relevant steps to ensure that the Ministry of Education arranges for a scholarship to be granted to the youngest son of the victim, Edilsar Omar Mérida Alvarado.

786. On December 21, 2006, the State reported that on November 30, 2006, the ceremony was held in which a plaque in memory of José Mérida Escobar was unveiled at the new headquarters of the National Civilian Police that was attended, on behalf of the State, by the Director General of the National Civilian Police and the President of COPREDEH. In addition, it reported that the municipality of San José del Golfo approved, by act No. 59-2006, naming the street where the victim lived with his family after him (José Miguel Mérida Escobar). With respect to the institution of the “José Miguel Mérida Escobar” scholarship, the State indicated that its regulation is pending approval. Finally, the State indicated that the victim’s younger child, Edilsar Omar Mérida Alvarado, would be hired as of January through the “My First Job” program.

787. On December 6, 2007, the State reported that it continues following up on the commitments related to granting a lifetime pension to the victims’ parents, as well as the creation of a scholarship for police studies named after Commissioner José Miguel Mérida Escobar.

788. By means of a communication dated October 25, 2011, the Commission requested the parties to provide updated information on compliance with the friendly settlement agreement in Report No. 99/05.

789. As the State reported in 2010, it is taking measures to comply with the agreements signed and asked the Commission to take into account the material and legal difficulties it has encountered in endeavoring to comply with the commitments undertaken. As for the investigation the State reported that it had asked the Attorney General of the Republic and the Head of the Public Prosecutor’s Office to reopen the criminal prosecution of the case. As for the scholarships for police studies, the State reported that it would resume meetings with the relevant authorities to draft the scholarship rules and arrange a government agreement for the scholarship for police studies.

790. With regard to granting a life pension to the parents of José Miguel Mérida Escobar and Edilsar Omar Mérida Alvarado, the State indicated the pension would be processed during 2010. Regarding the pension for Edilsar Omar Mérida Alvarado to continue until he completes his advanced technical studies, the State said it was unable to comply on this point since Edilsar Mérida indicated that he was not studying.

791. The parties did not submit any information during 2011 regarding compliance with the agreement.

792. Because of the above, the Commission concludes that the friendly settlement agreement has been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

Case 10.855, Report on Friendly Settlement Agreement No. 100/05, Pedro García Chuc (Guatemala)

793. In Report No. 5/00 of February 24, 2000, the Commission concluded that the Guatemalan State was internationally responsible for the arbitrary execution of Mr. Pedro García Chuc and the violation of his rights to life, judicial protection, and judicial guarantees, among other rights enshrined in the American Convention. In this case, on March 5, 1991, at kilometer 135 of the route to the Western region, department of Sololá, several members of the state security forces captured Mr. García Chuc in the early morning hours. Two days later, the victim's corpse was located at the same place where he was captured, with several gunshot wounds. It is presumed that the extrajudicial execution was due to his work as president of the Cooperativa San Juan Argueta R.L., as well as his active participation in obtaining benefits for his community. The petition was presented by the victim's next-of-kin, and was one of a total of 46 petitions received by the Commission in 1990 and 1991 in which the State was allegedly responsible for the extrajudicial execution of a total of 71 men, women, and children, including Mr. García Chuc. After processing the cases before the IACHR, the Commission decided, in keeping with Article 40 of its Regulations, to join those cases and resolve them together.

794. In that report, the IACHR recommended to the Guatemalan State that it:

1. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and related violations in the cases of the victims named in section VII, and to punish the persons responsible pursuant to Guatemalan law.
2. Adopt the measures necessary for the family members of the victims identified in paragraph 289 to receive adequate and timely reparation for the violations established herein.

795. On April 13, 2000, the Guatemalan State issued a formal statement in which it recognized its international responsibility for breaching Article 1(1) of the American Convention, accepted the facts set forth in Report No. 5/00 of the Commission, and undertook to make reparation to the victims' next-of-kin, based on the principles and criteria established in the inter-American human rights system. It also undertook to promote investigations into the facts, and, to the extent possible to prosecute the persons responsible. Finally, it undertook to report on progress in carrying out its obligations. On that same date the IACHR published Report No. 39/00.

796. On February 18, 2005, the State and the petitioners signed an "Agreement on Implementation of Recommendations. Case 10,855. Pedro José García Chuc," and on July 19, 2005, they signed an agreement on compensation. On October 27, 2005, the IACHR published Report No. 100/05 on the "Compliance Agreement" in this case.

797. During the monitoring of compliance, the Guatemalan State observed that while it had complied with some commitments, its compliance with other commitments was still "pending". Among those that the States said it had complied with, were those related to payment of economic reparations to the victim's next of kin; the establishment of the Indigenous Association for Business Development – ASINDE-; the public apologies, and measures to honor the victim's memory.

798. By means of a communication dated October 25, 2011, the Commission requested the parties to provide updated information on compliance with the friendly settlement agreement appearing in Report No. 100/05.

799. Regarding the commitments identified as "pending," the State of Guatemala reported that: i) regarding the operation of the Association, the articles of association of ASINDE (Indigenous Association for Business Development) had to be amended for the appointment of the new

representative. However, it noted that this change had not been possible because the petitioners had not submitted the respective articles of association for amendment, in addition to the tax exemption that should be processed with the SAT. Regarding the handover of a property where ASINDE headquarters will be set up, the State asserted that arrangements have been made with the Municipal Mayor of Quetzaltenango on granting a plot of land in that department, with the prerequisite that the petitioners make a formal application to the Municipal Council for the proper approval but this has not happened. Regarding its commitment to provide technical training to the members of ASINDE, it stated that because the Technical Training Institute –INTECAP– requires a minimum number of participants, it has coordinated with another association to join the training process in order to comply with the agreement but the petitioners have not responded in this regard.

800. Finally, the State indicated that the greatest difficulty in complying with the commitments undertaken by the State is the petitioners' absence from and disinterest in attending the meetings that have been called and in submitting the documentation needed to streamline the procedures and carry out the commitments.

801. For their part, the petitioners indicated with respect to the investigations that there has been no concrete and significant progress made on measures taken during 2009, 2010 and 2011 to determine the whereabouts of those potentially responsible for the arbitrary execution of Mr. Pedro García Chuc.

802. Because of the above, the Commission concludes that the State has partially complied with the friendly settlement agreement. As a result, the Commission shall continue to monitor the items that are pending.

Case 11.171, Report No. 69/06, Tomas Lares Cipriano (Guatemala)

803. In Report No. 69/06 of October 21, 2006, the IACHR concluded that the Guatemalan State was responsible for: (a) the violation of the human right to life in keeping with Article 4 of the American Convention, in relation to Article 1(1) of that instrument, due to the extrajudicial execution, by state agents, on April 3, 1993, of Tomas Lares Cipriano; (b) the violation of the human rights to humane treatment, judicial guarantees, and judicial protection, enshrined at Articles 5, 8, and 25 of the American Convention, in relation to Article 1(1) of that instrument, for the events that occurred April 3, 1993, and their consequences of impunity, to the detriment of Tomas Lares Cipriano and his next-of-kin; and (c) consequently, for the breach of the obligation to respect the human rights and guarantees, imposed by Article 1(1) of the American Convention. The victim, Tomás Lares Cipriano, was a farmer, 55 years of age, a member of the Consejo de Comunidades Étnicas "Runujel Junam" (CERJ), and of the Comité de Unidad Campesina (CUC). As an active community leader in his town, Chorraxá Joyabaj, El Quiché, he had organized numerous demonstrations against the presence of the army in his zone, and against the apparently voluntary but in fact compulsory service by the campesino farmers in the so-called Civilian Self-Defense Patrols (PAC). In addition, he had filed numerous complaints in relation to the threats against the local population by the Military Commissioners who acted as civilian agents of the army, patrol chiefs, and, on occasion, as soldiers. On April 30 of that same year, Tomas Lares Cipriano was ambushed and assassinated by Santos Chich Us, Leonel Olgadez, Catarino Juárez, Diego Granillo Juárez, Santos Tzit, and Gaspar López Chiquiaj, members of the PAC.

804. The IACHR made the following recommendations to the Guatemalan State:

1. To carry out a complete, impartial and effective investigation of the events reported, to judge and punish all those responsible, either as abettors or perpetrators, for human rights violations with prejudice to Tomás Lares Cipriano and his family members.
2. To make reparation for the violation of the aforementioned rights as established in paragraph 128 of this report.
3. To effectively prevent the resurgence and reorganization of the Civil Self-defense Patrols.

4. To adopt the necessary measures to avoid similar events in the future, pursuant to the duty of prevention and guarantee of fundamental human rights, recognized by the American Convention.

805. On October 25, 2011 the Commission requested the parties to provide updated information on the status of compliance with the recommendations issued in its Report No. 69/06.

806. In its reply of December 5, 2011, the Guatemalan State reported the following: i) with respect to the first recommendation, it observed that the 1996 conviction of Santos Chic Us notwithstanding, there were another three arrest warrants that had yet to be executed; ii) concerning the recommendation that measures of reparation be adopted, the State again noted that the victim's next of kin had expressed no interest in this case and observed that while the most recent attempts made in December 2010 succeeded in contacting some of the victim's children, the situation had reportedly remained unchanged. As to the possibility of establishing "a special fund for reparations to the relatives of the victim in the event they decided to accept reparations in the future",⁶⁰ the State's contention was that this could not be done since in order to be able to request payment of the compensation established in the Agreement on Friendly Settlement, Compliance with Recommendations or Judgment of the Inter-American Court of Human Rights, it needed the legal justification in order for the Ministry of Finance to be able to pay out the corresponding amounts; and iii) concerning the recommendation intended to avoid a resurgence of the PAC, the State reported that Decree No. 143-96 of November 28, 1996 had overturned Decree 19-86 of January 17, 1986, which had established those patrols.

807. Because of the above, the Commission concludes that the recommendations have been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

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

808. In Report No. 48/03 of October 8, 2003, the IACHR concluded that the Republic of Guatemala was responsible for: (1) violating Article 4 of the American Convention on Human Rights to the detriment of Martín Pelicó Coxic, in relation to Article 1(1) of said instrument; (2) violating Articles 5, 8, and 25 of the American Convention on Human Rights, in relation to Article 1(1) of that instrument, to the detriment of Martín Pelicó Coxic and his next-of-kin. The Commission determined that the responsibility of the Guatemalan State emanated from the extrajudicial execution perpetrated on June 27, 1995, by state agents, of Mr. Martín Pelicó Coxic, a Mayan indigenous member of an organization for the defense of the human rights of the Maya people, as well as the injuries inflicted on the victim and his next-of-kin by virtue of the facts mentioned and the subsequent impunity for the crime.

809. The Commission made the following recommendations to the Guatemalan State:

1. Conduct a complete, impartial, and effective investigation of the reported events leading to the prosecution and punishment of the material and intellectual authors of the human rights violations committed to the detriment of Martín Pelicó Coxic and his next of kin.
2. Effectively prevent the reemergence and reorganization of the Civil Self-defense Patrols.
3. Promote in Guatemala the principles set forth in the United Nations "Declaration of the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms," and take the necessary measures to ensure respect for the freedom of expression of those who have undertaken to work for the respect of fundamental rights and to protect their lives and personal integrity.
4. Adopt all necessary measures to prevent the recurrence of similar acts, in accordance with the responsibility to prevent and to guarantee the fundamental rights recognized in the American Convention."

⁶⁰ IACHR, Merits Report No. 69/06, Case 11.171, Tomas Lares Cipriano, Guatemala, October 21, 2006, paragraph 128.

5. Comply with the obligations still pending in the area of reparations to the victim's next of kin.

810. After this report, the parties of the present case, on July 19, 2005, entered into an Agreement to Comply with the Recommendations of Report No. 48/03. The IACHR has been able to appreciate with satisfaction the major progress achieved in complying with the recommendations that were made, because of which, on October 26, 2006, at its 126th Regular Session, the Commission decided to not submit the case to the Inter-American Court of Human Rights and rather to follow up on compliance with the recommendations by means of the mechanism enshrined in Article 51 of the American Convention.

811. For this purpose, on March 8, 2007, Report No. 12/07 (Article 51 Report), where the IACHR repeated its recommendations to the State of Guatemala and also recommended that the obligations that are pending with respect to reparations for the next-of-kin of the victim should be complied with, was adopted.

812. Finally, on October 15, 2007, the IACHR approved Report No. 80/07, which provides for the publication of the previously mentioned reports. On this occasion, once again the Commission expressed its satisfaction at fulfillment of most of the commitments made in the Agreement to Comply with the Recommendations of Report No. 48/03, but it also reiterated to the State of Guatemala recommendations two and three as set forth in Report No. 12/07 and recommended that the investigation of the facts that were reported be completed impartially and effectively investigated to bring to trial and punish the principal offenders and accessories who violated the human rights against Martín Pelicó Coxic and his next-of-kin.

813. By means of a communication dated October 25, 2011 the IACHR requested the parties to provide updated information on the status of compliance with the recommendations made for the present case.

814. The State of Guatemala submitted information regarding the investigation and punishment of those responsible for the facts reported and on the scholarship offered to Eliseo David Pelicó. On the first point, the State of Guatemala reiterated to the Commission that the Criminal Tribunal absolved Pedro Acabal Chaperón, quien was accused of homicide against Martín Pelicó Coxic, and added that to date the resolution is firm. In addition, it reiterated that the adhesive complainant in the civil process renounced in favor of the accused, as a consequence of the termination of the criminal case. Despite this, the State reported that the prosecutor's office is continuing to investigate. To do so, it asked the Superintendency of Tax Administration for data on the vehicle in which the accused and victims are alleged to have been riding on the day of the events; Pedro Acabal Chaperón was summoned to indicate the location where he was with the victim just moments before the events; and a statement was received from the wife of Martín Pelicó Coxic, who told the authorities that she has no interest in continuing with the case, for which reason the prosecutor's office is investigating the reasons for this retraction. On the other point, the State indicated that it is making arrangements on the respective mandate with the Office of the General Prosecutor of the Nation for the signing of a Specific Agreement to justify purchasing the musical instrument requested by Eliseo David Pelicó, as well as payment for classes and necessary expenses to move to Guatemala City.

815. The State asked the Commission to take in consideration the efforts made to comply with the commitments undertaken upon signing the "Agreement on Compliance with the Recommendations made in Report No. 48/03."

816. For their part, the petitioners indicated their appreciation of the fact that the State's report includes updated information on the status of the investigation process and on some actions taken to carry out its commitment to provide a scholarship. However, they indicated that the arrangements reported are procedural only so they cannot highlight any substantial progress made in implementing the reparations measures pending in the case. In addition, regarding the investigation of the facts, they

indicated that although the victim's family members stopped pushing for the judicial process, the State of Guatemala has the obligation to investigate *ex officio* the violence committed against Martín Pelicó.

817. Because of the above, the Commission concludes that the recommendations have been partially complied with. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.264, Report No. 1/06, Franz Britton (Guyana)

818. In Report No. 1/06, dated February 28, 2006 the Commission concluded that agents of the State security forces abducted and/or detained Franz Britton and that during the following six years his whereabouts have not been identified and that, as a result, Guyana violated the rights of Franz Britton to life, liberty, personal liberty, judicial protection, arbitrary arrest and due process of law, all recognized, respectively, in Articles I, XVIII, XXV, XXV and XXVI of the American Declaration.

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

1. Carry out a serious, impartial and effective investigation by means of the competent organs, to establish the whereabouts of Franz Britton and to identify those responsible for his detention-disappearance, and, by means of appropriate criminal proceedings, to punish those responsible for such grave acts in accordance with the law.
2. Adopt the necessary legislative or other measures to prevent the recurrence of such events and provide, in all cases, the required due process and effective means of establishing the whereabouts and fate of anyone held in State custody.
3. Adopt measures to make full reparation for the proven violations, including taking steps to locate the remains of Franz Britton and to inform the family of their whereabouts; making the arrangements necessary to facilitate the wishes of his family as to an appropriate final resting place; and providing reparations for the relatives of Franz Britton including moral and material damages in compensation for the suffering occasioned by Mr. Britton's disappearance and not knowing his fate.

820. On November 2, 2007; November 4, 2008; November 12, 2009, and November 22, 2010; and October 25, 2011 the Commission requested up-to-date information from the State and the petitioner regarding the compliance with the recommendations issued in this case. The Commission did not receive a response within the specified timeframe from either party.

821. Based on the information available, the Commission considers that compliance with the recommendations is pending. As a result, the Commission shall continue to monitor its compliance.

Case 12.504, Report 81/07 Daniel and Kornel Vaux (Guyana)

822. In Report 81/07 of October 15, 2007 the IACHR concluded that the State of Guyana is responsible for the infliction of violence by police officers on brothers Daniel and Kornel Vaux while in their custody; and for failing to accord a fair trial to the Vaux brothers, particularly in the treatment of the confession evidence by the courts of that country, which prevented them from fully contesting the voluntariness of the confession evidence tendered by the prosecution. Accordingly, the IACHR concluded that the State of Guyana violated the rights of the Vaux brothers under Articles XVIII, XXV and XXVI of the American Declaration of the Rights and Duties of Man; and that execution of the Vaux brothers based upon the criminal proceedings for which they are presently convicted and sentenced would be contrary to Article I of the American Declaration.

823. On the basis of its recommendations, the IACHR recommended to the State that it:

1. Grant an effective remedy, which includes compensation for the maltreatment inflicted on the Vaux brothers; a re-trial of the charges against the Vaux brothers in accordance with the fair trial protections under the American Declaration, or failing that, an appropriate remission or commutation of sentence.

2. Adopt such legislative or other measures as may be necessary to ensure that criminal defendants are afforded access to evidence under the control of the State that they might reasonably require necessary to challenge the voluntariness of confession evidence.

3. Undertake an investigation to identify the direct perpetrators of the beatings inflicted on Daniel Vaux and Kornel Vaux while in custody to extract confessions and to apply the proper punishment under law;

4. Adopt such legislative or other measures as may be necessary to ensure that any confession of guilt by an accused is valid only if it is given in an environment free from coercion of any kind, in accordance with Article XXV of the American Declaration.

824. On November 22, 2010 the Inter-American Commission requested information from both parties about compliance with the recommendations set forth in aforementioned report, and established a one month deadline to that effect. The IACHR did not receive any responses from either party to these communications within the deadline.

825. On April 7, 2011, the Commission received a communication from Avril Salomon, sister of Daniel and Kornel Vaux, reporting that both were still on death row in Guyana. Mrs. Salomon added that the Vaux brothers continued to be subjected to inhumane and degrading treatment on death row—for example, a harmful contaminated environment, bad food, medical attention that was too little too late. She added that since her brothers were put on death row, four people there had died due to these conditions. Mrs. Salomon also mentions that when the Clemency Board meets, the convicts whose cases are being examined are not informed about it; thus, the Vaux brothers do not know whether the Board has met to review their case.

826. On October 17, 2011 the State sent a communication in response to the IACHR's letter of November 22, 2010. The State's communication contains extensive comments about the facts of the case and its position concerning the admissibility and grounds of the matter. The Inter-American Commission has no standing to consider these arguments in the present stage, since the case was decided after each of the parties had ample opportunity to present their case and make their arguments. It should be noted in this regard that in the proceeding before the IACHR, the State did not present arguments either of fact or of law, but confined itself to referring to the Vaux brothers' case before the Clemency Board in Guyana.

827. In virtue of thereof, the Inter-American Commission will refer only to the parts of the State's communications that refer to measures to comply with the above-cited recommendations.

828. Referring to the first recommendation, the State cites a series of Guyanan constitutional and legal provisions whereby it considers that due process is guaranteed and that include effective remedies, such as equality before the law, the right to life, personal freedom, personal integrity, and the prohibition of mistreatment, and other basic guarantees. It likewise states that the the Clemency Board considered the case of the Vaux brothers in November 2007, and that the official recommendation of that body was to uphold and enforce the death sentence imposed on the Vaux brothers. The Inter-American Commission observes that the information furnished by the State does not indicate any steps taken to comply with the first recommendation; on the contrary, what it is seeking is to justify its noncompliance.

829. As to the second recommendation, the bulk of the information submitted by the State refers to the legislation that was in force on the date that the Inter-American Commission determined its international responsibility. Furthermore, Guyana mentions two new laws passed in 2010: the amendment to the Law on Criminal Offenses, which allows commutation of the death penalty to life imprisonment; and the Judicial Review Law of 2010, which permits a court to review a person's sentence if it deems that it is in the public interest. However, Guyana does not indicate what direct bearing these legislative changes have on the IACHR's recommendation concerning access by the accused to the State's evidence to prepare their defense.

830. As to the third recommendation, the State makes general reference to the legal and administrative mechanisms for the investigation and sanctioning of torture but does not mention any measures to comply with its international obligation to clarify the facts related to the torture of the Vaux brothers, which were established in the proceedings before the IACHR, and to sanction the parties responsible. Again, the State is seeking to reopen the procedural stages of admissibility and grounds, which were precluded several years ago.

831. Guyana also fails to mention the measures to comply with the fourth recommendation on legislative reforms to guarantee non-repetition of the practice of extracting confessions under torture, as proven in the case of the Vaux brothers, and that such declarations are made in a setting free of any coercion. Once again, the State cites several legislative provisions that were in force at the time of the events of this case and is attempting to make extemporaneous allegations that it did not make at the appropriate stage of the proceedings.

832. On October 25, 2011, the IACHR again requested information from both parties on the status of compliance with the aforementioned recommendations, pursuant to Article 48(1) of its Regulations. The Inter-American Commission has not received a response from the petitioners to that communication; the State indicated that it had responded prior to receiving the letter.

833. Based on these considerations, the Commission concludes that compliance with the aforementioned recommendations remains pending. As a result, the Commission shall continue to monitor its compliance.

Case 11.335, Report No. 78/02, Guy Malary (Haiti)

834. In Report No. 78/02 of December 27, 2002, the IACHR concluded that: a) the Haitian State violated the right to life enshrined in Article 4 of the American Convention to the detriment of Mr. Guy Malary; b) the Haitian State violated the right to a fair trial and the right to judicial protection enshrined in Articles 8(1) and 25 of the American Convention to the detriment of the next-of-kin of Mr. Guy Malary; and c) that these violations of human rights involves that the Haitian State breached the general obligation to respect and guarantee rights under Article 1(1) of the above-cited international instrument, to the detriment of Mr. Guy Malary and his next-of-kin.

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

1. Carry out a full, prompt, impartial, and effective investigation within the Haitian ordinary criminal jurisdiction in order to establish the responsibility of the authors of the violation of the right to life of Mr. Guy Malary and punish all those responsible.
2. Provide full reparation to the next-of-kin of the victim, *inter alia*, the payment of just compensation.
3. Adopt the measures necessary to carry out programs targeting the competent judicial authorities responsible for judicial investigations and auxiliary proceedings, in order for them to conduct criminal proceedings in the accordance with international instruments on human rights.

836. Despite repeated requests to both parties for information, most recently on October 29, 2011, neither of them has provided the Commission with up-dated information concerning compliance with the Commission's recommendations in Report No. 78/02.

837. Based upon the information available, the Commission considers that compliance with the Commission's recommendations is pending. As a result, the Commission shall continue to monitor its compliance.

Cases 11.826, 11.843, 11.846 and 11.847, Report No. 49/01, Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley (Jamaica)

838. In Report No. 49/01 dated April 4, 2001 the Commission concluded that the State was responsible for: a) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 4(1), 5(1), 5(2) and 8(1), in conjunction with violations of Article 1(1) of the American Convention, by sentencing these victims to a mandatory death penalty; b) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 4(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide these victims with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating the rights of the victims in Case Nos. 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 7(5) and 7(6) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to promptly bring the victims before a judge following their arrests, and by failing to ensure their recourse without delay to a competent court to determine the lawfulness of their detention; d) violating the rights of the victims in Case Nos. 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delays in trying the victims; e) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Article 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the victims' conditions of detention; f) violating the rights of the victims in Case Nos. 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 8(2)(d) and 8(2)(e) in conjunction with violations of Article 1(1) of the Convention, by denying the victims access to legal counsel for prolonged periods following their arrests; and g) violating the rights of the victims in Case Nos. 11.826 (Leroy Lamey), 11.843 (Kevin Mykoo), 11.846 (Milton Montique) and 11.847 (Dalton Daley) under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to make legal aid available to these victims to pursue Constitutional Motions.

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

1. Grant the victims an effective remedy which included commutation of their death sentences and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in violation of the rights and freedoms guaranteed under the Convention, including Articles 4, 5 and 8, in particular that no person is sentenced to death pursuant to a mandatory sentencing law.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4.6 of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.
4. Adopt such legislative or other measures as may be necessary to ensure that the victims' rights to humane treatment under Articles 5.1 and 5.2 of the Convention, particularly in relation to their conditions of detention, are given effect in Jamaica.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8.1 of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions.

840. By note dated January 22, 2007, the State informed the Commission that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been executed within a five-year period after sentence. Furthermore, the State expressed that it regarded the first recommendation as "vague and incoherent" considering that the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. According to the State, if the Commission's argument is that compensation is due because the State has not provided an effective remedy in death penalty cases, this point is unfounded because as a

result of the decision in *Lambert Watson v. R* [2004] the mandatory death penalty was declared unconstitutional and that the law was revised. Therefore, the State would only contemplate compensation for those persons given a mandatory sentence of death after the ruling in *Lambert Watson*, because to do otherwise, would be to apply the law retroactively.

841. Concerning the second recommendation, the State informed that it had adopted legislative measures to ensure that the mandatory death penalty is not imposed with amendments to the Offences Against the Persons Act 1992, the Parole Act 1978, the Criminal Justice [Reform] Act of 1978 and the Gun Court Act 1974, pursuant to the Offences Against the Persons (Amendment) Act 2005 and the Offences Against the Persons (Amendment) Act 2006. Specifically, the State indicated that the present legislation effectively discarded the two-classification of murder into categories of capital murder, which attracted an automatic and obligatory sentence, and non-capital murder, and, therefore, the sentence of death is now optional for all cases in which previously involved mandatory death sentences. In this regard, the State indicated that the court is mandated, before passing sentence, to hear submissions, representations and evidence from the prosecution and the defense in relation to the issue of the sentence to be passed. In addition, the State of Jamaica informed that whenever a sentence of life imprisonment is imposed, the court has the duty to specify the period of imprisonment that should be served before the offender is eligible for parole. The State similarly indicated that provisions have been made for a review of all mandatory sentences of death previously imposed under the Offences Against the Persons (Amendment) Act 1992 and that as a result, sentences have been quashed and a judicial determination has been made, or is to be made, as to the appropriate sentence to be imposed for each convict.

842. With regard to the Commission's third recommendation, the State informed that the Governor General is empowered under Section 90 of the Jamaican Constitution to grant pardon to any person convicted of any offence, grant respite to any person either indefinitely or for a specified period from the execution of any punishment imposed on that person, or, to substitute a less severe form of punishment for that imposed on any person. The Governor General acts in this on the recommendation of the Jamaican Privy Council under Section 91 of the Constitution. The State referred that the ruling of the Judicial Committee of the Privy Council in *Neville Lewis v. The Attorney General of Jamaica* [2000], regarding fair and proper procedures for the grant of mercy, has become part of Jamaican law, individuals are given notice of hearings and the opportunity to present submissions on their behalf. The State also pointed out that by virtue of the Offences Against the Persons (Amendment) Act 2005, there is no longer a mandatory sentence of death in Jamaica and that judicial consideration of submissions, representation and evidence, as to the appropriateness of the sentence to be passed, is required in all circumstances where a sentence of death may be imposed. Furthermore, the State indicated that persons sentenced to death in Jamaica have always enjoyed a right of appeal against sentence, which is evidenced by the several death row cases that have gone before the Court of Appeal and the Judicial Committee of the Privy Council. Appeal from a sentence of death can and has led to either confirmation or to a quashing of the sentence and the substitution of a more appropriate sentence. According to the State, it effectively guarantees persons condemned to death the right to seek a review of their sentence which can lead to the commutation of their sentence.

843. In respect of the Commission's fourth recommendation, the State pointed out that Leroy Lamey, Kevin Mykoo, Milton Montique and Dalton Daley are inmates that have benefited under the *Lambert Watson v. Jamaica* [2004]. The State indicated that as a result of the decision in *Lambert Watson* decision, all persons on "death row" were removed from "death row" and placed within general prison population, pending the outcome of the hearings as to the appropriateness of the death sentence previously imposed mandatorily. Furthermore, the State indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all correctional facilities and where necessary the Unit makes recommendations for systematic improvements.

844. Finally, concerning the fifth recommendation, the State indicated that it retained the view that judicial protections and fair hearing procedures are effectively guaranteed under the laws of Jamaica.

As to the provision of legal aid assistance to persons wishing to bring Constitutional Motions, the State expressed it is not adverse to giving consideration to such a course of action but maintained, however, that this is not a requirement of Article 8 of the Convention.

845. The Commission points out that in its 2004 and 2005 and 2006 Annual Reports, the Commission stated there had been partial compliance with the Commission's first, second, and third recommendations. The Commission notes that the last information from the parties following its request for details on compliance with its recommendations was received on January 22, 2007, and that since then it has received no more up-to-date information. Based upon the latest information presented by the State, the Commission now considers that there has been compliance with the Commission's second recommendation with the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law. With respect to the remaining recommendations, however, the Commission notes that the latest communication presented by the State of Jamaica, for the most part, reiterates the information provided in its previous response considered by the Commission in its 2004 Annual Report.

846. On June 19, 2008, the petitioners for Kevin Mykoo sent a letter where they informed that their client expressed that the environment at his new prison, South Camp, is much better than the previous one. However, Mr. Mykoo raised the following issues that pertain to the recommendation on conditions of detention: water leaking through the roof of his cell; an infestation of red ants in the cell; and the lack of access to a dentist since 2005.

847. The IACHR requested updated information to both parties on November 4, 2008 and November 12, 2009, but neither of them replied within the established deadlines.

848. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

849. In its January 2010 letter, the State of Jamaica reiterates its position with respect to compliance with each of the four recommendations, as it stated previously in the January 22, 2007 communication to the IACHR summarized above.

850. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties to those communications.

851. The Commission concludes that the State complied partially with the aforementioned recommendations. The IACHR will continue supervising until full compliance is reached.

Case 12.069, Report No. 50/01, Damion Thomas (Jamaica)

852. In Report No. 50/01 dated April 4, 2001 the Commission concluded that the State was responsible for failing to respect the physical, mental and moral integrity of Damion Thomas and, in all of the circumstances, subjecting Damion Thomas to cruel or inhuman punishment or treatment, contrary to Articles 5(1) and 5(2) of the Convention, all in conjunction with violations of the State's obligations under Article 1(1) of the Convention.

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

1. Grant the victim an effective remedy, which included compensation.

2. Conduct thorough and impartial investigations into the facts of the pertinent incidents denounced by the Petitioners in order to determine and attribute responsibility to those accountable for the violations concerned and undertake appropriate remedial measures.

3. Review its practices and procedures to ensure that officials involved in the incarceration and supervision of persons imprisoned in Jamaica are provided with appropriate training concerning the standards of humane treatment of such persons, including restrictions on the use of force against such persons.

4. Review its practices and procedures to ensure that complaints made by prisoners concerning alleged mistreatment by prison officials and other conditions of their detention are properly investigated and resolved.

854. In a letter dated December 21, 2006, Mr. Damion Thomas' representatives indicated that, based upon information available to them and to the best of their knowledge, the State of Jamaica had not taken any steps to comply with the four recommendations contained in Report No. 50/01. By note dated January 22, 2007, the State indicated that it regarded the first recommendation as "vague and incoherent" considering that the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. As to the second recommendation, the State indicated that it had taken the initiative to bring the matter concerning Mr. Damion Thomas to the attention of the Office of the Public Defender, the one empowered under Jamaican law to receive and investigate complaints from inmates. With regard to the Commission's third recommendation, the State indicated that the Inspectorate Unit of the Correctional Services Department periodically undertakes awareness training exercises for all Correctional Officers to raise awareness of the standards of humane treatment set by the United Nations, international treaties and Jamaican law. Concerning the fourth recommendation, the State informed that periodic reviews of various internal and external prisoner complaints mechanisms continue to be a part of the agenda of the Jamaican Correctional services. The mechanisms include internal investigations of complaints by the superintendent of Correctional Services and the Inspectorate Unit of the correctional services.

855. On November 4, 2008, the IACHR requested updated information from both parties on compliance with the recommendations. The State did not respond, but the petitioners sent a letter dated November 17, 2008. In this communication, the petitioners indicated their position as follows:

1. Damion Thomas has not been granted any remedy by the State of Jamaica, nor has he been granted any compensation;

2. The State of Jamaica has not conducted any investigation into the facts of the incidents which we denounced to the Commission on behalf of Damion Thomas. As far as we are aware, responsibility has not been attributed to anyone in respect of the violations of Damion Thomas' human rights and no remedial measures have been undertaken;

3. The State of Jamaica has not carried out any review of the practices and procedures of officials involved in the incarceration and supervision of prisoners in Jamaica (in either St. Catherine District prison or the Horizon Remand Centre, to which Damion Thomas was transferred on the 3d March 2007). Neither are we aware of officials being given any training relating to the humane treatment of prisoners and restrictions on the use of force against them; and

4. The State of Jamaica has not undertaken any review of the practices and procedures through which prisoners may complain of any alleged mistreatment, or about their conditions of detention. We therefore understand that complaints of mistreatment by Jamaican prisoners, or complaints about their conditions of detention, are still not being properly investigated and resolved.

856. The IACHR requested updated information to both parties on November 12, 2009 and set a one month period to that effect. The petitioners responded on November 25, 2009 and reiterated their position as expressed in the four paragraphs above. For its part, the State did not respond within the referenced period.

857. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. The petitioners sent a communication on December 3, 2010, which reproduces literally the position they had expressed in their November 17, 2008 letter copied above. For its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

858. With respect to the first recommendation, the State reiterates in January 2010 its position set forth in the January 2007 letter referred to above, to which it adds that “the proper course of action is for Mr. Thomas to seek redress through the local courts” and that “domestic remedies have not been exhausted and that Mr. Thomas retains the option of obtaining legal aid under the Legal Aid Act if he is impecunious and believes that he has a good cause of action”.

859. As to the second recommendation, the State indicates that it “has conducted thorough and impartial investigations into the allegations made by Mr. Thomas” and that it “is currently in the process of obtaining additional information”. Regarding the third and fourth recommendation, the State of Jamaica reiterates its position expressed in the January 2007 letter, summarized above.

860. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties to those communications.

861. Based on the information at its disposal, the Commission considers that there has been partial compliance with the recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.183, Report No. 127/01, Joseph Thomas (Jamaica)

862. In Report No. 127/01, dated December 3, 2001, the Commission concluded that the State was responsible for: a) violating Mr. Thomas' rights under Articles 4(1), 5(1), 5(2) and 8(1) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Mr. Thomas' rights under Article 4(6) of the Convention, in conjunction with violations of Articles 1(1) and 2 of the Convention, by failing to provide Mr. Thomas with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Mr. Thomas' rights under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention; and d) violating Mr. Thomas' rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the manner in which the judge instructed the jury during Mr. Thomas' trial.

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

1. Grant the victim an effective remedy, which included a re-trial in accordance with the due process protections prescribed under Article 8 of the Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.
4. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which the victim is held comply with the standards of humane treatment mandated by Article 5 of the Convention.

864. By communication dated January 22, 2007, the State expressed its reservation with the recommendation that Mr. Joseph Thomas be granted an effective remedy which includes a re-trial or in the alternative, his release and compensation. In this regard, the State indicated that after Mr. Joseph Thomas' first trial leading to his conviction, the case was brought before the Jamaican Court of Appeal and also before the Jamaican Privy Council Mercy Committee. According to the State, at both appellate hearings Mr. Thomas raised the issue of the judge's conduct at the summing up and the failure to hold an identification parade, and that Mr. Joseph Thomas was unsuccessful on both occasions. Given this situation, the State indicated that it can grant no further remedies to Mr. Joseph Thomas through the courts nor grant him compensation without a judicial order.

865. Concerning the second recommendation transcribed above, the State of Jamaica indicated it had adopted legislative measures to ensure that the mandatory death penalty is not imposed with amendments to the Offences Against the Persons Act 1992, the Parole Act 1978, the Criminal Justice [Reform] Act of 1978 and the Gun Court Act 1974, pursuant to the Offences Against the Persons (Amendment) Act 2005 and the Offences Against the Persons (Amendment) Act 2006. Specifically, the State informed the Commission that the pre-existing legislation classified all cases of murder into categories of capital murder, which attracted an automatic and obligatory sentence, and non-capital murder. The present legislative effectively discarded this two-tiered classification of murder and, therefore, the sentence of death is now optional for all cases in which previously involved mandatory death sentences. In this regard, the State indicated that the court is mandated, before passing sentence, to hear submissions, representations and evidence from the prosecution and the defense in relation to the issue of the sentence to be passed. In addition, the State informed that whenever a sentence of life imprisonment is imposed, the court has the duty to specify the period of imprisonment that should be served before the offender is eligible for parole. The State similarly indicated that provisions has been made for a review of all mandatory sentences of death previously imposed under the Offences Against the Persons (Amendment) Act 1992 and that a result, these sentences have been quashed and a judicial determination has been made, or is to be made, as to the appropriate sentence to be imposed for each convict.

866. With regard to the Commission's third recommendation, the State informed that the Governor General is empowered under Section 90 of the Jamaican Constitution to grant pardon to any person convicted of any offence, grant respite to any person either indefinitely or for a specified period from the execution of any punishment imposed on that person, or, to substitute a less severe form of punishment for that imposed on any person. The Governor General acts in this on the recommendation of the Jamaican Privy Council under Section 91 of the Constitution. The State referred that the ruling of the Judicial Committee of the Privy Council in *Neville Lewis v. The Attorney General of Jamaica* (2000), regarding fair and proper procedures for the grant of mercy, has become part of Jamaican law, individuals are given notice of hearings and the opportunity to present submissions on their behalf. According to the State, it effectively guarantees persons condemned to death the right to seek a review of their sentence which can lead to the commutation of their sentence.

867. Concerning the fourth recommendation, the State pointed out that Mr. Joseph Thomas is one of the inmates to benefit under the *Lambert Watson v. Jamaica* [2004]. The State indicated that as a result of the decision in *Lambert Watson* decision, all persons on "death row" were removed from "death row" and placed within general prison population, pending the outcome of the hearings as to the appropriateness of the death sentence previously imposed mandatorily. The State similarly referred that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been made effective within a five-year period after sentence. Finally, the State indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all

correctional facilities and where necessary the Unit makes recommendations for systematic improvements.

868. In its 2004, 2006, 2007, 2008, and 2009 Annual Reports, the Commission stated there had been partial compliance with the Commission's second and third recommendations in Report No. 127/01. The Commission notes that the last information from the parties following its request for details on compliance with its recommendations was received on January 22, 2007, and that since then it has received no more up-to-date information. Based upon the latest information presented by the State, the Commission considers that there was compliance with the Commission's second recommendation with the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law. With respect to the remaining recommendations, however, the Commission notes that there is no updated information, since the request sent to both parties on November 12, 2009 was not responded by either of them within the established time period.

869. In its 2004, 2006, 2007, 2008, and 2009 Annual Reports, the Commission stated there had been partial compliance with the Commission's second and third recommendations in Report No. 127/01.

870. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

871. With respect to the first recommendation, the State reiterates its "reservation" and adds the following:

First, the State takes the position that concerns with respect to the conduct of any trial should be addressed by an appellate court, not the Commission. In this regard, the Commission is reminded that the Court of Appeal reviewed the Trial Judge's directions to the jury and found that the directions were "fair, balanced and presented with clarity to the jury." Secondly, having reviewed the recommendation of the Commission, the Jamaican Privy Council took the decision that the ruling of the Court of Appeal was satisfactory. Thirdly, the applicant's petition for special leave to appeal to the Judicial Committee of the Privy Council was denied notwithstanding the claim that there had been flaws in the judge's summing up.

872. As regards the second, third and fourth recommendations, the State also reiterates the position it expressed in its January 2007 submission to the IACHR, summarized above.

873. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties to those communications.

874. The Commission concludes that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.275, Report No. 58/02, Denton Aitken (Jamaica)

875. In Report No. 58/02 dated October 21, 2002, the Commission concluded that the State was responsible for: a) violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Aitken, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Article 4(6) of the Convention in respect of Mr. Aitken, in conjunction with violations of Articles 1(1) and 2 of the Convention, by failing to provide him with an effective right to apply for amnesty, pardon or commutation of sentence; c) violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Aitken, in conjunction with violations of Article 1(1) of the Convention, by reason of his conditions of detention; and d) violating Articles 8(1) and 25 of the Convention in respect of Mr. Aitken, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr.

Aitken of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

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

1. Grant Mr. Aitken an effective remedy, which includes commutation of sentence and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the right under Article 4(6) of the Convention to apply for amnesty, pardon or commutation of sentence is given effect in Jamaica.
4. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which Mr. Aitken is held comply with the standards of humane treatment mandated by Article 5 of the Convention.
5. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions in accordance with the Commission's analysis in this report.

877. By note dated January 22, 2007, the State of Jamaica indicated that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been carried out within a five-year period after sentence. Furthermore, the State expressed that it regarded the first recommendation that compensation be granted to Denton Aitken, as "vague and incoherent" because the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. According to the State, if the Commission's argument is that compensation is due because the State has not provided an effective remedy in death penalty cases, this point is founded on a false premise because as a result of the decision in *Lambert Watson v. Jamaica* [2004], the mandatory death penalty was declared unconstitutional in Jamaica and that the law of Jamaica was revised. Therefore, the State would only contemplate compensation for those persons given a mandatory sentence of death after the ruling in *Lambert Watson*, because to do otherwise, would be to apply the law retroactively.

878. Concerning the second recommendation transcribed above, the State of Jamaica indicated that it had adopted legislative measures to ensure that the mandatory death penalty is not imposed with amendments to the Offences Against the Persons Act 1992, the Parole Act 1978, the Criminal Justice [Reform] Act of 1978 and the Gun Court Act 1974, pursuant to the Offences Against the Persons (Amendment) Act 2005 and the Offences Against the Persons (Amendment) Act 2006. Specifically, the State informed the Commission that the pre-existing legislation classified all cases of murder into categories of capital murder, which attracted an automatic and obligatory sentence, and non-capital murder. The present legislative effectively discarded this two-tiered classification of murder and, therefore, the sentence of death is now optional for all cases in which previously involved mandatory death sentences. In this regard, the State indicated that the court is mandated, before passing sentence, to hear submissions, representations and evidence from the prosecution and the defense in relation to the issue of the sentence to be passed. In addition, the State informed that whenever a sentence of life imprisonment is imposed, the court has the duty to specify the period of imprisonment that should be served before the offender is eligible for parole. The State similarly indicated that provisions have been made for a review of all mandatory sentences of death previously imposed under the Offences Against the Persons (Amendment) Act 1992 and that a result, sentences have been quashed and a judicial determination has been made, or is to be made, as to the appropriate sentence to be imposed for each convict.

879. With regard to the Commission's third recommendation, the State informed that, pursuant to a recommendation of the Jamaican Privy Council under Section 91 of the Constitution, the Governor General is empowered under Section 90 of the Jamaican Constitution to grant pardon to any person convicted of any offence, grant respite to any person either indefinitely or for a specified period from the execution of any punishment imposed on that person, or, to substitute a less severe form of punishment for that imposed on any person. The State referred that the ruling of the Judicial Committee of the Privy Council in *Neville Lewis v. The Attorney General of Jamaica* (2000), regarding fair and proper procedures for the grant of mercy, has become part of Jamaican law, individuals are given notice of hearings and the opportunity to present submissions on their behalf. According to the State, it effectively guarantees persons condemned to death the right to seek a review of their sentence which can lead to the commutation of their sentence.

880. With respect to the Commission's fourth recommendation, the State indicated that by virtue of the *Lambert Watson* decision, all persons on "death row" were removed from "death row" and placed within general prison population, pending the outcome of the hearings as to the appropriateness of the death sentence previously imposed mandatorily. The State also indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all correctional facilities and where necessary the Unit makes recommendations for systematic improvements.

881. Concerning the fifth recommendation, the State indicated that it retained the view that judicial protections and fair hearing procedures are effectively guaranteed under the laws of Jamaica. With regard to the provision of legal aid assistance to persons wishing to bring Constitutional Motions, the State expressed it is not adverse to giving consideration to such a course of action but maintained, however, that this is not a requirement of Article 8 of the Convention.

882. In its 2004, 2005, 2007, 2008 and 2009 Annual Reports, the Commission stated that there had been partial compliance with the first, second, and third recommendations in Report No. 58/02. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

883. With respect to the first recommendation, the State informs that the Governor General of Jamaica extended the prerogative of mercy to Mr. Aitken, on the advice of the Jamaican Privy Council and that, accordingly, his sentence was commuted to life imprisonment. The decision was taken pursuant to above mentioned ruling of the Judicial Committee of the Privy Council in *Pratt and Morgan v. the Attorney General of Jamaica*. As to the compensation to be granted to Mr Aitken, the State reiterates its concern "based on the Commission's failure to indicate the purpose for or the basis on which compensation is to be granted" and because it considers that the IACHR "also failed to articulate the principles which should govern such compensation".

884. As regards the second recommendation, the State reiterates the information submitted previously and summarized above, and concludes that it "complied fully with the above recommendation by adopting legislative measures to ensure that the mandatory death penalty is not imposed in contravention of Articles 4, 5 and 8 of the Convention". The IACHR reiterates that there was compliance with the second recommendation by virtue of the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law.

885. With respect to the third, fourth and fifth recommendations, the State also reiterates the position it expressed in its January 2007 submission to the IACHR, summarized above.

886. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties to those communications.

887. The Commission concludes that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.347, Report No. 76/02, Dave Sewell (Jamaica)

888. In Report No. 76/02 dated December 27, 2003, the Commission concluded that the State was responsible for: a) violating Articles 4(1), 5(1), 5(2) and 8(1) of the Convention in respect of Mr. Sewell, in conjunction with violations of Articles 1(1) and 2 of the Convention, by sentencing him to a mandatory death penalty; b) violating Articles 5(1) and 5(2) of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of his treatment and conditions in detention; c) violating Articles 7(5) and 8(1) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by reason of the delay in trying Mr. Sewell; and d) violating Articles 8(1) and 25 of the Convention in respect of Mr. Sewell, in conjunction with violations of Article 1(1) of the Convention, by reason of the denial to Mr. Sewell of recourse to a Constitutional Motion for the determination of his rights under domestic law and the Convention in connection with the criminal proceedings against him.

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

1. Grant Mr. Sewell an effective remedy which includes commutation of sentence in relation to the mandatory death sentence imposed upon Mr. Sewell, and compensation in respect of the remaining violations of Mr. Sewell's rights under the American Convention as concluded above.
2. Adopt such legislative or other measures as may be necessary to ensure that the death penalty is not imposed in contravention of the rights and freedoms guaranteed under the Convention, including and in particular Articles 4, 5 and 8.
3. Adopt such legislative or other measures as may be necessary to ensure that the conditions of detention in which Mr. Sewell is held comply with the standards of humane treatment mandated by Article 5 of the Convention.
4. Adopt such legislative or other measures as may be necessary to ensure that the right to a fair hearing under Article 8(1) of the Convention and the right to judicial protection under Article 25 of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions in accordance with the Commission's analysis in this report.

890. By note dated January 22, 2007, the State informed the Commission that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been carried out within a five-year period after sentence. Furthermore, the State expressed that it regarded the first recommendation that compensation be granted to Mr. Sewell, as vague and incoherent because the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. According to the State, if the Commission's argument is that compensation is due because the State has not provided an effective remedy in death penalty cases, this point is founded on a false premise because as a result of the decision in *Lambert Watson v. Jamaica* [2005] 1 A.C. 472, the mandatory death penalty was been declared unconstitutional in Jamaica and that the law of Jamaica was revised. Therefore, the State would only contemplate compensation for those persons given a mandatory sentence of death after the ruling in *Lambert Watson*, because to do otherwise, would be to apply the law retroactively.

891. Concerning the second recommendation transcribed above, the State of Jamaica indicated that it had adopted legislative measures to ensure that the mandatory death penalty is not imposed with amendments to the Offences Against the Persons Act 1992, the Parole Act 1978, the Criminal Justice [Reform] Act of 1978 and the Gun Court Act 1974, pursuant to the Offences Against the Persons (Amendment) Act 2005 and the Offences Against the Persons (Amendment) Act 2006. Specifically, the State informed the Commission that the pre-existing legislation classified all cases of murder into categories of capital murder, which attracted an automatic and obligatory sentence, and non-capital murder. The present legislative change effectively discarded this two-tiered classification of murder and, therefore, the sentence of death is now optional for all cases in which previously involved mandatory death sentences. In this regard, the State indicated that the court is mandated, before passing sentence, to hear submissions, representations and evidence from the prosecution and the defense in relation to the issue of the sentence to be passed. In addition, the State informed that whenever a sentence of life imprisonment is imposed, the court has the duty to specify the period of imprisonment that should be served before the offender is eligible for parole. The State similarly indicated that provisions have been made for a review of all mandatory sentences of death previously imposed under the Offences Against the Persons (Amendment) Act 1992 and that as a result, sentences have been quashed and a judicial determination has been made, or is to be made, as to the appropriate sentence to be imposed for each convict.

892. With regard to the Commission's third recommendation, the State pointed out that Mr. Sewell is one of the inmates to benefit under the *Lambert Watson v. Jamaica* [2005] 1 A.C. 472 decision. The State indicated that as a result of the decision in *Lambert Watson* decision, all persons on "death row" were removed from "death row" and placed within general prison population, pending the outcome of the hearings as to the appropriateness of the death sentence previously imposed mandatorily. The State similarly referred that by virtue of the ruling of the Judicial Committee of the Privy Council in *Pratt & Morgan v. the Attorney General of Jamaica* [1993], in any instance where the period between a sentence of death and the time of execution exceeds five years, the carrying out of that execution will be presumed to be inhuman and degrading punishment and therefore inconsistent with Jamaican law. Consequently, as a matter of course, death row convicts will have their sentence of death automatically commuted to life imprisonment, once the sentence has not been carried out within a five-year period after sentence. Finally, the State indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all correctional facilities and where necessary the Unit makes recommendations for systematic improvements.

893. Finally, concerning the fourth recommendation, the State indicated that it retained the view that judicial protections and fair hearing procedures are effectively guaranteed under the laws of Jamaica. As to the provision of legal aid assistance to persons wishing to bring Constitutional Motions, the State expressed it is not adverse to giving consideration to such a course of action but maintained, however, that this is not a requirement of Article 8 of the Convention.

894. The Commission notes that the last information from the parties following its request for details on compliance with its recommendations was received on January 22, 2007, and that since then it has received no more up-to-date information. Based upon the latest information presented by the State, the Commission considers that the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law has led to compliance with the Commission's second recommendation. With respect to the remaining recommendations, however, the Commission notes that there is no updated information, since the request sent to both parties on November 12, 2009 was not responded to by either of them within the established time period.

895. In its 2004, 2005, 2007, 2008 and 2009 Annual Reports, the Commission stated that there had been partial compliance with the first, second, and third recommendations in Report No. 76/02. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter

sent in response to the request for information that the IACHR had submitted in November of the previous year.

896. With respect to the first recommendation, the State reiterates the information regarding the effect of the *Pratt and Morgan* decision referred to above, and adds that “the Prerogative of Mercy was extended to Mr. Sewell, who had been on death row in excess of five years, and his sentence was commuted to life imprisonment”. As to the compensation to be granted to Mr. Sewell, the State reiterates its position that Commission has not indicated “the purpose for or the basis on which compensation is to be granted” and that it considers the IACHR “also failed to articulate the principles which underlie such compensation”.

897. As regards the second recommendation, the State reiterates the information submitted previously and summarized above, and concludes that it “complied fully with the above recommendation by adopting legislative measures to ensure that the mandatory death penalty is not imposed in contravention of Articles 4, 5 and 8 of the Convention”. The IACHR reiterates that there was compliance with the second recommendation by virtue of the adoption of legislative measures to ensure that no person is sentenced to death pursuant to a mandatory sentencing law.

898. With respect to the third and fourth recommendations, the State also reiterates the position it expressed in its January 2007 submission to the IACHR, summarized above.

899. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties to those communications.

900. The Commission concludes that the State complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.417, Report No. 41/04, Whitley Myrie (Jamaica)

901. In Report No. 41/04 of October 12, 2004, the IACHR concluded the State was responsible for: a) violating Mr. Myrie’s rights under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his conditions of detention; b) violating Mr. Myrie’s rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, due to the trial judge’s failure to ensure that the jury was not present during the *voir dire* on Mr. Myrie’s statement, and the trial judge’s failure to postpone the trial when Mr. Myrie’s counsel was not present and thereby denying Mr. Myrie full due process during his trial; c) violating Mr. Myrie’s rights under Articles 8(1) and 8(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide him with the assistance of competent and effective counsel during his trial; and d) violating Mr. Myrie’s rights under Articles 25 and 8 of the Convention, in conjunction with violations of Article 1(1) of the Convention, by failing to provide Mr. Myrie with effective access to a Constitutional Motion for the protection of his fundamental rights.

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

1. Grant Mr. Myrie an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Myrie’s conditions of detention comply with international standards of humane treatment under Article 5 of the American Convention and other pertinent instruments, as articulated in the present report.
3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Article 25 of the Convention and the right to a fair hearing under Article 8(1) of the Convention are given effect in Jamaica in relation to recourse to Constitutional Motions.

903. By note dated January 22, 2007, the State expressed its reservation with the recommendation that Mr. Myrie be granted an effective remedy, which includes a re-trial or in the alternative, his release and compensation. In this regard, the State indicated that after Mr. Myrie's first trial leading to his conviction, the case was brought before the Jamaican Court of Appeal where Mr. Myrie was successful in having his sentence of death commuted to life imprisonment. Given this situation, the State indicated that it can grant no further remedies to Mr. Myrie through the courts nor grant him compensation without a judicial order. Furthermore, according to the State, the recommendation for compensation is vague and incoherent because the Commission has not set out the purpose for compensation or the underlying principles on which this compensatory package should be based. Concerning the Commission's second recommendation transcribed above, the State indicated that generally, the conditions of detention comply with the standards of humane treatment and that the Inspectorate Unit of the Jamaican Correctional Services continues to monitor conformity to the requisite standards of order, cleanliness and adequacy of space, bedding, ventilation and lighting in all correctional facilities and where necessary the Unit makes recommendations for systematic improvements. With regard to the third recommendation, the State indicated that it retained the view that judicial protections and fair hearing procedures are effectively guaranteed under the laws of Jamaica. As to the provision of legal aid assistance to persons wishing to bring Constitutional Motions, the State expressed it is not adverse to giving consideration to such a course of action but maintained, however, that this is not a requirement of Article 8 of the Convention.

904. The last information from the parties following the IACHR's request for details on compliance with its recommendations was received on January 22, 2007, and since then it has received no more up-to-date information, despite requests by the IACHR in November 2008 and November 2009.

905. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

906. With respect to the first recommendation, in the January 5, 2010 submission, the State reiterates its reservations and adds that "the Executive cannot encroach on powers conferred on the judiciary by purporting to grant a further remedy to Mr Myrie- a matter which falls squarely within the purview of the Jamaican courts". The State also reiterates its position on the second and third recommendations, as summarized above.

907. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties to those communications.

908. The Commission, therefore, concludes that compliance with the recommendations of Report 41/04 remains pending. As a result, the Commission shall continue to monitor its compliance.

Case 12.418, Report No. 92/05, Michael Gayle (Jamaica)

909. In Report No. 92/05, issued on October 24, 2005, the Commission concluded that the State was responsible for: a) violating Mr. Gayle's right to life under Article 4 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful killing at the hands of members of the Jamaican security forces; b) violating Mr. Gayle's right not to be subjected to torture and other inhumane treatment under Articles 5(1) and 5(2) of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of the assault perpetrated upon him by State agents and its effects, which led to his death; c) violating Mr. Gayle's right to personal liberty under Article 7 of the Convention, in conjunction with violations of Article 1(1) of the Convention, because of his unlawful detention and arrest on false charges; and d) violating Mr. Gayle's rights to a fair trial and to judicial protection under Articles 8 and 25 of the Convention, in conjunction with violations of Article 1(1) of the

Convention, by failing to undertake a prompt, effective, impartial and independent investigation into human rights violations committed against Mr. Gayle and to prosecute and punish those responsible.

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

1. Grant an effective remedy, which includes the payment of compensation for moral damages suffered by Michael Gayle's mother and next-of-kin, Jenny Cameron, and a public apology by the State to the family of Michael Gayle.
2. Adopt such legislative or other measures as may be necessary to undertake a thorough and impartial investigation into the human rights violations committed against Mr. Gayle, for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations.
3. Adopt such legislative or other measures as may be necessary to prevent future violations of the nature committed against Mr. Gayle, including training for members of Jamaican security forces in international standards for the use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, summary executions and arbitrary detention, and undertaking appropriate reforms to the procedures for investigating and prosecuting deprivations of life committed by members of Jamaica's security forces to ensure that they are thorough, prompt and impartial, in accordance with the findings in the present report. In this respect, the Commission specifically recommends that the State review and strengthen the Public Police Complaints Authority in order to ensure that it is capable of effectively and independently investigating human rights abuses committed by members of the Jamaican security forces.

911. In communication dated December 29, 2006, the State indicated that compensation had already been paid to Michael Gayle's mother and next-of-kin, Jenny Cameron, and did not accept the Commission's recommendation that the matter of compensation be "revisited between the parties." The State specified that the matter was settled by arm's length negotiations, the sum offered was in keeping with Jamaican precedents and rules, and it was accepted by Ms. Cameron when she had the opportunity to challenge it. In addition, the State informed the Commission that a public apology was given by the Attorney General and Minister of Justice and was published in full in the Sunday Herald, March 14-20, 2004, under the heading "The Michael Gayle Case," and reported with substantial quotation in the Daily Gleaner, dated March 11, 2004, under the heading "Government 'regrets' Michael Gayle's Death." Again the State did not agree with the Commission's recommendation that this matter be "revisited between the parties." With regard to recommendation No. 2 transcribed above, the State informed the IACHR that thorough and impartial investigations were carried out in the Michael Gayle case. Additionally, the State indicated that training of members of the security forces is sufficient and appropriate to bring those members up to international standards and that it has in place appropriate procedures for the pursuit of against members of the security forces for wrongful killing, though there are significant concerns concerning the garnering and safeguarding of evidence in some cases. With respect to the strengthening of the Public Police Authority, the State informed that draft legislation concerning the creation of an investigative agency independent of the police force that will investigate matters concerning police abuse and related accusations brought against representatives is currently being discussed in various Ministries of Government. In a letter dated January 9, 2007, the Petitioners informed the Commission that the State had not taken any steps to comply with the Commission's recommendation transcribed above.

912. On February 27, 2009, the Petitioners submitted a communication where they expressed that the Jamaican State has failed to comply with the first of the recommendations, despite verbal and written requests from Jamaicans for Justice (JFJ) to the Prime Minister of that country. With respect to the second recommendation, the petitioners mention that the State has failed to "undertak[e] a thorough and impartial investigation into the specific human rights violations committed against Mr. Gayle, for the purpose of identifying, prosecuting and punishing all the persons who may be responsible for those violations". With respect to the third recommendation, they mention that the State of Jamaica is in the process of enacting legislation to create an Independent Commission of Investigation to investigate deaths, abuses and excesses by state agents. Further, the petitioners mention that draft legislation is also pending in the Jamaican Parliament for the following: the creation of an Office of the Special Coroner to conduct inquests in cases where deaths occur at the hands of State agents; and for establishing a

whistleblower law as well as an Office of the Special Prosecutor to investigate and prosecute corruption. In the final comment regarding compliance with the third recommendation, the Petitioners indicate that steps have been taken to train police officers in human rights, with the participation of JFJ representatives. The petitioners consider that Jamaica has made some progress in complying with the third recommendation, and believe that there are indications that the Government is considering compliance with the second recommendation. However, JFJ expresses that it "is not aware of any attempts to comply with recommendation two of the report".

913. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners, but they had sent a letter previously, dated April 7, 2010, in response to the IACHR's 2009 request for information. For its part, the State sent a communication dated December 15, 2010 in which it reiterates the contents of its January 5 and September 20, 2010 letters sent in response to the request for information that the IACHR had submitted in November of the previous year.

914. With respect to the first recommendation, the petitioners informed in their April 2010 submission that until that date compensation for moral damages had not been paid to the family of Michael Gayle and that "the sum already received is viewed as an inadequate remedy to compensate the family". In response to this, the September 2010 letter from the State reiterates its position mentioned above, and it also cites certain precedents in the inter-American and European human rights systems to indicate that the payment of reparations to the family of Michael Gayle was "in excess of the range of awards given as compensation for human rights violation[s] in other jurisdictions, even in the instance of death. The State also adds that, in its view, "moral damages were not proved in the Michael Gayle Case at the time of arriving at the settlement for compensation" and that "the petitioner had full legal representation and accepted the settlement amount as full payment". Regarding the public apology, the petitioners point out that the letter they sent to the Prime Minister of Jamaica requesting compliance with this point was responded with the copy of an opinion issued by the Solicitor General in the sense it was in the discretion of the Prime Minister to apologize, but cautioned that it could have implications in other cases. The petitioners indicate that the Prime Minister ultimately did not issue a public apology. For its part, the State reiterates that the apology was published in two newspapers and publicized on the radio; and that it "was sufficient given that there was an expression of regret and an acknowledgement of the wrong on the part of the State against Michael Gayle".

915. With respect to the second recommendation, the petitioners mentioned in April 2010 that the State had made no indication whether there was an intention to "review the circumstances leading to the death of Michael Gayle or take any steps to identify, prosecute or punish his attackers" if the legislative reform pending at the time was eventually enacted. In turn, the State reiterates its position that "thorough and impartial investigations were undertaken in the Michael Gayle case". The State adds that "section 94 of the Constitution provides that it is within the sole purview of the Director of Public Prosecutions (DPP) to institute and undertake criminal proceedings at any stage before judgment"; that "the Constitution clearly provides that the DPP is not subject to the direction or control of any person or authority in the exercise of his power" and that "in the instant case, the DPP ruled that there was insufficient evidence for prosecution". In the submission it is also mentioned that "the Government should therefore not be asked to intervene in this or any other case" because this "would undermine the constitutional integrity of the DPP's role".

916. Regarding the third recommendation, the petitioners indicate that Jamaicans for Justice had participated, along with Amnesty International, in training sessions with the Jamaica Constabulary Force, and that since 2008 this force had "begun to incorporate human rights issues into their general training sessions", which had "been geared towards focusing their officers on the importance of human rights through programs such as the use of Force and Firearms, Safe Encounter Training and Critical Incident Management". The petitioners' submission of April 2010 further points out that the Office of the Special Coroner was established pursuant to an amendment to the Coroner's Act, but that the officer had not yet been appointed and that there were no facilities made available for the institution's headquarters. In its September 2010 the State also informs that "interim facilities have now been identified for the Special Coroner's Court and that the challenge being faced with respect to the Special Coroner is being

addressed". The State further adds that a proposed "whistle blower" legislation is before a Joint Select Committee of Parliament under the name "The Protection Disclosures Act, 2010", which has the intention to encourage and facilitate employees making disclosures of improper conduct in the public interest; to regulate the reception and investigation of disclosures of improper conduct; and to protect employees who make such disclosures. With respect to the Police Public Complaints Authority, the petitioners indicated that the Independent Commission of Investigations had been created to replace it. Despite describing the additional powers given by law to this new institution as "encouraging", the petitioners express their concern that it may not receive enough resources to function properly and with effectiveness. The State, in turn, indicated its commitment to "ensuring that legislative measures are taken to prevent the future violations of the nature committed against Michael Gayle" and in that regard it points out that the Independent Commission of Investigations Act, 2010" was enacted and came into operation on April 15, 2010. As explained by the State:

The purpose of the independent Commission, which replaces the Police Public Complaints Authority, is to undertake independent investigations concerning actions by members of the security forces and other agents of the State that result in death or injury to persons or the abuse of the rights of persons.

An important feature of the Independent Commission is that it is not subject to the direction or control of any other person or authority pursuant to section 5 of the Act. This will ensure that the duties of the Commission are executed without interference.

Further, the function of the Independent Commission will not be performed by members of the security forces. In this regard, it removes the notion of the police being unwilling or incapable of conducting fair and impartial investigation[s] of other police and [places] this responsibility with persons who are not members of the security forces.

917. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties to those communications.

918. The Commission concludes that the State has complied partially with the aforementioned recommendations. As a result, the Commission shall continue to monitor the items that are pending.

Case 12.447, Report No. 61/06, Derrick Tracey (Jamaica)

919. In Report No. 61/06, adopted on July 20, 2006, the Commission concluded that the State was responsible for: a) violations of Mr. Tracey's right to counsel and his right to obtain the appearance of persons who may throw light on the facts contrary to Article 8(2)(d), (e) and (f) of the Convention, in conjunction with Articles 1(1) and 2 of the Convention, in connection with the use of his statement against him at trial; b) violating Mr. Tracey's right to a fair trial under Article 8(2)(c) of the Convention, in conjunction with a violation of Article 1(1) of the Convention, due to the inadequate time and means provide to Mr. Tracey and his attorney to prepare his defense; and c) violations of Mr. Tracey's right to a fair trial and his right to judicial protection under Article 8(2)(e) and (h) and 25 of the Convention, in conjunction with a violation of Articles 1(1) and 2 of the Convention, due to the State's failure to provide Mr. Tracey with legal counsel to appeal his judgment to a higher court.

920. The IACHR issued the following recommendations to the State of Jamaica:

1. Grant an effective remedy, which includes a re-trial of the charges against Mr. Tracey in accordance with the fair trial protections under the American Convention.
2. Adopt such legislative or other measures as may be necessary to ensure that indigent criminal defendants are afforded their right to legal counsel in accordance with Article 8.2.e of the American Convention, in circumstances in which legal representation is necessary to ensure the right to a fair trial and the right to appeal a judgment to a higher court.

3. Adopt such legislative or other measures as may be necessary to ensure that any confession of guilt by an accused is valid only if it is given in an environment free from coercion of any kind, in accordance with Article 8.3 of the Convention.

921. The IACHR sent requests for information to both parties in 2007, 2008 and 2009 but did not receive a response from either of them in the deadline established. A new request for information was submitted to both parties on November 22, 2010 with a one-month deadline. No response was received in that time period from the petitioners; for its part, the State sent a communication dated December 17, 2010 in which it reiterates the content of its January 5, 2010 letter sent in response to the request for information that the IACHR had submitted in November of the previous year.

922. With respect to the first recommendation, in its January 2010 letter the State of Jamaica informed the following:

By virtue of the nature of the constitutional framework governing the Westminster system of government in Jamaica, the State is unable to grant the remedy proposed by the Commission. Under the Westminster system, there is a clear separation of powers among the three branches of government, namely the Executive, the Legislature and the Judiciary. As a direct result of this constitutional structure, the Executive may not encroach on powers conferred on the judiciary by purporting to grant a further remedy to Mr. Tracey- a matter which falls squarely within the purview of the Jamaican courts.

The trial transcript suggests that the additional issues which were not raised by Mr. Tracey before the Court of Appeal would not be sufficient to form the basis for a retrial. It will be recalled that leave to appeal was denied because the Court of Appeal was of the view that all the legal issues had been properly dealt with and there was no point of law on which to appeal. A retrial would not cure this defect.

923. As regards the second recommendation, the State indicates that under the norm enacted in 2000, "legal aid may be granted to any person accused of a criminal offence where the person's means are insufficient to enable him to obtain legal services". It adds that "under the Legal Aid Scheme, every citizen of Jamaica who is detained or charged is entitled to Duty Counsel regardless of the offence he is charged with or the suspected offence". The State further informs that duty counsel is provided to persons held at a police station, lock up, correctional institution or any other place of detention before a court appearance. According to the State, the duty counsel "gives legal advice to the detained person; attends identification parades, if such parades are being held; is present at the taking of a cautioned statement, if one is to be taken or at a questioning by the police, whether the questioning will be recorded by the police or not; makes representation for bail at the lockup; and represents the accused as counsel on his appearance in court". Also, the Legal Aid Council has implemented a "Weekend Duty Counsel Programme" to strengthen access and increase the use of the Legal Aid System. The State indicates finally that the Council provides legal aid in the Resident Magistrates' Courts, Circuit Courts, Gun Courts and the Appeal Court; and that it also provides attorneys who conduct the defense on behalf of the accused when an application is made and granted by the appropriate authority.

924. The State also referred to the third recommendation in the following terms:

Under Jamaican law, a confession is only admissible if it is clearly established that it was made voluntarily. Where an accused alleges that a confession was made by force, a *voire dire* or a trial within a trial is held in which the issue of voluntariness of the statement must be determined by the trial judge. A confession will not be admitted into evidence unless the prosecution proves that it was made voluntarily.

Further, in order to ensure that statements from the accused are taken in an environment which is free from coercion, the Jamaica Constabulary Force Manual on Force Standing Orders, Volume II, Chapter 44 sets out mandatory procedures to be adopted by the police when taking statements of accused persons.

925. On October 25, 2011, the IACHR requested again information to both parties on compliance with the recommendations, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties to those communications.

926. In light of the available information, the Commission considers that the State has complied with the second and third recommendations. As a result, the Commission shall continue to monitor compliance with the first recommendation.

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

927. In Report No. 53/01, of April 4, 2001, the Commission concluded that the Mexican State had violated, to the detriment of Ms. Delia Pérez de González and her daughters Ana, Beatriz, and Celia González Pérez, the following rights enshrined in the American Convention: the right to personal liberty (Article 7); the right to humane treatment and protection of honor and dignity (Articles 5 and 11); judicial guarantees and judicial protection (Articles 8 and 25); with respect to Celia González Pérez, the rights of the child (Article 19); all those in conjunction with the general obligation to respect and ensure the rights, provided for in Article 1(1) of the Convention. In addition, it concluded that the State was responsible for violating Article 8 of the Inter-American Convention to Prevent and Punish Torture.

928. According to the complaint, on June 4, 1994, a group of soldiers detained the González Pérez sisters and their mother Delia Pérez de González, in the state of Chiapas, to question them, and deprived them of their liberty for two hours. The petitioners allege that during that time the three sisters were separated from their mother, beaten, and raped repeatedly by the soldiers; that on June 30, 1994, the complaint was filed with the Federal Public Ministry (Office of the Attorney General, or "PGR" - Procuraduría General de la República) based on a gynecological medical exam, which was corroborated before that institution by the statements by Ana and Beatriz, the two older sisters; that the case was removed to the Office of the Attorney General for Military Justice ("PGJM": Procuraduría General de Justicia Militar) in September 1994; and that it finally decided to archive the case given their failure to come forward to make statements once again and to undergo expert gynecological exams. The petitioners argue that the State breached its obligation to investigate the facts alleged, punish the persons responsible, and make reparation for the violations.

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

1. Conduct a full, impartial and effective investigation in the ordinary criminal jurisdiction of Mexico to determine the responsibility of all those involved in violating the human rights of Ana, Beatriz and Celia González Pérez and Delia Pérez de González.
2. Provide adequate compensation to Ana, Beatriz and Celia González Pérez and to Delia Pérez de González for the human rights violations established herein.

930. Regarding compliance with the recommendations during 2011, the petitioners indicated that a working meeting was held on September 27, 2011 during a working visit to Mexico by Commissioner Escobar Gil. At that meeting, the State did not report on concrete actions taken to ensure that the criminal jurisdiction will proceed with the investigations in the case; it only indicated that the authorities are making arrangements to have the investigations placed with the Office of the Prosecutor General of the Republic. According to the petitioners, the State continues to foster impunity for human rights violations committed by the army. They also reported that the government of Chiapas gave the victims a sum of money for purposes of humanitarian assistance. The petitioners recognize and express their satisfaction for the humanitarian assistance, as well as how important that act is for the victims and the petitioning organizations. Nonetheless, they indicated that the State made it explicitly clear that the humanitarian assistance did not imply a state action intended to comply with the recommendations made by the Commission in Report on the Merits 53/01.

931. For its part, the State reported that on April 4, 2011, through the Government of Chiapas, the State handed over to the victims and their mother, in a private ceremony, the amount of \$2,000,000

(two million Mexican pesos) or the equivalent of about US\$172,000 for humanitarian assistance. It stipulated that the assistance granted to the victims did not constitute recognition of responsibility for the actions that led to the recommendations made by the IACHR nor could it be considered reparations for damage. Regarding the investigation, the State indicated that the investigation was archived because no violations of military justice were determined in the military jurisdiction since evidence demonstrating the commission of a crime was not presented.

932. Based on the above, the IACHR notes that despite the recommendation made in the report on the merits in 2001 and the requests made by Commissioner Escobar Gil during the working meeting held in Mexico in September of this year, the investigation has not been transferred from the military jurisdiction to the ordinary criminal jurisdiction. Regarding the reparations, the IACHR appreciates the action taken by the Government of Chiapas in delivering humanitarian assistance to the victims and their mother. However, the State itself recognizes that that assistance does not constitute recognition of responsibility for the facts nor reparations for damage. Therefore, the State has not complied with the recommendation to make reparations to the victims.

933. As a result, the recommendations issued in this case by the Commission are pending compliance and the Commission will thus continue to monitor compliance therewith.

934. It therefore concludes that the State has not complied with the recommendations outlined above. It will therefore continue to monitor its compliance.

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

935. In Report No. 2/06 of February 28, 2006, the Commission concluded that the record in the case of Miguel Orlando Muñoz Guzmán did not contain elements that would allow one to attribute international responsibility to the Mexican State for his forced disappearance. Accordingly, it did not find the Mexican State responsible for the violation of the rights to life, humane treatment, or personal liberty, to the detriment of Miguel Orlando Muñoz Guzmán; nor of the right to humane treatment of his next-of-kin. On the other hand, the IACHR determined in that report that the Mexican State was responsible for the violation of the rights to judicial guarantees and judicial protection contained in Articles 8 and 25 of the American Convention, in connection with Article 1(1) of the same international instrument.

936. According to the complaint, Mr. Miguel Orlando Muñoz Guzmán, a lieutenant in the Mexican Army, disappeared on May 8, 1993, at the age of 25 years. He was last seen on that date by his comrades of the 26th Battalion of Ciudad Juárez, state of Chihuahua, Mexico, when he was preparing to go on leave. Lt. Muñoz Guzmán's family indicates that he was an officer devoted to his career, and therefore they call into question the credibility of the Army's official version, according to which he deserted and then traveled to the United States. They explain that to date no serious investigation has been carried out in Mexico to determine his whereabouts or to punish the persons responsible for his forced disappearance. They argue that the irregularities that have surrounded this case have been deliberate, with the intent of covering up the persons responsible. They also mention the fact that the family began to receive anonymous threats, which they attribute to members of the military, from the moment they went to report the facts to the authorities.

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

1. Conduct a complete, impartial, and effective investigation in the Mexican general jurisdiction to determine the whereabouts of Miguel Orlando Muñoz Guzmán; and, if it were determined that he was a victim of forced disappearance, to sanction all those responsible for such crime.
2. Provide adequate compensation to the relatives of the family of Miguel Orlando Muñoz Guzmán for the human rights violations established herein.

938. By means of a communication dated November 25, 2011, the IACHR requested both parties to report on the measures taken to comply with these recommendations.

939. On November 26, 2011, the petitioners reiterated that the State had not complied with the recommendations from the IACHR nor had it implemented the agreements reached between the parties at the working meeting held on November 4, 2009 at IACHR headquarters during the 137th regular session, which covered: 1) sistematization of measures taken and to be taken in the preliminary inquiry initiated by the Attorney General's Office of the State of Chihuahua; 2) joint review of the criminal case file by the petitioners, the Attorney General's Office of Chihuahua and the Secretariat of External Relations; and 3) convening of a meeting to discuss the preceding points in January 2010. They reported that in view of the failure to comply with these recommendations, María Guadalupe Guzmán Romo and María Guadalupe Muñoz Guzmán, mother and sister of Miguel Orlando Muñoz Guzmán, contacted senior government authorities but their efforts were unsuccessful. They indicated that no progress was seen in 2010 and 2011 toward compliance with the commitments assumed.

940. For its part, on December 5, 2011 the State expressed the Government's willingness to follow up the agreements reached at the working meeting convened by the IACHR in 2009. They also indicated the importance of coordinating a meeting with the petitioners so that forensic genetics specialists could take genetic fingerprints from the relatives of Miguel Orlando Muñoz Guzmán for purposes of conducting procedures in forensic chemical comparison.

941. Based on the above, the Commission concludes that there has not been compliance with the recommendations summarized above. As a result, the Commission will continue to supervise the pending items.

Petition 161-02, Report No. 21/07, Paulina del Carmen Ramírez Jacinto (Mexico)

942. On March 9, 2007, by friendly Settlement Report No. 21/07, the Commission approved a friendly settlement agreement in the case of Paulina del Carmen Ramírez Jacinto. In summary, the petitioners alleged that on July 31, 1999, when Paulina del Carmen Ramírez Jacinto was 14 years old, she was the victim of a rape perpetrated in her home. The act was reported immediately to the Agency of the Public Ministry Specialized in Sexual Crimes and Family Violence. The petitioners alleged that the Public Ministry did not inform Paulina del Carmen Ramírez Jacinto or her mother of the existence of emergency oral contraception, and the rape led to a pregnancy. The petitioners state that under Article 136 of the Criminal Code of Baja California, Paulina del Carmen Ramírez Jacinto had the right to a legal abortion, upon authorization from the Public Ministry, since the rape is one of the exceptions in which abortion is not criminalized. Nonetheless, despite the insistence in performing that procedure to which she had a right, representatives of the Public Ministry and of the hospitals to which Paulina Ramírez Jacinto was referred imposed various administrative and psychological barriers, providing false information on the procedure and its consequences, to the point of influencing her decision. Finally, the interruption of the pregnancy was not performed.

943. [Friendly Settlement Report No. 21/07](#) concluded that "the achievements secured through the actions and good disposition of the two parties in this matter offer a significant example to be followed in other cases – both those that involve Mexico as well as other cases from other regions and countries of the hemisphere. In particular, the IACHR appreciates the active and direct interest of the representatives of the federal government and of the government of Baja California, pursuant to the terms of Articles 1, 2, and 28 of the American Convention. In a federally structured country such as Mexico, national and local authorities alike are obligated to uphold in full the rights enshrined in the American Convention. In this case particular note has therefore been taken of the joint, complementary work carried out by the federal and local authorities – each within its sphere of competence – in pursuit of this goal. The IACHR also applauds the efforts made and the flexibility shown by the petitioners, which made this agreement possible."

944. In the same report, the IACHR decided to approve the friendly settlement agreement signed by the parties on March 8, 2006 and to continue monitoring and supervising the points in the friendly settlement that are pending compliance and continued compliance.

945. On March 11, 2008, the parties agreed as follows regarding matters pending from the 2006 agreement:

:

- School Support: The sum already set in the agreement shall be paid, for which the government of the State shall develop a mechanism to ensure it is handed over on a timely basis, which will be within 30 days of the beginning of the school year.
- Legislative Reform: The State will seek to foster lobbying of the new local congress to encourage the amendment of Article 136 of the local Criminal Code, Article 20 (f, XI) of the Code of Criminal Procedure, and add 22 bis and 22 bis 1 of the health law.
- Training: The State will seek to take initiatives with the appropriate offices to hold training courses, after receiving a proposal from the petitioners.
- Circular: The State will seek, with the appropriate offices, to see to it that the local circular is published in the official gazette of the State. Both parties undertake to continue a dialogue on this point of the agreement.
- Productive Project: The State shall inform the petitioners on implementation of this point, and a copy of the permit will be given to them. The State will take up anew the commitment to give the technical training course for the productive project.

946. The Commission requested updated information from the parties in a letter dated November 25, 2011.

947. The State reported regarding *academic support*, that as agreed, on July 15, 2011 Mrs. Paulina del Carmen Ramírez Jacinto was given the related amount as well as a school kit containing a backpack and various school supplies. Regarding *training*, it indicated that steps were being taken to develop a cycle of courses for health personnel during the first quarter of 2012. Regarding the *circular* "General Guidelines for Organizing and Operating Health Services Related to the Interruption of Pregnancy in the State of Baja California," it referred to the considerations expressed earlier, i.e., that publication in the official State gazette was not necessary since the circular was properly disseminated and because the provisions contained in the circular were duly published at the appropriate time.

948. In addition, regarding the *productive project* the State reported that on June 1, 2010 official letter No. CU-001188-2009 was delivered to Paulina del Carmen Ramírez Jacinto regarding the Land Use Opinion issued by the Urban Control Department of the XIX Municipal Council of Mexicali, Baja California, so that compliance with the agreement is considered definitive. In addition, the State reported that in October 2011 the Governor of the State of Baja California supported Mrs. Paulina Ramírez Jacinto with 100 waterproofing sheets as "roofing material" indicating that the authorities' commitment to the welfare of the beneficiary and her son is obvious.

949. Regarding *academic support*, on October 28, 2011 the petitioners indicated that the State had agreed to develop "a mechanism to ensure timely delivery" and in that sense they felt that an institutionalized payment mechanism had not been ensured to facilitate collection by Paulina del Carmen Ramírez Jacinto. On *training*, they indicated that the State had shown its willingness to repeat the training with health personnel and the prosecutor's office in charge of the sex crimes agency. They added that measures are being taken to ensure that the Government of Baja California covers the expense of the training that may be conducted in early 2012. Regarding the *circular*, they indicated that its publication in an official State gazette constitutes the central point of the agreement as it involves the principal guarantee that the facts that led to the case will not be repeated, in that the circular describes the procedure to be followed by medical personnel to ensure appropriate treatment for legal interruption of the pregnancy in cases of rape. They added that the circular had not been officially published nor could it

be found in the files on the website of the state Health Secretariat or through another Internet search engine.⁶¹

950. Based on the above, the Commission concludes that there has been partial compliance with the recommendations summarized above. As a result, the Commission will continue to monitor the pending items.

Case 11.822, Friendly Settlement Report No. 24/09, Reyes Penagos Martínez et al. (Mexico)

951. On March 20, 2009, in Friendly Settlement Report No. 24/09, the Commission approved a friendly settlement agreement for the case of Reyes Penagos Martínez, Enrique Flores González and Julieta Flores Castillo. The complaint the petitioners filed was based on the victims' alleged unlawful detention, the acts of torture to which they were reportedly subjected and the alleged extrajudicial execution of Mr. Reyes Penagos Martínez. Summarizing, the petitioners reported that the victims were detained on December 16, 1995, when a protest sit-in organized on the *ejido* of Nueva Palestina was forcibly broken up; in the days following their arrest, the victims were tortured. In the case of Mrs. Flores Castillo, the petitioners added that she had also been raped. In the early morning hours of December 18, Mr. Reyes Penagos Martínez was taken to an unknown location. Some hours later, his lifeless body was found near Jaltenango. The petitioners asserted that Enrique Flores González and Julieta Flores Castillo were released two months later. The petitioners stated that a preliminary inquiry was launched by the Office of the Attorney General of the State of Chiapas to look into Mr. Reyes Penagos Martínez' detention and subsequent death. However, the petitioners were of the view that the investigation was riddled with problems and not properly carried out.

952. On March 1, 1999, at IACHR headquarters, the parties signed the agreement to initiate a friendly settlement process and on November 3, 2006, in the city of Tuxtla Gutiérrez, State of Chiapas, they signed an agreement on reparations for damage to be paid to the victims and their relatives. In the commitment of 1999, the State undertook to:

- a) "To investigate the events of which Mr. Reyes Penagos Martínez was victim, bringing the persons responsible to trial, so that they may be punished in keeping with the final judicial resolution.
- b) To continue the investigations and, in due course, bring the corresponding criminal actions, based on the statements made by Enrique Flores and Julieta Flores and all other evidentiary elements for the acts of torture that they note they suffered. This is for the purpose of bringing to trial and punishing those who turn out to be responsible for these facts.
- c) To determine and deliver the amount of economic aid or compensation and reparation to the victims and their family members, with the participation of the petitioners...

953. Thereafter, in the "Agreement on Reparation for the Harm to the Victims and Their Next of Kin," signed on November 3, 2006, the parties agreed that:

"THIRD. Measures of Satisfaction and Guarantees of Non-Repetition. (...)

a) Public Recognition of the International Responsibility of the Mexican State

The State undertakes to make a public pronouncement in which it recognizes ITS RESPONSIBILITY IN the facts described in the first section, considering that the death of Reyes

⁶¹ The petitioners indicated in their communication that, in an effort to close the case and to show their good will, they suggested the following as an alternative form of compliance: 1) that the circular be published on the website of the Secretariat of Health of Baja California both in the PROGRAMAS section and the NOTICIAS section and that the circular be left there permanently so that it could be consulted by the public; 2) that the Secretariat of Health of Baja California deliver the circular to hospital chiefs and heads of gynecology and obstetrics, labor and delivery, and emergency services who are to be trained by the representatives, at least 15 days before the training sessions start.

Penagos Martínez and the detention and torture of Julieta Flores Castillo and Enrique Flores González, committed by various public servants of the state of Chiapas, are imputable to it.

The State also undertakes to apologize publicly to the victims and their family members for the facts reported to the IACHR, which were the result of a violation of human rights.

This pronouncement may be made at the moment the payment is made to make reparation for the material and non-material injury agreed upon in the preceding paragraphs.

Likewise, the State undertakes to publish the public pronouncement in two local newspapers.

b) Investigation and punishment of the persons responsible

In addition, the State undertakes to continue the investigations until attaining the sanction of the persons responsible for those crimes, through a serious and impartial investigation according to the international human rights standards, for the purpose of avoiding their re-victimization due to lack of access to justice.

[...]

SIXTH. Material injury. [...]

In this regard, the following sums have been agreed upon:

Beneficiary	For	Amount
1. Penagos Roblero family*	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 105,354.00 MN
	SUBTOTAL	\$ 157,902.00 MN
2. Julieta Flores Castillo	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	SUBTOTAL	\$ 65,187.00 MN
3. Enrique Flores González	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	SUBTOTAL	\$ 65,187.00 MN
TOTAL 1		\$ 288,278.00 MN

SEVENTH. Non-material injury. [...]The sums agreed upon are as follows:

Beneficiary	For	Amount
1. Penagos Roblero family	Non-material injury	\$ 342,098.00 MN
2. Julieta Flores Castillo	Non-material injury	\$ 228,951.00 MN
3. Enrique Flores González	Non-material injury	\$ 228,951.00 MN
TOTAL 2		\$ 800,000.00 MN

[...]

NINTH. Considering the changes in the living conditions of the victims and their family members, the Office of the Attorney General of Chiapas undertakes to take whatever efforts necessary, before the competent authorities, so that scholarships be granted to the three youngest children of Mr. Reyes Penagos. While the Office of the Attorney General cannot guarantee that the result of those efforts will be positive, it nonetheless expresses its commitment to diligently pursue such requests, and to seek a favorable outcome for the children of Mr. Reyes Penagos.

TENTH. Along the same lines, the State undertakes to make efforts for the beneficiaries to obtain medical insurance.

954. In its Report No. 24/09, the Commission examined the measures taken by the Mexican State and acknowledged compliance with the obligations undertaken in regard to: i) recognition of the

state's responsibility; ii) publication of the act of public recognition of state responsibility; iii) payment of pecuniary damages, and iv) access to medical insurance for Enrique Flores and Julieta Flores. In that report the Commission decided as follows:

"2. To urge the State to take the measures necessary to carry out the commitments pending, in particular the obligation to investigate, prosecute and punish the persons responsible for the unlawful detention, torture and extrajudicial execution of Mr. Reyes Penagos Martínez and the unlawful detention and torture of Mr. Enrique Flores and Ms. Julieta Flores."

955. On October 26, 2011, the IACHR asked the parties for updated information on the status of compliance with pending commitments.

956. Regarding the obligation to investigate, prosecute, and punish, the State reported that it has been complying with the obligation to investigate the facts and exact punishment for the crimes committed against the victims in this case. Regarding the crime committed against Mrs. Julieta Flores, it reported that it had concluded the investigation and determined to set aside the file because the cooperation of the victim and her representative had not been obtained.

957. The petitioners indicated that the State only submitted general information and refers only to investigations into the crimes committed against one of the victims. Specifically they argued that the State is making the investigation into the crimes against Mrs. Julieta Flores contingent upon the procedural actions of the victim, counter to the *ex officio* initiative that should be seen in these cases and failing to consider the circumstances that would make her participation in the proceedings difficult.

958. Based on the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. As a result, the Commission will continue to monitor the pending item.

Case 12.228, Report No. 117/09, Alfonso Martín del Campo Dodd (México)

959. In its Report No. 63/02 of October 22, 2002, the IACHR concluded that the Mexican State was responsible for violation of articles 5, 7, 8(1), 8(2), 8(3) and 25 of the American Convention, and articles 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture, all in violation of its duty to respect and ensure the Convention-protected rights, undertaken in Article 1(1) of the American Convention, to the detriment of Mr. Alfonso Martín del Campo Dodd. The Mexican State incurred responsibility for these violations by virtue of the fact that Mexico City's judicial police had arbitrarily detained the victim and then subjected him to torture and other forms of cruel, inhuman and degrading treatment, all in order to force him to confess to the double homicide of his sister and brother-in-law; the State also failed to observe the guarantees of due process in the trial prosecuted against Alfonso Martín del Campo Dodd, particularly in the case of his right to be presumed innocent, inasmuch as the various magistrates ignored his complaints of torture and gave credence to a confession made under torture.

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

1. Take the necessary measures to throw out the confession obtained by means of torture in facilities of the PGJDF on 30 May 1992 and all legal action deriving therefrom; review the entire judicial proceeding against the victim in this case; and order the immediate release of Alfonso Martín del Campo Dodd while such measures are in process.
2. Carry out a complete, impartial, and effective investigation to determine the culpability of all those who violated the human rights of Alfonso Martín del Campo Dodd.
3. Provide appropriate compensation to Alfonso Martín del Campo Dodd for the violations of [...] human rights established herein.

961. In view of the State's failure to comply with the recommendations and in application of Article 50 of the American Convention and Article 44 of its Rules of Procedure, the Commission decided to refer the matter to the Inter-American Court. The application was filed on January 30, 2003.

962. On September 3, 2004, the Inter-American Court issued its judgment on the Preliminary Objections in this case. There, it decided to admit the preliminary objection *ratione temporis* brought by the State and ordered the case closed.

963. Since that time the Commission undertook an analysis of the possible follow-up of the recommendations contained in its Report No. 63/02. After a careful examination of both sides' arguments, the Commission concluded that, under Article 51(2) of the Convention, the State was still bound by the obligation to comply with the Commission's recommendations.

964. The Commission reasoned that according to the principles of efficacy, utility and good faith that govern the obligations of states in human rights matters, should the Inter-American Commission's application not meet the formal requirements for submission to the Court, the Commission nonetheless retains its competence to exercise its authorities under Article 51 of the American Convention.⁶² It also considered that "in the absence of a judgment on merit that considers "[i]f [the Court finds that] there has been a violation of a right or freedom protected by this Convention," pursuant to Article 63 of the American Convention, the State's treaty obligation to comply in good faith with issued recommendations, based on the responsibility established in Report No. 62/02, remains."⁶³

⁶² IACHR, Report No. 117/09, Case 12.228, Merits (Publication), Alfonso Martín Del Campo Dodd, Mexico, November 12, 2009, paragraph 110.

⁶³ IACHR, Report No. 117/09, Case 12.228, Merits (Publication), Alfonso Martín Del Campo Dodd, Mexico, November 12, 2009, paragraph 112.

965. Therefore, on March 30, 2009, the IACHR adopted its Merits Report No. 33/09 (Article 51 Report), wherein it examined compliance with the recommendations made to Mexico and concluded that they had not been effectively implemented. Given this fact, it confirmed the conclusions it reached in Report 63/02 and reiterated its recommendations.

966. Finally, on November 12, 2009, the IACHR approved Merits Report No. 117/09 (Article 51 Report – Publication). There, the Commission again reiterated the conclusions adopted on the situation denounced by Mr. Alfonso Martín del Campo Dodd and its recommendations to the State.

967. In a communication dated November 26, 2011, the IACHR requested updated information from the parties concerning the status of compliance with the recommendations made in the present case.

968. On December 2, 2011, the petitioners reported that there still had not been compliance with the recommendations of the IACHR. As a result, the State was failing to meet its international obligations and Mr. Campo Dodd continued to be deprived of his freedom. They reported that in August 2011 Mr. Martín del Campo Dodd submitted a petition for recognition of innocence to the Seventh Criminal Chamber of the Superior Court of Justice of the Federal District. In that petition, he referred to the international processing of the case and on November 25, 2011, that Chamber declared his petition unfounded. They added that he filed an appeal for constitutional protection (*amparo*) on November 16, 2011 and that a decision is pending on that appeal.

969. The State, for its part, did not respond to the IACHR's request.

970. Based on the above, the IACHR concludes that the recommendations summarized above are still pending compliance. As a result, it will continue to monitor compliance therewith.

Case 12.642, Report No. 90/10, José Iván Correa Arévalo (Mexico)

971. On July 15, 2010, in [Report No. 90/10](#), the Commission approved a friendly settlement agreement in the case of José Iván Correa Arévalo. The petition alleged that José Iván Correa Arévalo, a young 17-year-old student died on May 28, 1991 as the result of a gunshot wound to his head. The petition argued that the death of the young José Iván – which was linked to his role as an independent student leader – had not been diligently investigated by the Mexican authorities and that those responsible for his death were not convicted. In summary, the petitioners alleged that the investigation conducted by the Office of the Attorney General of the State of Chiapas had been prosecuted without due diligence and that, despite the passage of many years, Mexican justice had not succeeded in determining the motives for the murder of the alleged victim nor had it punished those responsible.

972. In its report, the IACHR noted that the parties had agreed as follows in a working meeting held on October 24, 2008 during the 133rd regular session of the IACHR:

MEMORANDUM OF WORKING MEETING
CASE 12.642
JOSÉ IVÁN CORREA ARÉVALO
OCTOBER 24, 2008

In the framework of a working meeting held in connection with Case 12.642, José Iván Correa Arévalo, during the 133rd Regular Period of Sessions of the IACHR, the parties agreed the following:

1. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to proceed with the investigation in a diligent and exhaustive manner and to open new lines of inquiry in order to ensure the prompt clarification of the truth surrounding the homicide of José Iván Correa Arévalo. In the course of the investigation, working panels will be held between the agents in charge of same and the coadjutors, in order comprehensively to review the case file.
2. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to hold a public act of recognition of responsibility and public apology for the failure of the authorities to conduct a diligent investigation into the homicide of José Iván Correa Arévalo. This public recognition and apology shall be published in the newspapers with the widest circulation in the State of Chiapas. The petitioners undertake to submit a draft text of public recognition of responsibility and apology within 15 days counted from today's date. The draft shall be analyzed by the authorities of the State of Chiapas within 15 days of its receipt. The final text shall be agreed by the parties. In response to the request of the petitioners that the above public ceremony be presided over by the head of the executive branch of the State of Chiapas, the Ministry of Justice undertakes to present that request to said authority, and failing that, agrees that the head of the Ministry of Justice shall preside over the ceremony. The parties shall agree on a date for holding the public ceremony, endeavoring to ensure, if at all possible, the presence of Commissioner Florentín Meléndez, Rapporteur for Mexico. In agreeing on the aforesaid ceremony the parties state that the possibility exists of signing a friendly settlement agreement in this case.
3. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to offer psychological treatment to Mr. Juan Ignacio Correa López and to include him and his family in the Seguro Popular Health Care Program, as agreed in the Minute of the Working Meeting signed in the State of Chiapas on October 8, 2008.
4. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to include Mr. Juan Ignacio Correa López in the Social Assistance Housing Program under the terms of the Minute of the Working Meeting signed in the State of Chiapas on October 8, 2008.
5. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to include Mr. Juan Ignacio Correa López in the Economic Recovery Program of the State of Chiapas for the purpose of obtaining a business loan. The Ministry of Justice of the State of Chiapas undertakes to arrange, as necessary, the repayment of the loan and its nonreimbursement on behalf of the petitioner.
6. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to grant compensation for material damages and emotional distress to Mr. Juan Ignacio Correa López in the total amount of \$600.000 pesos (six hundred thousand Mexican pesos) clear, free, and unencumbered.
7. The Mexican State, through the Ministry of Justice of the State of Chiapas, undertakes to make arrangements with the Municipality of Tuxtla Gutiérrez in the State of Chiapas to have the street where José Iván Correa Arévalo was deprived of his life named after him; or, failing that, to make arrangements with the relevant education authority for a commemorative plaque recording the facts in the instant case to be put up at *Colegio de Bachilleres Plantel 01 (COBACH)*, which José Iván Correa Arévalo attended.

973. The above-referenced IACHR report also indicates that on February 19, 2009, the parties held a meeting in the city of Tuxtla Gutiérrez, Chiapas. On that occasion, they drew up for the record a memorandum of the following : i) the Office of the Attorney General indicated that the investigation to clarify the facts was ongoing and reported on the creation of a working panel to report to the IACHR every six months on the progress made in that regard; ii) the parties agreed on the date, time, and place for holding the public act of recognition of responsibility and public apology; iii) the representatives of the State submitted a draft text of recognition of responsibility and pledged to publish it once consensus was reached on its wording; iv) the Office of the Attorney General provided information on the arrangements made to provide psychological treatment to Juan Ignacio Correa López and to include both him and his family in the Seguro Popular Health Care Program; v) the Ministry of the Interior provided information on the steps take to include Mr. Correa López in the Social Assistance Housing Program and the Economic Recovery Program of Ministry of Social Development; and vi) the petitioners indicated their consent that a plaque be put up in the library of the COBACH in memory of José Iván Correa Arévalo, rather than naming the street where the incident occurred after him. In addition, the Government of Chiapas paid Mr. Correa López the previously agreed compensation for material damages and emotional distress.

974. On March 21, 2009, during the working meeting held during the IACHR's 134th Regular Period of Sessions, the parties signed a memorandum of working meeting in which they acknowledged "the fulfillment of the instant friendly settlement and agreed to continue to monitor points 1 and 4 of the Memorandum of Working Meeting of October 24, 2008[.]"

975. In its report, the IACHR noted that it had closely monitored the development of the friendly settlement reached and was highly appreciative of the efforts made by both parties to achieve this settlement, which is compatible with the Convention's object and purpose. It also noted the commitments undertaken by the State that, as of the date of the Friendly Settlement Agreement, were pending compliance:

- a. To include Mr. Juan Ignacio Correa López in the Social Assistance Housing Program; and
- b. Clarify the historical truth regarding the homicide of José Iván Correa Arévalo by conducting a diligent and exhaustive investigation.

976. On October 26, 2011, the IACHR asked the parties for updated information on the status of compliance with the pending commitments.

977. On November 8, 2011, the State reported with respect to the investigation into the murder of José Iván Correa Arévalo that it had complied with the terms of the agreement in that a series of actions had been taken as recorded in the following documents:

- "A) Official letter assigning preliminary investigation No. 2062/ZC/991.
- B) Copy of the arrest order filed against an individual as a probable suspect in the crime of QUALIFIED CONCEALMENT OF MURDER, to the detriment of the person who while alive answered to the name of José Iván Correa Arévalo, issued by the Judge of the Second Criminal Court for Less Serious Crimes of the Judicial District of Tuxtla, Chiapa de Corzo, Chiapas.
- C) Official letter assigning Preliminary Investigation No. 2062/ZC/991, filed against two persons as probable suspects of crime, the first for "QUALIFIED HOMICIDE" and the second for "QUALIFIED CONCEALMENT OF HOMICIDE," asking the First Judge Specializing in Justice for Adolescents to initiate the respective proceeding, in that based on the dates the case involves adolescents."

978. The petitioners did not submit a response to the request made by the IACHR.

979. The IACHR notes the information provided by the State regarding the opening of a criminal proceeding that could lead to clarification of the facts in the case and considers this a positive step. In addition, it expects to receive periodic information in this regard.

980. Based on the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. As a result, the Commission will continue to monitor the pending items.

Case 12.660, Report No. 91/10, Ricardo Ucán Seca (Mexico)

981. On July 15, 2010, in [Report No. 91/10](#), the Commission approved a friendly settlement agreement in the case of Ricardo Ucán Seca. The petition alleged responsibility on the part of the Mexican State for the alleged irregularities that affected the criminal prosecution conducted against Mr. Ucán Seca, an indigenous Maya, because he had neither the assistance of an interpreter who would have allowed him to defend and express himself in his own language nor an effective public defender.

982. On December 31, 2009, the parties signed the following agreement:

Case 12.660 - Ricardo Ucán Seca (Mexico)
Friendly Settlement Agreement

One. This friendly settlement agreement is signed with respect to Case no. 12.660 (Ricardo Ucán Seca), being processed by the Inter-American Commission on Human rights (hereinafter referred to as "the Commission" or "the IACHR") by the United States of Mexico, represented by the Secretariat of Foreign Affairs and the Government of the State of Yucatán, for the first part, and by the petitioners, Mr. Ricardo Ucán Seca, the *Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todos y Todas* and *Organización Indignación Promoción y Defensa de los Derechos Humanos* represented respectively by José Miguel Edgar Cortéz and María Cristina Muñoz Menéndez (hereinafter referred to as "the petitioners") for the second part.

The parties enter into this agreement in accordance with Articles 48.1.f and 49 of the American Convention on Human Rights and Article 40 of the IACHR's Rules of Procedure.

Two: the parties indicate their full consent to the commitments for the definitive resolution of case 12.660, as follows:

- a) The Mexican State agrees as of the signing of this agreement to legally consider and, as appropriate, administratively grant the release of Mr. Ricardo Ucán Seca. To this end, the Mexican State, through the Government of Yucatán, shall make the appropriate determinations based on the legal system in effect in the entity and with full respect for the judicial independence of the Superior Tribunal of Justice of the State of Yucatán.
- b) The Mexican State shall guarantee that the right to compensation shall remain intact with respect to the relatives of Bernardino Chan Ek, who lost his life in the events that occurred on July 5, 2000, as stated in the record of Case No. 12.660 before the IACHR.
- c) As a consequence of the above, the Mexican State agrees, through the Government of Yucatán, to process for the benefit of Mr. Ricardo Ucán Seca and his family the social benefits that are applicable based on their socio-economic situation.
- d) The authorities of the Government of Yucatán indicate their willingness to analyze cases similar to this case that are submitted for its consideration and are properly documented. This shall be done with full respect for judicial independence and the division of powers; in addition, the rights of the victims or injured parties of the crimes involved shall in all cases be protected.
- e) The authorities of the Federal Government and the Government of Yucatán indicate their willingness to continue strengthening access to justice and the effectiveness of human rights on behalf of indigenous communities, as well as to consider the proposals the petitioners refer to them on such topics.
- f) The parties shall inform the IACHR periodically regarding progress made in carrying out this friendly settlement agreement. In addition, by mutual agreement, they ask the Commission to prepare the report referred to in Article 49 of the American Convention on Human Rights and to

proceed in accordance with that article for purposes of publishing that report.

The State shall disseminate, through the Official Journal of the Federation and the corresponding journal of the State of Yucatán, the friendly settlement report published by the Inter-American Commission.

This agreement presupposes the principle that both parties are acting in good faith, so that in the event of any doubt regarding the scope thereof, it shall in principle be the parties themselves that resolve the matter and, in the event they do not reach agreement, they may seek the intervention of the IACHR to assist for that purpose within the scope of its powers.

The parties who sign this friendly settlement agreement indicate their free and spontaneous willingness and their acceptance of each and every one of its clauses and, as a result, they agree that processing of the petition in case 12.660 before the Inter-American Commission should be considered terminated once the release of Mr. Ricardo Ucán Seca proceeds and the right referred to in clause two (b) of this agreement has been satisfied.

983. In the Friendly Settlement Report the IACHR expressed its great appreciation for the efforts made by both parties to achieve a solution compatible with the Convention's object and purpose. It also noted that on December 31, 2009, Mr. Ricardo Ucán Seca regained his freedom and urged the State to fulfill the remaining obligations assumed in the friendly settlement agreement signed on December 31, 2009.

984. On October 26, 2011, the IACHR asked the parties for updated information on the status of compliance with the pending commitments.

985. The parties did not respond to the request for information.

986. Based on the above, the IACHR concludes that there has been partial compliance with the friendly settlement agreement. As a result, the Commission will continue to monitor the pending items. En el Informe de Solución Amistosa la CIDH valoró altamente los esfuerzos desplegados por ambas partes para lograr la solución que resultaba compatible con el objeto y fin de la Convención. Asimismo, observó que el 31 de diciembre de 2009, el señor Ricardo Ucán Seca recuperó su libertad e instó al Estado a satisfacer las demás obligaciones asumidas en el acuerdo amistoso suscrito el 31 de diciembre de 2009.

Case 12.623, Report No. 164/10, Luis Rey García Villagrán (Mexico)

987. On November 1, 2010, in [Report No. 164/10](#), the Commission approved a friendly settlement agreement in the case of Luis Rey García Villagrán. The complaint alleged that Mr. García Villagrán was illegally detained and tortured by agents of the Mexican State and that in the detention centers where he was held he was kept incomunicado on repeated occasions, subjected to mistreatment, and transferred to detention centers far from his family's residence, allegedly as punishment for his complaints. In addition, in the criminal proceeding conducted against him there were violations of procedural guarantees and the torture to which he was subjected has not been investigated by Mexican authorities.

988. On November 3, 2009, the parties agreed on a "Proposed Friendly Settlement" as follows:

Case 12.623, which is pending before the Inter-American Commission on Human Rights, lodged by Mrs. Martha Martínez de la Fuente on behalf of her husband, Luis Rey García Villagrán.

In the city of Washington, D.C., United States of America; being gathered at the "Fray Bartolomé de las Casas" Human Rights Center, A.C., it being the hour of 11 a.m. on the third day of November, 2009; there being present Mr. Pedro Raúl López Hernández, the Chiapas state Special Prosecutor for the Protection of Nongovernmental Organizations for the Defense of Human Rights, Mr. Juan Valverde Galindo of the Human Rights Department of the Secretariat of Government, Mr. Ricardo Lagunes Gasca and Rubén Moreno Méndez, representatives of the [sic] this Human Rights Center; the aforementioned, in order to establish the bases and agreements of the CONCILIATION PROPOSAL, to answer and resolve Case 12.623, which is pending before the Inter-American Commission on Human Rights, lodged by Mrs. Martha Martínez de la Fuente on behalf of her husband, Luis Rey García Villagrán; hereby gathered, [the matter] is discharged in the following manner:

BACKGROUND

The Inter-American Commission on Human Rights decided, in July 2007, to admit the petition lodged by Mrs. Martha Martínez de la Fuente on behalf of her husband, Luis Rey García Villagrán.

The wife of Mr. García Villagrán expressed her intention to enter into a friendly settlement proceeding in the case, for which she submitted a draft with minimum requirements, in which she requests the complete release of the person she represents; reparation for damages; and the establishment of non-repetition measures.

Based on the foregoing, the following are established:

AGREEMENTS

First. The Mexican State, through the Government of the State of Chiapas, on October 28, 2009, asked Mr. José Patricio Patiño Arias, Deputy Secretary of the Prison System of the Secretariat of Public Security, for the transfer of Mr. Luis Rey García Villagrán, who is being held in Federal Center for Social Re-adaptation Number Three, located in Matamoros, Tamaulipas, to State Center for the Social Reintegration of the Convicted Number 3, located in the city of Tapachula, Chiapas. This is established in the document consisting of one page that is attached to this agreement.

Second. The petitioners establish the commitment that as of the moment Mr. Luis Rey García Villagrán is transferred to State Center for the Social Reintegration of the Convicted Number 3, located in the city of Tapachula, Chiapas, he will conduct himself in a way that is proper, correct, and disciplined, respecting and following the internal regulations of that prison.

Third. The Mexican State, through the Government of the State of Chiapas, agrees that once Mr. Luis Rey García Villagrán is transferred to State Center for the Social Reintegration of the Convicted Number 3, located in the city of Tapachula, Chiapas, it will take the relevant steps for his case file to be submitted to the Reconciliation Board of the Chiapas State Government for a decision, so that it can study and analyze the criminal procedure that was followed and bring it in line with guarantees of legal and judicial security.

Fourth. The Mexican State, through the Government of the State of Chiapas, agrees that at the same time the State Government Reconciliation Board is studying and analyzing the case, in the event that this has a favorable outcome for Mr. Luis Rey García Villagrán, the State Government, by mutual agreement with the petitioners, shall establish the mechanisms and conditions for reparations for damages.

The parties agree that this Conciliation Agreement shall be submitted to the Inter-American Commission on Human Rights for its ratification, and determine that once the agreement has been fulfilled, the aforesaid international body shall be informed, so as to bring to a close the proceedings in Case 12.623, lodged by Mrs. Martha Martínez de la Fuente on behalf of her husband, Luis Rey García Villagrán.

The parties manifest that if this conciliation agreement is not fulfilled, they will assume that this alternate friendly settlement is not possible, and they will return to their initial positions established before the Inter-American Commission on Human Rights.

989. The referenced report noted that on December 22, 2009, the parties signed the "Minutes from the meeting to follow up and comply with the proposed friendly settlement regarding case 12.623, of Mr. Luis Rey García Villagrán, as follows:

BACKGROUND

[...]

Based on the referenced background and following up on the aforementioned memorandum [of November 3, 2009], the following agreements are established:

FIRST: Mr. Luis Rey García Villagrán states that on the ninth of December of this year at 6:00 a.m., he was transferred to State Center for Social Reintegration of the Convicted Number 3, located in the city of Tapachula, Chiapas, from Federal Center for Social Re-adaptation Number Three, located in Matamoros, Tamaulipas.

SECOND: On December 22 of this year, Mr. Luis Rey García Villagrán was released through the application of the Law of Suspension of Conviction [*ley de Sentencia Suspendida*].

THIRD: Mr. Juan José Sabines Guerrero, Constitutional Governor of the State of Chiapas, on behalf of the Mexican State, during a public event held in the "Enrique Robles Domínguez" Auditorium of the Supreme Court of Justice of the State of Chiapas, publicly acknowledged the following:

"...the Mexican State, through the government of Chiapas, accepts and recognizes that Mr. Luis Rey García Villagrán, at the time of the events, which was in 1997, was tortured and illegally deprived of his liberty by the then State Judicial Police, and was submitted to an improper legal process, for which he is asked for pardon, and it is recognized that he was not involved in the acts for which he was incriminated."

With the foregoing, the petitioners and Mr. Luis Rey García Villagrán consider the clarification of facts and public apology to be partially fulfilled, given that still to be unfulfilled is for said clarification and public apology to be published the [sic] national circulation newspaper "La Jornada," as well as in the local newspapers "Cuarto Poder" and "El Orbe."

In addition, still pending is that which is relative to reparation for damages, which is agreed to in the following terms:

1. HEALTH:

Psychological and psychiatric care.

Medical care: Ophthalmological, traumatological, and any others that may be necessary.

The foregoing based on the understanding that Mr. Luis Rey García Villagrán was tortured and arbitrarily deprived of his liberty, which caused damage to his psychological and physical health, it thus being necessary, and is so accepted by the Mexican State, that any treatments, medications, and if necessary surgeries, shall be paid for by the state [sic], for which on this occasion the representatives of the Government of the State of Chiapas undertake to give Mr. Luis Rey García Villagrán, during the first two weeks of next year, the sum of 500,000 pesos in national currency.

2. LOST EARNINGS:

On this occasion, the representatives of the Government of the State of Chiapas undertake to give Mr. Luis Rey García Villagrán, during the first two weeks of next year, the sum of \$1,000,000 (one million pesos in national currency) for income that he was unable to earn during the 12 years and 5 months that he was arbitrarily deprived of his liberty.

3. LIFE PROJECT:

In order for Mr. Luis Rey García Villagrán and his family to be able to resume their life and have an honest way to support themselves in the future, on this occasion the representatives of the Government of the State of Chiapas undertake to give Mr. Luis Rey García Villagrán, during the first two weeks of next year, the sum of \$1,000,000 (one million pesos in national currency) to cover the costs of installing a serigraphy workshop and a legal-accounting office.

The parties agree that as soon as the terms of this memorandum are fulfilled in their entirety, this will be made known to the Inter-American Commission on Human Rights so that once the Mexican State, through the Government of the State of Chiapas, has provided accreditation and ratification to that International Body, Case 12,623, lodged by Mrs. Martha Martínez de la Fuente and the Fray Bartolomé de las Casas Human Rights Center, A.C., would be deemed closed and this file would be archived completely.

990. In Friendly Settlement Report No. 164/10, the IACHR noted that both Mexico and the petitioners acknowledged full compliance with the commitments undertaken by the State in the friendly negotiation process and sought to conclude the case. In addition, it greatly appreciated the efforts made by both parties to achieve this solution compatible with the Convention's object and purpose.

991. On December 27, 2011, the State reiterated the actions undertaken to comply with the agreements with the petitioners on November 3, 2009 and December 22, 2009. In addition, it enclosed a "Minute of Agreements" dated December 9, 2011 and subscribed by Mr. Luis Rey García Villagrán, in which he expresses that all the points of the agreement have been complied with.

992. Based on the above, the IACHR concludes that the agreements reached by the parties have been fulfilled.

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

993. In Report No. 100/01 of October 11 2001, the Commission concluded that the Nicaraguan State: (a) violated, to the detriment of Milton García Fajardo, Cristóbal Ruiz Lazo, Ramón Roa Parajón, Leonel Arguello Luna, César Chavarría Vargas, Francisco Obregón García, Aníbal Reyes Pérez, Mario Sánchez Paz, Frank Cortés, Arnoldo José Cardoza, Leonardo Solís, René Varela, and Orlando Vilchez Florez, the right to humane treatment, contained in Article 5 of the American Convention on Human Rights; and (b) violated, to the detriment of Milton García Fajardo and the 141 workers who are included in this complaint, the rights to judicial guarantees and judicial protection, and economic, social, and cultural rights, protected by Articles 8, 25, and 26 of that international instrument, in relation to the general obligation to respect and ensure the rights, provided for in Article 1(1) of the same Convention.

994. According to the complaint, on May 26, 1993, the customs workers went on strike after having sought unsuccessfully to negotiate, through the Ministry of Labor, a set of petitions that demanded, among other things, the nominal reclassification of the particular and common positions at the General Bureau of Customs, labor stability, and 20 percent indexing of salaries in keeping with the devaluation. The Ministry of Labor resolved, on May 27, 1993, to declare the strike illegal, arguing that Article 227 of the Labor Code did not permit the exercise of that right for public service workers or workers whose activity is in the collective interest. The petitioners also alleged that the Police made disproportionate use of force during the strike held by the workers on June 9 and 10, 1993.

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

1. To conduct a complete, impartial, and effective investigation to establish the criminal responsibility of the persons who inflicted the injuries caused to the detriment of Milton García Fajardo, Cristóbal Ruiz Lazo, Ramón Roa Parajón, Leonel Arguello Luna, César Chavarría Vargas, Francisco Obregón García, Aníbal Reyes Pérez, Mario Sánchez Paz, Frank Cortés, Arnoldo José Cardoza, Leonardo Solís, René Varela and Orlando Vilchez Florez, and to punish those responsible in accordance with Nicaraguan law.

2. To adopt the measures necessary to enable the 142 customs workers who lodged this petition to receive adequate and timely compensation for the violations of their human rights established herein.

996. On April 4, 2001, the Commission approved Report No. 56/01 (Article 51 Report), in which it reiterated for the Nicaraguan State the conclusions and recommendations contained in its report 80/00; on October 11, 2001, it adopted its Merits Report No. 100/01 (Article 51 Report – Publication), in which it ordered publication of the above-mentioned reports and reiterated yet again the conclusions and recommendations contained in Report 80/00.

997. Subsequent to these events, the State repeatedly told the Commission that the first recommendation could not be carried out, since criminal prosecution was time barred under Nicaragua's statute of limitations.

998. On the other hand, the Commission observes that in order to comply with the second recommendation, on June 7, 2007 the State and 113 victims signed an "Agreements and Commitments" (which another 20 workers later signed). In that agreement, Nicaragua pledged to pay the sum of 125 thousand *cordobas* to each of the 144 victims in this case, within a period of 5 years; to recognize contributions not drawn and contributed to the INSS for the 14 years not worked; and to make every effort possible to gradually rehire, somewhere in the public sector, those petitioners who were former Customs employees. On the other hand, the Commission understands that no agreement was reached with 6 of the petitioners.

999. On November 23, 2010, the Commission asked the State and the petitioners to submit updated information on the status of compliance with the recommendations.

1000. On November 30, 2011, the co-petitioners, CEJIL and CENIDH, stated that they had no observations regarding the information to be included in Chapter III of the Annual Report.

1001. On the other hand, during 2011 alleged representatives of the former customs employees submitted contrary views regarding compliance with the recommendation on reparations. Some indicated that compliance had been satisfactory and sought to have the case archived. In contrast, others questioned the representation of those who signed the agreement with the State and indicated they were not in agreement with the compensatory amount established in the agreement.

1002. The IACHR takes note of the agreement signed between the State and most of the victims in 2007 and again urges the State to submit the parameters that were used as the basis for the compensation figures in that agreement. Regarding the investigation to determine the criminal responsibility of all the perpetrators of the offenses against the victims, the IACHR again reminds the State of its obligation to investigate and sanction those who prove to be responsible for human rights violations.

1003. Based on the above, the IACHR concludes that the State has partially complied with its recommendations. As a result, it will continue to monitor the pending items.

Case 11.506, Report No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor Dos Santos (Paraguay)

1004. In Report No. 77/02 of December 27, 2002, the Commission concluded that the Paraguayan State: (a) had violated, with respect to Waldemar Gerónimo Pinheiro and José Víctor Dos Santos, the rights to personal liberty and judicial guarantees, enshrined at Articles 7 and 8 of the American Convention, with respect to the facts subsequent to August 24, 1989; and (b) had violated, with respect to Waldemar Gerónimo Pinheiro and José Víctor Dos Santos, the rights of protection from arbitrary arrest and to due process established by Articles XXV and XXVI of the American Declaration on the Rights and Duties of Man for the events that occurred prior to August 24, 1989.

1005. The IACHR made the following recommendations to the State:

1. Make full reparation to Mr. Waldemar Gerónimo Pinheiro, which includes appropriate compensation.
2. Make full reparation to Mr. José Víctor Dos Santos, which includes appropriate compensation.
3. Such reparation should be commensurate with the harm done, which implies that compensation should be greater for Mr. José Víctor Dos Santos, given that he spent eight years in prison, with no legal justification for his detention.
4. Order an investigation to determine who was responsible for the violations ascertained by the Commission and punish them.
5. Take the necessary steps to prevent such violations from recurring.

1006. In 2010, the Commission requested updated information from the parties. In a note dated November 22, 2010, the State requested a two-month extension to answer the request for information concerning compliance with the recommendations, in part because it did not know where the petitioners were. By the completion of this Annual Report, the parties had not presented any information regarding compliance with the Commission's recommendations.

1007. Because of this, the Commission concludes that compliance with the recommendations continues to be pending. As a result, the Commission shall continue to monitor its compliance.

Case 11.607, Report No. 85/09, Víctor Hugo Maciel (Paraguay)

1008. In Report No. 85/09 of August 6, 2009, the Commission concluded that the Paraguayan State had violated the right to personal liberty, the right to humane treatment, the right to life, children's right to special measures of protection, the right to judicial protection and the right to judicial guarantees, recognized, respectively in articles 7, 5, 4, 19, 25 and 8 of the American Convention. Summarizing, they alleged that Víctor Hugo Maciel, a child 15 years of age, was recruited on August 6, 1995, to perform Compulsory Military Service (SMO) in the Paraguayan Army, even though his parents expressly objected; he died on October 2, 1995, as a result of excessive physical exertion, known in Paraguay as "flaying", a punishment for a mistake made during the so-called "closed drill." The petitioners stated that Maciel, a minor, was suffering from Chagas disease in its chronic stage, the most evident symptoms of which are heart irregularities. The petitioners alleged that a summary inquiry was launched in the military courts, and the case was dismissed on December 4, 1995. Another inquiry was underway in the regular court system, because of the media attention that the case had received and the interest shown by members of the Senate Human Rights Commission. Even so, that inquiry did not move forward.

1009. On March 8, 2005, the Inter-American Commission on Human Rights adopted Report No. 34/05, pursuant to Article 50 of the American Convention. The Paraguayan State was notified on April 20, 2005, and given two months to comply with the recommendations. In a communication dated June 17, 2005, the State requested that the time period established in Article 51(1) of the American Convention be suspended and formally requested the possibility of seeking a compliance agreement with the petitioners based on its acknowledgment of its international responsibility for the facts that gave rise to this case, which was accepted by the petitioners. On March 22, 2006, the petitioners and the State signed a friendly settlement agreement.

1010. In Report No. 85/09, the Commission concluded that despite the substantial progress made to comply with the March 22, 2006 Compliance Agreement, the State had only partially complied with the recommendation made by the IACHR in Report No. 34/05 concerning the State's obligation to investigate the facts denounced. The Commission therefore recommended to the Paraguayan State the following:

1. That it complete a full, fair and effective investigation of the facts of this case for the purpose of trying and punishing the material and intellectual authors of the human rights violations committed to the detriment of Víctor Hugo Maciel Alcaraz.

1011. In 2010, the Commission asked the parties to provide updated information on the status of compliance with this recommendation. In a note dated December 29, 2010, the State reported that the case titled "Complaint entered by the Attorney General of the State in connection with the Death of Conscript Víctor Hugo Maciel Alcaraz. Case No. 397/95" was with Examining and Sentencing Court No. 3, awaiting the testimony of four witnesses, as well other evidence.

1012. For their part, in a communication dated December 21, 2010, the petitioners asserted that the State had not taken any steps to conduct a useful investigation to determine the identity of those responsible for the events that resulted in Víctor Hugo Maciel's death. It had thus failed to comply with the Commission's recommendation. The petitioners pointed out that four years had passed since the summary proceeding was reopened, yet the procedures and proceedings had been inadequate, barely functional and without any strategic direction encompassing every aspect of the case.

1013. On October 25, 2011, the Commission requested updated information from the parties. In a communication dated November 21, 2011, the petitioners reported that no progress had been made in the judicial investigation since December 2010. In their view, in the five years since the reopening of the pre-trial investigation, the judicial proceedings have been inadequate and ineffectual and have lacked a strategic focus encompassing all aspects of the case.

1014. Based on the information supplied by the parties, the Commission observes that its recommendation regarding investigation, prosecution and punishment of the human rights violations committed against Víctor Hugo Maciel has not yet been complied with. The Commission therefore

concludes that the Compliance Agreement that the parties signed on March 22, 2006, has been only partially carried out.

Case 11.031, Report No. 111/00, Pedro Pablo López González et al. (Peru), and Case 10.247 et al., Report No. 101/01, Luis Miguel Pasache Vidal et al. (Peru)

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

1015. In Report No. 111/00 of December 4, 2000, the IACHR concluded that the Peruvian State: (a) through members of the National Police and the Navy of Peru detained Messrs. Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez, and Carlos Martín and Jorge Luis Tarazona More on May 2, 1992, in the human settlements of “La Huaca,” “Javier Heraud,” and “San Carlos,” located in the district and province of Santa, department of Ancash, and that subsequently it proceeded to disappear them; (b) that accordingly it was responsible for the forced disappearance of the victims identified above, thereby violating the right to liberty (Article 7), the right to humane treatment (Article 5), the right to life (Article 4), the right to juridical personality (Article 3), and the right to an effective judicial remedy (Article 25) enshrined in the American Convention on Human Rights; and (c) that it had breached the general obligation to respect and ensure these rights enshrined in the Convention, in the terms of Article 1(1) of that Convention.

1016. The Commission made the following recommendations to the Peruvian State:

1. That it carry out an exhaustive, impartial, and effective investigation to determine the circumstances of the forced disappearance of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More, and that it punish the persons responsible, in keeping with Peruvian legislation.
2. That it void any domestic measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the detention and forced disappearance of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More. Accordingly, the State should nullify Laws 26.479 and 26.492.
3. That it adopt the measures required for the family members of Pedro Pablo López González, Denis Atilio Castillo Chávez, Gilmer Ramiro León Velásquez, Jesús Manfredo Noriega Ríos, Roberto and Carlos Alberto Barrientos Velásquez and Carlos Martín and Jorge Luis Tarazona More to receive adequate and timely reparation for the violations established.

1017. On November 11, 2010, the Commission requested up-to-date information from the parties regarding the progress made on implementation of the above-mentioned recommendations. The State did not submit a reply within the established time period.

1018. In a communication received on December 10, 2010, the petitioners reported that on October 1, 2010, the First Special Criminal Chamber convicted former members of law enforcement and high-ranking government officials under the government of then President Alberto Fujimori, who were convicted of the aggravated homicide of Pedro Pablo López Gonzales, Jesús Manfredo Noriega Ríos, Carlos Martín Tarazona More, Jorge Luis Tarazona More, Roberto Barrientos Velásquez, Carlos Alberto Barrientos Velásquez, Gilmar León Velásquez, Denis Atilio Castillo Chávez and Federico Coquis Vásquez. The petitioners added that the judges in that Criminal Chamber ordered the condemned persons and the State, as a third party that bore civil liability, to pay reparations and pay for medical-psychological treatment and other forms of compensation for the pecuniary and non-pecuniary damages sustained by the victims’ next of kin. The petitioners indicated that the defense counsel filed an appeal to have the verdict vacated; the Supreme Court’s decision on that appeal is still pending.

1019. The petitioners asserted that the Peruvian State had not taken the measures necessary to determine the whereabouts and hand over the remains of the nine disappeared farm workers in the district of El Santa. As for the second recommendation in Report No. 111/00, the petitioners asserted that while Peru's Judicial Branch has repealed Laws Nos. 26479 and 26492, the Executive Branch has pressed for legislative measures which, if they took effect, would obstruct the investigation into serious human rights violations committed during the internal armed conflict.

1020. In a communication dated October 21, 2011, the IACHR asked the parties for information on the status of compliance with the recommendations made in Report No. 111/00 and Report No. 101/01. The parties have not submitted updated information within the time period set by the IACHR. Nonetheless and given that recommendation 3 of Report Nos. 111/00 and 101/01 are included in subparagraphs c) and d) of the joint press release signed by the IACHR and the Peruvian State on February 22, 2001, on which the parties have submitted information during 2011, and the IACHR convened two working meetings during its 141st and 143rd regular sessions, the IACHR will combine its comments on compliance with this recommendation.

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

1021. In Report No. 101/01 of October 11, 2001, the IACHR concluded that the Peruvian State was responsible for: (a) violation of the right to life and to judicial guarantees and judicial protection enshrined at Articles 4, 8, and 25 of the American Convention; (b) the violation of the right to personal liberty established in Article 7 of the American Convention; (c) the violation of the right to humane treatment enshrined in Article 5 of the American Convention, and of its duty to prevent and punish torture established in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; (d) the violation of the right to recognition of juridical personality enshrined in Article 3 of the Convention; and (e) the violation of the rights of the child established at Article 19 of the American Convention. All of these violations were found to the detriment of the persons indicated in the report.

1022. The Commission made the following recommendations to the Peruvian State:

1. Void any judicial decision, internal measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the summary executions and forced disappearance of the victims indicated at paragraph 252. In this regard, the State should also repeal Laws No. 26,479 and 26,492.
2. Carry out a complete, impartial, and effective investigation to determine the circumstances of the extrajudicial executions and forced disappearances of the victims and to punish the persons responsible pursuant to Peruvian legislation.
3. Adopt the measures necessary for the victim's families to receive adequate and timely compensation for the violations established herein.
4. Accede to the Inter-American Convention on Forced Disappearance of Persons.

1023. On November 10, 2009, the Commission requested updated information from the parties concerning the implementation of the above-mentioned recommendations. The State did not reply to that request for information within the stipulated time period.

1024. On November 11, 2010, the IACHR again requested information from the parties. The *Asociación Pro Derechos Humanos* (APRODEH) submitted observations on the criminal investigations in connection with the victims covered in cases 10,247, 11,501, 11,680 and 11,132. The other petitioners and the Peruvian State did not present observations.

1025. Concerning case 10,247, APRODEH asserted that in May 2008 criminal proceedings were undertaken against Jesús Miguel Ríos Sáenz, Walter Elias Lauri Morales or Walter Elias Ruiz Miyasato and Máximo Augusto Agustín Mantilla Campos, for the kidnapping and aggravated homicide of Luis Miguel Pasache Vidal. According to what was reported, the examining phase has ended and the

decision of the Superior Prosecutor is pending. As for case 11,501, APRODEH reported that on June 2, 2010, the National Criminal Chamber delivered a verdict of acquittal in favor of Santiago Enrique Martín Rivas and reserved judgment with respect to Eudes Najarro Gamboa until he is found. These individuals were tried for the aggravated homicide of Adrián Medina Puma. According to what was reported, the Public Prosecutor's Office filed an appeal to challenge the June 2, 2010 verdict of the National Criminal Chamber.

1026. In case 11,680, APRODEH reported that on January 31, 2008, defendant José Alberto Delgado Bejarano was acquitted of the aggravated homicide of Moisés Carbajal Quispe, and that the verdict was upheld by the Transitory Criminal Chamber of the Supreme Court. As for case 11,132, it reported that the forced disappearance of Edith Galván Montero was still being investigated by the Fourth Supra-provincial Criminal Prosecutor's Office.

1027. The IACHR has not received updated information on compliance with the second recommendation made in report 10/01 with respect to the following cases covered therein – 10.472, 10.805, 10.913, 10.947, 10.944, 11.035, 11.057, 11.065, 11.088, 11.161, 11.292, 10.564, 10.744, 11.040, 11.126, 11.179, 10.431, 10.523, 11.064 and 11.200.

1028. Regarding the first recommendation of report 101/01, APRODEH expressed that even though the Judicial Branch of Peru has declared that Laws No. 26479 and 26492 have no effect, the Executive Branch has promoted legislative measures that would hinder the investigation of serious violations of human Rights perpetrated during the internal armed conflict.

1029. Regarding the third recommendation, the Commission notes that the cases referred to in Report Nos. 111/00 and 101/01 are included in sections c) and d) of the joint press release that the Commission and the Peruvian State signed on February 22, 2001, in which Peru undertook a formal commitment to find comprehensive solutions to the recommendations issued by the Commission on the more than 100 final merits reports adopted pursuant to articles 50 and 51 of the American Convention on Human Rights.⁶⁴

1030. The petitioners observed during 2010 that despite the obligations undertaken in that joint press release and the provisions of Law No. 28592 "Law on the Comprehensive Reparations Plan," thus far no reparations had been paid. They observed that while Supreme Decree No. 005-2002-JUS of April 2003 regulated some forms of non-monetary reparations in the area of housing, education and health, the Peruvian State had not even identified the plot of land that could be given to the next of kin of the victims in cases 10.805, 10.913, 11.035, 11.605, 11.680, 10.564, 11.162, 11.179 and 10.523.

1031. The petitioners indicated that back in 2003, the Ministry of Justice granted a plot of land in the Huachipa sector, in the district of Lurigancho, province and department of Lima, to be turned over to 200 victims or their next of kin, in some of the cases mentioned in the February 22, 2001 joint press release. They include cases 10.247, 10.472, 10.878, 10.994, 11.051, 11.088, 11.161, 11.292, 10.744, 11.040, 11.126, 11.132, 10.431, 11.064 and 11.200, all of which are included under Report 101/01. They emphasized, however, that the Peruvian State had not taken steps to legalize occupation and property title to the lots on the land in question. They went on to point out that because of this, some beneficiaries had set up crude dwelling places that had no access to basic sanitation services; they lived under the constant threat of looting and third-party property takeovers.

1032. According to the petitioners, the Ministry of Justice has made final handover of the property conditional upon a risk evaluation, because an Army weapons factory adjacent to the property has resumed operations. However, they observed that in Memorandum No. 709-2010-MML/SGDC, the Office of the Deputy Manager of Civil Defense of the Lima Metropolitan Municipality reported that the Huachipa property is approved for housing construction, and there should be no impediment to giving the 200 beneficiaries title to the lots.

⁶⁴ See <http://www.cidh.oas.org/Comunicados/English/2001/Peru.htm>.

1033. Finally, with regard to the fourth recommendation in Report 101/01, the Inter-American Convention on Forced Disappearance of Persons was ratified on February 8, 2002, and entered into force in Peru on February 13 of that same year.

1034. During 2011, the State submitted information regarding the measures adopted in the areas of housing, education, and health. Regarding the housing reparations, the State indicated that Supreme Decree No. 014-2006-JUS authorized the Ministry of Justice to take the actions needed to effect the transfer free of charge of 50% of the land called Sublot No. 01, located on Central Avenue, town of Huachipa, district of Lurigancho, province and department of Lima. The State indicated that at the meeting held during the 141st Regular Session of the IACHR, commitments were made to: 1) approve without further delay the Supreme Decree transferring ownership of the plots of land in Huachipa to the 200 victims benefiting from this measure; 2) report to the Commission within a period of two months on the measures that the State takes to identify possible lands for housing reparations with respect to the other 307 victims who have not been served. It also reported that on April 5, 2011, the Ministry of Justice submitted information regarding the transfer of ownership of Lot 1-B as well as the need to resolve some unexpected developments.

1035. Regarding the reparations in terms of education, the State reported that Supreme Decree No. 038-2002-ED of November 13, 2002 ordered exempting the victims or relatives included in Supreme Decree No. 005-2002-JUS from the entry examination for public Higher Education Institutes in Technology, Teaching, and the Arts at the national level, provided they have certificates indicating completion of Secondary Education. In addition, the State indicated that during the working meeting held during the 141st Regular Session of the IACHR a commitment was made to introduce the educational points agreed to in Supreme Decree No. 005-2002-JUS, regarding the reparations program, and that they are designed: 1) to extend the status of beneficiary in education to the children of the victims who have died or disappeared, and the children resulting from rape, who did not necessarily interrupt their studies as a result of the violence; and 2) to establish as components of the program: vacancy set-asides, decentralized scholarship program, special ongoing training program, and refresher plan for promoting inclusion in the workforce and development of business skills. In this respect, the State reported that it will provide public universities and higher technology and teaching institutes with the database of the Single Registry of Victims and the list of cases included in the Joint Communiqué of February 22, 2001.

1036. Regarding reparations in the area of health, the State reported that Administrative Resolution No. 082-2003/SIS incorporated the victims of human rights violations and their relatives as recognized by the IACHR in the Integrated Health System (SIS). It indicated that to date the Ministry of Health reports a total of 191 beneficiaries enrolled in the SIS and 68 beneficiaries enrolled with some other type of insurance. It stated that the Memorandum of Understanding of March 29, 2011, signed during the 141st regular session of the IACHR, agreed that the State, through the Ministry of Health, will issue a letter within no more than two months certifying lifetime affiliation with the SIS for each of the beneficiaries, to ensure that the beneficiaries do not encounter any obstacles when proving their affiliation with the SIS.

1037. In a communication dated November 22, 2011, the petitioners reported that although they acknowledge some progress made regarding the commitments assumed by the State in the Memorandum of Understanding signed during the 141st Regular Session of the IACHR, they are deeply concerned that so far the State has not implemented the previously announced measures regarding reparations in terms of housing, as well as some aspects concerning economic reparations in the area of health and education.

1038. The Commission appreciates the measures adopted by the State to comply with the recommendations made in Report Nos. 111/00 and N° 101/01. At the same time, it notes that there are measures that are pending compliance. Based on the above, the Commission concludes that there has been partial compliance with the recommendations, so that it will continue to monitor the pending items.

1039. In Report No. 112/00 of December 4, 2000, the IACHR concluded that the Peruvian State: (a) through members of the National Police detained Mr. Yone Cruz Ocalio on February 24, 1991, at the agricultural station of Tulumayo, Aucayacu, province of Leoncio Prado, department of Huánuco, Peru, from where they were taken to the Military Base of Tulumayo, and subsequently proceeded to disappear him; (b) that as a consequence it was responsible for the forced disappearance of Mr. Yone Cruz Ocalio; (c) that it therefore violated the right to liberty (Article 7), the right to humane treatment (Article 5), the right to life (Article 4), the right to juridical personality (Article 3), and the right to an effective judicial remedy (Article 25) enshrined in the American Convention on Human Rights; and (d) that it breached its general obligation to respect and ensure these rights enshrined in the Convention, in the terms of Article 1(1) of that instrument.

1040. The Commission made the following recommendations to the State:

1. That it carry out an exhaustive, impartial, and effective investigation to determine the circumstances of the forced disappearance of Mr. Yone Cruz Ocalio, and that it punish the persons responsible, in keeping with Peruvian legislation.
2. That it void any domestic measure, legislative or otherwise, that tends to impede the investigation, prosecution, and punishment of the persons responsible for the detention and forced disappearance of Mr. Yone Cruz Ocalio. Accordingly, the State should nullify Laws 26.479 and 26.492.
3. That it adopt the measures required for the family members of Mr. Yone Cruz Ocalio to receive adequate and timely reparation for the violations established herein.

1041. By communication of October 31, 2008, the IACHR asked both parties to provide up-to-date information on implementation of the above-noted recommendations. The IACHR did not receive any response from the petitioners within the time set.

1042. The State, by communication of December 5, 2008, reported, regarding the investigation into the facts, that by resolution of October 25, 2002, the Specialized Prosecutor on Forced Disappearances, Extrajudicial Executions, and Exhumation of Clandestine Mass Graves ruled to remove to the Mixed Provincial Prosecutor's Office of Aucayacu the matters in the records that include, as persons injured, Yone Cruz Ocalio, among others. It indicated that by Resolution of the Mixed Provincial Prosecutor's Office of Leoncio Prado-Aucayacu of August 9, 2004, the Prosecutor considered that it was pertinent to gather more information regarding the alleged commission of the crime of kidnapping of Mr. Cruz Ocalio and ruled to "expand the prosecutorial investigation and that consequently the matter is forwarded to the local Police Station of the Peruvian National Police to perform the following investigative steps: first, that it take a statement from the injured party; second, that it take the statement from the person investigated ... with respect to his alleged participation in the facts investigated; and that other investigative steps be taken as deemed useful for clarifying the facts."

1043. Concerning the second recommendation, the Peruvian State has repeatedly observed that its institutions have a practice, based on the judgment of the Inter-American Court of Human Rights in the *Barrios Altos Case*, which is that amnesties cannot be invoked as grounds for contesting investigations undertaken to identify and punish those responsible for human rights violations.

1044. On November 10, 2009, November 11, 2010, and October 21, 2011 the Commission requested updated information from the parties concerning the progress made with implementation of the recommendations. The parties did not submit observations on the matter.

1045. The Commission therefore concludes that the State has only partially complied with the recommendations contained in the report and will continue to monitor for compliance with the pending items.

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

1046. On October 10, 2003, by Report No. 71/03, the Commission approved a friendly settlement agreement in the case of María Mamérita Mestanza.

1047. According to the friendly settlement agreement, the State:

1. Recognized its international responsibility for the violation of Articles 1.1, 4, 5, and 24 of the American Convention on Human Rights, as well as Article 7 of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women in the harm done to victim María Mamérita Mestanza Chávez.
2. Promised to undertake a thorough investigation of the facts and apply legal punishments to any person determined to have participated in them, as either planner, perpetrator, accessory, or in other capacity, even if they be civilian or military officials or employees of the government. Report any ethical violations to the appropriate professional association so that it can apply sanctions to the medical personnel involved in these acts, as provided in its statutes.
3. Awarded one-time compensation to each of the beneficiaries of ten thousand U.S. dollars (\$10,000.00) for reparation of moral injury, which totals eighty thousand U.S. dollars (\$80,000.00); and pledge to compensate other damages as established in the agreement.
4. Awarded a one-time payment to the beneficiaries of seven thousand U.S. dollars (\$7,000.00) for psychological rehabilitation treatment they require as a result of the death of María Mamérita Mestanza Chávez, and to give the husband and children of María Mamérita Mestanza Chávez permanent health insurance with the Ministry of Health or other competent entity.
5. Pledged to give the victim's children free primary and secondary education in public schools. The victim's children will receive tuition-free university education for a single degree at state schools, provided they qualify for admission.
6. Awarded an additional payment of twenty thousand U.S. dollars (\$20,000.00) to Mr. Jacinto Salazar Suárez to buy land or a house in the name of the children he had with Ms. María Mamérita Mestanza.
7. Pledged to change laws and public policies on reproductive health and family planning, eliminating any discriminatory approach and respecting women's autonomy. The Peruvian State also promises to adopt and implement recommendations made by the Ombudsman concerning public policies on reproductive health and family planning, among which are those listed in the agreement.

1048. By communication of November 3, 2008, the IACHR asked both parties to submit up-to-date information on the implementation of the above-noted recommendations.

1049. The State reported that the Permanent Commission on disciplinary measures of the Regional Bureau of Cajamarca, on January 9, 2001, had established that two physicians were disqualified and that on January 18, 2001, one physician-obstetrician, two obstetricians, and one nurse were acquitted.

1050. With respect to the compensations, the State reported that it paid US\$ 10,000 in moral damages to each of the eight beneficiaries – the husband of Ms. Mamérita Mestanza and their seven children; that it paid US\$ 2,000 as actual damages for each beneficiary, and that a trust fund had been set up for this purpose of the child beneficiaries. In addition, it is indicated that US\$ 20,000 was handed over to Ms. Mamérita Mestanza's husband to purchase a plot of land or house in his children's name. It is indicated that the purchase of a piece of land was shown.

1051. In addition, the State presented information on implementation of the eleventh clause of the friendly settlement agreement with regard to public policies on reproductive health and family planning. On this occasion, the State reported that in July 2004 the National Health Strategy for Sexual and Reproductive Health was established; that the technical standard for family planning was updated

that indicates that any complication attributable to and verified to result from the use of contraceptives provided by the establishments of the Ministry of Health should be reported as soon as it is detected, and that all deaths and grave medical problems attributable directly to the use of contraceptive methods will be investigated to determine their causes; that in the context of the Health Strategy for Sexual and Reproductive Health workshops were programmed for professionals involved in reproductive health care for updating on contraceptive methods; that a total of 565 obstetricians, 30 physician obstetricians, 46 general physicians, and five nurses were trained; that educational materials on sexual and reproductive health have been given to the health services of the regions, nationwide; that in 2006, a series of workshops was scheduled on managing gender-based violence, directed to physicians, psychologists, and obstetricians from different regions of the country; that meetings were held to raise awareness for 410 members of the National Police of Lima, and for 69 members of the police forces in Arequipa, La Libertad, and Ucayali; that a Diploma Program on Violence was carried out; that it was established that in cases of voluntary contraception the period of reflection will be 72 hours, and that state institutions and NGOs should exercise citizen oversight of the family planning services, among others. Training was provided for health professionals and education programs were conducted on violence and sexual and reproductive health.

1052. The petitioner also reported that the State has been making payment of monetary reparations to the victim's family to pay the amount for purchasing a plot of land. As regards the health benefits, they reported that the State had made payment of the sum of US\$ 7,000 for the psychological rehabilitation treatment, which was administered and monitored by DEMUS until it was concluded in March 2008, when the National Council on Human Rights was given a final report on its results.

1053. As for the educational benefits, the petitioners indicated that on February 28, 2007, at the request of the National Council on Human Rights, a report was submitted on the beneficiaries' educational requirements, which was reiterated and updated on March 5, 2008. The reports indicate that three of the beneficiaries have difficulties accessing secondary education due to the fact that there is no secondary school in their locality.

1054. With respect to legislative changes and changes in public policy, the petitioners make reference to the permanent training the State provided health personnel in reproductive rights, violence against women, and gender equity, indicating that they do not have information as to whether the State is actually carrying out those trainings.

1055. On November 4, 2009, in the framework of the Commission's 137th Regular Session, a working meeting was held, during which the petitioners reported that, on May 26, 2009, the District Attorney's Office decided to dismiss the investigation in the domestic jurisdiction on the basis of the statute of limitations for the crime of culpable homicide and the absence of a criminal category for the crime of coercion.

1056. After the working meeting, the Chair of the Commission and Rapporteur for the Rights of Women sent the State a communication requesting information from the Attorney General's Office about the unit of this institution in charge of the case of Ms. Mestanza; the measures adopted for allocating the human and financial resources needed to guarantee due investigation of the facts; as well as the measures available to fulfill the commitment to punish those responsible by means of the corresponding criminal, civil, administrative and disciplinary measures. It also requested the State to report on the real possibility of continuing the criminal investigation after the preliminary resolution to apply the statute of limitations for the crimes and on the status of the proceedings for the complaint filed, which is currently being processed against the resolution to dismiss the case on the basis of the statute of limitations and which is supported by the petitioners.

1057. On October 27, 2010, the Commission held a working meeting on this case during the course of its 140th regular session. There, the petitioners stated that although Mrs. Mamérita Mestanza's next of kin were enrolled in the Comprehensive Health Insurance Program (SIS), they continued to encounter financial obstacles and problems in getting actual access to health services. As for the State's commitment to provide education to the victim's children free of charge, the petitioners asked the

Peruvian State for details about the measures that the authorities of the Ministry of Education were taking to enable those children to pursue their elementary, secondary and higher education on a regular basis. They pointed out that young Napoleón Salazar Mestanza completed elementary school over five years ago but has been unable to enroll in secondary education because there is no secondary school where he lives.

1058. As for the commitment to adopt measures to prevent a recurrence of similar events, the petitioners maintained that Peru's criminal laws had not yet been amended to specifically criminalize forced sterilization. They also alleged that Peru needed to adapt its Penal Code to the Statute of the International Criminal Court so that events such as those that claimed María Mamérita Mestanza and thousands of other Peruvians as victims could be classified as crimes against humanity.

1059. The petitioners expressed great concern over the fact that the Peruvian Public Prosecutor's Office had declared that the criminal prosecution of the forced sterilization of María Mamérita Mestanza was now definitively time barred by the statute of limitations.

1060. Subsequent to the working meeting the Commissioner Rapporteur on the Rights of Women sent a letter to the Peruvian State in which she expressed "her deep concern over noncompliance with the third clause of the agreement, which establishes the State's commitment to conduct an exhaustive investigation of the facts and apply the penalties that the law requires to any person who had a hand in these events..." The Commission underscored the fact that "under the American Convention and other inter-American instruments like the Convention of Belém do Pará, member states are obligated to investigate, prosecute and punish any and all violations of women's rights and ensure that they do not recur."

1061. On November 11, 2010, the IACHR requested updated information on the progress made toward compliance with the friendly settlement agreement approved through Report No. 71/03. In response, the petitioners repeated the information they provided during the working meeting held on October 27, 2010. The Peruvian State did not submit observations within the stipulated time period.

1062. During the course of 2011, the State indicated that it had complied with clauses in the agreement with regard to compensation of the relatives of Mrs. Mamérita Mestanza, health benefits and education benefits. It noted that all the beneficiaries are permanently affiliated with the Integrated Health System (SIS), which is subsidized by the State. Regarding educational benefits, it stated that the beneficiaries have access to public educational facilities in the locality where they live.

1063. On October 26, 2011, the IACHR held a working meeting within the framework of its 143rd Session. At that time, the Peruvian State reported that on October 21, 2011 the Office of the Public Prosecutor ordered the reopening of the investigation regarding the forced sterilization of María Mamérita Mestanza and thousands of other women during the second half of the 1990s. Upon the conclusion of the 143rd Session, the IACHR welcomed the decision of the Prosecutor's Office and indicated that it represents an initial and important step in "the State's commitment to carry out a thorough investigation of the facts and apply legal sanctions against those who were responsible, including public officials."

1064. On October 21, 2011, the IACHR asked the parties for information on progress made in terms of compliance with the commitments assumed by the Peruvian State. The petitioners did not submit information within the time period allowed by the IACHR. The State reiterated the information submitted during the last working meeting. It emphasized that in ordering the reopening of the criminal investigations, the Office of the Public Prosecutor emphasized that the previous decisions to archive the matter do not have the effect of *res judicata* and that they have considered the facts under investigation as common crimes and not as offenses linked to cases of human rights violations.

1065. Regarding economic reparations, the State indicated that there has been full compliance with the payment of benefits for moral damages, emerging damage, psychological rehabilitation, and land or housing, for a total amount of US\$109,000. Regarding health benefits, it reiterated that all the beneficiaries are permanently affiliated with the Integrated Health System. Regarding education benefits,

it noted that an intra-sectoral commission of the Ministry of Education has initiated actions to identify the needs of each of the seven children of María Mamérita Mestanza.

1066. Based on the information provided, the Commission concludes that Peru has partially complied with the friendly settlement agreement. Accordingly, the Commission will continue to monitor the pending points.

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

1067. On March 11, 2004, by Report No. 31/04, the Commission approved a friendly settlement agreement in the case of Ricardo Semoza Di Carlo.

1068. According to the friendly settlement agreement, the State:

1. Acknowledged its responsibility for violation of Articles 1(1) and 25 of the American Convention on Human Rights, to the detriment of Ricardo Semoza di Carlo.
2. Granted the following benefits to the petitioner as compensation: a) recognition of the time that he was arbitrarily separated from the institution; b) immediate reinstatement in the Superior School of the National Police of Peru (ESUPOL); c) regularization of pension rights, as of the date of his reinstatement, taking into account the new calculation of his time in service; d) refund of the officers' retirement insurance (FOSEROF, AMOF etc.); and e) a public ceremony will be held.
3. Pledged to undertake an exhaustive investigation of the facts and will prosecute any person found to have participated in the deeds of this case, for which an Ad Hoc Commission will be established by the Office of International Affairs and the Legal Advisory Services of the Ministry of the Interior.

1069. By communication received on December 13, 2007, the petitioner reported that even though the State recognized the time of service during which he was separated from active duty as "real, effective, and uninterrupted," a series of benefits that derive from that recognition have yet to be implemented. Specifically, Mr. Semoza Di Carlo indicated on that occasion that repayment for fuel has not been made; with the regularization of his pension payments; with the regularization of his contributions to the Officers Retirement Insurance Fund; with the holding of the ceremony of reparation; and with the investigation and punishment of the persons responsible for failure to carry out the judicial orders handed down to protect his rights that had been violated. Finally, the petitioner mentioned that the failure to carry out the agreement in those respects indicated have caused moral injury to him personally and to his family, as well as actual damages and lost profit.

1070. On November 10, 2009, the Commission requested both parties to provide updated information on the progress in fulfilling the commitments made by the State as a result of the friendly settlement agreement. At the time of the drafting of the present chapter, the petitioner had not responded to the request for information. The petitioner did not submit observations at that time.

1071. The State, by means of note 7-5-M/828 received on December 14, 2009, pointed out that, as a result of Directorate Resolution No. 735-2006-DIRREHUM-PNP of January 20, 2006, Major Semoza's real and effective time of service in the Police Force was recognized and, as a result, his renewable retirement pay equivalent to the rank immediately above his own was granted; as of October 2005 the victim was granted a nonpensionable fuel subsidy; and, on February 8, 2006, the Commissioner of Surquillo ordered that the petitioner be notified to schedule the ceremony of public apologies, which according to the State the petitioner refused.

1072. On November 11, 2010, the IACHR again requested updated information from the parties concerning progress made toward compliance with the commitments undertaken by the State in the friendly settlement agreement.

1073. In a note received on December 10, 2010, the State again reported that the Peruvian National Police has already regularized the pension rights and granted Mr. Semoza Di Carlo a renewable pension; he was also reinstated at the National Police School of Advanced Studies. It has been unable to comply with its commitment to stage a public ceremony to make apologies because the petitioner is not interested, despite the invitations sent by the appropriate office of Peru's National Police. As for the other commitments, the State observed that it will send additional information to the Commission as soon as possible.

1074. The petitioner did not answer the Commission's November 11, 2010 request for updated information.

1075. Over the course of 2011, the State indicated that the General Director of the Ministry of the Interior's Office of Internal [sic] Affairs issued Ministerial Resolution No. 0217-2010-IN, dated March 9, 2010, setting up the Ad Hoc Commission charged with identifying and establishing the responsibilities of the officials who failed to enforce the judicial mandate in favor of Mr. Ricardo Semoza Di Carlo on a timely basis. It noted that in a resolution dated January 15, 2004 the National Police of Peru assigned a vacancy to Major Ricardo Semoza Di Carlo as a participant in a master's and social sciences program for academic year 2004. It added that on February 25, 2005 he was granted a diploma as a Staff Officer after having completed that program satisfactorily. Based on that information, the State maintained that it has complied with the friendly settlement agreement with respect to immediate reinstatement to the Superior School of the National Police of Peru.

1076. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. Peru did not submit comments within the stipulated time period. The petitioner maintained that the State has not paid him a total amount of 92,000 new soles to restore various benefits and that it has not held a public apology ceremony or punished those responsible for the violation of his rights.

1077. The Commission does not have sufficient information to conclude that the State has fully complied with the recommendations contained in the friendly settlement agreement and will continue to monitor the pending items.

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

1078. On December 28, 2005, by Report No. 107/05, the Commission approved a friendly settlement agreement in the petition regarding Roger Herminio Salas Gamboa.

1079. According to the friendly settlement agreement, the State:

1. Considers that it is lawful, and an obligation of the State, for the National Council of the Judiciary to reinstate the title of full member of the Supreme Court of Justice of the Republic for Mr. Róger Herminio Salas Gamboa, so that he may resume his duties.
2. Pledged to recognize the time not worked for the purposes of the calculating the labor benefits that he stopped receiving.
3. Recognized the petitioner's right to the payment of comprehensive compensation.
4. Pledges to hold a Ceremony to Restore Reputation for Mr. Róger Herminio Salas Gamboa within three months of the signing of this Agreement.

1080. By communication of November 3, 2008, the IACHR asked both parties to submit up-to-date information on implementation of the above-noted friendly settlement agreement.

1081. By communication of December 4, 2008, the State reported that on December 16, 2005, the then-minister of justice, Alejandro Tudela, signed, with Mr. Roger Herminio Salas Gamboa, a friendly settlement agreement, and that on that same occasion Mr. Salas Gamboa publicly apologized. With respect to regaining the title as member of the Supreme Court, it was indicated that on January 15, 2006, National Judicial Council resolution No. 021-2006-CNM, by which the title of full member of the Supreme Court of Justice of the Republic was being restored to Mr. Gamboa, was published in the official gazette. In addition, it noted that on January 5, 2006, Dr. Salas Gamboa was paid the sum of S/68.440.00 (new soles, national currency) as economic reparation. Finally, the State reported that in April 2008 the petitioner had stepped down as a member of the Supreme Court and asked that this case be archived.

1082. The petitioner, for his part, indicated that despite the time elapsed, the State still owned him a sum of money as a result of the friendly settlement agreement that was signed.

1083. In 2009, on repeated occasions, the petitioner reported to the Commission that the Peruvian State had failed to comply with pending aspects of the friendly settlement agreement.

1084. On November 11, 2010, the IACHR requested information from both parties concerning the progress made toward compliance with the commitments undertaken by the Peruvian State. In a note received on December 6, 2010, the petitioner asserted that the Peruvian Government had not fully complied with points 3 and 4 of the friendly settlement agreement. The State did not reply to the Commission's request for information.

1085. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. The State did not submit comments within the time period stipulated by the IACHR. The petitioners, through a communication dated November 27, 2011 as well as in notes received over the course of the year, indicated that the State has not completely paid the reparation for benefits he ceased to receive during the period during which he was separated from the Judicial Branch. On this subject, the IACHR notes that the fifth clause of the friendly settlement agreement signed by the parties establishes as follows:

For the purposes of monetary reparations, consisting of remuneration not received, operating expenses pending payment up until his actual restitution, and the amount of compensation, the parties, by mutual agreement, defer their payment pending the results of the initiatives being taken to that end vis-à-vis the Judicial Branch.

1086. Thus, the IACHR feels that the suggestions related to the payment of monetary compensation other than the fixed compensation amount established in the fourth clause of the Friendly Settlement Agreement⁶⁵ does not form part thereof. Accordingly, and without prejudice to any actions the petitioner may take before the Peruvian Judicial Branch, the IACHR will not monitor communications related to the payment of compensation and benefits not received.

1087. Finally, given that the Peruvian State has not submitted updated information, the Commission therefore concludes that the friendly settlement agreement has been partially carried out. Accordingly, the Commission will continue to monitor the pending points.

**Petition 711-01 *et al.*, Report No. 50/06, Miguel Grimaldo Castañeda Sánchez *et al.* (Peru);
Petition 33-03 *et al.*, Report No. 109/06, Héctor Núñez Julia *et al.* (Peru);
Petition 732-01 *et al.*, Report No. 20/07 Eulogio Miguel Melgarejo *et al.*;
Petition 758-01 *et al.*, Report No. 71/07
Hernán Atilio Aguirre Moreno *et al.*; Petition 494-04 (Peru)**

1088. On March 15, 2006, by Report No. 50/06, the Commission approved the terms of the friendly settlement agreements of December 22, 2005, January 6, 2006, and February 8, 2006 signed by the Peruvian State and a group of unratified judges, who were petitioners in petition No 711-01 and others. On October 21, 2006, by Report No. 109/06, the Commission approved the terms of the friendly settlement agreements of June 26 and July 24, 2006, signed by the Peruvian State and a group of unratified judges, petitioners in petition No. 33-03 and others. On March 9, 2007, by Report No. 20/07, the Commission approved the terms of the friendly settlement agreements of October 13 and November 23, 2006, signed by the Peruvian State and a group of unratified judges who were petitioners in petition No. 732-01 and others. On July 27, 2007, by Report No. 71/07, the Commission approved the terms of the friendly settlement agreement of January 7, 2007, signed by the Peruvian state and a group of unratified judges, petitioners in petition No. 758-01 and others. On March 13, 2008, by Report No. 71/07, the Commission approved the terms of the friendly settlement agreement of April 24, 2007, signed by the Peruvian State and one unratified judge, the petitioner in petition No. 494-04.

1089. According to the text of the friendly settlement agreements included in the above-mentioned reports, the State:

1. Pledged to restore the corresponding title and facilitate the reinstatement of the judicial officials.
2. Pledged to recognize the period of service not worked in calculating duration of service, retirement, and other applicable employment benefits under Peruvian law.

⁶⁵ Paragraph b) of that clause establishes as follows:

The Peruvian State recognizes the sum of US\$20,000.00 U.S. dollars [...] for moral injury [...]. Dr. Róger Herminio Salas Gamboa undertakes not to pursue any claim for moral injury, directly or indirectly. In addition, he agrees not to sue the Peruvian State for joint-and-several liability and/or a third party with civil liability, or on any other grounds.

3. Agreed to make compensation.
4. Will conduct a new evaluation and reconfirmation process under the purview of the National Council of the Magistracy for the judicial officials included in the instant agreement.
5. Pledged to hold a Public Reparations Ceremony for the reinstated judicial officials.

1090. By communication of December 18, 2008, the State reported that on December 9, 2008, a ceremony was held as a form of public reparation in the auditorium of the Ministry of Justice in honor of the 79 judges included in Reports Nos. 50/06 and 109/06, for the purpose of carrying out its international obligations acquired in the context of the inter-American system for the protection of human rights. In addition, the State noted that the ceremony included the presence of high-level state officials, such as the President of the Council of Ministers – in representation of the Peruvian President – the Minister of Justice, the President of the National Judicial Council, and the Executive Secretary of the National Council on Human Rights, among others; and with the presence of civil society and the group of 79 judges included in the reports of the IACHR referred to above.

1091. On November 10, 2009, the Commission requested the parties to provide updated information on the progress made in complying with the commitments made by the State by virtue of the friendly settlement agreements. At the time of the drafting of the present chapter, the State had not responded to this request for information.

1092. Some of the petitioners included in the reports that are the subject of the present section submitted information in response to the request made by the IACHR by means of a communication referred to in the preceding paragraph and also submitted information at their own initiative regarding this on different occasions in 2009. As a rule, the unratified judges included in the friendly settlement agreements pointed out the failure to totally comply with these agreements and requested the IACHR to repeat their request to the State to comply fully with the agreements that were signed.

1093. On October 27, 2010, the Commission held a working meeting during its 140th regular session, to examine compliance with the commitments undertaken by the Peruvian State in the friendly settlement agreements concerning unconfirmed magistrates. The party who requested the working meeting, Mr. Elmer Siclla Villafuerte, pointed out that while the Constitutional Tribunal had established certain requirements that the National Council of the Magistracy must observe, the mere existence of a confirmation system in Peru whose purpose was to neither discipline nor penalize, was incompatible with international and constitutional standards on the independence of the judicial branch. He also asserted that the confirmation proceeding was incompatible with the guarantees of due process, as the right to double review did not exist. Mr. Elmer Siclla emphasized the fact that the State had not paid the compensation for costs and expenses to all the magistrates who were reinstated and had not held a ceremony to make a public apology to all the victims.

1094. The State, for its part, reported that it had assigned the Ministry of Justice an amount of money to pay a portion of the five thousand dollars in compensatory damages ordered for each magistrate covered under the friendly settlement agreements approved by the Commission. It maintained that the current case law of the Constitutional Court guaranteed magistrates their right to due process and their right to challenge the decision of the National Council of the Magistracy in the event they were not confirmed.

1095. On November 11, 2010, the IACHR requested updated information on the progress toward compliance with the friendly settlement agreements approved through reports 50/06, 109/06, 20/07 and 71/07. As of the date of completion of this section, the parties had not submitted observations.

1096. Over the course of 2011 some petitioners reported that a group of judges had been reinstated to positions other than those they held at the time they were separated from the Office of the Attorney General or the Judicial Branch. They indicated that the State has still not held a public apology ceremony for all the judges who signed the friendly settlement agreements and payment is still pending with respect to the US\$5,000 amount of compensation.

1097. The Peruvian State indicated that it has fully complied with the clause in the friendly settlement agreement related to the restoration of titles and reinstatement of the judges. It added that a very small number of judges could not be reinstated because they had reached the judiciary's maximum age of 70 or because of personal reasons that prevented their reinstatement such as the decision to retire or to serve in an elective position. Peru asserted that it has paid the amount of US\$5,000 to a total of 79 judges and that another 97 judges have collected a portion of that amount. It added that the Ministry of Justice already has a Budget Heading transferred by the Special Fund for the Administration of Money Obtained Illicitly to the Detriment of the State (FEDADOI) that is intended for payment of the remaining amount.

1098. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. Most of the petitioners did not submit information within the time period stipulated by the IACHR.

1099. On October 26, 2011, a working meeting was held between the Peruvian State and the representative for petition 33-03, Mr. Elmer Siclla Villafuerte. At that time, the solicitor repeated the information provided at earlier meetings. The State, in turn, confirmed the information provided over the course of 2011, adding that the National Council of the Judiciary and the Ministers of Justice and Foreign Relations are coordinating on a date for holding a public ceremony to recognize the State's responsibility, according to the terms indicated in the friendly settlement agreements.

1100. Based on the information submitted by the parties, the IACHR concludes that the friendly settlement agreements included in the reports listed above have been partially carried out. Accordingly, it will continue to monitor the pending points.

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

1101. On March 13, 2008, by means of Report No. 20/08, the Commission approved a friendly settlement agreement in the request of Romeo Edgardo Vargas Romero.

1102. According to the friendly settlement agreement:

The National Judicial Council will restore his title within fifteen (15) days following the approval of the instant Friendly Settlement Agreement by the Inter-American Commission on Human Rights.

The Judiciary or the Office of the Attorney General, in the cases, respectively, of judges or prosecutors, will order the reinstatement of the judge to his original position within the fifteen days following restoration of his title. Should his original position not be available, at the judge's request, he shall be reinstated in a vacant position of the same level in the same Judicial District, or in another one. In this case, the judge will have the first option to return to his original position at the time a vacancy appears.

The Peruvian State undertakes the commitment to recognize as days of service the time spent removed from his position, counted from the date of the decision on non-confirmation, for purposes of calculating time served, retirement, and other work benefits granted by Peruvian law. Should it be necessary, in order to comply with this Friendly Settlement agreement, to relocate judges to another Judicial District, their years of work shall be recognized for all legal effects in their new seats.

The Peruvian State agrees to pay petitioners who abide by this Friendly Settlement a total indemnity of US\$5,000.00 (five thousand United States dollars), which includes expenses and costs related to national and international processing of his petition.

The representative of the Peruvian State undertakes the commitment to hold a ceremony of public apology in favor of the reinstated judges.

1103. On November 10, 2009, the Commission requested both parties to provide updated information on progress in the process of complying with the commitments made by the State by virtue of the friendly settlement agreement. At the time none of the parties responded to the request for information.

1104. On January 6, 2011, the Commission reiterated the request for updated information to the parties. The applicant did not submit observation.

1105. On February 3, 2011, the State attached the copy of resolution No. 133-2008-CNM, whereby the National Judicial Council (*Consejo Nacional de la Magistratura*) reinstated Mr. Romeo Edgardo Vargas' title as public prosecutor. Additionally, this resolution recalled the Attorney General to report on the reincorporation of Mr. Edgardo Vargas in his former position or any other equivalent to the title reinstated. The State did not indicate whether the reincorporation has been fulfilled by the Attorney General.

1106. The State pointed that on January 6, 2011, the Supranational Public Attorney (*Procuraduría Pública Especial Supranacional*) sent a request to the General Office of Administration at the Ministry of Justice in order to issue a check of US\$ 3,400 (three thousand and four hundred dollars) in favor of Mr. Edgardo Vargas. The State attached a copy of the receipt by the aforementioned general office.

1107. On October 21, 2011, the IACHR asked the parties for information on progress made in complying with the commitments assumed by the Peruvian State. Neither the petitioners nor the State submitted observations within the time period stipulated by the IACHR.

1108. In view of the foregoing, the IACHR concludes that the friendly settlement agreement has been implemented in part. Accordingly, the Commission will continue to monitor the items still pending compliance.

Case 12.269, Report No. 28/09, Dexter Lendore (Trinidad and Tobago)

1109. In Report No. 28/09 issued on March 20, 2009, the Inter-American Commission concluded that Trinidad and Tobago is responsible for violating Mr. Lendore's rights under Articles 8(1) and 8(2) of the American Convention, in conjunction with violations of Article 1(1) of that international instrument, due to its failure to provide him with the assistance of competent and effective counsel during his criminal proceedings; and that the State is also responsible for violating Mr. Lendore's rights under Articles 25 and 8 of the American Convention, in conjunction with violations of Article 1(1) of the American Convention, as well as violations of Articles XVIII and XXVI of the American Declaration, by failing to provide Mr. Lendore with effective access to a Constitutional Motion for the protection of his fundamental rights.

1110. On the basis of these conclusions, the IACHR recommended to Trinidad and Tobago that it:

1. Grant Mr. Lendore an effective remedy, which includes a re-trial in accordance with the due process protections prescribed under Article 8 of the American Convention or, where a re-trial in compliance with these protections is not possible, his release, and compensation.
2. Adopt such legislative or other measures as may be necessary to ensure that Mr. Lendore's conditions of detention comply with applicable international standards of humane treatment as articulated in the present report, including the removal of Mr. Lendore from death row.
3. Adopt such legislative or other measures as may be necessary to ensure that the right to judicial protection under Articles XVIII and XXVI of the American Declaration is given effect in Trinidad and Tobago in relation to recourse to Constitutional Motions.

1111. On January 18, 2011 the IACHR requested both parties to submit, within one month, updated information on compliance with the recommendations. Neither party responded.

1112. On October 25, 2011, the IACHR requested information again to both parties on compliance with the recommendations listed above, in conformity with Article 48.1 of its Rules. The Inter-American Commission has not received responses from the parties.

1113. The Commission concludes that compliance with the recommendations remains pending. Accordingly, the IACHR will continue to monitor compliance with its recommendations.

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

1114. In Report No. 124/06 of October 27, 2006, the Inter-American Commission concluded that: (a) The Uruguayan State has breached its obligation to respect and ensure the right to be heard by a competent, independent, and impartial court, previously established by law (Article XXVI American Declaration) and judicial protection (Article 25 American Convention), the freedom of expression (Article IV American Declaration), his right to dignity and honor (Article 5 of the Declaration and Article 11 of the Convention), the right to equality before the law (Article 24 of the Convention), and the right to compensation (Article 10 of the American Convention); and (b) that by virtue of the violations mentioned, the Uruguayan State has breached its obligations to respect and ensure human rights, imposed by Article 1(1) of the American Convention, and to adopt provisions of domestic law, imposed by Article 2.

1115. The Commission made the following recommendations to the State:

1. Nullify forthwith and to rescind retroactively Executive Resolutions Nos. 46.202 and 46.204 of January 2, 1973, Ministry of Defense Resolution No. 6.540 of December 20, 1973, and the ruling of the Tribunal of Honor that harmed him. Restore all the rights, benefits, honors and other prerogatives pertaining to him as a retired member of the Armed Forces of Uruguay.
2. To adopt all necessary measures for reparation and compensation, so as to restore the honor and reputation of Mr. Tomás Eduardo Cirio.
3. To promote measures that lead to the adoption of domestic legislation in conformity with the norms of the American Convention with respect to freedom of expression and due process under military jurisdiction.

1116. In 2010, the IACHR requested updated information from the parties concerning compliance with the recommendations.

1117. In a note dated December 16, 2010, the State reported to the Commission that it had complied with the recommendations made in Report No. 124/06 of October 27, 2006. Regarding the first two recommendations, the State indicated that the reparations granted to Major Cirio involved promoting him to the rank of General as of February 1, 1996, increasing his retirement pay, and paying

compensation equivalent to 24 times the corresponding retirement assets, paid at values for July 2005. Likewise, in the framework of comprehensive reparation, the State pointed out that enjoyment of the benefits of his rank and honors pertaining to his position was reinstated, military health services restored, and all references based on incidents of the past were deleted from his personal files. The details of the reparations that were granted were provided by the State in its note of December 6, 2007, as indicated in the IACHR Annual Report for 2007.

1118. Regarding the third recommendation, the State mentioned the draft Law for National Defense, which as reported in due time was submitted by the Executive Branch of Government to Parliament and was adopted by the Senate of Uruguay on December 29, 2008. Regarding this, the State warned that, although the above-mentioned law was adopted by Parliament in August 2009, at the date of its report, it had not been enacted “because of a veto by the Executive Branch aimed at one of the articles that have nothing to do with the articles referring to military jurisdiction.” The State provided the Commission with the text of the Law adopted by Parliament, except that it has not yet entered into force because of the reasons indicated above. The State explained that when the text was returned to the General Assembly, the latter lifted the veto imposed on February 9, 2010. The State sent the Commission the text of the National Defense Framework Act No. 18,650, approved by Parliament and enacted by the Executive Branch. The Law took effect on March 8, 2010.

1119. As for the petitioner, in December 2007, he informed the Commission about compliance with the first two recommendations as set forth in Report No. 124/06. In his note of December 4, 2007, the petitioner indicated that, by means of Resolution No. 83.329 issued by the Executive Branch on December 28, 2005, resolutions Nos. 46.202 and 46.204 of January 2, 1973 were repealed retroactively, all the rights, benefits, honors and other privileges that would have pertained to his rank as a retired officer were reinstated, and the legal repercussions of his censure for severe offense were annulled. In this same communication, the petitioner indicated that, as moral redress, he was awarded the highest rank in the Armed Forces as of February 1, 1986, by Executive Resolution No. 83.805 of September 4, 2006.

1120. Based on the information supplied by the parties, the Commission observes that the State has complied with the three recommendations made in its Report No. 124/06. In the case of the third recommendation, the Commission appreciates the efforts of the Uruguayan State to bring domestic law in line with the provisions of the American Convention on the matter of freedom of expression and due process in the military justice system. It also takes note of the National Defense Framework Act.

1121. The Commission therefore concludes that the State has fully complied with the recommendations made.

Case 12.553, Report No. 86/09, Jorge, José and Dante Peirano Basso (Uruguay)

1122. In Report No. 86/09 of August 6, 2009, the Inter-American Commission concluded that the State was responsible for violation of the rights that Jorge, José and Dante Peirano have under articles 7(2), (3), (5) and (6), 8(1) and (2), and 25(1) and (2), as a function of its obligations under articles 1(1) and 2 of the American Convention. It therefore made specific recommendations. Summarizing, the petitioners had alleged that the three Peirano Basso brothers were deprived of their liberty on August 8, 2002. As of the date on which the complaint was filed, i.e., October 18, 2004, they had not been formally charged and had not been tried. The petitioners alleged that by January 2005, the requirements for their release had been met, as they had already spent two and a half years in prison. The State accused them of violating Law 2230 (1893) which punishes the directors of companies in dissolution who commit tax evasion and other financial offenses. According to the complaint, persons charged with this crime need not be incarcerated during their trial; nevertheless, the Peirano Basso brothers were held in prison because of the “social alarm” brought on by the collapse of the Uruguayan banking system, which they were alleged to have caused.

1123. In its report the Commission decided the following:

1. Reiterate the recommendation that the State amends its legislation, to make it consistent with the rules of the American Convention, which guarantee the right to personal liberty.

1124. On November 19, 2010, the IACHR requested updated information from the parties concerning compliance with the recommendations.

1125. In a note dated December 20, 2010, the State reported that the Executive Branch had sent the bill to amend the Penal Code to the Parliament on November 9, 2010. The House of Representatives' Committee on the Constitution, Codes, General Legislation and Government took it under consideration on November 16, 2010. It explained that from December 15, 2010 to March 30, 2011, representatives will be able to propose amendments. The House will then move on to discussion of the bill. Finally, the State observed that while the Commission's recommendation is not fulfilled merely by sending the bill to the legislature, it does signify how seriously this commitment is taken.

1126. In notes dated July 15, 2010 and February 7, 2011, the petitioners requested a hearing with the IACHR and stated that the judge in the case had decided to continue the proceedings despite the repeal of the article under which the Peiranos had been investigated and imprisoned (Art. 76, Law 2.230). They also reported other allegedly arbitrary actions, including an injunction prohibiting the petitioners from leaving Montevideo, the suspension of Jorge Peirano's professional credentials, and the disallowance of time served in remand custody in the United States by Juan Peirano. Subsequently, the petitioners submitted a statement dated July 18, 2011 in which they reported as very serious an April 15, 2011 decision by the Supreme Court to allow the case against the Peirano brothers to proceed, despite the repeal of Article 76 of Law 18.411 in 2008. In its decision, the Supreme Court held that, although the offense in question had been abrogated, the proceedings should continue because the State's charges against the Peiranos had been broadened in October 2006 to include the charge of "fraudulent business insolvency" (Art. 5, Law 14.095). The petitioners claim that this decision violates the principle of the retroactivity of the lighter criminal penalty set forth in Article 9 of the American Convention because the State broadened its complaint in order to justify the lengthy period of detention in view of the imminent repeal of Article 76 of Law 2.230. Furthermore, contrary to the holding of the Supreme Court, they consider the broadening of the State's charges improper, given that there have been no new facts in the case since the indictment (which, in their opinion, may not be altered) and that the sole original charge in the indictment was for a now abrogated offense.

1127. On October 25, 2011 the Commission requested updated information from the parties regarding the status of compliance with the recommendations in Report No. 86/09. A working meeting was held for this purpose at the Commission's headquarters on October 26, 2011.

1128. With regard to the legal reform, the petitioners reported in a communication to the Commission on November 21, 2011 that, even though the bill was before the Legislature, they had concerns about its eventual outcome, given the lack of political will to achieve the necessary changes within the executive branch and existing provisions that delayed preliminary implementation of the new criminal procedure system until 2014. The petitioners asked the IACHR to require the Uruguayan State to provide information on actions taken after approval and publication of the report.

1129. In a communication received on December 15, 2011, the Uruguayan State provided the code of criminal procedure bill that the executive branch had put before the Legislature, as well as stenographic versions of the meetings of the Senate Constitution and Legislation Committee on May 3, 10, and 31 and July 19, 2011.

1130. According to the State, articles 219 to 257 of the proposed code of criminal procedure, including, specifically, chapter II, section III, articles 226 to 238 on remand custody, meet inter-American system standards. The State's report mentions a series of principles of criminal due process that are upheld by the proposed legal reform. For example, with respect to the principle of "innocent until proven guilty," article 220 provides that remand custody may not under any circumstance become punishment served in advance of sentence. With regard to a time limit on remand custody, article 238 limits the length of remand, providing for its termination when, inter alia, more than three years have elapsed since the effective time of

deprivation of liberty and no charges have been brought. Regarding the principle of provisionality, articles 235 and 236 regulate the procedure for revocation or replacement of remand when at the request of a party the grounds for its imposition cease to exist. Regarding the principle of proportionality of remand, article 231 defines the cases in which remand custody may not be ordered, which include (a) misdemeanor proceedings; (b) cases where the offense in question is punishable only by fine or suspension of credentials; and (c) cases where in the opinion of the court, if the defendant is found guilty, the sentence imposed will be one other than deprivation of liberty. Lastly, the State explains that, by nature, a reform process such as the one undertaken in Uruguay not only implies completion of the legal reforms in progress, but also a paradigm shift in the concept of criminal procedure, together with the cultural change involved in implementation.

1131. The Commission notes that the process of overhauling the legal provisions on remand custody in particular and the criminal procedure system in general is ongoing. Since the unimplemented recommendation involves the improvement of these laws, the Commission appreciates the information received in regard to the fundamental guarantees underpinning the proposed remand custody norms and urges the State to complete the corresponding legislative process. In view of the foregoing, the Commission deems the said recommendation to have been partially implemented and will therefore continue to monitor compliance.

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

1132. On October 27, 2006, by means of Report No. 110/06⁶⁶, the Commission approved a friendly settlement agreement in the case of Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola. The case deals with the deportation, from Venezuela to Spain, of Juan Víctor Galarza Mendiola on June 2, 2002, and of Sebastián Echaniz Alcorta on December 16, 2002, both of whom are Spanish nationals of Basque origin.

1133. In the friendly settlement agreement, the Venezuelan State accepted its responsibility for violating the human rights of Juan Víctor Galarza Mendiola and Sebastián Echaniz Alcorta, by illegally deporting them and illegally handing them over to the Spanish State. The Venezuelan State also acknowledged its violation of the following articles of the American Convention: Right to Humane Treatment, Right to Personal Liberty, Right to a Fair Trial, Right to Privacy, Rights of the Family, Freedom of Movement and Residence, Right to Equal Protection, and Right to Judicial Protection, in accordance with the general obligation to respect and guarantee rights. It also admitted the violation of Article 13 of the Inter-American Convention to Prevent and Punish Torture, it undertook to provide, *inter alia*, pecuniary damages and guarantees of non-repetition.

1134. On November 21, 2006, the Commission adopted Report No. 110/06, in which it applauded the efforts made by both parties in reaching the friendly settlement and, in addition, clarified that the agreement referred to a series of matters beyond the jurisdiction of the Commission and/or that were not addressed in the case before it. The Commission therefore deemed it was necessary to state that the adopted report in no way implied a ruling on the individuals not named as victims in the case before the Commission, on the citizenship of Messrs. Juan Víctor Galarza Mendiola and Sebastián Echaniz Alcorta, nor on the treatment they may have received in third countries not subject to the IACHR's jurisdiction.

1135. On October 25, 2011, the IACHR asked both parties for information on measures adopted to ensure compliance. Neither the State nor the petitioners responded to the request for information.

⁶⁶ Report No. 110/06, Case 12.555, Sebastián Echaniz Alcorta and Juan Víctor Galarza Mendiola, October 27, 2006, available at: <http://www.cidh.oas.org/annualrep/2006eng/VENEZUELA.12555eng.htm>

1136. Based on the foregoing, the IACHR concludes that compliance with the friendly settlement agreement remains pending. Therefore, the Commission will continue to monitor the pending items.

ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2011

CHAPTER IV

INTRODUCTION

1. The Inter-American Commission on Human Rights continues its practice of including a Chapter in its Annual Report to the General Assembly of the Organization of American States on the situation of human rights in the member States of the Organization, based on its competence from the OAS Charter, the American Convention on Human Rights, the Statute and the Commission's Rules. The aim of this practice is furnishing the OAS with up-to-date information on the situation of human rights in the countries which have been the focus of special concern to the Commission.

2. Preparing reports on the situation of human rights in the countries of the region has been one of the main tools of the Commission' work since its mandate began. This practice has had the approval of the OAS General Assembly which, at various times, has adopted resolutions requesting that the IACHR follow-up on the situation of human rights in different countries.

3. The Commission has provided information and observations on specific countries since its first Annual Report to the OAS General Assembly in 1969.¹ Beginning in 1977, the Commission started to publish this information systematically, using different titles, chapters or sections, in what essentially has become the current Chapter IV.²

4. In 1996, the Commission established four specific criteria to identify those OAS member States whose human rights practices merited special attention by the IACHR and consequently a special analysis to be included in the annual report. In the 1997 Annual Report, the Commission added a fifth applicable criterion to be followed when deciding which countries to include in this Chapter. The criteria applied since then are to be found at the end of this introduction. The IACHR underscores that the interpretation of such criteria is done on the basis of the mandate and faculties assigned to it by regional instruments, and that accordingly it analyzes the situations described in the criteria in light of the actions of States, pursuant to inter-American human rights standards.

5. The IACHR has conducted constant analysis and debate at the internal level towards refining the methodology for the preparation of Chapter IV of the Annual Report. This process has been nurtured by the observations and suggestions provided by the States and civil society organizations. In this sense, it is necessary to emphasize that throughout 2011, the content of Chapter IV was considered on a number of occasions by the Commission.

6. During its 141st regular period of sessions, after an in depth debate on its appropriateness, the Commission's Plenary decided to maintain Chapter IV of the Annual Report and to apply the criteria approved in 1997, without prejudice to continuing the process of reflection to strengthen it in the future. After the agreement on maintaining Chapter IV, the Plenary also decided to discuss proposals on its methodology during its 142nd regular period of sessions; and so it established that those

¹ The Report includes references to the situation in Guatemala, Cuba, the Dominican Republic, Haiti, Paraguay, El Salvador, Honduras and Panama, whose object was to update the work of the Commission in these countries, which included *in loco* visits, country reports and observations and recommendations in previous reports on its activities.

² In 1978, the Commission published a "Section IV" called "Development of the Situation of Human Rights in Various Countries", which examined the situation of human rights in Chile, Panama, Paraguay and Uruguay. This "Section IV" provided information on the Commission's work with regard to the preparation and publication of separate reports on each one of these countries, and observed that the General Assembly had requested the Commission to continue to provide information on developments in each one of them. In its Annual Report for 1979-80, the Commission published update reports with respect to Chile, Paraguay, Uruguay and El Salvador. That year the Commission changed the format of its Annual Report and published the follow up information in Chapter V instead of "Section IV", although the objective and content of this information followed the previous practice. In its Annual Report for 1981-82, the Commission published updated information in Chapter V on the situation of human rights in nine countries, following the same criteria applied in previous years.

Commissioners interested in modifying the current procedure, should present their proposals before the start of the sessions.

7. On August 10, in the absence of specific proposals to modify the procedure for drafting Chapter IV, and following the procedure of previous years, the President requested each member of the Commission to highlight those countries requiring special attention by the IACHR during 2011 due to their human rights situation. Therefore the Commission requested that the Executive Secretariat draft memoranda containing information on the human rights situations in those countries identified by the IACHR members. Six of the seven Commission members requested that the Executive Secretariat draft memoranda on the situation of human rights in a number of countries of the region.

8. Meanwhile, the IACHR continued to develop the discussion on possible indicators and criteria that might be considered in relation to this Chapter, and some of its members proposed various indicators to take into account, such as the ratification of international instruments, compliance or not with the IACHR's recommendations, the right to exercise political opposition free from constraints, the independence of the judicial branch, and the situation of human rights defenders and of civil society. Some of these indicators were already being considered in the IACHR's analysis of Chapter IV, but the memoranda prepared by the Executive Secretariat widened the analysis of the situation of civil and political rights and of the advances in guaranteeing economic, social and cultural rights; the situation of groups of individuals at particular risk or facing discrimination; the ratification of Inter-American instruments; and the best practices adopted by the State to protect individuals at risk, among other indicators.

9. During its 143rd period of sessions, after examining the memoranda requested from the Executive Secretariat, containing information on certain countries, the IACHR Plenary --with the exception, where applicable, of those who are nationals of some of the States under consideration-- discussed and voted on whether include them or not. As a result, in some cases it was decided to include the State in Chapter IV; and in others, not to do so. With regard to the decision on certain States, some members expressed their disagreement, and at the end of the debate announced that they would be lodging a dissenting vote with regard to the entire chapter. Afterwards, another Commissioner announced that he would present a concurring vote.

10. The Commission, by a majority, and based on the criteria set out below, decided to include four member States in the current Chapter: Colombia, Cuba, Honduras and Venezuela. In addition, as has been the practice since 1996, the Commission sent the draft of the respective sections of Chapter IV to the State concerned with a request to present relevant observations within a certain time, which have been taken into account when adopting the final text of this report. Of the four States included in this Chapter, only Colombia and Honduras sent their observations within the deadline established by the IACHR.

CRITERIA

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

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

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

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

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

METHODOLOGY

11. The Commission assesses the situation of human rights in the OAS Member States throughout the year in the exercise of its mandate to promote and protect human rights in the region. It gathers information from multiple sources in order to apply the criteria listed in the previous section to determine the issues and the countries discussed in Chapter IV. In particular, the Commission utilizes reliable information obtained from the following sources in making its evaluation:

- (a) Official governmental acts, at any level and in any branch of government, including Constitutional amendments, legislation, decrees, judicial decisions, statements of policy, official submissions to the Commission and other human rights bodies, and any other statement or action attributable to the government.
- (b) Information available in cases, petitions and precautionary/provisional measures in the Inter-American system, as well as information about state compliance with recommendations of the Commission and judgments of the Inter-American Court.
- (c) Information gathered through visits in loco by the Commission, its rapporteurs, and its staff.
- (d) Information obtained through public hearings held by the Commission during its sessions.
- (e) Findings of other international human rights bodies, including UN treaty bodies, UN rapporteurs and working groups, the Human Rights Council, other UN organs and specialized agencies.
- (f) Information from human rights reports of governments and regional bodies.
- (g) Reports of civil society organizations and reliable, credible information submitted by them and by individuals.

(h) Public information widely disseminated in the media.

12. Taking all this information into consideration, when the Commission receives credible communications denouncing widespread violations by a particular state, supported or corroborated by the reports or findings of other governmental or inter-governmental bodies and/or respected national and international human rights organizations, the Commission's mandate requires it to bring such situations to the attention of the Organization and its Member States. It deliberates in plenary during its third session each year, applying the methodology and criteria indicated to make reasoned decisions on Chapter IV and on other matters included in the Annual Report.

ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2011
CHAPTER IV
COLOMBIA³

I. INTRODUCTION

13. The Inter-American Commission on Human Rights has paid special attention to the human rights situation in Colombia and in the exercise of its authority has monitored and evaluated the human rights situation in thematic and country reports;⁴ in Chapter IV of the Annual Report,⁵ through the system of petitions and cases;⁶ and by way of precautionary measures.

14. Based on the criteria adopted by the IACHR in 1997 to identify the states whose human rights practices merit special attention, the Commission has considered that the human rights situation in Colombia falls under those categories, particularly as regards the persistence of circumstantial or structural situations which for various reasons have a serious and grave effect on the enjoyment and exercise of the fundamental human rights enshrined in the American Convention on Human Rights. Accordingly, the Commission has adopted the following considerations, in keeping with the procedure established in Article 59(1)(h) of its Rules of Procedure, for inclusion in its Annual Report.

15. On November 28, 2011, the IACHR forwarded to the State a copy of the preliminary draft of this section of its 2011 Annual Report, in accordance with the aforementioned article, and asked the State to send its observations within one month's time. The State presented its observations on December 27, 2011. The Inter-American Commission is grateful for the State's willingness to engage in constructive dialogue with the IACHR to advance the cause of protecting the human rights of those living in Colombia.⁷

³ In keeping with Article 17(2) of the Commission's Rules of Procedure, Commissioner Rodrigo Escobar Gil, of Colombian nationality, did not participate in the debate or decision on this chapter.

⁴ With respect to Colombia, the IACHR has prepared the following thematic or country reports: Report on the Situation of Human Rights in the Republic of Colombia (1981); Second Report on the Situation of Human Rights in Colombia (1993); Third Report on the Human Rights Situation in Colombia (1999); Report on the Demobilization Process in Colombia (2004); Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia (2006); Violence and Discrimination Against Women in the Armed Conflict in Colombia (2006); Report on the implementation of the justice and peace law: Initial stages in the demobilization of the AUC and first judicial proceedings (2007); Follow-up on the demobilization process of the AUC in Colombia - Digest of published documents (2004-2007); Principal Guidelines for a Comprehensive Reparations Policy (2008); Informe sobre la Visita al Terreno en Relación con las Medidas Provisionales Ordenadas a favor de los Miembros de las Comunidades Constituidas por el Consejo Comunitario del Jiguamiandó y las Familias del Curbaradó, Municipio de Carmen del Darién, departamento del Chocó, República de Colombia (IACHR Report of the visit to the Jiguamiandó and Curvaradó communities in Colombia) (2009); and Preliminary observations of the IACHR after the visit of the Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination to the Republic of Colombia (2009). In addition, the IACHR has issued the following reports by way of follow-up that appear in Chapter V of the Annual Report: Chapter V of the 1999 Annual Report, Follow-up report on compliance with the recommendations of the IACHR in the Third Report on the Human Rights Situation in Colombia, and Chapter V of the 2009 Annual Report, Follow-up Report – Violence and Discrimination Against Women in the Armed Conflict in Colombia. At www.cidh.org.

⁵ IACHR, Chapter IV of the Annual Report for the following years: 1981, 1982, 1994, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010. The inclusion of Colombia in Chapter IV of the Annual Report of the IACHR has been based on one or more of the criteria established by the IACHR. The 2001 and 2002 reports, for example, indicate that its inclusion was based on several criteria. From chapter IV of 2003 to chapter IV of 2010, the criterion indicated with respect to Colombia has been "the continued existence of circumstantial or structural situations that, for various reasons, seriously and gravely affect the enjoyment and exercise of the basic rights enshrined in the American Convention on Human Rights." At www.cidh.org.

⁶ As noted in the annual reports of the IACHR, Colombia has been the country with the largest number of petitions received in 2009, 2010, and 2011. At www.cidh.org.

⁷ In its observations on the Draft Annual Report of the Inter-American Commission on Human Rights for 2011, the State commented that:

The Colombian State wishes to express its gratitude to the Inter-American Commission on Human Rights [...] for the draft Annual Report on the situation of Human Rights in the Republic of Colombia, which has been

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16. As it has noted in previous years, the IACHR is aware of the complex situation that Colombia faces after five decades of violence and its impact on the civilian population. It is also aware of the effect that the drug-trafficking business continues to have on the use of violence and on the State's efforts to fight this phenomenon. The State's efforts notwithstanding, the Commission observes that violations of human rights in Colombia can be traced both to its unresolved past and to existing structural problems and circumstances that seriously affect the exercise and enjoyment of human rights. Despite efforts to dismantle the armed *Autodefensas Unidas de Colombia* ("AUC") [United Self-Defense Units of Colombia], illegal armed groups continue to be involved in acts of harassment and violence committed against women, indigenous peoples, Afro-descendant communities, social leaders, human rights defenders and advocates of children and adolescents.

17. The IACHR also believes that while the Colombian State has undertaken a number of legislative, administrative and judicial measures in efforts to correct the very serious human rights violations that can be traced, for example, to the paramilitary movement and the illegal intelligence activities,⁸ those measures are still neither entirely effective nor completely in keeping with inter-American standards. The IACHR observes, for example, that complaints alleging the use of the military justice system to prosecute cases of human rights violations persist, as do problems obstructing access to intelligence records. It also notes that six years after enactment of the Justice and Peace Law, only one court verdict has become final. Furthermore, criminal groups may be operating in collusion with certain public officials or with their tolerance and acquiescence, and the gradual evolution of these groups into emerging structures of violence continues to take a serious toll on Colombian society, despite the State's efforts to eliminate those groups.⁹

18. The IACHR also observes that internal displacement is still a serious problem in Colombia. While it recognizes that reports of "false positive" extrajudicial executions have declined somewhat, the IACHR is troubled that so few members of law enforcement have been convicted of extrajudicial executions; the Commission must underscore how vital it is that the investigations be conducted promptly and that measures be taken to stop the harassment of and attempts made against victims who file complaints of violations of their and their family members' human rights.

...continued

prepared for the 2011 period, as the result of work that has taken into account information from sources both from the State and from civil society organizations.

Colombia, by virtue of its clear commitment to Human Rights and with the inter-American System of Human Rights, values that the IACHR presents to it a well-balanced and objective report, in which recognition is made of the advances, difficulties and challenges that still persist in achieving the goal of guaranteeing, promoting and protecting human rights for all Colombians, taking into perspective our particular context given by an armed conflict that involves a challenge to the authorities, who must confront illegal armed organizations with great sacrifices. In this way, it is possible to have a constructive dialogue that includes proposals.

Observations of Colombia on the Draft Annual Report of the Inter-American Commission on Human Rights for 2011, December 27, 2011, p. 1.

⁸ For example, the State informed the IACHR that: a) in February 2009, "because of news reports run by various media outlets complaining of alleged illegal activities against various actors in society," the previous Director of the Administrative Security Department –DAS– had reportedly asked the Attorney General, the Inspector General and the Comptroller General to create elite groups to conduct the necessary investigations; b) since February 2009, DAS officials had been instructed to do everything possible to cooperate with the control and investigative bodies, and since March 2009, 104 "shadow AZ files from the DAS database" had reportedly been made available to the competent authorities and were said to be part of the criminal investigation; c) the DAS was said to have provided full cooperation with a view to enabling the investigations to move forward, be carried to completion and ultimately be effective, and was also reportedly abiding by and respecting all the decisions issued by the courts; d) within the DAS disciplinary measures were reportedly taken to ascertain blame and determine the appropriate administrative penalties; and e) a process had allegedly gotten underway to reshuffle and screen the DAS in-house staff, with the result that some internal task forces were eliminated and changes were made in staffing at the section level. Observations of Colombia to the Draft Annual Report of the Inter-American Commission on Human Rights for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 2.

⁹ For example, through Decree 2374, which established the Inter-Institutional Commission against Criminal Gangs and Networks, the demobilization process and the Justice and Peace Law.

19. The Commission reiterates that despite the challenges, the Colombian State has undertaken noteworthy efforts to bring peace by demobilizing armed actors and providing protection for its citizens. Among these efforts, on June 10, 2011, Law 1448 was adopted “by which measures are ordered for attention, assistance, and integral reparations to the victims of the internal armed conflict, and other provisions are issued,” also called the “Law on Victims and Restitution of Lands.” According to its text, the purpose of Law 1448

is to establish a set of judicial, administrative, social, and economic measures, both individual and collective, to benefit the victims [who individually or collectively have suffered harm for events that occurred as of January 1, 1985, as a result of violations of international humanitarian law or of grave and manifest violations of international human rights law provisions, which occurred on occasion of the internal armed conflict] within a framework of transitional justice, that make possible the effective enjoyment of their rights to truth, justice, and reparation with guarantees of non-repetition.¹⁰

20. The Commission is pleased to observe the passage of this law but notes that in tandem with the initiatives to promote and protect human rights, violence persists and continues to hit the most vulnerable sectors of the civilian population. Accordingly, based on the information received from the State and civil society, and on information in the public domain, the IACHR has prepared a series of considerations on the human rights situation in Colombia in 2011. These address the situation of civil, political, economic, social, and cultural rights, and in particular the situation of groups in special situations of vulnerability, such as women; indigenous peoples; human rights defenders; Afrodescendants; children and adolescents; persons deprived of liberty; and lesbian, gay, bisexual, trans, and intersex persons (hereinafter “LGBTI”).

II. HUMAN RIGHTS SITUATION IN COLOMBIA

A. Respect for and guarantees of the rights to life, humane treatment, and personal liberty by the State

21. The IACHR continues to receive reports of crimes committed by state agents and illegal armed groups.¹¹ In addition to the so-called “emerging structures” or “criminal bands,” which operate in a manner similar to the old paramilitary organizations,¹² the Revolutionary Armed Forces of Colombia (“FARC”) and the National Liberation Army (“ELN”) continue perpetrating acts of violence for the purpose of instilling fear in and punishing civilians and communities, and continue to use antipersonnel mines in violation of international humanitarian law.¹³

22. In terms of the figures available on deaths in the context of the conflict, the “Observatory of Human Rights and International Humanitarian Law” of the Vice-Presidency of the Republic indicates

¹⁰ Law 1448 of June 10, 2011, Article 1.

¹¹ See, for example,; IACHR. Press Releases: 10/11, IACHR Deplores Armed Clash with Civilian Victims in Cauca, Colombia. Washington, D.C., February 14, 2011. 18/11, IACHR Condemns Continued Threats and Murders Directed Against Human Rights Defenders and their Families in Colombia. Washington, D.C., March 7, 2011; 19/11, IACHR Expresses Concern over Threats Against Human Rights Organizations in Colombia. Washington, D.C., March 8, 2011; 59/11, IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia. Washington, D.C., June 20, 2011; R66/11, Special Rapporteurship on Freedom of Expression Condemns Murder of Journalist in Colombia. Washington, D.C., July 8, 2011; and 83/11, IACHR Condemns the Murder of Keila Esther Berrio in Colombia. Washington D.C., August 2, 2011.

¹² See IACHR, Annual Report, Chapter IV - Colombia for 2007, 2008, 2009, and 2010; as well as United Nations, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee Colombia, para. 9, at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/441/30/PDF/G1044130.pdf?OpenElement>.

¹³ IACHR. Press Release 8/11, IACHR Laments Landmine Death of Indigenous Child in Colombia . Washington, D.C., February 10, 2011. In this respect, see figures produced by the Observatory on Human Rights and International Humanitarian Law of the Vice-Presidency of the Republic of the period January-September 2011, at: <http://www.derechoshumanos.gov.co/Observatorio/Paginas/Observatorio.aspx>.

that there were 12,159 homicides from January to October 2011.¹⁴ It also reports that during the same period there were 32 massacres with 149 victims.¹⁵ The Centro de Investigación y Educación Popular (“CINEP”) indicates that from January to June 2011 there were 201 extrajudicial executions,¹⁶ 77 intentional homicides of protected persons,¹⁷ as well as six forced disappearances and 64 arbitrary detentions.¹⁸ It also reports that as of June 2011 there were 102 victims wounded and 256 threatened by direct or indirect agents of the State.¹⁹ The IACHR considers it appropriate to cite both sources in its report despite the major methodological discrepancies between them²⁰ in order to take account of the outlook presented by both official and civil society sources,²¹ in keeping with its consistent practice.

23. In February 2011, the United Nations High Commissioner for Human Rights issued her report on the situation in Colombia and referred to “the drastic reduction in the number of persons presented as killed in combat while under the custody of the Army, known as ‘false positives.’”²² The High Commissioner considered it “essential to advance in the judicial proceedings on past violations and to conduct an in-depth analysis of their causes, as a guarantee of nonrepetition.”²³ As regards the investigations, the High Commissioner referred to a “significant decrease” in the cooperation of the

¹⁴ See <http://www.derechoshumanos.gov.co/Observatorio/Paginas/Observatorio.aspx>. The figures from the Observatory of the Vice-Presidency indicate 12,844 homicides in the same period in 2010.

¹⁵ The figures from the Observatory of the Vice-Presidency indicated 32 massacres that claimed 154 victims in the same period in 2010. See [in Spanish] at: <http://www.derechoshumanos.gov.co/Observatorio/Paginas/Observatorio.aspx>.

¹⁶ This source makes reference to both “victims of extrajudicial execution by abuse of authority and social intolerance by direct or indirect agents of the State (human rights violations)” and “victims recorded simultaneously as extrajudicial executions perpetrated by direct or indirect agents of the State for political persecution (human rights violations) and as intentional homicides of protected persons (breaches of international humanitarian law).” See Banco de Datos del CINEP, Noche y Niebla No. 43, p. 59, <http://www.nocheyniebla.org/files/u1/43/03Cifras43.pdf>.

¹⁷ This source makes reference to “victims of intentional homicide of protected person or civilians killed by the use of illicit methods and means of war in military actions or in attacks on civilian interests (breaches of international humanitarian law by the insurgency.” See Banco de Datos del CINEP, Noche y Niebla No. 43, p. 59, <http://www.nocheyniebla.org/files/u1/43/03Cifras43.pdf>.

¹⁸ See Banco de Datos del CINEP, Noche y Niebla No. 43, p. 60, <http://www.nocheyniebla.org/files/u1/43/03Cifras43.pdf>.

¹⁹ See Banco de Datos del CINEP, Noche y Niebla No. 43, p. 59, <http://www.nocheyniebla.org/files/u1/43/03Cifras43.pdf>.

²⁰ The methodology of the statistical studies of the Observatory of Human Rights and International Humanitarian Law of the Vice-Presidency of the Republic consists of compiling data reported by the National Police, specifically by the Center for Criminalistics Investigation, and as a secondary source for comparison, to validate data, the Observatory has developed its “Bitácora Semanal de Prensa,” which is the result of a daily review of national and regional daily newspapers and radio networks consulted on Internet from which the information recorded on the following issues is extracted: the judicial activity relating to human rights and international humanitarian law, captures of combatants, members of illegal armed groups, the military actions of the Armed Forces of Colombia; actions of the “subversive groups” and the *autodefensas*; breaches of international humanitarian law; complementary categories, those violations in respect of which the perpetrator is not known; and what it generically calls “acts of peace and expressions against the war.” This source does not make public the list of victims of such conduct. See <http://www.derechoshumanos.gov.co/modules.php?name=informacion&file=article&sid=223>. While CINEP had based its statistics on press sources, it has also indicated in its reports that it has had to “largely abandon the press sources and to hear more directly from the victims, their families, their organizations, attorneys, and social milieu.... We are increasingly convinced that it is impossible to claim to offer statistics on grave violations of human rights and international humanitarian law in Colombia.... There are many reasons why a significant and sometimes enormous number of such violations remain in silence or knowledge thereof does not reach anyone who can report them. Very frequently this is due to fear.... There are reasons that go to resources and limitations in communication, in such a large country with great poverty.... There are reasons that go to lack of information and absence of mediating entities to process and collect the reports.... Many facts or known or reported months and years after they occur.” See Banco de Datos del CINEP, Noche y Niebla No. 34/35, p. 15. This source makes public the list of victims of the conduct indicated in their statistics. For more details see “Síntesis del marco conceptual adoptado por el Banco de Datos” in <http://www.nocheyniebla.org>.

²¹ CINEP is one of the few non-official entities that collect data on the entire country from various civil society sources, and they report statistical information related to the armed conflict. The information that is consulted for the CINEP report comes from 78 civil society organizations, including human rights, religious, education, ethnic community-based, and trade union organizations. See Banco de Datos del CINEP, Noche y Niebla No. 34/35.

²² Human Rights Council, Report of the High United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 2010, February 3, 2011, A/HRC/16/22, para. 25.

²³ Human Rights Council, Report of the High United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 2010, February 3, 2011, A/HRC/16/22, para. 26.

military criminal justice system with the regular justice system in the transfer of cases of “deaths in combat” with signs of human rights violations and to information on the removal from office and transfer of some military criminal law judges, which may have been motivated by their cooperation with the regular justice system.²⁴ The report also referred with profound concern to the continuing denial that extrajudicial executions have been carried out by any members of the security forces and the attacks their members suffer for cooperating with the judiciary.²⁵

²⁴ In addition, the High Commissioner indicated:

Members of security forces accused of serious human rights violations, as any other person, are entitled to due process. There are, however, doubts whether this right is upheld when soldiers accused of participating in extrajudicial executions are represented by the so-called Military Defence (DEMIL). There are indications that DEMIL tries to prioritize certain interests of the military institution over defendants' rights. For example, the accused are prevented from confessing their involvement in the crimes and are thus unable to plea bargain for reduced sentences, and from making statements regarding the involvement of other members of the Army.

Human Rights Council, Annual Report of the High United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 2010, February 3, 2011, A/HRC/16/22, paras. 28 and 29. The State claimed that the number of cases referred from the military criminal justice system to the regular courts had not declined and pointed to the official data for the period between 2008 and October 2011. It also maintained that the transfers and removals of military judges ordered in 2011 had been done in accordance with the legal authorities given in Article 26 of 2000 Decree 1512, and were dictated by “service needs or changes requested by the judiciary officials.” Observations of Colombia to the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 7.

²⁵ Human Rights Council, Report of the High United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, 2010, February 3, 2011, A/HRC/16/22, para. 30.

24. The allegations of extrajudicial executions perpetrated by members of the security forces²⁶ have been a matter of concern to the IACHR in its annual reports from 2006 to 2010.²⁷ On this occasion, the IACHR agrees with the United Nations High Commissioner for Human Rights in recognizing the decrease in the information received on new cases of “false positives.” Nonetheless, in 2011 it has received consistent and reiterated information about the failure to investigate and impunity in relation to extrajudicial executions. Accordingly, during its 141st and 143rd periods of sessions, the IACHR received information on impunity in the cases of extrajudicial executions, particularly in relation to the very small number of convictions of lower-ranking and mid-level commanders of the security forces, the absence of convictions of high-level commanders,²⁸ and the use of the military jurisdiction to prosecute acts that could constitute human rights violations.²⁹

25. It should be noted that as the IACHR mentioned in its 2010 report,³⁰ the State has reported that the National Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General has 1,244 active cases of homicides presumably attributable to state agents that involve 3,676 members of the security forces: 708 persons were in the trial phase, of whom 361 were in trial or awaiting a decision; 281 persons had benefited from 94 decisions to refrain from issuing arrest warrants; and 41 decisions had been handed down precluding investigations that have benefited 194 persons.³¹ In addition, as of March 2010, 299 cases had been forwarded voluntarily by the military criminal courts to

²⁶ In 2010 the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions defined the “false positives” as “unlawful killings of civilians, staged by the security forces to look like lawful killings in combat of guerrillas or criminals.” Human Rights Council. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, March 31, 2010, A/HRC/14/24/Add.2, para. 10.

²⁷ See IACHR, Annual Report, Chapter IV - Colombia for the years 2006, 2007, 2008, 2009, and 2010. In addition, as the IACHR has reported since 2008, the high number of extrajudicial executions reported led to the identification of patterns, of which special mention should be made of the following: extrajudicial executions appear in the framework of anti-insurgent military operations, though the witnesses testify that there was no combat; in a large number of cases the victim is captured illegally at home or at work and taken to the place of the execution; the persons executed or disappeared are generally small farmers, indigenous person, workers, youths, marginalized persons, or community leaders; the victims are reported by the security forces as insurgents killed in combat; the victims often appear in uniform and with different kinds of arms and military equipment while, according to the testimony, they had disappeared with their usual clothing and unarmed; on occasion the victims are first accused by anonymous, hooded, or reinserted informants, and on other occasions they are selected at random; the official act of removal of the body is done by the very members of the security forces who have previously “killed them in combat”; the crime scene and existing evidence are not preserved; often signs of torture appear on their bodies; personal effects are removed from the bodies and the identity papers are made to disappear; the bodies are taken to municipalities far from the place where they were originally kept, and there are serious impediments to relatives being able to have access to the corpses and to identify; the bodies are buried as unidentified persons, despite being identified by family members or third persons; the members of the security forces receive economic and professional incentives and bonuses for presenting “positives”; jurisdiction over the investigation into the facts is attributed from the outset to military criminal law judges; the victims’ family members, witnesses, and human rights defenders endeavoring to clear up the facts are subject to threats and intimidation; and the percentage convictions of those responsible is relatively low.

²⁸ According to press articles, in July 2011, a judge in the department of Sucre convicted and sentenced to 21 years the commander of a task force who recognized his direct participation in two extrajudicial executions and said that he knew of at least 57 other cases. Colonel Luis Fernando Borja became the highest ranking officer to be convicted for committing extrajudicial executions among members of the security forces. See, for example: http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-9900565.html, <http://www.radiosantafe.com/2011/08/25/por-falso-positivo-condenan-a-23-anos-de-carcel-a-coronel-del-ejercito/> and <http://www.caracol.com.co/noticias/judicial/condenan-a-25-anos-de-carcel-a-coronel-por-caso-de-falsos-positivos-en-sucre/20110930/nota/1555476.aspx>.

²⁹ In the Annual Report, Chapter IV - Colombia for 2010, the IACHR expressed its concern over the adoption of the new Military Criminal Code, Law 1407 of 2010, of August 17, 2010, which establishes the adversarial system in proceedings before the military criminal courts, and it creates new institutions, such as the Fiscal General Penal Militar, or Attorney General for the Military Criminal Jurisdiction, the military judges trying issues involving constitutional guarantees, and the Military Technical Investigations Corps. In this respect, the Commission expressed its concern over certain provisions of the new Code such as the chapter on crimes against the civilian population, the limitation on the responsibility of the members of the security forces in those cases in which they are in the position of guarantor, the difference in penalties imposed in the regular and military criminal justice systems, among others, which could have a detrimental impact on the right of the victims of human rights violations to have an independent and impartial court.

³⁰ IACHR, Annual Report, Chapter IV – Colombia for 2010, paras. 84 and 87.

³¹ Note Ministry of Foreign Affairs of the Republic of Colombia DIDHD/ No. 21398/0386 of April 15, 2010.

the regular courts, yet there were more than 200 jurisdictional disputes in cases of alleged extrajudicial executions.³²

26. The Commission continues receiving information that the military criminal jurisdiction continues to be taking cognizance of cases involving human rights violations and that in these cases the Superior Judicial Council continues to resolve jurisdictional disputes in favor of the military criminal jurisdiction.³³ In this regard, the Commission observes with concern the proposed amendment to Article 221 of the Constitution,³⁴ approved in the first round of debate, which if passed into law would establish

The Martial Courts or Military Tribunals [las Cortes Marciales o Tribunales Militares] shall sit in judgment of the offenses committed by the members of the security forces on active duty and service-related duty as per the provisions of the Military and Police Criminal Code. Such Courts or Tribunals shall be made up of members of the security forces active or retired. In each case, it is presumed that the operations and procedures of the security forces are service-related. When criminal charges should be brought in such situations, this shall be done by the Military and Police Criminal Justice system.³⁵

27. The Commission notes that the military judges adopt decisions to archive and terminate proceedings in cases involving human rights violations, and to extend the military criminal jurisdiction to the regime of deprivation of liberty of members of the security forces accused and convicted of human rights violations.³⁶ In this respect the Inter-American Court established in, among others, the *Case of Manuel Cepeda Vargas v. Colombia*³⁷ that the unsuitability of the military criminal jurisdiction extends to all stages of the proceedings, including in the enforcement of a conviction. In addition, in the cases of *Cabrera-García and Montiel Flores v. Mexico*³⁸ and *Rosendo Cantú v. Mexico*³⁹ the Court reiterated its

³² Human Rights Council, Report of the United Nations High Commissioner on Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 41.

³³ Information received in the context of the 141st and 143rd periods of sessions of the IACHR. Hearing on the situation of human rights in Colombia, held March 25, 2011, at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=122> and Situation of human rights in Colombia, held on October 27 2011, at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>. In addition, the Human Rights Committee of the United Nations has noted with concern that military justice continues to assume jurisdiction in cases of extrajudicial executions in which the alleged perpetrators are members of the security forces. Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee, Colombia, CCPR/C/COL/CO/6, August 6, 2010, para. 14.

³⁴ That proposal is part of the proposed constitutional reform to the justice system (Proposed Legislative Act No. 07 of 2011 of the Senate “which reforms articles of the Constitution in relation to the administration of justice and other provisions are issued”) that was introduced by the Ministry of Interior and Justice to the Senate and was approved by the First Committee of the Senate as appears in the record for October 5 and 6, 2011, see: <http://www.mij.gov.co/Ministerio/Library/Resource/Documents/ProyectosAgendaLegistaliva/ReformaJusticia422.pdf>.

³⁵ Article 15 of Proposed Legislative Act No. 07 of 2011 of the Senate “which reforms articles of the Constitution regarding the administration of justice and other provisions are issued.” The State reported that the “Legislative Bill for Reform of the Justice System still has another four rounds of debate ahead” and would not be a reform of the military justice system, as Article 221 of the Constitution would remain intact and that it would continue to “recognize, preserve, and observe the shared principle that investigation and prosecution of cases of serious violations of human rights and international humanitarian law is the competence of the civilian justice system.” Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 9.

³⁶ Information received in the context of the 140th period of sessions of the IACHR. Hearing on application of the military jurisdiction in cases of human rights violations in Colombia, held October 28, 2010. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>. For its part, the State reported that the “law prescribes some basic rules of evidence and legal guidelines for the various phases of a criminal case; compliance with those rules and guidelines is to be constantly monitored by the Public Prosecutor’s Office.” The State also mentioned the resources that would be available at the domestic level. Furthermore, the State observed that the Office of the Executive Director of the Military Criminal Justice System had started to compile information with which to quantify, classify and analyze the judicial performance of officers of the military criminal justice system. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 11.

³⁷ See, among others, I/A Court H.R. *Case of Manuel Cepeda Vargas v. Colombia*. Preliminary Objections, Merits and Reparations. Judgment of May 26, 2010. Series C No. 213.

³⁸ See, among others, I/A Court H.R. *Case of Cabrera and Montiel Flores v. Mexico*. Preliminary Objections, Merits and Reparations. Judgment of November 26, 2010. Series C No. 220.

consistent case-law to the effect that the military jurisdiction is not competent for investigating or prosecuting and punishing the perpetrators of alleged human rights violations; rather, prosecution of the persons responsible should always be entrusted to the regular justice system.

28. The Commission emphasizes that fully clarifying the facts when there are allegations of extrajudicial executions by members of the security forces – which should be done speedily, in the appropriate jurisdiction, and with due guarantees – and the follow-up to the measures adopted by the State to prosecute all those responsible and prevent future incidents, are matters of special interest to the IACHR and the international community.

29. In response to the information on the consolidation of other phenomena of violence, the IACHR reiterates that the active protection of the right to life and the other rights enshrined in the American Convention is part of the State's duty to ensure the free and full exercise of the rights of all persons under the jurisdiction of the State, and requires that it adopt the measures necessary for prosecuting and punishing the arbitrary deprivation of life, personal integrity, and personal liberty. In particular, it requires preventing violations of these rights by the security forces, i.e., by the State's own forces.⁴⁰

30. In this regard, in 2011 precautionary measures continued to be an important mechanism for monitoring the situation in Colombia. The Commission has noted⁴¹ the continuation of the "Program for the protection of human rights defenders, trade unionists, journalists, and social leaders," which is said to cover more than 10,000 persons.⁴² In relation to this program, and implementation of the precautionary measures issued by the IACHR, civil society continued to report that the beneficiaries were required to undergo a process of "showing risk" as a condition for entering the program even when the respective international bodies had already determined the existence of risk upon granting urgent measures of protection. In addition, civil society has expressed its concern over the privatization of the security services provided in the framework of the security schemes provided by the State.

31. In 2011, the Office of the United Nations High Commissioner for Human Rights ("OHCHR") in Colombia expressed its concern over the delays in performing the risk studies, the sluggishness with which the measures are implemented, the lack of a differential approach, and the assignment of the protection schemes to private companies. In its recommendations it has encouraged the government to undertake an exhaustive review of the protection policies and programs, both governmental and other entities of the State.⁴³

32. The Protection Program (which was established in 1997) is governed by Decree 1740, promulgated on May 19, 2010.⁴⁴ This Decree was adopted to "establish the guidelines of the policy on the protection of persons who are at special or extreme risk as a direct consequence and because of the

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³⁹ See among others, I/A Court H.R. *Case of Rosendo Cantú and one other v. Mexico*. Preliminary Objections, Merits and Reparations. Judgment of August 31, 2010. Series C No. 216.

⁴⁰ I/A Court H.R., *Case of Myrna Mack Chang v. Guatemala*. Judgment of November 25, 2003. Series C No. 101, para. 153. *Case of Bulacio v. Argentina*. Judgment of September 18, 2003. Series C No. 100, para. 111. *Case of Juan Humberto Sánchez v. Honduras. Request for Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs*. (Article 67 American Convention on Human Rights). Judgment of November 25, 2003. Series C No. 102, para. 110.

⁴¹ IACHR, Annual Report 2010-Chapter IV. Colombia, March 7, 2011, para. 205; Annual Report 2009-Chapter IV. Colombia, December 30, 2009, para. 151.

⁴² Hearing on the situation of human rights defenders in Colombia and implementation of precautionary measures, held October 28, 2010, during the 140th period of sessions of the Commission (in which reference was made to 10,421 persons): <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

⁴³ UN General Assembly, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, February 3, 2011, A/HRC/16/22, para. 25, A/HRC/16/22, February 3, 2011. Available at: http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2010_esp.pdf.

⁴⁴ Decree 1740 of May 19, 2010, was modified by Decrees 2271, 4520, 955, 1896, 2309, and, on September 13 2011, by Decree 3375. See: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Septiembre/13/dec337513092011.pdf>.

exercise of their political, public, social, or humanitarian activities or functions,”⁴⁵ and has been criticized by the beneficiaries, who note that it limits and hinders implementation of the precautionary measures by establishing rigid criteria and a specific list of benefits that are not necessarily in line with the needs for protection.

33. In both hearings and working meetings with the IACHR the State recognized that the application of Decree 1740 was beset by problems and on September 13, 2011, the Ministry of Interior decreed its amendment by Decree 3375.⁴⁶ Decree 3375 modifies some aspects of Decree 1740, including introducing a “differential approach” for evaluating risk, and for recommending and adopting measures of protection “by age, ethnicity, gender, disability, sexual orientation, and urban or rural origin of the persons subject to protection,”⁴⁷ and the possibility of adopting “other measures of protection ... mindful of the differential approach and without prejudice to the existing measures.”⁴⁸ The IACHR will continue following up on the implementation of precautionary measures and reiterates the need to continue strengthening the mechanisms of protection established to protect life and personal integrity in Colombia.

B. State respect for and guarantee of freedom of expression⁴⁹

34. The Inter-American Commission on Human Rights has received information concerning the situation of the right to freedom of expression in Colombia, which included data supplied by civil society and by the State. On December 27, 2011, the Colombian State addressed memorandum MPC/OEA No.1829 to the IACHR, forwarding note DIDHD.GAIID No. 79338/1665, dated December 23, 2011 from the Office of the Director of Human Rights and International Humanitarian Law, part of the Ministry of Foreign Affairs, in which reference is made to the situation of freedom of expression in Colombia and information is provided regarding the specific cases reported to the IACHR and presented in this report.

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35. The IACHR takes note of the passage by the Congress of the Republic of Colombia of Law No. 1426, signed by President Juan Manuel Santos on December 29, 2010, according to which in the future the limitations period for homicides of journalists, human rights defenders, and members of trade unions is extended from 20 to 30 years.⁵⁰ In 2011, the limitations period expires in at least seven cases of journalists.⁵¹

⁴⁵Decree 1740 of May 19, 2010, Article 1, at: <http://www.dmsjuridica.com/CODIGOS/LEGISLACION/decretos/2010/1740.htm>.

⁴⁶ See: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Septiembre/13/dec337513092011.pdf>.

⁴⁷Decree 3375 of September 13, 2011, Article 1, at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Septiembre/13/dec337513092011.pdf>.

⁴⁸Decree 3375 of September 13, 2011, Article 4, at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Septiembre/13/dec337513092011.pdf>.

⁴⁹ Authorship of this section of the report was assigned by the Commission to the Office of the Special Rapporteur for Freedom of Expression.

⁵⁰ Congress of the Republic of Colombia. December 29, 2010. [Ley No. 1426 de 2010](#); Inter-American Press Association (IAPA)/IFEX. January 18, 2011. [Satisface a la SIP reforma legal que permite luchar contra la impunidad](#).

⁵¹ Arsenio Hoyos, assassinated September 13, 1991, in Granada, Meta; Carlos Julio Rodríguez and José Libardo Méndez, assassinated May 20, 1991, in Florencia, Caquetá; and Julio Daniel Chaparro and Jorge Enrique Torres, assassinated April 24, 1991, in Segovia, Antioquia. Also soon to prescribe are the assassinations of Rafael Solano Rochero, who died on October 30, 1991, in Fundación, Magdalena, and Néstor Henry Rojas Monje, who died on December 28, 1991, in Arauca. Fundación para la Libertad de Prensa (FLIP). September 14, 2011. With respect to Julio Daniel Chaparro and Jorge Enrique Torres, both from the newspaper *El Espectador*, on April 12 the Office of the Attorney General of Colombia decided not to continue the investigation into their assassinations. The Office of the Attorney General is said to have alleged that the persons suspected of assassinating the journalists were guerrillas, that they died in combat with the Army in 2000 and 2002, and that the assassinations could not be characterized as crimes against humanity. [Prescribe caso del periodista Arsenio Hoyos, asesinado hace 20 años en Granada, Meta](#); Fundación para la Libertad de Prensa (FLIP). May 21, 2011. [Homicidios de los periodistas Carlos Julio Rodríguez y José Libardo Méndez prescriben a pesar de los llamados a la Fiscalía](#); Fundación para la Libertad de Prensa (FLIP). April 25, 2011.

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36. According to the information received, the Attorney General of Colombia, Viviane Morales Hoyos, announced that the department that handles crimes against journalists within the National Unit of Human Rights and International Humanitarian Law will be strengthened with the aim of expediting investigations into the threats that have been made against journalists. According to the information received, that department will take charge of all the cases that different offices of the Public Ministry currently handle independently. In 2010, the Office of the Attorney General had recorded some 50 complaints of threats against journalists.⁵²

37. Politicians Ferney Tapasco González and Dixon Tapasco Triviño were said to have been the subject of an order for preventive detention without the benefit of release in March 2009 for the assassination of journalist Orlando Sierra, assistant director of the daily newspaper *La Patria*, which occurred on January 30, 2002. In its observations to the IACHR, the State reported that on July 25, charges were brought against three persons, “among them Mr. Francisco Ferney Tapasco González, who is currently incarcerated serving the sentence he was given upon his conviction for the crime of aggravated conspiracy to commit crime. However, the prosecutor dropped the case against Mr. Dixon Ferney Tapasco Triviño.”⁵³ In its report, the State commented that “three persons have thus far been convicted” of the murder of journalist Orlando Sierra.⁵⁴

38. The IACHR learned that the Office of the Attorney General ordered the preventive detention, without benefit of release, of Jaime Arturo Boscan Ortiz, allegedly responsible for the assassination of journalist Jaime Rengifo Ravelo in 2003 in Maicao, department of Guajira.⁵⁵

39. In its observations to the IACHR, the State wrote that “the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation currently has 49 assigned cases involving crimes committed against journalists: 39 are active cases involving a total of 106 suspects, 67 persons charged and 58 in detention pending trial. Thus far, 18 convictions have been won, involving 26 persons.”⁵⁶

40. According to the information received, on February 24, the 23rd Municipal Court of Bogotá absolved journalist Claudia López of the criminal offenses of *injuria* (libel) and *calumnia* (slander). She was facing a complaint lodged by former president Ernesto Samper, who alleged that a column of hers

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[Homicidios de los periodistas Chaparro y Torres prescriben a pesar de los llamados de sociedad civil a la Fiscalía](#); El Planeta. April 25, 2011. [Prescripción de asesinatos de periodistas causa indignación](#); Terra Noticias. April 18, 2011. [La SIP preocupada por prescripción de delitos contra periodistas en Colombia](#); Fundación para la Libertad de Prensa (FLIP). April 25, 2011. [Homicidios de los periodistas Chaparro y Torres prescriben a pesar de los llamados de sociedad civil a la Fiscalía](#); El Tiempo. April 17, 2011. [A punto de prescribir proceso por asesinato de Daniel Chaparro](#).

⁵² Office of the Attorney General. February 9, 2011. [La Fiscal General anuncia fortalecimiento investigativo por amenazas a periodistas](#); Colprensa/Europapress. February 10, 2011. [La Fiscalía colombiana agilizará las investigaciones sobre amenazas contra periodistas](#); RCN Radio. Undated. [Unidad especial de la Fiscalía asume investigación de 50 casos de amenazas contra periodistas](#).

⁵³ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011, “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”, p. 14. See also, El Tiempo. July 26, 2011. [Llaman a juicio a Ferney Tapasco por crimen de Orlando Sierra](#); Office of the Attorney General of the Nation. March 29, 2011. [Por el crimen de Orlando Sierra asegurados los Tapasco](#); *Semana*. March 29, 2011. [Profieren medida de aseguramiento a Ferney y Dixon Tapasco por el asesinato de Orlando Sierra](#).

⁵⁴ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”. p. 14.

⁵⁵ Office of the Attorney General of the Nation. January 28, 2011. [Detención preventiva por homicidio de periodista](#); El Informador. February 1, 2011. [Medida de aseguramiento contra aspirante a la Alcaldía de Maicao](#).

⁵⁶ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”. p. 14.

published in the newspaper *El Tiempo* had been injurious to his honor. The judges in the case absolved her, and in so doing referenced the inter-American doctrine and case-law.⁵⁷

41. The IACHR learned of the decision of the 16th Criminal Law Judge of Bogotá in September 2011, who had exonerated journalists Darío Arizmendi Posada, Clara Elvira Ospina, Vicky Dávila, Juan Carlos Giraldo, and Héctor Rincón Tamayo, who had been sued by former presidential adviser José Obdulio Gaviria for the criminal offenses of *calumnia* and *injurias* after the publication of articles in June 2009.⁵⁸

42. The Commission recognizes the importance of the issuance of Law No. 1474 of July 12, 2011, “by which provisions are issued aimed at strengthening the mechanisms for preventing, investigating, and punishing acts of corruption and effective government oversight,” in which rules are established on expenditures for official publicity.⁵⁹

- **Assassination**

43. On June 30, 2011, journalist Luis Eduardo Gómez was assassinated in the municipality of Arboletes. He was engaged in independent work for daily newspapers such as *El Heraldo de Urabá* and *Urabá al Día*, where he covered issues related to tourism and the environment. Luis Eduardo Gómez was known for his investigations into the management of the public resources by the local government, giving impetus to the investigation into the death of his son, and his demands that the State make gains in that investigation, as well as his role as a witness before the Office of the Attorney General in cases of infiltration of paramilitaries in the police in the region.⁶⁰ In a communication to the Office of the Special Rapporteur, the Colombian State expressed that it “laments and rejects the homicide that took the life of Mr. Gómez, and reports that it has taken the necessary actions within its legal order with a view to the persons responsible for this act being duly identified and taken before the competent authorities.”⁶¹

- **Attacks on and threats against media and journalists**

44. In mid-February, unknown persons were reported to have thrown an incendiary bomb at the home of Rodolfo Zambrano, a journalist with the newspaper *Magangué Hoy*, in Magangué, which caused harm to the façade of the home. According to the information received, at the time of the attack several of his family members were in the home; none suffered any injury.⁶²

45. The IACHR received information concerning the attack with sticks and stones suffered on March 18 by CM& correspondent Ana Mercedes Ariza, and cameraman Armando Camelo by populations

⁵⁷ Instituto Prensa y Sociedad (IPYS). February 25, 2011. [Juez absuelve a la columnista Claudia López en caso de injuria y calumnia](#); El Universal. February 25, 2011. [Absuelta columnista Claudia López de injuria y calumnia](#); El Espectador. February 24, 2011. [Columnista Claudia López es absuelta](#).

⁵⁸ El Espectador. September 14, 2011. [Demanda de José Obdulio Gaviria contra varios periodistas no prosperó](#); La F.M. September 14, 2011. [Precluyó investigación contra periodistas denunciados por José Obdulio Gaviria](#).

⁵⁹ Article 10 of the Law restricts the use of official publicity to carrying out the purpose of the agency and to satisfying citizens' right to information. Contracts entered into for official publicity activities should answer to pre-established criteria of effectiveness, transparency, and objectivity. The Law prohibits the use of official publicity or any other means of disseminating official programs and policies for the promotion of public servants, political parties, or candidates, or that make use of their voice, image, name, symbol, logo, or any other identifiable element that may induce confusion. Congress of the Republic of Colombia. July 12, 2011. [Ley. No 1474 de 2011](#).

⁶⁰ IACHR. Office of the Special Rapporteur for Freedom of Expression. July 7, 2011. Press Release R66/11. [Special Rapporteurship on Freedom of Expression Condemns Murder of Journalist in Colombia](#); Fundación para la Libertad de Prensa (FLIP). July 2, 2011. [La FLIP condena asesinato del periodista Luis Eduardo Gómez en Arboletes, Antioquia](#).

⁶¹ Ministry of Foreign Affairs of Colombia. Communication DIDHD. GAPID 41308/1809. July 13, 2011. In files of the Office of the Special Rapporteur.

⁶² El Universal. February 18, 2011. [Atacada casa de periodista Rodolfo Zambrano](#); Federación Colombiana de Periodistas (FECOLPER). August 8, 2011. [Ciento catorce ataques contra periodistas durante el primer trimestre del 2011; grupos paramilitares el mayor depredador de la prensa](#).

in a mining zone in the municipality of California, Santander. Days later the authorities detained four suspects in the attacks which were taped on the video equipment of Cameo.⁶³

46. On May 26, 2011, Héctor Rodríguez, a journalist with the radio station *La Veterana* in Popayán, Cauca, was said to have been attacked by two unknown persons who were said to have shot a firearm when he was entering his workplace. He did not suffer any injury, due to the intervention of police bodyguards who were said to have accompanied him for three months due to the situation of risk he faced.⁶⁴

47. The IACHR learned of a large number of cases of threats against journalists. On December 2, 2010, journalist Ramón Sandoval Rodríguez received several calls to his cell phone; in one of those calls he was told: “the cup has spilled. You should shut up and leave Sabana de Torres, or assume the consequences. You are not the first dog we’ve killed in this town.” Sandoval relates the threat by presenting information he has published about the alleged acts of corruption in the municipal administration.⁶⁵ In addition, according to the information received by the Office of the Special Rapporteur, on February 17, 2011, several Colombian non-governmental organizations received an email purportedly sent by the self-styled “Bloque Capital de las Águilas Negras” (“Capital Bloc of the Black Eagles”), which announced: “the time has come to exterminate and annihilate all those persons and organizations who pass themselves off as defenders of human rights, and even more so those who infiltrate as international NGOs, journalists...”⁶⁶ Next the message mentioned persons and entities among which were included the Federación Colombiana de Periodistas (“FECOLPER”) and the journalists Eduardo Márquez González, Claudia Julieta Duque, Daniel Coronell, Hollman Morris, and Marcos Perales Mendoza.⁶⁷ According to what was reported, on February 18 representatives of various journalists’ organizations held a meeting in Bogotá with the Committee on Regulation and Evaluation of Risks, which addressed the threat received, and at which possible measures for ensuring the security of persons in danger were discussed.⁶⁸ On March 14 once again an alleged threat from the “Bloque Capital de las Águilas Negras” was circulated reiterating the warnings.⁶⁹ In this respect, the Office of the Special Rapporteur consulted the State on the measures adopted to ensure the lives and integrity of the persons threatened, in a note sent March 4.⁷⁰ In its response of April 13, 2011, the State conveyed to the Special

⁶³ According to the information received, journalists were collecting different versions concerning the decision of a foreign company to postpone a mining project when the neighbors lashed out against the team of journalists with sticks and stones, as they were upset by the delay in the project. Both journalists were assisted by the Police and taken to a hospital. Vanguardia. March 19, 2011. [Periodista agredida está bajo pronóstico reservado](#); Knight Center for Journalism in the Americas. March 19, 2011. [Periodista y camarógrafo hospitalizados tras agresión de pobladores con piedras y palos en Colombia](#); RCN. March 18, 2011. [Capturadas cuatro personas por agresión a equipo periodístico en Santander](#).

⁶⁴ The bodyguards along with other police from the local post (CAI: Comando de Atención Inmediata) are said to have pursued the assailants, one of whom was said to have been wounded in the exchange of gunfire and taken to a clinic, while the other assailant was said to have been detained and brought before the Departmental Office for Criminal Investigation of the National Police (SIJIN). Rodríguez notes that he had received threats since he reported on his new program “En Línea FM Noticias” on the involvement of members of the FARC in the elections for mayor of Patía, in southern Cauca. Fundación para la Libertad de Prensa (FLIP). May 26, 2011. [Atentado contra periodista Héctor Rodríguez en Popayán – Cauca](#); El Tiempo. May 26, 2011. [Farc podrían estar tras atentado a periodista en Popayán](#).

⁶⁵ El Tiempo. No date. [Amenazan a periodista en Sabana de Torres \(Santander\)](#); Fundación para la Libertad de Prensa (FLIP). December 10, 2010. [Periodista es amenazado en Sabana de Torres, Santander](#).

⁶⁶ Anonymous email originating from the email address fenixaguilasnegras@gmail.com. February 16, 2011. In files of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁷ Círculo de Periodistas de Caldas. February 18, 2011. [FECOLPER rechaza amenaza de muerte contra su presidente Eduardo Márquez](#); Fundación para la Libertad de Prensa (FLIP)/IFEX. February 18, 2011. [Circula panfleto que amenaza a FECOLPER y cuatro periodistas](#); Reporters Without Borders. February 18, 2011. [Apoyo a cinco periodistas declarados “objetivos militares” en un mail atribuido a las “Águilas Negras”](#).

⁶⁸ Telephone interview by the IACHR with representatives of Colombian organizations of journalists. February 22, 2011.

⁶⁹ World Association of Community Broadcasters (AMARC). March 21, 2011. [Las “Águilas Negras” amplían su campaña de amenazas contra periodistas y ONG: las autoridades tardan en reaccionar](#); Fundación para la Libertad de Prensa (FLIP). March 22, 2011. [Circula nuevo panfleto contra FECOLPER y cuatro periodistas](#).

⁷⁰ Communication from the Office of the Special Rapporteur for Freedom of Expression to the Permanent Mission of Colombia to the OAS. March 4, 2011. Washington D.C.

Rapporteurship its repudiation of the threats made against the journalists, reiterated its commitment to defend freedom of expression, highlighted the operation of the Protection Program of the Ministry of Interior and Justice, and noted that measures have even been put in place to protect journalists in zones of violence and in dangerous missions. In its communication, the State recalled that the number of journalists who were beneficiaries of the Program had increased from 14 in the year 2000 to 175 in 2010, while total deaths of journalists have been reduced from 27 from 2001 to 2003 to two from 2008 to 2010. The State explained that the cases of threats mentioned in the communication of March 14 “have been made known to the respective judicial authorities so that they may further the respective investigations.” Finally, it indicates that in the case of journalists Hollman Morris and Claudia Julieta Duque, measures have already been implemented on their behalf in the context of the Protection Program mentioned above.⁷¹

48. The IACHR learned that in late March three pamphlets circulated in the department of El Cauca attributed to the “Águilas Negras, Rastrojos, and Autodefensas Unidas de Colombia-AUC,” in which they declared the “11 journalists and 11 community radio stations” are “permanent military targets.”⁷² In addition, in August journalist Mary Luz Avendaño, correspondent for the newspaper *El Espectador*, in Medellín, had been forced to leave the country given her elevated risk, even though she was receiving protection from the Municipal Police.⁷³ The risk was said to have originated after the publication of articles on violence between bands of drug traffickers and the collusion of members of the Police, due to which she is said to have received several threatening phone calls as of June 22, 2011.⁷⁴ Indeed, with the information received, on September 29 an alleged member of a criminal band was said to have called the radio station Radio Guatapurí, in the city of Valledupar, to warn that they had been ordered to attack a series of persons in that city, including journalist Ana María Ferrer, who worked with the television program “La Cuarta Columna” on Channel 12 in Valledupar.⁷⁵

49. In the last week of May unknown persons broke in, through a window, to the apartment of journalist Gonzalo Guillén while he was outside the country and were said to have stolen an external hard drive with 1,000 gigabytes and a laptop computer. The equipment stolen contained data from journalistic investigations over the last 15 years. Among the information stolen is said to be documentation on issues such as extrajudicial executions, expenditures of the State that are kept secret, and corruption in State security agencies. He asked the Office of the Attorney General to conduct an investigation.⁷⁶ The Office of the Special Rapporteur requested information from the Colombian State in the wake of these events

⁷¹ Ministry of Foreign Affairs. Republic of Colombia. April 13, 2011. Note FIDHD. GAPID No.22090/0955.

⁷² According to the information received, the pamphlet threatened journalists Silvio Sierra, Fredy Calvache, Antonio Palechor, Ricardo Mottato, Eli Alegría, Gustavo Molina, Carlos Pito, Gustavo Alzate, José Fernando Conejo, Carlos Andrés Gómez, and Dario Patiño, and radio stations Guambía Estéreo, Uswal Nasa Yuwe, Nuestra Voz Estéreo, Renacer Kokonuco, Radio Nasa de Tierradentro, Aires del Pueblo Yanacona, Radio Payumat, Radio Libertad, Voces de Nuestra Tierra, Nasa Estéreo, and Radio Inzá. Asociación de Cabildos del Cauca Indígenas del Norte del Cauca. April 6, 2011. [Colombia: Paramilitares amenazan a periodistas indígenas](#); Reporters Without Borders/IFEX. April 6, 2011. [Once periodistas y diversas estaciones de radio indígenas son blancos de los paramilitares](#).

⁷³ Fundación para la Libertad de Prensa (FLIP). August 23, 2011. [Periodista de Antioquia se ve obligada a salir del país](#); *El Espectador*. August 23, 2011. [Periodista de El Espectador se ve obligada a salir del país](#).

⁷⁴ Fundación para la Libertad de Prensa (FLIP). June 25, 2011. [Grave amenaza contra la vida de periodista de El Espectador en Medellín](#); *El Espectador*. August 23, 2011. [Periodista de El Espectador se ve obligada a salir del país](#).

⁷⁵ According to the information provided, the alleged paid gunman had indicated that the order to assassinate Ferrer was due to information that she disclosed on a functioning criminal group. She is also the director of communications of the Committee to Monitor and Evaluate the Investment of Coal Royalties from Cesar. In that function she is said to have written numerous articles regarding alleged mismanagement of funds from the mining industry. Police authorities are said to have initiated an investigation and to have offered her measures of protection. Committee to Protect Journalists (CPJ). October 5, 2011. [Periodista provincial recibe amenazas en Colombia](#); Fundación para la Libertad de Prensa (FLIP). October 4, 2011. [Confiesan plan para asesinar a una periodista en Valledupar, Cesar](#); Committee to Monitor and Evaluate the Investment of Coal Royalties from Cesar. Website: <http://www.comitederegaliascesar.org/Comite/Publico/ComiteEsp.php>

⁷⁶ Letter from Gonzalo Guillén to the Attorney General, Viviane Morales. June 2, 2011. Archive of the Office of the Special Rapporteur for Freedom of Expression; *El Espectador*. July 2, 2011. [“Un expresidente me entregó el libretto de la Operación Jaque”](#); Federación Colombiana de Periodistas (FECOLPER). August 8, 2011. [Ciento catorce ataques contra periodistas durante el primer trimestre del 2011; grupos paramilitares el mayor depredador de la prensa](#).

and the threats that Guillén was said to have received.⁷⁷ In its response of August 4, 2011, the State reported that journalist Guillén has been a beneficiary of the Ministry of Interior and Justice's Protection Program since July 2007, and that he currently has a mobile protection scheme. He also reported that with respect to the larceny of the journalistic information from Mr. Guillén's residence, the Office of the 113th Local Prosecutor's Office (Fiscalía 113 local) is pursuing an investigation into the alleged offense of aggravated larceny (*hurto calificado y agravado*), which is in the inquiry stage to determine who the person or persons responsible might be.⁷⁸ As of the preparation of this report, no progress had been reported in that investigation.

- **Espionage against and harassment of journalists by the DAS**

50. In its 2009 and 2010 reports, the IACHR reported the information that it had received on illegal activities involving espionage, harassment, and discrediting of journalists, and even death threats against journalists, which were carried out by the Administrative Department of Security (DAS: Departamento Administrativo de Seguridad) from 2002 to 2008. In its annual report last year the Commission followed up, in particular, on the cases of some of the most besieged journalists: Daniel Coronell, Claudia Julieta Duque, Carlos Lozano, and Hollman Morris.⁷⁹

51. During 2011, the IACHR continued following up on the judicial proceedings under way in relation to the illegal activities of espionage and harassment of the above-mentioned journalists. The information received by the Office of the Special Rapporteur indicates that there has yet to be any criminal conviction related specifically to the unlawful acts directed against these journalists. At the same time, the IACHR takes note of the significant progress in the investigation into some of these cases. In the case of journalist Claudia Julieta Duque, for example, the Office of the Third Prosecutor of the National Unit for Human Rights and International Humanitarian Law of the Office of the Attorney General found documents in the offices of the DAS that include information on Ms. Duque updated as of November 2008. Duque has been the target of repeated threats that may have caused her extreme suffering and she is the beneficiary of precautionary measures granted by the IACHR in November 2009. In August 2011, after publishing an article in the *Washington Post* on the abuses of the DAS and U.S.-Colombian relations⁸⁰, Duque was possible targeted by stigmatizing accusations by former President Álvaro Uribe.⁸¹ Former President Uribe also potentially made stigmatizing statements against the *Washington Post* correspondent in Colombia, Juan Forero, for the publication of an article on alleged gross irregularities said to have been committed by his administration.⁸² The press organizations expressed reasonable concern over the possible consequences of those statements.⁸³

52. The Colombian State wrote that it had complied with all the protection measures ordered by the IACHR in the case of journalist Claudia Julieta Duque Orrego, who on November 26, 2004, "filed a criminal complaint with the Human Rights and International Humanitarian Law Unit of the Office of the

⁷⁷ Communication from the Office of the Special Rapporteur to the Colombian State of July 8, 2011, with respect to: "Situation of journalist Gonzalo Guillen." In files of the Office of the Special Rapporteur.

⁷⁸ Ministry of Foreign Affairs of the Republic of Colombia. Communication DIDHD.GAPDH No. 46620/2034. August 4, 2011. In files of the Office of the Special Rapporteur.

⁷⁹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 140-168; IACHR. Annual Report 2009. OEA/Ser.LV/II. Doc. 51. December 30, 2009. Vol. II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). December 30, 2009. Paras. 135-148.

⁸⁰ Washington Post. August 20, 2011. [U.S. Aid Implicated in Abuses of Power in Colombia](#).

⁸¹ Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists "terrorism sympathizers"](#). Semana. August 26, 2011. [FLIP, preocupada por acusaciones de Uribe contra redactores de Washington Post](#).

⁸² Reporters Without Borders. September 22, 2011. [En espera de una respuesta presidencial ante el temor de asesinato de una periodista víctima del "dasgate"](#); Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists "terrorism sympathizers"](#).

⁸³ Committee to Protect Journalists (CPJ). August 24, 2011. [Uribe labels journalists "terrorism sympathizers"](#). Semana. August 26, 2011. [FLIP, preocupada por acusaciones de Uribe contra redactores de Washington Post](#).

Attorney General of the Nation owing to the threats allegedly made against her since 2001.” According to the information reported by the State, the journalist said “that she was the victim of an abduction committed in the course of a criminal practice known as the ‘millionaire’s walk’ or the ‘millionaire’s tour’; and that she had been stalked and harassed and her e-mails intercepted by members of State Security agencies (DAS) because of her investigations into and her documentary on the killing of journalist Jaime Garzón.” In its observations on the IACHR’s draft report, the State commented that the investigative work conducted by the Human Rights and International Humanitarian Law Unit of the Attorney General’s Office had “succeeded in implicating State agents in the commission of the crime and is currently focusing on establishing the identity of the agents in order to prosecute them in the Colombian courts. Thus far the investigation has not determined whether any high-ranking government officials had knowledge of or participated in the crimes committed against the journalist.” The State underscored the measures that the Prosecutor on the case had taken to ensure the journalist’s life and personal safety, “and compliance with the orders of the Inter-American Commission on Human Rights regarding the precautionary measures for the journalist and her daughter.”⁸⁴

- **Judicial Actions**

53. On May 25, 2011, the Constitutional Court of Colombia issued Judgment C-442-11, by which it found that the judges who sit in cases regarding *injurias* and *calumnias* should narrowly interpret these definitions of criminal conduct so as to favor an “expansive interpretation of the freedom of expression” (“la vis expansiva de la libertad de expresión”), which enjoys a privileged place in the Colombian legal order. It noted that “only willful conduct is subject to sanction,” i.e., that the attribution of certain conduct to a certain person must be done knowingly and with the intent of producing harm. Finally, it reiterated the importance of abiding by the inter-American standards of freedom of expression.⁸⁵

54. Despite the judgment mentioned in the previous paragraph, on September 12, 2011, the director of the newspaper *Cundinamarca Democrática*, Luis Agustín González, was said to have been found guilty of the crimes of *injuria* and *calumnia* by the first criminal law judge of Fusagasugá. He had been sued by former governor Leonor Serrano de Camargo, who considered publication of an editorial in 2008 calling into question Serrano’s candidacy for the Senate to harm her honor and good name, for which she was seeking 50 million Colombian pesos in compensation (equivalent to US \$26,000 dollars).⁸⁶

- **Regulation of the press during electoral periods**

55. The IACHR takes note of Decree 3569 of 2011, “by which provisions of law are issued for preserving public order during the period of elections of Territorial Public Authorities and Legislative Bodies and other provisions are issued.”⁸⁷ This new decree preserves, in general, the language of Decree 1800 of 2010,⁸⁸ with respect to which the IACHR expressed concern in its 2010 Annual Report.⁸⁹

⁸⁴ In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights, concerning Human Rights Developments in Colombia in 2011”. p. 15.

⁸⁵ Constitutional Court of Colombia. [Judgment C-442-11](#). May 25, 2011.

⁸⁶ Fundación para la Libertad de Prensa (FLIP). September 13, 2011. [Condenan al periodista Luis Agustín González por cuestionar a la ex gobernadora Leonor Serrano de Camargo](#); Periódico Metronet. September 14, 2011. [Fallo Contra Periódico Cundinamarca Democrática](#).

⁸⁷ Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#).

⁸⁸ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). The Office of the Special Rapporteur took note, moreover, of the judicial proceeding that was brought by various Colombian organizations through a *tutela* action seeking to annul the articles of Decree 1800 of 2010, which were considered to violate the freedom of expression, press, and information. The domestic courts upheld the legality of the decree. Fundación para la Libertad de Prensa (FLIP). August 23, 2011. [El Acceso a la información en Colombia-Entre el Secreto y la Filtración](#); Council of State, Judgment of July 29, 2010. Writing for the court: Bertha Lucía Ramírez de Páez. Case No. 25000-23-15-000-2010-01.

⁸⁹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 135-137.

56. In this respect, the IACHR observes first that Decree 3569 maintains the prohibition, on election-day, of “all types of publicity, statements, communiqués, and interviews for political-electoral purposes” by any means of communication.⁹⁰ Second, with respect to the “information on election results,” Decree 1800 of 2010 established that on election day, while the election is taking place, the media “may only provide information on the number of persons who have voted...”⁹¹ The wording of the relevant article has been modified in Decree 3569 of 2011, eliminating the word “only” to establish that the media “may provide information on the number of persons who have voted...”⁹² Finally, the foregoing decree established that “as regards public order, the media shall broadcast, on election day, only information confirmed by official sources.”⁹³ Decree 3569 of 2011 strikes out the word “only,” providing that “in respect of public order, on election-day the media shall broadcast the information confirmed by official sources.”⁹⁴

57. The IACHR reiterates what it indicated in its 2010 Annual Report to the effect that during electoral periods there may be special restrictions on the right to freedom of expression, yet that constitutional and international guarantees must be strictly respected, particularly those enshrined in Article 13(2) of the Convention. According to this provision, the exercise of the right to freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: (a) respect for the rights or reputations of others; or (b) the protection of national security, public order, or public health or morals.” In application of this provision, the IACHR and the Court have already indicated that any restriction must be established in a law both materially and formally and that the restrictions must be clear and precise in scope. In that sense, the IACHR notes that in this case general restrictions were established relying on administrative provisions that are not compatible with the conditions noted above.⁹⁵

- **Right of Access to Information**

58. The IACHR takes note of the approval, by the Congress of the Republic, of the bill “by which provisions of law are issued to strengthen the legal framework that allows the agencies engaged in intelligence and counter-intelligence activities to perform their constitutional and statutory mission, and issuing other provisions.”⁹⁶ According to the information received, the provision of law approved is under prior review by the Constitutional Court, which is called for as a statute of constitutional rank (*ley estatutaria*).⁹⁷

59. The IACHR expresses concern about some aspects of said law on intelligence and counter-intelligence that could disproportionately affect the right of access to information. First, the provision adds to the Criminal Code the crime of “Revelation of a secret by a private person,” which provides: “One who makes known a confidential public document shall be subject to imprisonment of five

⁹⁰ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 3; Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 3.

⁹¹ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 7.

⁹² Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 6.

⁹³ Ministry of Interior and Justice. May 24, 2010. [Decree No. 1800 of 2010](#). Art. 9.

⁹⁴ Ministry of Interior and Justice. September 27, 2011. [Decree No. 3569 of 2011](#). Art. 8.

⁹⁵ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Paras. 135-137.

⁹⁶ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, Bill No. 195 of 2011 of the House, “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011.

⁹⁷ The Constitution of Colombia establishes at Article 153: “The approval, amendment, or derogation of *leyes estatutarias* will require the absolute majority of the members of Congress and shall be done in a single legislature. This process shall include a prior review by the Constitutional Court of the constitutionality of the proposed legislation. Any citizen may come forward to defend or challenge it.”

to eight years, unless it is done pursuant to a constitutional or statutory duty.”⁹⁸ Nonetheless, in Chapter VI (Confidentiality of Intelligence and Counter-intelligence Information) the law provides: “The mandate that it be confidential is not binding on journalists or the media when they are performing their journalistic function of serving as a check on governmental power, in the context of the self-regulation of journalism and the constitutional case-law; they in any event are obligated to keep their sources confidential.” The IACHR recalls in this regard that the public authorities and public servants have the exclusive responsibility of protecting the confidentiality of any secret information legitimately under their control. Other individuals, including journalists and representatives of civil society, should never be subject to sanctions for the mere publication or subsequent dissemination of this information, independent of whether it has been leaked, unless they commit fraud or another offense in order to obtain the information.⁹⁹ The IACHR further recognizes the partial protection that the law grants for whistleblowers¹⁰⁰ and recalls that whistleblowers who in good faith disclose information on statutory violations, gross cases of mismanagement of public agencies, grave threat to health, safety, or the environment, or a violation of human rights or humanitarian law should be protected from statutory, administrative, or labor sanctions.¹⁰¹

60. In its observations on this report, the State wrote that “with regard to freedom of information and the intelligence and counterintelligence services provided by the Colombian State (...), the statutory law on intelligence and counterintelligence meets the specifications set by the Constitutional Court for classifying certain information: (i) clearly and precisely stated terms; (ii) a written explanation of the rationale and proportionality of the decision to deny access to certain information; (iii) the time period that the information will be kept classified; (iv) the system for custodianship of that information; (v) the checks on such decisions, and (vi) the existence of judicial remedies and actions by which to challenge a decision to classify certain information.” The State underscored the fact that “the law does not violate either freedom of the press or freedom of expression.” It also observed that paragraph 4 of Article 33 provides that “the classification period is not binding upon either journalists or the communications media when they are engaging in watchdog journalism, following the rules by which the media and journalists regulate themselves and provided they are acting in accordance with constitutional jurisprudence; in all events, journalists and the media would be required to guarantee the confidentiality of their sources.” For the State, this provision elevates the Constitutional Court’s jurisprudence on the subject to the rank of statutory law. That jurisprudence holds that “classification is not binding upon the media, who are liable only if they reveal their sources.” In its observations, the State explained that the justification for the provision, “as the Court itself has explained, is that the responsibility of the media is to serve as the watchdog of public power. This function could not be properly performed if the media were limited to the information provided to them.” The State explained that the “exception to the classification principle is made for journalists but not for all organizations in civil society, since the general principle of intelligence is that it must be kept confidential because it has a close bearing on national security and defense. However, lawmakers were of the view that because of the watchdog function that the media perform, journalists must be allowed to use classified information without committing a crime. On the other hand, if any organization in civil society was allowed to use classified information without committing an offense, no matter how many mechanisms were instituted to keep that information secure any person could gain access to that information by unlawful means and publish it, thereby jeopardizing national security, national defense, international relations and other national interests.” The State observed that the Constitutional Court has sanctioned the creation of the classified information system “to ensure protection

⁹⁸ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, 195 of 2011 House: “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011. Art. 45.

⁹⁹ Joint Declaration by the rapporteurs on freedom of expression of the United Nations, the OAS, and the OSCE (2004). Available at: <http://www.cidh.oas.org/relatoria/showarticle.asp?artID=319&IID=2>

¹⁰⁰ [Report on Conciliation of Bill No. 263 of 2011](#). Senate, 195 of 2011 House “By which provisions of law are issued to strengthen the legal framework that enables the agencies that conduct intelligence and counter-intelligence activities to carry out their constitutional and statutory mission, and other provisions are issued.” June 14, 2011. Art. 39: “[...] In any event, the public servants of the agencies that undertake intelligence and counterintelligence activities may report the criminal activities of which they come to learn directly or through a representative of the intelligence agency, and in conditions that make it possible to ensure their security and integrity, guaranteeing the protection of sources, means, and methods....”

¹⁰¹ [Joint declaration by the rapporteurs on freedom of expression of the United Nations, the OAS, and the OSCE \(2004\)](#).

of the fundamental rights of third parties that may be disproportionately affected if certain information is made public and given the need to keep certain information confidential in order to safeguard national security and defense.” The State added that “public officials who have access to this information are thus obligated not to disclose it; if they disclose such information they will face criminal and disciplinary consequences.” It also pointed out that the Constitutional Court held that “disclosure [of classified information] shall have criminal and disciplinary consequences only for the official who discloses the information.”¹⁰²

61. Furthermore, in 2011 the IACHR received information on the exercise of the right of access to information by groups of small farmers in the department of Atlántico. The various groups of small farmers requested information from the Colombian Rural Development Institute (“INCODER” *Instituto Colombiano de Desarrollo Rural*) with respect to the implementation of agrarian programs in their respective subdivisions, including programs in training, social services, physical infrastructure, rural housing, adaptation of lands, technical assistance, financing, and legal support.¹⁰³ On several occasions the groups of small farmers have pursued the special constitutional remedy known as *acción de tutela* after receiving responses from INCODER to their filings in exercise of their right to petition that they considered unsatisfactory. Those actions were resolved favorably in the cases of the subdivisions of Los Guayacanes of the municipality of Repelón,¹⁰⁴ Banco Totumo of the municipality of Repelón,¹⁰⁵ and Maramara of the municipality of Baranoa.¹⁰⁶ The judicial rulings in these cases, considering the “generic and incomplete nature of the response” from INCODER, order “INCODER to address each and every one of the petitions filed, making a clear pronouncement on them ... without the use of evasive or elusive language, so as to consider the subject matter of the petition and be in keeping with what is requested” within 48 hours.¹⁰⁷ INCODER was said to have challenged the judicial decisions in three of these cases;¹⁰⁸ in the case of the subdivision of Los Guayacanes, the ruling in the *tutela* action was already upheld on appeal.¹⁰⁹

62. The IACHR recalls that principle 4 of the Declaration of Principles on Freedom of Expression establishes that “Access to information held by the state is a fundamental right of every individual” and recognizes as a good practice the judicial response of guaranteeing the exercise of this right in the cases mentioned. At the same time, and without prejudice to the possible rulings on first and second appeal in these proceedings, the IACHR expresses its concern given indicia of the repeated failure of INCODER to respect the right of access to information.

C. Respect of and guarantee by the State of the right to freedom of movement and residency

¹⁰² In memorandum No. MPC/OEA No. 1829, from the Colombian State to the IACHR, dated December 27, 2011. “Observations of the Colombian State on the Draft Annual Report of the Inter-American Commission on Human Rights on Human Rights Developments in Colombia in 2011”. pp. 14 and 15.

¹⁰³ Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011; Thirteenth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011; Twelfth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

¹⁰⁴ Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

¹⁰⁵ Thirteen Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011.

¹⁰⁶ Twelfth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011.

¹⁰⁷ Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00272-00. September 27, 2011; Thirteenth Civil Court of Barranquilla. Tutela Action No. 08001-31-03-013-2011-00207-00. August 22, 2011; Twelfth Civil Court of the Circuit of Barranquilla. Tutela Action No. 08001-31-03-012-2011-00230-00. August 25, 2011.

¹⁰⁸ Twelfth Civil Court of Barranquilla. Tutela Action 2011-00230. Motion to Appeal (Recurso de Impugnación). September 1, 2011. See also information sent by the Colectivo Mujeres al Derecho to the Rapporteurship on “events that constitute violations of the right of access to information of women and rural communities in the departments of Atlántico and Magdalena, Colombia, by the Colombian State,” received on August 8, 2011 and September 30, 2011. In the files of the Office of the Special Rapporteur.

¹⁰⁹ Superior Court, Judicial District of Barranquilla. Tutela Action on appeal. *Abelardo Prentz Norieg (sic) and Sergio Rafael Cabarcas Torrenegra*. October 4, 2011.

63. The IACHR continues to receive reports of crimes by state agents and illegal armed groups, and there has been an increase in the number of requests for measures of protection based on the different actions of the “post- demobilization” groups. In addition to the emerging armed groups, the FARC and the ELN continue perpetrating acts of violence and harassment. These violations of human rights and breaches of international humanitarian law against the civilian population, together with the problems of inequality of income, gender, locality, and ethnicity¹¹⁰, have led to an increase in the phenomenon of internal displacement.

64. Accordingly, the Office of the United Nations High Commissioner for Refugees (“UNHCR”) indicated that as of May 2011, the Government has recorded more than 3.7 million persons internally displaced in the country, which represents an increase in relation to 2010, when the International Committee of the Red Cross (“ICRC”) referred to 3.3 million. In addition, according to the analysis by the UNHCR, it is expected that the number of internally displaced persons will continue to rise in the next two years. The Consultoría para los Derechos Humanos y el Desplazamiento (“CODHES”) reports that a total of 280,041 persons were displaced in 2010 in Colombia due to the armed conflict and other expressions of political and social violence.¹¹¹ Finally, the State observed that the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation had 212 cases assigned as of December 2011: 166 were active cases, involving 469 suspects, 209 persons charged, and 128 persons deprived of liberty. It reported that 62 convictions had been won, involving 163 persons.¹¹²

65. The Commission has observed that the displacements affect mostly persons and communities located in areas where most of the armed confrontations take place and that the forced dispossession of their lands by the illegal armed actors is the leading cause of displacement. The Commission observes that most of the lands forcibly dispossessed continue in the hands of the illegitimate possessors and their straw men. In this respect, the United Nations OHCHR has expressed concern over the numerous threats against and assassinations of persons who lead or participate in land restitution processes¹¹³ and has asked that the State “adopt a program for comprehensive protection that supplements the public security measures, including a risk analysis at the local level and political, technical, and financial support for individuals and community and victims’ organizations claiming the restitution of their lands.”¹¹⁴ The Commission continues to be especially concerned about the humanitarian and security situation of displaced persons as well as the sustainability of their return processes.

66. In addition, the Mission to Support the Peace Process in Colombia (“MAPP/OEA”) has referred to this situation in its April 2011 report, by which it indicates that it continues to be concerned about the way in which the civilian population is involved in the violent dynamics imposed by the post-demobilization groups. The confrontations that occur between these groups in rural zones of municipalities in southern Córdoba, the lower Cauca river valley, Chocó, and along the coast of Nariño have generated displacements of Afro-Colombian and indigenous communities that are caught in the middle of these confrontations. The conditions of insecurity produced by these events may have an

¹¹⁰ In June 2011, the Assistant Secretary-General of the United Nations Heraldo Muñoz visited Colombia. According to Muñoz, the results of a study by the UNDP reveal that the greatest scourge Colombia faces at this time is inequality. Latin America is the most unequal region in the world; and Colombia is among the 15 most unequal countries in the world.

¹¹¹ See: <http://www.acnur.org/t3/operaciones/situacion-colombia/desplazamiento-interno-en-colombia/> and CODHES, Boletín 77 of February 28, 2011 at: http://www.codhes.org/index.php?option=com_docman&task=cat_view&gid=63&Itemid=50.

¹¹² Observations of Colombia to the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 17.

¹¹³ Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 79.

¹¹⁴ Press Release, Office in Colombia of the United Nations High Commissioner for Human Rights, November 26, 2010, “*Al repudiar la muerte violenta del líder Óscar Maussa, la Oficina de la ONU para los Derechos Humanos solicita establecer una política de protección de las personas que reclaman la restitución de tierras*”, <http://www.hchr.org.co/publico/comunicados/2010/comunicados2010.php3?cod=37&cat=81>.

impact adverse to the communities through confinement or restrictions on mobility, also keeping them from receiving humanitarian aid from the state agencies and international cooperation.¹¹⁵

67. The Constitutional Court of Colombia periodically reviews the situation of the displaced population in the context of the armed conflict. In Judgment T-025 of 2004 it declared the existence of an unconstitutional state of affairs (*un estado de cosas inconstitucional*) due to the effect of forced displacement, and it ordered that public policies effectively protect the rights of the persons displaced and overcome the unconstitutional state of affairs. These directives have been progressively set forth by the Constitutional Court in successive follow-up orders.¹¹⁶

68. Order 008 of the Constitutional Court noted that “despite the budgetary effort made by the government, as well as the gains in several of the components of services for the displaced population, there is an agreement both in the national executive and on the part of the oversight bodies, the international organizations, and the Commission for Follow-up that the conditions are not present for declaring that the unconstitutional state of affairs to have been overcome.” It notes that even though “according to the government the budgetary resources are sufficient for protecting the effective enjoyment of the rights of the displaced population, the level of coverage of almost all the components continues to be far from reaching an acceptable level.”¹¹⁷

69. On July 1, 2010, the Government submitted a report on overcoming the unconstitutional state of affairs found in Judgment T-025 of 2004 to the Constitutional Court in which it asked the Court to find that this state of affairs had been overcome.¹¹⁸ Specifically, the State indicated that among the measures implemented and that would indicate that the unconstitutional state of affairs has been overcome is the improvement in inter-institutional coordination through the formation of the Executive Committee of the National Council of Comprehensive Care to the Displaced Population; the strengthening of the Ministry of Interior and Justice through the use of specialized technicians in this area, and having information available by department and municipality, so as to make possible better coordination between the national government and the departmental and municipal governments and raising the awareness of the local authorities; maturity of the monitoring and information systems so as to make it possible to monitor the performance of the policy, institutions, regional and local governments, administrative records of the delivery of services and effective enjoyment of rights; and the effective participation of the organizations.¹¹⁹

70. In addition, the State highlighted the major budget increase and the reorganization of public policy so as to cover the cost of the budget effort. It noted that three-fourths of the budget is now part of the Medium-Term Fiscal Framework (which is to say it is financed) and that financing will be sought for the other one-fourth. The State concluded that given that the barriers that made it impossible for the state to address the problem have been overcome and that notable gains are being made in the full attainment of the effective enjoyment of rights of the populations forcibly displaced by the violence, it

¹¹⁵ OAS, Fifteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), OEA/Ser.G, CP/INF. 6225/11, April 15, 2011, p. 3.

¹¹⁶ The orders (*autos*) of the Constitutional Court of Colombia are available at <http://www.corteconstitucional.gov.co/relatoria/radicador/RADICADOR%20AUTOS%202009.php>.

¹¹⁷ Constitutional Court, Order 008 of 2009, Writing for the Court Judge Manuel José Cepeda, January 26, 2009, paras. 134-137.

¹¹⁸ National System for Integral Attention to the Displaced Population (SNAIPD: Sistema Nacional de Atención Integral a la Población Desplazada). Informe del Gobierno Nacional a la Corte Constitucional sobre la Superación del Estado de Cosas Inconstitucional Declarado Mediante la Sentencia T-025 de 2004, July 1, 2010. Document available at http://www.vertice.gov.co/LinkClick.aspx?fileticket=Dy3R_Am2-8%3D&tabid=71&mid=454.

¹¹⁹ National System for Integral Attention to the Displaced Population (SNAIPD). Informe del Gobierno Nacional a la Corte Constitucional sobre la Superación del Estado de Cosas Inconstitucional Declarado Mediante la Sentencia T-025 de 2004, July 1, 2010. Document available at http://www.vertice.gov.co/LinkClick.aspx?fileticket=Dy3R_Am2-8%3D&tabid=71&mid=454.

is possible to continue the surveillance and control of the measures needed to consolidate those gains without any need to have recourse to the concept of the unconstitutional state of affairs.¹²⁰

71. For its part, in its comments to the Report of the Government, the Commission to Monitor the Public Policy on Forced Displacement indicated that in Judgment T-025 the Court refers repeatedly to the budgetary and institutional capacity problems that are at the basis of the massive violation of rights of the displaced population and concluded that

The Report by the Government allows one to conclude that there subsists an accentuated insufficiency of financial resources for addressing the needs of the [population subject to forced displacement], that the level of indicators of effective enjoyment for the majority of the rights of this segment of the population, while in some cases showing slight improvements, means that one cannot say that their effective enjoyment has been attained, as required by Judgment T-025, and that the policies needed to guarantee the overcoming of forced displacement in Colombia are not yet in place.¹²¹

72. In addition, the Roundtable for Monitoring Order 092 of 2008¹²² – on protecting the fundamental rights of women victims of forced displacement in the context of overcoming the unconstitutional state of affairs of Judgment T-025 of 2004 – verified, in its Third Report, that the entities in charge have not complied with the obligations that stem from that Order and that findings made by the Constitutional Court remain unchanged. Specifically, the Roundtable noted that (i) the Office of the Attorney General has not designed and implemented a public policy that makes it possible to recognize, address, and overcome the barriers to access to justice faced by women victims of sexual violence in the context of the armed conflict, nor have significant or consistent gains been made in the proceedings going forward to inquire into such crimes; (ii) the State has not implemented an effective policy in the area of prevention and protection that would make it possible to diminish the risk to which women are exposed; (iii) the protection programs have not been effective, the obstacles to their access persist, deficiencies in implementing the measures of protection persist, and the process for getting women into the programs has been discriminatory and re-victimizing; and (iv) the Office of the Attorney General has not adopted the measures necessary to guarantee that women victims of sexual violence in incidents associated with the armed conflict receive comprehensive physical and mental health care so as to enable them to have access to justice.¹²³

73. In July 2010, the Roundtable for Monitoring Order 006 of 2009 of the Constitutional Court on Displacement and Disability issued a report on compliance with some of the orders issued by the Court in that Order and indicated that the outlook is not very encouraging.¹²⁴ The Roundtable noted,

¹²⁰ National System for Integral Attention to the Displaced Population (SNAIPD). Informe del Gobierno Nacional a la Corte Constitucional sobre la Superación del Estado de Cosas Inconstitucional Declarado Mediante la Sentencia T-025 de 2004, July 1, 2010. Document available at http://www.vertice.gov.co/LinkClick.aspx?fileticket=Dy3R_Am2-8%3D&tabid=71&mid=454.

¹²¹ Commission for Monitoring the Public Policy on Forced Displacement, Comments on the Report of July 1, 2010 of the National Government to the Constitutional Court on Overcoming the Unconstitutional State of Affairs Found in Judgment T-025 of 2004, July 2010. Document available at http://derechoydesplazamiento.ilsa.org.co:81/sites/derechoydesplazamiento.ilsa.org.co/files/doc/Comseg/comen-inf-gob_nal.pdf.

¹²² The Roundtable for Follow-up is made up of Corporación Casa de la Mujer, Consultoría para los Derechos Humanos y el Desplazamiento (CODHES), Corporación Sisma Mujer, Alianza Iniciativa de Mujeres Colombianas por la Paz (IMP), Ruta Pacífica de Mujeres, Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia), Mesa de Trabajo Mujer y Conflicto Armado, Comisión Colombiana de Juristas, Colectivo de Abogados José Alvear Restrepo, and Liga de Mujeres Desplazadas.

¹²³ Third Report Monitoring Order 092 of 2008, June 2010. The State also observed that in the criminal prosecutions conducted by each of the specialized prosecutors from the Human Rights and International Humanitarian Law Unit in which the victims named are women and children, assistance is being provided to advise them of their rights and to avoid re-victimization in cases of sexual violence; to engage in direct dialogue so as to establish trust; to ensure that the competent state entities devote priority attention to the health- and safety-related requests made by the victimized women and children; and to make state officials more aware of and sensitive to the need for a gender-based approach. The State also reported that work is moving forward on a comprehensive treatment model for victims of sexual violence, and further progress has been made on regulation of the mandatory health plan. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 17 and 18.

¹²⁴ Roundtable for Follow-up on Order 006 of 2009 on Displacement and Disability, July 2010.

among other things, that the Ministry of Social Protection, as the lead agency of the public policy on disability and the agency involved in the specifics of Order 006 of 2009, and Social Action, as the lead agency of the public policy on displacement, have not been able to agree upon genuine efficient mechanisms for coordination and action, and that said lack of inter-institutional coordination causes delays and makes it impossible to go forward with implementing Order 006 of 2009.¹²⁵

74. On June 10, 2011, Law 1448 was adopted “by which measures of attention, assistance, and integral reparation are issued for the victims of the internal armed conflict and other provisions are issued”; it is also called the “Law on Victims and Restitution of Land.” It has been considered a major step for many of the victims of the armed conflict.¹²⁶ One of its crucial points is that it recognizes the existence of an armed conflict, which had been systematically denied by the State. With that one would be allowing reparation for the victims and the return of lands said to have been forcibly dispossessed by paramilitary groups, on some occasions with the collusion of the security forces. Nonetheless, its recent approval poses many challenges and has drawn many criticisms. Among other points, the law would establish the possibility of economic reparation only for the victims of abuses since 1985 and one could only claim the restitution of lands forcibly dispossessed since 1991.¹²⁷ It may also exclude the recent victims of paramilitary groups because the State would assert that those groups demobilized in 2003. In addition, the law may pose an economic challenge to the State in light of the number of persons to whom reparation is owed and the law would not include measures to ensure the security of persons who return to their lands vis-à-vis those said to have displaced them.¹²⁸

75. In June 2011, the office of the UN High Commissioner for Human Rights in Colombia issued a statement on the Law on Victims and Restitution of Lands by which it declared that “Recognition of the harm and suffering caused by the decades of conflict and violence, and the collective will to make a significant effort to make reparation for them, are without doubt an act of justice towards the victims and an important step in the search for peace and reconciliation” and it made observations particularly in terms of the principles of non-discrimination, access to justice, integral reparation, differential approach, duty of protection, and victims’ participation.¹²⁹

76. In December 2011, the President of the Republic issued Decrees-Laws 4633, 4634 and 4635¹³⁰ for individual and collective victims belonging to indigenous peoples and communities, the Roma or gypsy people and the Afro-Colombian, black, Raizal and Palenquero peoples, respectively.¹³¹

¹²⁵ Roundtable for Follow-up on Order 006 of 2009 on Displacement and Disability, July 2010.

¹²⁶ “The approval of the Law on Victims and Restitution of Lands marks historic progress. It is the culmination of an effort promoted by President Juan Manuel Santos to put the victims at the center of attention of the Colombian State. Its implementation is going to mean a new horizon of hope in the search for peace and reconciliation in Colombia, a challenge that deserves the support of all Colombian society and of the international community,” said Christian Salazar Volkmann, Representative in Colombia of the United Nations High Commissioner for Human Rights. Press Release of the OHCHR, May 25, 2011, at: <http://www.hchr.org.co/publico/comunicados/2011/comunicados2011.php3?cod=12&cat=86>.

¹²⁷ The State listed the reasons for narrowing the universe of potential victims under the reparations program created by Law 1448, which have to do with the nature of this law as a vehicle of transitional justice. It added that the Constitutional Court was studying the exigibility of the law in response to the constitutionality challenges brought since it was passed. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 18.

¹²⁸ The State observed that the same law provides for mechanisms to orchestrate the planning, execution and follow-up of a land-restitution security strategy. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 18.

¹²⁹ Statement by the Office in Colombia of the United Nations High Commissioner for Human Rights on the Law of Victims and Restitution of Lands, Bogotá D.C., June 7, 2011, at: <http://www.hchr.org.co/publico/comunicados/2011/comunicados2011.php3?cod=14&cat=86>.

¹³⁰ As the State reported, under the special authorities given by Article 205 of 2011 Law 1448, which regulates public policy for serving and assisting victims, making full reparations and restoring land rights. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 26. See also: Decree 4633-2011 at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/09/dec463309122011.pdf>; Decree 4634-2011 at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/09/dec463409122011.pdf> ; and Decree 4635-2011 at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Diciembre/09/dec463509122011.pdf>.

77. The Commission has followed up on the discussion and approval of Law 1448 and agrees that the Law on Victims and Restitution of Lands is a step forward towards developing an integral concept of reparation. Nonetheless, it recognizes that the issue poses multiple challenges¹³² to the Colombian State and establishes that it will continue monitoring the measures adopted to address the situation of the displaced population and compliance with the orders given by the Constitutional Court, and the new legal provisions in light of the urgent nature of its implementation and the complexities entailed.

D. Guarantees of due process of law and effective access to justice

1. The process of demobilizing armed groups and judicial clarification and reparation of crimes perpetrated in the context of the internal armed conflict

a. Reintegration of the demobilized population and dismantling the armed structures

78. After the agreements reached between the Government of President Álvaro Uribe Vélez and leaders of the Autodefensas Unidas de Colombia, there was a collective demobilization of more than 31,000 persons¹³³ who identified themselves as members of the AUC, with international verification by the Mission to Support the Peace Process in Colombia of the OAS (MAPP/OEA). The Government has also maintained dialogues with armed groups of the guerrilla movements, some of whom have joined the process of collective demobilization.¹³⁴ The legal framework of the process, established among statutes in Law 975 of 2005, also known as the “Law of Justice and Peace,”¹³⁵ establishes a series of procedural benefits and sentence reductions for those who, having participated in committing crimes, join the demobilization process.¹³⁶

...continued

¹³¹ The State indicated that these decrees underwent a process of advance consultations and negotiation with each of the respective ethnic groups. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 26 and 27.

¹³² In connection with the challenges that implementation of the law will pose, the State underscored its commitment to ensuring that the service, assistance and reparations measures embodied in the Victim’s Law will materialize and pointed out that it had engaged in a “comprehensive and participatory” process of putting together a set of rules and regulations to enable the planned measures to be instituted. A regulatory Decree was to be adopted embodying the standards and operating principles necessary to enforce the law nationwide.” As of December 2011, the Legal Secretariat of the Office of the President of the Republic was reportedly studying the regulatory Decree with a view to its eventual publication, as it had been “substantially modified as a result of the victims’ participation and feedback.” Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 23-26.

¹³³ Office of the High Commissioner for Peace. Logros: Balance de Gobierno 2002-2010. Document available at: <http://www.altocomisionadoparalapaz.gov.co/web/noticias/2010/julio/documentos/10%20logros%20Oficina%20del%20Alto%20Comisionado%20para%20la%20Paz.pdf>

¹³⁴ Official figures indicate that from August 2002 to October 2010, more than 54,000 members of illegal armed groups (AUC, FARC, ELN) demobilized. This figure includes both those persons who demobilized collectively, and the approximately 22,000 persons associated with the paramilitary and guerrilla groups who turned in their weapons individually. Figures from the Program for Humanitarian Attention for Persons who have Demobilized, Office of the High Commissioner for Reintegration, Statistics August 2002-October 2010. Document available at: http://www.reintegracion.gov.co/Es/proceso_ddr/Documents/presentaciones/Presentacion_oct_2010.ppt#304,5,Slide 5.

¹³⁵ For more than a year-and-a-half the process of demobilization, surrender of weapons, and reincorporation to civilian life went forward under the regime for individual and collective demobilization in place, in keeping with Decree 128 of 2003, which regulates Law 418 of 1997, extended and modified by Law 548 of 1999 and Law 782 of 2002 on reincorporation into civil society, and Law 782 of 2002. On June 22, 2005, the Colombian Congress approved Law 975 of 2005, which came into force after presidential approval on July 22, 2005. In addition, on December 30, 2005, Decree No. 4760 of the Ministry of Interior and Justice was adopted; it regulates certain aspects of Law 975 related to the time available for investigating those who seek to avail themselves of the benefits of the law (Article 4) and by introducing the principle of opportunity to favor third parties related to the acquisition, possession, tenure, transfer, and in general ownership of the ill-gained assets that should be given in reparation to the victims (Article 13). On September 29, 2006, Decree No. 3391 was made public; it partially regulated Law 975 de 2005. Ministry of Interior and Justice, Decree No. 3391 de 2006, September 29, 2006, “Partially regulating Law 975 of 2005.”

¹³⁶ The compatibility of Law 975 with the Colombian Constitution was called into question before the Constitutional Court. In response, the Constitutional Court found Law 975 to be constitutional overall and at the same time indicated conditions for Continúa...

79. Since 2004, the IACHR has monitored the process of disarmament of the illegal armed structures, and principally the application of the legal framework designed to establish the truth, justice, and reparation for the victims of the conflict as an essential part of its role of providing advisory services to the member states of the OAS, the General Secretariat of the Organization, and the MAPP/OEA.¹³⁷

80. In October 2011, the MAPP/OEA submitted a Diagnóstico de Justicia y Paz, or assessment of the special Justice and Peace jurisdiction, in the framework of Colombian transitional justice, examining the difficulties and obstacles that have accumulated in the six years in which Law 975/2005 has been in force (“Diagnóstico MAPP/OEA”).¹³⁸ The report provides an extensive recounting of the stages of the special criminal procedure of the Justice and Peace courts and of the efforts made and difficulties encountered in implementing transitional justice in Colombia. The report presents a total of 110 recommendations on all the issues it addresses. On this occasion, the IACHR endorses the considerations and recommendations presented by the MAPP/OEA in the course of 2011.

81. The Commission observes in particular that despite the efforts aimed at dismantling the armed structure of the AUC, illegal armed groups continue to be involved in acts of harassment and violence against vulnerable populations, social leaders, and human rights defenders. The Secretary General of the Organization of American States has identified in his reports to the Permanent Council of the Organization the existence of phenomena of violence subsequent to the demobilizations, based on information obtained on the ground by the MAPP/OEA. According to those reports, the situation is shaped by various dynamics: (1) the regrouping of those who demobilized into criminal bands that exercise control over specific communities and illicit economies; (2) remnants of those who did not demobilize; (3) the appearance of new armed actors and/or strengthening of some of the already-existing ones in zones abandoned by demobilized groups.¹³⁹

82. In this vein, according to the October 2011 Diagnóstico MAPP/OEA, “even though the paramilitary groups formally ceased to exist, the INML [(*Instituto Nacional de Medicina Legal*)] recorded,

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several of its provisions to be considered compatible with core constitutional principles identified as the *bloque de constitucionalidad*. Among the parameters for interpretation established by the Constitutional Court, those aimed at protecting the participation of victims in the process, and their access to integral reparation, are of special note. The judgment also clarifies the obligation to effectively impose the reduced prison sentence provided for therein and introduces legal consequences, such as the loss of benefits, in the event that the demobilized who seek to benefit from the application of the Law hide information from the judicial authorities. In addition, the judgment clarifies the characterization of paramilitarism as a common crime. In summary, demobilized persons implicated in committing crimes related to the armed conflict who wish to obtain the benefits established by Law 975 will have to cooperate with the justice system so as to effectively attain victims’ rights to truth, justice, reparation, and non-repetition. Constitutional Court, Case D-6032 – Judgment C-370/06, reasoning made public on July 13, 2006.

¹³⁷ Permanent Council of the OAS, Resolution CP/RES. 859 (1397/04) “Support to the Peace Process in Colombia,” third operative paragraph. OEA/Ser. G CP/RES. 859 (1397/04) of February 6, 2004. See IACHR, *Third Report on the Human Rights Situation in Colombia*, OEA/Ser.L/V/II.102 Doc. 9 rev. 1, February 26, 1999; *Report on the demobilization process in Colombia*, OEA/Ser.L/V/II.120 Doc. 60, December 13, 2004; *Statement by the Inter-American Commission on Human Rights on the Application and Scope of the Justice and Peace Law in Colombia*. OEA/Ser/LV/II. 125 Doc. 15, August 1, 2006. IACHR, “Report on the implementation of the justice and peace law: Initial stages in the demobilization of the AUC and first judicial proceedings,” OEA/Ser.L/V/II.129 Doc. 6, October 2, 2007. See also Chapter IV of the annual reports of the IACHR for 1995, 1996, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, and 2010.

¹³⁸ OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf.

¹³⁹ See Sixth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA). OEA/Ser. G/CP/doc. 4075/06, February 16, 2006. See also Seventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA). See OEA/Ser.G/CP/doc. 4148/06, August 30, 2006; Eighth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA). OEA/Ser.G. CP/doc. 4176/07, February 14, 2007; Ninth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), July 3, 2007; Tenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), October 31, 2007; Eleventh Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), June 25, 2008; Twelfth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), February 9, 2009.

from 2004 to 2008, 16 cases of sexual violence attributable to 'paramilitaries-self-defense forces'; and during 2009, seven cases to 'emerging bands.'¹⁴⁰ In addition, the MAPP/OEA has reported that in several zones of Colombia the actions of what are called "emergent structures and criminal gangs against the population have not ceased, and that massacres, abductions, disappearances, murders, threats, and extortion continue to take place."¹⁴¹ The MAPP/OEA has found that "these structures directly affect community and social leaders, public officials, indigenous and Afro-Colombian populations when they pose an obstacle to the pursuit of illegal activities, and that situation fuels uncertainty and fear within communities."¹⁴²

83. During 2011, the IACHR has received, as in previous years, complaints regarding groups that act under the names of "Águilas Negras," "Rastrojos," "Los Paisas," "Los Urabeños," "Renacer," "ERPAC," and "Autodefensas Gaitanistas," among others. In this respect, the Office in Colombia of the UN High Commissioner for Human Rights has already noted that the ranks of these groups include persons who demobilized and did not demobilize from the former paramilitary organizations, who were recruited voluntarily or forcibly, and that several of the current leaders were previously mid-level commanders of those organizations or in the military.¹⁴³

84. In addition, the IACHR continues receiving information that indicates that known paramilitary leaders are or have been in the leadership of groups that have been called "criminal bands" or "BACRIM."¹⁴⁴ For example, the information received indicates that paramilitary chief Daniel Rendón Herrera alias "Don Mario," who was arrested in 2009, had been at the command of the paramilitary groups of his brother Freddy Rendón Herrera alias "el Alemán," who grouped under the names of "Héroes de Castaño" and "Autodefensas Gaitanistas." In addition, Pedro Oliveira Guerrero alias "Cuchillo," who demobilized in 2006 and who is a fugitive at present, is said to be at the head of the Frente Héroes del Guaviare, which was part of the Bloque Centauros of the AUC, and Héctor Germán Buitrago alias "Martín Llanos," who did not demobilize and at present possibly continues to be engaged in criminal conduct, is said to be at the head of the Autodefensas Campesinas del Casanare.¹⁴⁵

85. The State, by Decree 2374 of July 1, 2010, created the Inter-institutional Commission against the Criminal Bands and Networks, whose objective is to articulate efforts that enable them to

¹⁴⁰ OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional Colombiana, MAPP/OEA, October 2011, p. 158. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf.

¹⁴¹ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁴² Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010. This information is consistent with the information received in the context of the 141st and 143rd periods of sessions of the IACHR. Hearing on the situation of human rights in Colombia, held March 25, 2011, at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=122> and Hearing on the situation of human rights in Colombia, held October 27, 2011, at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>.

¹⁴³ Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 61.

¹⁴⁴ The following are some of the comments the State presented in connection with the "BACRIM." The peace processes in Colombia disbanded the organized illegal armed groups of the AUC. The BACRIM are criminal groups spawned by the drug trafficking industry and other illegal businesses. They follow the classic model of organized crime, which is that they expand by "purchasing" franchises associated with drug trafficking; their goal is to control the drug trafficking chain and other legal and illegal businesses. Their structure is not hierarchical in the traditional sense; instead, they are complex structures of crime on a large scale and do not fit the criteria established in the various international instruments on armed conflict and transnational crime." They do not control large tracts of territory and their ability to conduct sustained and concerted military operations is limited. From a legal standpoint they are more akin to an organized criminal group as defined in the Palermo Convention. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 30-31.

¹⁴⁵ Comisión Colombiana de Juristas. Colombia: La metáfora del desmantelamiento de los grupos paramilitares. Segundo Informe de Balance sobre la Aplicación de la Ley 975 de 2005, pp. 96 to 101. See also: <http://www.verdadabierta.com/victimarios/los-jefes>. The State wrote that "the involvement of demobilized persons in these groups is not widespread; indeed the number of demobilized persons involved is small by comparison to the total number of persons demobilized thus far, which is 54,213." Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 30.

arrest and prosecute persons who form or are part of the “criminal bands and networks.” The decree indicates that the security forces have identified several bands, including “Los Rastrojos,” “Los Paisas,” “Urabá” (or “Urabeños),” “Ejército Revolucionario Popular Antiterrorista Colombiano (ERPAC),” “Renacer,” and “Los Machos.” Despite the Government’s efforts to dismantle these armed structures,¹⁴⁶ the OHCHR noted: “The scope of organized violence committed by these groups, their substantial economic power, capacity to corrupt authorities and State institutions, links with local authorities and local networks of influence, their impact on social actors and the alarming levels of violence against civilians make them a daunting challenge to the rule of law.”¹⁴⁷

86. In addition, the IACHR observes that in June 2011, Law 1424 was regulated, opening up the possibility for some 20,000 demobilized persons to clear up their legal situation. To gain access to the benefits of the new law, a demobilized person cannot have applied for benefits under the Law on Justice and Peace, and must be active in or formally complete the process of reintegration led by the Office of the High-Level Presidential Adviser for Reintegration, not have engaged in criminal conduct since demobilizing, and sign a form undertaking to contribute to the historical truth and reparations. In addition, by presidential decree of November 4, 2011, the Office of the High-Level Presidential Adviser for Reintegration, who handles the situation of the demobilized Colombian population, became the Colombian Agency for Reintegration (ACR: Agencia Colombiana para la Reintegración). As reported, “The transformation of the Office of the High-Level Adviser into the Colombian Agency for Reintegration means that the policy of reintegration has been institutionalized in Colombia, and is a clear example that for this government demobilization and reintegration are priorities in consolidating security.”¹⁴⁸

b. Application of the legal framework: The situation of the demobilized under the Law on Justice and Peace

87. As the IACHR has been indicating, of the more than 30,000 persons who are said to have demobilized from November 2003 to mid-2006, 4,356 expressed interest in availing themselves of the benefits of the Law on Justice and Peace.¹⁴⁹ Nonetheless, 1,514 of those who originally came forward for this purpose (known as “*postulados*” or “*postuladas*”) decided not to ratify their decision to avail themselves of the Law on Justice and Peace.¹⁵⁰ As was indicated in the analysis of 2009 and 2010, the Commission has not yet received any specific information on judicial actions initiated with respect to the demobilized who in their first application to the Law on Justice and Peace recognized that they had committed “atrocious crimes of ferocity or barbarity, terrorism, kidnapping, genocide, homicide committed out of combat, or placing the victim in a

¹⁴⁶ The State reported that two mutually reinforcing processes had reportedly gotten underway to correct the problems exposed when the Justice and Peace Law was put into practice. They were: 1) introduction of a bill on transitional justice, which was “approved on the first round” on December 14, 2011 and whose purpose is to “elevate peace, as the overriding goal of all instruments of transitional justice, to the rank of constitutional principle. This would authorize the creation of non-judicial transitional justice instruments for investigation and punishment and empower the lawmaker to establish criteria for prioritization and selection for purposes of criminal investigation, and 2) a bill to amend the Justice and Peace Law, which the House of Representatives reportedly passed on December 15, 2011, on the second round of debate. The bill is said to take into account some of the recommendations made in the diagnostic study by MAPP/OEA. The State also claimed that in 2011, it had been executing the strategy called “Anti-BACRIM Operational Coordination Center” (C.E.C.O.B.) to coordinate the intelligence capabilities of the State’s security agencies, comprehensive criminal investigations and operations to break the back of the BACRIM. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 27-28.

¹⁴⁷ Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, March 4, 2010, A/HRC/13/72, para. 64.

¹⁴⁸ Office of the the Presidential Adviser for Reintegration, <http://www.reintegracion.gov.co/Es/prensa/noticias/Paginas/111104a.aspx>. According to the State’s report, the Regulations for Law 1424 would be put into practice in 2012. The State also reported on the coordination of judicial proceedings under the Justice and Peace Law using an inter-institutional data system which was slated to be put into operation in the first half of 2012. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 30, 36-38.

¹⁴⁹ Information updated to August 30, 2010, at http://www.verdadabierta.com/index.php?option=com_content&id=1856.

¹⁵⁰ National Justice and Peace Prosecution Unit, information as of May 31, 2010. Available at: <http://www.verdadabierta.com/reconstruyendo/1856-estadisticas>.

defenseless situation,”¹⁵¹ even though later they did not ratify their decision to continue participating in the process of the Law on Justice and Peace.¹⁵² With respect to the more than 2,500 *postulados* who continue in the process, a total of 2,431 unsworn statements were initiated,¹⁵³ 1,514 of which have formally terminated, and only 228 were said to have ended with a confession of their own acts.¹⁵⁴

88. The information collected in the unsworn statements as of July 2011 has led to the exhumation of 3,378 common graves and 4,185 corpses, 1,594 of which were fully identified, and in 1,491 cases the remains have already been returned to the next-of-kin.¹⁵⁵ The National Justice and Peace Prosecution Unit reports that as of July 2011, the unsworn statements have included the confession of 26,026 crimes, among them 16,287 homicides, describing 32,441 victims.¹⁵⁶

89. The Commission observes that in April 2011, six years after the promulgation of the Law on Justice and Peace, the Supreme Court ratified the first judgment against two paramilitary chiefs for the massacre of Mampuján.¹⁵⁷ That judgment upheld the conviction but determined that the reparation should be made to the victims individually and not collectively, as the Court had ordered, determining maximum amounts for the payment of compensation; it overturned reparations “in equity” that had been ordered by

¹⁵¹ Law 782 of December 23, 2002, extending the effect of Law 418 of 1997, extended and modified by Law 548 of 1999 and some of its provisions are modified.

¹⁵² In most cases the information had already been collected at the demobilization points. IACHR. Follow-up on the demobilization process of the AUC in Colombia - Digest of published documents (2004-2007). III. Implementation of the First Judicial Proceedings of the Law on Justice and Peace, paras. 20-24. Available at <http://www.cidh.oas.org/pdf%20files/COLOMBIA%20COMPILACION.pdf>.

¹⁵³ National Justice and Peace Prosecution Unit, Information in the process of being consolidated and verified as of June 30, 2010.

¹⁵⁴ National Commission on Reparation and Reconciliation, Informativo de Justicia y Paz: Caminos, No. 2 as of April 2010, figures as of March 18, 2010. Available at: <http://www.cnrr.org.co/new/boletin-justiciaypaz/EDI-2/justicia%20y%20paz-EDI2.pdf>. The figures do not specify whether the confession was complete or partial.

¹⁵⁵ Information updated to September 2011, based on what was indicated by the Office of the Attorney General as of July 31, 2011 at: http://www.verdadabierta.com/index.php?option=com_content&id=1856.

¹⁵⁶ Information updated to September 2011, based on what was indicated by the Office of the Attorney General as of July 31, 2011 at: http://www.verdadabierta.com/index.php?option=com_content&id=1856. On December 27, 2011, the State observed that as of December 20, 2011, 4,643 demobilized persons had applied for the procedure under 2005 Law 975. It reported that in the course of the ‘voluntary statement’ proceedings, the demobilized *postulados* had confessed to 33,170 criminal acts which would have involved a total of 44,280 victims. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 39.

¹⁵⁷ On June 29, 2010, the Chamber of Justice and Peace of the Superior Court of the Judicial District of Bogotá convicted Edwar Cobos Téllez alias “Diego Vecino” and Uber Ebrique Banquez Martínez alias “Juancho Dique” and gave them as the principal penalty prison sentences of 468 and 462 months respectively, and as the accessory penalty prohibition on the exercise of public rights and functions for 20 years for having been found to be co-perpetrators responsible for committing the crimes of aggravated homicide, aggravated conspiracy to engage in criminal conduct, deportation, expulsion, transfer of the civilian population for forced displacement, unaggravated kidnapping, aggravated larceny (*hurto calificado y agravado*), unlawful use of uniforms and insignias, and manufacture, trafficking in, and carrying weapons and munitions that are for the exclusive use of the armed forces, committed in conjunction with other offenses (*en concurso homogéneo y heterogéneo*). Edwar Cobos Téllez was also found liable for the crime of aggravated conspiracy to engage in criminal conduct in conjunction with other offenses (*en concurso homogéneo y heterogéneo*). In addition, the Court gave them the benefit of the alternative penalty for a period of eight years of deprivation of liberty.

The Court indicated that the demobilized who were convicted committed ... grave breaches of international humanitarian law, because as actors in the armed conflict they attacked the civilian population on displacing them from their territory, on attacking the lives of non-combatants and on pillaging their properties after the incursion, clarifying that as regards the complete principle of legality, the criminal law definition was with respect to common crimes, considering the date on which the facts occurred. Yet in addition, as perpetrators of crimes against humanity, because it was not isolated criminal conduct, the widespread, systematic conduct involving the commission of inhumane acts and the target of these attacks – the civilian population – make it possible to conclude that belonging to the group of *autodefensas* or self-defense forces (conspiracy to engage in criminal conduct), the forced displacement of the residents of San Cayetano and Mampuján and the extrajudicial executions should be characterized as crimes against humanity.

the trial court, instead assessing them in law¹⁵⁸; and it overturned the deadlines established for performing the public works and programs ordered as collective reparations, on understanding them as merely hortatory. With the affirmation of the judgment, some questions have been raised concerning the will to make reparation and the money for paying compensation to the survivors of the paramilitary violence, together with the criticisms of the law itself, and the lack of significant results in the area of justice.¹⁵⁹

90. As the MAPP/OEA established in its October 2011 report, the institutional development established in the Law on Justice and Peace “has proceeded as the process has unfolded, to ensure that the number of proceedings with *postulados* would be compatible with the institutional human capacity for prosecuting them. This situation has been reflected in the time that it has taken to resolve the appeal by the Chamber of Cassation of the Supreme Court of Justice since the appeal must be resolved in the Criminal Chamber *en banc*.”¹⁶⁰ In the case of Mampuján (*supra*), the Court took 10 months to decide the appeal, and despite the existence of agreements in March 2011 that sought to clear up the backlog in the system by having more expeditious procedures, the clearing up aspired to has yet to be attained.¹⁶¹

91. In addition, the Diagnóstico by the MAPP/OEA established that in the judicial sphere a one-person system of investigation and knowledge has been chosen that ends up blocking judicial actions which, in turn, translates into “a striking lack of results and a lack of real effectiveness vis-à-vis the criminal phenomenon that has resulted in a veritable lack of protection for victims’ rights.”¹⁶² The IACHR agrees with the MAPP/OEA that this situation should be eliminated, and to that end “collegial organs for investigation and taking cognizance should be established ... which with coordinated, simultaneous, or successive activities and actions interact in the respective phases to attain the objective sought more quickly and effectively.”¹⁶³ In addition, “a radical change is needed in the strategy of investigating international crimes based on the adoption of criteria for selection and prioritization.”¹⁶⁴ In this

¹⁵⁸ In its judgment of first instance the Court established a system of reparations based on the concept of equity, following the practice of the Inter-American Court of Human Rights in the cases of the Pueblo Bello and Ituango massacres, and that of the Council of State. With those criteria, it established tables for individual compensation based on crime and relationship that are fixed, which address material and non-material damages together, beginning with the value attributed to the harm caused by the most serious crime, i.e. homicide, with a maximum reference value of 240 million pesos per nuclear family. Chamber of Justice and Peace, Superior Court of the Judicial District of Bogotá. Judgment of June 29, 2010, case: 110016000253200680077, Writing for the Court Judge Uldi Teresa Jiménez López (footnotes omitted), paras. 343-352. For cases of homicide the Court would grant each indirect victim who is a spouse, parent, or child the sum of 40 million pesos, while siblings would be granted the sum of four million pesos, with a maximum limit per nuclear family of 240 million pesos. In the case of displacement, the Court turned to the practice of the Council of State, which attributes to all displaced persons half (50 salaries) of the amount attributed to spouse, parents, and children in the case of a homicide (100 salaries), thus each displaced person from the same nuclear family would receive the sum of 17 million pesos, with a maximum per nuclear family of 120 million pesos. In the case of kidnappings, the Chamber established a sum between what is granted in the administrative jurisdiction and the Inter-American Court of Human Rights for homicide, and determined that the direct victim should receive 30 million pesos, without the total sum granted to a family group being more than 180 million, and for the siblings it would be four million pesos. Finally, the Chamber establishes that in the event that a single person has been the victim of several offenses, the calculation of the compensation owed him or her, or his or her nuclear family, taking into account the sum corresponding to the most serious offense, with a total limit for the entire nuclear family 240 million pesos.

¹⁵⁹ Similarly, in June 2011 a judgment was handed down against a person who demobilized from the Bloque Catatumbo who was convicted and sentenced to a prison term of 424 months that was suspended so as to impose the alternative penalty of six years for two crimes of escape and aggravated conspiracy to engage in criminal conduct. OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, p. 78. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf.

¹⁶⁰ OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, p. 78. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf.

¹⁶¹ OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, pp. 78 and 79. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf.

¹⁶² OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, p. 79. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf.

¹⁶³ OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, p. 79. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf.

¹⁶⁴ OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, p. 79. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf. The Diagnóstico, in addition to putting forth
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connection the State wrote that acting on the IACHR's observation, the Office of the Attorney General of the Nation had introduced the following criteria for the investigation and prosecution of violations: the representativeness of the crime committed; the vulnerability of the victim; the magnitude of the consequences of certain crimes committed on a particularly large scale, and when the actors, by virtue of their position within the hierarchy or their power within the armed structures, have had a hand in the commission of the most serious crimes.¹⁶⁵

92. In addition to the foregoing, the Commission reiterates that one of the substantial obstacles to progress in the prosecution of those who have applied for the benefits of the Law on Justice and Peace is the extradition of several paramilitary leaders to the United States, and the virtual standstill in the process of clearing up grave crimes perpetrated by the AUC, which in many cases were committed with the acquiescence or cooperation of state agents.¹⁶⁶ The Commission has repeatedly voiced its concern that the failure to clarify those crimes affects victims' rights to truth, justice, and reparation.¹⁶⁷

93. According to the Diagnóstico MAPP/OEA, as of August 2011, 31 of the demobilized who applied for benefits under the Law on Justice and Peace had been sought in extradition; of these, 29 were actually extradited to the United States.¹⁶⁸ The Commission observes that the extradition of these paramilitary leaders also interferes with the State's obligation to prosecute civilians and state agents involved in cases in which both the Inter-American Commission and the Inter-American Court have established its responsibility in the face of grave violations of the rights protected by the American Convention on Human Rights.¹⁶⁹

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specific recommendations, addresses some of the problematic aspects that have been identified after more than six years of applying Law 975 of 2005 *in extenso*.

¹⁶⁵ OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana*, MAPP/OEA, October 2011, p. 79. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf. The State said that it was aware of the delay in the process under Law 975 of 2005 and reported that it had introduced Bill 096 in 2011, which would amend Law 975 with respect to the pace of the process, the various jurisdictions with a view to expediting investigation and prosecution in each phase, and the matter of comprehensive reparations. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 33 and 42.

¹⁶⁶ The State reported that an article had been included in 2011 Bill 096 concerning the adoption of measures to enable extradited demobilized *postulados* to participate effectively in the process. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 35.

¹⁶⁷ In 2008 the IACHR expressed its concern over the potential impact of the extradition to the United States of 16 paramilitary leaders on the effort to determine the facts in thousands of crimes. Specifically, it observed that the extradition, in the conditions in question, affects the obligation of the Colombian State to ensure victims' rights to truth, justice, and reparation for the crimes committed by the paramilitary groups; impedes the investigation into and prosecution of grave crimes by the means established in the Law on Justice and Peace in Colombia and by the regular criminal justice procedures in Colombia; closes off the possibilities of direct participation by the victims in the search of the truth about the crimes committed during the conflict; and limits access to reparations for the harm caused. Finally, the Commission emphasized that this act interferes with the efforts to determine the links between state agents and these paramilitary leaders in the commission of human rights violations. The IACHR issued a press release, held public hearings to receive information on this issue, and made a pronouncement on the matter in Chapter IV of its Annual Report for 2008. See IACHR, Press Release No. 21/08, "IACHR expresses concern about extradition of Colombian paramilitaries," Washington, D.C., May 14, 2008; Hearing on extraditions of paramilitaries to the United States and the right of victims in Colombia, held October 23, 2008 in the context of the 133rd regular period of sessions of the Inter-American Commission on Human Rights. <http://cidh.org:81/Audiencias/seleccionar.aspx>. Annual Report of the IACHR 2008, Chapter IV Colombia, paras. 30-38 <http://www.cidh.oas.org/annualrep/2008sp/cap4.Colombia.sp.htm>

¹⁶⁸ OAS, *Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana*, MAPP/OEA, October 2011, pp. 145-155. At: http://www.indepaz.org.co/attachments/691_DiagnosticoJyP%20Mapp-OEA.pdf.

¹⁶⁹ "The Court considers that in the decisions regarding the application of certain procedural concepts to one person, the accusation of serious human rights violations must prevail. The application of concepts like the extradition must not serve as a means to favor, foster or guarantee impunity. Hence, based on the lack of agreement as to the judicial cooperation between the States that arranged such extradition, it falls upon Colombia to clarify the mechanisms, instruments and legal concepts that shall be applied to guarantee that the extradited person will collaborate with the investigations into the facts of the instant case, as well as, if applicable, to guarantee the due process." I/A Court H.R., *Case of the Mapiripán Massacre v. Colombia*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, July 8, 2009, para. 41.

94. The IACHR reiterates its concern over the impact of the extraditions on the victims' rights to the truth, justice, and reparation; their direct participation in the search for the truth concerning the crimes committed during the conflict, and in securing access to reparation for the harm caused; and over the obstacles to determining the ties between state agents and leaders of the AUC in the commission of human rights violations in which – in some cases – the international responsibility of the State has already been established.

95. The Commission notes that some of the *postulados* and their families have been victims of threats and attacks.¹⁷⁰ In addition, the attacks on and homicides of family members of the paramilitary leaders who have been extradited has endangered cooperation with the proceedings in the Justice and Peace jurisdiction. The Commission observes that the State must provide guarantees of protection to the demobilized if their cooperation is to be effective and without conditions.¹⁷¹

c. Participation of witnesses and victims in the judicial proceedings derived from the Law on Justice and Peace

96. In 2011, the MAPP/OEA has reiterated the need for a national strategy that guarantees comprehensive assistance to the victims. In this regard, it has recognized the progress in implementing the Comprehensive Victim Assistance Model in various cities such as Bucaramanga (Santander), Medellín (Antioquia), Santa Marta (Magdalena), and Valledupar (Cesar). Nonetheless, it has also established that that strategy should take stock of the local and regional lessons learned for the single model to take into account the cultural and institutional dynamics of each region.¹⁷²

97. Nonetheless, one must reiterate that the impossibility of questioning those who seek to benefit from Law 975, either directly or through their representatives, regarding the facts of interest to them in the different phases of the unsworn statement is an obstacle to the victims' participation.¹⁷³ The questioning by the victims is reserved for the second phase of the unsworn statement, but is developed through an indirect mechanism, for the questions proposed are included on a form that is delivered to the members of the Technical Investigations Corps ("CTI" *Cuerpo Técnico de Investigaciones*), who in turn deliver them to the prosecutor. This indirect mechanism seriously restricts the possibility of using the questioning of the victim as an adequate means of discovering the truth of the facts.

98. In that regard, since 2009 the IACHR established that the Office of the Attorney General is losing a valuable strategy for confronting the unsworn statements, and advancing in verifying compliance with the legal requirements for gaining access to the benefits.¹⁷⁴ Specifically, of the almost 300,000 victims on record, only 55,545, i.e. nearly 18%, have participated in the unsworn statements; and 22,691 victims have asked 28,513 questions of *postulados* who are giving their unsworn statements.¹⁷⁵

¹⁷⁰ OAS, Fifteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), 2011.

¹⁷¹ On this point, the State reported that while there was no special protection program for the demobilized persons, their safety and security were paramount for the National Penitentiary and Prison Institute, the Witness Protection Program run by the Office of the Attorney General of the Nation or the National Police. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 36.

¹⁷² OAS, Fifteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), 2011, p. 12.

¹⁷³ The State asserted that protocols had been designed to enable victims to actually participate. They included the voluntary statement proceeding, the voluntary statement chamber and victims chamber, and the model and infrastructure for real-time transmission. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 43.

¹⁷⁴ Annual Report of the IACHR 2009, Chapter IV Colombia, para. 19 <http://www.cidh.oas.org/annualrep/2009sp/cap.4Colo.09.sp.htm>.

¹⁷⁵ National Justice and Peace Prosecution Unit, Information in the process of being consolidated and verified as of June 30, 2010.

The MAPP/OEA has indicated that the re-broadcast of both the unsworn statements and the judicial hearings still poses technical problems that have hindered full implementation of that mechanism.¹⁷⁶

99. In addition, the MAPP/OEA has reported that given the large number of unsworn statements, the capacity of the psychologists to assist victims in those proceedings has been overtaken, thus it has recommended strengthening the capacity of both the *Comisión Nacional de Reparación y Reconciliación* (“CNRR”) and the Office of the Attorney General to provide psychosocial care services.¹⁷⁷ The Commission recalls that the Supreme Court of Justice has noted the collective nature of the right to truth and the obligation of the State to undertake a “serious, clear, transparent, and compelling investigation [which] entails the victims’ right to be heard in the proceeding, facilitating their active participation in constructing the truth.”¹⁷⁸

100. In addition, the Commission observes that victims face difficulties accessing legal counsel and representation in judicial proceedings. The Commission notes that the Defensoría del Pueblo (Office of the Human Rights Ombudsman) has undertaken initiatives aimed at overcoming the shortcomings in judicial representation such as special days for collecting documentation, contracting of assistant attorneys to help handle cases, as well as actions aimed at improving the channels of communication between the victims and the officials in charge of their defense, such as in the north of the department of Tolima and the department of Caldas.¹⁷⁹ The MAPP/OEA has reported that thanks to the support of international cooperation the *Defensoría del Pueblo* has increased the number of public defenders in the Justice and Peace jurisdiction to 60¹⁸⁰ and that it has highlighted the adoption of strategies for organizing the work in the Defensoría del Pueblo, such as distribution of proceedings based on the *bloques* or principal units of the AUC, which makes it possible for the defense counsel to focus their activities by zones and armed structures. In addition, and in the specific case of the process of land restitution, a sort of sub-unit has been established that brings together specialized defense attorneys.¹⁸¹

101. The security of the victims actively involved in the process, their representatives, and the judicial officers involved has been seriously compromised or directly impacted by the actions of illegal armed groups. The MAPP/OEA has indicated that it is necessary

to establish adequate security conditions for the victims to be able to attend and participate in the trial, mindful of the persistence of violence and threats against them. Indeed, according to the Consultoría para los Derechos Humanos y el Desplazamiento (Codhes), from March 2002 to June 2011, 50 victims’ leaders have been assassinated. The most recent cases are Antonio Mendoza Morales, a leader of the land restitution process in the municipality of San Onofre, Sucre on June 30, 2011, and Ana Fabricia Córdoba, assassinated in Medellín on June 8.¹⁸²

102. Accordingly, as regards application of the Law on Justice and Peace, the IACHR considers it fundamental that efforts be redoubled to ensure the mechanisms for the safety of victims,

¹⁷⁶ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010. The State claimed that as of December 1, 2011, 68,582 victims had attended the voluntary statement proceedings; of these, 26,556 had interrogated the *postulados*. As for the broadcasts, the State claimed that the signal for the transmission of the voluntary statements had been carried to 652 municipalities where the victims lived; the transmissions amounted to a total of 2,311 days of broadcasting. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 43.

¹⁷⁷ OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, p. 161.

¹⁷⁸ Supreme Court of Justice, Chamber of Criminal Cassation, Writing for the Court Justice Sigifredo Espinosa Pérez, Appeal, September 21, 2009.

¹⁷⁹ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁸⁰ Fourteenth Quarterly Report of the Secretary General to the Permanent Council on the Mission to Support the Peace Process in Colombia (MAPP/OEA), April 26, 2010.

¹⁸¹ OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, p. 35.

¹⁸² OAS, Diagnóstico de Justicia y Paz en el marco de justicia transicional colombiana, MAPP/OEA, October 2011, p. 41.

public servants, attorneys, and their family members, and to strengthen the procedural mechanisms for judicial proceedings to go forward.

III. THE SITUATION OF GROUPS IN PARTICULAR VULNERABILITY IN COLOMBIA

A. Women

103. The Commission reiterates its concern over the situation of insecurity and the increase in threats against the organizations that work in defense of women's rights. In this respect, the IACHR has granted a series of precautionary measures and has expanded the existing precautionary measures in favor of women human rights defenders and organizations that work to protect women's rights, in particular to advance the rights of women who have been displaced.

104. In 2011, women seeking precautionary measures presented information to the IACHR on incidents of sexual violence, physical assaults, and death threats from groups such as the Águilas Negras and the Rastrojos, harassment, and forced entry in the homes of their members as a result of their work in defense of women's rights. In addition, the Commission has received information on the failure of the State to effectively implement the measures, and the general distrust of Colombian women of the justice system as a place to find an adequate remedy in the face of these violations of their integrity. For its part, the State has reported that a "Gender-based Treatment Model" was developed by the Institute of Legal Medicine and Forensic Sciences [*Instituto de Medicina Legal y Ciencias Forenses*] (INML) which the State claimed set out policies for treating women victims of violence based on a human rights approach aimed at reversing the invisibilization of women and encouraging respect for women's rights and proper treatment of gender-based violence. The State reported that the model would be put into practice in 2012.¹⁸³

105. In this regard, the IACHR, in a press release, condemned the assassination of Ana Fabricia Córdoba Cabrera, an Afrodescendant social leader of displaced persons who are pursuing the restitution of lands in the Urabá region.¹⁸⁴ The IACHR expressed its concern in response to the public recognition by the State that this assassination could have been avoided, for as of May 9 the Protection Program of the Ministry of Interior had learned of the threats against her, yet failed to implement timely measures of protection.

106. The IACHR also convened a working meeting in March 2011 that included the participation of the Colombian State and the organizations Casa de la Mujer, Colectivo de Mujeres al Derecho, Liga de Mujeres Desplazadas, Observatorio Género, Democracia y Derechos Humanos, and Ruta Pacífica de las Mujeres. At that meeting, the organizations informed the IACHR of shortcomings in coordinating precautionary measures in Colombia, including the lack of articulation among the ministries in charge; the absence of consultation of the women's organizations in the process of follow-up to the measures; and the lack of a differential approach in their implementation; among others. They also reported on assassinations of women who exercise leadership in processes of land restitution. At the end of that meeting the organizations signed an "Act of Commitment" with a view to discussing and defining with the Colombian State a mechanism for implementing and following-up on the precautionary measures of the IACHR in favor of the women's organizations, women human rights defenders, and activists who work for the defense and promotion of women's rights. In addition, it was agreed with the Office of the Attorney General to identify the cases of threats, harassment, persecution, and violence against women human rights defenders and women's rights activists, including the victims of displacement and of the organizations and women who work for the restitution of land, among others.¹⁸⁵

¹⁸³ Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 43.

¹⁸⁴ IACHR, *IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia*, June 20, 2011.

¹⁸⁵ The State emphasized that dialogue has been opened up with women's organizations to follow up on the commitments undertaken at the working meeting. Here it made reference to the progress made in getting the gender-based approach mainstreamed into the protection system and the 2011 Decree 3375. According to the State, the decree had incorporated the

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107. The situation of risk, threats, harassment, and violent acts that women defenders of women's rights in Colombia and their families face – in particular those who work on issues related to the armed conflict, such as forced displacement – has been extensively documented by the IACHR in its 2006 report *Violence and Discrimination Against Women in the Armed Conflict in Colombia* and the follow-up report published as part of Chapter V of the 2009 Annual Report.¹⁸⁶ The Commission notes the need for the State to duly investigate and punish the threats to and attacks on women defenders of women's rights to ensure that these abuses do not culminate in impunity.

108. Amnesty International has reported this year that women and girls in Colombia continue to be the target of generalized and systematic sexual violence at the hands of all parties to the armed conflict.¹⁸⁷ Women and girls suffer various types of abuse and sexual violence, including reprisals for their work as human rights defenders or as community and social leaders, and may be subject to forms of violence in an effort to “silence them” when they report abuses. Amnesty highlights how so few of the perpetrators of crimes of sexual violence committed during the 45 years of the armed conflict have been brought to justice; the resulting impunity compounds the suffering of the victims and exposes them to other abuses.

109. The Office of the High Commissioner for Human Rights also expressed its concern this year over the under-registration of cases of sexual violence committed in the context of the armed conflict.¹⁸⁸ It received information on cases of sexual violence that can be attributed to the security forces, in particular the Army, in Arauca, Caldas, Cauca, Chocó, Meta, and Vichada. It noted the need for the State to adopt measures to improve conditions so as to enable women to report acts of sexual violence in an atmosphere of security and trust, and the need to expedite investigations into sexual violence.

110. The United Nations Independent Expert on Minority Issues put out a statement saying that being “Afro-Colombian, female, displaced and poor is a potentially fatal combination” for discrimination.¹⁸⁹ She understands that the vast majority of displaced Afro-Colombians are women, and many of these women are heads of families with children. In addition, those women are exposed to constant physical assaults and sexual violence during their displacement; few victims lodge complaints out of fear or due to unfamiliarity with the remedies available. She also highlighted the particularly grave situation of Afro-Colombian women in Suárez, Cauca, where several women told her of their experiences of forced labor, violence, and rape at the hands of the illegal armed groups.

B. Indigenous Peoples

111. The IACHR examined in detail the situation of the indigenous peoples and the risks most of these groups face as a result of the armed conflict in Chapter IV of its 2010 Annual Report. In 2011, the factors generating this risk have continued; there are grave patterns of violations similar to those

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observations and concerns expressed by civil society regarding express inclusion of the principle of a differentiated approach for risk assessment and adoption of protection measures. The State categorically condemned the indiscriminate acts of sexual violence that actors in the armed conflict had committed against civilians, especially women and girls. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 44 and 45.

¹⁸⁶ Follow-up Report –*Violence and Discrimination Against Women in the Armed Conflict in Colombia* –Chapter V, OEA/Ser.L/V/II., Doc. 51 corr. 1, December 30, 2009, para. 106.

¹⁸⁷ Amnesty International, “‘This is what we demand, justice!’ Impunity for sexual violence against women in Colombia's armed conflict,” September 2011.

¹⁸⁸ United Nations, Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, February 3, 2011, A/HRC/16/22.

¹⁸⁹ United Nations, Human Rights Council, Report of the Independent Expert on Minority Issues, January 23, 2011, A/HRC/16/45/Add.1.

documented for the preceding years. Some of the most serious violent incidents that were made known to the IACHR led to the adoption of precautionary measures or the issuance of press releases.

112. In August 2011, the Organización Nacional Indígena de Colombia (“ONIC”) published a “Report on the humanitarian crisis and the violation of the rights of indigenous peoples” (“Informe sobre la crisis humanitaria y violación a los derechos de los pueblos indígenas”) in which it describes the continued victimization of the indigenous communities by the armed conflict, reporting, for the first half of 2011, 51 cases of assassinations, massacres, or disappearances by the different actors in the conflict, 27 victims of antipersonnel mines (six of them fatal), and three massive forced displacements of entire indigenous communities.¹⁹⁰ In addition, the indigenous organizations nationwide publicly reported that five members of the Zenú indigenous people from the lower Cauca river valley (el Bajo Cauca) were assassinated by armed groups, including the vice-governor of the cabildo La 18 (rural zone of the municipality of Zaragoza), along with his two sons ages 15 and 16 years, as well as the son of the vice-governor of the cabildo Unión Pató (municipality of Caucasia);¹⁹¹ on June 10, 2011, a member of the U’wa people was assassinated in the department of Arauca and subsequently presented as a guerrilla fighter killed in combat by the armed forces; on July 5 the Cacica (female traditional leader) of the Cabildo Zenú El Porvenir de la Fe was assassinated, in the municipality of Montelíbano, Córdoba, by unknown persons. In addition, some members of Colombian indigenous peoples were also said to have been killed in the course of military operations by the National Army. According to the Consejo Regional Indígena del Cauca, on April 27, 2011, the Army, in the course of an antinarcotics operation, killed the alternate *fiscal* of the cabildo of the *resguardo* of Togoima, and wounded three other community members.

113. Of particular gravity is the situation of the indigenous peoples of the department of Cauca, which has one of the highest concentrations of indigenous communities in the country. In the first half of 2011 there were several violent confrontations in the urban and rural zones of several municipalities of Cauca with large indigenous populations, including Jambaló, Caldoño, Caloto, Corinto, and Toribío. On July 5 and 6 the municipalities of Jambaló and Toribío were harassed by the FARC. On July 9, 2011, the FARC detonated a car bomb in the urban center of Toribío (Cauca), causing the death of two indigenous persons and wounding approximately 80 more. On that same date there were armed confrontations between the Army and the FARC guerrillas in the urban area of the municipalities of Toribío and Corinto (Cauca), trapping numerous indigenous civilians.

114. Equally serious is the situation of the Awá. On March 16, 2011, the IACHR granted precautionary measures on behalf of the members of the Awá indigenous people in the departments of Nariño and Putumayo, Colombia. The request for precautionary measures and information from various sources indicate that the Awá people have been targeted by numerous attacks, assassinations, and threats in the context of the Colombian armed conflict. It adds that recently there were confrontations between the Army and irregular armed groups in the territory of the *resguardo* Chinguirito Mira and of the community of La Hondita, said to have taken the lives of members of the Awá people in the crossfire. The request indicates, moreover, that in 2011 there were said to have been three accidents with antipersonnel mines planted by the actors in the armed conflict on their ancestral territory.¹⁹²

¹⁹⁰ Colombia observed that according to the Information Management System for Mine Action –IMSMA- of the Presidential Program for Mine Action –PAICMA- , it had reports of 22 victims of anti-personnel mines, 17 of whom had been injured and 5 of whom had been killed. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 46.

¹⁹¹ “Colombia: Asesinan a cinco indígenas en Antioquia.” At: <http://servindi.org/actualidad/47161>.

¹⁹² On August 9, 2011, the Constitutional Court issued Order 174/2011, in the framework of the unconstitutional state of affairs declared in judgment T-025 of 2004 and the directives issued in court order 004 of 2009 (<http://www.corteconstitucional.gov.co/relatoria/autos/2011/a174-11.htm>) concerning the adoption of urgent precautionary measures to protect the fundamental rights of the Awá Indigenous People, located in the departments of Nariño and Putumayo. The State reported that, as directed in Order 174, the Colombian Family Welfare Institute –ICBF- would be crafting and setting in motion an urgent response and contingency plan of action, which it would be developing in partnership with the Nariño and Putumayo regions. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 47 and attached document.

115. The indigenous population in forced displacement continues to live in conditions marked by the lack of any protection and poverty harmful to the fundamental rights of their members. For example, as reported in the press, in June, more than 30 members of the Nukak-Makú displaced in San José del Guaviare were affected by a respiratory epidemic; this indigenous people has been decimated in recent decades by outbreaks of flu and malaria, and 40% of its members are displaced from their territory due to the presence of the FARC. In addition, on June 3, 2011, the IACHR granted precautionary measures on behalf of 21 families from the Nonan community of the Wounaan indigenous people; the request for precautionary measures reported that the families had been targeted by harassment by the armed forces and illegal armed groups, and so had to displace from their territory and suffered, as a result, grave problems of access to food, shelter, and medicine. In addition, it was reported that the families did not receive consistent and effective medical and humanitarian care during the nine months since they were displaced, even though a *tutela* ruling was issued on their behalf in a situation related to the death of an 11-month-old girl due to tuberculosis on May 12, 2011.

116. Equally serious is the impact on the indigenous population of the placement of antipersonnel mines in their ancestral lands. For example, several members of the Awá indigenous people, including children, have been victims of antipersonnel mines, allegedly placed in their territory by illegal armed groups. On January 31 and February 7, 2011, there were two explosions of antipersonnel mines that took the life of a child and wounded four adults, which led to the issuance of a press release by the IACHR on February 10, 2011.¹⁹³ In addition, several sources have reported an increase in the forced recruitment of indigenous children by the FARC in 2011.¹⁹⁴ On March 26, 2011, in the village of Gargantillas in the Resguardo of Tacueyó, municipality of Toribío (Cauca), the armed forces bombarded an encampment of the FARC where some recently-recruited guerrillas were located; these victims of recruitment included 16 indigenous persons, most of them children, who died as a result of the attack.¹⁹⁵

C. Human rights defenders

117. In 2011, the Commission observed the continued use of forms of discourse aimed at discrediting human rights defenders; attacks on their lives and integrity, without notable results in the investigations; as well as the filing of criminal actions, allegedly unfounded, with the aim of criminalizing their work.¹⁹⁶

118. The IACHR noted that although the State indicated that it had adopted a policy of “disarming the word,” as part of a non-confrontational discourse with human rights defenders, in practice there has not been significant progress in the situations they face, which have persisted for several years.¹⁹⁷ In this regard, it is especially worrisome that public officials continue making declarations aimed at discrediting human rights defenders, which could increase the risks they face as they pursue their activities and undermine the trust of Colombian society in human rights organizations.

¹⁹³ Colombia observed that the Information Management System for Mine Action had recorded that another four minors were hurt in the second accident. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 46.

¹⁹⁴ See, among others: <http://www.eluniversal.com/2011/06/04/indigenas-reclaman-ayuda-por-reclutamiento-forzoso-de-las-farc.shtml>; <http://asociacionminga.org/pdf/comunicado/JUNTA%20CRIC%20210711.pdf>; <http://www.vanguardia.com/actualidad/colombia/109735-cifras-indican-que-el-reclutamiento-de-menores-es-cada-vez-mayor-en-colom>; <http://www.centromemoria.gov.co/archivos/pronunciamento%20toribo%2020%20de%20julio%202011%20cric%20final.pdf>.

¹⁹⁵ <http://www.nasaacin.org/inicio/1-ultimas-noticias/1888-voces-de-ninos-gritos-de-vida>. The State observed that the statistics reported by the Colombian Family Welfare Institute –ICBF– under its Specialized Care Program revealed that the problem of recruiting boys from indigenous communities who were under the age of 18 was a substantial one. The State commented that a plan of action was to be developed for 2012 and would be the responsibility of the Technical Secretariat of the Inter-sector Commission, with a view to furthering the coordination called for in the document titled “*Las Rutas de Prevención de Reclutamiento*” [The Avenues of Recruitment Prevention]. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 47.

¹⁹⁶ Programa Somos Defensores, *Amenazas Cumplidas*, August 8, 2011. Available at: http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3

¹⁹⁷ IACHR, Hearing on situation of human rights defenders in South America, 141st period of sessions, March 25, 2011.

119. In particular, it was learned that high-level public authorities made statements in the context of the events related to an alleged fraud by one of the persons identified as a victim in the case of the Mapiripán Massacre.¹⁹⁸ Information was received according to which the President of the Republic said that the alleged fraud “confirms what many people had been saying with respect to there being dark interests, economic interests, that use that system, that make a mockery of it, to profit at the cost of the public resources of the State, which are the resources of the citizens.”¹⁹⁹ In addition, the Procurator General of the Nation (*Procurador General de la Nación*) is said to have stated that members of the Corporación Colectivo de Abogados José Alvear Restrepo (“CCAJAR”) could have committed the crimes of fraud upon the law (*fraude procesal*) and falsity (*falsedad*) on having represented false victims of the massacre committed by paramilitaries in Mapiripán, and “that conduct such as that learned of is typical of criminal bands specialized in swindling the Colombian State.”²⁰⁰ The Commission considers that statements such as these, before the State has carried out the respective investigations, may have a negative impact on the work of Colombian human rights organizations. In recent decades these organizations have pursued their human rights advocacy in situations marked by serious risk to the point that it has cost many human rights defenders’ lives, and has led the Commission to repeatedly request that the Colombian State respect and protect their activity.²⁰¹

120. As for the assassinations of human rights defenders, according to available information, in the first three months of 2011 there were 96 recorded cases of attacks, nine of which were said to be assassinations, and four disappearances.²⁰² On concluding the first half of 2011, civil society organizations documented that every day-and-a-half one defender was attacked.²⁰³ According to the Office of the United Nations High Commissioner for Human Rights, the responsibility for a large part of the violations against defenders was attributed to state agents, members of post-demobilization groups, and members of the FARC-EP and the ELN.²⁰⁴ During its 143rd period of sessions, the IACHR received information from trade union organizations according to which 23 unionists had been assassinated in 2011.²⁰⁵

¹⁹⁸ IACHR, *Press Release 114/11, With regard to recent events surrounding the Mapiripán Massacre in Colombia*, October 31, 2011. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2011/114-11sp.htm>

¹⁹⁹ El Informador, *Presidente y vicepresidente pidieron llevar caso de Mapiripán a la OEA*, October 28, 2011. Available at: http://www.elinformador.com.co/index.php?option=com_content&view=article&id=27159:presidente-y-vicepresidente-pidieron-llevar-caso-de-mapiripan-a-oea&catid=79:nacional-e-internacional&Itemid=422; Nuevo Siglo, *Caso Mapiripán es una burla a los DH: Santos*, October 27, 2011. Available at: <http://elnuevosiglo.com.co/articulos/10-2011-caso-mapirip%C3%A1n-es-una-burla-los-dh-santos.html>

²⁰⁰ Nuevo Siglo, *Caso Mapiripán es una burla a los DH: Santos*, October 27, 2011. Available at: <http://elnuevosiglo.com.co/articulos/10-2011-caso-mapirip%C3%A1n-es-una-burla-los-dh-santos.html>

²⁰¹ IACHR, *Press Release 114/11, With regard to recent events surrounding the Mapiripán Massacre in Colombia*, October 31, 2011. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2011/114-11sp.htm>

²⁰² Programa Somos Defensores, *Protección a defensores(as) de derechos humanos en Colombia: Saldo pendiente*, June 8, 2011. Available at: http://www.somosdefensores.org/index.php?option=com_content&view=article&id=78:proteccion-a-defensores-de-derechos-humanos-en-colombiasaldo-pendiente&catid=8:novedades&Itemid=3

²⁰³ Programa Somos Defensores, *Amenazas Cumplidas*, August 8, 2011. Available at: http://www.somosdefensores.org/index.php?option=com_content&view=article&id=88:amenazas-cumplidas&catid=8:novedades&Itemid=3. The State observed that the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation had “34 [assigned] cases, 28 of which are active cases involving 133 suspects, 74 persons charged and 84 persons deprived of their liberty.” It added that “7 investigations are currently in progress into criminal threats, one investigation is underway into a case of forced disappearance, 24 for the crime of homicide and one for the crime of abduction.” Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 48.

²⁰⁴ UN General Assembly, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/16/22, February 3, 2011, para. 10. Available at: http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2010_esp.pdf

²⁰⁵ See IACHR, *Hearing on the right to organize and join trade unions in Colombia*, October 27, 2011. Available at: http://www.oas.org/OASPage/videosasf/2011/10/102711_PV_V4_2pm.wmv

121. In particular, the IACHR has received information indicating that some groups continue to be exposed to attacks against their lives, including trade union leaders²⁰⁶, indigenous leaders²⁰⁷, and Afrodescendant leaders, as well as persons displaced in the struggle for restitution of lands, this last group having been documented by the OHCHR with special intensity in the departments of Cauca, Sucre, and the Urabá region.²⁰⁸

122. The IACHR followed up especially, during 2011, on attacks against social leaders of displaced persons, and has found that many of these attacks are related to their defenselessness in the face of the violence generated by the confrontations with armed groups in the areas from which they have been displaced, and vis-à-vis the interests of groups that oppose displaced persons claiming their rights. According to the information available, at least 45 leaders of the displaced population who have ties to the land restitution processes were assassinated from 2002 to 2011.²⁰⁹ Specifically, in 2011, the IACHR received information on the assassination of Bernardo Ríos Londoño, a social leader who is a member of the Peace Community of San José de Apartadó, assassinated by gunshot wounds on March 22, 2011²¹⁰; Eder Verbel Rocha, whose family denounced the existence of paramilitary groups in San Onofre, Sucre, who received a gunshot wound on March 23, 2011, that took his life²¹¹; David de Jesús Góez, who called for the restitution of 20 hectares of land in the sector of Tulapa and was killed on March 23, 2011, at a shopping center to the southwest of Medellín²¹²; and Ana Fabricia Córdoba, an Afrodescendant social leader of displaced persons in the restitution of lands in the Urabá region, founder of the Asociación Líderes Hacia delante Por un Tejido Humano de Paz ("LATEPAZ"), and member of the Ruta Pacífica de las Mujeres, who was killed by a gunshot wound on June 7, 2011.²¹³ After the assassination of social leader Ana Fabricia Córdoba, the IACHR received information according to which high-level authorities of the Colombian State had publicly said that the assassination could have been avoided, since on May 9 the Protection Program of the Ministry of Interior had learned of the threats against her yet failed to implement timely measures of protection.²¹⁴

²⁰⁶ According to information from the International Trade Union Confederation in January and February 2011 three trade unionists associated with teaching activities were assassinated. See http://www.ituc-csi.org/IMG/pdf/tercer_sindicalista_docente_asesinado_en_2011_feb.pdf

²⁰⁷ The IACHR has learned of the assassination of Fernando Tequia, indigenous leader of the Embera Katío who was said to have been assassinated on July 2, 2011, in Antioquia. According to the information available, Tequia directed an "organizational process" of claiming the rights of communities of his ethnic group settled in the populations situated to the northwest of Medellín. The assassination of Fernando Tequia is apparently the sixth assassination of an indigenous person since the last week of June in the department of Antioquia. See El Espectador, *Denuncian asesinato del gobernador indígena en Urrao*, July 3, 2011. Available at: <http://www.elespectador.com/noticias/judicial/articulo-281701-denuncian-asesinato-de-gobernador-indigena-urrao>

²⁰⁸ UN General Assembly, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/16/22, February 3, 2011, para. 11. Available at: http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2010_esp.pdf

²⁰⁹ CODHES, *Asesinan otro líder de restitución de tierras*, March 24, 2011. Available at: http://www.codhes.org/index.php?option=com_content&task=view&id=1019; Consultoría para los Derechos Humanos y el Desplazamiento, *Líderes y personas en situación de desplazamiento asesinadas del 1 de marzo de 2002 a abril 29 de 2010*. Available at: <http://www.codhes.org/images/stories/pdf/cld%20asesinados%20abril%20%202011.pdf>; CODHES - Consultoría para los Derechos Humanos. *¿Consolidación de qué? Informe sobre desplazamiento, conflicto armado y derechos humanos en Colombia en 2010*. Informational bulletin No.77, Bogotá, February 15, 2011. Available at www.codhes.org

²¹⁰ Amnesty International, *Urgent Action, Colombian Peace Community Threatened*, April 5, 2011. Available at: <http://www.amnesty.org/es/library/asset/AMR23/009/2011/es/3d7062e1-dda8-46cc-a2e6-e41e9701d4e9/amr230092011es.html>; Protectionline, *Bernardo Ríos Londoño, Defensor de derechos humanos: asesinado por paramilitares*, March 23, 2011. Available at: <http://www.protectionline.org/Bernardo-Rios-Londono-defensor-de.html>

²¹¹ Amnesty International, *Urgent Action. Paramilitaries Kill Human Rights Defender*, March 30, 2011. Available at: <http://www.amnesty.org/es/library/asset/AMR23/007/2011/es/527749b4-58df-4de5-8041-614905982c26/amr230072011es.html>

²¹² CODHES, *Asesinan otro líder de restitución de tierras*, March 24, 2011. Available at: http://www.codhes.org/index.php?option=com_content&task=view&id=1019

²¹³ IACHR, Press Release 59/11, *IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia*, Washington, D.C., June 20, 2011.

²¹⁴ IACHR, Press Release 59/11, *IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia*, Washington D.C., June 20, 2011. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2011/59-11sp.htm>. See also, Colombia.com, *Angelino Garzón aseguró que dejaron Continúa...*

123. The IACHR has observed that some of the assassinations of human rights defenders in 2011 were preceded by threatening and intimidating notes that indicate that human rights defenders or their organizations are targets of paramilitary groups, such as the self-styled “Águilas Negras”²¹⁵ or “Rastrojos.”²¹⁶ In that regard, days prior to the assassination of social leader Ana Fabricia Córdoba,²¹⁷ dozens of organizations that work for the defense of the rights of the displaced population, including Ruta Pacífica de las Mujeres – of which she was a member – received a death threat dated June 2 signed by the armed group the “Rastrojos,” which was aimed at those who played a crucial role in implementing the Law on Victims and Restitution of Lands, which would be approved days after the threat, on June 10, 2011. Among the organizations designated as targets in the note from the “Rastrojos” are CREAM, Arco Iris, Ruta Pacífica de la Mujer, Fundación Social, Sisma Mujer, Red de Empoderamiento, CCAJAR, FUNDEPAZ, Casa Mujer, Ruta Pacífica de las Mujeres, FUNDHEFEM, CODHES, FUNDEMUD, MOVICE, UNIPA, and Fundación Nuevo Amanecer. Members of several of the organizations indicated in that threat are beneficiaries of precautionary measures granted by the IACHR.²¹⁸

124. During 2011, attacks against judicial officers continued. The IACHR received information according to which four judicial officers were assassinated from January to June 2011²¹⁹; at least 750 threats had been recorded in the last four years against members of the judicial branch, especially criminal law judges.²²⁰ Among the attacks against the lives of judicial officers, the IACHR learned of the assassination of Judge Gloria Constanza Gaona, who died in March 2011 after having received gunshot wounds in Saravena (Arauca). According to the information available, Judge Gaona was in charge of complicated criminal proceedings related to drug-trafficking, as well as the case of a massacre of three children for which a second lieutenant of the Army is behind held.²²¹

125. The Commission has highlighted in earlier reports²²² the continuity of the “Program for the protection of human rights defenders, trade unionists, journalists, and social leaders,”²²³ which is said

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sola a Ana Fabricia Córdoba, June 8, 2011, available at: <http://www.colombia.com/actualidad/nacionales/sdi/12497/angelino-garzon-aseguro-que-dejaron-sola-a-ana-fabricia-cordoba>; *Semana, Debate en el gobierno por crimen de Ana Fabricia Córdoba*, June 8, 2011. Available at: <http://www.semana.com/nacion/debate-gobierno-crimen-ana-fabricia-cordoba/158131-3.aspx>

²¹⁵ IACHR, *Chapter IV-Colombia in the Annual Report of the IACHR 2010*, para. 199. Available at: <http://www.cidh.oas.org/annualrep/2010sp/CAP.IV.COLOMBIA.2010.FINAL.DOC> Hearing on the situation of human rights defenders in Colombia and implementation of precautionary measures, held October 28, 2010, during the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

²¹⁶ IACHR, Press Release 59/11, IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia, Washington, D.C., June 20, 2011. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2011/59-11sp.htm>

²¹⁷ IACHR, Press Release 59/11, IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia, Washington, D.C., June 20, 2011.

²¹⁸ IACHR, Press Release 59/11, IACHR Condemns Murder of Human Rights Activist and Expresses Concern over New Threats to Human Rights Defenders in Colombia, Washington D.C., June 20, 2011. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2011/59-11sp.htm>

²¹⁹ Corporación Fondo de Solidaridad con los Jueces Colombianos (FASOL), *Banco de datos de víctimas. Acciones violatorias de 1989 a 2011*, updated to March 22, 2011. Available at: <http://www.corpofasol.org/estadisticas.html>

²²⁰ *El Universal, La Justicia siente miedo “más que jueces somos seres humanos,”* March 28, 2011. Available at: <http://www.eluniversal.com.co/monteria-y-sincelejo/local/la-justicia-siente-miedo-%E2%80%9Cmas-que-jueces-somos-seres-humanos%E2%80%9D-16622>; *El Tiempo, El asesinato de una jueza*, March 22, 2011. Available at: http://www.eltiempo.com/opinion/editoriales/ARTICULO-WEB-NEW_NOTA_INTERIOR-9053889.html

²²¹ *El Tiempo, El asesinato de una jueza*, March 22, 2011. Available at: http://www.eltiempo.com/opinion/editoriales/ARTICULO-WEB-NEW_NOTA_INTERIOR-9053889.html

²²² See IACHR, *Annual Report 2010-Chapter IV. Colombia*, March 7, 2011, para. 205, available at: <http://www.cidh.oas.org/annualrep/2010sp/CAP.IV.COLOMBIA.2010.FINAL.DOC>; *Annual Report 2009-Chapter IV. Colombia*, December 30, 2009, para. 151, http://www.cidh.oas.org/annualrep/2009sp/cap.4Colo.09.sp.htm#_ftn243.

²²³ The Protection Program was established in 1997 as the result of a joint effort on the part of the Government and civil society to protect certain groups of the population who were considered especially vulnerable to the activities work of illegal armed organizations in their rights to life, integrity, liberty, and personal security. The objectives of the Program are: (1) to strengthen the Continúa...

to cover 10,421 personas.²²⁴ This program, now governed in keeping with Decree 1740 promulgated on May 19, 2010, contributes significantly to the protection of defenders, union leaders,²²⁵ and judicial officers at risk. During 2011, the IACHR received information related to a series of shortcomings in the processes of requesting and implementing the special measures of protection that this program provides. In this respect, the Office of the High Commissioner for Human Rights in Colombia stated in its report on Colombia for 2011 its concern over the persistence of delays in conducting studies of risk, sluggishness in the implementation of measures, the lack of a differential approach, and the assignment of the protection schemes to private companies.²²⁶ In addition, in its recommendations the OHCHR has encouraged the government to undertake an exhaustive review of the policies and programs for protection, of both the government and other entities of the State.²²⁷

126. The IACHR takes note that by Decree 4065 of October 31, 2011,²²⁸ the National Unit of Protection was created as an entity that assumes the protection functions that had been carried out by the Administrative Department of Security. The Commission observes that this Unit shall be entrusted with coordinating and implementing the provision of the protection service, among others, who due to their “union and NGO leadership” are at extraordinary or extreme risk of suffering harm to their life, integrity, liberty, and personal security, as well as to ensure the timeliness, efficiency, and suitability of the measures granted.²²⁹ In addition, the Unit will be in charge of evaluating the risk to those persons who seek protection.²³⁰

127. One aspect of special concern to civil society is that in the process of liquidating the DAS,²³¹ the security schemes of the Protection Program that were assigned to it were gradually assigned to private security companies. According to several organizations, this progressive privatization of the personnel poses several problems for their own security and for carrying out their activities, including: the historic ties that some private security companies are said to have with paramilitary groups; the possible

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state agencies with competence at the national, regional, and local levels to undertake joint, coordinated, integrated, and permanent actions to prevent human rights violations and to protect the human rights of the inhabitants of the targeted communities at risk; (2) to strengthen the traditional organizational forms, traditional authorities, and social organizations of the communities at risk that are targeted, to develop initiatives, make proposals, negotiate with the public authorities and become involved in the implementation, follow-up, and control of the measures of prevention and protection of human rights and international humanitarian law; (3) to reestablish or improve the relationships between the State and the community for the coordination, furtherance, follow-up, and evaluation of preventive and protective measures included in the action plans.

²²⁴ Hearing on the situation of human rights defenders in Colombia and the implementation of precautionary measures, held October 28, 2010, in the context of the 140th period of sessions of the Commission. <http://www.cidh.oas.org/prensa/publichearings/advanced.aspx?Lang=ES>.

²²⁵ The IACHR received information on Resolution No. 716 of the Ministry of Interior and Justice, which introduced the definitions of “trade union leader” and “trade union activist” for the purposes of implementing Decree 1740 of 2010. See IACHR, *Hearing on the right to organize and join trade unions in Colombia*, October 27, 2011. Available at: http://www.oas.org/OASPage/videosast/2011/10/102711_PV_V4_2pm.wmv

²²⁶ UN General Assembly, *Report by the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/16/22, February 3, 2011, para. 15. Available at: http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2010_esp.pdf.

²²⁷ UN General Assembly, *Report by the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, A/HRC/16/22, February 3, 2011, recommendation (f). Available at: http://www.hchr.org.co/documentoseinformes/informes/altocomisionado/Informe2010_esp.pdf

²²⁸ Available at: <http://wsp.presidencia.gov.co/Normativa/Decretos/2011/Documents/Octubre/31/dec406531102011.pdf>.

²²⁹ Article 3 of Decree 4065 of October 31, 2011.

²³⁰ Article 4(6) of Decree 4065 of October 31, 2011.

²³¹ According to information received by the IACHR, the government indicated that the decree liquidating the DAS would be postponed until a new intelligence law is adopted. *Semana, Reforma al Estado, más que tres nuevos ministerios*, July 7, 2011. Available: <http://www.semana.com/politica/reforma-estado-tres-nuevos-ministerios/159879-3.aspx>.

participation of persons who demobilized in the protection schemes and the lack of experience by the security companies for performing an activity that originally corresponded to the State.²³²

128. The IACHR has recommended that the activities of risk analysis and implementation of the measures should be assigned to personnel who belong to a state security agency separate from the one that performs intelligence and counter-intelligence activities.²³³ In this vein, the IACHR values the efforts by the State to ensure that the personnel in charge of protection are no longer members of the DAS; nonetheless, it observes that according to available information, 601 bodyguards who are said to belong to the DAS would be transferred to the new Unit,²³⁴ accordingly in practice it could be the same personnel who would be in charge of the protection functions. The Commission considers that the State should ensure that the personnel who participate in the security schemes inspire trust in the beneficiaries of the protection. One fundamental element for achieving such trust is for the State to ensure that the assignment of personnel for protection include the participation of the beneficiaries.²³⁵

129. Another obstacle that human rights defenders have reported experiencing in relation to the Protection Program and the implementation of the precautionary measures issued by the IACHR or the provisional measures ordered by the Court is that the beneficiaries must once again undergo a process of “showing risk” in order to enter the Protection Program, even when the respective international bodies already determined the existence of such risk when they granted the measures. The State has indicated that the studies of the level of risk are not aimed at questioning the existence of risk but at establishing its extent and keeping track of how it evolves once measures of protection are implemented.²³⁶ In addition, it has indicated that performing the Technical Study of the Level of Risk does not imply the absence of preventive measures of protection, which allow for the protection of the beneficiaries during the time the study is conducted.²³⁷ The IACHR considers that while the State must have knowledge and analyze the situation of risk of a beneficiary of precautionary measures; such an analysis must be conducted to determine, in conjunction with the beneficiary, the most appropriate measures of protection. It would be a motive of concern if the State, through a new risk assessment, were to impose an additional burden on the beneficiary as a condition for being able to enter the State’s Protection Program; such conduct would constitute an obstacle to the timely adoption of the measures of protection ordered by the organs of the inter-American system.

130. According to the information received by the IACHR, in a new legislative procedure, in June 2011, the plenary of the Senate is said to have adopted, in the final round of debate, as a *ley estatutaria*, the Law on Intelligence and Counter-intelligence, which is said to be pending conciliation between the Senate and the House of Representatives, subject to subsequent constitutional review by the Supreme Court.²³⁸ The IACHR notes as a positive development that it values the fact that the law on intelligence and counter-intelligence has established that “in no case shall intelligence and counter-intelligence information be collected, processed, or disclosed for reasons of [...] belonging to a trade

²³² Letter from civil society organizations directed to Mr. German Vargas Lleras, Minister of Interior and Justice, May 20, 2011. Available at: http://www.abcolombia.org.uk/downloads/8C8_CARTA_MIJ_PROGRAMA_PROTECCION11.pdf

²³³ IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 136.

²³⁴ El Universal, *Se crea Unidad Nacional de Protección a cargo del Ministerio del Interior*, November 2, 2011. Available at: <http://www.eluniversal.com.co/cartagena/nacional/se-crea-unidad-nacional-de-proteccion-cargo-del-ministerio-del-interior-51426>.

²³⁵ *Matter of Mery Naranjo et al. regarding Colombia*. Provisional Measures regarding Colombia. Order of the Court of March 4, 2011. Third operative paragraph.

²³⁶ Observations by Colombia on the Draft Report by the Inter-American Commission on Human Rights on the Country corresponding to 2010, February 25, 2011, p. 42.

²³⁷ Observations by Colombia on the Draft Report by the Inter-American Commission on Human Rights on the Country corresponding to 2010, February 25, 2011, p. 42.

²³⁸ *Semana*, *Congreso aprueba ley para poner fin a “chuzadas ilegales”*, June 14, 2011. Available at: <http://www.semana.com/politica/congreso-aprueba-ley-para-poner-fin-chuzadas-ilegales/158489-3.aspx>; El Tiempo, *Congreso aprueba en último debate ley de inteligencia*, June 14, 2011. Available at: http://www.eltiempo.com/politica/ARTICULO-WEB-NEW_NOTA_INTERIOR-9622612.html

union, social organization, or human rights organization [...],”²³⁹ and that the law indicates that intelligence activities are subject to the principles of necessity, suitability, and proportionality.²⁴⁰ Even so, the IACHR observes, among other considerations, that the State has not yet adopted a law that makes possible the effective exercise of the right of *habeas data*, so that human rights defenders who have been targeted by arbitrary intelligence activities can access their data and thereby be able to ask that it be corrected, updated, or expunged from the intelligence archives.²⁴¹

D. Afrodescendant communities

131. The IACHR has noted, as of 2009, the “constant acts of violence against civilians [mostly Afrodescendants] in the form of massacres, selective executions, forced disappearances, bodily harm, sexual violence, acts of harassment, and forced displacement.”²⁴² In its 2010 Annual Report the IACHR stated its concern over the number of assassinations of leaders of the Afro-Colombian population, which pointed to “a strategy of persecution and dismantling against the Afro-Colombian ethnic-territorial movement”²⁴³ and has as its purpose “causing fear, displacement and unlawful seizure of [Afro-Colombians] lands.” In addition, the IACHR referred to the failure of the judiciary to clear up most of the acts of violence that have affected the Afrodescendant communities and caused their displacement in the context of the armed conflict.²⁴⁴

132. During 2011, the IACHR continued receiving information from various sources on the grave humanitarian crisis affecting the Afro-Colombian population, in particular their leaders, and members of the community councils, who exercise leadership in claiming, defending, and protecting the human rights of Afro-Colombians, especially of their rights in relation to their territories, the natural resources in those territories, and their right to autonomy and cultural identity. In that regard, the State only made reference to macro policies in the context of the social protection that is associated with the 2010-2014 Development Plan, without referring to the more serious situation, which the IACHR highlighted in Chapter IV last year, particularly the situation of insecurity of leaders of the Afro-Colombian population who have continued to be targets of harassment, threats, and selective assassinations in the course of 2011.²⁴⁵

²³⁹ Article 4 of Proposed Ley Estatutaria No. 195 of 2011 House. Available at: <http://www.senado.gov.co/az-legislativo/proyectos-de-ley?download=412%3Aarticulado-proyecto-inteligencia-y-contra-inteligencia>

²⁴⁰ Article 5 of Proposed Ley Estatutaria No. 195 of 2011 House. Available at: <http://www.senado.gov.co/az-legislativo/proyectos-de-ley?download=412%3Aarticulado-proyecto-inteligencia-y-contra-inteligencia>

²⁴¹The IACHR observes that according to the proposed legislation, a Commission will be created to advise on the screening of intelligence and counter-intelligence information and files, the purpose of which is to produce, within one year, a report recommending to the national government the criteria for retaining information, the criteria for removing information, and what to do with the intelligence and counter-intelligence information and files to be removed. Within one year after the Commission’s report, the national government should implement a system for screening the files. Article 25 of Proposed Ley Estatutaria No. 195 of 2011. House. Available at: <http://www.senado.gov.co/az-legislativo/proyectos-de-ley?download=412%3Aarticulado-proyecto-inteligencia-y-contra-inteligencia>

²⁴² IACHR. Preliminary observations of the IACHR after the visit of the Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination to the Republic of Colombia, March 27, 2009, para. 47.

²⁴³ Asociación Nacional de Afrocolombianos Desplazados (AFRODES) and Global Rights – Partners for Justice. Bicentenario: ¡Nada que celebrar! July 2010, para. 98.

²⁴⁴ Annual Reports of the IACHR for 1995, 1996, 1999-2010. In this connection, the State reported that for the crimes investigated by the Forced Displacement and Disappearance Unit of the Office of the Attorney General of the Nation, investigation strategies had reportedly been introduced back on July 25, 2011, for the prosecution of crimes of this type; the strategies involved the “joinder of cases and differentiated approaches” and added “procedural momentum and monitoring of proceedings.” Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 3.

²⁴⁵ In its Observations on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 48-49, the State reported on the measures taken by the Ministry of the Interior, through the Office of the Director for Black, Afro-Colombian, Raizal and Palenquero Communities, in compliance with Order 005 of 2009
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E. Children and adolescents

133. According to statistics from the National Police, in the first quarter of 2011, 915 children had been victims of sexual abuse; the population affected in the largest numbers is the 12-to-14 year old age group.²⁴⁶ In addition, 52,400 children sought assistance through the 106 line for sexual abuse over a three-year period; there were 12,276 calls from January to July 2011.²⁴⁷ As of August 2011, the 106 line, created to provide assistance in situation affecting minors, is operating 24 hours a day.²⁴⁸

134. On International Women's Day 2011, the representative in Colombia of the United Nations High Commissioner for Human Rights expressed concern over sexual violence directed against women and girls, especially by armed groups. According to the information from that office, the armed groups attack or take girls or women, by threat or by force, rape them, and take them as "property," abusing them, torturing them, sometimes to the point of killing them.²⁴⁹ He also emphasized that children are used by armed groups and organized crime for drug trafficking and the girls are used in prostitution or are subjected to sexual violence.²⁵⁰

135. In addition, the recruitment and use of children by illegal armed groups still constitutes a practice (in May 2011, the Minister of Interior indicated, on presenting the results from the process of identifying nearly 10,000 missing persons in Colombia, that more than 4,000 corpses buried as "NN"s – no name – in different cemeteries of the country correspond to minors). In addition, President Santos

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regarding individual and collective measures of protection. As for the macro policies, the State observed that Colombia's Ministry of the Interior and the National Planning Office would be conducting an exercise to introduce a differentiated approach into the territorial development plans.

²⁴⁶ See article "915 menores, víctimas de abuso sexual este año," *El País*, August 19, 2011. Available at: <http://www.elpais.com.co/elpais/judicial/915-menores-victimas-abuso-sexual-este-ano>. See also "915 víctimas de abuso sexual en el primer trimestre de 2011," *El Universal*, April 1, 2011. Available at: <http://www.eluniversal.com.co/cartagena/nacional/915-menores-victimas-de-abuso-sexual-en-primer-trimestre-de-2011-17345>

²⁴⁷ See the article "Colombia: 52,400 menores han pedido ayuda por abuso sexual y maltrato en tres años," CPIU, July 14, 2011. Available at: <http://www.cpiu.es/2011/noticias/colombia-52-400-menores-han-pedido-ayuda-por-abuso-sexual-y-maltrato-en-tres-anos/>

²⁴⁸ See the article "Línea 106 operará 24 horas," *El Espectador*, August 2, 2011. Available at: <http://www.elespectador.com/noticias/bogota/articulo-288867-linea-106-operara-24-horas-al-dia>. The IACHR has information on the conviction of a judge from Caldas for having sexually abused a 14-year-old girl: "Condenan a juez de Caldas por abuso sexual de menores de edad," CPIU, July 21, 2011. Available at: <http://www.cpiu.es/2011/noticias/colombia-condenan-a-juez-de-caldas-por-abuso-sexual-de-menores-de-edad/>. The State reported that the Human Rights and International Humanitarian Law Unit of the Office of the Attorney General of the Nation had assigned most of the cases to a prosecutor trained in the subject of recruitment of minors. It added that a total of 238 cases are currently assigned; 200 of these are active cases involving 222 suspects, 67 persons accused, and 65 persons deprived of their liberty. A total of 22 convictions had been won, involving 42 persons. Finally, it observed that the Technical Secretariat of the Inter-sector Commission would be starting up the Observatory to Prevent Recruitment and Exploitation of Children and Adolescents by outlaw groups; a database would be established on the dynamics of these two issues and the risk factors associated with these crimes. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 49-50.

²⁴⁹ See article by UNHCR "Colombia: OACNUDH pide protección para niñas y mujeres víctimas de violencia sexual," March 8, 2011. Available at: <http://www.acnur.org/t3/noticias/noticia/colombia-oacnudh-pide-proteccion-para-ninas-y-mujeres-victimas-de-violencia-sexual/>

²⁵⁰ See article "ONU denuncia uso de menores para el tráfico de drogas en Cali," *El País*, March 10, 2011. Available at: <http://www.elpais.com.co/elpais/judicial/onu-denuncia-uso-menores-para-trafico-drogas-en-cali>. Apropos the protection of children and adolescents, the State highlighted the activities undertaken by the Colombian Family Welfare Institute –ICBF– to prevent violation of the sexual and reproductive rights of children and adolescents. These included plans and programs that the national government had promoted in connection with the prevention and eradication of sexual exploitation, the fight against human trafficking, and the national policy on sexual and reproductive health. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, p. 52.

made an appeal to the FARC to release the children who are in their ranks²⁵¹ and the Secretary General of the OAS expressed his concern over the recruitment of children in Colombia.²⁵²

F. Persons deprived of liberty

136. With respect to persons deprived of liberty, the National Penitentiary and Prisons Institute (“INPEC” *Instituto Nacional Penitenciario y Carcelario*) reported that in July 2011, 1,743 were taken in at the country’s 144 prisons, bringing the total number of prisoners to 95,184, which indicates that the overpopulation of the prisons climbed from 28.39 percent to 30.77 percent. Officially, Colombia’s installed capacity is 78,000.²⁵³

137. In July 2011, a letter was received at the Rapporteurship for Persons Deprived of Liberty sent by an INPEC agent who works in the Medium-Security Penitentiary Establishment and Prison in the city of Bucaramanga (Santander) in which he alleges gross overcrowding at that prison. According to the information provided, the initial capacity at that prison was 700, and due to the implementation of “*planchas y chambranas*” (“boards and cross-pieces”) the number was increased to 1,236; nonetheless, the current prison population is approximately 2,558. This situation apparently requires the inmates to sleep in the bathrooms, hallways, and even to “hang themselves in blankets” tied at heights up to 10 meters off the floor.

138. Similarly, this year the Commission received information from several sources according to which the Prison of Valledupar – which at present is housing more than 1,300 prisoners – is suffering a serious sanitary crisis due mainly to the lack of regular water supply. In addition, the lack of medical care has been reported as have repeated acts of torture, cruel, inhuman, and degrading treatment by the security personnel at that prison. The lack of water at this establishment is also said to have direct consequences on hygienic and sanitary conditions; it is the cause of constant scuffles among inmates and the situations of violence within the prison; and it is said to affect the provision of other basic services, such as having food in good condition. In this respect, the IACHR sent a request for information to the State based on its authority as set out in Article 41 of the Convention.²⁵⁴

²⁵¹ See article “Santos pide a las Farc ‘liberar’ a los niños y niñas que están en sus filas,” *El Espectador*, July 22, 2011. Available at: <http://www.elespectador.com/noticias/politica/articulo-286332-santos-pide-farc-liberar-los-ninos-y-ninas-estan-sus-filas>

²⁵² See article “La OEA preocupada por la violencia y el reclutamiento de niños en Colombia,” *Diario del Huila*, April 20, 2011. Available at: <http://www.diariodelhuila.com/noticia/13928>

²⁵³ *Diario El Tiempo*, *Aumentó en julio la sobrepoblación de las cárceles colombianas*, August 2, 2011, available at: http://www.eltiempo.com/justicia/ARTICULO-WEB-NEW_NOTA_INTERIOR-10077464.html

²⁵⁴ On June 27, 2011, the State’s response was received in which it provided general information on that prison, and indicated that:

(a) According to the company EMDUPAR (water supplier in the city of Valledupar) in mid-2011 several factors combined that have had a negative impact on the regular supply of water in several parts of that city, and not only in the zone where the Valledupar prison is located. Among those factors are: the increase in the volume of flow of the Guatapuri river due to the strong rains typical of the season; the cultural festivals of Valledupar, which drive up total water consumption by 10%; the existence of an invasive population of some 30,000 inhabitants using fraudulent connections; and the structural shortcomings inherent in the city’s water supply system, which allow for underground leaks of water from the system.

(b) In 2009, in the wake of a ruling by the Administrative Court of Cesar, a drinking water storage tank was built with a capacity of 400 cubic meters. In addition, in the 2005-2011 period resources have been invested in different projects aimed at maintaining and making adjustments to the water tanks and water supply system of the Prison at Valledupar.

(c) The prison has three water tanks whose capacity is 1,500 m³; nonetheless, only 32% of this storage capacity is used. Moreover, the water is distributed in the different patios “based on the volume stored in the tanks.” Despite the foregoing, the State recognizes that in inspections of the prison on May 12 and 13 it was found that the water supply was approximately 172 m³. The State recognizes, moreover, that the water supply system at the prison is inoperative, and that its productivity is insufficient to supply the water needed for the almost 1,400 inmates.

(d) Joint initiatives are under way among the INPEC, the Office of the Governor, and the Fire Department to ensure, among other things, that water is supplied on a regular basis through cistern tanks and other palliative measures.

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139. As regards the general human rights situation of persons deprived of liberty, the IACHR takes note of the *Informe de Seguimiento a las Recomendaciones del Comité contra la Tortura y Otros Tratos o Penas Crueles Inhumanos y Degradantes* (Report on Follow-up to the Recommendations of the Committee against Torture)²⁵⁵, prepared by the Coalición Colombiana contra la Tortura, published in August 2011 and submitted to the Rapporteurship on the Rights of Persons Deprived of Liberty. What is indicated in this document is in line with the information observed consistently by the Rapporteurship in the performance of its monitoring functions.

140. According to that report – in which 10 civil society organizations participated – even though the total capacity in Colombia's prisons increased by an additional 23,851 places from 1998 to May 2010, during the same period the prison population increased from 44,398 to 80,490, driving the overcrowding rate up from 34.1% to 41.3% (taking into account the official capacity declared by the State). In addition, this report notes that the main problems in addition to overcrowding are the deficiencies in the provision of health services by the company CAPRECOM; prison violence²⁵⁶; and the commission of and impunity for acts of torture, cruel, inhumane, and degrading treatment against the prisoners, which mostly consist of beatings, the use of tear gas, denigrating body searches, collective punishments, and the arbitrary and disproportionate use of solitary confinement.²⁵⁷

141. The IACHR also observes that both the United Nations Human Rights Committee²⁵⁸ and the UN High Commissioner for Human Rights²⁵⁹ have made statements recently along the same lines in relation to acts of torture, and cruel and inhumane treatment by security force agents against persons in their custody.

142. Finally, the IACHR expresses its concern over the information widely disseminated by different media outlets this year according to which cases of corruption, irregularities, and lack of institutional transparency are common in the INPEC, which is the institution in charge of running and ensuring security at the prisons.

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(e) With respect to events at the prison of Valledupar, in 2009 there were: 29 complaints of physical abuse and assaults; in 2010: 26 complaints of physical abuse and excessive use of force; and in 2011: 11 complaints of physical abuse. General information is provided on the different stages of these proceedings.

(f) Workshops have been conducted, and educational and medical care programs have been carried out in the Prison at Valledupar.

(g) Other measures have been adopted, such as changing the prison warden and the director for security, and in the future other measures will be implemented including workshops on human rights for administrative personnel and guards; changing some officers in those who work as guards and surveillance officers; and the adjustments needed internally and externally to ensure the water supply.

²⁵⁵ This report is available at: http://www.coljuristas.org/documentos/libros_e_informes/informe_ccct_2009-2010.html

²⁵⁶ According to the information presented in that report by the Coalición Colombiana contra la Tortura, the National Institute of Forensic Medicine (Instituto Nacional de Medicina Legal), by official note No. SSF.042.2010 of February 4, 2010, revealed that the report of personal injuries in prisons climbed from 663 in 2007 to 1,098 in 2009, an increase of 60.38%.

²⁵⁷ The State acknowledged the multiple problems of prison overcrowding present in most incarceration facilities nationwide, and said that it had formed an Advisory Committee to develop a prison master plan, which would feature a set of strategies whose main objective would be to modernize prison infrastructure so as to eliminate the high incidence of overcrowding. The State also mentioned that decrees laws would be adopted to reconfigure the division of authorities in prison management and create two entities, one in charge of the custody, surveillance, re-socialization and treatment of prisoners, and the other in charge of any other services needed to operate the prison institutions. Observations of Colombia on the Draft Annual Report of the IACHR for 2011, Chapter IV, Human Rights Developments in Colombia, December 27, 2011, pp. 53-54.

²⁵⁸ UN, Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee: Mexico, CCPR/C/COL/CO/6, adopted August 6, 2010, para. 21.

²⁵⁹ UN, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia, A/HRC/16/22, adopted February 3, 2011, paras. 91-93.

G. Lesbian, Gay, Trans, Bisexual and Intersex Persons

143. In recent years, the IACHR has closely monitored the human rights situation of LGBTBI persons, mainly through its precautionary measures, hearings, visits to the countries and activities to advance the cause of human rights.²⁶⁰ In the case of Colombia, the IACHR notes that observance of the rights of lesbians, gays and trans, bisexual and intersex persons has improved since 1980, when homosexuality was decriminalized through a reform of the Criminal Code.²⁶¹ Moreover, between 2007 and 2008 Colombia's Constitutional Court granted same-sex couples the same pension benefits, social security benefits and property rights that heterosexual couples enjoy. In 2009, the Constitutional Court decided to amend 42 provisions that appeared in some 20 laws, to provide same-sex civil unions the same rights that cohabitating heterosexual unions enjoy.²⁶²

144. Although the Colombian Constitution and Colombia's laws recognize the rights of LGBTBI persons and provide for a number of remedies, access to those remedies and their effectiveness are limited in practice by the discrimination that LGBTBI persons have traditionally experienced. While the Constitutional Court has developed an extensive body of jurisprudence on this subject, mainly on the rights of same-sex couples, the information the IACHR has obtained suggests that discrimination based on sexual orientation and gender identity persists. The rights of lesbian, gay, trans, bisexual and intersex persons in Colombia are not properly respected, because in practice the court and government authorities often let their biases interfere with their enforcement of the law and/or disregard the needs and rights of this sector of the public, with the result that the rights of LGBTBI persons to life, to personal integrity, to personal liberty and security, and other rights are violated, and the remedies that the law affords to protect and guarantee their rights are not truly effective.²⁶³

145. The IACHR must again underscore the fact that the right of all persons to live free of discrimination is guaranteed by international human rights law, and specifically by the American Convention. The IACHR urges Colombia to take the necessary measures to prevent and respond to these human rights abuses by, *inter alia*, adopting public policies and waging campaigns against discrimination based on sexual orientation.

IV. CONCLUSIONS

²⁶⁰ See, IACHR, Press Release No. 115/11 "IACHR Creates Unit on the Rights of Lesbian, Gay, Bisexual, Trans, and Intersex Persons." Available at: <http://www.cidh.oas.org/Comunicados/English/2011/115-11eng.htm>.

²⁶¹ See text of the decree [in Spanish] at:

http://www.icbf.gov.co/transparencia/derechobienestar/codigo/codigo_penal_1980.html.

²⁶² On October 4, 2007, the Constitutional Court ruled that same-sex couples who have been living together in Colombia for at least two years in *de facto* unions may jointly enroll in the social security system. In this same ruling, the Court also held that a partner in a same-sex union may also enroll his or her partner in the public health system, merely by filing a notarized statement to the effect that they have been co-habiting for at least two years. The Constitutional Court delivered a ruling on April 17, 2008, whereby partners in same-sex unions of lesbians and gays shall be entitled to the same survivor's pension benefits to which partners in heterosexual unions are entitled. The following are among the changes introduced by the 2009 ruling: a homosexual shall have the right not to incriminate his or her permanent partner and shall not be required to testify against said partner. As for immigration rights, the same-sex foreign partner of a Colombian citizen has an equal opportunity to obtain citizenship as a foreign member of a heterosexual couple, provided the same-sex couple has lived together for more than two years. The principles that apply to same-sex domestic violence are the same as those that apply to heterosexual domestic violence, although the Court disqualified itself from ruling on the question of whether same-sex couples can be included in the concept of family. The Military Health System will allow partners in same-sex unions to qualify for survivor's benefits and to be listed as health care beneficiaries. Same-sex couples also have a right to own property that cannot be embargoed, which means that a same-sex couple can decide that its property is jointly owned and may have it declared to be "family property." A partner in a same-sex union may be the beneficiary of his or her partner's life insurance and of the SOAT (mandatory vehicle accident insurance), which means that if one partner of the same-sex couple dies, the other shall receive indemnity. When a public official takes his or her oath of office, his or her same-sex partner –if there is one– shall also take the oath. See, Constitutional Court of Colombia, at <http://www.corteconstitucional.gov.co/relatoria/2009/C-029-09.htm>.

²⁶³ Information obtained during the 141st and 143rd regular sessions of the IACHR. In June 2011, a series of marches and roundtables "of the LGBTBI citizenry" were held nationwide to demand observance of those rights.

1. The IACHR has indicated that the durability of peace is tied to the non-repetition of crimes of international law, human rights violations, and grave breaches of international humanitarian law and, therefore, the clarification of and reparation for the consequences of violence through mechanisms suitable for establishing the truth of what happened, administering justice, and making reparation to the victims of the conflict. Colombia still faces challenges when it comes to dismantling the illegal armed structures and implementing the legal framework adopted to prosecute the crimes perpetrated during the conflict.
2. The IACHR maintains its concern with respect to the existence of remnants of persons not demobilized from the paramilitary structures, the phenomenon of rearmament, and the consolidation of new armed groups, and reiterates the need for the Government of Colombia to implement effective mechanisms aimed at ensuring the dismantling of the structures of the AUC. The IACHR understands that the State plays a central role and has the lead responsibility when it comes to guaranteeing the victims of crimes of international law effective access to measures of integral reparation, in equal conditions, in keeping with the standards of international human rights law. The IACHR will continue monitoring the legislative discussion and implementation of measures aimed at achieving integral reparation that include the effective restitution of land to the victims.
3. The Commission maintains its concern with respect to extrajudicial executions allegedly carried out by members of the security forces and the small number of persons convicted for these acts. In addition, the Commission states its grave concern over the acts of harassment and assassination attempts directed against the family members of the victims who have reported these incidents. The Commission states its concern with respect to the use of the military criminal jurisdiction to hear cases of human rights violations, and more specifically of extrajudicial executions allegedly by members of the security forces, which is in violation of the case-law of the Commission and the Inter-American Court of Human Rights, as well as of the Colombian Constitutional Court.
4. The Commission expresses its grave concern over the number of persons internally displaced by the violence and the forcible dispossession of land by armed actors. In addition, the Commission is concerned about the humanitarian and security situation of the displaced and the sustainability of their processes of return. The IACHR considers it fundamental for the State to adopt a comprehensive program to protect the displaced population, and reiterates the importance of carrying out the orders of Judgment T-025 of 2004 of the Constitutional Court, and its follow-up orders.
5. In addition, the Commission maintains its concern with respect to the impact of the violence on the civilian population, and in particular on the most vulnerable groups, such as the indigenous peoples and the Afrodescendant communities, who need differentiated measures of protection and humanitarian assistance.
6. The Commission expresses its concern over the human rights situation of Colombia's indigenous peoples, affected constantly and profoundly in recent years, and specifically during 2011, by the armed conflict, forced displacement, poverty, delicate demographic situation, and state neglect, to the point of seeing their physical and cultural existence endangered. The facts referred to in this report probably entail cross-cutting violations of the individual and collective rights of the indigenous peoples and their members protected by the inter-American instruments. For this reason, the IACHR urges the Colombian State to carry out its international obligations to respect, protect, and promote human rights with special diligence, and likewise its duty to adopt positive measures of special protection for the indigenous peoples to avoid their continued victimization.
7. The Commission maintains its concern over the grave humanitarian crisis affecting the Afro-Colombian population, in particular its leaders, and members of the community

councils, who exercise leadership in claiming, defending, and protecting the human rights of Afro-Colombians, especially of their rights to their territories, the natural resources therein, and their right to autonomy and cultural identity. In this respect, the Commission considers it necessary to implement public policies and specialized mechanisms to ensure that Afro-Colombians fully exercise their rights and fundamental freedoms.

8. The Commission states its grave concern over the attacks against human rights defenders and social leaders by the illegal armed groups and hopes to adopt the measures necessary to ensure freedom of expression in conditions of security.
9. The IACHR reiterates its special concern over the use of intelligence mechanisms against human rights defenders, social leaders, journalists, judicial officers, international cooperation agencies, and international organizations. In addition, the Commission maintains its concern over the threats against and harassment of judicial officers, which hinders the performance of their work, and over the failure to judicially clarify events related to illegal intelligence activities. The IACHR will continue following up on the initiatives aimed at expunging records from the intelligence archives and clarifying responsibilities.

146. In view of these considerations, the IACHR recommends to the Colombian State that it:
1. Strengthen the work of the institutions called on to play a role in implementing the Law on Justice and Peace, especially the units of the Office of the Attorney General that play an essentially investigative role, in terms of logistical support and security so as to ensure judicial clarification of the crimes perpetrated against the victims of the conflict and designate prosecutors in the Justice and Peace jurisdiction trained in sex crimes and crimes that involve children.
 2. Bolster the mechanisms aimed at protecting and guaranteeing the security of the victims of the conflict, witnesses, and human rights defenders who come forward to participate in the process of investigating and prosecuting those who seek to benefit from the Law on Justice and Peace.
 3. Adapt the extradition of persons demobilized under the Law on Justice and Peace to the standards established by the Supreme Court of Colombia, the Inter-American Commission, and the Inter-American Court of Human Rights.
 4. Guarantee the real and effective participation of the persons extradited in the proceedings that should go forward in the Justice and Peace jurisdiction, and the victims' rights to truth, justice, and reparation.
 5. Adopt and implement effective measures aimed at breaking up and dismantling illegal armed groups.
 6. Effectively implement measures of integral reparation for the victims of human rights violations and breaches of international humanitarian law, including measures for the effective restitution of lands.
 7. Strengthen mechanisms that ensure the prevention of extrajudicial executions by members of the security forces.
 8. Strengthen mechanisms of investigating possible extrajudicial executions and remove all the causes that may involve extrajudicial executions of civilians from the military criminal courts to the regular courts.
 9. Design, adopt, and effectively implement policies that take into account the specific needs in terms of territory, health, education, and justice of the indigenous peoples and Afro-Colombian communities affected by the armed conflict.
 10. Adopt the measures needed for protecting the work of human rights defenders, social and trade union leaders, and journalists; prevent their stigmatization and the improper use of mechanisms of intelligence against them; and remove the risk factors that affect them through the judicial clarification of acts of violence, harassment, and threats.
 11. Adopt the measures necessary to ensure that the judges and judicial officers can perform their work for the administration of justice in conditions of security and independence, and free from pressures by private parties and the State.

**ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2011
CHAPTER IV**

CUBA

I. INTRODUCTION

147. The Inter-American Commission on Human Rights has been particularly attentive to the human rights situation in Cuba and, in exercise of its competence, has observed and evaluated the human rights situation there, which it has documented in special reports,²⁶⁴ in Chapter IV of the Annual Report,²⁶⁵ and through its case system.²⁶⁶ On a number of occasions it has asked the Cuban State to take precautionary measures with a view to protecting the life and personal security of its citizens.²⁶⁷

148. On January 31, 1962, the Government of Cuba was excluded from participation in the inter-American system by means of Resolution VI, adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, held in Punta del Este (Uruguay).²⁶⁸ On June 3, 2009, during its XXXIX session held in Honduras, the General Assembly of the Organization of American States (OAS) resolved that Resolution VI adopted at the Eighth Meeting of Consultation of Ministers of Foreign Affairs, would cease to have effect, and that “the participation of the Republic of Cuba in the OAS will be the result of a process of dialogue initiated at the request of the Government of Cuba, and in accordance with the practices, purposes, and principles of the OAS.”

149. The IACHR has held that even for the time of its exclusion, the Cuban State “is juridically answerable to the Inter-American Commission in matters that concern human rights” since “the Cuban State is party to the first international instruments established in the American hemisphere to protect human rights” and because Resolution VI of the Eighth Meeting of Consultation “excluded the present Government of Cuba, not the State, from participation in the inter-American system.”²⁶⁹

150. Using the criteria that the IACHR developed in 1997 to identify States whose human rights practices merit special attention, the Commission has concluded that the human rights situation in Cuba falls under criteria one and five, in that the political rights recognized in the American Declaration of the Rights and Duties of Man are not respected, and structural problems persist that seriously affect the enjoyment and exercise of the fundamental rights recognized in the American Declaration.

²⁶⁴ IACHR, Special Reports from the following years: 1962; 1963; 1967; 1970; 1976; 1979; 1983. At www.iachr.org

²⁶⁵ IACHR, Chapter IV of the Annual Report for the following years: 1990-1991; 1991; 1992-1993; 1993; 1994; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007, 2008, 2009 and 2010. at www.iachr.org

²⁶⁶ See: IACHR, Merits Report No. 47/96, Case 11,436, Victims of the Tugboat “13 de marzo,” October 16, 1996; IACHR, Merits Report No. 86/99, Case 11,589, Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales, September 29, 1999; IACHR, Admissibility Report No. 56/04, <http://www.cidh.org/annualrep/2004eng/Cuba.12127eng.htm>, Vladimiro Roca Antúnez *et al.*, October 14, 2004; IACHR, Admissibility Report No. 57/04, <http://www.cidh.org/annualrep/2004eng/Cuba.771.03eng.htm>, Oscar Elías Biscet *et al.*, October 14, 2004; IACHR, Admissibility Report No. 58/04, <http://www.cidh.org/annualrep/2004eng/Cuba.844.03eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 14, 2004; IACHR, Merits Report No. 67/06, <http://www.cidh.org/annualrep/2006eng/CUBA.12476eng.htm>, Oscar Elías Biscet *et al.*, October 21, 2006; IACHR, Merits Report No. 68/06, <http://www.cidh.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006. At: www.iachr.org.

²⁶⁷ When it is notified of an IACHR decision, the Cuban State either does not respond or sends a note to the effect that the Inter-American Commission on Human Rights does not have competence -and the Organization of American States does not have the moral authority- to examine issues related to Cuba.

²⁶⁸ The complete text of Resolution VI can be found in the “Eighth Meeting of Consultation of the Ministers of Foreign Affairs to serve as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance, Punta del Este, Uruguay, January 22 to 31, 1962, Meeting Documents,” Organization of American States, OEA/Ser.F/II.8, doc. 68, pages 17-19.

²⁶⁹ IACHR, *Annual Report 2002*, Chapter IV, Cuba, paragraphs 3-7. See also IACHR, *Annual Report 2001*, Chapter IV, Cuba, paragraphs 3-7. IACHR, *Seventh Report on the Situation of Human Rights in Cuba*, 1983, paragraphs 16-46.

151. The restrictions on political rights, on the right to freedom of association, freedom of expression, freedom of thought, the lack of elections, the lack of an independent judicial branch and restrictions on freedom of movement have, over the decades, become permanent fixtures in systematic violations of the human rights of the Cuban people. In 2011, the information available suggests that the general human rights situation has not changed. The same human rights violations mentioned above persist, as do severe repression of women, restrictions on human rights defenders, and laws and practices that violate the rights of children and adolescents.

152. On November 22, 2011, the Commission sent this report to the State of Cuba and asked for its observations. The State did not respond.

II. ECONOMIC SANCTIONS

153. The economic and trade embargo imposed against Cuba in 1961 is still in effect. The IACHR's position is still that economic sanctions have an impact on the Cuban people's human rights, and therefore urges that the embargo be lifted.²⁷⁰ Nevertheless, the economic embargo imposed on Cuba does not relieve it of its international obligations and is no excuse for the violations of the American Declaration described in this report.

III. HUMAN RIGHTS SITUATION IN CUBA

A. The State's respect for and guarantee of the rights to life, to humane treatment and to personal liberty

- The death penalty

154. The Commission observes with concern that Cuban law makes the death penalty the punishment for a significant number of crimes, especially crimes against the security of the State. The language of the law is broad and vague, and the death penalty can be applied even in the most summary proceeding²⁷¹ that does not afford the minimum guarantees necessary for the accused to be able to exercise his right to an adequate legal defense.²⁷²

155. As was explained in Chapter IV of the 2008 Annual Report, the IACHR welcomes the fact that on April 28, 2008 the Council of State decided to commute the death penalty of those sentenced to that grave and irreparable punishment, and sentenced them to life or 30 years in prison instead. However, three people sentenced to death for supposed terrorist crimes would appear not to have had their sentences commuted.

156. The Commission is mindful of the State's comment to the effect that:

²⁷⁰ On October 25, 2011, the United Nations approved, for the twentieth consecutive year, a resolution in which it demanded that the United States lift the economic blockade and trade embargo that it has had in place against Cuba since 1962. UN, Resolution "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba." At: <http://www.un.org/en/ga/66/resolutions.shtml>

²⁷¹ Articles 479 and 480 of the Criminal Procedure Law establish the especially expedited summary proceeding:

Article 479: In a case of exceptional circumstances, the Attorney General may propose to the President of the People's Supreme Court and the latter shall decide whether to use the especially expedited summary proceeding to prosecute those crimes that any court has jurisdiction to hear, except for those crimes that are the jurisdiction of the People's Municipal Courts.

Article 480. In especially expedited summary proceedings, the procedures that this law establishes for preliminary proceedings, oral trial and appeals may be reduced to the extent that the court with jurisdiction deems necessary. Title X, Especially Expedited Summary Proceeding. Articles 479 and 480. Available [in Spanish] at: <http://www.gacetaoficial.cu>. [Translation ours].

²⁷² IACHR, Annual Report 2008, Chapter IV, Cuba, paragraph 177.

Even if it is included in the national legislation, the application of this sanction has a very exceptional nature in Cuba. It is only applied by the authorized tribunal, in extremely serious cases, for a reduced number of crimes for which this sanction is established, and it is nuanced by a wide range of requisites and guarantees that must be complied with. Life-term sentences are prescribed for some crimes with the aim of using this as an alternative for the death penalty.
[...]

Philosophically speaking, Cuba is against application of the death penalty. We are in favour of eliminating it when suitable conditions exist.

We have been forced, in the legitimate defence of our national security, to establish and to apply severe laws against terrorist activities and crimes designed to destroy the Cuban state or the lives of its citizens, always adhering to the strictest legality and with respect for the most ample guarantees.²⁷³

157. The IACHR hopes that the commutation is extended to include all those sentenced to the death penalty.

158. Having said this, the Commission observes that under Cuban law, a significant number of crimes carry the death penalty, especially crimes against the security of the State. The language of the law is broad and vague.

159. Capital punishment is the penalty for crimes against the security of the State; against peace and international law; against public health; against life and bodily integrity; against the normal conduct of sexual relations; against the normal development of childhood and adolescence; and against property rights. The crimes against the security of the State that carry the death penalty are the following: acts committed against the independence and territorial integrity of the State; those aimed at promoting war or armed action against the State; the provision of armed services against the homeland; providing aid and comfort to the enemy; espionage; insurrection;²⁷⁴ sedition; usurpation of political or military control; sabotage; terrorism; hostile acts against a foreign State; genocide; piracy; enrolling in the service of a foreign military force; apartheid²⁷⁵ and other acts against the security of the State. Other capital offenses include: the unlawful production, sale, use, trafficking, distribution and possession of drugs, narcotics, psychotropic substances and others having similar effects;²⁷⁶ murder;²⁷⁷ rape;²⁷⁸ violent

²⁷³ United Nations, (2009) Universal Periodic Review, Report of the Working Group on the Universal Periodic Review of Cuba, Additions, Responses provided by Cuba on the recommendations listed under paragraph 131 of the report of the Working Group on the Universal Periodic Review of Cuba. At: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_11_22_Add1_CUB_E.pdf

²⁷⁴ Article 98: 1. Anyone who takes up arms to achieve any of the following ends shall be sentenced to prison for a period of ten to twenty years or to the death penalty: a) to prevent the higher organs of the State and of Government from discharging their functions, either entirely or partially and even if temporarily; b) to change the economic, political and social order of the socialist State; c) to change, in whole or in part, the Constitution or the form of government it establishes.

2. Any person who commits an act intended to encourage others to take up arms shall face the same punishment if he or she accomplishes his or her ends; if not, the penalty shall be imprisonment for four to ten years.

²⁷⁵ Article 120: 1. The penalty shall be imprisonment for ten to twenty years or death for anyone who, in order to establish or maintain one racial group's domination over another and acting in accordance with policies for racial extermination, segregation or discrimination: a) denies members of that group the right to life and the right to liberty through murder, egregious attacks on their physical or mental security or dignity; torture or cruel, inhuman or degrading treatment or punishment; arbitrary detention and unlawful imprisonment; b) imposes on that group legislative or other measures intended to prevent it from participating in the country's political, social, economic, or cultural life and deliberately creates conditions that thwart the group's full development by denying its members their fundamental rights and freedoms; c) divides the population along racial lines by creating reservations and ghettos, prohibiting marriage between members of different racial groups and expropriating their property; d) exploits the labor of the group's members, especially by subjecting them to forced labor.

1. 2. If a person in any way persecutes or harasses organizations and persons who are opposed to apartheid or who struggle against it, he or she shall face imprisonment for ten to twenty years.

2. 3. Responsibility for the acts provided for in the preceding paragraphs shall be irrespective of the country in which the culpable parties act or reside and applies, irrespective of motive, to private citizens, members of organizations and institutions and representatives of the State. [Translation ours]

²⁷⁶ Cuban Criminal Code, Article 190.

pederasty;²⁷⁹ corruption of minors;²⁸⁰ robbery committed with violence or intimidation.²⁸¹ The death penalty is also the punishment for a significant number of offenses criminalized in broad or vague language that include expressions like “dangerous state.”²⁸²

160. Furthermore, as previously noted, in Cuba the death penalty can be ordered even in especially expedited summary proceedings. The Commission has written that “[a]lthough Article XVIII of the American Declaration refers to the simple and brief procedure whereby the courts will protect persons from acts of authority that violate any fundamental rights, the requirement of simplicity and brevity cannot be applied to a trial that does not allow the accused to defend themselves with all the guarantees of due process of law, and even more so in cases where the penalty that could be applied is irreversible by nature, that is, death.”²⁸³

161. According to the information available to the Commission, the last time the death penalty was used in Cuba was in 2003, when Messrs. Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García and Jorge Luis Martínez Isaac²⁸⁴ were executed. However, the death penalty continues to be applied in the especially expedited summary trials. The Commission believes that if capital punishment is an option, then the judicial branch must be an independent one, where judges exercise a high degree of scrutiny and respect the guarantees of due process. Here, the Inter-American Court has written that:

capital punishment is not *per se* incompatible with or prohibited by the American Convention. However, the Convention has set a number of strict limitations to the imposition of capital punishment.²⁸⁵ First, the imposition of the death penalty must be limited to the most serious common crimes not related to political offenses.²⁸⁶ Second, the sentence must be individualized in conformity with the characteristics of the crime, as well as the participation and degree of culpability of the accused.²⁸⁷ Finally, the imposition of this sanction is subject to certain procedural guarantees, and compliance with them must be strictly observed and reviewed.²⁸⁸

...continuation

²⁷⁷ Cuban Criminal Code, Article 263.

²⁷⁸ Cuban Criminal Code, Article 298.

²⁷⁹ Cuban Criminal Code, Article 299.

²⁸⁰ Cuban Criminal Code, Article 310.

²⁸¹ Cuban Criminal Code, Article 327.

²⁸² As the Inter-American Court has observed, “[a]mbiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.” See, for example, I/A Court H.R., *Case of Castillo Petruzzi et al.* Judgment of May 30, 1999. Series C No. 52, paragraph 121.

²⁸³ IACHR, Merits Report No. 68/06, <http://www.IACHR.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, paragraph 96.

²⁸⁴ IACHR, Merits Report No. 68/06, <http://www.IACHR.org/annualrep/2006eng/CUBA.12477eng.htm>, Lorenzo Enrique Copello Castillo *et al.* October 21, 2006.

²⁸⁵ Cf. *Restrictions to the Death Penalty (Arts 4(2) and 4(4) American Convention on Human Rights)*. Advisory Opinion OC-3/83 of September 8, 1983. Series A. No. 3.

²⁸⁶ Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94, paragraph 106, and *Case of Raxcacó Reyes, Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 133, paragraph 68. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 22, paragraph 55.

²⁸⁷ Cf. *Case of Hilaire, Constantine and Benjamin et al.*, *supra* note 23, paragraphs 103, 106 and 108, and *Case of Raxcacó Reyes*, *supra* note 23, paragraph 81. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 22, paragraph 55.

²⁸⁸ Cf. *Case of Fermín Ramírez, Merits, Reparations and Costs*. Judgment of June 20, 2005. Series C No. 126, paragraph 79. See also *Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights)*, *supra* note 22,

Continued...

162. The IACHR observes that the gradual trend in the hemisphere is toward abolition of the death penalty²⁸⁹ and, in that respect, welcomes the statement made by the Cuban State to the effect that:

Even if the death penalty [sic] prescribed in the national legislation, Cuba understands and respects the arguments of the international movement that proposes its elimination or a moratorium. For that reason, our country has not rejected initiatives in the United Nations having this aim.²⁹⁰

- **Rights to personal security and liberty**

163. The American Declaration provides that every human person has the right to liberty²⁹¹ and no person may be deprived of this liberty except in the cases and according to the procedures established by pre-existing law.²⁹² Under the American Declaration, every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released.²⁹³ It also provides that every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.²⁹⁴

164. On the matter of the right to personal liberty, the IACHR has observed with concern²⁹⁵ that in Cuba, an offense criminalized under Article 72 of the Cuban Criminal Code, called "dangerous state", defined as "the special proclivity of a person to commit crimes," is still on the books and is still being enforced. Article 72 of that text provides that:

Dangerous state is considered to be the special proclivity one finds in a person to commit crimes, demonstrated by the conduct observed in manifest contradiction with the norms of socialist morality.

165. The definition of "dangerous state" appears in Article 73, paragraph 1 of the Criminal Code, which provides that a subject who exhibits any of the following indicia shall be deemed dangerous: (a) habitual drunkenness or dipsomania; (b) drug addiction; and (c) antisocial conduct. Article 73, paragraph 2, provides that:

anyone who habitually breaks the rules of social coexistence through acts of violence, or by other provocative acts, violates the rights of others, or who by his or her general conduct violates the rules of social co-existence or disturbs the order of the community, or lives as a social parasite from the work of others, or exploits or practices socially reproachable vices, is considered to be socially dangerous by virtue of such anti-social conduct.

...continuation

paragraph 55, and *The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16, paragraph 135.

²⁸⁹ "Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights", Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Adopted and proclaimed by General Assembly resolution 44/128 of 15 December 1989. At: <http://www2.ohchr.org/english/law/ccpr-death.htm>

²⁹⁰ United Nations, (2009) Universal Periodic Review, Report of the Working Group on the Universal Periodic Review of Cuba, Additions, Responses provided by Cuba on the recommendations listed under paragraph 131 of the report of the Working Group on the Universal Periodic Review of Cuba. At: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CU/A_HRC_11_22_Add1_CUB_E.pdf

²⁹¹ American Declaration, Article I.

²⁹² American Declaration, Article XXV.

²⁹³ American Declaration, Article XXV.

²⁹⁴ American Declaration, Article XXVI.

²⁹⁵ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

166. For its part, Article 75(1) of the Criminal Code provides that “anyone who, although not covered by any of the dangerous states described in Article 73, has ties or relations to persons who are potentially dangerous to society, to other persons, and to the social, economic and political order of the social State and may therefore be inclined to commit crimes, shall be warned by the competent police authority.”

167. If a person is deemed dangerous because he or she engages in any of the behaviors mentioned above, security measures can be applied either before or after the criminal conduct. Article 78 of the Criminal Code provides that therapeutic or re-educational measures can be applied in the case of a person declared to be in a dangerous state, or the National Revolutionary Police may keep that person under surveillance. Under Article 79, one of the therapeutic measures is internment in care facilities, psychiatric institutions, or detoxification centers.²⁹⁶ The re-educational measures are applied in the case of supposedly anti-social persons and consist of internment in specialized work or study facilities; the person may also be ordered sent to a labor collective where his or her conduct will be supervised and rehabilitated. These security measures last a minimum of one year and a maximum of four.

168. The provisions of the Cuban Criminal Code are supplemented by Decree No. 128, issued in 1991, which provides that a declaration of pre-criminal dangerous state must be decided through a summary proceeding. In that decree, the National Revolutionary Police are to put together a criminal case file containing evidence of the “dangerous” conduct and present it to the Municipal Prosecutor who, within the space of two days, shall decide whether the case will go to the Municipal Court. If that court finds that the case file is complete, it shall set a date for a hearing where the parties are to appear. The court is to deliver its decision within the twenty-four hours following the hearing.

169. The Commission believes that the function of criminal law is to punish crimes or attempts to commit crime, but never the predilection to commit crime or a presumption of the commission of a crime.²⁹⁷ The Commission is troubled by the fact that “dangerousness” or “dangerous state” is a criminal offense since it is, in fact, a subjective assessment on the part of whoever qualifies it as such; imprecision here jeopardizes the public’s legal certainty, as the law creates conditions conducive to abuses of authority. The Commission finds it extremely serious that these provisions –which are themselves incompatible with the principles established in the American Declaration- are applied via a summary proceeding, to persons who have not even committed a crime but who, in the judgment of the Cuban authorities, are considered *dangerous* to society and, therefore, deserving of severe measures that deny them their liberty.²⁹⁸ In such cases, on the pretext of preserving *social peace*, the State has virtually complete discretion to interfere in the lives of the Cuban citizenry and heedlessly violate the right to personal liberty.

170. The violations of the personal liberty of Cuban political dissidents will be examined in the next section.

B. Respect for and guarantee of political rights

171. Political rights are of fundamental importance and closely related to a set of other rights that make the practice of democracy possible. Under the Inter-American Democratic Charter, signed in Lima, Peru on September 11, 2001, representative democracy is recognized and required within the Organization of American States as indispensable for the stability, peace, and development of the region. The existence of free elections, independent and effective branches of government, and full respect for freedom of expression are among the essentials of democracy and cannot be examined separately.

²⁹⁶ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

²⁹⁷ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999

²⁹⁸ IACHR, Annual Report of the Inter-American Commission, 1998, April 16, 1999.

From this standpoint, human rights cannot be fully guaranteed unless the right of persons to form and participate in political groups is respected.

172. The right to vote is one of the elements essential for the existence of democracy and one of the ways in which citizens freely express their will and exercise their right to political participation. This right means that citizens can directly decide and freely elect, under conditions of equality, those persons who will represent them in decisions taken on public affairs.²⁹⁹ Political participation through the exercise of the right to be elected presupposes that citizens can stand as candidates under conditions of equality and can hold elective office. The American Convention provides that even in emergency situations, this right cannot be suspended.³⁰⁰

173. One of the main reasons for including Cuba in Chapter IV of the Annual Report is that it does not have free elections held in accordance with internationally accepted standards. This is a violation of the right to political participation recognized in Article XX of the American Declaration of the Rights and Duties of Man. That article reads as follows:

Every person having legal capacity is entitled to participate in the government of his country, directly or through his representatives, and to take part in popular elections, which shall be by secret ballot, and shall be honest, periodic and free.

174. Article 3 of the Inter-American Democratic Charter defines the distinctive features of a democratic system of government as follows:

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

175. The State has asserted that “Cuba’s democratic system is based on the principle of ‘government of the people, by the people and for the people’,” adding that “[t]he Cuban people participate in the exercise and active control of Government through its political and civil institutions and in the framework of its laws.”³⁰¹ It has also claimed that the restrictions that the law imposes on the exercise of certain political rights in Cuba are the minimum necessary to ensure protection of the right to self-determination, peace and the right to life of all people, in response to the increasingly anti-Cuban aggressiveness on the part of the Empire.³⁰²

176. The Declaration and the Inter-American Charter reflect a widely held view that under representative democracy, the people are sovereign and the offices through which authority is exercised are held by persons freely elected to represent the will of the people.

²⁹⁹ IACHR, Annual Report, 1990-1991, p. 557; IACHR, *Second Report on the Situation of Human Rights in Peru*, 2000, Chapter IV, Political Rights, A.1; see also I/A Court H.R., *Case of Castañeda Gutman v. Mexico*, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 6, 2008, Series C No. 184.

³⁰⁰ Article 27 of the American Convention, which is titled “Suspension of Guarantees”, provides the following in subparagraph 2: “The foregoing provision does not authorize any suspension of the following articles: [...] and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.”. See also, I/A Court H. R., *Case of Castañeda Gutman v Mexico*. Preliminary Objections, Merits Reparations and Costs. Judgment of August 6, 2008, Series C No. 184, and I/A Court H.R. *The Word “Laws” in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, paragraph 34; and *Case of Yatama v. Nicaragua*. Preliminary Objections, Merits, Reparations and Costs, Judgment of June 23, 2005. Series C No. 127, paragraph 191.

³⁰¹ National Report Submitted in Accordance with Paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1. Cuba, UN, Human Rights Council, Working Group on the Universal Periodic Review, Fourth Session, Geneva, February 2-13, 2009, of November 4, 2008, paragraph 8.

³⁰² In Chapter 9 of the “*Libro Blanco del 2007*”, published [in Spanish] at the official website of the Ministry of Foreign Affairs of Cuba.

177. In the Commission's view, those elements are not present in Cuban elections, inasmuch as such basic features as the pluralistic system of political parties and independence are lacking, as is free access to a variety of sources of information. Based on the international standards mentioned earlier, the Commission emphasizes that the lack of free and fair elections, based on secret balloting and universal suffrage as an expression of the sovereignty of the people,³⁰³ is a violation of the Cuban people's right to political participation.

- **Situation of Political Dissidents and Political Repression**

178. According to information obtained, thanks to the good offices of the Catholic Church in Havana, between July 2010 and March 2011 the Cuban government, in the person of its president, Raúl Castro, released persons who had been in prison since 2003, when a group of members of the opposition and independent journalists (the so-called group of 75) was arrested, tried and sentenced to harsh penalties, in what was called the "Black Spring." That situation was the subject of the IACHR's Case 12,476.³⁰⁴ The majority of those released were sent to Spain. In press release 69/10 of July 13, 2010, the IACHR welcomed the decision taken by the Cuban Government.

179. While the Cuban Government's original commitment was to release the remaining prisoners of the Group of 75, it then announced its willingness to release other political prisoners and exile them to Spain. The Government also said that it would grant *licencia extrapenal* (conditional release amounting to house arrest) to those prisoners of conscience who refused to leave their country upon their release.³⁰⁵ They could thus remain free on the island, although the case against them would go on. Twelve of the victims who refused to leave the island as a condition for their release from prison, remained at liberty provisionally; however the laws that allowed their arrest are still in force.

180. The IACHR received information concerning Oscar Elías Biscet, a recently released dissident who remains in Cuba. He has allegedly been ordered to make an appearance between the first and fifth of each month to sign a document, in the presence of the examining judge and the sector chief. Oscar Elías Biscet said that he allegedly had to sign the control form the first time in order for them to give him identification papers. He also said that he was the only person remaining in Cuba who was subject to that order.³⁰⁶

181. The IACHR must again make the point that convictions delivered against political dissidents must be overturned inasmuch as they are based on laws that impose unlawful restrictions on their human rights.³⁰⁷ Likewise, the so called "*licencias extrapenales*" to those who have been released and opt to remain in Cuba does not constitute compliance with the recommendations the Commission made in its report on the merits.³⁰⁸

182. Moreover, from the information received it would appear that during 2011, the Government allegedly continued what the IACHR had labeled a tactic of political repression in the form of systematic arrests for several hours or even several days, threats and other forms of harassment against opposition activists.

³⁰³ Article 3 of the Inter-American Democratic Charter lists as one of the essential elements of representative democracy the holding of free and fair elections based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations.

³⁰⁴ IACHR, Merits Report No. 67/06, Case 12.476 , Oscar Elías Biscet *et al.*, October 21, 2006.

³⁰⁵ Article in the newspaper *El País*, *Cuba deja quedarse a los ex presos que no quieren exiliarse* [Cuba allows former prisoners who do not want to go into exile to remain], September 23, 2010.

³⁰⁶ The newspaper *Diario de Cuba*, *Biscet se niega a aceptar una imposición policial que le obliga a reportarse cada mes* [Biscet refuses the police order requiring him to report every month], July 7, 2011, Available [in Spanish] at: <http://www.ddcuba.com/derechos-humanos/5691-biscet-se-niega-aceptar-una-imposicion-policial-que-le-obliga-reportarse-cada->

³⁰⁷ IACHR, Merits Report No. 67/06, Case 12.476 , Oscar Elías Biscet *et al.*, October 21, 2006.

³⁰⁸ IACHR, Merits Report No. 67/06, Case 12.476 , Oscar Elías Biscet *et al.*, October 21, 2006.

183. According to the Cuban National Human Rights and Reconciliation Commission, the level of “low intensity” political repression remained high in 2011. According to that organization, in 2011, the figures on the number of persons taken into temporary custody on allegedly political grounds were as follows: January, 268; February, 390; March, 264; April, 244; May, 349; June, 212; July, 251; August, 243; and September, 563.³⁰⁹ According to that organization, these figures are the highest in all Latin America and the Caribbean for this type of repression. It also observes that the figure for the month of September was the highest that Cuba had seen in the last 30 years.³¹⁰

184. It points out that in recent months state agents used physical violence on members of the opposition, men and women alike. The IACHR points to the May 5, 2011 beating of Juan Wilfredo Soto García. A dissident and former political prisoner, Mr. Soto García, age 46, had allegedly been beaten and detained by Cuban State Security forces as he and other people were participating in an anti-government demonstration. According to the information supplied, two days later, on May 7, 2011, Mr. Soto García died as a result of the beatings he received, although a proper investigation has not shed light on the cause.

185. The IACHR also received information concerning Damaris Moya, a member of the *Coalición Central Opositora* [Central Opposition Coalition], who was hospitalized on June 26 from a beating allegedly inflicted by a number of military personnel. Activist Guillermo Cobas reported from El Caney that a dozen members of the opposition had allegedly been “beaten violently and received a public censure by the political police, State Security and members of the Communist Party.”³¹¹ He also said that dissidents Reiner ArochaTéllez and René Hierrezuelo Arafe had allegedly been “beaten and dragged across the floor” as they were meeting in Mr. Hierrezuelo Arafe’s house.

186. The IACHR received information to the effect that on January 19, 2011, Mrs. Marta Fonseca’s house was allegedly raided to remove some anti-government posters that had been drawn on the façade of the home. The activist, along with her son and husband, were allegedly brutally beaten and arrested.³¹² According to the information available, although Sara Fonseca already had a bandage on her back from previous beatings sustained during the marches of the *Damas de Blanco* [Ladies in White], she was beaten again.³¹³

187. The IACHR was also told of a number of temporary arrests and acts of violence against Marta Díaz Rondón, a member of the Rosa Parks Women’s Civil Rights Movement [Movimiento

³⁰⁹ Comisión Cubana de Derechos Humanos y Reconciliación Nacional [Cuban National Human Rights and Reconciliation Commission]. Available [in Spanish] at: <http://www.cubasindical.org/docs/ccdhrnseptiembre11.pdf>.

³¹⁰ Comisión Cubana de Derechos Humanos y Reconciliación Nacional [Cuban National Human Rights and Reconciliation Commission]. Available [in Spanish] at: <http://www.cubasindical.org/docs/ccdhrnseptiembre11.pdf>.

³¹¹ Cubaencuentro, *Denuncian actos de repudio y agresión a opositores en Santiago de Cuba* [Acts of censure against members of opposition in Santiago de Cuba denounced], August 14, 2011. Available [in Spanish] at: <http://www.cubaencuentro.com/cuba/noticias/denuncian-actos-de-repudio-y-agresion-a-opositores-en-santiago-de-cuba-266953>.

³¹² Assembly of the Cuban Resistance. Special Report. Cuba: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

³¹³ IACHR, Precautionary Measures granted by the IACHR during 2011. PM 370-11, Sara Marta Fonseca Quevedo, Cuba. On December 6, 2011, the IACHR granted precautionary measures for Sara Marta Fonseca Quevedo in Cuba. The request seeking precautionary measures alleges that Sara Marta Fonseca Quevedo, Executive Secretary of the Pro Human Rights Party in Cuba and a delegate of the Rosa Parks Feminist Civil Rights Movement in Havana, was harassed when she sought medical treatment at state-run health care institutions, presumably because of her political position and because she is an advocate for human rights. The request also states that Sara Marta Fonseca Quevedo was detained four times in 2011, often by violent means. The parties requesting the precautionary measures state that Sara Marta Fonseca Quevedo was in custody from September 24 to October 24, 2011 and that because of the violence allegedly used on her during her detention, a pre-existing back condition was aggravated, leaving her unable to stand up on her own. The Commission therefore asked the Cuban Government to take the necessary measures to ensure the life and physical integrity of Sara Marta Fonseca Quevedo and to guarantee that she would not be harassed by staff of state-run hospitals; that in concert with the beneficiary and her representative it arrange the measures it will take, and that it report on the measures undertaken to investigate the facts that necessitated adoption of precautionary measures.

Femenino por los Derechos Civiles Rosa Parks] and the Eastern Democratic Alliance [Alianza Democrática Oriental] (on May 9, 2011, May 24, 2011, and May 26, 2011), as she was on her way to participate in meetings or peaceful marches.³¹⁴

188. The Inter-American Commission also received a report to the effect that in Santiago de Cuba on June 21, the political police had allegedly conducted an operation to clamp down on dissidents who were attempting to express their solidarity with Alba García, mother of Jorge Cervantes, who had been on a hunger strike for 24 days in the Saturnino Lora provincial hospital. The operation reportedly involved stationing a number of officers to fence off access to the hospital and demand to see identification papers before letting people gain access to the hospital. A number of people were allegedly temporarily detained. Their names were on a list.³¹⁵

189. The IACHR was informed that the regime's new strategy for suppressing political opposition was to exile the principal leaders of the opposition. To achieve that end, it would fabricate criminal cases. Faced with the possibility of prison, the leaders of the opposition would have to choose what was represented as voluntary exile. This was the case of Néstor Rodríguez Lobaina, founder of the Cuban Pro-Democracy Youth Movement [Movimiento Cubano de Jóvenes por la Democracia], for whom the Commission granted precautionary measures on January 24, 2011.³¹⁶ According to the petition seeking precautionary measures, on December 9, 2010 Néstor Rodríguez Lobaina was out walking with his 10-year-old daughter, Diana Rodríguez Castillo, when he was intercepted by agents of the political police. According to the request, the agents reportedly hit him with pepper spray and put him in a patrol car, leaving the girl by herself, 15 blocks from home. The request adds that after being detained for 72 hours at the Department for State Security Operations in the city of Guantánamo, he was apparently transferred on December 12 to the Guantánamo Provincial Prison and that his family did not receive any information about his state of health or about any treatment he may or may not have been receiving for burns he allegedly suffered as a result of the pepper spray having hit him at close range. The Inter-American Commission was later informed that Mr. Rodríguez Lobaina had allegedly accepted the Government's offer to be exiled to Spain, rather than face 12 years in prison for crimes he said he did not commit. He was reportedly taken directly from the prison where he had been held since December 9, 2010, to the airport with his closest next of kin. Mr. Rodríguez Lobaina reportedly arrived in Spain on April 8, 2011. The Inter-American Commission was also told that a suggestion had also been made to Rolando Rodríguez Lobaina, brother of Néstor Rodríguez Lobaina, Rogelio Tabío and Ricardo Galván Casal that they, too, should leave the country, but they declined.³¹⁷

190. The IACHR received information on the forms of repression being practiced in Cuba, among them the threats made against members of political parties. The IACHR was told that Elpidio Rodríguez Casas, a member of the Cuban Independent Democratic Party [Partido Cubano Independiente y Democrática] (CID), had allegedly been threatened by State Security agents to get him to resign from

³¹⁴ Assembly of the Cuban Resistance. Special Report. Cuba: Increased Repression against Human Rights Defenders and violent assault on Women Human Rights Defenders, August 2011.

³¹⁵ Payolibre, *Detenciones y golpizas en torno a la huelga de Cervantes* [Detentions and beatings associated with Cervantes' hunger strike], June 23, 2011. Available [in Spanish] at: <http://www.payolibre.com/noticias/noticias2.php?id=7822>

³¹⁶ Precautionary measure 13/11 for Néstor Rodríguez Lobaina and family, Cuba. On January 24, 2011, the IACHR granted precautionary measures for Néstor Rodríguez Lobaina and his family in Cuba. The petition seeking precautionary measures alleges that on December 9, 2010, Néstor Rodríguez Lobaina was out walking with his 10-year-old daughter, Diana Rodríguez Castillo, when he was intercepted by agents of the political police. According to the request, the agents reportedly hit him with pepper spray and put him in a patrol car, leaving the girl by herself, 15 blocks away from home. The request adds that after being detained for 72 hours at the Department for State Security Operations in the city of Guantánamo, he was apparently transferred on December 12 to the Guantánamo Provincial Prison and that his family had not received any information about his state of health or about any treatment he may or may not have received for burns he allegedly suffered as a result of the pepper spray having hit him at close range. The Inter-American Commission asked the State of Cuba to adopt any measures necessary to preserve and guarantee the life and physical integrity of Néstor Rodríguez Lobaina and his family, and to allow him access to a doctor he trusted or an international organization for treatment and monitoring of his health. See at: <http://www.cidh.oas.org/medidas/2011.eng.htm>

³¹⁷ Pedazosdelaisla, *Néstor Rodríguez Lobaina sobre su Destierro* [Néstor Rodríguez Lobaina on His Exile], April 11, 2011. Available [in Spanish] at: <http://pedazosdelaisla.wordpress.com/2011/04/11/nelstor-rodriiguez-lobaina-sobre-su-destierro/>

the board of directors of the party; they threatened that if he did not, he would lose his housing and the Law on Pre-Criminal Danger would be enforced against him.³¹⁸

C. The State's observance and guarantee of exercise of freedom of expression

191. The IACHR learned of a hunger strike being staged by journalists Pedro Argüelles Morán and Albert Santiago Du Bouchet Hernández, both members of the "Group of 75" dissidents detained in 2003 and the subject of IACHR Case 12,476 (Oscar Elías Biscet *et al.*). Argüelles Morán had allegedly gone on a hunger strike to protest the pressure being exerted by the authorities to get him to leave the country if they released him. He went off his hunger strike when the authorities promised that he and ten other dissidents being held could remain in Cuba once released. For his part, Du Bouchet Hernández' hunger strike had allegedly lasted 23 days, and was to honor the first anniversary of the death of dissident Orlando Zapata and to call attention to his own imprisonment and that of other political prisoners.³¹⁹

192. The Office of the Special Rapporteur for Freedom of Expression received information to the effect that temporary arbitrary detentions were still being made and could last hours or even a few days. The victims were persons identified as opponents of the regime and the idea was to prevent them from participating in political activities or to respond to demonstrations or the circulation of messages critical of the Government. According to the information received, another common practice is to stage acts of censure in front of the homes of political dissidents, as a way to harass them and prevent them from going out in public. These events, during which government slogans are yelled and patriotic anthems and revolutionary music are played full blast, tend to be accompanied by arrests and attacks on the members of the opposition. According to the reports received, Cuban dissident organizations reported between 2,668 and 2,784 arrests between January and September 2011, averaging at least 333 detentions a month in the first eight months of 2011. However, the dissident organizations reportedly saw a sizeable increase in arrests in September, with between 486 and 563 persons taken into custody. According to reports received, 80 persons were allegedly either convicted or tried on political grounds; 63 of these were reported to be in prison.³²⁰ The increase in arrests prompted a public communiqué from the British Embassy in Cuba, in which the diplomatic mission called upon the State to allow peaceful protests and expressed concern over the short-term detentions of political and human rights activists, and the aggressive treatment against opposition organizations like the *Damas de Blanco* [Ladies in White].³²¹

193. According to information the Commission received, at least a dozen journalists who collaborated with the independent news agency *Hablemos Press* had reportedly been taken into temporary custody or attacked in the days before and during the Sixth Congress of the Cuban Communist Party, held in Havana April 16 – 19, 2011. On April 15, the *Hablemos Press* correspondent in Guantánamo, Enyor Díaz Allen, had allegedly been attacked by two persons who started by yelling pro-government slogans at him and then fractured one of his arms and inflicted a head injury on him. He was

³¹⁸ Cuba Independiente y Democrática, *O te retiras del CID o te quitamos tu casa* [Either you pull out of CID or we take your home], August 16, 2011. Available [in Spanish] at: <http://cubacid.blogspot.com/2011/08/o-te-retiras-del-cid-o-te-quitamos-tu.html>

³¹⁹ Reporters Without Borders. February 4, 2011. *Jailed Journalists on Hunger Strike*; Committee to Protect Journalists (CPJ). February 9, 2011. *Press Cuba to keep promise to free journalists*; Agence France Presse (AFP). February 10, 2011. *Un preso político cubano levanta su huelga de hambre de ocho días*. [One Cuban political prisoner ends eight-day hunger strike]

³²⁰ Comisión Cubana de Derechos Humanos y Reconciliación Nacional [Cuban National Human Rights and Reconciliation Commission]. October 3, 2011. *Algunos actos de represión política registrados en Cuba durante septiembre de 2011* [Some acts of political repression recorded in Cuba in September 2011]; Centro de Información Hablemos Press. October 3, 2011. *Informe mensual de violaciones de los derechos humanos*. [Monthly report on human rights violations]; EFE News Service. October 4, 2010. *Septiembre malo para la disidencia*. [A Bad September for the dissident movement]; Inter-American Press Association (IAPA). September 29, 2011. *IAPA condemns increased harassment in Cuba*; Reuters. October 3, 2011. *Grupo disidente Cuba reporta histórica cifra detenciones mensuales*. [Cuban dissident group reports historic figure on monthly arrests]

³²¹ Embassy of Great Britain in Cuba. September 29, 2011. *Recent reports of short term detentions in Cuba. British Ambassador Dianna Melrose Comments on the Situation*.

later allegedly detained by the Police, treated in a hospital and then jailed for four days.³²² Raúl Arias Márquez and Elier Muir Ávila, correspondents in the provinces of Morón and Ciego de Ávila, were detained in Márquez' home on April 5 and 6 by Police and State Security agents. They had reportedly been warned that they would be jailed if they continued to practice their journalistic activities.³²³ On March 31, State Security agents allegedly arrested the Hablemos Press correspondent Idalberto Acuña Carabeo at his home in Havana when he refused to turn over photographs he had taken just hours earlier at a protest at the *Central de Trabajadores de Cuba* (CTC).³²⁴ On April 16, a group of police and State Security agents had allegedly kept the Hablemos Press correspondent in Mayabeque province, Luis Roberto Arcia Rodríguez, trapped inside his home for 12 hours to prevent him from going to Havana to cover the Communist Party Congress.³²⁵ Something similar happened on April 16, when the home of the Hablemos Press correspondent in Melena del Sur, Sandra Guerra Pérez, was surrounded for two days by some 20 police and State Security agents to prevent her from travelling to Havana.³²⁶ On April 15, two State Security agents showed up at the offices of Hablemos Press in Havana, to warn journalists Robert de Jesús Guerra Pérez, Magaly Norvis Otero Suárez, Ignacio Estrada Cepero and José Alberto Álvarez not to go outside while the Communist Party Congress was in session or they would be jailed.³²⁷

194. According to the information received, journalist and political dissident Guillermo Fariñas has reportedly been held in custody for hours on several different occasions since December 2010. In December, the State refused to give Fariñas authorization to travel to Strasbourg, France, to receive the Sakharov Prize, which the European Parliament awards each year for freedom of conscience.³²⁸ On January 27, Fariñas was allegedly arrested twice within 24 hours, along with other dissidents, accused of making a “public scandal” for their participation in anti-government protests.³²⁹ On February 23, Fariñas was detained yet again, together with another 46 activists in Santa Clara, who were attempting to mark the first anniversary of the death of another dissident, Orlando Zapata. Fariñas was released 27 hours later. In addition to being detained, some 200 Government sympathizers had allegedly surrounded the women of the opposition group known as “Damas de Blanco” [Ladies in White] to hurl insults and slogans in support of the government. On April 6, Fariñas was arrested yet again, along with a dozen activists from the *Foro Antitotalitario* and the Santa Clara Central Coalition, after showing up at a prison to protest the arrest of various members of the opposition who had been detained just moments earlier. The authorities kept Fariñas under house arrest and took away his passport.³³⁰ Fariñas and another 26

³²² Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#); Reporters Without Borders. July 1, 2011. [Authorities Step Up Harassment of Independent News Centre](#).

³²³ Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#); Reporters Without Borders. July 1, 2011. [Authorities Step Up Harassment of Independent News Centre](#).

³²⁴ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#) [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX, April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

³²⁵ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

³²⁶ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

³²⁷ Misceláneas de Cuba. April 19, 2011. [Informe sobre represión contra corresponsales de Hablemos Press](#). [Report on repression against correspondents of *Hablemos Press*]; Committee to Protect Journalists (CPJ)/IFEX. April 25, 2011. [Journalists face arrest, intimidation during Party Congress](#).

³²⁸ Europa Press. December 14, 2010. [Guillermo Fariñas no logra el permiso para salir de Cuba](#). [Guillermo Fariñas not given permission to leave Cuba]; *El Mundo*. December 13, 2010. [Fariñas responsabiliza a Fidel y no a Raúl por no dejarle recoger el premio Sájarov](#). [Fariñas blames Fidel, not Raúl for not allowing him to go to receive his Sakharov Prize]

³²⁹ Inter-American Press Association (IAPA). January 28, 2011. [IAPA calls for end to repression in Cuba](#); Agence France Presse (AFP). January 28, 2011. [Cuba: Guillermo Fariñas liberado tras segundo arresto en 24 horas](#). [Cuba: Guillermo Fariñas released after second arrest in 24 hours]

³³⁰ La Voz de Galicia. April 7, 2011. [El opositor cubano Fariñas, en arresto domiciliario tras otra detención](#). [Cuban dissident Fariñas under house arrest after being detained again]; EFE News Service. April 7, 2011. [Disidente cubano Guillermo Fariñas, de nuevo preso](#). [Cuban dissident Fariñas jailed again]

dissidents were reportedly detained on September 15 in Santa Clara, as they were preparing for a demonstration. Fariñas and the others were released some hours later.³³¹

195. On November 1 2011, Guillermo Fariñas was detained again when he tried to access the provincial hospital “Arnaldo Milian Castro” to know about the health situation of Alcides Rivera, a dissident who was hospitalized by a hunger strike he initiated a month ago. A group of security men impeded his way to the hospital. He was beaten, handcuffed and was transferred in a police car to the police unit. He was released on November 3, 2011.

196. As the detentions increased and the harassment of political and human rights activists was heating up, various leaders of dissident groups were allegedly arrested. According to the information received by the Office of the Special Rapporteur, on September 9, former political prisoners Ángel Moya Acosta, José Daniel Ferrer and Raúmel Vinajera were reportedly detained again in Palma de Soriano, in eastern Cuba.³³² On September 15, opposition leaders and former political prisoners Librado Linares García and, again, Ángel Moya Acosta, were detained, as was the leader of the Central Opposition Coalition, Idania Yáñez Contreras. The arrests were allegedly made as the activists were preparing for the march called “Boitel and Zapata Live,” which would go through a number of Cuban cities.³³³ On September 27, leaders of the Red Cubana de Comunicadores Comunitarios [Cuban Network of Community Journalists], Martha Beatriz Roque and Arnaldo Ramos Lauzarique were detained, as was Berta Soler, one of the founders of the Damas de Blanco [Ladies in White] and wife of former political prisoner Ángel Moya Acosta. The three were detained as they were on their way to a police station to intercede for a number of persons previously arrested; they were reportedly beaten as they were being transported in police vehicles.³³⁴

197. The IACHR received information concerning detentions, acts of aggression and harassment against the Damas de Blanco, an organization made up of women related to political prisoners. According to the report received, on September 9, at least 22 women from the Damas de Blanco were allegedly detained for several hours in Havana and Santiago, while they were participating in a celebration marking the feast of Our Lady of Charity, also known as Our Lady of Cobre.³³⁵ On September 24, several dozen Ladies in White met at a member’s home to organize a peaceful march and attend mass at the Church of La Merced, in Havana. However, between 200 and 300 people had gathered outside the house to yell pro-government slogans and prevent the group of women from leaving the house. When the members of the Ladies in White attempted to get the peaceful march underway, there was reportedly a struggle with the pro-government demonstrators; a number of the women were beaten.³³⁶ On October 22, 11 Ladies in White were allegedly detained and beaten in Palma Soriano, as

³³¹ Europa Press. September 19, 2011. [Arrestan a unos 150 opositores cubanos en los últimos días](#). [Some 150 members of Cuban opposition arrested in recent days]; EFE News Service. September 16, 2011. [Más de 20 opositores fueron detenidos en Cuba](#). [More than 20 members of Cuban opposition arrested in Cuba]

³³² EFE News Service. September 9. [Esposas de dos expresos del grupo de los 75 denuncian detención](#). [Wives of two former prisoners of Group of 75 denounce arrest]; Net for Cuba. September 12, 2011. [Two ex-prisoners of conscience remain arbitrarily arrested](#).

³³³ Diario de Las Américas. March 17, 2011. [Marcha por la Libertad cobra fuerza en Cuba](#). [March for Freedom Gains Momentum in Cuba]; ABC. October 5, 2011. [Ofensiva de los Castro con 600 encarcelados en un mes](#). [Castro brothers’ offensive with 600 persons arrested in one month]; Tellus Folio. September 19, 2011. [La missione de la Dame in Bianco: Lottare per la libertà del popolo cubano](#); La revolución de los gladiolos. September 10, 2011. [Idania Yáñez Contreras, presidenta de la Coalición Central Opositora](#).

³³⁴ Inter-American Press Association (IAPA). September 29, 2011. [IAPA Condemns Increased Harassment in Cuba](#); El Nuevo Herald. September 28, 2011. [Brutal agresión a líderes de la disidencia cubana](#). [Leaders of Cuban dissident movement face brutal aggression]

³³⁵ Milenio. September 9, 2011. [Liberados opositores cubanos tras ser detenidos temporalmente en procesión](#). [Leaders of Cuban opposition released after being detained temporarily in march]; La Verdad.Es. September 19, 2011. [26 disidentes detenidos en Santiago y La Habana](#). [26 dissidents detained in Santiago and Havana]

³³⁶ Agence France Presse (AFP). September 24, 2011. [Seguidores del Gobierno cubano acosan e impiden a Damas de Blanco ir a misa](#). [Supporters of Cuban Government harass Ladies in White and prevent them from attending mass]; EFE News Service. September 24, 2011. [Oficialistas acosan a Damas de Blanco y les impiden ir a misa por día Merced](#). [Government supporters harass Ladies in White and prevent them from attending mass on the feast of Our Lady of Mercy]

they were attempting to attend mass at the cathedral in Santiago. According to the information received, the activists were released some hours later.³³⁷

198. The information received states that on April 7, Spanish journalist Carlos Hernando, collaborator with the *Intereconomía* press group and the creator of a documentary on Guillermo Fariñas was allegedly detained and expelled from the country by Cuban authorities, who accused him of “counter-revolutionary activity”.³³⁸ In the first week of September, Cuban authorities reportedly took away the press credentials of Mauricio Vicent, who for 20 years had been the Spanish newspaper *El País* correspondent in Cuba. Without his press credentials, he cannot practice journalism in Cuba. The International Press Center, part of the Ministry of Foreign Affairs, had allegedly justified the decision by pointing to Vicent’s coverage, which it claimed conveyed “a biased and negative image” of Cuban reality.³³⁹

199. In 2011, the Internet was well out of reach of the majority of the population, owing to the high cost of internet service, the slow connection speeds, and restrictions that limit or obstruct the connection.³⁴⁰ The situation reported in the 2010 report has not changed in any significant way.³⁴¹

200. In February 2011, the government announced that Cuba would be connecting to a submarine fiber optic cable installed in cooperation with Venezuela, which would increase internet data transmission speed by 3,000 times, and would increase the percentage of persons with access to the net, whereas just 3% of the population has access at the present time; it would also lower the cost of international calls. However, thus far there are no reports that the fiber optic cable has been made accessible to the general public; the high rates and usage and connection restrictions reported in previous years still persist.³⁴²

201. Resolution 179/2008 reportedly was still in effect in the Cuban legal system in 2011. That resolution establishes a set of “Regulations for public internet service providers that offer internet services in hotels, post offices and other entities in the country, and where internet search engines and national and international e-mail services are offered to natural persons.”³⁴³ One provision that called the IACHR’s attention was the following requirement for providers: “take the measures necessary to block access to sites whose content is inimical to social and moral interests and good conduct; as well as the use of applications that affect the integrity or security of the State.” That same provision states, *inter alia*, that: “providers shall observe the orders issued by the institutions charged with the country’s defense in the event of emergency situations, and perform the immediate functions necessary to secure the defense and security of the State.” Under Article 21 of that resolution, when a service provider fails to comply with

³³⁷ Cubaencuentro. October 2, 2010. [Detienen y golpean a mujeres en Palma Soriano](#) [Women detained and beaten in Palma Soriano]; Radio Martí. No date. [Entrevista al ex preso político José Daniel Ferrer García](#). [Interview with former political prisoner José Daniel Ferrer García]

³³⁸ El Mundo. April 8, 2011. [Carlos Hernando: “Se me ha pasado pero han sido momentos muy difíciles”](#). [Carlos Hernando: It happened, but there were some very difficult moments]; Intereconomía. April 7, 2011. [Carlos Hernando detenido por “contrarrevolucionario”](#). [Carlos Hernando detained as counterrevolutionary]

³³⁹ El País. September 5, 2011. [Apoyo de FAPE y Reporteros sin Fronteras al corresponsal de El País en Cuba](#). [FAPE and Reporters Without Borders Come to Defense of El País correspondent in Cuba]; Knight Center for Journalism in the Americas. September 5, 2011. [Unhappy with “negative” coverage, Cuba revokes press credentials of foreign correspondent](#).

³⁴⁰ There are two webs in Cuba: one domestic, with limited access to information resources, and the other international. The average hourly cost of connecting to the domestic network is close to US\$1.63, while the average hourly cost of connection to the international network is US\$5.48, in an economy where the average monthly salary is US\$20. In January the government reportedly announced an improvement in satellite connections that would increase connectivity by 10%. Reporters Without Borders. 2010. [Internet Enemies](#); Cf. Inter-American Press Association (IAPA). April 2011. [Country reports: Cuba](#).

³⁴¹ IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc.5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Paras. 186 *et seq.*

³⁴² BBC News. February 9, 2011. [Cuba welcomes new Internet cable link with Venezuela](#); Generación Y. August 30, 2011. [¡Dame Cable!](#) [Give Me Cable!].

³⁴³ Ministry of Information Technology and Communications. [Resolución No 179/2008](#); Ministry of Information Technology and Communications. [Resolución 55/2009](#).

these regulations, it may have its license and any contracts signed temporarily or permanently suspended.

202. Resolution 55/2009, which took effect in June 2009, remained in effect in 2011. That resolution established the same regulations referenced in the preceding paragraph, but this time for the so-called Internet Service Providers for Storage, Hosting, and Applications.³⁴⁴ According to this resolution, the regulations include those Cuban legal persons who have received an operating license as a Public Service Provider for Internet Access, including those that rent physical space so that the client can place its own computer there; those who provide the site-hosting service, applications, and information; and those who provide applications services to third parties.

203. Here, the IACHR must reiterate that the Internet “is an instrument with the capacity to fortify the democratic system, assist the economic development of the region’s countries, and strengthen full enjoyment of freedom of expression. The technology of the Internet is without precedent in the history of communications and it allows rapid access of and transmission to a universal network of multiple and varied information. Maximizing the population’s active participation through the use of the Internet furthers the political, social, cultural, and economic development of nations by strengthening democratic societies. In turn, the Internet has the potential to be an ally in the promotion and dissemination of human rights and democratic ideas and a major tool in the actions of human rights organizations, because of its speed and breadth which allow it to immediately transmit and receive information on situations affecting fundamental rights in different regions.”³⁴⁵

D. The State’s observance and guarantee of the rights of assembly and freedom of association

204. Under the American Declaration, every person has the right to work,³⁴⁶ the right to assemble peaceably,³⁴⁷ and the right to associate with others to promote, exercise and protect his legitimate interests.³⁴⁸ On the matter of freedom of association, the Commission again expresses its concern over the fact that there is only one officially recognized labor confederation mentioned in Cuban law, a matter that the International Labour Organisation has been watching closely. Like the International Labour Organisation, the Commission believes that trade union pluralism must remain possible in all cases and that the law must not institutionalize a *de facto* monopoly by referring to a specific trade union confederation.³⁴⁹ The Commission observes that one of the guiding principles of the Constitution of the ILO, of which Cuba is a signatory, includes “recognition of the principle of freedom of association” as essential for “universal and lasting peace.”

205. Concerning the rights of assembly, the IACHR was informed that on July 24, 2011, Vivian Peña Hernández, activist from Palma Soriano, was at home with other women and activists when State Security had allegedly organized a mob outside her house. They had reportedly attacked prisoner of conscience José Daniel Ferrer García when the women began to yell anti-government slogans. Vivian Peña Hernández was allegedly beaten by two men in civilian dress, who pinned her against a wall and pummeled her. By-passers reportedly intervened in an attempt to protect the activists, saying that this was an abuse. The political police had thrown eggs at them. According to the information received, Peña Hernández has two little girls, one of who is disabled; regime authorities had reportedly visited her to tell

³⁴⁴ Ministry of Information Technology and Communications. [Resolución 55/2009](#).

³⁴⁵ IACHR. Annual Report 1999: [Annual Report of the Special Rapporteur for Freedom of Expression 1999](#). Chapter II. Assessment of the Situation of Freedom of Expression in the Hemisphere: D. The Internet and Freedom of Expression.

³⁴⁶ American Declaration, Article XIV.

³⁴⁷ *Id.*, Article XXI.

³⁴⁸ *Id.*, Article XXII.

³⁴⁹ International Labour Conference, 97th Session 2008. Report of the Committee of Experts on the Application of Conventions and Recommendations. General Report and observations concerning particular countries. Cuba: pp. 105-107. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_090991.pdf.

her that the assistance she was receiving to help with her little girl's disabilities would be withdrawn because of her opposition activities.³⁵⁰

E. The State's observance and guarantee of the exercise of freedom of movement and residence

206. The American Declaration of the Rights and Duties of Man provides that "Every person has the right to fix his residence within the territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will."³⁵¹ The Commission considers that although the American Declaration does not explicitly recognize every person's right to return to his or her country, that right is implicitly recognized in the Declaration. The IACHR has held that "[t]he right of every person to live in his own country, to leave and return when he deems convenient [...]" is an elementary right that "is recognized in every international instrument that protects human rights."³⁵² In effect, Article 13(2) of the Universal Declaration of Human Rights provides that "Anyone has the right to leave any country, including his own, and to return to it."

207. The IACHR has observed that according to the texts cited above, the right of residence and movement is related to the right of nationality. The latter is recognized in Article XIX of the American Declaration, and the Commission has underscored that its observance is an imperative and has condemned situations in which the right to nationality is violated as a result of the government's action against its political adversaries.³⁵³

208. The Commission believes that exercise of the right to freedom of residence and movement can under no circumstances lead to the loss of nationality, and were such a penalty imposed for exercising that right, it would be unlawful; hence, no government can threaten loss of nationality to prevent a person from returning to his native country, regardless of status.³⁵⁴

209. Since 1983, the Commission has commented on the fact that the Cuban Constitution does not protect the right of residence and movement. That situation remains unchanged. Cuban citizens have to request special authorization to leave and enter the country. The authorities do not have a deadline by which they answer applications for authorization, a fact corroborated by the Guidelines of the Economic and Social Policy of the Party of the Revolution, approved at this year's VI Communist Party Congress. The Guidelines provide for the possibility of "studying a policy that makes it easier for Cuban residents to travel abroad as tourists."³⁵⁵ As a rule, applicants have to wait a long time to receive that authorization, if they get it. There are also certain legal formalities that must be observed in order to leave the national territory; failure to comply with those formalities is a punishable offense.

210. The IACHR received information concerning Mr. Oswaldo Payá Acevedo, son of opposition leader Oswaldo Payá Sardiñas, president of the Christian Liberation Movement. Authorities would not allow Mr. Payá Acevedo to travel to Madrid to visit relatives and attend the World Youth Day. Although he was given the necessary permits, including a Spanish visa, immigration officials allegedly advised him that "he would not be permitted to travel; they had no explanations and he could make his

³⁵⁰ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders , August 2011 .

³⁵¹ Article VIII of the American Declaration of the Rights and Duties of Man.

³⁵² IACHR. *Ten Years of Activities 1971-1981*, Secretariat General of the Organization of American States, Washington, D.C., 1982, page 325.

³⁵³ IACHR. *Ten Years of Activities 1971-1981*, Secretariat General of the Organization of American States, Washington, D.C., 1982, page 325.

³⁵⁴ IACHR, *Annual Report 1983*, Chapter VIII, Right of Residence and Movement.

³⁵⁵ Government of Cuba, *Guidelines of the Economic and Social Policy of the Party of the Revolution*, approved April 18, 2011. Available [in Spanish] at: <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>.

own inquiries with the Office of the Provincial Immigration Director.” When he did inquire, he was allegedly told “the status remains unchanged, you cannot travel.”³⁵⁶

F. Guarantees of legal due process and effective access to justice

211. The case-law of the inter-American system has consistently held that all organs that exercise materially judicial functions have the duty to reach fair decisions based on full respect for due process guarantees. The American Declaration establishes that every person has the right to turn to the courts³⁵⁷, to protection from arbitrary arrest³⁵⁸, and to due process.³⁵⁹ These rights are part of what has been called the body of due process guarantees, and constitute the minimum guarantees recognized for all human beings in respect of any type of judicial proceeding.

212. The right to trial by a competent, independent and impartial tribunal previously established by law has been interpreted by the Commission and the Inter-American Court as entailing certain conditions and standards that must be satisfied by tribunals charged with judging the substantiation of any accusation of a criminal nature or with the determination of a person’s rights and obligations of a civil, fiscal, labor or other nature.³⁶⁰

213. Independence also means that tribunals must be separate from other branches of government, free from influence, threats or interference of any kind or for any reason, and have other characteristics essential to ensure proper and independent performance³⁶¹ of judicial functions, including tenure on the bench and proper professional training.³⁶² The impartiality of the courts³⁶³ must be evaluated from both a subjective and objective perspective, to ensure the absence of actual prejudice on

³⁵⁶ Diario de Cuba, *El régimen impide viajar a España a un hijo de Payá* [Regime refuses to allow Payá’s son to travel to Spain], August 15, 2011. Available [in Spanish] at: <http://www.ddcuba.com/derechos-humanos/6427-el-regimen-impide-viajar-espana-un-hijo-de-paya>.

³⁵⁷ American Declaration, Article XVIII.

³⁵⁸ American Declaration, Article XXV.

³⁵⁹ American Declaration, Article XXVI.

³⁶⁰ IACHR, Report on Terrorism and Human Rights, 2002, paragraph 228.

³⁶¹ Similarly, the Court has written that the impartiality of a court implies that its members have no direct interest in, a pre-established viewpoint on, or a preference for one of the parties, and that they are not involved in the controversy. I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 146.

³⁶² IACHR, *Report on the Situation of Human Rights in Chile*, 1985, Chapter VIII, paragraph 139; *Report on the situation of Human Rights in Haiti*, 1995, Chapter V, paragraphs 276-280; *Report on the Situation of Human Rights in Ecuador*, 1997, April 24, 1997, Chapter III; *Report on the Situation of Human Rights in Mexico*, 1998, Chapter V, paragraphs 393-398. *Report on Terrorism and Human Rights*, 2002, paragraph 229.

³⁶³ The Inter-American Court has observed that the right to be tried by an impartial judge or court is a fundamental guarantee of due process. In other words, it must be ensured that the judge or court hearing a case does so based on the utmost objectivity. Furthermore, the independence of the Judiciary from the other State powers is essential for the exercise of judicial functions. I/A Court H.R. *Case of Palamara Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, paragraph 145; *Case of Herrera Ulloa*, paragraph 171.

“[O]ne of the principal purposes of the separation of public powers is to guarantee the independence of judges. Such autonomous exercise must be guaranteed by the State both in its institutional aspect, that is, regarding the Judiciary as a system, as well as in connection with its individual aspect, that is to say, concerning the person of the specific judge. The purpose of such protection lies in preventing the Judicial System in general and its members in particular, from finding themselves subjected to possible undue limitations in the exercise of their functions, by bodies alien to the Judiciary or even by those judges with review or appellate functions.” I/A Court H.R.. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 55.

Likewise, public officials, particularly the top Government authorities, need to be especially careful so that their public statements do not amount to a form of interference with or pressure impairing judicial independence and do not induce or invite other authorities to engage in activities that may abridge the independence or affect the judge’s freedom of action. I/A Court H.R.. *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182, paragraph 131.

the part of a judge or tribunal as well as sufficient assurances to exclude any legitimate doubt in this respect. These requirements in turn require that a judge or tribunal not harbor any actual bias in a particular case, and that the judge or tribunal not reasonably be perceived as being tainted with any bias.³⁶⁴

214. As for the guarantee of an independent and impartial court, Article 121 of the Constitution of Cuba provides that:

The courts constitute a system of state bodies which are set up with functional independence from all other systems and subordinate only to the National Assembly of the People's Power and the Council of State.

215. The Commission observes that the subordination of the courts to the Council of State, presided over by the head of state, means that the judicial branch is directly answerable to the executive branch. In the Commission's view, this subordination to the executive branch does not represent an independent judicial branch capable of providing guarantees for the enjoyment of human rights.

216. In the section of Chapter IV on Cuba in the IACHR's 2010 annual report, the IACHR again observed that to continue to allow criminal proceedings that do not offer the necessary guarantees of due process, as they are carried out in summary form, without trustworthy defense counsel, and with juries of dubious independence and impartiality, was in violation of international human rights instruments. Such criminal proceedings could lead to disproportionate sentences and give court authorities enormous latitude that may have the effect of eliminating any possibility the individual might have of defending himself or herself from the authorities.³⁶⁵ This situation remains unchanged.

217. According to Human Rights Watch, a nongovernmental organization, on May 31, 2011 Luis Enrique Labrador, 33, David Piloto, 40, Walfrido Rodríguez, 42, and Yordani Martínez, 23, were reportedly convicted in Havana of contempt and public disorder. Martínez was reportedly sentenced to three years in prison, while the other three were sentenced to five years, for having circulated pamphlets critical of Raúl and Fidel Castro³⁶⁶. According to Human Rights Watch, family members said that state security agents had visited their homes the day before the trial, warning relatives that if they "created a scene" and called attention to the hearing, the detainees would be left in pretrial detention indefinitely. One man's mother said that in April, she was fired from her job as a courier on the grounds that she was "the mother of a counterrevolutionary."³⁶⁷ The families also told Human Rights Watch that Martínez and Piloto went on a hunger strike in May in Valle Grande prison to demand they be put on trial. In response, they later told their families, they were handcuffed and beaten by a prison official.³⁶⁸

³⁶⁴ IACHR, Case 11.139, Report No. 57/96, William Andrews (United States), *Annual Report of the IACHR 1997*, paragraphs 159-161. See, analogously, European Court of Human Rights, *Findlay v. United Kingdom*, February 25, 1997, *Reports 1997-I*, p. 281, paragraph 73. IACHR, Report on Terrorism and Human Rights, 2002, paragraph 229.

³⁶⁵ According to the State of Cuba, the death penalty is reserved for exceptional cases and only for the commission of the most serious crimes. The Cuban Criminal Code reads as follows:

Article 29.1. The death penalty is an exceptional punishment and shall only be applied by the court to persons who have committed the most serious of crimes for which it was established.

2. The death penalty is not used in cases involving minors under the age of 20 or women who were pregnant when they committed the crime or are pregnant when sentenced to death.

3. Execution is by firing squad.

³⁶⁶ Human Rights Watch. Cuba: Stop Imprisoning Peaceful Dissidents, 1 June 2011. Available at: <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>

³⁶⁷ Human Rights Watch. Cuba: Stop Imprisoning Peaceful Dissidents, 1 June 2011. Available at: <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>

³⁶⁸ Human Rights Watch. Cuba: Stop Imprisoning Peaceful Dissidents, 1 June 2011. Available at: <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>

218. Human Rights Watch also documented the fact that on May 24, 2011, brothers Marcos Maikel Lima Cruz, 33, and Antonio Michel Lima Cruz, 28, both members of a human rights group in Holguín called *Pedro Luis Boitel* - were convicted and sentenced to three and two years in prison, respectively, in a closed, summary trial, for “insulting national symbols” and causing “public disorder” for events that the two claimed never happened.³⁶⁹

219. In its reports on Cuba, the IACHR has repeatedly pointed to the lack of Independence and impartiality of the courts and the lack of judicial guarantees and due process in the prosecution of persons regarded as ideological political dissidents, a problem that is particularly acute when especially expedited summary proceedings are used.

220. As previously observed, articles 479 and 480 of the Law on Criminal Procedure provide for the possibility of applying a summary proceeding. The same law also establishes that in the event of prosecution via an especially expedited summary proceeding, the court may, insofar as it considers it necessary, reduce the terms for the preliminary proceedings, the oral trial, and the appeals.

Summary Proceedings

Article 479: In a case of exceptional circumstances, the Attorney General may propose to the President of the People’s Supreme Court and the latter shall decide whether to use the especially expedited summary proceeding to prosecute those crimes that any court has jurisdiction to hear, except for those crimes that are the jurisdiction of the People’s Municipal Courts.

Article 480. In especially expedited summary proceedings, the procedures that this law establishes for preliminary proceedings, oral trial and appeals may be reduced to the extent that the court with jurisdiction deems necessary.

221. The repeated use of the especially expedited summary proceedings in Cuba, in which the guarantees of due process are not observed, including the minimum guarantees necessary for the accused to exercise his right to adequate defense counsel, is an extremely serious matter. The Commission has in the past been told of the lack of efficacy of the public defenders, particularly when those attorneys are not permitted beforehand to confer freely with their clients.³⁷⁰

222. Time and time again, the Commission has recommended that the Cuban State take the measures necessary to adapt its laws, procedures and practices to international human rights standards. The Commission has particularly recommended that Cuba’s criminal laws be amended with a view to ensuring the right to a fair trial and due process. It has also recommended that Cuba undertake a process of amending its Constitution to ensure the independence of its judicial branch of government.

223. The decision to use an exceptional proceeding is left to the discretion of those who administer justice in a particular case; it is also up to the judge to decide how long a court case will last, which includes the preliminaries, the oral arguments and the time periods for appeals.³⁷¹

224. The Commission has observed that political dissidents have been prosecuted using these especially expedited proceedings, as have those who have attempted to escape from Cuba; at the end of these expedited summary trials, in which the minimum guarantees of due process are ignored, the sentences imposed have included the death penalty.³⁷² In Merits Report 67/06³⁷³ on Case 12.476 (Oscar

³⁶⁹ Human Rights Watch. Cuba: Stop Imprisoning Peaceful Dissidents, 1 June 2011. Available at: <http://www.hrw.org/news/2011/06/01/cuba-stop-imprisoning-peaceful-dissidents>

³⁷⁰ IACHR, Merits Report No. 67/06, Case 12.476, Oscar Elías Biscet *et al.*, October 21, 2006.

³⁷¹ IACHR, Merits Report No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, paragraphs 87-92, available at: <http://www.IACHR.org/annualrep/2006eng/CUBA.12477eng.htm>,

³⁷² IACHR, Merits Report No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, paragraphs 87-92, available at: <http://www.IACHR.org/annualrep/2006eng/CUBA.12477eng.htm>.

Eliás Biscet *et al.*), which concerned the political dissidents detained and prosecuted in these especially expedited summary trials during the so-called “Black Spring” of 2003, in application of Article 91³⁷⁴ of the Cuban Criminal Code and Law 88 on Protection of the National Independence and Economy of Cuba, the IACHR recommended that the Cuban State:

2. Adopt the necessary measures to adapt its laws, procedures and practices to international human rights legislation. In particular, the Commission recommends that the State of Cuba repeal Law No. 88 and Article 91 of the Criminal Code as well as to initiate a process to reform its Constitution in order to ensure the independence of the judiciary and the right to participate in government.

225. In addition, in Merits Report 68/06 on Case 12,477³⁷⁵ (Lorenzo Enrique Copello Castillo *et al.*), regarding three persons who were executed by firing squad after a very summary trial in which the right of defense and the guarantee of the impartiality and independence of the court were violated, the IACHR recommended to the Cuban State:

1. Take the necessary steps to adapt its laws, procedures and practices to international human rights legislation. In particular, the Commission has recommended that Cuba's criminal legislation be amended in order to ensure the right to justice and the right to a fair trial, and to initiate a process to reform its Constitution to ensure the independence of the judiciary.

226. The Commission reiterates that the lack of an independent judiciary in Cuba, combined with the absence of the guarantees of due process and the use of summary trials and the ambiguity and/or broad language of certain criminal-law provisions, affect the individual's fundamental rights.

227. Summarizing, the Commission calls upon the Government of Cuba to adapt its procedural laws to international standards on due process, so that persons who turn to the courts for a determination of their rights and responsibilities have the minimum legal guarantees necessary to exercise their means of defense. The Commission considers that the current framework of laws in Cuba does not comply with its international obligations in this area. Full observance of the judicial guarantees recognized in the American Declaration rests on an independent and autonomous judicial branch of government and on the application of clear, unambiguous provisions that leave no room for discretionary abuses of authority.

IV. ANALYSIS OF THE SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

228. As for the economic, social, and cultural rights, and specifically where education is concerned, while falling behind in school is a recurring phenomenon in the region, Cuba is one of the four countries³⁷⁶ where at least 90% of the children at the age where they enter elementary school have done so.

229. According to the United Nations Development Programme (UNDP), the literacy rate among adults over the age of 15 in Cuba for the 2005-2008 period was 99.8%; some 68.8% of its

...continuation

³⁷³ On November 1, 2006, the Cuban State and the representatives of the petitioners were notified of Merits Report No. 67/06, approved October 21, 2006. See in IACHR, Press Release 40/06, “IACHR announces two reports on human rights violations in Cuba,” November 1, 2006.

³⁷⁴ Article 91 of the Criminal Code of Cuba: “Whoever, in the interest of a foreign State, commits an act with the intent to cause damage to the independence of the Cuban State or the integrity of its territory, shall receive a sentence of between ten and twenty years or a death sentence.”

³⁷⁵ IACHR, Report on the Merits No. 68/06, Case 12,477, Lorenzo Enrique Copello Castillo *et al.*, October 21, 2006, available at: <http://www.IACHR.org/annualrep/2006eng/CUBA.12477eng.htm>

³⁷⁶ Guyana, Cuba, Barbados and Argentina.

population over the age of 25 had completed their secondary education. As for the efficiency of the education system, the drop-out rate at all levels is 4.4%.³⁷⁷

230. The health statistics indicate that healthy life expectancy in Cuba is 69, on a scale where the margins of variation between the maximum and minimum ages go from 75 to 32 years, respectively.³⁷⁸

231. The Commission again recognizes the significant strides that Cuba has made towards accomplishing the United Nations millennium development goals.³⁷⁹ The IACHR particularly welcomes the progress made where maternal health is concerned, especially the fact that 100% of births were attended by qualified personnel.³⁸⁰

232. As for dietary needs, the Cuban people have an equitable rationing system that supplies 50% of the public's nutritional requirements at subsidized prices. There are also special diets for vulnerable groups with special needs (children, pregnant women, nursing mothers with high nutritional requirements, and the sick suffering from different pathologies).

233. In its 2009 report, the United Nations Children's Fund (UNICEF) indicated that there are no problems of severe child malnutrition in Cuba. With that, Cuba has become the only country in Latin America to achieve that goal.³⁸¹

234. Reports from a number of United Nations agencies observed that the overall volume of food available for consumption had recovered somewhat, but was still short of what it needed to be. The composition of the diets was not balanced, which manifests itself in the form problems with weight and anemia in certain population groups.³⁸²

235. The Commission observes that in 2011, the Cuban economic system began to open up to private investment. The VI Congress of the Cuban Communist Party approved a plan of economic reforms that President Raúl Castro proposed to "modernize the Cuban economic model with a view to ensuring the continuation and irreversibility of Socialism."³⁸³ A resolution approved on the Guidelines of the Economic and Social Policy of the Party of the Revolution stated that the party's economic policy "will adhere to the principle that only socialism is capable of conquering problems and preserving the gains that the Revolution has made and that planning will be the hallmark of the economic model's modernization and will factor in market trends." The resolution provides that "in addition to the socialist state enterprise that is the core of the national economy, the model will also recognize and promote

³⁷⁷ Human Development Report 2010 – 20th Anniversary Edition, The Real Wealth of Nations: Pathways to human development. UNDP.

³⁷⁸ Estimates of 'healthy life expectancy' (HALE) at birth is the average number of years that a person can expect to live in "full health" by taking into account years lived in less than full health due to disease and/or injury. It thus factors in fatal and nonfatal health results and disabilities.

³⁷⁹ Cuba, Fulfillment of Millennium Development Goals, 2010. Available online at: <http://www.cubaminrex.cu/Multilaterales/Articulos/Politicos/2010/Millennium%20Development%20Goals%20-%20Cuba.pdf>

³⁸⁰ United Nations Population Fund, State of the World Population 2010, Available online at: http://www.unfpa.org/swp/2010/web/en/pdf/EN_SOWP10.pdf

³⁸¹ Interview with Juan José Ortiz, representative of the United Nations Children's Fund. Available online at: http://www.bbc.co.uk/mundo/cultura_sociedad/2010/01/100126_1823_unicef_cuba_gz.shtml.

³⁸² Report "United Nations Development Assistance Framework for Cuba, 2008-2012," of the United Nations Country Team in Cuba, composed of the FAO, PAHO/WHO, UNEP, UNDP, UNESCO,, UNFPA and UNICEF.

Available [in Spanish] at: http://www.onu.org/cu/es/mostrardocm.asp?filename=MANUD.pdf&doc= docs_intra

³⁸³ Guidelines of the Economic and Social Policy approved by the Party of the Revolution, VI Congress of the Cuban Communist Party, April 18, 2011. Available [in Spanish] at: <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>.

foreign investment, cooperatives, small-scale farmers, property holders, tenants, the self-employed and other forms that can help improve performance.”³⁸⁴

236. The Commission notes that one of the measures approved was homes sales between natural persons and the “easing of other forms of conveying property (barter, gift and others).³⁸⁵ Under the current system, natural persons used an official form of exchange in which no transfer of money was involved.³⁸⁶ According to the government newspaper GRANMA, under the law a person still cannot own more than one housing unit in the category of permanent residence and another in areas of leisure.³⁸⁷

237. Similarly, natural persons may acquire more than one vehicle, and the date of manufacture is not a factor. Thus, the existing regulation that only vehicles made prior to 1959 could be sold or gifted was eliminated.³⁸⁸ Also eliminated was the restriction whereby natural persons who received authorization to purchase a vehicle and were owners of another vehicle had to transfer ownership of the other vehicle to the State or take it out of commission.³⁸⁹

238. In the conclusions of the Congress, President Raúl Castro had the following to say about the introduction of the economic reforms:

The modernization of the economic model is not a miracle that will work its magic overnight, as some are inclined to think; full deployment of the model will be a gradual process over a five-year period, as there are many details to be addressed, and planning and coordination are required both at the legal level and in the careful training of all those that will play a role in its implementation in practice.

Dissemination of each measure we adopt will take considerable work, as we will have to keep our ears and feet to the ground to conquer the obstacles we encounter and act quickly to correct any mistakes we might make in applying the model.

A. Situation of specific groups

1. Women

239. The IACHR received information on complaints that would seem to suggest that the violent repression in Cuba is meted out with particular cruelty in the case of women.

³⁸⁴ Guidelines of the Economic and Social Policy approved by the Party of the Revolution, VI Congress of the Cuban Communist Party, April 18, 2011. Available [in Spanish] at: <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>

³⁸⁵ Guidelines of the Economic and Social Policy approved by the Party of the Revolution, VI Congress of the Cuban Communist Party, April 18, 2011. Available [in Spanish] at: <http://www.cubadebate.cu/wp-content/uploads/2011/05/folleto-lineamientos-vi-cong.pdf>

³⁸⁶ Diario GRANMA, Política para flexibilizar los trámites relacionados con la vivienda [Policy to ease housing procedures], July 1, 2011. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/1julio-politica.html>; BBC, Cuba reveals more details of private property laws. Available at: <http://www.bbc.co.uk/news/world-latin-america-13998167>

³⁸⁷ Diario GRANMA, Política para flexibilizar los trámites relacionados con la vivienda [Policy to ease housing procedures], July 1, 2011. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/1julio-politica.html>. Diario GRANMA, Nuevas Normas para la Transmisión de la Propiedad de la vivienda, eliminar prohibiciones y flexibilizar trámites, November 5, 2011. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/5nov-Eliminar%20prohibiciones.html>.

³⁸⁸ Diario GRANMA, Política para flexibilizar los trámites de transmisión de la propiedad de los vehículos de motor entre personas naturales [Policy to ease procedures for transferring ownership of motor vehicles between natural persons]. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/1julio-carros.html>

³⁸⁹ Diario GRANMA, Política para flexibilizar los trámites de transmisión de la propiedad de los vehículos de motor entre personas naturales [Policy to ease procedures for transferring ownership of motor vehicles between natural persons]. Available [in Spanish] at: <http://www.granma.cu/espanol/cuba/1julio-carros.html>.

240. The IACHR received information on repeated physical assaults and verbal abuse against Cuba's Ladies in White. It learned of a number of episodes that happened on the way to church, after attending mass, or when they were getting ready for one of their routine Sunday marches. Women in the group were allegedly beaten by women in uniform and the police, using stones and sticks. They were also temporarily detained and threatened with dogs.³⁹⁰

241. The information the Inter-American Commission has received indicates that on at least four different occasions in 2011, the Ladies in White were the targets of physical aggression and presumably arbitrary detentions. Specifically, 1) on September 27, a number of the Ladies in White were reportedly detained as they were on their way to the home of Marta Beatriz Roque to stage a protest in front of Section 21, in Marianao, Havana. The following were among the activists detained: Belkis Cantillo, Tania Montoya and Aymé Garcés. It was also reported that other Ladies in White who had opposed the earlier detentions were attacked by State Security agents;³⁹¹ 2) on August 7, 2011, the Ladies in White were allegedly physically and verbally assaulted by women in uniform and male police officers in civilian dress, armed with sticks and other objects, as the Ladies in White were about to begin their traditional Sunday demonstration to demand that their family members, held as political prisoners in Cuba, be released;³⁹² 3) on July 24, 2011, after a visit to the church of El Cobre, close to 16 women members of the Ladies in White were reportedly beaten and stoned; one was injured by a person wielding scissors;³⁹³ 4) on July 31, 2011, another group of women in the Ladies in White were allegedly attacked outside the church in Palma Soriano.³⁹⁴

242. The IACHR also received information to the effect that on July 17, 2011, as they were conducting a peaceful march, 16 women members of the Ladies in White were leaving the National Shrine of Our Lady of Charity in El Cobre when they were violently attacked and beaten by male police officers in civilian dress, headed by a lieutenant colonel from State Security. According to the information, Tania Montoya Vázquez allegedly lost consciousness from a heavy blow to the head; as she was recovering from the blow, a man and several women reportedly grabbed her by the hair, pulling her head back; they ripped her clothing to shreds, so much so that she was left with only her brassier. Adriana Pécora was beaten on the back and her blouse was torn. According to the testimony of María Elena Matos Creagh, another participant, someone hit her in the back with a stone, then slapped her and beat her with a parasol. In her statement she said the following: "those who hit us were agents of State Security in civilian dress and persons they brought with them to attack us." Doraisa Correoso was grabbed by the feet. Belkis Cantillo Ramírez, a Lady in White, was allegedly cut with scissors or some other bladed object, inflicting a deep cut in the arm.³⁹⁵

³⁹⁰ World Organization Against Torture, *Cuba: Nuevos Actos represivos contra las Damas de Blanco* [Cuba: New acts of repression against Ladies in White], August 12, 2011. Available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/08/d21375/>; Cubaencuentro, La Policía Reprime a las Damas de Blanco [Police Repression of Ladies in White], Available [in Spanish] at: <http://www.cubaencuentro.com/cuba/noticias/la-policia-reprime-a-las-damas-de-blanco-en-santiago-de-cuba-266950>.

³⁹¹ Directorio Democrático Cubano, **Whereabouts of opposition leader Yris Pérez Aguilera and other detained activists unknown**, September 28, 2011. Available at: http://www.directorio.org/pressreleases/note.php?note_id=3061; Cubaencuentro, *Propinan "gran golpiza" a disidentes* [Cuban dissidents given a serious beating], September 28, 2011. Available [in Spanish] at: <http://www.cubaencuentro.com/cuba/noticias/propinan-gran-golpiza-a-disidentes-268672>

³⁹² World Organisation Against Torture. *Cuba: Nuevos Actos represivos contra las Damas de Blanco* [Cuba: New acts of repression against Ladies in White], August 12, 2011. Text of article available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/08/d21375/>

³⁹³ World Organisation Against Torture. *Cuba: Nuevos Actos represivos contra las Damas de Blanco* [Cuba: New acts of repression against Ladies in White], August 12, 2011. Text of article available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/08/d21375/>

³⁹⁴ World Organisation Against Torture. *Cuba: Nuevos Actos represivos contra las Damas de Blanco* [Cuba: New acts of repression against Ladies in White], August 12, 2011. Text of article available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/08/d21375/>

³⁹⁵ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

243. They were then reportedly taken to the police units. Montoya, Pécora and Correoso were allegedly taken to a hospital and released from there. Adriana Núñez Pascual had allegedly sustained a burn on the shoulder when they tried to grab a backpack she was carrying. While she was on the ground, they kicked her on the underside of her breast, where the ribs are located, and caused an inflammation in the area. One officer had grabbed her by the hair and dragged her to the patrol car, while other men grabbed her and beat her through the door on the other side of the car. They ripped off her pullover and brassier, leaving her upper body completely nude. They then cut the pullover to pieces with scissors or some other sharp object.³⁹⁶ According to the testimony of Adriana Núñez³⁹⁷:

They hurled stones at us, which is what caused us to fall. These were not little pebbles but large rocks. When I fell, I grabbed her because they were stepping on her head; when I turned my back to the people, that's when they ripped my pullover to pieces; they scratched me; it was a man who kicked me in the breast; he couldn't care less that I was a woman. He treated me like I was a man.³⁹⁸

244. The IACHR also received information concerning Annis Sarrión Romero, a member of the Ladies in White Support Group, who was allegedly shot by a member of the Rapid Response Brigades in Moa, in the province of Holguín.³⁹⁹

245. The Commission was also informed that on July 14, 2011, Leydis Coca Quesada, a human rights defender and member of the Cuban Pro-Democracy Youth Movement in Havana, was reportedly inquiring about the whereabouts of detained independent journalist Alberto Alvarez Bravo, together with her 9-year-old daughter, in front of the "10 de octubre" police unit. The report alleges that the two were surrounded by State Security officers and that twelve female security officers had attempted to take the little girl from her. The girl clung to her mother, and an officer yanked her by the hair and beat her. The child had to be taken to the pediatric hospital as a result of the beating.⁴⁰⁰

246. On August 4, 2011, on the stairs leading up to the Cuban National Capitol Building in Havana, human rights defenders Tania Maldonado, Mercedes García Álvarez, and Odalys González Naya were reportedly arrested as they were staging a peaceful demonstration demanding respect for human rights. They were reportedly beaten and dragged to the patrol cars. Inside the cars, officers had allegedly split open Mercedes Garcia's lip when they hit her in the mouth. According to the information received, once at the Havana Vieja municipal police unit the women were forced to undress completely and to kneel down and bend over. Tania Maldonado was having her period, which didn't matter to the authorities, who forced her to do exactly the same as the other two activists. When the body search was finished, they were allegedly questioned for several hours and threatened with prosecution and jail in the Occidente Women's Prison, known as the *Manto Negro* [Black Cloak or Black Veil].⁴⁰¹

2. Human rights defenders

³⁹⁶ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

³⁹⁷ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

³⁹⁸ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

³⁹⁹ Damas de Blanco, *Agreden a opositora en Moa* [Member of opposition attacked in Moa]. Available [in Spanish] at: http://damasdeblanco.org/index.php?option=com_content&view=article&id=948%3Aagreden-a-opositora-en-moa&catid=13%3Aarchivo-derechos-humanos&Itemid=8

⁴⁰⁰ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

⁴⁰¹ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

247. In 2011, information was received concerning physical assaults, threats, harassment and repeated detentions of human rights defenders, particularly in the repression of the public protest demonstrations staged to support the rights of persons deprived of their liberty for political reasons. Information was also received concerning the considerable obstacles that leaders encounter in defending labor rights through an independent trade union movement.

248. As observed in the previous section on the situation of women, the IACHR has received information on the repeated physical and verbal assaults against the Ladies in White in Cuba, all reportedly taking place in a climate of hostility toward and repudiation of that group's activities. Information was received concerning some students from the "Celia Sánchez" school in Holguín, who were allegedly encouraged to oppose the Ladies in White movement and any opposition to the government. According to the information received, a number of students who refused to participate in the attacks were threatened with expulsion if they refused to do what was required of them.⁴⁰²

249. The IACHR notes that the Ambassador of Great Britain in Cuba recently expressed concern "about increased reports of political and human rights activists being detained for short periods. The high number of detentions in Santa Clara and Eastern Cuba are a cause of particular concern, as is the aggressive treatment of the Damas de Blanco, and we urge the Cuban authorities to allow peaceful activists to go about their work free from arrest or the fear of it. President Raúl Castro has emphasised the need to tolerate different views and we hope this will translate into reality."⁴⁰³

250. In addition to the attacks on the Ladies in White, reports have been received of physical attacks on other persons who have participated in the demonstrations to demand, *inter alia*, the release of political prisoners. In a number of arrests made of demonstrators, women have been brutally treated. The Commission has learned that women who participated in the public protest demonstrations and were arrested for it, were dragged by the hair, immobilized using chokeholds and beaten in the face and on the body.⁴⁰⁴

251. The Commission received information on, *inter alia*, the following public protest demonstrations in which various activists were allegedly detained and brutalized by State Security agents: the September 24, 2011 march in the Río Verde Division, Municipality of Boyeros, and the September 25, 2011 march of demonstrators outside the Santa Clara courthouse, who wanted to be present for the trial of Dailin Hernández Caballero and Pedro Antonio Blanco Fleitas. Exercising its authorities under Article 18 of its Statute, on October 12, 2011 the IACHR requested information from the Cuban State concerning these incidents, but has yet to receive a reply.

252. As for the detentions made in the Río Verde Division of the municipality of Boyeros at around 6:00 p.m. on September 24, 2011, as activists from a large group of demonstrators were reportedly getting ready to "beat the pots and pans" to signal a nationwide protest, the police reportedly detained and beat a number of people who were participating in the demonstration. They included the following: Sara Marta Fonseca, her husband Julio Ignacio León Pérez (both members of the Pro-Human Rights Party), Jorge Luis García Pérez "Antúnez", Hermógenes Inocencio Guerrero Gómez, Ramsés Miranda Camejo and Eriberto Liranza Romero. According to the information available, a number of people were also detained on September 26, 2011, as they were heading to State Security Section 21 to inquire about the persons detained in the Río Verde march. Among those detained on September 26

⁴⁰² Alianza Democrática Oriental, *Informe parcial sobre las violaciones de los Derechos Humanos en las provincias orientales de Cuba* [Partial report on human rights violations in Cuba's eastern provinces], July 15, 2011, Available [in Spanish] at: <http://palenquecubano.wordpress.com/2011/07/15/informe-parcial-sobre-las-violaciones-de-los-derechos-humanos-en-las-provincias-orientales-de-cuba-primer-periodo-del-ano-2011/>

⁴⁰³ Recent reports of short term detentions in Cuba. British Ambassador Dianna Melrose Comments on the Situation. September 29, 2011. Available at: <http://ukincuba.fc.gov.uk/en/news/?view=News&id=663052182>

⁴⁰⁴ *Testimony of Yris Tamara Pérez Aguilera*, October 4, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3066. See also precautionary measures PM 187/11 Ydania Yanes Contreras, Cuba. Available [in Spanish] at: <http://www.IACHR.oas.org/medidas/2011.sp.htm>

were Yris Tamara Pérez Aguilera; Donaida Pérez Paseiro; Yaimara Reyes Mesa; Mariblanca Ávila Espósito and Julio León Fonseca (son of Sara Fonseca and Julio León Fonseca).⁴⁰⁵ According to what the IACHR was told, during her detention at Cuarta del Cerro, Sara Marta Fonseca Quevedo was allegedly beaten by a security agent, which left her temporarily immobilized, unable to move on her own.⁴⁰⁶

253. The information the Inter-American Commission received indicates that because of the pressure and insistence brought to bear by a number of organizations in Cuba, some of those detained were reportedly released on September 29, 2011, on the condition that they not demonstrate in support of those still being held. Because they persisted in their demands that the Río Verde detainees be released, those released on September 29 were arrested again.⁴⁰⁷ According to the information available, Yris Pérez Aguilera, Yaimara Reyes Mesa and Donaida Pérez Paisero were eventually released on October 2, 2011⁴⁰⁸ while Sara Marta Fonseca and Julio León Pérez were released on October 8, 2011.⁴⁰⁹ It is extremely serious that the condition for the demonstrators regaining their personal liberty be that they not exercise their right to freedom of expression and assembly.

254. One of those detained in the Río Verde events was Yris Pérez Aguilera who, in 2011, was the victim of a number of physical assaults and harassment by agents of the State. It was reported that on May 25, 2011, she was allegedly beaten on the head, thrown to the pavement and, while down, kicked by a State Security officer and then held in punishment cells at the Placetas and Santa Clara police units. Although on July 6, 2011 the IACHR granted precautionary measures to protect her life and personal integrity,⁴¹⁰ while Yris Pérez Aguilera was under arrest for the events at Río Verde the State Security forces continued to physically attack her. According to her testimony, at the time of her arrest she was dragged by the hair for more than ten meters, while another officers pressed his knee into her stomach; they stuffed a towel into her mouth, gagging her to the point of asphyxiation.⁴¹¹

255. The IACHR also received information about the October 24, 2011 re-arrest of Sara Marta Fonseca, who had also been arrested at the Río Verde events and who, along with other activists, was

⁴⁰⁵Asopazco, *Sara Marta Fonseca, detenida* [Sara Marta Fonseca detained], September 26, 2011. Available [in Spanish] at: <http://asopazco.net/2011/09/26/sara-marta-fonseca-detenida/>; Directorio Democrático Cubano, **Whereabouts of opposition leader Yris Pérez Aguilera and other detained activists unknown**, September 28, 2011. Available at: http://www.directorio.org/pressreleases/note.php?note_id=3061

⁴⁰⁶Asopazco, *Sara Marta Fonseca, detenida* [Sara Marta Fonseca detained], September 26, 2011. Available [in Spanish] at: <http://asopazco.net/2011/09/26/sara-marta-fonseca-detenida/>; Directorio Democrático Cubano, **Whereabouts of opposition leader Yris Pérez Aguilera and other detained activists unknown**, September 28, 2011. Available at: http://www.directorio.org/pressreleases/note.php?note_id=3061

⁴⁰⁷ *Testimony of Yris Tamara Pérez Aguilera*, October 4, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdepreensa/note.php?note_id=3066

⁴⁰⁸*Front Line Defenders, Cuba: Release of incommunicado detainees and continuing crackdown on human rights defenders during peaceful demonstrations*, October 2, 2011. Available at: <http://www.frontlinedefenders.org/node/15944>

⁴⁰⁹Diario de Cuba, *Liberados los disidentes Sara Marta Fonseca y Julio León Pérez* [Dissidents Sara Marta Fonseca and Julio León Pérez released], October 8, 2011. Available [in Spanish] at: <http://www.ddcuba.com/derechos-humanos/7375-liberados-los-disidentes-sara-marta-fonseca-y-julio-leon-perez>

⁴¹⁰ Precautionary measure 218/11 for Yris Tamara Pérez Aguilera, Cuba. On July 6, 2011, the IACHR granted precautionary measures for Yris Tamara Pérez Aguilera, in Cuba. The request for precautionary measures alleges that Yris Tamara Pérez Aguilera, reportedly a leader of the Rosa Parks Feminist Movement and a political dissident, was a victim of physical attacks, acts of harassment, and threats by agents of the State. It alleges specifically that as a result of a new attack she suffered on May 25, 2011, she is suffering from cervical trauma, memory loss, and headaches, and has not been provided with the medical treatment she needs. The Inter-American Commission asked the State of Cuba to adopt any necessary measures to guarantee the life and physical integrity of Yris Tamara Pérez Aguilera; to reach agreement with the beneficiary and her representatives on the measures to be adopted; and to inform the Commission about the actions taken to investigate the facts that led to the adoption of precautionary measures. See at: http://www.cidh.oas.org/medidas/2011_eng.htm

⁴¹¹ *Testimony of Yris Tamara Pérez Aguilera*, October 4, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdepreensa/note.php?note_id=3066

arrested yet again.⁴¹² The re-arrest happened on the occasion of the so-called “Day of Resistance”, as demonstrators were on their way to another public protest in Martin Luther King Park, to honor the memory of Laura Pollán, founder of the Ladies in White who died on October 14, 2011.⁴¹³ According to the information the Commission received, Sara Marta Fonseca and other activists were released after being held for five hours.⁴¹⁴

256. As for the demonstrators arrested on September 25, 2011 outside the Santa Clara courthouse, according to the information the IACHR received, these activists were on their way to the trial of Dailin Hernández Caballero and Pedro Antonio Blanco Fleitas. According to reports, around 20 persons were allegedly detained, put in patrol cars and taken to the provincial investigative police unit to prevent them from attending the oral arguments. The Commission also learned that upon conclusion of the trial, demonstrators who had demanded the release of the detainees were also arrested.⁴¹⁵

257. In addition to the reports of human rights defenders being attacked and detained in those demonstrations, the IACHR has also received information concerning human rights defenders who have been the victim of physical assaults, threats and harassment. The Commission learned of the situation of Idania Yanes Contreras who, on April 8, 2011, had reportedly been stopped by a dozen police officers from the National Specialized Brigade. According to the information received, Mrs. Yanes Contreras had been put in a truck and then put in a chokehold to immobilize her; during the 30-kilometer trip to the Cifuentes police station, the police had hit her in the face and pummeled her body, causing bruising on both arms and the leg. The police had taken Mrs. Yanes Contreras to the “polyclinic” and although she told the staff there about her medical conditions, all they did was administer oxygen. According to what the Commission was told, after nine hours under detention, they took her home. On July 8, 2011, the IACHR granted precautionary measures to protect her life and personal security.⁴¹⁶

258. The IACHR also received information concerning the following human rights defenders: Leydis Coca Quesada, Sonia Garro Alfondo, Ivón Mayesa Galano, Rosario Morales la Rosa, Mercedes Fresneda, Yaquelin Borges and Niurka Luke Alvarez, who had allegedly been detained after conducting a public event in defense of human rights. While in custody, the women were beaten by State Security officers. According to the testimony of Niurka Luke Alvarez, while detained she suffered an epileptic seizure, although she had informed the authorities of her condition beforehand. The military denied her any medical treatment, and beat her saying that it would cure her of her epilepsy.⁴¹⁷

⁴¹² Among the other activists detained on their way to Martin Luther King Park were Roberto Ramón Ramírez, arrested at “G” and 25 del Vedado streets, and Jorge Luis García Pérez, arrested on the Paseo Martí de Placetas. Cf. *Directorio Democrático Cubano, Jornada de Resistencia por Laura Pollán marcada por la represión y actividades en las Calles de Cuba* [Day of Resistance to Honor the Memory of Laura Pollán marked by repression and activity on the streets of Cuba], October 24, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3071

⁴¹³ According to the available information, public protests were held in various places in Cuba, such as Havana, Placetas, Cienfuegos, Holguín, Bayamo and Guantánamo to honor the memory of Laura Pollán. Cf. *Directorio Democrático Cubano, Jornada de Resistencia por Laura Pollán marcada por la represión y actividades en las Calles de Cuba* [Day of Resistance to Honor the Memory of Laura Pollán marked by repression and activity on the streets of Cuba], October 24, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdeprensa/note.php?note_id=3071; El Mundo.es, *Muere Laura Pollán, líder de las Damas de Blanco* [Laura Pollán dead, leader of the Damas de Blanco], October 14, 2011. Available [in Spanish] at: <http://www.elmundo.es/america/2011/10/14/cuba/1318608194.html>.

⁴¹⁴ Cubanet, *detenidos durante cinco horas Sara Martha Fonseca y otros opositores* [Sara Marta Fonseca and other government opponents detained for five hours], October 26, 2011. Available [in Spanish] at: <http://www.cubonet.org/noticias/detenidos-durante-cinco-horas-sara-martha-fonseca-y-otros-opositores/>;

⁴¹⁵ Cuba Derechos Humanos, *Arrestan a disidentes en Santa Clara* [Dissidents arrested in Santa Clara], September 29, 2011. Available [in Spanish] at: <http://dhcuba.impela.net/2011/09/arrestan-a-disidentes-en-santa-clara/>.

⁴¹⁶ IACHR, [Precautionary Measures granted by the IACHR during 2011, PM 187/11](#), Idania Yanes Contreras and family, Cuba, July 8, 2011.

⁴¹⁷ Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011.

259. In 2011, the IACHR continued to receive information on various arrests of Yordis García Fournier, a member of the Cuban Pro-Democracy Youth Movement and the beneficiary of precautionary measures granted by the IACHR back in 2008.⁴¹⁸ According to the information available, he had allegedly be detained and attacked in February,⁴¹⁹ May,⁴²⁰ and September,⁴²¹ presumably in retaliation for his activities in support of the rights of persons detained for political reasons.

260. Information was also received to the effect that an agent of State Security and a lieutenant colonel from the Ministry of the Interior had allegedly entered the offices of the Center for Human Rights Rapporteurs of Cuba (CRDHC). According to the information available, the government representatives were inside the organization's offices for around 40 minutes, during which time they had physically assaulted and threatened members of the CRDHC.⁴²²

261. In 2011, the Commission learned about the situation of Father José Conrado Rodríguez, pastor of the church of Santa Teresita in Santiago de Cuba, who had long since been warning of acts of censure against persons who attended religious services, and how they were kept inside their homes to prevent them from attending mass on Sundays. This conduct was allegedly encouraged and tolerated by the revolutionary national police and members of the Ministry of the Interior.⁴²³

262. The IACHR has closely monitored the situation of independent trade union leaders in Cuba.⁴²⁴ In 2011 specifically during the hearing on the Situation of Labor Union Rights in the Americas,⁴²⁵ the IACHR received information on serious regulatory restrictions on the exercise of labor union rights and defense of labor rights. It was told that the right to strike is still not recognized under Cuban law, which means that exercise of that right is still prohibited in practice. The law in Cuba still does not recognize the possibility of forming independent labor unions, as all workers must belong to the *Central de Trabajadores de Cuba*, the only government-recognized union. It has a monopoly on representation of workers vis-à-vis government.

⁴¹⁸ PM 320/08 Yordis García Fournier. Available at: <http://www.cidh.oas.org/medidas/2008.eng.htm>

⁴¹⁹ According to the information available, between February 21 and 22, 2011, García Fournier and other activists were allegedly detained and threatened by State Security Forces. Cf. Directorio Democrático Cubano, *Resistencia y represión en Cuba preceden aniversario de la muerte de Orlando Zapata Tamayo* [Resistance and repression in Cuba precede the anniversary of the death of Orlando Zapata Tamayo], February 22, 2011. Available [in Spanish] at: http://www.directorio.org/comunicadosdepremsa/note.php?note_id=2932

⁴²⁰ According to the information available, on May 9, 2011, he was allegedly arrested and beaten for holding a march in support of prisoner Andy Frometa Cuenca after a 25-day hunger strike in the Guantanamo provisional prison, along with Alfredo Noa Estopiñán. CIHPRESS, *Informe mensual de violaciones a derechos humanos- Mayo de 2011* [Monthly Report on Human Rights Violations-May 2011]. Available [in Spanish] at: <http://www.cihpress.com/2011/06/informe-mensual-de-violaciones-de-los.html>

⁴²¹ The IACHR learned that State Security officers allegedly arrested and beat him on September 29, as he was going down Paseo y Calixto García street in Guatanamo. CIHPRESS, *Informe Mensual de Violaciones de Derechos Humanos- Septiembre de 2011* [Monthly Report on Human Rights Violations-September 2011]. Available [in Spanish] at: <http://www.cihpress.com/2011/10/informe-mensual-de-violaciones-de-los.html>

⁴²² World Organization Against Torture, Cuba: Threats against members of the Cuban Council of Human Rights Rapporteurs, January 27, 2011. Article available [in Spanish] at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/cuba/2011/01/d21055/>

⁴²³ *Cuba Democracia y Vida: El sacerdote católico, Padre, José Conrado Rodríguez, denuncia violaciones de los derechos humanos en Santiago de Cuba* [Catholic priest Father José Conrado Rodríguez denounces human rights violations in Santiago de Cuba], August 11, 2011. Available [in Spanish] at: <http://www.cubademocraciayvida.org/web/article.asp?artID=14538>

⁴²⁴ The IACHR was apprised of the situation of trade union leaders in Cuba at the following sessions: 128th session, Hearing on the "Situation of the union members deprived of liberty in Cuba"; 133rd session, Hearing on the "Situation of imprisoned union members in Cuba"; 137th session, Hearing on the "Situation of Independent Union Leaders in Cuba"; and 140th session, Hearing on the "Human Rights Situation of Independent Union Leaders in Cuba".

⁴²⁵ IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/en/media_center/videos.asp?sCodigo=11-0245&videotype=&sCollectionDetVideo=9

263. In practice, the ban on independent unions leads to a policy of harassment and to criminalization of trade union leaders who choose to defend workers rights from outside the official union, and are therefore branded as opponents of the regime.⁴²⁶ Information was received on the danger under which the Cuban National Confederation of Independent Workers (CONIC), the Cuban Confederation of Independent Labor (CTIC) and the Cuban Unified Workers' Council (CUTC) operate.⁴²⁷

264. Union leaders are repeatedly detained and held under *de facto* and *de jure* house arrest, particularly the Afro-descendant union leaders, who are routinely subjected to arrests and attacks that are all the worse because they are both Afro-descendant and union leaders. Specifically, the Commission learned of the situation of Iván Hernández Carrillo, currently head of CONIC and one of those arrested in the events of the "Black Spring" in 2003, who was at last released in February 2011.⁴²⁸ Nevertheless, according to what the Commission has learned, in October 2011 he was arrested five times, presumably as a reprisal for his independent union activities.⁴²⁹

3. Afro-descendants

265. Apart from what has already been reported, the IACHR also received information from the Committee on the Elimination of Racial Discrimination. In its observations on Cuba, it comments that "[w]hile the Committee notes the State party's opinion that 'racial prejudices have little place in today's Cuba' and are 'expressed mostly in the most intimate areas of life, usually in the relations between couples', it remains concerned by the prevalence of deeply rooted negative racial stereotypes and prejudices and by their sexist dimension."⁴³⁰ The Committee also commented that while noting the State party's efforts to increase representation of the black and mestizo population in public service positions, the Committee was aware of the difficulty of identifying policies that might successfully rectify the situation of groups that historically have been excluded as a result of the combined effects of racial discrimination and economic deprivation.⁴³¹

266. The IACHR received information indicating that Donaida Pérez Paseiro, a human rights defender, had allegedly been detained, together with other women, as they were participating in a peaceful march in the city of Gibara. She was grabbed by the hair, dragged across the pavement, and put in a patrol car as they called her a "filthy nigger" and yelled other insults and obscenities.⁴³²

4. Immigrants

⁴²⁶ IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/en/media_center/videos.asp?sCodigo=11-0245&videotype=&sCollectionDetVideo=9; IACHR, *Human Rights Situation of Independent Union Leaders in Cuba*, 140th session, October 28, 2010. See also, ITUC, *Annual Report 2010 CSI, Annual survey of violations of trade union rights, Cuba*. Available at: <http://survey10.ituc-csi.org/Cuba.html?lang=en>

⁴²⁷ IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/en/media_center/videos.asp?sCodigo=11-0245&videotype=&sCollectionDetVideo=9

⁴²⁸ *El Imparcial*, *Cuba libera al preso de conciencia Iván Hernández Carrillo* [Cuba releases prisoner of conscience Iván Hernández Carrillo], February 21, 2011, available [in Spanish] at: <http://www.elimparcial.es/americas/cuba-libera-al-pres-de-conciencia-ivan-herandez-carrillo-79241.htm>; República.com, *Cuba libera al disidente político Iván Hernández Carrillo del Grupo de los 75* [Cuba releases political dissident Iván Hernández Carrillo of the Group of 75], February 19, 2011, available [in Spanish] at: http://www.republica.com/2011/02/19/cuba-liberara-a-siete-disidentes-uno-de-ellos-del-grupo-de-los-75_298231/print

⁴²⁹ IACHR, *Hearing on Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/en/media_center/videos.asp?sCodigo=11-0245&videotype=&sCollectionDetVideo=9

⁴³⁰ United Nations, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on Racial Discrimination, Cuba*, CERD/C/CUB/CO/14-18, March 10, 2011, paragraph 14. Available at: <http://www2.ohchr.org/english/bodies/cerd/cerds78.htm>.

⁴³¹ United Nations, Committee on the Elimination of Racial Discrimination, *Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on Racial Discrimination, Cuba*, CERD/C/CUB/CO/14-18, March 10, 2011, paragraph 15.

⁴³² Assembly of the Cuban Resistance. Special Report: Cuba: Increased repression against human rights defenders and violent assault on women human rights defenders, August 2011

267. On the question of the immigration of foreigners to Cuba, the United Nations Committee on the Elimination of Racial Discrimination, in its recent observations on Cuba, expressed concern at the lack of an enabling legal framework for the local integration of persons present in Cuban territory who require international protection, such as refugees, asylum-seekers and stateless persons.⁴³³ It also expressed concern at the explanation provided by the State party in relation to the application of article 215 of the Criminal Code, which establishes that illegal entry into Cuban territory is a criminal offence and that border control personnel “shall return all persons who attempt to enter the country without satisfying immigration requirements.”⁴³⁴ The Committee on the Elimination of Racial Discrimination was concerned that the State had not provided any additional information on the mechanisms in place to ensure that decisions concerning the return or expulsion of foreigners at Cuban borders conform to the standards and principles established in international human rights law, in particular the principle of non-discrimination.

5. Children and adolescents

268. As for children, in its final observations issued in August 2011 the United Nations Committee on the Rights of the Child expressed concern that although the age of majority is 18 under the Convention on the Rights of the Child, in Cuba one attains one’s majority at age 16; hence, the minimum age at which a girl can marry and be held answerable for crimes is 16.

269. The Committee therefore expressed concern that crimes involving corruption of minors (the use of children in prostitution and pornography) and the sale of children, which are crimes under the Cuban Criminal Code, would not protect adolescents ages 16 to 18. On the contrary, rather than provide them with the reintegration, rehabilitation and recovery services to which they are entitled by virtue of their special status as children, the State informed the Committee that adolescents over the age of 16 who engage in antisocial behavior and practice prostitution may face “re-educational security measures (...), including confinement in a rehabilitation centre” because they pose a “manifest threat to society.”⁴³⁵

270. The United Nations Committee on the Rights of the Child was concerned about children born abroad to Cuban parents and who are not covered under any of the circumstances that Article 29 of the Cuban Constitution stipulates for citizenship to convey.⁴³⁶ These children run the risk of becoming stateless persons.⁴³⁷ The Committee was also concerned over the longstanding travel restrictions for

⁴³³ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on Racial Discrimination, Cuba, CERD/C/CUB/CO/14-18, March 10, 2011. Available at: <http://www2.ohchr.org/english/bodies/cerd/cerds78.htm>.

⁴³⁴ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under article 9 of the Convention. Concluding observations of the Committee on Racial Discrimination, Cuba, CERD/C/CUB/CO/14-18, March 10, 2011, paragraph 20.

⁴³⁵ Committee on the Rights of the Child, Reply of Cuba to the list of issues concerning additional and updated information (CRC/C/CUB/Q/2) related to the second periodic report of Cuba (CRC/C/CUB/2), CRC/C/CUB/Q/2/Add. 1, April 27, 2011, paragraph 139.

⁴³⁶ Article 29. Cuban citizens by birth are:

- a) those born within Cuban national territory, with the exception of the children of foreign persons at the service of their governments or international organizations. In the case of the children of foreign residents in the country temporarily, the law stipulates the requisites and formalities;
- b) those born abroad, at least one of whose parents is Cuban and on an official mission;
- c) those born abroad, at least one of whose parents is Cuban, who have complied with the formalities prescribed by law;
- d) those born outside national territory, at least one of whose parents is Cuban and who lists their Cuban citizenship provided they apply for citizenship according to the procedures prescribed by law;
- e) foreigners who, by virtue of their exceptional merits earned in the struggle for Cuba’s liberation, were deemed Cuban citizens by birth.

⁴³⁷ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: *Cuba*, CRC/C/CUB/CO/2, August 3, 2011, paragraph 30.

Cuban nationals, which have resulted in involuntary separation within many Cuban families, thereby imposing restrictions on the right of children to live with their parents.⁴³⁸

271. As for corporal punishment, the IACHR has maintained that in accordance with the established doctrine as it applies to children, States are obliged to “adopt all positive measures required to ensure [the] protection of children against mistreatment [corporal punishment and other forms of violence], whether in their relations with public authorities or in relations among individuals or with non-governmental entities” in order to ensure them the full exercise and enjoyment of their rights.⁴³⁹ Cuba would be one of the countries of the region where corporal punishment is still practiced, which is contrary to what the Commission has held. Indeed, the Secretariat received information from the Committee on the Rights of the Child indicating that in Cuba, corporal punishment is not a prohibited practice wherever children and adolescents are. In fact, under the Family Code, parents and guardians may still employ corporal punishment as “adequate and moderate” punishment for children under their care and authority; corporal punishment is also used as a disciplinary measure in schools and other social institutions.⁴⁴⁰

6. Lesbians, gays, and transsexual, bisexual and intersexual persons (“LGTBI”)

272. In a newspaper interview given in late 2010, former President Fidel Castro publicly acknowledged the discrimination against lesbians and gays, particularly the mistreatment and violations to which they were subjected in the sixties and seventies, when many were detained and sent to “re-education” camps and homosexuality was labeled as counterrevolutionary.⁴⁴¹

V. CONCLUSIONS

273. Based on the foregoing, the Commission must again point out that the restrictions on political rights, on freedom of expression and thought, the lack of elections, the lack of an independent judicial branch, and the restrictions on the right of residence and movement, together constitute a permanent situation of violation of fundamental rights of Cuban citizens. The Commission urges the State to introduce the necessary reforms in keeping with its international obligations in respect of human rights.

274. The Commission urges the Cuban State to bring its procedural laws in line with the international standards of due process, so that persons who turn to the courts for a determination of their rights and responsibilities may have the minimum legal guarantees of the right to defense. In particular, overturn the convictions against the victims in Case 12.476.

275. The Commission urges the Cuban State to adopt the legislative and other measures necessary to ensure that the death penalty will not be imposed in violation of the rights to due process and a fair trial by a competent, independent, and impartial court previously established by law.

276. The Commission is also urging the Cuban State to eliminate the crimes of “dangerous state” and “special proclivity of a person to commit crimes” contained in the Criminal Code.

277. The Commission is urging the Cuban State to take the measures necessary to prevent and eradicate the various forms of harassment practiced against those who exercise their rights of

⁴³⁸ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: *Cuba*, CRC/C/CUB/CO/2, August 3, 2011, paragraph 41.

⁴³⁹ IACHR, Report on Corporal Punishment and Human Rights of Children and Adolescents, 2009, paragraph 31. Available at: <http://www.cidh.oas.org/Ninez/CastigoCorporal2009/CastigoCorporal.TOC.htm>

⁴⁴⁰ Committee on the Rights of the Child, Consideration of reports submitted by States parties under article 44 of the Convention. Concluding observations: *Cuba*, CRC/C/CUB/CO/2, August 3, 2011, paragraphs 36 to 38.

⁴⁴¹ *Diario La Jornada*, August 31, 2010, *entrevista de Fidel Castro* [interview with Fidel Castro], available [in Spanish] at the following link [consulted on October 29, 2011]: <http://www.jornada.unam.mx/2010/08/31/index.php?section=mundo&article=026e1mun>

association and of assembly for humanitarian and organized labor purposes and against those are dedicated to defending and promoting human rights.

ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2011
CHAPTER IV
HONDURAS

I. INTRODUCTION

278. The Commission has taken particular care to monitor the human rights situation in Honduras. Through its reports, it has raised a number of structural issues in the area of justice, security, marginalization and discrimination, which for decades have been problematic for the human rights of its people and have worsened since the 2009 *coup d'état*.

279. In 2009 and 2010, the IACHR decided to include Honduras in Chapter IV of its Annual Report, pursuant to Article 57(1)(h) of its Rules of Procedure. In the Commission's view, since the *coup d'état*, the human rights situation in Honduras met the criteria, as set forth in the 1997 Annual Report and explained in the introduction to this chapter.

280. In 2011, the Commission continued to observe the human rights situation in Honduras, focusing on the consequences of the 2009 *coup d'état*. Available information reveals that since the 2009 *coup d'état* there have been human rights violations, which seriously affected the Honduran people, and the effects or repercussions have persisted. Consequently, after evaluating the situation at its 143rd regular session, the Commission decided to include the country in this chapter, because in its view, it qualifies for inclusion based on the aforementioned criteria, as laid out in the 1997 Annual Report.

281. The Commission sent this report to the State of Honduras on November 22, 2011, and the State's reply was received on December 16 and 21, 2011.⁴⁴² The Inter-American Commission appreciates the willingness of the State to dialogue with the Commission in a constructive way in order to advance in the protection of Honduran Population's human rights.⁴⁴³

282. In the present document, the IACHR recounts the activities conducted in 2011 in connection with the situation in Honduras and examines the human rights situation in that country, addressing specific issues. It also comments on the Truth and Reconciliation Commission; identifies the government's best practices aimed at strengthening democratic institutions and makes its recommendations.

II. 2009 COUP D'ÉTAT

⁴⁴² The State of Honduras indicated that it was repetitive "to point out in this draft report exactly the same information about the political events of 2009, during 2010 and 2011, including the issue of the Amnesty, and other matters about which the State has already submitted its observations. The State trusts that as of 2012 the same information will not be included, or at least that the observations submitted by the State will also be included." Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras," p. 3.

⁴⁴³ In a note sent on December 22, 2011, the Secretary of State for Justice and Human Rights, Ana Pineda H., explains: "The State of Honduras appreciates the attention and constant concern shown by the IACHR for the human rights situation in Honduras, moreover, this subject it also evidences that this situation responds to serious structural problems in matters such as justice, security, marginalization and discrimination; this difficulties have become most clearly evident since June 28, in the context of the coup d'état, when the serious human rights violations existing in the country were exposed, and were exacerbated with the crisis." On the same note, the Secretary of State for Justice and Human Rights pointed out that "the Government of the Republic makes efforts and creates mechanisms in order to respond to the major structural problems that affect our country, such as those identified by the Commission (justice, security, marginalization and discrimination), therefore it takes note and welcomes the efforts of the International Systems for Protection of Human Rights and, specially, of the IACHR in order to guide our internal procedures to overcome the conditions that affect Honduras people's human rights". Observations of the Secretary of State for Justice and Human Rights to the Draft of the General Report on the Situation of Human Rights in Honduras approved by the Commission on December 21, 2011, pages 1 and 5.

283. On June 28, 2009, the democratically elected President of Honduras, Manuel Zelaya Rosales, was ousted by means of a civilian-military *coup d'état*. A *de facto* government was immediately established, which held power until January 27, 2010, when Mr. Porfirio Lobo Sosa became the President of the country.⁴⁴⁴

284. The IACHR immediately condemned the *coup d'état* in Honduras⁴⁴⁵ and, in light of the high number of petitions it received,⁴⁴⁶ closely monitored the human rights situation in Honduras.

285. As a result of an interruption of the democratic order caused by the 2009 *coup d'état* in Honduras, on July 4, 2009, the OAS General Assembly decided⁴⁴⁷ “to suspend the Honduran state from the exercise of its right to participate in the Organization of American States, in accordance with Article 21 of the Inter-American Democratic Charter.”⁴⁴⁸ In this resolution, the General Assembly decided “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.”⁴⁴⁹

286. As a result of the *coup d'état* and in exercising its competence as promoter of enforcement and respect for human rights in the hemisphere, the Commission conducted an *in locu* visit to Honduras,⁴⁵⁰ published the report “Honduras: Human Rights and the *Coup d'état*,”⁴⁵¹ granted a large number of precautionary measures,⁴⁵² and made requests for information, as provided under Article 41 of the American Convention on Human Rights and Article XIV of the Inter-American Convention on Forced Disappearance of Persons. It also issued several press releases.⁴⁵³ Additionally, the IACHR decided to

⁴⁴⁴ Candidate of the National Party (*Partido Nacional*), elected President of the Republic of Honduras on November 27, 2009.

⁴⁴⁵ IACHR, Press Release 42/09: IACHR Strongly Condemns Coup d'états in Honduras. Washington, D.C., June 28, 2009 CIDH. Available at <http://www.cidh.oas.org/Comunicados/English/2009/comunicados2009eng.htm>

⁴⁴⁶ In light of the sheer number of petitions, the IACHR used several mechanisms to ensure respect for human rights in Honduras, including requests for precautionary measures and requests for information, pursuant to Article 41 of the American Convention on Human Rights; press releases. See www.cidh.org

⁴⁴⁷ OAS, Resolution AG/RES. 2 (XXXVII-E/09), on the suspension of the right of Honduras to participate in the OAS. 37th Special Session. OEA/Ser.P. 4 July 2009.

⁴⁴⁸ Article 21 of the Inter-American Democratic Charter:

When the special session of the General Assembly determines that there has been an unconstitutional interruption of the democratic order of a member state, and that diplomatic initiatives have failed, the special session shall take the decision to suspend said member state from the exercise of its right to participate in the OAS by an affirmative vote of two thirds of the member states in accordance with the Charter of the OAS. The suspension shall take effect immediately.

The suspended member state shall continue to fulfill its obligations to the Organization, in particular its human rights obligations.

Notwithstanding the suspension of the member state, the Organization will maintain diplomatic initiatives to restore democracy in that state.

⁴⁴⁹ OAS, Resolution AG/RES. 2 (XXXVII-E/09), on the suspension of the right of Honduras to participate in the OAS. 37th Special Session. OEA/Ser. P. 4 July 2009.

⁴⁵⁰ IACHR, Press release 60/09 – IACHR presents preliminary observations on its visit to Honduras. August 21, 2009. Available at: <http://www.cidh.oas.org/Comunicados/English/2009/60-09eng.htm>

⁴⁵¹ IACHR, Honduras: Human Rights and the Coup D'état, December 30, 2009. Available at: <http://www.cidh.oas.org/countryrep/Honduras09sp/Indice.htm>

⁴⁵² IACHR, Precautionary Measures granted by the IACHR during 2009. Available at: <http://www.cidh.oas.org/medidas/2009.sp.htm>

⁴⁵³ IACHR Press Releases: 1) IACHR, Press Release 42/09 - IACHR Strongly Condemns Coup D'état in Honduras. Washington, D.C., June 28, 2009; 2) IACHR, Press Release R 44/09 - Office of the Special Rapporteur for Freedom of Expression Condemns Limitations to Freedom of Expression in Honduras. Washington, D.C., June 29, 2009; 3) IACHR, Press Release 45/09 - IACHR Requests to Visit Honduras, Grants Precautionary Measures and Asks for Information. Washington, D.C., June 30, 2009; 4) Continúa...

include Honduras in Chapter IV of the 2009 Annual Report on the development of human rights in the region.⁴⁵⁴

287. In May 2010, the IACHR conducted a visit to Honduras in order to follow up on the August 2009 visit and the Report *Honduras: Human Rights and the Coup D'état*. In June 2010, it released its preliminary observations.⁴⁵⁵

288. Former President Manuel Zelaya returned to Honduras on May 28, 2011. On June 1, 2011, the OAS General Assembly, at the 41st Special Session, lifted the suspension of Honduras' right to participate in the Organization, under resolution AG/RES.2(XXXVII-E/09) of July 4, 2009.⁴⁵⁶

289. The Commission has continued to use all of the mechanisms available to it in order to monitor the situation in Honduras and demand a government policy that abides by human rights. During the 142nd and 143rd regular sessions of the IACHR this year, four thematic hearings were held on the country: "Situation of Human Rights Defenders in Honduras," "Disproportionate use of force by the National Police and the Army of Honduras," "Human rights situation of in Bajo Aguan, Honduras," and "Human rights violations in the context of the natural resources concessions in Honduras."

III. ANALYSIS OF THE CIVIL AND POLITICAL RIGHTS SITUATION

A. Respect and guarantee by the state of the right to life; personal integrity and liberty

290. As will be apparent throughout this report, in the area of respect and guarantee by the state of the right to life and personal integrity and liberty, in 2011, the Inter-American Commission received troubling information on the situation of journalists, human rights defenders, peasant farmers of Bajo Aguan; indigenous peoples, LGBTI persons, all in the context of a high rate of murder and impunity,⁴⁵⁷ which particularly affects women, children and adolescents.

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IACHR, Press Release [47/09](#) - IACHR Expresses Concern over the Suspension of Guarantees in Honduras and Amplifies Precautionary Measures. Washington, D.C., July 3, 2009; 5) IACHR, Press Release [R 48/09](#) - Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Honduras. Washington, D.C., July 6, 2009; 6) IACHR, Press Release [49/09](#) - IACHR Maintains Its Competence in Honduras Following Suspension. Washington, D.C., July 9, 2009; 7) IACHR, Press Release [R 50/09](#) - Office of the Special Rapporteur for Freedom of Expression Condemns Detention of Foreign Journalists in Honduras. Washington, D.C., July 12, 2009; 8) IACHR, Press Release [52/09](#) - IACHR Condemns Murder in Honduras. Washington, D.C., July 27, 2009; 9) IACHR, Press Release [56/09](#) - IACHR to Visit Honduras after coup d'état. Washington, D.C., August 5, 2009; 10) IACHR, Press Release [58/09](#) - IACHR Announces Delegation that will Visit Honduras. Washington, D.C., August 12, 2009; 11) IACHR, Press Release [60/09](#) - IACHR presents preliminary observations on its visit to Honduras. Tegucigalpa, August 21, 2009. Direct link to preliminary observations; 12) IACHR, Press Release [64/09](#) - IACHR Urges Honduras' *de facto* Government to Respect Protests. Washington, D.C., September 22, 2009; 13) IACHR, Press Release [65/09](#) - IACHR Condemns Excessive Use of Force in Repression of Protests in Honduras. Washington, D.C., September 22, 2009; 14) IACHR, Press Release [R66/09](#) - Special Rapporteurship for Freedom of Expression Condemns Restrictions to Freedom of Expression in Honduras. Washington, D.C., September 25, 2009; 15) IACHR, Press Release [69/09](#) - IACHR Condemns Suspension of Guarantees in Honduras. Washington, D.C., September 29, 2009; 16) IACHR, Press Release [R71/09](#) - Office of the Special Rapporteur for Freedom of Expression Condemns the Suspension of Guarantees in Honduras and the Violations of the Right to Freedom of Expression. Washington, D.C., September 29, 2009; 17) IACHR, Press Release [79/09](#) - Special Rapporteurship for Freedom of Expression Expresses its Deepest Concern Regarding the Situation of Freedom of Expression in Honduras. Washington, D.C., November 26, 2009; 18) IACHR, Press Release [R83/09](#) - Special Rapporteurship for Freedom of Expression Reiterates its Deep Concern Regarding the Lack of Guarantees to Freedom of Expression in Honduras. Washington, D.C., December 9, 2009. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2009/comunicados2009esp.htm>

⁴⁵⁴ IACHR, Annual Report of the Inter-American Commission on Human Rights 2009, Chapter IV, Honduras. Available at: <http://www.cidh.oas.org/annualrep/2009sp/cap.4Honduras09.sp.htm>

⁴⁵⁵ IACHR, Preliminary Observations of the Inter-American Commission of Human Rights on its visit to Honduras, May 15 to 18, 2010. June 3, 2010. Available at: <http://www.cidh.org/countryrep/Honduras10sp/Honduras10.Indice.htm>

⁴⁵⁶ AG/RES. 1 (XLI-E/11), Resolution on the Participation of Honduras in the OAS. OEA/Ser.P. June 1, 2011. Forty-First Special Session.

⁴⁵⁷ According to a Special Report on Crime Prevention and Investigation "Public Safety: A Priority on the National Agenda," issued by the National Human Rights Commissioner (CONADEH), which examined information from the Office of the Continúa...

291. Moreover, during the course of this year, we have continued to receive information indicating that the Police and the Army use force disproportionately against individuals who take part in public demonstrations called by opposition organizations,⁴⁵⁸ which has led to serious incidents of violence and repression against the demonstrators. One of the victims of the acts of repression against the demonstrators was professor Ilse Ivania Velásquez Rodríguez,⁴⁵⁹ who died after being run over by the driver of a vehicle belonging to a television channel on Friday March 18, 2011, in circumstances when she was escaping from the area trying to avoid being forcibly removed with a group of teachers by Police with tear gas. According to information provided by the State of Honduras, the driver of the vehicle was reportedly arrested and prosecuted.⁴⁶⁰

292. Additionally, the Commission notes with concern over reports that the rate of violence in Honduras has increased and is one of the highest in the region. Specifically, according to information from the United Nations Office on Drugs and Crime (UNODC), in 2010, there were 6,239 homicides in the country, which translates into a national ratio of 82.1 homicides for every 100,000 people.⁴⁶¹ This figure amounts to an increase of 10.7 homicides above the 2009 rate, which was 66.8 homicides for every 100,000 inhabitants.⁴⁶² The homicide rate in Honduras is the highest of all the States in the region.⁴⁶³

293. According to the records of the Observatory on Violence of the University Institute on Democracy, Peace and Security, in 2010, the national homicide rate was 77.5 for every 100,000 people; in other words, it grew by 10.7 homicides compared to 2009, when the homicide rate was 66.8 for every 100,000 people. Based on figures from this same organization, between 2004 and 2010, 26,829 deaths by homicide took place and the number of homicide victims went from 2,155 [in 2004] to 6,239 victims in 2010, which represents a 189.5% increase. In 2007, the beginning of an accelerated rise in the incidence of homicide crimes was noted, according to the Observatory, particularly in the modality of killings by hire.⁴⁶⁴ The institute's January-June Bulletin reported a 16.2% rise in violent deaths in Honduras in the first half of 2011 as compared to the first half of 2010. In the disaggregated analysis, homicide was reportedly the most frequent manner of death, with 3,587 victims—that is, 72.8% of all violent deaths—and was 22.5% greater than the number of homicides committed during the same period of the previous year.⁴⁶⁵

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Public Prosecutor during the period of 2005-2009, said agency received 320,153 complaints, 250,216 of which were transferred to the National Office of Criminal Investigation (DNIC) for inquiry. According to this report, the DNIC returned 48,626 complaints with an investigation report to the Office of the Public Prosecutor, which amounts to 19% of the total number, while 201,590 (81%) of the reported crimes were still in the process of being investigated and possibly would remain in total impunity. Available at <http://www.conadeh.hn/pdf/InformeSeguridadPublica.pdf>

⁴⁵⁸ IACHR, thematic hearing on "Disproportionate use of force by the National Police and Army of Honduras," held on March 25, 2011 during the 141th regular session. Available at: CIDH: <http://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=es>

⁴⁵⁹ Ilse Ivania Velásquez Rodríguez was the Assistant Director of the Escuela República de Argentina and sister of Ángel Manfredo Velásquez Rodríguez, who was arrested on September 12, 1981 by agents of the Honduran State and was the victim of forced disappearance. See IA Ct. HR, *Case of Velásquez Rodríguez*. Judgment July 29, 1988. Series C No. 4.

⁴⁶⁰ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras," p. 4.

⁴⁶¹ United Nations Office on Drugs and Crime (UNODC). Homicide level for 2010, or latest available year. Available at: <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html>

⁴⁶² Observatory on Violence of the University Institute on Democracy, Peace and Security IUDPAS, Edition No.20, March 2011. Available at: <http://iudpas.org/pdfs/NEd20EneDic2010.pdf>

⁴⁶³ United Nations Office on Drugs and Crime (UNODC). Homicide level for 2010, or latest available year. Available at: <http://www.unodc.org/unodc/en/data-and-analysis/homicide.html>

⁴⁶⁴ Observatory on Violence of the University Institute on Democracy, Peace and Security IUDPAS, Edition No.20, March 2011. Available at: <http://iudpas.org/pdfs/NEd20EneDic2010.pdf>

⁴⁶⁵ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras," p. 4.

294. In its observations to this Report, the State of Honduras maintained that the “information about high levels of violence in Honduras is alarming for all of the country’s inhabitants, as there have been deaths, robberies, and assaults against people of all walks of life and not just in regard to specific groups.” The state added that this was evidenced in the previously cited October 2010 report of the National Human Rights Commissioner of Honduras (CONADEH) entitled “Public Safety: A Priority on the National Agenda.”⁴⁶⁶ It further added that everyone in the country is at risk, and not just some people.

- **Situation in Bajo Aguán**

295. During 2011, the IACHR continued to receive troubling reports that the situation in the Bajo Aguán had worsened. There has been a long-standing land dispute between *campesinos* and businessmen in this area and it has come to the attention of the Commission that as of the June 28, 2009 *coup d’état*, there has been an increase in the number of deaths, threats and intimidation against *campesinos* in the area and stigmatization and criminalization of the land rights struggle persists.⁴⁶⁷

296. The IACHR was informed that an International Verification Mission, made up of a variety of international networks and organizations, visited the area from February 25 to March 4, 2011,⁴⁶⁸ and subsequently submitted a report to the international community, indicating that it “confirms with concern that repressive violence against community members and peasant organizations continues. These groups are unprotected and have no recourse to defense in the face of the authorities’ actions and omissions. The crimes committed against life in Bajo Aguán are on their way to being treated with complete impunity, enabling the repetition of such human rights violations in the future.”⁴⁶⁹

297. During its 143rd session, the IACHR held a hearing on the “Human Rights Situation in Bajo Aguán,” with the participation of the Honduran State and civil society and received up-to-date information on the situation in the area.

298. According to information provided on that occasion, from September 2009 to October 2011, forty-two individuals affiliated with different *campesino* organizations, one journalist and his partner, had been murdered in the context of the land dispute of Bajo Aguán⁴⁷⁰ and one peasant was still reported missing as of May 15, 2011.⁴⁷¹ It was also brought to the attention of the Commission that from early 2010 to mid 2011, around 162 peasants had been prosecuted in that same context.⁴⁷²

⁴⁶⁶ Special Report on Crime Prevention and Investigation “Public Safety: A Priority on the National Agenda,” of the National Human Rights Commissioner of Honduras (CONADEH), October 2010.

⁴⁶⁷ IACHR, Preliminary observations of the Inter-American Commission on Human Rights on its visit to Honduras from May 15-18, 2010. June 3, 2010. Situation of the Bajo Aguán, paras. 118-121. Available at: <http://www.cidh.org/countryrep/Honduras10sp/Honduras10.Indice.htm>. Also see: IACHR, Annual Report, Chapter IV, Honduras, Situation of Bajo Aguán, paras. 543-551. Available at: <http://www.cidh.oas.org/annualrep/2010sp/indice2010.htm>

⁴⁶⁸ The International Verification Mission was made up of international networks and organizations, including APRODEV (Association of World Council of Churches Related development Organizations), CIFCA (Copenhagen Initiative for Central America and Mexico), FIAN International (International Organization for the Right to Food), FIDH (International Federation for Human Rights), Rel-UITA (Latin American Regional Office of the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers) and Vía Campesina Internacional.

⁴⁶⁹ Report “Honduras: Human right violations in the Bajo Aguán,” July 2011. Available at: http://www.fidh.org/IMG/pdf/honduras_informe_mision_bajo_aguan_-_version_final.pdf.

⁴⁷⁰ IACHR, thematic hearing “Human Rights Situation in Bajo Aguán,” on October 24, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

⁴⁷¹ IACHR, thematic hearing “Human Rights Situation in Bajo Aguán,” on October 24, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

⁴⁷² According to the State of Honduras, the evictions and arrest warrants were ordered by the District Trial Court of Trujillo, in the Department of Colón, based on complaints alleging the offense of usurpation of farms or properties not included in the agreements signed among the Governments, businesspersons, and some peasant farmer organizations. It reported that “The evictions and arrest warrants ordered on 8 farms subject to the agreement will not be enforced.”

299. In its observations, with regard to the Bajo Aguán conflict, the State of Honduras maintained that not only peasant farmers have died but that there are also several cases involving the deaths of security guards, farm laborers, and other people who were not peasant farmers. According to the State, this demonstrates “the true magnitude of the situation in that region, and not as a criminalization or persecution of the peasant farmers’ movement.”⁴⁷³ The State reported that between 2010 and 2011, the Office of the Public Prosecutor documented a total of 31 deaths in Bajo Aguán, of which “18 were peasant farmers, 2 alleged peasant farmers (as it was not determined whether they belonged to any movement), 12 security guards, 4 farm laborers, 5 persons of unknown occupation or identity, and 5 private citizens (neither guards, nor peasant farmers, nor laborers), for a total of 46 violent deaths in Bajo Aguán as of November 2011.” It added that progress has been made in 4 of the investigations into the deaths of peasant farmers, with specific theories and suspects.⁴⁷⁴

300. By the accounts of the civil society representatives attending the hearing before the IACHR, the state response to the dispute had been characterized by the criminalization of the *campesino* struggle and militarization of the area.⁴⁷⁵ It was reported that in August 2011, the government had authorized a third military operation in the area known as Xatruch II, this time on a permanent basis, with the deployment of one thousand troops, between police and military forces. It was added that in the weeks following the mounting of the military operation, six male peasants and one female peasant had been tortured, including a 17 year-old boy. The civil society organizations noted that the murders, threats, harassment have still gone unpunished.⁴⁷⁶

301. At the hearing, the State informed that the land dispute in the area of Bajo Aguán dates back to 1996. It added that several steps have been taken to address the serious situation in the area, including the signing of several accords⁴⁷⁷ between the State and *campesino* organizations in order to settle the land disputes. In this regard, it noted that approximately 5,000 hectares benefiting peasant farmer organizations in the area were being handed over, housing was being built, openings at schools were being created, and scholarships were being awarded, among other things. Additionally it reported on the appointment of special prosecutors for investigation proceedings. With respect to the Xatruch II military operation, the State reported that it began in August of 2011 as a temporary operation, the main purpose of which was to “provide the necessary security guarantees during the negotiation and signing of the Agreement among the peasant farmers, business people, and the Government. It is also responsible for seeking to reduce drug trafficking activity in that area[.]”⁴⁷⁸

302. The Commission was also informed of several threats and other acts of harassment against human rights defenders who work in the area, which shall be examined in the section on the situation of human rights defenders in Honduras.

⁴⁷³ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras,” p. 5.

⁴⁷⁴ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras,” p. 5.

⁴⁷⁵ According to the report of the International Verification Mission, the forced removal of peasants from land are not carried out under due process and international standards, and this particularly infringes the right to food and the right to housing; the right of access to education is not ensured and most of these people do not have access to health services. Report “Honduras: Human rights violations in Bajo Aguán,” July 2011. Available at: http://www.fidh.org/IMG/pdf/honduras_informe_mision_bajo_aguan_-_version_final.pdf.

⁴⁷⁶ IACHR, thematic hearing “Human Rights Situation in Bajo Aguán,” on October 24, 2001. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123>

⁴⁷⁷ According to the civil society organizations attending the hearing before the IACHR, these agreements have been signed by the State with only a few of the *campesino* organizations of the area and they would not solve the root-causes of the problem.

⁴⁷⁸ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras,” p. 5.

- **Findings of the Truth and Reconciliation Commission**

303. On July 7, 2011, the Truth and Reconciliation Commission (CVR),⁴⁷⁹ created in 2010, released its report “*Para que los Hechos no se Repitan*”⁴⁸⁰ [‘So that the events are not repeated]. In its report, the CVR found the events of June 28, 2009 to be a *coup d’état*, and not constitutional succession, as the de facto government of Roberto Micheletti regarded them.⁴⁸¹ Additionally, the CVR established in its report that “Honduras lacks a clear procedure to settle disputes between the Branches of the State and a way to address and solve when a president or high-level official must undergo investigation or removal. The lack of a defined procedure can cause the overstepping of functions of the National Congress.”⁴⁸²

304. In the chapter “Findings and Recommendations,” the CVR noted that it confirmed the disproportionate use of force by the military and police institutions during the *coup d’état* and the *de facto* government; the result of which were human rights violations, which manifested themselves in the form of violent deaths, deprivation of liberty, torture, rape and political persecution. In this regard, it recommended the State to publically recognize that its authorities and agents committed human rights violations, apologize to the victims and pledge to them and to society that such violations will not be repeated.⁴⁸³

305. Additionally, the CVR recommended that the State investigate, prosecute and punish those responsible for the human rights violations taking place from June 28, 2009 until January 27, 2010:

The State of Honduras in fulfillment of its international obligations must investigate, try and punish all human rights violations, which took place from June 28, 2009 to January 27, 2010, as well as the responsibility of the persons identified as the main perpetrators of the violations, without excluding the highest levels of responsibility and without undue delay, and should ensure all protections of due process for the accused persons, including the presumption of their innocence, assistance of an attorney, full access to evidence and opportunities to examine and refute evidence. For this purpose, the Government of Honduras is to provide the Office of the Public Prosecutor and the competent judges the technical, logistical and budgetary support necessary to successfully carry out these investigations and proceedings. The Armed Forces, the National Police and other competent institutions must cooperate fully in a timely manner with the Office of the Public Prosecutor for these investigations, including identifying suspects, providing information and access to its files, records of operational orders, communications and intelligence reports and any other internal and personal documentation that may be relevant in the investigations into human rights violations.⁴⁸⁴

⁴⁷⁹ The Truth and Reconciliation Commission (CVR) was created on April 13, 2010, under Executive Decree PCM-011-2010, issued by President Porfirio Lobo Sosa. On May 4, 2010, the CVR began its work and was made up of Eduardo Stain, Coordinating Commissioner; Michael F. Kergin, María Amabilia Zavala Valladares, Julieta Castellanos and Jorge Omar Casco Zelaya, Commissioners and Sergio Membreño Cedillo as Executive Secretary.

⁴⁸⁰ Report “*Para que los Hechos no se Repitan*” [‘So that the events are not repeated’], available at: <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/TOMO-I-FINAL.pdf>

⁴⁸¹ In the Report “*Para que los Hechos no se Repitan*”, Findings and Recommendations Section – Principal Findings in connection with the events of June 28, 2009,” the Commission expressly notes in paragraph 6: “We the commissioners recognize that the call by the President of the Republic to a consultation first and opinion poll afterwards, known as the fourth ballot, marked a definitive and irreversible element of confrontation, culminated in the arrest of President Jose Manuel Zelaya under judicial order and then his expulsion to San Jose, Costa Rica, the *coup d’état* against the Executive Branch being executed in this way.”

⁴⁸² CVR, Report “*Para que los Hechos no se Repitan*”, Findings and Recommendations Section – Principal Findings in connection with the events of June 28, 2009, para. 15. Available at <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/hallazgos-y-recomendaciones-low.pdf>.

⁴⁸³ CVR, Report “*Para que los Hechos no se Repitan*”, Findings and Recommendations Section – Principal Findings in connection with the events of June 28, 2009, para. 35. Available at <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/hallazgos-y-recomendaciones-low.pdf>.

⁴⁸⁴ CVR, Report “*Para que los Hechos no se Repitan*”, Findings and Recommendations Section, III, Elements so that the events are not repeated, Recommendations in the area of human rights, para. 12.

Available at <http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/hallazgos-y-recomendaciones-low.pdf>.

306. The CVR also recommended the following to the Honduran State:

The Government and National Congress of Honduras must publically pledge to the victims to redress them for the damage that its agents caused them, under standards of restitution, indemnification, rehabilitation, satisfaction and guarantees of non repetition, and should establish a national reparation plan to ensure full redress of the victims of human rights violations stemming from the political crisis following June 28, 2009.

The Government and Judiciary must ensure full reparation to the victims of human rights violations stemming from the political crisis following June 28, 2009, under the responsibility of the State of Honduras or, as appropriate, under the responsibility of the perpetrators of said violations.

The State of Honduras must take measures of public acknowledgement of the victims individually and collectively, such as naming public facilities, monuments or commemorative plaques or other appropriate things after them.

The State of Honduras must publically acknowledge that the authorities and agents committed human rights violations, apologize to the victims and promise them and society that such violations shall not be repeated.

The State of Honduras must provide to the victims of human rights violations, or to their loved ones, the information that is in the possession of the state security forces on them [the victims] and disclose how it has been used.⁴⁸⁵

307. No information has been received during 2011 about the Alternative Truth Commission, which was established on June 28, 2010 and spearheaded by the Human Rights Platform (Plataforma de Derechos Humanos).

B. Respect and guarantee by the state of the exercise of freedom of expression

308. The Inter-American Commission on Human Rights has received information relating to the situation of the right of freedom of expression in Honduras, from civil society as well as from the State of Honduras. In terms of the latter, on December 16, 2011, the State of Honduras sent Official Letter No. 1899-DGAE-11 to the IACHR, forwarding Official Letter No. SP-A-158-2011 from the Office of the Attorney General of Honduras, in which the State makes reference to the situation of freedom of expression in Honduras and provides information with respect to the particular cases that have been reported to the IACHR and which are addressed in this report.

- Murders

309. The Special Rapporteur for Freedom of Expression of the IACHR has counted at least 13 murders of journalists and communicators in Honduras between 2010 and 2011, which could be related to their professional activities. The IACHR deplores these homicides and urges the State to conduct diligent and thorough investigations paying particular attention to the possibility of the motive of the crimes being the professional activities of the communicators. In addition, the IACHR appreciates the information provided by the State of Honduras with respect to the ongoing investigations into these murders and other acts of violence against journalists. It urges the State to follow up on these investigations diligently and to open the pertinent investigations in those cases where they have not yet been opened.

310. In its report to the IACHR, the State began by noting the murders of journalists in 2007 and 2009, years in which the murders of journalist Carlos Alberto Salgado (2007) and journalists

⁴⁸⁵ CVR, Report "Para que los Hechos no se Repitan", Findings and Recommendations Section, III, Elements so that the events are not repeated, Recommendations in the area of human rights, paras. 22 a 26.

Bernardo Rivera Paz, Rafael Munguía and Osman Rodrigo López (2009) were reported. The State also indicated that it is aware of its obligation to guarantee diligent and exhaustive investigations into acts that violate freedom of expression, and that the State “has requested the assistance of friendly countries to strengthen investigative teams with more personnel and with the necessary logistical resources.” In this same respect, the State specified that “between 2010 and 2011, the Office of the Public Prosecutor has documented 14 cases involving the deaths of journalists, in 9 of which the investigations have yielded specific theories and suspects.” As a result, those 9 cases have been brought before the courts.⁴⁸⁶ In particular, the IACHR urges the State not to rule out the theory that the victims could have been murdered in retaliation for the exercise of their right to freedom of expression, and to thoroughly exhaust any line of investigation in this respect.

311. In an initial case reported to the IACHR, concerning the murder of journalist Henry Suazo on December 28, 2010 in the town of La Masica, Department of Atlántida, the information received indicates that two individuals shot the journalist several times as he was leaving his home in the morning. He reported on general news as a correspondent for radio HRN and was a reporter on the local television news program *Cable Visión del Atlántico*. A few days prior to the murder, journalist Suazo had filed a complaint that he had received a death threat in a text message on his cell phone.⁴⁸⁷ With regard to this case, the State indicated that “On January 21, 2011, the Office of the Public Prosecutor filed a criminal complaint against an individual alleged to be the direct perpetrator of the offense of murder, and on the same date, the corresponding Court issued a warrant for the suspect’s arrest.”⁴⁸⁸

312. On May 11, 2011, journalist Hector Francisco Medina Polanco, manager and anchor of *Omega Visión* television station, was murdered in Morazan, Department of Yoro. According to reports, when he was leaving the television station the night of May 10, the journalist was followed by two unknown individuals riding on a motorcycle, who shot him as they approached his home. Hector Medina was taken to a hospital alive in San Pedro Sula, where he passed away early in the morning of May 11. In addition to managing the local TV station *Omega Visión*, Hector Medina worked as a producer and anchor on TV9 news, where he had recently reported on alleged irregularities by local authorities and land ownership disputes. He had been telling his family for weeks prior to his murder that he was receiving death threats.⁴⁸⁹ In August, a brother of the murdered journalist, who is also in the same field, charged that he had been threatened to persuade him to stop demanding an investigation of the crime.⁴⁹⁰ In reference to this case, the Honduran State specified that “Various proceedings have been conducted, including the taking of statements from the channel’s employees, from relatives, and from eyewitnesses, as well as from individuals who worked with him as a community outreach worker for PROHECO [...]”

⁴⁸⁶ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁸⁷ IACHR. Special Rapporteurship for Freedom of Expression. December 29, 2010. Press Release R125/10. [Special Rapporteurship for Freedom of Expression condemns murder of journalist in Honduras](#); Committee for the Protection of Journalists (CPJ). December 30, 2010. [Reportero hondureño abatido frente a su vivienda](#). [Honduran reporter gunned down in front of his home]; Reporters without Borders. December 29, 2010. [Honduras: Henry Suazo, décimo periodista asesinado en 2010](#). [Honduras: Henry Suazo, 10th journalist murdered in 2010]; Inter-American Press Society (SIP). December 29, 2010. [Condena la SIP asesinato de periodista en Honduras](#). [SIP condemns murder of journalist in Honduras]; El Nuevo Diario. December 28, 2010. [Asesinan a otro periodista en Honduras](#). [‘Another journalist is murdered in Honduras’]

⁴⁸⁸ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁸⁹ IACHR. Special Rapporteurship for Freedom of Expression. May 12, 2011. Press Release R45/10. [Relatoría Especial para la Libertad de Expresión deplora asesinato contra periodista en Honduras](#). [Special Rapporteur for Freedom of Expression deplors murder of journalist in Honduras]; Inter-American Press Association (IAPA). May 12, 2011. [La SIP repudia crimen y reclama al Gobierno hondureño cumplir compromiso para combatir violencia e impunidad](#). [SIP condemns crime and calls on Honduran Government to fulfill commitment to combat violence and impunity]; International Freedom of Expression Exchange (IFEX). May 18, 2011. [Asesinato de periodista destaca estado de país como uno de los peores para la prensa](#). [Murder of journalist highlights status of country as one of the worst for the press]; EFE News Agency. May 16, 2011. [Francia condena el asesinato del periodista hondureño Héctor Francisco Medina](#). [France condemns the murder of Honduran journalist Hector Francisco Medina]

⁴⁹⁰ El Heraldo. August 19, 2011. [Periodista denuncia amenazas de muerte](#). [Journalist denounces death threats]; Tiempo. August 10, 2011. [Familiares de comunicador asesinado denuncian amenazas](#). [Family of murdered journalist denounce threats]

inspections and other expert and scientific proceedings have also been conducted, and his cell phone records have been investigated. There are two theories in the case.”⁴⁹¹

313. The Special Rapporteurship learned of the murder of the owner of *Canal 24* Luis Ernesto Mendoza Cerrato, in the City of Danlí, El Paraíso, on May 19, 2011. Based on the available information, at least three hooded and heavily armed men ambushed Luis Mendoza and shot him several times at the entrance to the television station, when he came to work in the morning. Mendoza Cerrato died during the shooting while two women and a child, who were passing by, were wounded. The perpetrators fled in a vehicle, which was abandoned and set aflame later.⁴⁹² The Honduran State indicated that the case is related to another case and that “various measures have been undertaken, such as telephone wiretaps, judicial and police background checks, and others.”⁴⁹³

314. It was also reported that on July 14, 2011, journalist Nery Jeremías Orellana, Director of *Radio Jaconquera* and correspondent at *Radio Progreso*, was murdered in the municipality of Candelaria, Department of Lempira. According to the information in the file, journalist Orellana was riding on a motorcycle toward the radio station when he was intercepted by unknown individuals, who shot him several times in the head. He was transported alive to the hospital of Sensuntepeque but died a few hours later. As director of *Radio Jaconquera*, he had opened spaces of discussion on radio programs of the Catholic Church and of the National People’s Resistance Front (FNRP) and had held a critical position of the 2009 *coup d’état*. Shortly before his murder, Orellana had confirmed his attendance at a meeting of community radio stations scheduled for July 15, 2011.⁴⁹⁴ The State of Honduras reported that “Several proceedings have been conducted, including the taking of statements from coworkers, relatives, and protected witnesses, inspections and other expert and scientific proceedings. Also, mutual legal assistance was requested from El Salvador, the place of his death. There is a theory and a suspect in the case.”⁴⁹⁵

315. Information was also received of the murder of the popular social communicator Medardo Flores, on September 8, 2011 in the community of Blanquito, Puerto Cortés. According to available information, several unidentified individuals murdered Medardo Flores with firearms in the town where he resided. Medardo Flores, who was a farmer by trade, was part of a group of volunteer popular communicators of *Radio Uno* of San Pedro Sula and was in charge of finances in the northern part of the country for the Broad People’s Resistance Front (FARP).⁴⁹⁶

⁴⁹¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 7.

⁴⁹² IACHR. Special Rapporteurship for Freedom of Expression. May 27, 2011. Press Release R49/11. [Relatoría Especial deplora asesinato y atentado contra propietario y gerente de medios de comunicación en Honduras](#). [Special Rapporteurship deploras murder and attempted murder of owner and manager of media outlets in Honduras]; Committee for the Protection of Journalists (CPJ). May 25, 2010. [Un ejecutivo de medios asesinado, otro herido](#). [One Media Executive Murdered, Another Wounded]; La Tribuna. May 19, 2011. [Encapuchados ultimán a conocido empresario](#). [Hooded men murder well-known businessman]

⁴⁹³ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁴⁹⁴ IACHR. Special Rapporteurship for Freedom of Expression. July 18, 2011. Press Release R70/11. [Relatoría Especial para la Libertad de Expresión condena nuevo asesinato de periodista en Honduras y pide investigación exhaustiva](#). [Special Rapporteurship for Freedom of Expression condemns latest murder of journalist in Honduras and calls for thorough investigation]; Reporters Without Borders. July 15, 2011. [Asesinan al joven director de una radio la víspera de una reunión de medios comunitarios](#). [Young director of a radio station murdered on the eve of community media meeting]; Radio Progreso. July 16, 2011. [Asesinan director de Radio Jaconquera](#). [Director of Radio Jaconquera murdered]

⁴⁹⁵ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁴⁹⁶ IACHR. Special Rapporteurship for Freedom of Expression. September 12, 2011. Press Release 100/11. [Relatoría Especial para la Libertad de Expresión condena asesinato de comunicador en Honduras](#). [Special Rapporteur for Freedom of Expression condemns murder of journalist in Honduras]; Reporters Without Borders. September 10, 2011. [Asesinado el periodista Medardo Flores](#). [Journalist Medardo Flores murdered]; El Tiempo. September 9, 2011. [Asesinan a estudiante de locución Medardo Flores de Radio Uno](#). [Radio broadcasting student of Medardo Flores of Radio Uno murdered]; Inter-American Press Association

316. As the Inter-American Commission has held repeatedly, it is of paramount importance for the State to urgently conduct investigations through specialized independent agencies under special protocols of investigation that lead to conclusively determining whether or not the crimes are indeed connected to the practice of the profession and to enable the prosecution and conviction of the persons responsible for them. Additionally, it is essential for the State to put permanent mechanisms into place in order to ensure the lives and integrity of at-risk communicators. The persistence of impunity not only is a threat to the family members of the victims but also has an adverse effect on society as a whole, because it sows fear and leads to self-censorship.⁴⁹⁷

317. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

- **Assaults on journalists and media**

318. According the information on file, on May 23, 2011, in Tegucigalpa, the managing editor of the newspaper *La Tribuna*, Manuel Acosta Medina, was the target of an attempt on his life, which left him seriously wounded. Mr. Acosta’s car was blocked by two vehicles with armed individuals on board. When Acosta Medina accelerated to escape, the criminals shot and wounded him. The victim was able to drive home where his family came to his aid and took him to a hospital. Shortly after the attempt, the Police arrested five armed suspects who were riding in a similar vehicle to the one used in the attack.⁴⁹⁸

319. On April 27, 2011, a group of armed men allegedly attempted to ambush the director of *Radio Uno*, Arnulfo Aguilar, when he was returning to his home in San Pedro Sula. According to available information, Aguilar had managed to lock the gate and enter the residence before the suspects reached him. The journalist asked the Police for help, which arrived one hour later, when the individuals had already left. The incident occurred a few days after *Radio Uno* released cables from the US Department of State reported that weapons given to the Honduran Army were alleged to be in the possession of organized crime groups. *Radio Uno* has held a critical editorial line against the June 2009 *coup d’état*.⁴⁹⁹ The State provided information with respect to the case, indicating that “Several proceedings have been conducted, including the taking of statements from the victim and from witnesses, inspections, and other procedures. At this time, we are waiting for the victim to go to the Office of the Public Prosecutor in order for a psychological evaluation to be conducted.”⁵⁰⁰

...continuation

(IAPA). September 12, 2011. [Condena la SIP asesinato del quinto periodista ultimado en Honduras en 2011](#). [SIP condemns fifth murder of journalists in Honduras in 2011]

⁴⁹⁷ Cf. IACHR. Annual Report 2010. OEA/SER.L/V/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Para. 312.

⁴⁹⁸ IACHR. Special Rapporteurship for Freedom of Expression. May 27, 2011. Press Release R49/11. [Relatoría Especial deplora asesinato y atentado contra propietario y gerente de medios de comunicación en Honduras](#). [Special Rapporteurship deploras murder and attempted murder against owner and manager of media outlets in Honduras]; Committee to Protect Journalists (CPJ). May 25, 2010. [Un ejecutivo de medios asesinado, otro herido](#). [One Media Executive Killed in Honduras, Another Wounded]; *La Tribuna*. May 24, 2011. [Atentado criminal contra gerente de La Tribuna](#). [Criminal Attempt on the Life of Manager of *La Tribuna*]; C-Libre/IFEX. May 24, 2011. [Desconocidos tirotean al gerente de diario “La Tribuna”](#). [Unidentified Men Shoot Manager of the Daily “*La Tribuna*”]

⁴⁹⁹ Committee to Protect Journalists (CPJ). April 29, 2011. [Director de radio hondureño emboscado por sujetos armados](#). [Director of Honduran Radio Station Ambushed by Armed Individuals]; Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición](#). [Honduras: Assault on Owner of Opposition Radio Station Thwarted]

⁵⁰⁰ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

320. The Special Rapporteurship has expressed its concern in light of several acts of harassment and violence perpetrated against several community radio stations and reminds the Honduran State of its obligation to investigate these incidents and make sure that its agents, or private individuals, do not attack people who exercise their freedom of expression through these media outlets.

321. According to reports, on March 13, 2011, the Director of *La Voz de Zacate Grande*, Franklin Meléndez, was allegedly threatened by two men in connection with coverage of the land disputes in the area and one of them is alleged to have shot him in the leg. The assailants were fully identified but the local authorities did not take any action against them.⁵⁰¹ A few hours later, the same individual that allegedly shot Melendez, threatened to kill journalist Ethel Correa of *La Voz de Zacate Grande*, whom he warned: “You’ll be the second to die.”⁵⁰² On August 4, 2011 a request for an arrest warrant from the public prosecutor was filed for the attempted murder against the person suspected of shooting Franklin Melendez, and on August 9, the presiding judge issued an arrest warrant⁵⁰³. The State of Honduras provided information indicating that “The defendant has been arraigned and the initial hearing was held on October 4, 2011.”⁵⁰⁴

322. On April 16, a journalist from the *La Voz de Zacate Grande* station, Pedro Canales, is alleged to have been the target of sabotage and death threats. That same day, Canales noticed unidentified individuals had sunk nails into one of the tires of his vehicle and later two armed individuals allegedly intercepted him and pointed their weapons at him.⁵⁰⁵ Reports also indicated that two journalists from the community radio station *La Voz de Zacate Grande* had been detained in the performance of their reporting duties on December 15, 2010. Based on the available information, correspondents Elia Hernández and Elba Rubio were covering the forced removal of a family from land in the community of Coyolito, on the Isle of Zacate Grande, where they allegedly were detained by members of the preventive Police and the Navy. According to the report, the lady reporters were stripped of their journalistic accreditation and cameras, held incommunicado for 36 hours, and charged with the crime of disobedience.⁵⁰⁶ The journalists are alleged to have been restricted by the court from performance of their journalistic tasks, in prohibiting their departure from the country, compelling them to secure permission to leave Coyolito, forcing them to appear before a judge every two weeks and prohibiting their participation in public demonstrations, as well as prohibiting them from having contact with the community of Coyolito.⁵⁰⁷

⁵⁰¹ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11 [Office of the Special Rapporteur Expresses Concern Over Attacks Against Media in Honduras](#); Reporters Without Borders. March 16, 2011. [Police try to hush up shooting of community radio station’s president](#).

⁵⁰² C-Libre/IFEX. March 21, 2011. [Comunicadora de la emisora La Voz de Zacate Grande amenazada de muerte](#). [Women Communicator of the radio station La Voz de Zacate Grande threatened with death]; Reporters Without Borders. March 24, 2011. [Se multiplican los ataques y agresiones a la prensa](#). [Attacks and assaults on the press increase]

⁵⁰³ Communication from the Center for Justice and International Law (CEJIL) to the IACHR. Ref: Communicators of *The Voice of Zacate Grande* MC115-11. September 2, 2011.

⁵⁰⁴ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁵⁰⁵ C-Libre/IFEX. April 19, 2011. [Atentan contra comunicador social de la radio La Voz de Zacate Grande](#). [Attempt on the Life of Social Communicator of Radio Station La Voz de Zacate Grande]; Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición](#). [Honduras: Attack against owner of opposition radio station thwarted]

⁵⁰⁶ IACHR. Special Rapporteurship for Freedom of Expression. January 11, 2011. Press Release R1/11. [Relatoría Especial manifiesta su preocupación por hostigamiento de radios comunitarias en Honduras](#). [Office of the Special Rapporteur for Freedom of Expression of expresses its concern over the recent acts of harassment sustained by several community radio broadcasters in Honduras]; World Association of Community Broadcasters (AMARC)/IFEX. December 21, 2010. [Apresan a corresponsales de la emisora Zacate Grande](#). [Correspondents from radio station Zacate Grande Detained]; World Association of Community Broadcasters (AMARC)/IFEX. December 29, 2010. [Corresponsales de radio comunitaria indiciadas por el delito de “desobediencia”](#). [Correspondents from community radio station charged with crime of ‘disobedience’]; Reporters Without Borders. December 27, 2010. [Las dos corresponsales de La Voz de Zacate Grande podrían ser juzgadas por el delito de desobediencia](#). [Two women correspondents from La Voz de Zacate Grande could be tried for crime of disobedience]

⁵⁰⁷ Reporters without Borders. January 20, 2011. [Medidas judiciales contra dos corresponsales de una radio comunitaria a pesar de la falta de condena sobre el fondo](#). [Judicial measures against correspondents of community radio station despite non Continúa...

323. According to the information received by the IACHR, on February 15, individuals identified as agents of the national Department of Criminal Investigation (DNIC), are alleged to have show up at the radio station in order to serve notice of an arrest warrant for disobeying an order to shut down the radio station, that had been issued in 2010 and to conduct an inspection. It is claimed that the agents attempted to force their way inside when radio station officials prevented them from entering.⁵⁰⁸ Additionally, on April 7 the Office of the Prosecutor of Choluteca allegedly issued arrest warrants for the crimes of disobeying authority and usurpation of land, against eight individuals who were members of *La Voz de Zacate Grande* and the Land Titling Movement (*Movimiento de Titulación de Tierras*), including Franklin Meléndez, Ernesto Lazo, Rafael Osorio, Danilo Osorio, Pedro Canales, Wilmer Rivera, Ethel Correa and Benito Pérez.⁵⁰⁹ In light of proof of a situation of imminent danger, on April 18, 2011, the IACHR requested the Honduran State to adopt urgent precautionary measures to ensure the lives and physical integrity of the communicators of *La Voz de Zacate Grande*, and to work out a specific agreement with the beneficiaries and their representatives on the measures to be taken.⁵¹⁰

324. The State indicated that the eviction from the property where the station operates was ordered by the District Trial Court of Amapala, and that the measure “is not related to the journalists’ activities, but rather to the unlawful appropriation of the land on which [the station] operates.” The State confirmed that a criminal complaint was filed against the 8 above-named journalists for the offenses of “unlawful appropriation and tax fraud,” and noted that following the issuance of the warrants for their arrest, the journalists appeared voluntarily at an arraignment hearing held on May 5, 2010, at which “the Office of the Public Prosecutor requested that the defendants be granted supervised pretrial release.”⁵¹¹

325. The State established that on May 27, 2010, the Court issued an incarceration order for the offense of unlawful appropriation with respect to 5 of the defendants, while the complaint alleging tax fraud was dismissed with prejudice. The Court also “affirmed the precautionary measures established at the arraignment hearing” with respect to the 5 aforementioned journalists. In addition, the Court ordered the dismissal without prejudice of the complaints against the other 3 accused journalists, and ordered that the property be vacated immediately. According to the information received, all of the defendants appealed the incarceration order before the Choluteca Court of Appeals. That appeal was declared inadmissible by the court on August 4, 2010. Subsequently, on October 11, 2010, the defendants filed a writ of *amparo* [petition for a constitutional remedy], which was forwarded to the Supreme Court of Justice on October 11, 2010.⁵¹²

...continuation
conviction on the merits]; AMARC/IFEX. January 21, 2011. [Emiten auto de prisión a corresponsales de radio](#). [Order of imprisonment issued against correspondents of radio station]

⁵⁰⁸ World Association of Community Broadcasters (AMARC). February 17, 2011. [Reinicia el hostigamiento en contra de La Voz de Zacate Grande por parte del gobierno de Honduras](#). [Harassment by government against La Voz de Zacate Grande resumes]; La Voz de Zacate Grande. February 15, 2011. [Policía llega a La Voz de Zacate Grande](#). [Police arrive at La Voz de Zacate Grande]

⁵⁰⁹ C-Libre. May 3, 2011. [Continúa la violación a la libertad de expresión en Honduras: Impunidad y represión el rostro del año 2011](#). [Violation of freedom of expression continues in Honduras: Impunity and repression the face of 2011]; Defenders on Line. April 8, 2011. [Ocho órdenes de captura contra dirigentes y pobladores de Zacate Grande](#). [Eight arrest warrants against leaders and residents of Zacate Grande]

⁵¹⁰ IACHR. Precautionary Measure MC 115-11. [Medida Cautelar MC 115-11](#). April 18, 2011; Center for Justice and International Law (CEJIL). April 26, 2011. [Comisión Interamericana exige que Honduras proteja a integrantes de radio comunitaria](#). [Inter-American Commission demands Honduras to protect members of community radio station]; Journalists in Spanish (Periodistas en Español). April 27, 2011. [Censura en Honduras: La CIDH pide protección para los periodistas de La Voz de Zacate Grande](#). [Censorship in Honduras: IACHR requests protection for journalists of La Voz de Zacate Grande]; Reporters Without Borders. June 28, 2011. [Radios comunitarias: voces aún excluidas de la frecuencia radiofónica, señalan RSF y AMARC](#). [Community Radio Broadcasters: voices still excluded from radiofrequencies, according to RSF and AMARC]

⁵¹¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 8.

⁵¹² Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 9.

326. The information provided by the State indicates that on June 2, 2010, the court officer in charge of executing judgments carried out the eviction of the property, together with members of the military and the National Police. The State established that “The defendants were not there, and the door was locked. Accordingly, the specified property was cordoned off with yellow adhesive tape, as ordered by the Court.” In spite of the fact that the State indicated that upon arriving at the property “they were met by unknown persons carrying some machetes and sticks,” it stated that the operation “was carried out peacefully, without anyone being injured.” The State further maintained that at the time of the eviction, “the radio station had already ceased broadcasting because of a problem with the equipment it was using,” and that “at no time during the execution of the order were they restricted from continuing with their broadcasts.” In this same respect, however, the State underscored that the broadcasts were illegal because the station does not have “a broadcast license issued by the National Telecommunications Council (CONATEL), and does not meet the other legal operating requirements, like having the municipal permits.”⁵¹³

327. The State noted that there was a new allegation that “the defendants re-entered the property [...] which resulted in the filing of another complaint by the prosecutor’s office on March 31, 2011 for the offense of contempt.” The defendants were again granted supervised pretrial release.⁵¹⁴

328. Finally, the State addressed “the alleged intimidating acts and attacks by armed, masked individuals.” It stated that those individuals were on-site investigative technicians from the National Bureau of Criminal Investigation (DNIC) who were at the property “to conduct the inspections requested by the prosecutor’s office,” and that they were met by individuals armed with “sticks, rocks, and machetes” who proceeded to intimidate, assault, and threaten the investigators. The information received indicates that in order to avoid a confrontation, they left the scene “after conducting the proceedings that had been ordered.”⁵¹⁵

329. To date, the IACHR does not know whether the radio station has continued to operate, and it is closely following the complaints that the eviction and seizure of the station are aimed at preventing it from continuing to air critical reports and expressions regarding matters of public interest in the region.

330. Furthermore, the IACHR received information about acts of harassment and threats to force the community radio station *Faluma Bimetu* (*Sweet Coconut*) to suspend broadcasts for 12 days beginning on January 14, 2011. According to the reports, municipal authorities of Tela, assisted by police officers, arrived on January 12, 2011 in the Garifuna community of Triunfo de la Cruz, where the radio station operates out of, to pressure it to appoint certain members to the board of the station, even though the election of board members was scheduled for January 28. In light of the refusal of the community to move up the date of the appointment, the members of the municipal delegation threatened to burn down the facilities of the radio station, which had already been destroyed by arsonists a year earlier.⁵¹⁶ On January 14, the director of radio *Faluma Bimetu*, Alfredo López, was brought before a criminal court in connection with a shooting that had taken place a few days earlier in Triunfo de la Cruz, without any charges being brought against him, much less any evidence being introduced to implicate him. At that same hearing, the charges were dropped due to lack of evidence. When broadcasts were suspended, the workers of the radio station hung a sign at the entrance that said: “Closed temporarily due to

⁵¹³ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 9.

⁵¹⁴ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 10.

⁵¹⁵ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 10.

⁵¹⁶ *Faluma Bimetu* and Garifuna community have maintained their opposition to real estate development projects in the Atlantic region of Honduras.

insecurity.” *Faluma Bimetu* resumed broadcasts on January 26.⁵¹⁷ Lastly, on April 7, 2011, unidentified individuals set Alfredo Lopez’ house on fire, and as of this date, the outcome of the investigation is unknown.⁵¹⁸ The IACHR requested information from the State of Honduras on January 18, regarding these incidents.

331. The State indicated with respect to the incident at the community radio station *Faluma Bimetu* that a complaint had reportedly been filed before the Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage “against unknown persons for the offense of harm to the Community of Triunfo de la Cruz.” The Honduran State reported that “the local Prosecutor’s Office in Tela conducted several investigative proceedings that subsequently led to the filing of a complaint on February 18, 2001 against unknown persons for the offenses of aggravated robbery and arson.” In the initial hearing of April 14, 2011 “the complaint alleging aggravated robbery was dismissed without prejudice, and the complaint alleging arson was dismissed with prejudice.” In this respect, the State indicated that “the investigations are ongoing.” In addition, with respect to the fire at Mr. Alfredo López’s house, the State specified that “Various proceedings have been conducted, including the taking of statements from the victims, the performance of a visual inspection, and the compilation of a photo album of the damages. A report was also requested from the Tela Fire Department for purposes of determining the cause of the fire. It has not yet been possible to identify the perpetrators.”⁵¹⁹

332. According to the information provided, on January 5, 2011, alleged members of the Electric Measuring Service of Honduras (SEMEH) entered the offices of the Civic Council of People’s and Indigenous Organizations (COPINH) in the city of La Esperanza and turned off the electricity, preventing the community radio stations *Guarajambala* and *La Voz Lenca* from broadcasting. According to the affected individuals, the purpose of the cutting of the electricity was to prevent these radio stations from continuing to broadcast, as retaliation for the critical content of their broadcasts. Additionally, the members of the SEMEH made death threats against them.⁵²⁰

333. The Honduran State indicated that “on January 6, 2011, the Office of the Public Prosecutor filed a complaint alleging the offense of threats” against two SEMEH employees. After the arraignment and the initial hearing, an incarceration order was issued against both defendants on February 1, 2011. They filed a motion for appeal that is still pending. The State stressed that “SEMEH is a private company in charge of measuring the electric power services of all consumers in the country, and it

⁵¹⁷ Radio Tierra. January 17, 2011. [Cesan las transmisiones de la radio comunitaria garífuna Faluma Bimetu “Coco Dulce” ante el incremento de amenazas y hostigamiento.](#) [Garífuna Faluma Bimetu radio broadcasts halted as a result of increased threats and harassment]; Journalists in Spanish. January 19, 2011. [Radio Faluma Bimetu se apaga ante la amenaza criminal.](#) [Radio Faluma Bimetu goes silent due to threat of crime]; World Association of Community Broadcasters (AMARC). February 1, 2011. [La emisora comunitaria Radio Faluma Bimetu reinuda sus transmisiones bajo una gran tensión.](#) [Community radio broadcaster Faluma Bimetu resumes broadcasts under heightened tension]; AMARC/RSF/IFEX. February 3, 2011. [Emisora comunitaria reanuda sus transmisiones bajo una gran tensión.](#) [Community radio broadcaster resumes broadcasts under heightened tension]

⁵¹⁸ Reporters Without Borders. April 29, 2011. [Honduras: Ataque frustrado contra el dueño de una emisora de oposición.](#) [Honduras: Attack against owner of opposition broadcaster thwarted]; Afro Legacy (Legado Afro.) April 12, 2011. [Honduras: Incendian casa de integrante de radio comunitaria Faluma Bimetu \(Coco Dulce\).](#) [Honduras: house of member of community radio broadcaster Faluma Bimetu (sweet coconut) set ablaze]; RSF/AMARC/IFEX. April 13, 2011. [Las radios comunitarias siguen siendo presas de grandes dificultades por el simple hecho de existir.](#) [Community radio broadcasters in big trouble for the simple fact of existing]

⁵¹⁹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 10.

⁵²⁰ IACHR. Special Rapporteurship for Freedom of Expression. January 11, 2011. Press Release R1/11. [Relatoría Especial manifiesta su preocupación por hostigamiento de radios comunitarias en Honduras.](#) [The Office of the Special Rapporteur expresses its concern over the recent acts of harassment sustained by several community radio broadcasters in Honduras]; World Association of Community Broadcasters (AMARC). March 17, 2011. [Integrantes de radios comunitarias reciben amenazas de muerte de miembros de empresa privada contratada por el Estado hondureño.](#) [Members of community radio stations receive death threats from members of private company hired by the Honduran State]; Foodfirst Information and Action Network (FIAN). January 5, 2011. [Denuncia pública urgente: Consejo Cívico de Organizaciones Populares e Indígenas de Honduras COPINH.](#) [Urgent public denouncement: Civic Council of People’s Organizations of Honduras (COPINH)]; AMARC/IFEX. January 5, 2011. [Integrantes de radios comunitarias reciben amenazas de muerte.](#) [Members of community radio stations receive death threats]

shuts off the power of individuals or legal entities that are delinquent in payment for services.” According to the State, “It was proven before the Office of the Public Prosecutor that COPINH was behind in its payment, and that is why its power was cut.” The State indicated that it assumes that “the members of COPINH were opposed to the power shut-off, and that gave rise to a dispute with the SEMEH employees.” It underscored that “the members of COPINH have not demonstrated interest in continuing with the case.”⁵²¹

334. Information has been received about several assaults on Honduran journalists, indicating that on March 25, 2011, police officers fired tear gas bombs at *Canal 36-Cholusat* reporter Richard Casulá, and cameraman Salvador Sandoval, as they were covering the police response to the educators’ demonstration in Tegucigalpa. Sandoval was wounded in the face and Casulá suffered from gas inhalation poisoning.⁵²² The State asserted that several proceedings have been conducted with respect to these events; nevertheless, “to date it has not been possible to identify the officers.”⁵²³ According to the information received, on March 22, 2011, the Police also assaulted journalist Lidieth Díaz, cameraman Rodolfo Sierra, of *Canal 36-Cholusat*, and the director of *Radio Globo*, David Romero, while they were in conversation with a group of professors.⁵²⁴ The State of Honduras reported that “The Office of the Public Prosecutor filed a complaint against five police officers alleging the offense of abuse of authority.” However, the presiding Court issued an order of incarceration against one of the officers, and dismissed the complaint with prejudice in the case of the other four officers. The Office of the Public Prosecutor appealed the dismissal with prejudice on June 27, 2011, but the court affirmed the lower court’s decision, “and therefore the Office of the Public Prosecutor filed a writ of *amparo* [petition for a constitutional remedy], which is pending.”⁵²⁵

335. In a separate incident, according to reports, on March 21, 2011, police agents fired tear gas bombs and rubber bullets at journalist Sandra Maribel Sánchez, director of *Radio Gualcho*, and *Globo TV* cameramen Uriel Rodríguez, as they were covering the forced removal of teachers in Tegucigalpa.⁵²⁶ The State reported that “The Office of the Public Prosecutor filed a complaint against a police officer alleging the offense of abuse of authority”; an initial hearing has yet to be held in the case.⁵²⁷ On March 30, 2011, *Radio Progreso* correspondent Pedro López was detained for four hours by police agents in Potrerillos, Department of Cortés, as he reported on a protest demonstration in the context of

⁵²¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” pp. 10-11.

⁵²² IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Special Rapporteur expresses concern over assaults against communicators in Honduras]; Reporters Without Borders. March 28, 2011. [Honduras: La policía hiere a dos periodistas que cubrían una manifestación](#). [Honduras: Police wound two journalists covering demonstration]; C-Libre. March 25, 2011. [Periodistas víctimas de represión policial](#). [Journalists victims of police crackdown]

⁵²³ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵²⁴ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Special Rapporteur expresses concern over assaults against communicators in Honduras]; C-Libre. March 23, 2011. [Policía Nacional atenta contra la vida de los periodistas David Romero y Lidieth Díaz](#). [National Police Attempt against the Lives of journalists David Romero and Lidieth Díaz]; Reporters Without Borders. March 28, 2011. [Un periodista herido y otro intoxicado denuncian un ataque de la policía al margen de las manifestaciones del magisterio](#). [One wounded journalist wounded and another poisoned denounce an police attack on the margin of teachers’ demonstration]

⁵²⁵ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵²⁶ IACHR. Special Rapporteurship for Freedom of Expression. March 30, 2011. Press Release R27/11. [Relatoría Especial manifiesta preocupación por agresiones contra comunicadores en Honduras](#). [Office of the Special Rapporteur Expresses Concern over Attacks Against Media in Honduras]; Revistazo. March 22, 2011. [Policías atacan sin reparo a periodista de Cholusat Sur](#). [Police attack journalist of Choulsat Sur without qualms]; C-Libre. March 22, 2011. [Policía Nacional agrede a periodista y camarógrafo](#). [National Police assault journalist and cameraman]

⁵²⁷ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

the nationwide work stoppage.⁵²⁸ That same day, a bullet wounded journalist David Corea Arteaga of the *Centro de Noticias de Colón* in the jaw, as he reported on the forced removal of demonstrators by the Police and the Army.⁵²⁹

336. On May 5, 2011, reporters Silvia Ardón of *Radio Uno* and Noel Flores of *Globo TV*, as well as the cameraman of that station, Uriel Rodríguez, were assaulted by policemen in San Pedro Sula as they tried to obtain information on a group of individuals being held in custody at the police station, for participating in a demonstration that was broken up with tear gas. According to the information provided to this Commission, the policemen pushed the communicators and prevented them from doing their job as journalists.⁵³⁰ The State indicated that these acts have not been reported to the Office of the Public Prosecutor, and “requests that those individuals file the appropriate complaint in order to be able to open an investigation into the matter.”⁵³¹ One day later, cameraman Uriel Rodríguez was beaten again and his equipment was destroyed by agents of the National Police. According to the reports, Rodríguez was wounded in the head and his equipment was destroyed while he was filming the violent breakup of a student demonstration. The communicator was taken to one hospital where he was supposed to have been stitched up but was then transferred to a different hospital. Government officials had gone to the original hospital he was supposed to go to with the intention of arresting him.⁵³² With respect to these events, the State reported that on November 18, 2011 “the Office of the Public Prosecutor filed a complaint alleging the offense of torture.”⁵³³

337. The IACHR has been informed of the armed robbery of journalist Edgardo Antonio Escoto Amador on September 22, 2011, in colonia Las Brisas of the city of Comayagüela. Edgardo Antonio Escoto Amador, also known as “el Washo”, is the coordinator of the news program “Temas y Debates” and the interview program “Entrevista con el Washo [interview with el Washo]” on Canal 13 in Tegucigalpa. According to reports, two men on a motorcycle intercepted him while he was heading to his car; they held him up at gunpoint with wide gauge firearms and grabbed his laptop, which contained confidential information. Prior to the hold up and harassment, the journalist had reported on matters connected to the Armed Forces and the *coup d'état* and, according to the information obtained, had been the target of threats.⁵³⁴

338. The ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR establishes that: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals

⁵²⁸ Radio Progreso. March 30, 2011. [Detienen a corresponsal de Radio Progreso en Potrerillos](#). [Correspondent of Radio Progreso Arrested in Potrerillos]; Revistazo. March 30, 2011. [Sin razón justificada, policía aprehende durante varias horas a periodista de Radio Progreso](#). [Without any justifiable reason, police hold Radio Progreso Journalist for hours]

⁵²⁹ Committee to Protect Journalists (CPJ). April 6, 2011. [El CPJ alarmado por ola de ataques contra la prensa en Honduras](#). [CPJ alarmed by wave of attacks against the press in Honduras]; C-Libre. April 1, 2011. [Periodista en herido de bala disparada por el Ejército Nacional](#). [Woman Journalist wounded by bullet shot from National Army]

⁵³⁰ C-Libre. May 5, 2011. [Periodista es agredida mientras intentaba recabar información de manifestantes detenidos](#). [Journalist is assaulted while attempting to gather information about detained demonstrators]; World Association of Community Broadcasters (AMARC). May 6, 2011. Reporters Without Borders. May 9, 2011. [Nuevas agresiones contra los medios de oposición en San Pedro Sula tras el atentado contra un director de radio](#). [More assaults against the opposition media in San Pedro Sula after attempt on life of radio station director]

⁵³¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵³² C-Libre. May 6, 2011. [Periodista Gráfico de Globo TV es brutalmente golpeado por la Policía Nacional](#). [Graphic journalist from Globo TV is brutally beaten by National Police]; YouTube. May 9, 2011. [Golpiza a camarógrafo de Globo TV Uriel Gudiel Rodríguez](#). [Globo TV cameraman Uriel Gudiel Rodríguez beaten]

⁵³³ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 11.

⁵³⁴ C-Libre. September 23, 2011. [Hombres armados intimidan a periodista](#). [Armed men intimidate journalists]; World Association of Community Broadcasters (AMARC). September 26, 2011. [RSF pide protección a los periodistas Mario Castro y Edgardo Antonio Escoto](#). [RSF requests protection for journalists Mario Castro and Edgardo Antonio Escoto]; Knight Center for Journalism in the Americas. September 28, 2011. [Honduran journalist attacked; laptop with coup d'état information stolen](#).

and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

- **Threats**

339. During 2011, information was received regarding several acts of violence, intimidation and harassment of journalists. On July 17, 2011, journalist Roberto García Fúnez, correspondent of *Radio Progreso* in the municipality of Arizona, Department de Atlántida, was allegedly physically assaulted by the mayor of Arizona at a public gathering and, consequently, the journalist brought a suit for physical assault against the mayor on July 25. According to reports, the journalist and his family were the targets of threats and acts of harassment.⁵³⁵ According to the information, on September 14, 2011, journalist Mario Castro Rodríguez, director of the news program “El látigo contra la corrupción” [‘the whip against corruption’] on Globo TV, received death threats via text messages.⁵³⁶ Journalists Esdras Amado López and Mario Rolando Suazo, of Canal 36-Cholusat, received death threats after disclosing information on alleged irregularities in the Honduran Catholic church. According to the account, the journalists began to receive threatening text messages on their cell phones, after revealing on July 12, the resignation letter of a priest in which alleged anomalies committed by the religious institution were mentioned.⁵³⁷ As of September 8, journalist Mario Castro Rodríguez, director of the news program “El látigo de la corrupción”, which is broadcast on Canal Globo TV in Tegucigalpa, received threats on several occasions via text messages to his cell phone.⁵³⁸

340. The Special Rapporteurship reiterates that, according to the ninth principle of the Declaration of Principles on Freedom of Expression of the IACHR: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

- **Indirect censorship, subsequent punishment and limitations on access to public information**

341. The IACHR has received information on National Telecommunications Commission (CONATEL)-issued resolution NR003/11 of February 24, 2011, which suspends the permitting and licensing of radio electric frequencies for Low Power FM (LPFM) Stations operating in the range of 88 to 108 MHz. CONATEL establishes that the use of those frequencies can only be authorized as repeaters for operators who have a frequency in another range. The decision would affect a group of community radio broadcasters that could not gain any access to other powers or frequencies because the only

⁵³⁵ C-Libre/IFEX. July 27, 2011. [Corresponsal de Radio Progreso amenazado de muerte](#). [Radio Progreso Correspondent receives death threat]; Canadian Journalists for Free Expression (CJFE). August 24, 2011. [Honduran Journalist Facing Death Threats](#).

⁵³⁶ International Freedom of Expression Exchange (IFEX). September 14. [Director de noticiario recibe amenazas de muerte](#). [Director of news program receives death threats]; C-Libre. September 14, 2011. [Director del noticiario “El látigo contra la corrupción” recibe amenazas de muerte](#). [Director of news program “El látigo contra la corrupción” receives death threats]; World Association of Community Broadcasters (AMARC). September 26, 2011. [RSF pide protección a los periodistas Mario Castro y Edgardo Antonio Escoto](#). [RSF request protection for journalists Mario Castro and Edgardo Antonio Escoto]

⁵³⁷ El Libertador. July 14, 2011. [Amenazas de muerte a periodistas Mario Rolando Suazo y Esdras Amado López de Canal 36](#). [Death threats against Canal 36 journalists Mario Rolando Suazo and Esdras Amado Lopez]; C-Libre. July 18, 2011. [Amenazan de muerte a periodistas de Canal 36](#). [Canal 36 journalists receive death threats]

⁵³⁸ The messages, which were sent repeatedly, were text such as: “It is great that they kill you pigs;” “Better to bring you all down;” “Old scoundrel let them kill you,” “ha, ha, ha they’re killing those dumb guys, ass hole,” Reporters Without Borders. September 28, 2011. [RSF pide protección para los periodistas Mario Castro y Edgardo Escoto](#). [RSF requests protection for journalists Mario Castro and Edgardo Escoto]; C-Libre. September 14, 2011. [Director del noticiario “El látigo contra la corrupción” recibe amenazas de muerte](#). [Director of news program “El látigo contra la corrupción” receives threats]

procedure to obtain them is through a bidding process.⁵³⁹ Based on the information received, this resolution came about despite the commitments accepted by the Honduran State at the United Nations Human Rights Council Universal Periodic Review in November 2010, under which Honduras made a commitment to “generating a debate in the National Congress and civil society with a view to harmonizing the regulatory framework of the Telecommunications Sector Law and ensuring that it is was *[sic]* line with the international human rights conventions and standards, in particular with regard to the levels of public, private and community broadcasting.”⁵⁴⁰

342. In this respect, the Honduran State maintained that Resolution NR003/11 “is based on technical considerations” relating to the saturation of the radio spectrum in the 88-108MHZ band, specifically for the stations that use frequency modulation (FM). This is because “in the more populated zones or areas of the country there is no availability of radio spectrum frequencies in that frequency range.” According to the State, that situation resulted in CONATEL authorizing “low power radio frequencies within the country to cover those zones that were not covered by regular power radio broadcasting stations.” The State maintained that these provisions have given rise to “obstacles to the development and implementation of new channeling schemes and new broadcasting zones made possible by the new technologies,” and that the new resolution aims to “prevent greater problems for the future planning of channeling schemes and of service areas for sound broadcasting services.”⁵⁴¹ Nevertheless, the IACHR notes that in the information provided, the State did not make reference to any difficulty that this resolution imposes upon community radio stations, in the sense that they would not be able to access other powers and frequencies through procedures other than financial bidding.

343. Principle 13 of the Declaration of Principles on Freedom of Expression of the IACHR holds that: “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans, the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media because of the opinions they express threaten freedom of expression, and must be explicitly prohibited by law. The means of communication have the right to carry out their role in an independent manner. Direct or indirect pressures exerted upon journalists or other social communicators to stifle the dissemination of information are incompatible with freedom of expression.”

344. In accordance with Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR: “Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news.”

345. According to the information we received, on September 23, 2011, the National Congress denied the digital magazine *Revistazo.com* information on non-governmental organizations, churches and foundations that had received money from the State during the *de facto* government of Roberto Micheletti, from June 28, 2009 to January 27, 2010. Congress limited its response to stating that it had

⁵³⁹ National Telecommunications Council. February 24, 2011. [Resolución NR002/11](#), published in the Gazette of the Republic of Honduras on April 5, 2011; World Community Broadcasters Association (AMARC)/IFEX. February 4, 2011. [El gobierno emite resolución para impedir acceso a frecuencias de radio en baja potencia](#). [Government issues resolution to prevent access to low power radiofrequencies]; C-Libre. February 4, 2011. [CONATEL pretende negar la apertura a nuevas radios comunitarias](#). [CONATEL attempts to deny the opening of new community radio stations]

⁵⁴⁰ UN. Human Rights Council. November 15, 2010. [Proyecto de Informe del Grupo de Trabajo sobre el Examen Periódico Universal: Honduras](#). [Draft Report of the Working Group on the Universal Periodic Review: Honduras]. Para. 85b.

⁵⁴¹ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras.” p. 12.

information available on the requested subject as of 2010, but did not have information from 2008 to 2009. *Revistazo* filed an administrative appeal for review with the Institute of Access to Public Information, which as of the date of completion of this report had not ruled on the appeal.⁵⁴²

346. The 4th Principle of the Declaration of Principles on Freedom of Expression establishes: "Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies."

C. Guarantees of due process of the law and effective access to justice

347. Available information indicates that no progress has been made in investigations on human rights violations committed during the *coup d'état* by the *de facto* government, which remain in impunity. An additional element in this context is the amnesty law currently in effect in Honduras, which the judiciary could enforce and thus put up further roadblocks to investigations.

- Judicial proceedings against the *Junta* of Commanding Officers

348. On January 6, 2010, the Office of the Public Prosecutor filed with Supreme Court of Justice a request to indict the highest-ranking officers of the armed forces for the expulsion of President Zelaya from the country on June 28, 2009.

349. Specifically, the Chief of the Joint Chiefs of Staff, Romeo Vásquez; Deputy Chief of the Joint Staff, General Venancio Cervantes, General Miguel Ángel García Padgett –Chief of the Army -, el General Luis Javier Prince –Air Force, Rear Admiral Juan Pablo Rodríguez -Navy -, and General Carlos Cuéllar -Inspector General of the Armed Forces-, were charged with the crimes of abuse of authority to the detriment of public administration and illegal expulsion from the country to the detriment of security. On January 26, 2010, Chief Justice of the Supreme Court Jorge Alberto Rivera Avilés dismissed the charges with prejudice in favor of the defendants.⁵⁴³ On February 18, 2010, the Special Court of Appeals –made up of Supreme Court Justices Jorge Reyes, Rosa de Lourdes Paz and Víctor Manuel Martínez- upheld that decision. On February 23, 2010, the Office of the Public Prosecutor filed an Appeal for Review with the Special Court of Appeals. According to press reports, this appeal was ruled groundless.

350. According to the information received in 2011, the Public Ministry requested by an appeal [*recurso de amparo*] to revoke the dismissal granted in favor of the Joint Chiefs [*Junta de Comandantes*]. The Supreme Court of Justice on October 19, 2011 rejected the referred appeal leaving the dismissal final.

351. In this regard, the State asserted that the human rights situations reported have been processed by the Office of the Special Prosecutor for Human Rights, "as in the case of the Joint Chiefs [*Junta de Comandantes*]," in which the proper due process guarantees have been observed."⁵⁴⁴

- Amnesty⁵⁴⁵

⁵⁴² *Revistazo*. September 23, 2011. [Gobierno Nacional Niega Información Pública e irrespeto la Ley de Transparencia](#). [National Government Denies Public Information and Breaks the Law of Transparency]; C-Libre. September 28, 2011. [Congreso Nacional niega información sobre organizaciones que recibieron dinero durante el golpe](#). [National Congress denies information on organizations that received money during the coup]

⁵⁴³ According to provisions of the constitution, the Supreme Court of Justice has the power to "hear cases brought against the highest officials of the State and Deputies."

⁵⁴⁴ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras," p. 12.

352. The Amnesty Decree was approved by the National Congress of Honduras on January 26, 2010, and was signed into law by President Porfirio Lobo on January 27, 2010, immediately after being sworn in as president. The decree was then published in the Official Gazette on February 2, 2010 and entered into effect on February 22 that year.⁵⁴⁶

353. The CVR noted in its report that the amnesty law has not affected investigations of human rights violations, which follow the normal course of procedure under the direction of the Office of the Special Prosecutor for Human Rights. However, it did note as well that judges could invoke the law in cases of human rights violations regardless of the initiatives of the Office of the Public Prosecutor.⁵⁴⁷ In addition, the State of Honduras indicated that the Amnesty Decree is explicit with regard to its inapplicability to cases of human rights violations, crimes against humanity, and corruption.⁵⁴⁸

IV. ANALYSIS OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS SITUATION

...continuation

⁵⁴⁵ On February 3, 2010, the IACHR issued Press Release No. 14/10, "IACHR EXPRESSES CONCERN ABOUT AMNESTY DECREE IN HONDURAS". On that occasion, the IACHR "observes with concern that the Amnesty Decree approved by the Honduran Congress on January 26, 2010, contains concepts that are confusing or ambiguous. The Commission observes, along these lines, 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." Additionally, an appeal was made to the authorities of Honduras to review the aforementioned decree, taking into consideration the obligations of the State in light of international treaties and, especially, its obligation to investigate and punish serious human rights violations.

⁵⁴⁶ In the operative part, the aforementioned decree establishes:

ARTICLE I.- Grant AMNESTY of a general nature to any citizens who have attempted or consummated any criminalized acts that are classified under Articles: 302, 310-A, 311 of Title XI Chapter I (REGARDING THE OFFENSE OF TREASON AGAINST THE NATION), 328 numerals 1), 2) and 4); 329, 330 of Title XII Chapter II (REGARDING CRIMES AGAINST THE FORM OF GOVERNMENT), 335 numerals 6), 7) and 8) of Title XII Chapter V (REGARDING THE CRIME OF TERRORISM), 337 numerals 1), 3), 4) and 5), 338 and 340 of Title XII Chapter VII (REGARDING THE CRIME OF SEDITION); all [crimes] of the CRIMINAL CODE classified as political crimes; and only the Related Common Crimes covered in Articles 292 of Title IX Chapter IV (REGARDING THE USURPATION OF FUNCTIONS), 331 of Title XII Chapter III (REGARDING CRIMES COMMITTED BY PRIVATE INDIVIDUALS AGAINST THE EXERCISE OF THE RIGHTS GUARANTEED BY THE CONSTITUTION), 346 and 349 numerals 1), 2), 3) and 4) of Title XIII Chapters II and III respectively (REGARDING CRIMES OF DISOBEDIENCE AND ABUSE OF AUTHORITY AND VIOLATION OF DUTIES OF OFFICIALS) of the same body of laws.

All acts constituting crimes relating to acts of corruption such as embezzlement of public funds, unlawful enrichment, bribery and other criminal offenses in criminal legislation, as well as crimes against humanity and human rights violations are not included in this Decree.

Acts that are considered constituting a crime in accordance in the judgment of the Truth Commission, created as a consequence of the agreement executed on October 30, 2009, shall be protected provided that they are subsumed in the provisions of the present decree.

The acts to which this decree refers which were attempted or consummated during the period covering from January 1, 2008 to January 27, 2010.

ARTICLE II: Competent Courts shall dismiss ex officio or at the request of the party any case that they are hearing and that is covered under this benefit.

ARTICLE III: With regard to investigative actions and other investigations which, as of this date, are underway in the offices of the Public Prosecutor, shall proceed through this Oversight Body of the State to place them in administrative archive under the benefit of the present decree, for this purpose the mandate of Article 40 of the Law of the institution mentioned in this number must be enforced;

⁵⁴⁷ The CVR noted that it has occurred with the request to prosecute filed by the Office of the Public Prosecutor against the commissioners of CONATEL, with regard to the dismantling of the equipment of several media outlets.

⁵⁴⁸ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: "Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras," p. 12.

354. In Honduras, the school dropout rate for all levels of schooling is 23.8%. 83.6% of the adult population over the age of 15 is literate. With regard to completion of secondary education, 17.1 % of the population over 25 years of age has completed this level of education, while enrollment is 64.5%.⁵⁴⁹

355. As for health, statistics show that healthy life expectancy,⁵⁵⁰ in Honduras, is 62 years of age,⁵⁵¹ and this is on a scale where the margin of variation between the highest and lowest ages ranges from 75 to 32 years old, respectively.

356. The information gathered by the Commission also shows that over the past years, Honduras has suffered from natural disasters, food insecurity, animal diseases and an increase in food and commodities prices. This situation has significantly raised the poverty level of the population, 12% of which suffers from malnutrition.⁵⁵² Statistics on nutrition levels⁵⁵³ show that, in Honduras, one fourth of all children under five years old exhibit stunted growth, while one percent of the child population is affected by low weight-for-height or acute malnutrition.

357. In regard to this matter, the State of Honduras maintained that it was “aware of the shortcomings in the social sphere and the major challenges it faces in improving conditions for its inhabitants.”⁵⁵⁴

V. BEST PRACTICES ADOPTED BY THE STATE

- Truth and Reconciliation Commission

358. The Truth and Reconciliation Commission (CVR) was created by executive decree PCM-011-2010 on April 13, 2010, for the purpose of “clarifying the events that took place prior to and after June 28, 2009 in order to identify the acts that led to the crisis situation and provide the people of Honduras with the wherewithal to keep these events from being repeated.”⁵⁵⁵ As was mentioned, the CVR released its Final Report on July 7, 2011.

359. The IACHR has supported Truth Commissions in several countries of the hemisphere where they were created, to the extent that they represent an adequate mechanism to ensure the right to the truth. In this regard, the IACHR has affirmed that:

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

⁵⁴⁹ Human Development Report 2010-20th Anniversary Edition, The Real Wealth of Nations: Pathways to Human Development, pg. 214, UNDP.

⁵⁵⁰ Estimates of “healthy life expectancy” (HALE) at birth, represents Average number of years that a person can expect to live in “full health” by taking into account years lived in less than full health due to disease and/or injury. Therefore, it takes into consideration fatal and non-fatal health outcomes and disabilities.

⁵⁵¹ World Health Statistics 2010, pg. 48 and 50. World Health Organization. Available at: http://www.who.int/whosis/whostat/ES_WHS10_Full.pdf

⁵⁵² FAO News (Food and Agriculture Organization of the United Nations), updated on July 8, 2011. <http://www.fao.org/countries/55528/en/hnd/>

⁵⁵³ National Demographics and Health Survey 2005-2006, ENDESA.

Available at: <http://www.measuredhs.com/pubs/pdf/FR189/FR189.pdf>

⁵⁵⁴ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras,” p. 13.

⁵⁵⁵ Executive Decree PCM-011-2010, Article 1.

be found in the methods of reparation and elucidation of the incidents which have occurred, but in the objective of preventing future violations.⁵⁵⁶

360. Additionally, the IACHR has declared that the right to the truth is also related to Article 25 of the Convention, which establishes the right to have a simple and prompt remedy for the protection of the rights enshrined in it. The presence of artificial or legal impediments (such as the amnesty law or domestic regulations on access to information) to accessing and obtaining important information regarding the facts and circumstances surrounding the violation of a fundamental right, constitutes an open violation to the right established in the provision referred to, and hampers the establishment of domestic remedies which allow for judicial protection of the fundamental rights established in the Convention, the Constitution, and the laws.⁵⁵⁷

361. The IACHR appreciates the efforts of the Truth Commission, but deems it important to reiterate that the release of its report and the important findings set forth therein, do not relieve the State of its international obligation to investigate, try and punish through the judiciary, agents of the State who have committed human rights violations⁵⁵⁸.

- **Creating the Secretariat for Development of Indigenous and Afro-Honduran Peoples**

362. In issuing Legislative Decree No. 177-2010; Article 28 and 29 of Decree No. 146-86 dated October 27, 1986, which pertains to the General Law of Public Administration, were amended, thus creating the Secretariat for the Development of Indigenous and Afro-Honduran Peoples. This new agency is in charge of formulating, coordinating, executing and evaluating policies to further the economic, social, cultural, academic and environmental development of the indigenous and afrodescendant peoples and communities of the nation. Additionally; to draft, promote and execute policies to strengthen the different forms of organization of indigenous peoples and afro-Hondurans, protect and promote the autochthonous and Afro-Caribbean identities and cultures of the nation; as well as contribute to the institutional responsibility, to [introduce] specific and cross-cutting inclusion of indigenous peoples and Afro-Hondurans in the different branches of government.

363. The Decree establishes that for the new state agency to function, specific programs and projects relating to indigenous peoples and Afro-Hondurans, which are currently executed by the Executive Branch of government through a variety of Secretariats, will be transferred to the new secretariat.

- **Creating the Ministry of Human Rights**

364. In issuing Legislative Decree No. 177-2010; Article 28 and 29 of Decree No. 146-86 dated October 27, 1986, which refer to the General Law of Public Administration, were amended, thus creating the Secretariat for Justice and Human Rights. Said Secretariat is tasked with matters relating to policy promotion, coordination, formulation, harmonization, implementation and evaluation in the area of

⁵⁵⁶ IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea et al (El Salvador), January 27, 1999, para. 154.

⁵⁵⁷ IACHR, Report No. 1/99, Case 10.480, Lucio Parada Cea et al (El Salvador), January 27, 1999, para. 151.

⁵⁵⁸ In a letter sent on December 22, 2011, by the Secretary of State in the Ministry of Justice and Human Rights, Ana Pineda H., noted that the Commission of Truth and National Reconciliation issued 84 recommendations contained in the Report "For that the Events are not Repeated", which are not limited to overcome the causes and effect of the June 28, 2009," because it aimed at the structural problems of the State of Honduras." For this, the State informed that on November 8, 2011, the President, Porfirio Lobo Sosa, created the Unit for Following the Recommendations of the Commission of Truth and Reconciliation, attached to the Secretary of State in the Ministry of Justice and Human Rights. Observations of the Secretary of State in the Ministry of Justice and Human Rights to the "Draft of the General Report on the Situation of Human Rights in Honduras", approved by the Commission, dated December 21, 2011, pg. 3.

justice and human rights.⁵⁵⁹ In order to perform its duties, the Secretariat for Justice and Human Rights has two Sub secretariats, the Sub secretariat for Justice and the Sub secretariat for Human rights.

365. On November 10, 2011 Honduras deposited at the OAS, the document of accession of the following inter-American human rights instruments:

- Inter-American Convention on the Elimination of all Forms of Discrimination against Person with Disabilities.
- Protocol to the American Convention on Human Rights to Abolish the Death Penalty.
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador"

366. In its observations to this Report, the State of Honduras expressed its appreciation for the incorporation of the good practices adopted by the State. It also requested the inclusion of the Government initiative on the National Security and Justice Policy, formulated jointly in September of 2011 by the Judiciary, the Office of the Public Prosecutor, and the Secretary of State in the Security Office, and referenced by the State's representatives during the hearings held before the IACHR in its 143rd regular session. The objective of that plan is ostensibly to address the current levels of violence in Honduras in order for the country to develop democratically, with security and without violence.⁵⁶⁰

VI. SITUATION OF SPECIFIC GROUPS

A. Women's' Rights

367. During 2011, the IACHR has received information revealing how serious the problem of violence against women is in Honduras as well as the obstacles for women to gain access to justice. For example, Amnesty International's 2011 *Annual Report: The State of the World's Human Rights* identified Honduras among the countries whose deficiencies in its justice system contribute to perpetuating impunity in gender violence and the repetition thereof.⁵⁶¹ Additionally, in its report released in 2011, OXFAM raises the serious problem of the murder of women in Honduras – which has come to be known in Spanish by several international entities as “*femicidio*” or ‘femicide’- and the impunity with which these homicides usually occur.⁵⁶² These homicides are attributed to three factors in particular: domestic and intrafamily violence, organized crime networks, and violence against women, in the broader sense. OXFAM stresses impunity as “a social and cultural factor that goes along with femicides, a context that tolerates and justifies the violent murder of women.”

368. Additionally, the United Nations Human Rights Council expressed its concern over the urgent nature of the problem of violence against women in Honduras in the context of the Universal Periodic Review of this country.⁵⁶³ Several delegations expressed their concern over the persistence and prevalence of the problem of violence against women, and the high homicide and femicide rates. Several recommendations pertaining to this issue were put forth during the interactive dialogue, including: reviewing domestic legislation to ensure the full enjoyment of women's' human rights; adopting the measures required to eliminate all forms of indirect discrimination against women; making sure that priority attention is paid to violence against women; promoting measures to provide treatment and

⁵⁵⁹ Executive Decree No. PCM-027-2011 “Amendment to the Regulations of the Organization, Functioning and Powers of the Executive Branch,” of which Article 1 .- Amends by addition to Articles 87-D, 87-E and 87-F, the Regulation of Organization, Functioning and Powers of the Executive Branch, set forth in Executive Decree No. PCM-008-97 dated June 02, 1997.

⁵⁶⁰ Communication from the State of Honduras, Official Letter No. 1899-DGAE-11, dated December 16, 2011, attachment: “Observations of the State of Honduras to the Draft of the General Report on the Situation of Human Rights in Honduras,” p. 13.

⁵⁶¹ Amnesty International, *Annual Report 2011: The State of the World's Human Rights*.

⁵⁶² Oxfam, *Final Report on Gender-Based Homicides (Femicides) in Honduras, March 2011*.

⁵⁶³ United Nations, Human Rights Council, 16th Session, Report of the Working Group on the Universal Periodic Review, Honduras, January 4, 2011, A/HRC/16/10.

assistance to the victims; implementing practical interventions to combat sexist, domestic and sexual violence; engaging in a sensitization campaign on violence against women; and training police officers in gender matters, among other things.

369. Regarding the problem of violence against women, the State of Honduras informed the IACHR during 2011 that some Offices of the Attorney General have special areas to serve the victims of sexual violence, mainly in San Pedro Sula, Tegucigalpa and Choluteca; as well as “domestic violence” Courts throughout the country. It also reported on conducting several sensitization and empowerment campaigns to disseminate the rights of the victims of sexual violence. Nonetheless, it also reported on practices that may discourage a female complainant from following through on her complaint before the justice system, including: a) the fact that the woman is revictimized in being compelled to recount the crime she has experienced on several occasions to different people involved in the investigation; b) the victim is threatened on an ongoing basis by the suspect, relatives or legal representatives to withdraw the complaint and stop the proceedings, and there is no mechanism in place to guarantee the personal safety of the victim or her next of kin; c) the criminal proceeding takes a long time until it reaches the oral public trial stage; d) having to travel, in some instances, on her own to different places to receive service such as to the Office of the Public Prosecutor, the National Office of Criminal Investigation, the Office of Forensic Medicine or other places, which generates in the women “fatigue, anxiety and an adverse economic effect;” and e) a lack of confidence in the justice system.⁵⁶⁴

370. This year, the IACHR released the thematic report *Access to Justice for Women Victims of Sexual Violence in Mesoamerica*, which analyzes the scope of the phenomenon of sexual violence in the Mesoamerican region, including addressing this problem in Honduras. The report cites obstacles to prevention, investigation, prosecution and punishment in cases of sexual violence, as well as deficiencies in the treatment given to the victims and their family members by the judicial protection bodies in the country. The IACHR reminds the State that these challenges prevent the full exercise and guarantee of the human rights of women enshrined in Inter-American and international human rights instruments, and breaches its comprehensive duty to act with the due diligence required to prevent, investigate, punish and redress acts of violence against women.

371. The IACHR expresses its concern over the information that has come to its attention during the 143rd regular session, with regard to the alarming rates of homicides of women in the country, and the problem known as “femicides.” According to official statistics submitted by civil society organizations to the IACHR at the working meeting with the State, in 2009 there were 407 murders of women, in 2010, 351 and as of July 2011, 207 murders had been reported. The petitioners presented a picture of the state’s failure to address this problem, which is exacerbated by impunity in the great majority of cases filed with the justice system. This promotes a sense of insecurity and distrust among victims. The failures include weakness and elimination of state institutions in charge of the prevention and response to these crimes; the slow pace of the process of investigation and irregularities affecting the development thereof; deficiencies in evidence-gathering; forms of revictimization and stigmatization suffered by the family members of the victims in seeking to obtain justice; and practices that discourage women from following through on their complaint before the justice system, such as blaming the victim for the crimes. According to the information received, 96% of all prosecuted cases end up in impunity. The IACHR notes the duty of the State to act with the due diligence required to prevent, investigate, punish and redress these acts of violence against women, as a fundamental measure for non-repetition of these crimes, and to continue its efforts to provide a better response to these cases in the judicial system.

B. Indigenous Peoples’ Rights

372. During the first half of 2011, representatives of Honduran indigenous and tribal peoples reported that they were adversely affected mainly by the programming and implementation of development, investment and natural resource exploitation plans and projects on their ancestral

⁵⁶⁴ Response of the State of Honduras, IACHR Questionnaire, *The situation of access to justice for women victims of sexual violence in Mesoamerica*, July 4, 2011.

territories, without any regard for their right to prior consultation or prior, free and informed consent. According to different statements of indigenous and tribal leaders of the country,⁵⁶⁵ several projects such as mining concessions, hydroelectric dams, investment in tourism, model cities, logging or the establishment of protected forests for the REDD program, were proposed, approved or implemented by state authorities, without having first engaged in any prior consultation, or otherwise allowing any participation in the development thereof. Some of these projects are also being programmed for implementation on ancestral territories, which have still not been titled, delimited or demarcated in the name of the respective communities, or the legal status of these lands is uncertain.⁵⁶⁶ Furthermore, some public demonstrations and protests carried out by members of the indigenous and tribal populations met with acts of repression by the public security forces, the detention of or threats against some leaders and demonstrators, and were denounced as a strategy of persecution designed to silence and criminalize social protest.

C. Human Rights Defenders

373. During 2011, the IACHR continued to receive information on the situation of human rights defenders in Honduras, indicating that attacks, threats and acts of harassment persist against social leaders and human rights defenders.⁵⁶⁷

374. In this topic, several civil society organizations reported during the 141st Session of the IACHR that in January and March 2011, 65 assaults against human rights defenders were committed.⁵⁶⁸ Additionally, a report of the Committee of the Families of the Detained and Disappeared in Honduras (COFADEH), that was released in March 2011, noted that over the past year it documented 138 death threats against human rights defenders⁵⁶⁹ and, in the broad context of the political crisis generated by the *coup d'état* until the present date, it recorded at least 75 murders.⁵⁷⁰ The IACHR also received information alleging that there has persisted an atmosphere of the State discrediting rights defense and promotion, through slander and threats; as well as ongoing intimidation, threats and following of defenders by criminal groups.⁵⁷¹

375. According to civil society, intimidation against human rights defense organizations has included posting members of paramilitary groups around the residence of the victims. They also note that in many instances, the assailants ride motorcycles, both in urban and rural areas, and use taxicabs to

⁵⁶⁵ See, for example: "In Honduras impunity and human rights violations reign." Civic Council of People's and Indigenous Organizations of Honduras (COPINH), July 18, 2011. Also see: "Declaration of the peoples of the earth and the sea martyrs of San Juan," San Juan Durugubuti – Tela, February 23, 2011.

⁵⁶⁶ For example: "Honduras: Statement of case concerning expulsion of Garifuna in Guadalupe". CNONH, OFRANEH and ONECA, July 9, 2011.

⁵⁶⁷ IACHR, *Annex to press release 28/11 on the 141st Regular Session of the IACHR, April 1, 2011*. Available at: <http://www.cidh.oas.org/Comunicados/Spanish/2011/28A-11sp.htm>

⁵⁶⁸ IACHR, *Situation of human rights defenders in Honduras*, 141st Regular Session, March 25, 2011.

⁵⁶⁹ COFADEH, *Report of COFADEH: It is the worst onslaught against Human Right in Honduras, March 9, 2011*. Available at: http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=1212%3AInforme-de-cofadeh-es-la-peor-arremetida-contra-los-derechos-humanos-en-honduras&Itemid=150

⁵⁷⁰ Concretely, information on the following murder statistics: 9 civil and political rights defenders; 3 union defenders; 14 indigenous rights defenders; 5 LGBTI rights defenders; 19 environmental defenders; 13 teachers' leaders and 12 social leaders linked to the National Resistance Front. IACHR, *Situation of Human Rights Defenders in Honduras*, 141st Regular Session, March 25, 2011.

⁵⁷¹ IACHR, *Situation of Human Rights Defenders in Honduras*, 141st regular session, March 25, 2011.

conduct surveillance on the victims in urban areas.⁵⁷² Additionally, a growing number of assaults are made on individuals who are relatives of publically known activists of the resistance.⁵⁷³

376. During 2011, the IACHR learned of obstacles to the activities of human rights defenders in specific cases. On this score, the Commission received information on the situation of defender Leo Valladares Lanza and his wife, Daysi Pineda Madrid, who had been the targets of following and harassment by unidentified individuals after Valladares Lanza made statements on a television program in February 2011. According to the information that was provided, on March 28, 2011, unidentified individuals entered the offices of the Association for a Participatory Citizenry, of which Valladares Lanza is the executive director, and searched the documents of the organization. Even though a complaint and a request for protection were filed, the State did not take any steps to ensure his safety. In light of the risk and urgency of the situation, on April 26, 2011, the Inter-American Commission requested the State to adopt measures to ensure the lives and physical integrity of Leo Valladares Lanza and Daysi Pineda Madrid as well as ensure that Leo Valladares Lanza can continue to practice human rights defense and promotion in conditions of safety.

377. The IACHR also received information on a new threat against Mrs. Gladys Lanza, beneficiary of a provisional measure granted by the Court,⁵⁷⁴ who on July 17, 2010 had received an e-mail with the following message *“You already forgot the money that you stole from STENEE CON LA ROLL ROIZ RUSH who now has an NGO stolen from Callejas and you no longer remember the people that you had killed in San Pedro Sula when you controlled the guerrilla of the Padilla Fush communist party? Or did you already forget it rotten old women? Do you think that we don’t remember? We’re going to drop in soon, ignorant old women!!! (...)”* The message had been sent along with six photographs, two photos of Mrs. Lanza downloaded from a webpage and one of former agent of 3-16 Billy Joya Amendola.⁵⁷⁵

378. On April 4, 2011, the IACHR granted precautionary measures in benefit of Leonel Casco Gutiérrez, who served as the Director of the legal section of the Ecumenical Human Rights Observatory in Honduras and was at risk because of his role in investigating and speaking out publically against an alleged plot to assassinate certain people in Honduras. According to information received by the IACHR, he and his wife had been receiving threats via telephone text messaging. On March 9, 2011, the IACHR granted precautionary measures for Pedro Vicente Elvir and Dagoberto Posadas, President and Director of the Communications Unit of the “Union of Workers of the National Institute of Children (SITRAPANI), who had been victims of acts of violence by assailants who were carrying firearms to terrorize them.

379. During the 141st Regular Session of the IACHR, civil society organizations noted that in the area of Bajo Aguan, where there have been serious disputes over land and property ownership, the role of the justice administration system and investigation of crimes against peasant leaders has been weak, inasmuch as the Office of the Public Prosecutor allegedly acted in coordination with the private security companies that guard the properties of the landowners of the area. This contributed to criminalizing the peasant protests, cracking down on their organizations and legitimizing human rights violations against peasant groups. On this issue, the organizations denounced that from February 24 to March 5, 2011, 112 individual court cases of peasants were recorded as pending in the Tocoa Sectional Trial Court, as were 50 cases before the Sectional Court of Trujillo, for a total of 162 peasants under prosecution for a variety of offenses, which include usurpation, theft and illegal carrying of commercial

⁵⁷² COFADEH, *Report of COFADEH: It is the worst onslaught against Human Right in Honduras*, March 9, 2011. Available at: http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=1212%3AInforme-de-cofadeh-es-la-peor-arremetida-contra-los-derechos-humanos-en-honduras&Itemid=150

⁵⁷³ COFADEH, *Report of COFADEH: It is the worst onslaught against Human Right in Honduras*, March 9, 2011. Available at: http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=1212%3AInforme-de-cofadeh-es-la-peor-arremetida-contra-los-derechos-humanos-en-honduras&Itemid=150

⁵⁷⁴ Resolution of the Court, September 2, 2010. Matter Gladys Lanza, Honduras.

⁵⁷⁵ OMCT, *Honduras: Death threat against Mrs. Gladys Lanza*, June 22, 2010. Available at: <http://www.omct.org/es/human-rights-defenders/urgent-interventions/honduras/2010/07/d20808/>

firearms to the detriment of the homeland security of the State of Honduras. Some of the defendants were peasant men and women leaders whose case file joined the charges for several crimes into one single case, such as the case of Mr. Adolfo Castañeda of the La Aurora settlement or cooperative, who was a member of the unified peasant movement of Aguan. He was a defendant in 13 different criminal proceedings for crimes of robbery and usurpation in the context of resistance and the struggle to reclaim their land.⁵⁷⁶

380. As for operators of justice, the IACHR received information on the murder of Raúl Enrique Reyes Carbajal, coordinator in Honduras of the Office of the Attorney General in Puerto Cortes, who prior to taking office, had served as a prosecutor for organized crime in San Pedro Sula. According to available information, the prosecutor died on May 27, 2011, after being shot while he was riding in his vehicle from Puerto Cortes to San Pedro Sula.⁵⁷⁷ The UN Human Rights Office expressed serious concern over the murder of this prosecutor.⁵⁷⁸

381. The IACHR has monitored the progress of the State in consolidating a mechanism to implement protection measures for human rights defenders particularly after the 2009 *coup d'état*.⁵⁷⁹ According to civil society, the mechanism implemented by the State is marred by several shortcomings, which include: 1) very limited staffing at the Human Rights Unit in charge of implementation and follow-up of the protection measures for beneficiaries;⁵⁸⁰ 2) particular interest on the part of the officials in getting the beneficiaries to sign "compromise agreements," which are useful to the authorities to justify their actions before international bodies, and after these agreements are signed, the officials would become relieved of their responsibility to protect; 3) that the beneficiaries are subject to the condition of paying the meals and transportation expenses of their escorts.⁵⁸¹ The IACHR reiterates, as it did in its *Report on the Situation of Human Rights Defenders in the Americas*, that the State must provide the appropriate funding and political support to the institutions and protection programs in order to ensure that the program runs properly,⁵⁸² additionally, the State must ensure that the measures are effective throughout the entire period when the beneficiaries of the special protection measures are still at risk.⁵⁸³

⁵⁷⁶ IACHR, *Situation of Human Rights Defenders in Honduras*, 141st Regular Session, March 25, 2011. CIDH. Regarding the situation of Adolfo Castañeda Cf. Defenders on line, *In the middle of the process of reclaiming lands in Aguan, repression persists*, June 15, 2010. Available at: http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=802:en-medio-del-proceso-de-recuperacion-de-tierras-en-el-aguan-persiste-la-represion&catid=54:den&Itemid=171

⁵⁷⁷ La Prensa.hn, *Asesinan a coordinador de fiscales en Puerto Cortés* [Prosecutors' Coordinator in Puerto Cortes murdered], May 28, 2011. Available at: <http://www.laprensa.hn/content/view/full/500604>;

⁵⁷⁸ UN News Centre, *UN expresses concern over murders of prosecutors in Central American*, May 31, 2011. Available at: <http://www.un.org/spanish/News/fullstorynews.asp?newsID=21052&criteria1=ddhh&criteria2=drogas#>

⁵⁷⁹ IACHR, Honduras: Human Rights and the Coup D'état, December 30, 2009, para. 21, available at: <http://www.cidh.oas.org/countryrep/Honduras09sp/Cap.2.htm#B>; IACHR, *Situation of Human Rights Defenders in Honduras*, 141st Regular Session, March 25, 2011, available at: <http://www.cidh.org/audiencias/141/8.mp3>; *Hearing on the mechanism of implementation of precautionary measures in Honduras*, 140th Regular Session, October 25, 2010. Available at: http://www.oas.org/OASPage/videosast/2010/10/102510_v5.wmv

⁵⁸⁰ According to the State, there are only four people in charge of overseeing implementation of precautionary measures, who are in charge of gathering information to follow up on the precautionary measures and related investigations. Cf. IACHR, *Situation of Human Rights Defenders in Honduras*, 141st Regular Session, March 25, 2011, available at: <http://www.cidh.org/audiencias/141/8.mp3>;

⁵⁸¹ *Hearing on the mechanism of implementation of precautionary measures in Honduras*, 140th Regular Session, October 25, 2010. Available at: http://www.oas.org/OASPage/videosast/2010/10/102510_v5.wmv

⁵⁸² IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, May 7, 2006. Recommendation 5. Available at: <http://www.cidh.oas.org/countryrep/Defensores/defensorescap9-10.htm#RECOMENDACIONES>

⁵⁸³ The Commission has held regarding the duration of precautionary and provisional measures that they must remain in effect for the entire time that the Commission or the Court, respectively, so requires. IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, May 7, 2006. Recommendation 8. Available at: <http://www.cidh.oas.org/countryrep/Defensores/defensorescap9-10.htm#RECOMENDACIONES>

382. The IACHR has confirmed that one of the central obstacles to the activities of human rights defenders in Honduras is the distrust that exists between the institutions of the State and the defenders; particularly the operators of justice and institutions in charge of providing protection. According to reports provided by the State at the 141st session of the IACHR, when news of an alleged attack or assault against a defender comes in, the responsible authority requests information from the civil society organizations in charge of cases, which on several occasions have refused to provide information to the authorities.⁵⁸⁴ The IACHR finds it imperative for the State to build a culture of human rights in which it builds trust between government and civil society actors through the recognition at all levels of government of the fundamental role played by defenders to ensure the building of democracy and the rule of law in Honduran society.

D. Rights of migrant workers and their families

383. High rates of poverty and violence, together with the recent coup d'état in 2009 have worsened the problem of Hondurans emigrating from their country, particularly to the countries of the North. Deportations of Hondurans from countries such as Mexico and the United States cause serious difficulties with regard to care and reintegration of these people into their country. Of all the migrants being held at migration holding centers in Mexico during 2011, 92% were from Central American countries, and Honduras had the second highest percentage of migrants detained in Mexico at 34% of the total (23,811).⁵⁸⁵ Additionally, Honduras ranked second place among countries to which more nationals were deported from Mexico at nearly 36% (23,580) of total deportations from said country in 2010.⁵⁸⁶ In 2010, undocumented migrants from Honduras detained in the United States constituted the fourth largest group after Mexicans, Guatemalans and Salvadorans, with 17,899 Honduran detainees being held at US immigration detention centers.⁵⁸⁷ Likewise, undocumented Honduran migrants were ranked third for most deportations from the United States in 2010 with 24,611 Hondurans being deported back to their home country, which represents 6% of total deportations.

384. It must be noted that most of the Honduran migrants are between 18 and 32 years of age. When they are deported back to Honduras, these people are compelled to work in precarious labor conditions. In practice, there is no government program in place aimed at aiding in the reintegration of these individuals into society and the job market. The only programs that have been set up are specifically designed to assist migrants deported back to Honduras by plane through the airports of Tegucigalpa and San Pedro Sula. As for land deportations, there is no intake program in place on the border, much less any reintegration program, and this fact heightens the conditions of vulnerability of these people upon their return to Honduras. This issue is much more serious in the case of unaccompanied minors, for whom the protection provided by state institutions is inefficient in many instances.

385. After a second round of debates, the Law of Protection of Honduran Migrants and their Families was recently approved, which is envisioned to fill the void of protection faced by the migrant population.

⁵⁸⁴IACHR, *Situation of Human Rights Defenders in Honduras*, 141st Regular Session, March 25, 2011.

⁵⁸⁵ NATIONAL MIGRATION INSTITUTE: Monthly bulletin of migratory statistics 2010. Mexico. Available at: http://www.inami.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_2010 [Search on August 19, 2011].

⁵⁸⁶ NATIONAL MIGRATION INSTITUTE: Monthly bulletin of migratory statistics 2010. Mexico. Available at: http://www.inami.gob.mx/index.php/page/Extranjeros_Alojados_y_Devueltos_2010 [Search on August 19, 2011].

⁵⁸⁷ DEPARTMENT OF HOMELAND SECURITY: *2010 Yearbook of Immigration Statistics*. United States. Available at: <http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf> [Search on August 19, 2011].

E. Children and adolescents

386. According to information from 2011 provided by Casa Alianza, one underage person is murdered each day in Honduras.⁵⁸⁸ Additionally, this organization noted that during the first half of 2011, more than 500 people under the age of 23 were murdered, which represents an increase over the prior year.⁵⁸⁹ The organization also noted that 63 people under 18 years of age were murdered during the first quarter of 2011, and that firearms were used in most of these cases.⁵⁹⁰ From 1998 to the first quarter of 2011, Casa Alianza recorded 1938 violent deaths and/or executions of persons under the age of 18.⁵⁹¹

387. Moreover, the IACHR has received information indicating that in May 2011, 1,700 calls for child abuse were recorded over the 111 emergency telephone number, 30% of which were alleged to be mistreatment. Additionally, the Prosecutors Office for Children in Honduras has brought dozens of proceedings against teachers at public and private institutions⁵⁹² also for child abuse.

388. Furthermore, according to information from the International Labor Organization, there are 215 million children and adolescents worldwide performing dangerous jobs, of which 2.3 million are working in Central American and almost 280,000 of these children do so in Honduras, where they are exposed to a variety of risks.⁵⁹³ According to the National Institute of Statistics, 412,000 children and adolescents work in prohibited jobs in Honduras.⁵⁹⁴

389. In addition to the information received, it has come to the attention of the Commission that the Office of the Public Prosecutor is investigating 125 complaints of trafficking in women and children in two cities of Honduras.⁵⁹⁵ For its part, Casa Alianza reports that in Honduras nearly 10,000 children are victims of sexual exploitation.⁵⁹⁶

F. Lesbians, Gays, Transsexuals, Bisexual and Intersex Persons (LGBTI)

390. In its Honduras report: *Human Rights and the Coup D'état*, the Commission confirmed that discrimination against lesbians, gays, and transsexual, bisexual and intersex persons had become

⁵⁸⁸ See news story "Every day one child is murdered in Honduras: Casa Alianza," La Tribuna, July 13, 2011. Available at: <http://www.latribuna.hn/2011/07/13/cada-dia-es-asesinado-un-nino-en-honduras-casa-alianza/>

⁵⁸⁹ See news story "More than 500 youths, victims of violence," El Herald, July 14, 2011. Available at: <http://www.elheraldo.hn/Ediciones/2011/08/12/Noticias/Ejecutan-a-jovenes-de-15-y-17-anos-en-Comayaqueela>. Also see "Two minors abducted and executed in Tegucigalpa", El Herald, May 8, 2011. Available at: <http://www.elheraldo.hn/Ediciones/2011/05/09/Noticias/Raptan-y-ejecutan-a-dos-menores-en-Tegucigalpa>. Also see "15 to 17 year old youths executed in Comayagüela", El Herald, August 12, 2011. Available at: <http://www.elheraldo.hn/Ediciones/2011/08/12/Noticias/Ejecutan-a-jovenes-de-15-y-17-anos-en-Comayaqueela>

⁵⁹⁰ Casa Alianza, Observatory on Violence against the Children of Honduras, January to March 2011, pgs. 7 y 8. Available at: http://redlamyc.sitiosuy.com/images/stories/Informe_Observatorio_de_la_Violencia_Casa_Alianza_Honduras_de_Enero-Marzo_2011.pdf

⁵⁹¹ Casa Alianza, Observatory on Violence against the Children of Honduras, January to March 2011, pg. 7. Available at: http://redlamyc.sitiosuy.com/images/stories/Informe_Observatorio_de_la_Violencia_Casa_Alianza_Honduras_de_Enero-Marzo_2011.pdf

⁵⁹² See press clip "mistreatment of children in schools investigated," El Herald, June 10, 2011. Available at: <http://www.elheraldo.hn/Ediciones/2011/06/11/Noticias/Investigan-maltratos-a-ninos-en-las-escuelas>

⁵⁹³ See press release "Almost 380,00 children perform dangerous jobs in Honduras," El Herald, June 14, 2011. Available at: <http://www.latribuna.hn/2011/06/14/casi-380000-infantes-realizan-trabajos-peligrosos-en-honduras/>

⁵⁹⁴ See press clip "Thousands of children do prohibited work in Honduras," La Tribuna, June 13, 2011. Available at: <http://www.latribuna.hn/2011/06/13/miles-de-ninos-realizan-trabajos-prohibidos-en-honduras/>

⁵⁹⁵ See press clip "125 complaints of human trafficking are investigated in Honduras," El Herald, April 11, 2011. Available at: <http://www.elheraldo.hn/Sucesos/Ediciones/2011/04/12/Noticias/Investigan-125-denuncias-de-trata-en-Honduras>

⁵⁹⁶ See press clip "Ten thousand children victims of forced prostitution in Honduras," La Tribuna, June 11, 2011. Available at: <http://www.latribuna.hn/2011/06/11/diez-mil-ninos-victimas-de-la-%E2%80%99C trata-de-blancas%E2%80%9D-en-honduras/>

deeper, and expressed deep concern over the degree of violence, discrimination and exclusion against these persons and appealed for the elimination of the impunity of acts perpetrated against them.

391. During 2011, the Commission continually received reports of acts against the physical integrity and the rights of LGBTI persons. In January 2011, it expressed in a press release deep concern over threats, serious acts of violence and murders of transsexual persons, and noted that in just the previous two months, seven of these people had died in unclear circumstances: Idania Roberta Sevilla Raudales (November 29, 2010); Luisa Alex Alvarado (December 18, 2010); Oscar Martínez Salgado (December 20, 2010); Reana Bustamante (December 29, 2010); a young girl known as Cheo (no further identification) (January 2, 2011); Génesis Briget Makaligton (January 7, 2011); and Fergie Alice Ferg (or Williams Afif Hernández, on January 18, 2011). These murders are in addition to 34 reported LGBTI violent deaths since June 2009 and, particularly, the leaders of the organization Pink Unity Collective (*Colectivo Unidad Color Rosa*) Neraldys Perdomo and Imperia Gamaniel Parson, and Walter Trochez.

392. On October 26, 2010, the Commission held a hearing on the situation of security of LGBTI persons, during which it heard the outcome of an investigation conducted by civil society organizations, according to which 172 hate crimes were committed from 2005 to 2009 in Honduras, and 45% of them were linked to police.⁵⁹⁷ The Commission also heard that the *Law on the Police and Social Coexistence*, Decree 226-2001 of March 6, 2002, is constantly used to arbitrarily detain many people, particularly sex workers, holding them in unofficial detention centers without any judicial oversight, and under highly subjective interpretations of undefined concepts such as “social coexistence” and “morals.”⁵⁹⁸

VII. RECOMMENDATIONS

393. Pursuant to the preceding analysis and, particularly, monitoring by the IACHR of the human rights situation in the country since the Coup d'état of June 28, 2009, the Commission puts forth the following recommendations to the State of Honduras:

1. Ensure that the system for the administration of justice affords everyone's effective access to justice.
2. Investigate, try and punish those responsible for human rights violations.
3. Prevent illegal groups from acting outside the law with impunity. In particular, the State has the duty to disband armed civilian groups that might be operating outside the law and to punish the unlawful actions they commit, in order to prevent the recurrence of acts of violence in the future.
4. Prevent the murders, threats and intimidations against human rights defenders, journalists, social communicators and social leaders by properly and efficiently implementing the precautionary measures that the Commission grants.
5. Conduct immediate investigations, run by independent, specialized bodies, which clarify the facts and determine whether the murders of human rights defenders, journalists, social communicators and members of the resistance were related to the practice of their professions or to the context of the *coup d'état*. Also, prosecute and convict those responsible for these murders.
6. Redress the victims of human rights violations.

⁵⁹⁷ Hearing on “Hate crimes against LGBTI persons in Central America,” Public hearing held by the IACHR on October 26, 2010, audio available at the link: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=32>, audio at 00:12:00.

⁵⁹⁸ Hearing on “Hate crimes against LGBTI persons in Central America,” Public hearing held by the IACHR on October 26, 2010, audio available at the link <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=32>, audio at 00:17:15.

7. Guarantee the conditions necessary so that defenders of human rights and labor rights are able to engage in their activities freely, and refrain from taking any action or adopting any legislation that might limit or obstruct their work.
8. 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.
9. 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.
10. Order the necessary measures to protect those sectors of the Honduran population that have been traditionally marginalized and more vulnerable, such as children, the LGBTI community, women, the indigenous peoples and the Garifuna people.

**ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 2011
CHAPTER IV**

VENEZUELA⁵⁹⁹

I. INTRODUCTION

394. The IACHR decided to include the Bolivarian Republic of Venezuela (hereinafter “Venezuela” or “the State”) in Chapter IV of its 2011 Annual Report pursuant to Article 59(1)(h) of its Rules of Procedure.⁶⁰⁰ The IACHR based its analysis on information compiled during its hearings and information available from other public sources, as well as information compiled through the mechanisms for petitions, cases and precautionary measures. On November 28, 2011, the IACHR forwarded to the State a copy of the preliminary draft of this section of its 2011 Annual Report, in accordance with the aforementioned article, and asked the State to send its observations within one month’s time. The State did not reply.

395. Of the five criteria presented in the 1997 Annual Report of the IACHR that the Commission takes into account to identify the member states whose human rights practices merit special attention, the IACHR considers that the Venezuelan situation fits within criterion five, which refers to

[...]structural or temporary situations that may appear in member states confronted, for various reasons, with situations that seriously affect the enjoyment of fundamental rights enshrined in the American Convention or the American Declaration. This criterion includes, for example: grave situations of violence that prevent the proper application of the rule of law; serious institutional crises; processes of institutional change which have negative consequences on human rights; or grave omissions in the adoption of the necessary measures which would provide for the effective exercise of fundamental rights.

396. First, the Commission has identified structural situations, such as changes in the law that create legal and administrative restrictions that affect the exercise and enjoyment of human rights in Venezuela. The Commission reports, for example, laws adopted under the “Law authorizing the President of the Republic to issue decrees with the rank, value and force of law, on the subject matters delegated to him”⁶⁰¹, known as the “Enabling Law.” In its previous reports on Venezuela, the Commission has repeatedly pointed to structural issues such as the practice of appointing provisional, temporary or interim judges and prosecutors, which weakens the judicial branch and strips it of its Independence and impartiality, thereby adversely affecting the right of access to justice. It has also identified the abuse of criminal law, the restriction of freedom of expression and other issues of special concern to the Commission. Second, the Commission has identified problems created by a confluence of circumstances and factors, such as the serious issues of citizen insecurity and violence in prison institutions, which affect Venezuelans’ enjoyment of their rights to life and to personal integrity, among others. All these situations will be examined at greater length in this chapter.

⁵⁹⁹ In accordance with the provisions of Article 17(2) of the Commission’s Rules of Procedure, Commissioner Luz Patricia Mejía Guerrero, a Venezuelan national, did not participate in the discussion or the decision in this chapter.

⁶⁰⁰ Article 59 of the Commission’s Rules of Procedure reads as follows: “1. The Annual Report presented by the Commission to the General Assembly of the OAS shall include the following: [...] h. any general or special report the Commission considers necessary with regard to the situation of human rights in Member States, and, as the case may be, follow-up reports noting the progress achieved and the difficulties that have existed with respect to the effective observance of human rights; [...] 2. For the preparation and adoption of the reports provided for in paragraph 1.h of this article, the Commission shall gather information from all the sources it deems necessary for the protection of human rights. Prior to its publication in the Annual Report, the Commission shall provide a copy of said report to the respective State. That State may send the Commission the views it deems pertinent within a maximum time period of one month from the date of transmission. The contents of the report and the decision to publish it shall be within the exclusive discretion of the Commission.”

⁶⁰¹ Special Official Gazette No. 6,009 of December 17, 2010.

397. The last Commission's visit to Venezuela took place in May 2002, following the institutional breakdown in April of that year. After that visit, the Commission published the *Report on the Situation of Human Rights in Venezuela* in December 2003, in which it made a number of recommendations. Since then, the Commission has been monitoring the status of implementation of those recommendations and compiling firsthand information on the current human rights situation in Venezuela. Accordingly, it has made a number of overtures to request the State's permission to conduct an observation visit. Thus far, the State has refused to allow the Commission to visit Venezuela, which not only affects the functions assigned to the Commission as one of the OAS' principal organs for the promotion and protection of human rights, but also seriously weakens the system of protection that the member States of the Organization themselves created.

398. On December 30, 2009, the Commission approved the report titled *Democracy and Human Rights in Venezuela*, in which it examined developments in the area of human rights in Venezuela. The Commission followed up the human rights situation and that report in Chapter IV of its 2010 Annual Report and continues the analysis in this report based on information received during the past year through its human rights protection mechanisms, such as hearings, the adoption of precautionary measures, requests petitioning the Court for provisional measures, and the issuance of press releases. The Commission also based its analysis on information that the Venezuelan State sent in response to IACHR requests regarding the general human rights situation pursuant to its powers under Article 41 of the American Convention, and on available public information.

399. The Commission would again point out that it is ever ready to engage in dialogue with the government, to discuss this Report's content and recommendations and to work with it to advance the cause of protecting the human rights of the people of Venezuela.

II. ANALYSIS OF THE SITUATION REGARDING CIVIL AND POLITICAL RIGHTS

A. Government actions to guarantee the right to life and personal integrity and democratic citizen security

400. The Commission has indicated on multiple occasions that States must take steps not only to protect their citizens from human rights violations committed by State agents, but also to prevent and punish acts of violence among private citizens. The Commission has also spoken about States' obligations in connection with the actions of non-state agents involved in organized crime, corruption, drug trafficking, etc. Since a lack of security directly affects the full enjoyment of people's basic rights, the IACHR has underscored the importance of addressing citizen security and respect for human rights, and of taking effective steps to prevent, control and reduce crime and violence.⁶⁰²

401. In the National Report submitted in July 2011 for purposes of the Universal Periodic Review, the State recognized that

Public security is an important factor in the quality of life of the Venezuelan people and it is the State's duty to guarantee it. In the past, the sense of insecurity felt by the public was mainly related to the presence, activity and general operations of the various police authorities. The Government believed it was a matter of the utmost urgency to reorganize the police, which former Governments had used as an instrument to suppress and control the most excluded members of society.⁶⁰³

⁶⁰² IACHR. *Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para.672; IACHR. Press Release N°16/07. *IACHR calls upon States to reflect on the importance of public security*. March 15, 2007 and IACHR. *Annual Report 2008*. Chapter I: Introduction.

⁶⁰³ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva,, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 30.

402. In its National Report, Venezuela reported that according to the Seventh National Urban Survey on Public Security, in 2010 the number of households that had been victims of crime decreased by 15.9 percent as compared with 2009. At the same time, the percentage of persons who had noticed an increase in crime in the country declined by 18.5 percent.⁶⁰⁴ However, it has recognized that fully guaranteeing the right to life, and specifically the right to public security, continues to be a challenge. In this regard, it has indicated that work is continuing “to design and implement public policies that tackle the problem from an essentially scientific perspective,”⁶⁰⁵ and that it is improving its statistical system so that it can better monitor and assess its human rights policies and programs.⁶⁰⁶

403. Civil society organizations indicated to the United Nations that although men are the main victims of the violence afflicting Venezuela, which has cost the lives of more than 100,000 people over the last decade, this violence also has profound effects on women.⁶⁰⁷

404. According to the results from the Study of Interpersonal Violence and Citizen Perception of the Security Situation in Venezuela conducted by the Institute for Coexistence and Citizen Security Research (INCOSEC) in July 2010, 82.9% feel that insecurity has increased in the country and nearly one-third of Venezuelan households report having been the victim of some type of crime. In addition, of those who were the victims of crime, only 37% filed a complaint and 75% of these received no response from the authorities. The reasons why people do not file a complaint include, first of all, the belief that the authorities do nothing to address their complaints and, secondly, fear of reprisals by the criminals, added to high rates of impunity, particularly for crimes like murder, where there were convictions in 2010 for only one out of ten homicides.⁶⁰⁸

405. As the Commission indicated in its December 2009 Report on Citizen Security, citizen security requires a strong police force to protect citizens; the strengthening of the administration of justice, with the elimination of corruption and impunity; and a prison system aimed at the genuine rehabilitation and social reintegration of prisoners. In this regard, the Venezuelan situation has been of particular interest to the IACHR and during 2001 the Commission continued to receive information on citizen insecurity as well as specific actions against the population by police forces.

406. A case in point that the IACHR has been following closely involves the Barrios family. Between 1998 and 2010, six members of the Barrios family were killed: the two brothers Néstor Caudi, Rigoberto, aged 15, and Wilmer José Flores; their cousin Oscar, aged 22; and their uncles Benito, Narciso and Luis. Benito and Narciso Barrios were extrajudicially executed by the police of Aragua, and in processing this case the IACHR determined that there would be sufficient evidence to conclude that the same thing happened to Luis, Rigoberto and Oscar Barrios.

407. The Commission submitted the case of the Barrios family to the Inter-American Court of Human Rights in the first half of 2010. In January 2011, Néstor Caudi Barrios, an eye witness to the extrajudicial execution of Narciso Barrios, suffered an attack on his life, which was condemned by the

⁶⁰⁴ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva,, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 37.

⁶⁰⁵ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva,, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 143.

⁶⁰⁶ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva,, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 150.

⁶⁰⁷ This complaint was made by the Venezuelan Observatory on the Rights of Women in the report it submitted to the Office of the United Nations High Commissioner for Human Rights and the U.N. Human Rights Council in the context of the Universal Periodic Review: <http://www.derechos.org/ve/proveaweb/examen-periodico-universal/el-universal-ong-afirman-que-la-violencia-enluta-a-miles-de-venezolanas.html>

⁶⁰⁸ See INCOSEC <http://incosec.sumospace.com/?p=688> and <http://incosec.sumospace.com/?p=747>.

Commission.⁶⁰⁹ Subsequently, on May 28, 2011 Juan José Barrios, aged 28, was murdered by two persons dressed in black who shot him several times. Juan José Barrios was the beneficiary of provisional measures issued by the Inter-American Court of Human Rights. The Commission condemned the murder and pointed out that

The IACHR and the IA Court have followed this situation through all available mechanisms, including requests for information, precautionary and provisional measures, Commission reports on admissibility and the merits, and submission of an application to the Inter-American Court. However, the Venezuelan State has not adopted the necessary measures to protect the life of the members of this family, who continue to be targets of assassination, detentions, raids, threats and harassment. Moreover, the State has not ordered an effective investigation of these crimes, which remain in impunity.

The Barrios family is being eliminated while the State stands by, ignoring the calls, decisions, recommendations and orders of the two bodies of the Inter-American System on Human Rights.⁶¹⁰

408. Given the panorama of citizen security in Venezuela, the Commission is of the view that the measures taken by the State have been insufficient, as it indicated in the 2009 Report on *Democracy and Human Rights in Venezuela* and in its 2010 Annual Report. This adversely affects Venezuelan citizens' enjoyment and exercise of their human rights.

409. In its Report on *Democracy and Human Rights in Venezuela*, the Commission also made reference to the Organic Law of the Bolivarian National Armed Forces (LFANB), enacted in October 2009, which provides that the civilian population may be armed and receive military training to defend the political interests of the government.⁶¹¹ Under this law, the Bolivarian Militia was created – which was part of the rejected constitutional reform. It is defined as an “armed corps” to assist the Bolivarian National Armed Forces in organizing territorial militias and corps of civilian combatants in public agencies, the private sector, social organizations and communities.⁶¹²

410. In 2010 the State implemented a nationwide plan called the Bicentennial Public Security Program based on the national crime map. It involves the participation of national, state and local police officers and has the backing of the Bolivarian National Armed Forces.⁶¹³

411. As noted earlier in its report on Democracy and Human Rights, the Commission is extremely concerned that citizens receive military training through the Bolivarian National Militia and then reenter civilian life to cooperate in maintaining domestic order. Once again, the IACHR emphatically points out that military training is not appropriate for controlling domestic security, so that fighting violence domestically must be the exclusive task of a properly trained police force that acts in strict compliance with human rights. In the Commission's view, citizens who receive military training must not be used for internal defense, and neither should the role of society vis-à-vis national security be distorted.

⁶⁰⁹ IACHR, Press release No. 1/11 IACHR condemns attempt against the life of another member of the Barrios family in Venezuela, Washington, D.C., January 14, 2011.

⁶¹⁰ IACHR, Press release No. 51/11 IACHR deplores murder of seventh member of the Barrios family in Venezuela, Washington, D.C., June 2, 2011. On November 24, 2011, the Court delivered its judgment in the case in which it found that the Venezuelan State's international responsibility had been engaged by the facts alleged and proven. See I/A Court H.R., *Case of the Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of November 24, 2011. Series C No. 237, available [in Spanish] at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_237_esp.pdf.

⁶¹¹ See, IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, para. 697.

⁶¹² See, IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter 6, paras. 694-700.

⁶¹³ Human Rights Council, Working Group on the Universal Periodic Review, 12th session, National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 of the Human Rights Council, A/HRC/WG.6/12/VEN/1, July 19, 2011, para. 35, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/150/04/PDF/G1115004.pdf?OpenElement>.

B. Respect and guarantee of political rights

412. On December 17, 2010 a special session of the National Assembly enacted the “Law authorizing the President of the Republic to issue decrees with the rank, value and force of law, on the subject matters delegated to him,”⁶¹⁴ known as the “Enabling Law.”⁶¹⁵ During the 141st Period of Sessions of the IACHR, in a hearing on the Enabling Law and human rights in Venezuela, it was reported that starting on December 16, 2010, the National Assembly began an 18-day period of special sessions during which it enacted and amended more than 11 laws that would be incompatible with the Convention.⁶¹⁶ These laws increased the power and control of the Executive Branch over various areas of society. In December 2010, Official Gazette 39 published laws enacted by this outgoing National Assembly as follows: 15 Ordinary Law (5 are amendments), 11 Organic Laws (5 are amendments), 12 Approval Laws and one “Enabling Law”. Specifically, the following were amended: the Law on Social Responsibility in Radio, Television and Electronic Media; the Organic Telecommunications Law; the Organic Law of the Office of the Comptroller General of the Republic and the National Fiscal Oversight System; the Organic Law on Municipal Public Power; Law on Political Parties, Public Assemblies and State Demonstrations; the Organic Law of Public Planning, Laws on Local Public Planning Councils and State Planning Councils and Coordination of Public Policies; and the Organic Law of Municipal Public Power. The following were also enacted: the Law on Political Sovereignty and National Self-Determination, the Organic Law of Popular Power and the Organic Law of the Communes and the Law on the Communal Economic System. In addition, the National Assembly’s Internal Rules of Procedure and Debate were amended to limit the number of sessions that can be held by new deputies in the Assembly, as well as their participation. In addition, the “Enabling Law” authorized the President of the Republic to issue provisions until June 2012, extending beyond his constitutional term of office in various areas.⁶¹⁷

413. On December 31, 2010, the Secretary General of the OAS, José Miguel Insulza, expressed his concern regarding the Enabling Law and other measures approved in Venezuela. In this regard, he stated “I think it is of concern that a branch of government is in practice being deprived of some powers or that some people who will be entering Congress are deprived of immunity.” He added that he was consulting with some countries and that “the balance of powers is a subject covered in the Inter-American Democratic Charter and that when laws like the Enabling Law are passed and have effect for such a long time, this truly is a matter of concern.”⁶¹⁸ In January 2011, the Secretary General of the OAS indicated that he had not asked that the “Enabling Law” be amended in Venezuela or that some body make a decision in this regard.⁶¹⁹ He also pointed out that the silence regarding the subject on the part of the member States was due to the situation of tranquility and good relations among the countries of Latin America, so that there might be hesitation to create discord in this environment.⁶²⁰

⁶¹⁴ Special Official Gazette No. 6.009 of December 17, 2010.

⁶¹⁵ During the term of the current President, four “Enabling Laws” have been passed (in 1999, 2000, 2007 and 2010). Cf. IACHR, 2008 Annual Report OAS/Ser.L/V/II.134, Doc. 5 rev. 1, February 25, 2009, para. 404 and 405.

⁶¹⁶ In this regard, the Commission, in Chapter IV of its 2010 Annual Report indicated that “[...], as pointed out in press release 122/10, the Commission is concerned that the Enabling Law might seriously compromise the ability of nongovernmental human rights organizations to perform their important functions,” and repeated the recommendation it made in its 2009 report on *Democracy and Human Rights in Venezuela* to amend Article 203 of the Venezuelan Constitution, as it allows legislative powers to be delegated to the President of the Republic without establishing clear and unambiguous limits on the nature of that delegation.

⁶¹⁷ 1. Systematic and Continuous Attention to the Vital and Urgent Human Needs Derived from the Social Conditions of Poverty and Rains, Landslides, Floods, and Other Events Produced by Environmental Problems; 2. Infrastructure, Transport, and Public Services; 3. Housing and Habitat; 4. Territorial Zoning, Integrated Development and Urban and Rural Land Use; 5. Finance and Taxes; 6. Citizen Security and Legal Security; 7. Security and Integrated Defense; 8. International Cooperation; 9. The National Socioeconomic System. Special Official Gazette No. 6.009 of December 17, 2010.

⁶¹⁸ El Nuevo Herald.com, *Secretario de la OEA cuestiona nuevas leyes en Venezuela* [OAS Secretary questions new laws in Venezuela], Friday, December 31, 2010.

⁶¹⁹ El Nacional, January 13, 2011, *Insulza: Yo no pedí que se modifique la Ley Habilitante* [Insulza: I didn’t ask that the Enabling Law be amended].

⁶²⁰ El Nacional, January 13, 2011, *Insulza: Yo no pedí que se modifique la Ley Habilitante* [Insulza: I didn’t ask that the Enabling Law be amended].

414. On December 21, 2010 the National Assembly enacted the Law on Defense of Political Sovereignty and National Self-Determination, published in Special Gazette No. 6.013 of December 23, 2010. This law penalizes “all natural or legal persons under public or private law, organized to carry out activities for political purposes⁶²¹ or activities in defense of political rights⁶²² that receive economic support or financial contributions from foreign individuals or legal entities outside of Venezuela; as well as “the participation of foreign citizens who, under the aegis of these organizations, “issue opinions that offend the institutions of the State and its senior officials or challenge the exercise of sovereignty.”⁶²³

415. In accordance with Articles 4 and 5 of the law, “the assets and other income of organizations with political purposes or organizations for the defense of political rights must be made up exclusively of national assets and resources” and “they may only receive donations or contributions from individuals or legal entities and within the territory of Venezuela.” The penalties provided in the law include a principal penalty and an accessory penalty. The principal penalty depends on whether the violator is: 1) an organization with political purposes or organization for the defense of political rights, in which case they will be punished with a fine equal to twice the amount received;⁶²⁴ 2) an individual, in which case they will be punished with a fine equal to twice the amount received;⁶²⁵ 3) an organization with political purposes or organization for the defense of political rights or an individual who invites foreign citizens to issue opinions that offend the institutions of the State, in which case they will be punished with a fine of between five thousand and ten thousand tax units.⁶²⁶ In addition, in this last case, foreign citizens who participate in the above activities are subject to the expulsion procedure as provided in the laws governing this subject.⁶²⁷ The accessory penalty consists of political disqualification for a period of between five and eight years for the president of the above organizations “or those who receive economic assistance, financial contributions or sponsor the presence of foreign citizens who attack the sovereignty and independence of the Nation and its institutions.”

416. The law does not indicate which agency of government is competent to supervise compliance with the law or to impose the penalties provided, or the applicable procedure. Given the breadth of the definition of “political activity or activities for the defense of political rights” under Article 3 of the law, these activities could potentially include any activity of any civil society organization whose work consists of the promotion and public defense of values, principles, and rights recognized in the Constitution, as well as international human rights treaties, through forums, discussions, training workshops, statements made to the press, release of reports, filing of complaints.

417. The Commission and the Special Rapporteurship for Freedom of Expression indicated in Chapter IV of the 2010 Annual Report that this law is of great concern in that it creates “the possibility that non-governmental human rights organizations whose purpose is to monitor the exercise of public power (purpose of the vast majority of these organizations) will see their capacity to perform their important functions seriously compromised.”⁶²⁸ The report indicated that

⁶²¹ In accordance with Article 3, organizations with political purposes are “those engaged in public or private activities intended to promote citizen participation in public venues, exercise control over political powers, or promote candidates aspiring to hold popularly elected public office.”

⁶²² In accordance with Article 3, organizations for defense of political rights are “those whose purpose is to promote, disseminate, report on, or defend the full exercise of citizens’ political rights.”

⁶²³ See Art. 8 of the Law on Defense of Political Sovereignty and National Self-Determination.

⁶²⁴ See Art. 6 of the Law on Defense of Political Sovereignty and National Self-Determination.

⁶²⁵ See Art. 7 of the Law on Defense of Political Sovereignty and National Self-Determination.

⁶²⁶ See Art. 8 of the Law on Defense of Political Sovereignty and National Self-Determination.

⁶²⁷ See Art. 8 of the Law on Defense of Political Sovereignty and National Self-Determination.

⁶²⁸ IACHR. Press release 122/10. December 15, 2010. IACHR Concerned about Law Initiatives that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>.

In Latin America, most non-governmental organizations dedicated to defending and promoting human rights and monitoring the government rely on the funding they receive through international cooperation in order to be able to function effectively, since there are few or no opportunities for financial independence at the local level. By prohibiting funding of this kind, the law proposed in the National Assembly would have the effect of shutting down all independent organizations, which in recent years have done important work in all countries in the region to defend and promote human rights, often by bringing cases to the Inter-American system for the protection of human rights.⁶²⁹

418. The legislative reform approved on December 21, 2010 also added a new chapter to the 1965 Law on Political Parties, Public Meetings, and Demonstrations. This chapter gives the Assembly the power to punish deputies who repeatedly fail to align with the political orientations and positions contained in the management program filed with the National Electoral Council when they recorded their candidacies. Such failure to stay in line is categorized as “fraud against the electorate.”

419. Conduct considered “fraudulent” consists of voting against the programmatic content and political-ideological direction of the program; making common cause with political issues or positions contrary to the program, as well as with political forces contrary to the social movements or political organizations that nominated them; and leaving the Parliamentary Bloc of the political or social organization that supported their candidacy in order to join or form another Parliamentary Bloc opposed to the program. The penalties provided are suspension or partial disqualification for the position of deputy, with a prior request of at least 0.1% of total registered voters of the federal entity or electoral district where they were elected and approval of the majority of the National Assembly. The reform also provides that the decision of the Assembly could be referred to the Office of the Comptroller General of the Republic for political disqualification of the sanctioned deputy. In this regard, the Commission considers that the definition of this offense constitutes a violation of the political rights and public responsibilities of the deputies, as it imposes upon them an obligation to obey the party and its activists.

420. This legislative reform also introduced limitations on the deputies’ participation in debates and on access to Assembly sessions by citizens and the private communication media. In this respect, the reform establishes that the full sessions may only be rebroadcast by the State channel, ANTV, eliminating the article that guaranteed that social communication media could cover the sessions. In addition, the reform reduces the number of times and length of time that deputies may have the floor during sessions and makes it possible to limit their ability to speak on matters other than those stipulated in the agenda and considered to be urgent by Assembly leadership.⁶³⁰

C. Respect and governmental guarantee for the exercise of freedom of expression

1. Attacks on the media and journalists

421. The Commission was informed of the murder of the journalist, Wilfred Ojeda Peralta, who was found dead in the early hours of May 17 in the municipality of Revenga in the State of Aragua. At the time, the Special Rapporteurship recognized the rapid intervention of Venezuelan police authorities to shed light on the case and asked that they not disregard the possibility that the murder had been motivated by the victim’s work as a journalist.⁶³¹ On June 28, the Scientific, Criminal, and Criminalistics

⁶²⁹ IACHR. Press release N° 122/10. December 15, 2010. IACHR Concerned about Law Initiatives that Could Undermine the Effective Exercise of Human Rights. Available at: <http://www.IACHR.oas.org/Comunicados/English/2010/122-10eng.htm>.

⁶³⁰ Civilis, Investigación y Acción de la Sociedad Civil en Derechos Humanos, *Situación de los derechos humanos y la democracia en Venezuela ante las recientes medidas legislativas* [Civilis. Investigation and Action by Human Rights Civil Society. *Human rights and democracy situation in Venezuela given recent legislative measures*], Caracas, January 6, 2011.

⁶³¹ Ojeda used to write a column titled “Critical Dimension” in the daily newspaper *Clarín* of La Victoria in the state of Aragua, where he frequently questioned governmental authorities. According to the information available, Ojeda was also an activist in the opposition Democratic Action Party (AD) and years earlier had held municipal and regional positions with this political group. IACHR. Office of the Special Rapporteur for Freedom of Expression. May 23, 2011. Press Release R47/11. [Office of the Special Rapporteur for Freedom of Expression Condemns Murder of Journalist in Venezuela](#); Committee to Protect Journalists (CPJ). May

Investigations Corps (CICPC) concluded that two brothers were responsible for the crime and that the murder had been due to a debt that the journalist owed to one of them. The CICPC declared that the case was “solved by the police” and announced that the suspects “were being sought by the First Preliminary Proceedings Court of the State of Aragua.”⁶³²

422. The IACHR learned of shots fired on the Venezuelan public television station *Vive TV Zulia* on July 31, 2011, injuring two employees of the channel.⁶³³ According to the information received, two suspects in the shooting at the station were shot down on August 3, 2011 when they were confronted by police.⁶³⁴

423. The IACHR was informed of various attacks on media employees by members of the State security forces. On December 6, 2010 in the State of Apure, agents of the Bolivarian National Guard attacked several journalists who were covering a salary protest by State government employees. The Special Rapporteurship learned that several members of the National Guard had beaten the General Secretary of the Apure office of the National Journalists Association, José Ramón González, while trying to arrest him and snatch his photographic equipment. The journalist Aly Pérez of the newspaper *Visión Apureña* was also attacked.⁶³⁵ On December 23, 2010 the Agence France-Presse (AFP) photographer, Miguel Gutiérrez, received a head wound during a police operation in Caracas to dissolve a demonstration of students opposed to the Universities Law.⁶³⁶ On January 15, 2011, according to reports, members of the National Guard attempted to seize the cameras of the photographers, Enio Perdomo, of *El Universal*, and José (Cheo) Pacheco, of *El Universal* and *Últimas Noticias*, while they were covering a protest by relatives of prisoners at the La Planta prison in Caracas.⁶³⁷ On March 28, the *Globovisión* journalist, Lorena Cañas, was attacked by police officers of the State of Bolívar while she was covering a

...continuation

20, 2011. [Newspaper columnist shot to death in Venezuela](#). Reporters Without Borders. May 19, 2011. [Contract-style Killing of Newspaper Columnist in Aragua State](#).

⁶³² Scientific, Criminal, and Criminological Investigations Corps (CICPC). June 28, 2011. [CICPC resuelve el caso del periodista aragüeño de El Clarín](#). [CIPC solves case of Aragua journalist from El Clarín]

⁶³³ According to the information received, on Sunday morning unknown subjects on board a truck passed in front of the headquarters of the channel in Maracaibo in the state of Zulia, and shot several times as press staff from the station were leaving the building. As a result of the attack, police officer Gustavo Ceballos was shot in the right leg and employee José Brito fractured his leg when he fell from a stairway while trying to protect himself from the bullets. IACHR. Office of the Special Rapporteur for Freedom of Expression, May 23, 2011. Press Release R84/11. [Office of the Special Rapporteur Expresses Concern Regarding Shots Fired at Public Television Station in Venezuela](#); Office of the Attorney General of the Bolivarian Republic of Venezuela. [MP comisionó a dos fiscales para investigar ataque contra Vive TV en el Zulia](#). [Prosecutor's Office commissioned two prosecutors to investigate attack on Vive TV]; Venezolana de Televisión. July 31, 2011. [Dos heridos tras atentado a Vive TV Zulia](#). [Two injured after attack at Vive TV Zulia]; Espacio Público [Public Arena]. August 1, 2011. [Atacan sede de Vive TV en Zulia](#). [Attack on headquarters of Vive TV in Zulia]

⁶³⁴ Noticiero Digital. August 4, 2011. [Abatieron a dos de las personas que atacaron a Vive TV](#). [Two people who attacked Vive TV cut down]; La Verdad. August 3, 2011. [Ultiman a involucrados en atentado contra Vive TV](#). [Suspects in attack on Vive TV killed]

⁶³⁵ National Association of Journalists (CNP). December 8, 2010. [CNP denuncia atropello de la Guardia Nacional a periodistas en Apure](#). [CNP denounced National Guard abuse of journalists in Apure]; National Association of Journalists (CNP). December 6, 2010. [Agredidos periodistas y sindicalistas durante protesta en San Fernando de Apure](#). [Journalists and trade unionists assaulted during protest in San Fernando de Apure]; Espacio Público. December 7, 2010. [Guardia Nacional agrede a periodistas en Apure](#). [National Guard assaults journalists in Apure]

⁶³⁶ BBC World. December 23, 2010. [Venezuela: policía dispersa marcha contra ley de universidades](#). [Venezuela: police disperse march against universities law]; Noticia al Día. December 23, 2010. [Repelen marcha de universitarios en Caracas: Reportan un periodista de AFP herido y dos estudiantes detenidos](#). [Universities march in Caracas repelled: Reports of an AFP journalist wounded and two students detained]; Noticias 24. December 23, 2010. [Fotógrafo de la Agencia AFP recibió una pedrada en la cabeza durante protesta estudiantil](#). [Rock hits AFP photographer in head during student protest]

⁶³⁷ Espacio Público. February 4, 2011. [GN intenta despojar de sus equipos a los reporteros gráficos de El Universal y Últimas Noticias](#). [NG tries to take equipment from El Universal and Últimas Noticias photojournalists]; El Informador. January 15, 2011. [Protestas en las afueras de retén de La Planta](#). [Protests outside the La Planta prison]

demonstration of students demanding the release of the former mayor of the municipality of Sifontes, Carlos Chancellor.⁶³⁸

424. The IACHR received information regarding several incidents in which individuals associated with the government had allegedly attacked journalists. On January 20, 2011, vigilantes from the State markets network of the Venezuelan Food Producer and Distributor (PDVAL) struggled with the journalist Gabriela Iribarren from the newspaper *Últimas Noticias* and snatched the notebook where she was noting down product prices in San José, Caracas. As reported to the Special Rapporteurship, on that same day the journalist succeeded in retrieving her notebook and received apologies from PDVAL management.⁶³⁹ On January 11, the outgoing President of the Municipal Chamber of Vargas, Miriam González, allegedly attacked the journalist Luisa Álvarez, of the Chamber's press corps, during a meeting during which the new municipal leadership was being elected and installed. As this office learned, González scolded the journalist so that she wouldn't note down her statements, called her a "traitor" and hit her in the face. The journalist received various injuries.⁶⁴⁰ On April 1, alleged employees of the state-owned *Petróleos de Venezuela (PDVSA)* attacked a press team from the First Justice party, which was documenting activities of this group in the area around the headquarters of the petroleum company in Caracas.⁶⁴¹ On April 1, a group of alleged sympathizers of the United Socialist Party of Venezuela (PSUV) allegedly attacked the journalists Juan Vicente Maya of the newspaper *Las Noticias de Cojedes* and Rosana Barreto of the daily newspaper *La Opinión*, as well as two other press employees outside the radio station in Cojedes, while they were waiting for the Governor of the State of Miranda, Henrique Capriles Radonsky, who was granting interviews there.⁶⁴²

425. The IACHR was informed of the attack on a team of journalists from *Globovisión* on April 7 in Trujillo, while they were covering a peaceful protest of nursing employees at the Central Hospital of Valera. According to reports to this office, individuals allegedly affiliated with the Bolivarian Union of Nurses physically and verbally attacked the journalist Laura Domínguez and the cameraman Heisser Gutiérrez and snatched their recording equipment.⁶⁴³

426. The Special Rapporteurship learned that on February 19 the State channel *Venezolana de Televisión (VTV)*, located in the Los Ruices district of Caracas, was temporarily left without telephone

⁶³⁸ When a police officer arrested the cameraman from *Globovisión* and seized the recording equipment, Cañas tried to intervene and was hit about the face and back. The cameraman was later released. The equipment was returned after a military official intervened. National Association of Journalists. March 31, 2011. [Agredida Lorena Cañas de Globovisión en Bolívar](#). [Lorena Cañas of *Globovisión* attacked in Bolívar]; Espacio Público. March 29, 2011. [Equipo de Globovisión es agredido por la Policía del estado Bolívar](#). [Globovisión team attacked by police in State of Bolívar]

⁶³⁹ Instituto Prensa y Sociedad (IPYS). January 24, 2011. [Personal de seguridad agrede a periodista](#). [Security personnel attack journalist]; El Universal. January 27, 2011. [CNP rechaza ola de agresiones en contra de comunicadores](#). [CNP rejects wave of attacks on journalists]

⁶⁴⁰ El Universal. January 12, 2011. [Concejo Municipal de Vargas se instaló en medio de trifulca](#). [Vargas Municipal Council installed in the midst of squabble]; Espacio Público. January 26, 2011. [Concejal de Vargas agrede a periodista Luisa Álvarez](#). [Vargas council member attacks journalist Luisa Álvarez]; El Universal. January 27, 2011. [CNP rechaza ola de agresiones en contra de comunicadores](#). [CNP rejects wave of attacks on journalists]

⁶⁴¹ According to reports, some 40 people, some of them with PDVSA identification, also threw several objects at the journalists, Deyanira Castellanos and Eucaris Perdomo, and the cameraman, Lenin León. Later, at a metro station, part of the press team was surrounded by individuals tied to the government. Police officers intervened to protect the journalists but asked them to turn over the material they had filmed. Espacio Público. April 4, 2011. [Trabajadores de PDVSA agreden a equipo de prensa de Primero Justicia](#). [PDVSA workers attack press team from Primero Justicia]; Knight Center for Journalism in the Americas. April 5, 2011. [Periodistas venezolanos atacados por grupo de presuntos partidarios de Chávez](#). [Venezuelan journalists attacked by groups of alleged Chavez partisans]

⁶⁴² Instituto Prensa y Sociedad (IPYS). April 4, 2011. [Simpatizantes del presidente Chávez agreden a periodistas](#). [Sympathizers of President Chávez attack journalists]; Espacio Público. April 11, 2011. [Grupo de oficialistas agrede a comunicadores en el estado Cojedes](#). [Pro-government group attacks journalists in the estate of Cojedes]

⁶⁴³ National Association of Journalists, Zulia section – Circle of Graphic Reporters of Venezuela. April 8, 2011. [CNP y CRGV Trujillo rechazan vil agresión a reporteros de Globovisión](#). [Trujillo CNP and CRGV reject vile attack on *Globovisión* reporters]; Espacio Público. April 7, 2011. [Agreden a corresponsal de Globovisión en Trujillo](#). [Globovisión correspondent attacked in Trujillo]

or Internet service after unknown persons deliberately burned the cable equipment from the telephone company, CANTV.⁶⁴⁴

427. On August 13, journalists from the program “Zurda Kondukta” of VTV were attacked in Puerto Ordaz as they were covering the launch of the campaign for Governor of the State of Bolívar of the opposition deputy Andrés Velázquez. According to the information available, the journalists Oswaldo Rivero and Marcos Ramírez were trying to interview those attending the event when several people beat them and seized a video camera.⁶⁴⁵ On September 13, journalists from VTV who were trying to interview the former governor of Zulia and opposition leader, Oswaldo Álvarez Pérez, were attacked and expelled from a location where the 70th Anniversary of the Democratic Action Party was being celebrated. According to reports, the politician tried to hit Oswaldo Rivero and Pedro Carvajalino when the latter called him a “murderer.” Later, those attending the event insulted, pushed, and expelled the journalists from the room and destroyed one of their cameras.⁶⁴⁶

2. Threats and harassment

428. The IACHR was informed of death threats received via Twitter on January 24 by Rayma Suprani, a journalist and cartoonist at the daily *El Universal*. The threats were sent from an account in the name of a recognized pro-government leader and activist. Based on the information received, the reason for the threatening message was a critical cartoon Suprani published about a submarine cable that will link telecommunications between Venezuela, Cuba and Jamaica.⁶⁴⁷ In December 2010 and January 2011, the secretary of Photojournalists of the National Union of Press Employees (SNTP), Nilo Jiménez, received anonymous phone calls with intimidating messages and death threats, in which, according to the information provided to this office, he was warned to stop gathering information for a book he is preparing that includes a photographic compilation regarding violations of freedom of expression in Venezuela.⁶⁴⁸ According to the information received, the reporter from the daily *El Carabobeño*, Kevin García, received a death threat on February 22 from two individuals who warned that they would kill him if he continued writing about the municipality of Guacara in the State of Carabobo.⁶⁴⁹

429. The U.S. journalist, John Enders, claimed he was harassed by agents of the Bolivarian Intelligence Service (SEBIN). According to the information received, on February 13 the journalist was in

⁶⁴⁴ Estamos en línea. February 19, 2011. [Armario de CANTV fue completamente quemado. Vandalismo deja sin servicios a VTV y a 900 usuarios](#). [CANTV equipment cabinet completely burned. Vandalism knocks out services to VTV and 900 users]; Instituto Prensa y Sociedad (IPYS). February 23, 2011. [Canal estatal sufre acto vandálico](#). [State-run channel hit by vandalism]

⁶⁴⁵ Espacio Público. August 23, 2011. [Agredido equipo reporterial de VTV en el estado Bolívar](#). [VTV reporter team attacked in State of Bolívar]; Venezolana de Televisión. August 14, 2011. [Zurda Kondukta Último domingo Agresiones Podemos Andrés Velásquez en Bolívar](#). [Zurda Kondukta Last Sunday Attacks We can Andrés Velásquez in Bolívar] Minute 9:00 *et seq*; Correo del Orinoco. August 13, 2011. [Opositores agredieron a equipo reporterial](#). [Team of reporters attacked by the opposition]

⁶⁴⁶ Espacio Público. September 15, 2011. [Reporteros de VTV agredidos durante celebración de 70th aniversario de Acción Democrática](#). [VTV reporters attacked during celebration of 70th anniversary of Democratic Action]; National Association of Journalists. September 15, 2011. [CNP protesta por agresión a trabajadores de VTV](#). [CNP protests attack on VTV employees]; Venezolana de Televisión (VTV). September 13, 2011. [Pedro Carvajalino y Oswaldo Rivero atacados por las hienas de Acción Democrática](#). [Pedro Carvajalino and Oswaldo Rivero attacked by Democratic Action hyenas] Minute 23: 30.

⁶⁴⁷ In the cartoon, Suprani drew a cable with the title “Cable to Cuba” alongside a noose with the text: “Cable to Venezuela.” One of the threatening messages said: “We’re going to put that noose on you unpatriotic X, Yankee-lover X, unfaithful to Vzla (Venezuela) X.” International Freedom of Expression Exchange (IFEX)/IPYS. February 1, 2011. [Amenazan a caricaturista vía Twitter](#). [Cartoonist threatened via Twitter]; Espacio Público. January 26, 2011. [La caricaturista Rayma es amenazada de muerte por @LinaNRonUPV](#). [Cartoonist Rayma receives death threats via @LinaNRonUPV]

⁶⁴⁸ Espacio Público. January 24, 2011. [Periodista del SNTP recibe amenazas de muerte](#). [SNTP journalist receives death threats]; International Freedom of Information Exchange (IFEX)/IPYS January 26, 2011. [Amenazan de muerte a secretario del Sindicato de Trabajadores de la Prensa](#). [Secretary of Union of Press Employees receives death threats]

⁶⁴⁹ International Freedom of Expression Exchange (IFEX)/Instituto Prensa y Sociedad (IPYS). March 1, 2011. [Amenazan de muerte a pasante del diario “El Carabobeño”](#). [“El Carabobeño” intern receives death threats]; Espacio Público. March 1, 2011. [Amenazan de muerte a reportero de diario El Carabobeño](#). [“El Carabobeño” reporter receives death threats]

the city of Sabaneta, State of Barinas, when he realized he was being followed and photographed by two unknown men.⁶⁵⁰

430. The IACHR received information regarding the intervention or hacking, since August 31, of the electronic accounts of journalists, writers, human rights defenders, and politicians on social networks, blogs, and e-mail accounts. The anonymous e-attack consisted of the insertion of text with insults, threats and mudslinging, as well as the disclosure of private information, destruction of data and threats to publicly identify the information sources of those affected. According to the reports, at least 14 people who expressed critical or independent positions regarding the government were subject to the attack.⁶⁵¹ An anonymous group called N33 was said to be responsible for executing the attacks. In a communication from the perpetrators issued on September 2 and read on the state-owned broadcaster VTV, the N33 group alleged that the purpose of the hacking was to prevent the legitimate owners of the accounts from using them “under the guise of freedom of expression” to attack Venezuelan institutions and the Head of State. The N33 group maintained that it had no links to the Government but was a sympathizer of President Chávez.⁶⁵² As of the date this report is being completed, the hacking of electronic accounts continues and no information has been received regarding investigations begun by the State to identify and punish those responsible.

431. On April 7, the journalist Maolys Castro and the photographer Ernesto Morgado, both of the daily *El Nacional*, were detained for some six hours at the military installations at Fort Tiuna, in Caracas, where they were covering a demonstration of victims of natural disasters being housed at that military center. Based on the reports, soldiers held the reporters at the entrance to the fort; took away their identity documents and did not tell them why they were being detained. They were released hours later after being forced to sign a document in the presence of attorneys and officials from the Public Defender’s Office.⁶⁵³

432. On April 7, the Director of the Educational Zone of the State of Mérida dismissed the educator, Manuel Aldana, Director of the “Rafael Antonio Godoy” State College in Mérida, allegedly for having informed the official newspaper “Correo del Orinoco” that cases of the AH1N1 flu had been detected at the school.⁶⁵⁴

⁶⁵⁰ The journalist discussed the event with representatives of the opposition party COPEI he was interviewing, and those representatives photographed the unknown subjects. Moments later, alleged police officers arrived where the reporter was interviewing the representatives and took their camera’s memory card. One day later, the journalist again noticed he was being followed and notified officials of the National Guard who were at a police post. The police detained the subjects, who were released after identifying themselves as agents of SEBIN. International Freedom of Information Exchange (IFEX)/IPYS. February 23, 2011. [Periodista estadounidense denuncia acoso del servicio de inteligencia](#). [U.S. journalist denounces assault by intelligence service]. Informe On Line. February 25, 2011. [SEBIN sigue los pasos a periodista estadounidense](#). [SEBIN follows trail of U.S. journalist]

⁶⁵¹ Espacio Público. September 5, 2011. [Hackeadas cuentas de Twitter de usuarios críticos al gobierno venezolano](#). [Twitter accounts of those critical of Venezuelan government hacked]; EFE News Service. September 6, 2011. [Hackers chavistas intervinieron cuentas de opositores por “atacar” a Chávez](#). [Chavist hackers broke into opposition accounts for “attacking” Chavez]

⁶⁵² Redpres Noticias. September 2, 2011. [Grupo Hacker #N33 se pronuncia y se atribuye hackeos a cuentas de personajes conocidos en twitt](#). [Hacker Group #N33 announces itself and claims it hacked accounts of persons known in Twitter]. Venezolana de Televisión. La Hojilla. September 3, 2011. [Mario Silva lee un supuesto comunicado de los hackers #33](#). [Mario Silva Lee reads an alleged communication from the #33 hackers]

⁶⁵³ The document signed by the journalists stated that they were not mistreated and that they needed to identify themselves in advance in order to enter a military installation. The reporters insisted they were detained outside the fort. Espacio Público. April 8. [Gremios denuncian abuso de autoridad](#). [Unions denounce abuse of authority]; Noticias 24. April 7, 2011. [Periodistas de El Nacional retenidos en Fuerte Tiuna son liberados tras firmar acta](#). [El Nacional journalists held at Fort Tiuna are released after signing document]

⁶⁵⁴ Institute for Press and Society (IPYS)/IFEX. April 15, 2011. [Destituyen a director de colegio por declarar a la prensa sobre casos de gripe AH1N1](#). [College director dismissed for telling press about AH1N1 flu cases]; El Universal. April 9, 2011. [Destituyen a docente que alertó casos de AH1N1 en el estado Mérida](#). [Teacher who warned of AH1N1 cases in State of Merida dismissed]; Correo del Orinoco. March 16, 2011. [Se detectaron en Mérida dos casos de influenza AH1N1](#). [Two cases of AH1N1 flu detected in Merida]

3. Indirect restrictions on freedom of expression: calls to suspend programming that the authorities find “offensive”

433. The IACHR was informed that on January 13 the National Telecommunications Commission (CONATEL) called on the television company *Televen* “to immediately suspend transmission of the 12 *Corazones* programs and the Colombian soap opera *Chepe Fortuna*, because of their demeaning treatment of Venezuela.”⁶⁵⁵ On January 15, in his report to the National Assembly, President Hugo Chávez questioned the transmission of the Colombian soap opera, which he called “disrespectful” of Venezuela.⁶⁵⁶ President Chávez indicated that *Televen* had agreed to remove the soap opera.

4. Criminal proceedings against journalists and opposition leaders

434. On January 27, the Criminal Cassation Chamber of the Supreme Court of Justice let stand the decision imposing⁶⁵⁷ 30 months in prison on the journalist, Gustavo Azócar, for the crime of “unlawful enrichment from the business of government.” The judges rejected a cassation appeal filed by the journalist’s defense.⁶⁵⁸ Gustavo Azócar was granted the benefit of conditional release but received an additional punishment of political disqualification. The journalist was also forbidden to speak about his case and in July 2009 he was imprisoned for eight months for reproducing news related to his legal situation in a personal blog.⁶⁵⁹ On February 7, 2011, Gustavo Azócar appeared before a court in the State of Táchira accused of defamation⁶⁶⁰ of an Army officer. According to the reports, the case began with an article that Gustavo Azócar published in September 2004 in the daily *El Universal*, in which he cited an official report discussing alleged irregularities in tasks involved in registering citizens, under the responsibility of the complaining military official. In a conciliation agreement, in April 2005, the journalist agreed to allow the official to respond on this television program “Café con Azócar” on *Televisión Regional del Táchira*. However, the officer had not received authorization from his superiors to discuss the case. When he was finally able to make statements, the complainant indicated that responsibility for the alleged offense belonged to the author of the report and not the journalist. However, processing of the case continued.⁶⁶¹

⁶⁵⁵ According to reports, in the soap opera *Chepe Fortuna* one of the characters is a woman named Venezuela, whose pet is a chihuahua named *huguito*. In one show, which led to the criticism, the dog was lost and Venezuela asks herself “and now what am I going to do without *Huguito*,” to which a friend answers “you will be free, Venezuela.” On January 13, both programs were sharply criticized on the “La Hojilla” program on the state channel *Venezolana de Televisión*. According to a communication from CONATEL: “The Colombian soap opera *Chepe Fortuna* (...) underestimates the intelligence of the viewer by presenting two characters identified as the sisters Colombia and Venezuela, with the second character being characterized as associated with criminal and interventionist activities, a metaphor that indicates blatant manipulation of the script to demoralize the Venezuelan people.” *El Universal*. January 13, 2011. [Conatel exhortó a Televen a suspender un programa y una novela](#). [CONATEL urged Televen to suspend a program and a soap opera]; RCN. Undated. [Escena: “Sin Huguito” de Chepe Fortuna](#). [“Without Huguito” scene from *Chepe Fortuna*]

⁶⁵⁶ VTV. January 15, 2011. [El Comandante Presidente Hugo Chávez ante la Asamblea Nacional](#). [Commander President Hugo Chavez before the National Assembly]; *El Universal*. January 17, 2011. [Presidente celebra salida del aire de “Chepe Fortuna”](#). [President celebrates removal of “*Chepe Fortuna*” from air]; *El Espectador*. January 15, 2011. [Chávez celebra suspensión de novela colombiana que “irrespetaba” a Venezuela](#). [Chavez celebrates suspension of Colombian soap opera “disrespectful” of Venezuela]

⁶⁵⁷ Supreme Court of Justice. Principal Matter 1JM-1276-07. [Review of judgment of January 2010](#); Ministry of Popular Power for Communication and Information. Judicial. [Sentencia Condenatoria bajo libertad condicional para Gustavo Azócar](#). [Conviction with conditional release for Gustavo Azócar]

⁶⁵⁸ Supreme Court of Justice. Judgment of January 27, 2011. [Expediente C10-297](#). [Case file C10-297]

⁶⁵⁹ IACHR. Annual Report 2010. OEA/SER.LV/II. Doc. 5. March 7, 2011. Volume II: [Annual Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II: Evaluation of the State of Freedom of Expression in the Hemisphere. Para: 424.

⁶⁶⁰ Third Court of First Instance (at trial). February 1, 2005. [Orden para librar boleta de citación a Gustavo Enrique Azócar Alcalá](#). [Order to issue summons for Gustavo Enrique Azócar]

⁶⁶¹ Reporters Without Borders. February 8, 2011. [El periodista Gustavo Azócar comparece de nuevo ante la justicia, esta vez por un caso de “difamación” con una base dudosa](#). [Provincial journalist prosecuted on dubious criminal libel charge]; *El Universal*. February 5, 2011. [Gustavo Azócar regresa a tribunales este lunes](#). [Gustavo Azócar returns to court this Monday]

435. The IACHR learned of the criminal conviction on July 13, 2011 of the former Governor of the State of Zulia, Oswaldo Álvarez Paz, for the crime of spreading false information, as established in the Penal Code of the Bolivarian Republic of Venezuela.⁶⁶² According to the information received, Court 21 of the Metropolitan Area of Caracas sentenced Álvarez Paz to two years in prison, with the benefit of conditional release, and prohibited him from leaving the country. The case began on March 8, 2010, when Álvarez Paz talked on the “Aló Ciudadano” program aired by the private broadcaster *Globovisión* about international judicial investigations into the alleged activities and links of international organized crime in Venezuela. Because of these comments, the governing party deputies, Manuel Villalba and Pedro Lander, filed a complaint with the Public Prosecutor’s Office seeking an investigation into the conduct of Álvarez Paz for having committed various crimes established in the Venezuelan Penal Code, including conspiracy, spreading false information, and instigating the commission of a crime. In addition to being a former Governor of Zulia, Oswaldo Álvarez Paz is a primary candidate from the opposition Constitutional Pole and was a candidate for the presidency of Venezuela in 1993.⁶⁶³ As of October 2011, Oswaldo Álvarez Paz had not received copy of the conviction and had not been able to appeal the decision so far.⁶⁶⁴

436. The IACHR was informed of the decision made by the Venezuelan courts to temporarily prohibit circulation of the weekly paper *Sexto Poder* in Venezuela and to order the capture, arrest, and criminal prosecution of the editorial director and president of that media outlet.⁶⁶⁵ According to the information received, the edition of the weekly *Sexto Poder* for Sunday, August 21, 2011 came out on August 19. It included a satirical article titled “The Powerful Ladies of the Revolution,” illustrated with a photographic montage of six female senior officials of the Venezuelan State dressed as cabaret dancers. The point of the publication was to question the alleged dependence on the Executive Branch of oversight agencies in Venezuela.⁶⁶⁶ Some of the female officials referred to, as well as other male senior public officials, stated that the photomontage and text offended “the dignity of Venezuelan women” and constituted “gender-based violence.” They claimed that the publication contained “hate speech” and that it “vilified” the officials and the institutions they represented.⁶⁶⁷ Once the publication became known, the Comptroller filed a complaint against the journalists with the Prosecutor’s Office and less than 24 hours later the Ninth Preliminary Proceedings Court of the Metropolitan Area of Caracas ordered a

⁶⁶² According to Article 297-A, “[a]nyone who spreads false information through any media, whether print, radio, television, telephonic, e-mail, or written brochure, to cause panic among the population or keep it in a state of anxiety shall be punished with imprisonment of two to five years.” Official Gazette of the Bolivarian Republic of Venezuela. March 16, 2005. Special Official Gazette No. 5763. Penal Code. [Gaceta Oficial No. 5.763 Extraordinario. Código Penal](#).

⁶⁶³ Public Prosecutor’s Office of the Bolivarian Republic of Venezuela. July 13, 2011. [MP logró condena de 2 años para Oswaldo Álvarez Paz por información falsa](#). [Public Prosecutor’s Office succeeds in sentencing Oswaldo Álvarez Paz to two years for false information]; VTV. July 13, 2011. [Oswaldo Álvarez Paz recibe condena a 2 años de prisión por difundir información falsa](#). [Oswaldo Álvarez Paz sentenced to two years in prison for spreading false information]; Globovisión. March 8, 2010. *Aló Ciudadano*. Part 1. [Entrevista a Oswaldo Álvarez Paz](#). [Interview with Oswaldo Álvarez Paz]

⁶⁶⁴ El Universal. October 1, 2011. [Oswaldo Álvarez Paz no ha podido apelar su condena](#). [Oswaldo Álvarez Paz has been unable to appeal his conviction]

⁶⁶⁵ IACHR. Office of the Special Rapporteur for Freedom of Expression, May 23, 2011. Press Release R96/11. [Office of the Special Rapporteur Expresses Concern over Detention of Journalists and Serious Measures Taken against Magazine in Venezuela for Publishing Article that Offended the Authorities](#); Office of the Public Prosecutor of the Bolivarian Republic of Venezuela. August 23, 2011. [MP imputó a directora general de 6to Poder](#). [Office of the Public Prosecutor indicted General Director of Sexto Poder]; Committee for the Protection of Journalists (CPJ). August 24, 2011. [Clausuran semanario venezolano y dos ejecutivos son acusados](#). [Venezuelan weekly shut down and two executives are accused]

⁶⁶⁶ The note and illustration showed the President of the Supreme Court of Justice, Luisa Estella Morales; the General Prosecutor, Luisa Ortega; the Ombudswoman, Gabriela Ramírez; the interim General Comptroller, Adelina González; the President of the National Electoral Council, Tibisay Lucena, and the Vice President of the National Assembly, Blanca Eekhout, all dressed as cabaret dancers. Among other assertions, the publication indicated that each of the representatives of the above-mentioned entities “played a specific role within the carabet led by Mr. Chávez.” Twitpic. August 22, 2011. [La Foto: Las poderosas de la Revolución Bonita](#). [Photo: Powerful ladies of the pretty revolution]

⁶⁶⁷ Noticias 24. August 22, 2011. [“Publicación del Semanario es un ataque a las instituciones del Estado”](#). [Publication by Weekly is an attack on the institutions of government]; Minuto a Minuto. August 22, 2011. [Maryclen Stelling calificó de burla la publicación de Sexto Poder](#). [Maryclen Stelling called publication by Sexto Poder a joke]; VTV. Contragolpe. August 23, 2011. [Sexto Poder. Gabriela Ramírez Defensora del Pueblo](#). [Sexto Poder. Gabriela Ramírez, Public Defender]

precautionary measure to prohibit the “publication and distribution” of the weekly “by any means.”⁶⁶⁸ The same court ordered the arrest of the general manager of the *Sexto Poder*, Dinorah Girón Cardona, and its president and general editor, Leocenis García, for alleged violations of the Penal Code of Venezuela based on publication of the referenced article. On August 21, agents of the SEBIN arrested Girón, who was released two days later when the referenced Ninth Court ordered conditional release. However, the court ordered that she be prohibited from leaving the country, that she appear in court to leave her signature every 15 days, and prohibited her from referring to her case and participating in public assemblies. On August 23, the Special Rapporteurship asked the State for information on this case. In its response, the State indicated that, based on her publication, Dinorah Girón was being charged with the crimes of “vilification of a public official, public instigation of hate, and public offense based on gender” while Leocenis García was being charged for “instigating hate, vilification and gender-based violence.” According to the information supplied by the State, such crimes are established and punished under the Penal Code and in the Organic Law on the Right of Women to a Life Free of Violence.⁶⁶⁹ In addition, on August 29, the State informed the Special Rapporteurship that it had revoked the prohibition on publication of the weekly. However, it was reported that the judge imposed an order prohibiting *Sexto Poder* from publishing information containing “graphic or textual” information that “constitutes an offense or insult against the reputation or decorum of any representative of the branches of government, where the purpose is to expose them to scorn or public hatred.” The court also prohibited the publication of “degrading and offensive content against women” and ordered the removal of copies of the edition of this past August 19 that were still available to the public.⁶⁷⁰ The weekly could not circulate on August 28 because the judicial measure originally adopted was in effect. On August 30, Leocenis García turned himself in to the authorities.⁶⁷¹

437. According to the information the IACHR has received, Leocenis García was on a hunger strike in the detention facility where he was being held. In the early morning hours of November 17, 2011, he was reportedly taken against his will to the Military Hospital. The information indicates that his family and the lawyers representing Leocenis García did not initially have information concerning his whereabouts and that despite his delicate health he allegedly received no medical treatment. On November 18, 2011, in exercise of its authorities under Article 41 of the American Convention, the Commission requested information about the situation and about Mr. Leocenis García’s health and the conditions under which he is being held.

5. Administrative proceedings

438. The IACHR learned that the CONATEL Social Responsibility Board penalized the television channel Globovisión on October 18, 2011 by imposing a fine of 9,394,314 Strong Bolívares (about US\$ 2.1 million), the equivalent of 7.5% of its gross revenue for the year 2010.⁶⁷² According to the information received, the penalty was imposed due to violations of Articles 27 and 29 of the Law on Social Responsibility in Radio, Television and Electronic Media (the *Resorte* Law), based on material aired by Globovisión between June 16 and June 19, 2011 about the prison situation at the El Rodeo Penitentiary

⁶⁶⁸ Judicial Branch of the Bolivarian Republic of Venezuela. Ninth First Instance Court (procedural) of the Criminal District of Caracas. August 20, 2011. Precautionary measure. Available in the archive of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁶⁹ Communication from State representative to the Inter-American System of Human Rights, Germán Saltrón Negretti. AGEV/000384. August 24, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁷⁰ Communication from State representative to the Inter-American System of Human Rights, Germán Saltrón Negretti. AGEV/000384. August 24, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression; Committee for the Protection of Journalists (CPJ). August 30, 2011. [Permite la reapertura de semanario venezolano, ejecutivos aún acusados](#). [Venezuelan weekly allowed to reopen; executives still accused]

⁶⁷¹ Reporters Without Borders. September 20, 2011. [Apelan la decisión de que el editor de Sexto Poder permanezca en prisión preventiva](#). [Decision to keep editor of Sexto Poder under preventive detention appealed]; El Universal. September 19, 2011. [Defensa de Leocenis García introduce recurso de apelación](#). [Leocenis García’s defense files appeal]

⁶⁷² Bolivarian Republic of Venezuela. Bureau of Social Responsibility. October 18, 2011. [Providencia Administrativa No PADRS-1.913](#). [Administrative Order No. PADRS-1.913]

Center.⁶⁷³ According to the resolution issued on October 18, the Social Responsibility Board determined that the television channel had transmitted “messages that promoted disturbances of the public order, advocated crime, and incited against the legal system in effect, promoted hatred for political reasons and fomented anxiety among the population, on June 16, 17, 18, and 19, 2011.” As the Special Rapporteurship learned, for several days Globovisión reported information on the events that occurred in the area of the El Rodeo Penitentiary Center and the intervention of law enforcement. Coverage included interviews of the relatives of those in prison, opposition politicians, and government officials.⁶⁷⁴

439. The IACHR has expressed its concern regarding the Law on Social Responsibility in Radio, Television and Electronic Media and its most recent reform of December 2010, which introduces a broad catalogue of restrictions written in vague and ambiguous language, and makes the sanctions for such prohibited actions more onerous. In that regard, this Rapporteurship considers it must observe that vague and imprecise legal provisions may grant overly broad discretionary powers to the authorities, which are incompatible with the full effect of the right to freedom of expression, because they may support potentially arbitrary actions that impose disproportionate liabilities for airing news, information, or opinions of public interest. By their mere existence, provisions of this type discourage the transmission of information and opinions due to fear of sanctions and may lead to broad interpretations that unduly restrict freedom of expression. Thus, the State must be specific about the conduct that may be subject to liability later, so as not to affect the free expression of uncomfortable ideas or inconvenient information regarding the actions of the authorities.

440. The IACHR has also expressed its concern regarding the absence of guarantees on the independence of agencies responsible for implementing the Law on Social Responsibility in Radio, Television and Electronic Media. The Rapporteurship notes that the President of the Republic may freely appoint and remove the members of CONATEL and there are no safeguards to ensure their

⁶⁷³ Article 27 of the *Resorte* Law as cited in Administrative Order No. PADRS-1.913, establishes that: *Radio, televisión, and electronic media are not permitted to disseminate messages that:*

1. *Incite or promote hate and intolerance for religious, political, gender-related, racist, or xenophobic reasons.*
2. *Incite or promote and/or advocate crime.*
- (...)
4. *Foment anxiety in the population or affect the public order.*
- (...)
7. *Incite or promote disobedience to the established legal order ...”*

Article 29 of the *Resorte* Law as cited in Administrative Order No. PADRS-1.913, establishes that: *Those subject to the application of this Law shall be punished:*

1. *With a fine of up to ten percent (10%) of gross revenues in the year immediately preceding the year when the violation was committed, and/or suspension for up to 72 continuous hours of their transmission, when they disseminate message that:*
 - a. *Promote, advocate or incite disturbances of the public order;*
 - b. *Promote, advocate or incite crime;*
 - c. *Incite or promote hatred or intolerance for religious, political, gender-related, racist or xenophobic reasons;*
 - (...)
 - g. *Foment anxiety in the population or affect the public order ...”*

Bolivarian Republic of Venezuela. Social Responsibility Board. October 18, 2011. [Providencia Administrativa No PADRS-1.913. Capítulo II](#). [Administrative Order No. PADRS-1.913, Chapter II]. See also: Ministry of Popular Power for Communication and Information. Official Gazette No. 39.610. February 7, 2011. [Ley de Responsabilidad Social en Radio, Televisión y Medios Electrónicos](#). [Law on Social Responsibility in Radio, Television and Electronic Media]

⁶⁷⁴ Venezolana de Televisión. La Hojilla. June 18, 2011. [Globovisión manipulación El Rodeo I cárcel tomada Guardia Nacional Bolivariana de Venezuela](#). [Globovisión charges manipulation. El Rodeo I prison taken by Bolivarian National Guard of Venezuela] *Min* 22, 30, 38, 53, 1:04, 1:10, 1:23; BBC World. June 19, 2011. [El descontrol del sistema carcelario de Venezuela](#). [Prison system in Venezuela out of control]; *El País*. July 13, 2011. [Los presos de la cárcel venezolana de El Rodeo II finalizan un mes de motín](#). [Prisoners at Rodeo II prison in Venezuela end a month of uprisings]

independence and impartiality. In addition, seven of the eleven members of the Social Responsibility Board are selected by the Executive Branch, the referenced law does not establish any criteria for appointing the board members, and does not define a fixed term of office for them or establish specific grounds for their removal.

441. The IACHR received information that *Canal 67 Tu Imagen TV* has been excluded from the programming grid of the cable company, Representaciones Inversat C.A, Tele-Red, in Charallave, State of Miranda, since March 28, 2011.⁶⁷⁵ According to the information received, its exclusion from the grid occurred after the mayor of Charallave, José Ramírez, wrote a note on November 16, 2010 to the President of the Tele Red company demanding that *Canal 67* be “suspended indefinitely from its transmissions.” In the same note, the mayor claimed that the content of *Canal 67* “has been systematically partial in favoring an opposition political sector to the detriment of economic equilibrium,” launches “misinformation attacks” and “gathers opinions against the municipal government in the communities.”⁶⁷⁶ On March 28, officials of CONATEL appeared at the facilities of *Canal 67* and Representaciones Inversat to conduct an inspection of the technical conditions at the station and its legal situation, during which it noted the lack of a written contract between the television station and the cable company, leading to the channel’s exclusion from the programming grid.⁶⁷⁷ On April 7, 2011, *Canal 67* remedied the failure to sign a contract with Representaciones Inversat C.A, and this was immediately demonstrated to CONATEL.⁶⁷⁸ Nonetheless, the cable company alleged that it would keep *Canal 67* off the grid until it received written approval from CONATEL. Despite requests for information made to CONATEL and various State agencies regarding the situation, the representatives of *Canal 67* and the cable company have not received a response and the channel’s suspension continues.⁶⁷⁹

442. The IACHR received information about proceedings that shut down various radio stations, some of them included in the proceedings initiated in 2009 against 34 stations that, according to CONATEL authorities,⁶⁸⁰ violated provisions of the Organic Law on Telecommunications.⁶⁸¹ On February 2, the Supreme Court of Justice confirmed the shutdown of *Radio Bonita “La Guapa”* in Guatire, State of Miranda. According to the reports, the Political-Administrative Chamber of the Supreme Court of Justice (TSJ) declared inadmissible the appeal⁶⁸² filed by *Radio Bonita “La Guapa”* seeking to overturn the shutdown order issued by what was then the Ministry of Popular Power for Public Works and Housing.⁶⁸³ On March 18, CONATEL ordered the shutdown of the station *Carabobo Estéreo 102.3 FM*, in the city of Valencia, State of Carabobo, as well as the seizure of the equipment and materials needed to operate the

⁶⁷⁵ Tu Imagen TV. May 9, 2011. Letter from the General Director of Tu Imagen TV, Douglas Abreu Zárate, to the General Manager of Operations of CONATEL, Enrique Quintana. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁷⁶ Mayor’s Office of the Municipality of Cristóbal Rojas Charallave. November 16, 2010. Letter from Mayor José Ramírez to the President of Tele-Red, José Manuel Angarita. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁷⁷ CONATEL. March 28, 2011. Report on inspection at administrative offices of Tu Imagen TV. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁷⁸ Contract between Representaciones Inversat, C.A. and Producciones Tu Imagen TV, C.A. April 7, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁷⁹ Tu Imagen TV. Letter from the General Director of Tu Imagen TV, Douglas Abreu Zárate, to the General Director of CONATEL, Pedro Rolando Maldonado, the General Manager of Operations CONATEL, Enrique Quintana, and the Chief of Regulatory Follow-up of CONATEL, Mikhail Marsiglia. May 17, 2011. Available in the archives of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁸⁰ Ministry of Public Works and Housing. July 31, 2009. [Oficio 1095](#). [Official communication 1095]

⁶⁸¹ See, IACHR. 2009 Annual Report. Volume II: [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 660 *et seq.*

⁶⁸² Supreme Court of Justice. Administrative-Political Chamber. Trial Court. June 8, 2010. [Exp. 2010-0279](#). [Case File 2010-0279]

⁶⁸³ Supreme Court of Justice. February 2, 2011. [Sentencia 00139. Expediente 2010-0279](#). [Decision 00139. Case File 2010-0279]; Inter-American Press Association (IAPA). April 2011. [Country reports. Venezuela](#).

radio station, since it did not have “the proper administrative authorization and license.”⁶⁸⁴ On January 20, National Guard soldiers closed the station *Onda Costera 95,1 FM* in Costa de Oro, State of Aragua, and seized the broadcasting equipment. According to the information received, local authorities requested the shutdown because it aired information regarding the illegal occupation of housing in that town.⁶⁸⁵ On March 25, CONATEL ordered the shutdown and seizure of equipment at the station *Musicable Higuero* 93.7 FM, in Higuero, State of Miranda, alleging clandestine operations by the station, a claim denied by the station’s owners.⁶⁸⁶ The Special Rapporteurship had already expressed its concern in 2009 over the massive shutdown of stations and the fact that, after several years of inaction, the authorities would announce such measures against a background of tension between the private media and the government and constant criticism by government agents regarding the editorial content of the media that would be affected, suggesting that the editorial outlook of these media outlets was one of the reasons for the shutdown measures.⁶⁸⁷

443. The IACHR was informed that a decree published on March 29, 2011 in the Official Gazette granted the Vice President of the Republic unilateral power to define the direction of public policies in all matters related to the radio spectrum and the power to “grant, revoke, renew, and suspend” radio and television frequency licenses.⁶⁸⁸

6. Access to information

444. The IACHR received information about a series of problems in guaranteeing the right of access to public information as well as judicial interpretations that restrict that right, the absence of a suitable judicial remedy, restrictions on journalists’ access to information sources, lack of information available on government websites, and lack of response to requests for public information.⁶⁸⁹ According to reports, the criterion being used by public institutions to reject requests for information is a decision handed down by the Supreme Court of Justice on July 15, 2010, requiring “i) that the person requesting the information expressly indicate the reasons or purposes for which he or she needs the information; and ii) that the magnitude of the information being sought is in proportion to the utilization and use one wishes

⁶⁸⁴ National Telecommunications Commission (CONATEL). March 18, 2011. [CONATEL inicia procedimiento administrativo sancionatorio a emisora Carabobo Estéreo](#). [CONATEL begins administrative proceeding to penalize Carabobo Estéreo station]; National Journalists Association. March 19, 2011. [Periodistas de Carabobo en emergencia por cierre de emisora FM](#). [Carabobo journalists facing emergency due to shutdown of FM station]

⁶⁸⁵ El Carabobeño. January 22, 2011. [Pobladores de Ocumare de la Costa denunciaron cierre de emisora radial](#). [Residents of Ocumare de la Costa denounce shutdown of radio station]; Inter-American Press Association (IAPA). April 2011. [Country reports. Venezuela](#).

⁶⁸⁶ National Telecommunications Commission (CONATEL). March 25, 2011. [CONATEL inició procedimiento administrativo sancionatorio a emisora Musicable por funcionar presuntamente de forma clandestina en Miranda](#). [CONATEL began administrative proceeding to penalize Musicable station for allegedly operating clandestinely in Miranda]; Institute for Press and Society (IPYS). April 5, 2011. [CONATEL cierra emisora e incauta equipos](#). [CONATEL closes station and seizes equipment]; Globovisión. March 25, 2011. [CONATEL ordena cierre e incautación de equipos a emisora en Higuero](#). [CONATEL orders shutdown of station and seizure of equipment in Higuero]; Noticias 24. March 25, 2011. [Conatel ordenó el cierre de operaciones de la emisora Musicable Higuero 97.7 FM](#). [CONATEL ordered shutdown of operations at Musicable Higuero 97.7 FM station]

⁶⁸⁷ See, IACHR. 2009 Annual Report. December 30, 2009. Volume II: [Report of the Office of the Special Rapporteur for Freedom of Expression](#). Chapter II (Evaluation of the State of Freedom of Expression in the Hemisphere). Para. 671 *et seq.*

⁶⁸⁸ Paragraph three of the new Article 2 of the Organic Regulations on the Office of the Vice President of the Republic, amended by Decree 8122 of March 29, 2011, signed by President Hugo Chávez, establishes, *inter alia*, that the Vice President has the power to “grant, revoke, renew and suspend administrative authorizations and licenses in the area of open radio and television broadcasting and non-profit community public service radio and television broadcasting.” Paragraph one also assigns to the Vice President “the leadership of public policies on matters relating to the administration, regulation, organization, and control of the radio spectrum.” Since August 3, 2010 the Office of the Vice President had attached to CONATEL [missing text here?]. However, the Vice President was not authorized to make unilateral decisions until the aforementioned decree took effect. Official Gazette of the Bolivarian Republic of Venezuela. March 29, 2011. [Decreto Número 8.122](#) [Decree No. 8.122]; Institute for Press and Society (IPYS)/IFEX. April 7, 2011. [Vicepresidente podrá revocar concesiones de radio y televisión](#). [Vice President may revoke radio and television licenses]

⁶⁸⁹ Cf. Hearing on right of access to public information in Venezuela held at the IACHR on October 25, 2011 during the 143rd Period of Session.

to make of the information being requested.”⁶⁹⁰ That criterion was reflected, for example, in a response that CONATEL gave to a request for information filed by the Public Arena Civil Association [*Asociación Civil Espacio Público*] in which the regulatory agency maintained that, in accordance with a binding decision from the Supreme Court of Justice, the requester must communicate to the entity “the ultimate purpose for which the information being sought is needed, so that this regulatory entity can make the appropriate determination, in view of the weight assigned between the proportionality of the information and the use to which it will be put.”⁶⁹¹ The jurisprudence of the Inter-American Court of Human Rights has maintained that “[the] information should be provided without the need to prove direct interest or personal involvement in order to obtain it, except in cases in which a legitimate restriction is applied.”⁶⁹² There are also obstacles in terms of having a suitable judicial remedy ensuring access to public information, given that in Venezuela there is no law on access to information and the courts have decided to reverse the original assumption according to which the right of access could be sought through a quick and simple remedy (appeal) and maintain that one must exhaust the entire Appeal for Failure to Act [*Recurso de Abstención o Carencia*] procedure established in the Organic Law of the Contentious Administrative Law Jurisdiction, which is neither quick or simple.

445. The IACHR learned of limitations that had been imposed on journalists’ access to various public agencies. As reported to this office, during 2011 there has been an increase in the restrictions imposed on journalists’ ability to access and obtain information from entities such as the National Assembly, the Supreme Court of Justice, the Miraflores Palace (seat of the Executive Branch), the Ministry of Planning and Finance, and the headquarters of the state-owned company, PDVSA.⁶⁹³ In the National Assembly, since February, journalists and photographers are prohibited from attending legislative debates and are only allowed to follow the debates from a television set in an adjoining room. The audio for the transmission was even suddenly suspended on February 3, based on the claim that the session had been declared private. In response to the journalists’ protests, the legislative employee pushed and insulted them.⁶⁹⁴ On February 21, one journalist involved in that incident, Oliver Fernández, from the station *Televén*, had his credentials for access to that public building revoked without explanation by the National Assembly. He submitted another request to the press team headed by Ricardo Durán for accreditation to access the Assembly, but this was denied although no written reasons were given for that denial. In practice, the new rules were extended even to the free movement of journalists within the legislative building. Prior to February, the restriction only covered television cameramen.⁶⁹⁵ The limitations were established based on reform of the Internal Rules of Procedure and Debates of the National Assembly approved in December 2010, according to which the National Assembly’s *Fundación Televisora* will provide private stations with the signal from legislative sessions.⁶⁹⁶

⁶⁹⁰ Public Arena sought information regarding the salary and other benefits of the Comptroller General of the Republic, as well as the personal compensation table for that institution. Supreme Court of Justice. Constitutional Chamber. July 15, 2010. [745-15710-2010-09-1003](#).

⁶⁹¹ CONATEL. September 23, 2011. DG/CJ/No 606. Archive of the Office of the Special Rapporteur for Freedom of Expression.

⁶⁹² I/A Court H.R. [Case of Claude Reyes et al. v. Chile](#). Judgment of September 19, 2006. Series C No. 151, para. 77.

⁶⁹³ Knight Center for Journalism in the Americas. April 10, 2011. [Gremio y sindicato de prensa denuncian agresiones y falta de acceso a fuentes oficiales en Venezuela](#). [Press guild and union denounce attacks and lack of access to official sources in Venezuela]; El Nacional. April 7, 2011. [CNP y SNTP denuncian restricciones del Gobierno al trabajo periodístico](#). [CNP and SNTP denounce government restrictions on journalism]; El Universal. April 8, 2011. [Periodistas exigen acceso a las fuentes informativas](#). [Journalists demand access to information sources]

⁶⁹⁴ El Universal. February 4, 2011. [Imponen más restricciones a los periodistas en la AN](#). [More restrictions imposed on journalists in National Assembly]; Espacio Público. February 4, 2011. [Aumentan restricciones de periodistas y fotógrafos a la AN](#). [Restrictions on journalists and photographers in National Assembly increased]; Espacio Público. February 23, 2011. [Periodista de Televen fue vetado en la Asamblea Nacional](#). [Televen journalist banned from National Assembly]

⁶⁹⁵ El Universal. February 4, 2011. [Imponen más restricciones a los periodistas en la AN](#). [More restrictions imposed on journalists at National Assembly]

⁶⁹⁶ Article 56 of the new Internal Rules of Procedure and Debate of the National Assembly of Venezuela, a chapter in the Operating System of the National Assembly, establishes that: “In order to guarantee access to information in accordance with Article 108 of the Constitution of the Republic, plenary sessions shall be transmitted by the National Assembly’s *Fundación Televisora* (ANTV) and the State television station may provide support for transmission. Conditions shall be provided so that media

According to reports, between January and September 2011, national organizations defending freedom of expression recorded 21 complaints involving restrictions on journalists' access to sources of official information, which includes both limitations on entering public buildings and discrimination against private communication media in terms of their participation in press conferences held by public agencies.⁶⁹⁷

446. According to reports, an analysis of the 65 requests for information submitted to various public agencies between August and October 2011 indicated that 82% of the requests received no response, while 12% obtained a positive response and 2% received an explicit negative response.⁶⁹⁸ In addition, an evaluation of the websites of 28 public institutions, performed during October 2011, revealed that none of them meets the standards established in the Model Law on Access to Public Information approved by the OAS General Assembly in 2009, although there is greater compliance in mayoral offices in the Metropolitan Area of Caracas and less compliance in the national central government.⁶⁹⁹

D. Guarantees for legal due process and effective access to justice

447. The Commission has stated on multiple occasions that the observance of rights and freedoms in a democratic system requires a juridical and institutional order, in which the law takes precedence over the will of the governing, and in which the courts scrutinize the constitutionality and legality of government acts; in other words, it presupposes respect for the rule of law.⁷⁰⁰

448. The Venezuelan State has said that the Constitution of the Bolivarian Republic of Venezuela provides the mechanisms necessary to ensure the independence of the branches of government. Specifically, Title IV, "Public Power," establishes the independence of the country's branches of government; in the rationale section, it sets forth the principle of restrictive competence, whereby those agencies that wield public power may only perform those functions that the Constitution and the law expressly assigns to them.⁷⁰¹

449. Using the Venezuelan Constitution as its frame of reference, in its 2009 report the Commission examined – and again examines in this chapter – whether sufficient guarantees are in place to ensure the judicial branch's independence from the political branches of government in Venezuela.

...continuation

outlets interested in transmitting the information produced in the course of the session may do so through the ANTV signal." These Rules, in Article 87 of the same chapter, established that: "All sessions shall be public. In view of the content of Article 108 of the Constitution, audiovisual communications media may partially or totally transmit the development of the sessions." National Assembly of the Bolivarian Republic of Venezuela. December 22, 2010. [Reglamento Interior y de Debates de la Asamblea Nacional](#). [Internal Rules of Procedure and Debate of the National Assembly]; National Assembly of Venezuela. September 5, 2000. [Reglamento Interior y de Debates de la Asamblea Nacional](#).

⁶⁹⁷ Cf. Hearing on the right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session.

⁶⁹⁸ Cf. Hearing on the right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session.

⁶⁹⁹ According to the evaluation done by the Public Arena Civil Association, the information that is usually available would represent information related to the organic structure, functions, location of department, names of employees, services offered, and laws and operational manuals, and the least available information is that related to employee salaries, complaints, and responses form agencies, requests received, lists of published information, decision-making procedures, budget, and subsidies granted. Cf. Hearing on right of access to public information in Venezuela, held at the IACHR on October 25, 2011 during the 143rd regular session; Organization of American States. Department of International Law. June 4, 2009. Resolution of the OAS General Assembly AG/RES. 2514 (XXXIX-0/09). [Ley Modelo sobre Acceso a la Información](#). [Model Inter-American Law on Access to Information]

⁷⁰⁰ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 180; IACHR. *Second Report on the Situation of Human Rights in Peru*, June 2, 2000, Chapter II, para. 1; IACHR. *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, para. 150.

⁷⁰¹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 181; Venezuelan State's response to the questionnaire for analysis of the human rights situation in Venezuela. August 13, 2009, p. 9.

450. The Inter-American Court has emphasized that one of the main purposes of the separation of powers is to guarantee the independence of judges.⁷⁰² An independent judicial branch is vital in overseeing the constitutionality of the actions taken by the other branches of government and in its role as the branch of government charged with administering justice.

451. The Commission has devoted particular attention to the administration of justice in Venezuela, particularly in its 2009 report on *Democracy and Human Rights in Venezuela*, the Follow-up Report on its 2003 report on Venezuela, the reports included under Chapter IV of its Annual Reports, the hearings held during its sessions, and the cases submitted to the Inter-American Court.⁷⁰³ Through these mechanisms the Commission has expressed its concern over issues affecting the independence and impartiality of the judicial branch, particularly the high percentage of judges and prosecutors who are provisional appointees and the failure to comply with some legal and constitutional procedures when appointing and removing judges and prosecutors. The Commission has also received reports on the executive branch's alleged interference in court rulings.

452. The Inter-American Commission has held that the guarantees necessary to ensure correct and independent operation of the judicial branch include the mechanisms whereby judges are appointed, the tenure they enjoy in their positions, and their proper professional preparation. Another guarantee that the courts are autonomous from the other branches of government is that they are free from influence, threats or interference, whatever the source.⁷⁰⁴

453. In its report on *Democracy and Human Rights in Venezuela*, the Commission looked at the process by which judges and prosecutors are appointed in Venezuela and the provisions governing the selection of judges.⁷⁰⁵ As indicated in the Report on Democracy and Human Rights in Venezuela,⁷⁰⁶ the Commission learned that during 2011⁷⁰⁷ the appointment of provisional, temporary and interim judges continued and most of these appointments have been justified by establishing a permanent state of emergency. While the various resolutions appointing or transferring judges cite Articles 255 and 267⁷⁰⁸ of the Constitution of the Bolivarian Republic of Venezuela and the final part of Article 20 of the Organic Law of the Supreme Court of Justice, appointments are being made based on "...the urgent need to cover vacancies arising in the nation's various courts, in order to prevent the paralysis of judicial proceedings and after an examination of the candidates' relevant credentials..."

⁷⁰² I/A Court H.R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, para. 73; and *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Judgment of August 5, 2008, Series C No. 182, para. 55.

⁷⁰³ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Judgment of January 31, 2001, Series C No. 71, para. 73; and *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, Judgment of August 5, 2008, Series C No. 182 and *Case of Reverón Trujillo v. Venezuela*. Judgment of June 30, 2009. Series C. No. 197.

⁷⁰⁴ IACHR. *Report on Terrorism and Human Rights*. October 22, 2002, para. 229.

⁷⁰⁵ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, paras. 187-201.

⁷⁰⁶ See IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, paras. 202-205.

⁷⁰⁷ See http://www.tsj.gov.ve/designaciones/designaciones_lista.asp?ano=2011&mes=1.

⁷⁰⁸ Article 267 of the Constitution of the Bolivarian Republic of Venezuela reads as follows: "The Supreme Court shall direct, govern and administer the Judicial Branch, inspect and monitor and courts of the Republic and the Public Defenders Offices. It shall also prepare and execute its own budget and the budget of the Judicial Branch.

Discipline within the judicial system shall be the responsibility of the disciplinary tribunals that the law determines.

The disciplinary system for magistrates and judges will be based on the Code of Ethics for the Venezuelan Judge, which the National Assembly shall enact. Disciplinary proceedings shall be public, oral and swift, in keeping with due process, and under the terms and conditions that the law establishes.

To discharge these functions, the Supreme Court *en banc* shall create an Executive Directorate of the Judiciary, with regional offices."

454. As the Commission previously observed, the failure to follow the procedures prescribed in the Constitution and the law for judicial appointments and the vacuum in the law as regards the categories of judges exposes these officials to possible undue pressure in the exercise of the important function they perform and thus pose a serious threat to the independence of Venezuela's judiciary.⁷⁰⁹ The Commission has also identified another issue that undermines judicial independence: the mechanism whereby judges' appointments can be revoked. A significant number of judges have been removed from the bench by that method, which means that the terms of the Constitution and the corresponding administrative proceedings have not been observed.⁷¹⁰ It should be noted that in 2011, the United Nations' Human Rights Council emphasized the following in connection with Venezuela: "the provisional status of judges was a constraint that could affect their independence. One challenge facing the State was to reinforce the independence of the judiciary by increasing institutional and material support for the justice system and putting an end to the provisional nature of judicial appointments."⁷¹¹

455. The Inter-American Court has held that the condition *sine qua non* for the independence of the judiciary is, in addition to the appointment process, the tenure of judges in their seats on the bench.⁷¹² In this regard, the United Nations Basic Principles on the Independence of the Judiciary stipulate that "the term of office of judges [...] shall be adequately secured by law" (Principle 11) and that "judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists" (Principle 12).

456. In its 2009 *Report on Democracy and Human Rights in Venezuela*, the Commission observed that in addition to guarantees of tenure, a system must be instituted to hold judges and prosecutors accountable for cases in which fair and correct proceedings have deemed their performance to be improper.⁷¹³ In this regard, the Commission recalls that the Code of Ethics for Venezuelan Judges was approved in June 2009. This Code established that the bodies with disciplinary authority over judges would be the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court.⁷¹⁴ The Commission is pleased to note that on June 30, 2011 the Commission on the Functioning and Restructuring of the Judicial System ceased to exercise its disciplinary powers⁷¹⁵ since the National Assembly approved the appointment of judges to serve as members of the Judicial Disciplinary Tribunal and the Judicial Disciplinary Court on June 9, 2011 and both bodies began to operate on September 16, 2011.⁷¹⁶

457. The Commission considers the operational implementation of those bodies a significant advance in the disciplinary regulation of the administration of justice and will continue to monitor the activities of those bodies. Nonetheless, the Commission reiterates its concern regarding the amendment

⁷⁰⁹ IACHR, *Annual Report 2007*. Chapter IV. Venezuela, paragraph 281; *Annual Report 2008*. Chapter IV. Venezuela, paragraph 393.

⁷¹⁰ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 269.

⁷¹¹ Human Rights Council, Working Group on the Universal Periodic Review, Twelfth Session, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 b) of the annex to Human Rights Council Resolution 5/1, A/HRC/WG.6/12/VEN/2, July 25, 2011, para. 36, available at: <http://www.unhcr.org/refworld/pdfid/4e9c07322.pdf>
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/151/09/PDF/G1115109.pdf?OpenElement>

⁷¹² I/A Court H.R. *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75; *Case of Apitz Barbera et al. v. Venezuela*. Judgment of August 5, 2008. Series C No. 182, para. 138.

⁷¹³ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 239.

⁷¹⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 242.

⁷¹⁵ Resolution No. 001-2011 of June 30, 2011 available at http://cfr.tsj.gov.ve/noticias/noticia_detalle.asp?id=029&id2=Comisi3n%20de%20Funcionamiento%20y%20Reestructuraci3n&codigo=5298

⁷¹⁶ The appointed judges are Tulio Amado Jiménez Rodríguez, Ana Cecilia Zulueta Rodríguez, Adolfo Acacio Guerrero Omaña, Hernán Pacheco Alviárez, Jacqueline Del Valle Sosa Mariño, Carlos Alfredo Medina Rojas, Merly Jacqueline Morales Hernández, Romer Abner Pacheco Morales, María Alejandra Díaz Marín, Marianela Gil Martínez, Francisco Felipe Artigas Pérez, and Marisol del Valle Bayeh Bayeh. Ministry of Popular Power for Communication and Information. Judicial Disciplinary Court and Tribunal will combat judicial delays. http://www.minci.gob.ve/noticias-minci/1/207802/corte_y_tribunal.html.

of Article 61 of the Code of Ethics on August 23, 2010, providing that “[d]uring the investigation, and if deemed advisable for purposes of the investigation, the Judiciary Disciplinary Tribunal may order, on a precautionary basis, a judge’s provisional removal from the bench [...]” As it indicated in Chapter IV of its 2010 Annual Report, the Commission considers that the possibility of removing a judge based on “advisability” as determined by the Judicial Disciplinary Tribunal could raise the issue of potential abuse of discretion and engender legal insecurity regarding the decisions adopted by this Tribunal.⁷¹⁷

458. As for the prosecutors with the Public Prosecutor’s Office, who are freely appointed and removed, the Commission has consistently pointed out that the provisional status of prosecutors and their resulting lack of job stability could translate into a lack of resolutions and a failure to follow-through and pursue certain lines of investigation in criminal inquiries and to meet deadlines in the investigative phase.⁷¹⁸ The Commission believes that the provisional status of judges and prosecutors in Venezuela could have negative consequences for victims’ rights in criminal proceedings involving human rights violations.⁷¹⁹

459. During 2011, the Commission continued to receive information on the provisional appointment of prosecutors. Thus, in the period between October 15, 2010 and March 15, 2011, a total of 230 prosecutors were appointed. Of these, 64 are provisional prosecutors, 161 are assistant interim prosecutors, 2 are alternate prosecutors, and 3 are superior court prosecutors.⁷²⁰ The appointment of prosecutors in 2011 was achieved through publication in the Official Gazette of the Bolivarian Republic of Venezuela of the resolutions of the Public Prosecutor’s Office appointing different persons to the positions indicated above, but without any indication of the reasons for their appointment.⁷²¹

460. In addition to the importance of appropriate mechanisms for appointing judges, the right to an independent judiciary requires that the same principles or mechanisms apply to the appointment of prosecutors. Thus, the Commission has underscored the importance of a correctly implemented prosecutorial career service given the essential role that the Public Prosecutor’s Office plays in conducting criminal investigations, which means that the independence, impartiality, and suitability of prosecutors must be ensured so as to guarantee that investigations are effective and that the risk of impunity is eliminated, particularly in cases of human rights violations.⁷²²

461. The Commission recalls that among the protections afforded under Article 8 of the American Convention (right to a fair trial) are certain requirements that must be observed to guarantee the independence of the officers of the court. In keeping with the jurisprudence of the European Court⁷²³

⁷¹⁷ IACHR. *2010 Annual Report*. Chapter IV. Venezuela, para. 626.

⁷¹⁸ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 265.

⁷¹⁹ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 265 and IACHR. *2006 Annual Report*. Chapter IV: Human Rights Developments in the Region. Venezuela, para. 167.

⁷²⁰ Information received during the 143rd Session, March 2011.

⁷²¹ See, *inter alia*: Official Gazette of the Bolivarian Republic of Venezuela of October 18, 2010; Official Gazette of the Bolivarian Republic of Venezuela of October 26, 2010; Official Gazette of the Bolivarian Republic of Venezuela of October 27, 2010; Official Gazette of the Bolivarian Republic of Venezuela of November 9, 2010; Official Gazette of the Bolivarian Republic of Venezuela of November 17, 2010; Official Gazette of the Bolivarian Republic of Venezuela of December 2, 2010; Official Gazette of the Bolivarian Republic of Venezuela of December 3, 2010; Official Gazette of the Bolivarian Republic of Venezuela of December 6, 2010; Official Gazette of the Bolivarian Republic of Venezuela of December 22, 2010; Official Gazette of the Bolivarian Republic of Venezuela of December 27, 2010; Official Gazette of the Bolivarian Republic of Venezuela of December 29, 2010; Official Gazette of the Bolivarian Republic of Venezuela of January 19, 2011; Official Gazette of the Bolivarian Republic of Venezuela of January 20, 2011; Official Gazette of the Bolivarian Republic of Venezuela of February 1, 2011; Official Gazette of the Bolivarian Republic of Venezuela of February 2, 2011; Official Gazette of the Bolivarian Republic of Venezuela of February 3, 2011; Official Gazette of the Bolivarian Republic of Venezuela of February 17, 2011; Official Gazette of the Bolivarian Republic of Venezuela of February 18, 2011; Official Gazette of the Bolivarian Republic of Venezuela of March 3, 2011.

⁷²² IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 119; IACHR. *Access to Justice and Social Inclusion; the Road towards Strengthening Democracy in Bolivia*. June 28, 2007, para. 96.

⁷²³ Cf. European Court of Human Rights (ECHR). *Case of Campbell and Fell v. United Kingdom*, Judgment of June 28, 1984, Series A No. 80, para. 78; ECHR. *Case of Langborger v. Sweden*, Judgment of January 22, 1989, Series A No. 155, para. 32.

and the United Nations Basic Principles on the Independence of the Judiciary,⁷²⁴ the Inter-American Court has held that States are required to ensure an adequate appointment process,⁷²⁵ freedom from outside pressure,⁷²⁶ and tenure in positions.⁷²⁷

462. Based on these guarantees, the Commission observes that the stability of the officers of the court is one of the essential guarantees of due process of law protected under the American Convention. Thus, in accordance with the United Nations Basic Principles on the Independence of the Judiciary, all procedures for the adoption of disciplinary measures, suspension or removal shall be determined in accordance with established standards of judicial conduct.⁷²⁸

463. Finally, the recognition made by the State for purposes of its Universal Periodic Review should be emphasized, to wit:

We must continue to improve the promotion and protection of human rights through awareness-raising and training for the police, judges, prosecutors, and public defenders. We have therefore established or expanded the National School of Prosecutors, the National School of the Judiciary and the National Experimental University for Security Services, all of which include human rights as a cross-cutting theme in their curricula to ensure these rights are effectively realized.⁷²⁹

1. The Supreme Court of Justice

464. On October 17, 2011 the Constitutional Chamber of the Supreme Court of Justice issued a finding of constitutionality, in a decision written by Judge Arcadio Delgado Rosales, declaring unenforceable the September 1, 2001 judgment of the Inter-American Court of Human Rights ordering the Venezuelan State to ensure that disqualification sanctions do constitute an impediment to the nomination of Mr. Leopoldo López Mendoza should he wish to register as an electoral candidate.

465. That judgment arises as the result of an action seeking a ruling of unconstitutionality filed by Carlos Escarrá Malavé in his capacity as General Prosecutor of the Republic and other actions against the ruling of the Inter-American Court of Human Rights in the case of Leopoldo López Mendoza, based, among other arguments, on (i) the alleged partiality of the Inter-American Court for having evaluated as a basis for its decision an *amicus curiae* brief submitted by the Human Rights Foundation, which is presided over by a blood relative of Leopoldo López Mendoza; (ii) the fact that Leopoldo López Mendoza had not exhausted domestic remedies before resorting to the Inter-American system for the protection of human rights; (iii) the fact the measures ordered by the Inter-American Court of Human Rights are directed to various State agencies for payment of procedural costs, which amounts to interference in the functions proper to the branches of government; (iv) the fact that invocation of what is called the “foreseeability test” to declare the Venezuelan State responsible ignores domestic law and seeks to apply

⁷²⁴ United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

⁷²⁵ I/A Court H.R., *Case of the Constitutional Court v. Peru*, Merits, Reparations, and Costs, Judgment of January 31, 2001, Series C No. 71, para. 75.

⁷²⁶ *Cf.* I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75.

⁷²⁷ *Cf.* I/A Court H.R., *Case of the Constitutional Court v. Peru*. Judgment of January 31, 2001. Series C No. 71, para. 75.; *Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela*, Judgment of August 5, 2008. Series C No. 182, para. 138.

⁷²⁸ *Cf.* Principles 18 and 19 of the United Nations Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from August 26 to September 6, 1985, and endorsed by General Assembly resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

⁷²⁹ Human Rights Council, Working Group on the Universal Periodic Review, Twelfth Session. National report submitted in accordance with paragraph 15 a) of the annex to resolution 5/1 of the Human Rights Council, A/HRC/WG.6/12/VEN/1, July 19, 2011, para. 144, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/150/04/PDF/G1115004.pdf?OpenElement>.

concepts proper to Anglo-Saxon law and foreign to the Inter-American system; (v) the fact that the judgment ignores the Venezuelan State's efforts to combat corruption and implement the Inter-American Convention against Corruption; and finally (vi) alleged inaccuracies and contradictions in the Court's judgment. The Supreme Court felt that the judgment violates the Venezuelan legal system.⁷³⁰

466. In its decision, the Constitutional Chamber stated that the American Convention on Human Rights is not an instrument of supraconstitutional rank and, in accordance with Article 23 of the Constitution, the provisions contained in the ACHR have constitutional rank and only take precedence on the domestic level "to the extent that they contain more favorable standards regarding the enjoyment and exercise of those rights" than those established in the Constitution.

467. The Chamber also stated that by applying the "conventionality control" it confirmed that subsequent to the American Convention Venezuela signed two important anti-corruption treaties, the Inter-American Convention against Corruption (1996) and the United Nations Convention against Corruption (2003), that not only provide but require that the States Parties must impose modern and effective judicial as well as administrative and/or disciplinary measures to sanction corruption, including disqualification "by court order or other appropriate means and for a period to be determined by domestic law on those involved in corruption."⁷³¹ Finally, the Constitutional Chamber stated both in the whereas clauses and in the operative part of the decision that the disqualification of Leopoldo López Mendoza is administrative rather than political and he thus enjoys the political rights enshrined in the Constitution.

2. Politically-motivated removal and prosecution of judges

468. In its 2009 *Report on Democracy and Human Rights in Venezuela*, the Commission examined the situation of various judges who were removed from the bench after adopting decisions that affected the government's interests. Available public information indicated political interference in the decision to remove them.⁷³²

469. In 2010, the Commission continued to receive information on the 31st Judge of the Court of Preliminary Proceedings of the Caracas Metropolitan Area, María Lourdes Afiuni Mora, who on December 10, 2009, decided to replace the detention measure against citizen Elegio Cedeño with a less onerous precautionary measure,⁷³³ since by that time he had already been held in pre-trial detention for over two years (more than the maximum preventive detention of two years allowed under the Organic Code of Criminal Procedure).⁷³⁴ Judge Afiuni Mora based her decision on Opinion No. 10/2009 (Venezuela) of the UN Human Rights Council's Working Group on Arbitrary Detention, dated September 1, 2009. In that opinion, the Working Group on Arbitrary Detention declared that Mr. Cedeño's incarceration was arbitrary based on his extended period of preventive detention.

470. As the Commission observed in the *Report on Democracy and Human Rights in Venezuela* and as the United Nations Working Group on Arbitrary Detention pointed out in its opinion of September 3, 2010, Judge Afiuni was arrested along with bailiffs Rafael Rondón and Carlos Lotuffo at the offices of the court, minutes after issuing her decision. The arrests were made by agents with the Public Security Police Force, part of the Directorate of Intelligence and Prevention Services (DISIP, now called

⁷³⁰ Supreme Court of Justice, Constitutional Chamber, Reporting Judge: Arcadio Delgado Rosales, Case File No. 11-1130.

⁷³¹ Supreme Court of Justice, Constitutional Chamber, Reporting Judge: Arcadio Delgado Rosales, Case file No. 11-1130.

⁷³² IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 285–301.

⁷³³ According to Opinion No. 20/2010 of September 3, 2010 of the United Nations Human Rights Council's Working Group on Arbitrary Detention, Judge Afiuni Mora ordered the conditional release on bail of Mr. Cedeño, in full exercise of her jurisdictional authority; in place of his preventive detention, she ordered less severe measures, among them prohibiting him from leaving the country, withholding his passport, and requiring him to make a court appearance every 15 days.

⁷³⁴ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 297.

SEBIN). The arresting officers did not state the cause for the arrest and did not disclose what authority had ordered the arrest, nor did they show an arrest warrant.⁷³⁵ The following day, speaking in a national radio and television broadcast, the President of the Republic, Hugo Chávez, branded the judge a “bandit” and said the following: “I call for toughness against this judge, I even told the president of the Supreme Court [of Justice, Luisa Estela Morales], and I tell the National Assembly: a law must be passed because a judge who frees a bandit is much worse than the bandit himself. It is infinitely more serious than an assassination; therefore, we must apply the maximum penalty against this judge and against others who do this. I call for thirty years in prison in the name of the dignity of the country.”⁷³⁶ On December 11, 2009, the day after her arrest, Judge Afiuni was advised of the arrest warrant, which noted the commission of irregularities that allowed Mr. Cedeño’s release.⁷³⁷ On December 10, 2010 the Inter-American Court granted provisional measures to Judge Afiuni.

471. In a resolution dated March 2, 2011, the Inter-American Court decided to lift the provisional measures issued on behalf of Judge Afiuni. The Court stated that:

[o]bviously the beneficiary’s situation of risk has not been completely eliminated, but the vulnerability experienced by those who are in prison is a characteristic inherent to their situation. In this regard, the Court notes that the adoption of replacement preventive detention measures, by virtue of which Judge Afiuni’s conditions of detention have been modified, keeping her under “house arrest,” indicate that the beneficiary’s current situation does not meet the standard of gravity confirmed earlier and, in any case, the urgency and immediacy of the situation no longer apply.

Regarding the potential need for specialized medical care provided by physicians to be selected by Judge Afiuni, the Court observes that, in response to the brief submitted by the representatives on December 13, 2010 seeking compliance with the President’s Order, the Twenty-Sixth Court of Caracas resolved, on December 20, to allow the beneficiary to be treated, if necessary, by the physicians of her choice, although in State institutions. In addition, the Court observes that, according to information submitted by the representatives themselves, the State has complied with the aforementioned order, particularly by means of the operation performed on the beneficiary, among others, by a physician of her choice. In this respect, the Court appreciates the information submitted by the representatives and concludes that the State has helped to achieve another objective of the provisional measures, namely, medical care for Mrs. Afiuni provided by physicians of her choice.⁷³⁸

472. Throughout 2011, the Commission received no information to the effect that Judge Afiuni has been provided adequate medical treatment for the illnesses from which she suffers. The Commission is aware that since February 2011 Judge Afiuni has been under “house arrest,” to which she was transferred after an emergency operation.⁷³⁹

473. As for the criminal proceeding against Judge Afiuni, according to information known to the public Judge Afiuni sought the protection of Article 350 of the Constitution, which provides that “the people of Venezuela, true to their republican tradition and their struggle for independence, peace and freedom, shall disown any regime, legislation, or authority that violates democratic values, principles, and

⁷³⁵ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 297; United Nations Human Rights Council’s Working Group on Arbitrary Detention, Opinion No. 20/2010 (Bolivarian Republic of Venezuela) adopted on September 3, 2010 in the case of the detention of Judge María Lourdes Afiuni Mora in Venezuela, para. 7 (translation ours).

⁷³⁶ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter III, para. 298.

⁷³⁷ United Nations Human Rights Council’s Working Group on Arbitrary Detention, Opinion No. 20/2010 (Bolivarian Republic of Venezuela), adopted on September 3, 2010, in connection with the case of the detention of Judge María Lourdes Afiuni Mora in Venezuela, para. 9 (translation ours).

⁷³⁸ Order of the Inter-American Court of Human Rights of March 2, 2011, Provisional Measures with respect to Venezuela, Matter of María Lourdes Afiuni, whereas clauses 8 and 9 (translation ours).

⁷³⁹ Press release. Globovisión. Afiuni adheres to Article 350 and refuses to attend trial, July 6, 2011, available at: <http://historico.globovision.com/news.php?nid=194469>.

guarantees or encroaches upon human rights” and decided not to participate in the trial being conducted against her.⁷⁴⁰

474. The Commission has learned that the judge in this case, Alí Fabricio Paredes, has tried to forcibly transfer Judge Afiuni to the hearing room in order to conduct the trial. As Judge Afiuni’s defense team stated to Globovisión “Judge Alí Paredes forced María Lourdes Afiuni to enter the hearing room without the presence of her attorneys and the prosecutor from the Prosecutor’s Office.”⁷⁴¹ According to the information received, on December 13, 2011, Judge Paredes decided to extend Judge Afiuni’s house arrest by another two years.⁷⁴²

475. The Commission reiterates that the case of Judge Afiuni sends a strong signal to Venezuelan society and to the remaining judges that the judicial branch is not free to adopt decisions contrary to the interests of the government,⁷⁴³ since by doing so they run the risk of being removed from their positions, prosecuted and being subjected to sanctions.

3. Situation of alleged political prisoners

476. During the 141st Session, the IACHR received information regarding the situation of alleged political prisoners in Venezuela indicating that officials of the branches of government, particularly the judicial branch, “have intensified their ongoing attitude violating and disrespecting national laws and well as international agreements and treaties.” The information indicated that there have been public and notorious cases of persons publicly known for their critical personal opinions or who have carried out public functions in which they have acted in ways displeasing to the Executive Branch.⁷⁴⁴

⁷⁴⁰ Press release. Globovisión. Afiuni adheres to Article 350 and refuses to attend trial, July 6, 2011, available at: <http://historico.globovision.com/news.php?nid=194469>.

⁷⁴¹ Press release. La Verdad.com, Judge tries to try María Lourdes Afiuni without the defense present, October 15, 2011, available at: <http://www.laverdad.com/detnotic.php?CodNotic=71383>

⁷⁴² Newspaper article. *El Universal*. Preocupa a la ONU extensión de la detención de la jueza Afiuni. [UN troubled by the extension of Judge Afiuni’s house arrest. December 28, 2011. Available [in Spanish] at: <http://www.eluniversal.com/nacional-y-politica/111228/preocupa-a-la-onu-extension-de-la-detencion-de-la-jueza-afiuni> and at <http://www.ohchr.org/sp/NewsEvents/Pages/DisplayNews.aspx?NewsID=11745&LangID=S> .

⁷⁴³ IACHR. *Report on Democracy and Human Rights in Venezuela, December 30, 2009*, Chapter III, para. 301.

⁷⁴⁴ They indicated that the most frequent components of those cases are:

1. Immediate launch of criminal investigation after a public announcement from some senior official in the national government pointing to a specific person as a criminal and guilty of serious crimes, disrespecting the right to a presumption of innocence and the right to have investigative bodies conduct the investigation through a proper procedure.
2. Emphasis on the part of the Prosecutor’s Office on presenting the evidence of guilt and discarding any item of evidence or investigative procedure that favors the person under investigation.
3. Decisions and convictions without grounds and without the necessary evidence, including the use of false witnesses.
4. There is widespread use of provisional measures of detention, in violation of the right to be tried while free. There are accusations of crimes with heavy penalties that later cannot be supported in later stages, such as at trial.
5. Denial or delay in granting alternative measures to completing the punishment despite expiration of the legally provided period for granting such measures.
6. Procedural delay or acceleration of the course of the trial depending on the needs or convenience of the Venezuelan State.
7. Constant threat of transfer to jails or judicial detention centers outside the jurisdiction of the courts, if one exercises the right to file a complaint.
8. Arbitrary actions by court and prison authorities designed to deny, without reason, requests for medical care sought by the defendant.
9. Sudden change of prosecutors and judges without following the legal procedure for their appointment.
10. Removal of judges when they make some decision that favors persons deprived of liberty.

477. It was reported that in most cases, the initial arrest was arbitrary and illegal, based on raids conducted without proper judicial guarantee. This has exacerbated the situation of the persons under arrest, having put them in a completely defenseless position. They maintained that another common factor refers to opinions expressed by senior officials belonging to branches of government other than the judicial branch, indicating which penalties should be handed down for conviction. They state that it is becoming more difficult each day to gain access to adequate and effective judicial remedies and to conduct adequate investigations and develop them impartially, seriously and diligently and in a reasonable amount of time. They maintained that there is a judicial deficit in the country and note a “programmed and concerted effort among the organs of justice to criminalize and punish those citizens, using political prosecution for the most serious crimes established in the legal system.”

III. ANALYSIS OF THE SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

478. In its 2009 Report on Democracy and Human Rights in Venezuela, the Commission analyzed the legal framework for protection of economic, social, and cultural rights in Venezuela as well as the status of such rights, taking particular account of poverty, education, and health indicators, in the light of the American Convention on Human Rights, the San Salvador Protocol and the Inter-American Democratic Charter. Within that legal framework of protection for economic, social and cultural rights, the Commission gave particular consideration to the protection of the rights of indigenous peoples and trade union rights.⁷⁴⁵

479. During the 143rd Session of the IACHR, the Commission conducted hearings on the general situation of human rights at the request of the State, in which it explained the progress made, particularly with respect to the exercise of economic, social and cultural rights. The State supplied information on its fulfillment of the Millennium Development Goals and presented a study based on comparative indicators, most of which spanned the period 1990 to the present day, showing the improvements made by the Government. It reiterated that the social and economic policies of the Bolivarian Government have made it possible for society to meet the goals of reducing poverty and hunger and promoting gender equity, eradicating illiteracy, ensuring free treatment for persons with HIV/AIDS, addressing morbidity and mortality due to tuberculosis, supplying drinking water, and achieving environmental protection goals.⁷⁴⁶

480. In its National Report for the Universal Periodic Review presented in July 2011, Venezuela reported that its achievements in terms of eradicating poverty include reducing the number of households living in extreme poverty, which fell from 21% in 1998 to 7.1% in 2010, according to studies conducted by the National Statistics Institute (INE).⁷⁴⁷ It also indicated that Venezuela’s Gini coefficient for the first half of 2010 was 0.3898, indicating that it is the country with the least inequality in Latin America⁷⁴⁸ and that it has successfully met the first of the Millennium Development Goals (MDG), which is to reduce by half, between 1990 and 2015, the percentage of people living in extreme poverty.⁷⁴⁹ Venezuela also indicated that the Food and Agriculture Organizations of the United Nations’ (FAO) 2010

⁷⁴⁵ IACHR. *Report on Democracy and Human Rights in Venezuela*, December 30, 2009, Chapter VII, paras. 953-956.

⁷⁴⁶ Information received in hearing on the Situation of Human Rights in Venezuela, 143rd Session, October 25, 2011. Bolivarian Republic of Venezuela. Social Achievements of the Bolivarian Republic of Venezuela: *Meeting the Millennium Goals*, October 2011.

⁷⁴⁷ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 20.

⁷⁴⁸ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 24.

⁷⁴⁹ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 26.

report included Venezuela in the second category of countries with the most food security, “reflecting the success of national policies in the area of access to and distribution of food”. It stated that it has met the MDG in this area and is currently working to reduce the indicator to zero.⁷⁵⁰

481. On December 20, 2010, the National Assembly approved a bill on University Education.⁷⁵¹ This bill establishes that university education, in addition to being a universal human right, is “an irrevocably public good, at the service of societal transformation, (...) in the context of building a socialist society⁷⁵²” and a “process for constructing cultural hegemony for overcoming capitalist society.”⁷⁵³

482. Regarding this law, the Commission indicated in Chapter IV of the 2010 Annual Report that “the State’s establishment of public policies in the area of university education is a legitimate State objective. However, that objective must be pursued within the boundaries that respect for human rights imposes. In the area of university education, those rights include, *inter alia*, the right to freedom of thought and expression, which is the very basis of academic freedom. Although the law establishes strong mechanisms for intervention in university affairs and in the content of instruction, the law does refer to the autonomy of universities and provides that their autonomy shall be exercised “through academic freedom, in order to debate the current trends of thought.”⁷⁵⁴ From that standpoint, the bill poses a serious contradiction since freedom of thought and expression, which is the basis of academic freedom, is to be strictly observed in the academic and university environment, and can in no way be limited by subordinating it to the ideological, religious or moral principles that the State imposes as an obligation.

483. The President of the Republic vetoed this law on January 4, 2011, sending it back to the National Assembly for further discussion. According to statements the President made to the press “the veto of the University Education Law is, once again, a demonstration of the profound democratic nature of the Bolivarian Government.”⁷⁵⁵

484. In its National Report for the United Nations Universal Periodic Review, Venezuela emphasized that on the subject of education in 2010, UNESCO recognized Venezuela in its reports as the country with the fifth highest gross enrolment rate in university education, at 85%, and the second highest rate in Latin America and the Caribbean⁷⁵⁶ and for 2010 recorded a total of 172 university institutions, 77 of which are state-run and 95 of which are private. It also indicated that enrolment in the sector amounts to 2,293,914 students registered, 2,184,327 of whom are in undergraduate education and

⁷⁵⁰ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 64.

⁷⁵¹ AFP. December 23, 2010. Venezuela approves law promoting socialism in universities. <http://www.google.com/hostednews/afp/article/ALeqM5jMroNmzm-ji5jP0E72U9hdDBeoBQ?docId=CNG.50e279c89752000e7527bb02f044cce8.331>. Prensa Latina. December 23, 2010. Venezuelan National Assembly Approves Law on Universities. Available at: http://www.prensa-latina.cu/index.php?option=com_content&task=view&id=249392&Itemid=1.

⁷⁵² Bill on University Education. Article 3.2. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es.

⁷⁵³ Bill on University Education. Article 3.6. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es.

⁷⁵⁴ Bill on University Education. Article 17. Available at: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=2788&tmpl=component&format=raw&Itemid=185&lang=es.

⁷⁵⁵ Agencia Venezolana de Noticias, Veto of University Law and Rejection of VAT Increase Show Democratic Character of Government, Caracas January 5, 2011.

⁷⁵⁶ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 75.

109,587 of whom are in postgraduate education.⁷⁵⁷ In the area of health, it indicated that in 2011, 24 million Venezuelans, or 80% of the population, received free healthcare at a total of 13,510 public health centers.⁷⁵⁸ Finally, it stated that for 2010 the Venezuelan Social Security Institute listed a total of 1,804,087 pensioners, showing a considerable increase since for 1998 that figure was 191,187 pensioners. The total of people insured equaled 12,157,710, and 7,188,203 of them are men and 4,969,507 are women.⁷⁵⁹

485. Based on the information received, the Commission acknowledges and appreciates the progress made in the area of economic, social and cultural rights through policies and measures designed to correct the problems plaguing broad sectors of the Venezuelan population as well as the progress that Venezuela has made in instituting laws that protect and guarantee these rights. The priority that the State assigns to these measures is essential in guaranteeing a decent life for the Venezuelan population and an important basis for preserving democratic stability.

486. In the area of housing, on January 9, 2011, President Hugo Chávez stated in his first *Aló Presidente* program of the year that he was making “the necessary adjustments to the Emergency Organic Law on Urban Land to continue implementing the housing plan and in this way provide special care for families affected by the rains.” He announced that the law on urban land would be approved in less than a week, through the Enabling Law.

487. The President expressed his support for the expropriations of buildings and lands carried out that week in western Caracas, which had been seized by persons who had identified themselves as affected by the rains that afflicted the country in December 2010, leaving more than 130,000 victims. He stated specifically that: “These are old and largely abandoned buildings, and when we ask about their owners, it turns out they’re in Spain, France, Miami.” The President also referred to a piece of land in this area that belongs to the Polar Company; it was seized on January 7 and its expropriation was approved on January 8, 2011. He stated that work was being completed on drawing up an organic emergency law for urban land and housing, via the Enabling Law, in order to respond to all the problems the country is enduring in this area.⁷⁶⁰

488. On February 13, 2011, the President approved a decree creating 17 Housing and Residential Vital Areas (AVIVIR) in the context of the Law on Land and Housing and specified that a total of 2,703 hectares would come under the control of the Presidential Housing Commission for conversion to AVIVIR.

489. Furthermore, in March 2011, the United Socialist Party of Venezuela (PSUV) submitted a Bill for Regularization and Control of Housing Rentals, the ninth transitional provision of which states that

In order to eradicate urban large estate all owners of old buildings intended for rental and constructed up to the year 1987, whether by individuals, legal entities, or de facto groups, are required to offer for sale the properties occupied by the tenants, occupants, or any other family of person inhabiting the property in question, regardless of how long they have been occupying it, within a period of no more than one hundred eighty (180) days

⁷⁵⁷ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva,, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 76.

⁷⁵⁸ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva,, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 85.

⁷⁵⁹ National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, Twelfth session, Geneva,, 3–14 October 2011, A/HRC/WG.6/12/VEN/1, General Distr., 19 July 2011, para. 103.

⁷⁶⁰ Últimas Noticias, Chávez announced adjustment in the Emergency Law, January 9, 2011.

from the moment when the national tenancy office sets the sales price according to the methods established in this law.⁷⁶¹

490. The President signed the bill into law on November 12, 2011.⁷⁶² In this regard, the Commission recalls the need to establish a balance between the State's duty to guarantee the right to housing and the right to private property enshrined in Article 21 of the American Convention.

491. In addition, the Commission again notes that Venezuela has not yet completed ratification of the Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), under which the States Parties pledge to adopt the necessary measures, to the extent that the available resources allow and taking their degree of development into account, for the purpose of achieving progressively and pursuant to their domestic laws, the full observance of economic, social and cultural rights. Venezuela signed the Protocol of San Salvador on January 27, 1989. The National Assembly discussed and approved it in March 2005; on May 23, 2005 it was published in the Official Gazette of the Bolivarian Republic of Venezuela under number 38,192. Nevertheless, the State has not yet ratified that instrument before the Organization of American States. Therefore, the Commission calls upon the Venezuelan State to complete its ratification of the Protocol of San Salvador.

IV SITUATION OF VULNERABLE GROUPS OR COLLECTIVITIES

A. Indigenous Peoples

492. The Commission learned that in April 2011, eight members of the Wayuú people were killed. Seven were members of the Cambar family. Four of the victims were children.⁷⁶³ The eight victims were shot to death in the village of Kasusaín in the western state of Zulia. Another four members of the family were wounded.⁷⁶⁴ The authorities are investigating the events. On July 8, 2011, seven armed subjects robbed and raped six Wayuú women and a Wayuú girl –all passengers on a bus on the La Concepción-Maracaibo line –, along with 13 other women. The authorities have the matter under investigation.⁷⁶⁵

493. A spokesperson for the Yanomami indigenous community of Yajanama filed a complaint with the Fourth Prosecutor's Office of Puerto Ayacucho to the effect that a 15-year-old girl had been raped by Army soldiers and reported that there were other similar cases.⁷⁶⁶ It was also said that the

⁷⁶¹ Bill for Regularization and Control of Housing Rentals, Ninth Transitional Provision. At: http://www.asambleanacional.gob.ve/index.php?option=com_docman&task=doc_view&gid=3393&tmpl=component&format=raw&Itemid=185&lang=es

⁷⁶² See: National Assembly of the Bolivarian Republic of Venezuela. Bill for Regularization and Control of Housing Rentals enacted into law. Available [in Spanish] at: http://www.asambleanacional.gov.ve/index.php?option=com_content&view=article&id=36458%3Apresidente-promulgo-este-sabado-la-ley-de-arrendamiento&catid=333%3Agenerales&Itemid=248&lang=es .

⁷⁶³ Abraham, Manuel, Guillermo and Alirio Cambar and three children, also members of the Cambar family, and the boy Luis Rafael Semprún. *El Universal*, La Guajira, April 25, 2011. Available [in Spanish] at: <http://74.6.147.41/search/srpcache?ei=UTF-8&p=investigaciones+muerte+de+siete+ind%C3%ADgenas+wayuu&fr=yfp-t-729&u=http://cc.bingj.com/cache.aspx?q=investigaciones+muerte+de+siete+ind%C3%ADgenas+wayuu&d=5025210873742099&mk=es-xl&setlang=es-PE&w=2fd4d2,44e87210&icp=1&.intl=pe&sig=RXIFssaoSO5cd8h3NasLbw-->

⁷⁶⁴ María Lucinda, Ana, José and Alexander Cambar, who were taken to the Cojoro clinic in La Guajira. *El Universal*, La Guajira, April 25, 2011. Available [in Spanish] at: <http://74.6.147.41/search/srpcache?ei=UTF-8&p=investigaciones+muerte+de+siete+ind%C3%ADgenas+wayuu&fr=yfp-t-729&u=http://cc.bingj.com/cache.aspx?q=investigaciones+muerte+de+siete+ind%C3%ADgenas+wayuu&d=5025210873742099&mk=es-xl&setlang=es-PE&w=2fd4d2,44e87210&icp=1&.intl=pe&sig=RXIFssaoSO5cd8h3NasLbw-->

⁷⁶⁵ En: <http://www.reportero24.com/2011/07/30792/>

⁷⁶⁶ Informe21.com. Febrero de 2011. Available [in Spanish] at: <http://informe21.com/~mgessen/actualidad/yanomamis-acusan-militares-violar-menor>.

Yanomami “do not want the military within their territory because the soldiers have raped the Yanomami women.”⁷⁶⁷

B. Human rights defenders

494. In 2011 the IACHR has continued to receive information regarding the situation of human rights defenders in Venezuela, indicating continued attacks on their life and integrity, criminalization of activities in defense of human right, accusations, and serious restrictions on freedom of association.

495. With respect to attacks on the life of human rights defenders, according to the information received by the IACHR, in the period between October 2010 and September 2011, thirty-seven union members were murdered, for a total of 273 people with ties to unions murdered during the period from 2005 to September 2011.⁷⁶⁸ A significant percentage of these murders were committed by hired killers and relate to jobs being sought and disputed, primarily in the construction and petroleum sectors.⁷⁶⁹ The IACHR has been informed that the Government has not adopted measures to improve the serious situation faced by union members in Venezuela but, on the contrary, has ignored the existence of the problem.⁷⁷⁰

496. Regarding alleged attacks on the integrity of human rights defenders, the Commission learned about the situation of Rocío San Miguel, founder and President of the organization called Citizen Oversight. According to the complaint she made to the media, in January 2011 she received a Bolivarian Armed Forces publication called *Ámbito Cívico Militar* containing an “intelligence report” that classified her and the journalists Nelson Bocaranda, Marianella Salazar, and Patricia Poleo as military targets because they were part of an alleged plan to destabilize the government of President Chávez.⁷⁷¹ The IACHR also received information that following this, Mrs. San Miguel learned that her Twitter account and personal mail addresses had been infiltrated and received threats that her photographs and personal data would be published.⁷⁷² Although Rocío San Miguel reported these facts to the authorities, to date no investigations have been initiated.

497. According to information submitted by civil society at the 141st Session of the IACHR, the situation of impunity for attacks against human rights defenders continues, given that in 99% of the cases those responsible have not been identified as yet nor has any punishment been set. In addition, as reported to the IACHR, 49% of the complaints regarding attacks on human rights defenders are in the investigative phase and only 1% have advanced to the trial stage and obtained a conviction. No investigation has been opened in 45% and the case has been dismissed or sent to the archives in the remaining 5%.⁷⁷³

⁷⁶⁷ Informe21.com. Febrero de 2011. Available [in Spanish] at: <http://informe21.com/~mgessen/actualidad/yanomamis-acusan-militares-violar-menor>.

⁷⁶⁸ IACHR, Hearing on the Situation of Labor Union Rights in the Americas, 143rd Session, October 28, 2011. Available at: http://www.oas.org/OASPage/videosasf/2011/10/102811_RB_S4.wmv

⁷⁶⁹ Inter-American Platform for Human Rights, Democracy and Development, *PROVEA: 122 union members have been murdered in the last two year in a context of impunity*, August 19, 2010. Available in Spanish at: http://www.pidhdd.org/index2.php?option=com_content&do_pdf=1&id=1936

⁷⁷⁰ The IACHR received information that in its last report the Public Defender’s Office did not address the situation of union members in Venezuela. IACHR, Hearing on the Situation of Labor Union Rights in the Americas, 143rd Session, October 28, 2011. Available at: http://www.oas.org/OASPage/videosasf/2011/10/102811_RB_S4.wmv; In addition, in 2010 it learned of the statements made by the President of the Republic who declared on July 31, 2010 that “[...] throughout the length and breadth of Bolivarian Venezuela we have no murdered or displaced union members or insurgent forces [...]”. Blog of Hugo Chávez, *Líneas de Chávez*, July 31, 2010. Available at: <http://www.chavez.org.ve/chavez/lineas-chavez/56-31-julio/>

⁷⁷¹ Globovisión, *Rocío San Miguel and three journalists considered military targets*, May 5, 2011. Available at: <http://historico.globovision.com/news.php?nid=187152>

⁷⁷² La Patilla, *Rocío San Miguel announces she closed her Twitter account, following new threats*, September 7, 2011. Available at: <http://www.lapatilla.com/site/2011/09/07/rocio-san-miguel-anuncia-que-cerro-su-nueva-en-twitter-tras-nuevas-amenazas/>

⁷⁷³ IACHR, *Hearing on the Situation of Human Rights Defenders in Venezuela*, 141st Session, March 29, 2011.

498. Regarding the criminalization of activities in defense of human rights, civil society reported that according to their records 70% of the cases related to human rights defenders accused of some crime are in the investigative phase, 13% are in the trial phase, and no charges have been filed in 17%. This indicates that in 83% of the cases there is underlying potential for criminal charges against human rights defenders.⁷⁷⁴ The criminal classifications used most frequently to criminalize the activities of human rights defenders are: defamation, violation of security zones and damage to public property, injuries, resisting authority, illegal association (*agavillamiento*) and conspiracy to commit a crime, unauthorized disclosure of information, and instigation to commit a crime.⁷⁷⁵

499. Specifically with respect to the criminalization of union leaders, the IACHR received information during its 143rd Session that union members who have called and led labor strikes have been accused of the crimes of “obstructing work”⁷⁷⁶ and “stockpiling.”⁷⁷⁷ According to information received by the IACHR, 150 union members were subject to criminal prosecution.⁷⁷⁸ Moreover, in addition to the prison terms that could be imposed for these types of crimes, judges ordered precautionary measures while proceedings were under way, forbidding the accused from calling meetings or approaching specific companies.⁷⁷⁹

500. During 2011, the Commission continued to monitor the situation of the union leader, Rubén González, General Secretary of the Orinoco Iron Miners’ Union (Sintraferrominera), who was taken into custody on September 24, 2009 along with other union members after heading up a work stoppage at the Orinoco Iron Mine Company to protest the failure to honor commitments made in the collective bargaining agreement. According to the information received, Rubén González was imprisoned after being charged with the crimes of conspiracy to commit crime, instigating the commission of criminal acts, restricting the right to work and failure to comply with the special regime governing security zones.⁷⁸⁰ On November 18, 2010, the International Labor Organization’s (ILO) Governing Body, based on the 358th Report of the Committee on Freedom of Association, asked the Venezuelan Government to release Rubén González.⁷⁸¹ According to the information available, on March 3, 2011 the Criminal Cassation Chamber of the Supreme Court of Justice ordered *ex officio* that Rubén González, be released from prison and placed under a regime requiring him to appear every 15 days and prohibiting him from leaving the country.⁷⁸²

501. The Commission also continued to receive information on statements that demeaned the work of human rights defenders and exposed them to situations of greater risk. In particular, during 2011 the Commission monitored the situation of Humberto Prado, Director of the Venezuelan Observatory of Prisons (OVP), who has been singled out on several occasions as being responsible for “organizing

⁷⁷⁴ IACHR, *Hearing on the Situation of Human Rights Defenders in Venezuela*, 141st Session, March 29, 2011.

⁷⁷⁵ IACHR, *Hearing on the Situation of Human Rights Defenders in Venezuela*, 141st Session, March 29, 2011.

⁷⁷⁶ Art. 192 of the Venezuelan Penal Code establishes: Anyone who, through violence or threats, restricts or suppresses, in any way, the free flow of trade or industry, shall be punished with imprisonment of one to ten months.

⁷⁷⁷ Art. 139 of the Decree Law for the Defense of Persons in Access to Goods and Services establishes: Those who restrict the supply, circulation or distribution of goods or hold them back, with or without concealment, to provoke scarcity and price increases, shall commit the crime of hoarding and shall be punished with imprisonment of two to six years.

⁷⁷⁸ IACHR, *Hearing on the Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at en: http://www.oas.org/OASPage/videosasf/2011/10/102811_RB_S4.wmv

⁷⁷⁹ IACHR, *Hearing on the Situation of Labor Union Rights in the Americas*, 143rd Session, October 28, 2011. Available at: http://www.oas.org/OASPage/videosasf/2011/10/102811_RB_S4.wmv

⁷⁸⁰ Information provided at the hearing “Democratic institutions and human rights defenders in Venezuela” held during the 140th Session of the IACHR.

⁷⁸¹ Available at: <http://www.derechos.org/ve/proveaweb/?p=8636>

⁷⁸² FIDH, *Conditional release for Mr. Rubén González, member of Sintraferrominera union*, March 4, 2011. Available in Spanish at: <http://www.fidh.org/Libertad-condicional-para-el-Sr-Ruben-Gonzalez>

prison strikes,” of “benefiting economically from inmates’ problems,” of “receiving financing from the opposition,” and of “obeying the interests of the United States.”⁷⁸³ According to the information available from various media sources, in June 2011 the Interior and Justice Minister, Tareck El Aissami, made statements on the state-run channel VTV accusing Humberto Prado of lying about the situation at the El Rodeo II penitentiary center, linking him with opposition political groups.⁷⁸⁴ These statements were made following the events that occurred on June 12, 2011 at the Rodeo I Judicial Confinement Center where at least 19 inmates died and 25 were injured as the result of a clash among inmates.⁷⁸⁵ In its resolution on provisional measures granted Humberto Prado, the Inter-American Court indicated that the State “must implement protective measures and grant effective and adequate guarantees so that he can freely carry out his activities, avoiding actions that limit or obstruct his work.”⁷⁸⁶ Humberto Prado informed the IACHR that with the support of Amnesty International, he temporarily left Venezuela for Spain in June 2011 for his own safety and that of his family. According to information available in some media outlets, he remained in Spain for nearly two months.⁷⁸⁷

502. During 2011 the IACHR learned of the passage of laws hampering the exercise of freedom of association by human rights defenders. In this regard, on December 23, 2010 the “Law on Political Sovereignty and National Self-Determination was published in the Official Gazette. The State enacted this law “to protect the exercise of political sovereignty and national self-determination from foreign intervention.⁷⁸⁸ The law states that the “the assets and other income of organizations with political purposes or organizations for the defense of political rights must be made up exclusively of national assets and resources.”⁷⁸⁹ Organizations that receive foreign financing must pay a fine equal to twice the amount received;⁷⁹⁰ individuals who receive economic assistance, financial contributions for the exercise of political activities from foreign individuals or organizations may pay a “fine equal to twice the amount received;⁷⁹¹ and foreign citizens who participate in foreign financing activities are subject to the procedure for expulsion from Venezuela,⁷⁹² without prejudice to other penalties provided in other laws, and accessory and specific penalties in the event of repeat offenses.⁷⁹³

503. Although no information has been received so far on the actual implementation of these penalties, civil society reported that the law has had two negative effects: a) it reduces civil society’s

⁷⁸³ FIDH, *Threats against Mr. Humberto Prado*, June 2, 2010. Available in Spanish at: <http://www.fidh.org/Hostigamiento-contra-el-Sr-Humberto-Prado-VEN-003>

⁷⁸⁴ Front Line, *Venezuela: Dr. Humberto Prado Sifontes, human rights defender, subject to defamation after statements by public official*, June 24, 2011; FIDH, *Defamation campaign against human rights defenders and organizations*, June 24, 2011. Available in Spanish at: <http://www.fidh.org/Campana-de-difamacion-en-contra-de-defensores-y>

⁷⁸⁵ IACHR, Press release 57/11, *IACHR deploras violent deaths in Venezuelan prison*, June 16, 2011. Available at: <http://www.cidh.oas.org/Comunicados/English/2011/57-11eng.htm> <http://www.IACHR.oas.org/Comunicados/Spanish/2011/57-11sp.htm>

⁷⁸⁶ Resolution of the I/A Court of July 6, 2010. Provisional measures with respect to Venezuela. Matters related to certain penitentiary centers of Venezuela. Whereas clause twenty-eight.

⁷⁸⁷ Diario del Pueblo Región Oriente, *Prado: Defending HR is a dangerous activity in Venezuela*, October 16, 2011. Available in Spanish at: <http://www.diazioregion.com/2011/10/16/prado-defensa-de-ddhh-es-una-actividad-peligrosa-en-venezuela/>

⁷⁸⁸ Art. 1. Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

⁷⁸⁹ Art 4. Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

⁷⁹⁰ Art 6. Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

⁷⁹¹ Art 7. Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

⁷⁹² Art 8. Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

⁷⁹³ Cf. Arts. 9 and 20 of the Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

opportunities for joint defense against restrictions on freedom of association, because organizations that clearly do not defend or sponsor causes associated with the defense of political rights do not consider themselves to be covered by this restriction and have avoided a joint reaction for fear that the regulations will eventually cover organizations that defend other types of rights; b) due to the ambiguity and lack of a clear definition of what is understood by “promoting disseminating, informing, or defending the full exercise of citizens’ political rights,”⁷⁹⁴ the law has had the effect of discouraging organizations from defending rights associated with the exercise of democracy and political rights for fear of restrictions on their funding.

C. Afro-descendants

504. The IACHR notes that to date the variable “Afro-descendant” (or “Afrodescendence”) has not been used in censuses or other mechanisms surveying the Venezuelan population.⁷⁹⁵ Nonetheless, according to information provided by the State, Venezuela will be conducting the Fourteenth Population and Housing Census from September 1st to November 30th, 2011 and a question has been included in the questionnaire addressing citizens’ self-recognition as Afro-descendants, which will make it possible to develop public policies intended to satisfy the needs of this group.

505. In this regard, the IACHR stresses the need to have disaggregated statistical data on Afro-descendants, which is essential information for action by the States in terms of their obligations to promote and protect human rights.⁷⁹⁶ Along the same lines, the Public Defender’s Office has recommended moving ahead with preparing an accurate diagnosis of the social and economic situation of Afro-descendant communities and eliminating the stereotypes that foster racial discrimination.⁷⁹⁷

506. Despite the above, the IACHR views favorably, as other international human rights bodies have done, the creation of specialized institutions to combat racial discrimination⁷⁹⁸ and urges the State to continue adopting innovative measures to effectively provide appropriate treatment to remedy the situation of Afro-descendants. In particular, the IACHR believes that these agencies must have trained staff and it is essential to assign sufficient human and financial resources to comprehend and promote the human rights of the Afro-descendant population.

D. Children and adolescents

⁷⁹⁴ Cf. Art. 3.2 of the Law on Defense of Political Sovereignty and National Self-Determination, December 23, 2010. Available at: <http://www.minamb.gob.ve/files/leyes-2011/No6013ledespan.pdf>

⁷⁹⁵ Response from the Bolivarian Republic of Venezuela to the Questionnaire of the Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination, August 3, 2011.

⁷⁹⁶ See also references to recommendations from United Nations treaty bodies contained in the *Compilation prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1*. Working Group on the Universal Periodic Review (A/HRC/WG.6/12/VEN/2, July 25, 2011): The Committee on the Elimination of Racial Discrimination (CERD) asked Venezuela to report within a year on the implementation of its recommendations, contained in paragraph 14 (disaggregated statistical data on Afro-descendants) of the final observations. (CERD/C/VEN/CO/18, para. 25). In addition, the Committee on the Rights of the Child (CRC) noted that statistics were needed regarding the situation of the Afro-descendant population (CRC/C/VEN/CO/2, paras. 80–81 in Spanish).

⁷⁹⁷ *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 © of the annex to Human Rights Council resolution 5/1*. Working Group on the Universal Periodic Review A/HRC/WG.6/12/VEN/3, July 22, 2011, para. 71.

⁷⁹⁸ *Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 © of the annex to Human Rights Council resolution 5/1*. Working Group on the Universal Periodic Review A/HRC/WG.6/12/VEN/3, July 22, 2011, para. 10; and Response of the Bolivarian Republic of Venezuela to the Questionnaire of the Rapporteurship on the Rights of Afro-descendants and against Racial Discrimination, August 3, 2011. For example, the State made reference to the Presidential Commission for the Prevention and Elimination of all Forms and Racial Discrimination and Other Distinctions in the Venezuelan Educational System; the National Commission for Afro-descendant Youth of the National Institute of Youth; the Liaison Office of Afro-descendant Communities of the Ministry of Popular Power for Culture; the Subcommittee for Afro-descendant Statistics; the Coordinating Office for Afro-descendant Women, and other bodies.

507. According to information known to the public, in April 2011 six children from the Warao indigenous community in Cambalache died from malnutrition and extreme poverty. The Warao indigenous community in Cambalache survives by collecting garbage and has no access to drinking water and adequate food.⁷⁹⁹ The situation of extreme poverty in which that community lives has been documented by the media.⁸⁰⁰ The report that the Human Rights Network for Children and Adolescents (REDHNA) submitted to the United Nations Human Rights Council in March 2011 indicates that it is still impossible to accurately monitor the situation of children and adolescents who belong to indigenous groups due to the absence of disaggregated data and records. It also emphasized, among others, the lack of access to health and the malnutrition suffered by those communities.⁸⁰¹

508. The IACHR recognized that the corporal punishment of children and adolescents was prohibited with adoption of the amendment to the Organic Law for the Protection of Children and Adolescents in December 2007.⁸⁰² However, REDHNA indicated that no policies and protective measures have been developed, as mandated by the law.⁸⁰³ On the other hand, the reform of the Organic Law for the Protection of Children and Adolescents established a new judicial process that includes alternative conflict resolution methods. REDHNA also indicates that there have been significant delays in the process of implementing the new judicial procedure, in addition to the continued lack of specialized personnel and the fact that children and adolescents are confined for unnecessarily long periods in centers not suited for implementing socio-economic measures. REDHNA emphasizes that the Full Panel of the Supreme Court of Justice agreed to issue some new guidelines to guarantee the right of children and adolescents to voice their opinions in judicial proceedings, which merits recognition.⁸⁰⁴

509. Finally, REDHNA emphasizes that police forces still have discriminatory practices with respect to children and adolescents who work or live on the streets or among traditionally excluded population sectors. It indicates that these children and adolescents are usually stigmatized and accused of criminal acts without sufficient evidence. REDHNA emphasizes the lack of programs and services to provide protection and proper care in such cases, which are generally not reported or addressed.⁸⁰⁵

E. Persons deprived of liberty

⁷⁹⁹ Prensa Indígena, Venezuela: Malnutrition kills six indigenous children in ten days, April 16, 2011. Available in Spanish at: <http://www.prensaindigena.org.mx/?q=content/venezuela-desnutrici%C3%B3n-mata-seis-ni%C3%B1os-ind%C3%ADgenas-en-10-d%C3%AD>. See also Community of Activities of Amnesty International, Six Warao children have died in Cambalache, April 13, 2011. Available in Spanish at: <http://amnistia.me/profiles/blogs/seis-ninos-waraos-han-muerto>

⁸⁰⁰ The New York Times, Left Behind in Venezuela to Piece Lives Together. Available at: <http://www.nytimes.com/2010/09/19/world/americas/19venez.html>

⁸⁰¹ REDHNA, UPR Information. Rights Situation of Specific Groups: Children and adolescents, March 18, 2011, p. 8. Available in Spanish at: http://www.cecodap.org.ve/images/stories/Informes_Cecodap/REDHNA_Venezuela_Informe_sobre_la_situacion_derechos_de_la_niez_Venezuela_Octubre_2011.pdf

⁸⁰² IACHR, Report on corporal punish and the human rights of children and adolescents, OEA/Ser.L/V/II.135, Doc. 14, August 5, 2009, para. 32. Available in Spanish at: <http://www.cidh.oas.org/Ninez/CastigoCorporal2009/CASTIGO%20CORPORAL%20ESP%20FINAL.pdf>

⁸⁰³ REDHNA, UPR Information. Rights Situation of Specific Groups: Children and adolescents, March 18, 2011, p. 3. Available in Spanish at: http://www.cecodap.org.ve/images/stories/Informes_Cecodap/REDHNA_Venezuela_Informe_sobre_la_situacion_derechos_de_la_niez_EPU_Venezuela_Octubre_2011.pdf

⁸⁰⁴ REDHNA, UPR Information. Rights Situation of Specific Groups: Children and adolescents, March 18, 2011, p. 2, 3 and 9. Available in Spanish at: http://www.cecodap.org.ve/images/stories/Informes_Cecodap/REDHNA_Venezuela_Informe_sobre_la_situacion_derechos_de_la_niez_EPU_Venezuela_Octubre_2011.pdf

⁸⁰⁵ REDHNA, UPR Information. Rights Situation of Special Groups: Children and adolescents, March 18, 2011, p. 9. Available in Spanish at: http://www.cecodap.org.ve/images/stories/Informes_Cecodap/REDHNA_Venezuela_Informe_sobre_la_situacion_derechos_de_la_niez_EPU_Venezuela_Octubre_2011.pdf

510. The situation of persons deprived of liberty is particularly serious in Venezuela. On February 7, 2011, the Commission asked the State pursuant to the powers conferred under Article 41 of the American Convention for information on the death of two inmates at the Tocarón Prison in Aragua on January 30 and February 2, 2011 and other acts of violence on subsequent days. The IACHR also requested information on acts of violence at the Vista Hermosa Prison in Bolívar that occurred on February 1, 2011, in which five inmates lost their lives and one inmate was injured. On February 9, the Commission issued a press release to express its deep concern over those deaths and urged the State to adopt the measures necessary to avoid the recurrence of such events. The situation led to the petition for and concession of provisional measures by the Court.

511. On February 15 and 16, 2011 two inmates lost their lives and at least 54 were injured in acts of violence at the Center-West Region Prison, Uribana Prison (under provisional measures since February 2, 2007), specifically as the result of the practice called “coliseum”⁸⁰⁶. These acts of violence are tied to rivalries among the inmates. On February 22, the Commission issued a press release expressing its deep concern and reiterating the need to adopt immediate and effective measures to prevent the repetition of such events. The IACHR repeated its condemnation of the “Coliseums” as stated earlier in November 2010 in press release No. 110/10. Subsequently, the IACHR received information on another Coliseum “session” that occurred on August 8, 2011, during which a total of 31 inmates were injured at the Uribana Prison.

512. At the hearing on the situation of persons deprived of liberty on March 19th 2011, information was received on: (1) prison violence as reflected in the large number of inmates who die each year in Venezuela, with 365 and 476 deaths recorded in 2009 and 2010, respectively; (2) the procedural delay affecting inmates and that is a factor that generates violence and various protest demonstrations at penal centers; and (3) the deplorable conditions of detention in the prisons, notably over-crowding. There were also reports regarding the frequent turnover of prison directors and the related minister, which impedes continuity of management and helps to maintain the *status quo*.

513. According to data provided in that hearing – attended by representatives of the State – during the first quarter of 2011 five “Coliseum sessions” were held at the Uribana Prison, during which one person died and at least 58 were injured. In addition, during the first quarter of 2011, four relatives of inmates, all of them women, were killed by firearms at penal centers.

514. In addition, according to information received, 19 inmates died and 25 were seriously injured on June 12, 2011 as the result of a fight among inmates at the Rodeo I Judicial Detention Center (under provisional measures since February 8, 2008) in the State of Miranda. This occurred against the backdrop of a struggle between rival gangs for control of the prison. According to the information received, the inmates used firearms to attack each other. On June 16, the Commission issued a press release on this respect. In addition, in the context of powers conferred under Article 41 of the Convention, on July 18, 2011 the Commission requested information to the State regarding the “retaking” of the Rodeo I and II prisons, during which the prisons were seized and thousands of National Guard troops retook control on June 17 and 18. According to the information released, on June 17, 2011 explosions were heard and tear bombs were tossed at journalists and relatives who were outside the judicial detention centers. In addition, information was received on inmates and National Guard troops who were killed and wounded, shots fired from tanks, the presence of snipers, the use of tear bombs, and the eventual transfer of 700 inmates to other detention centers. No response had been received from the State by the time this report was approved.

515. According to information released in the press: (a) on July 19 six inmates died and 22 were injured in a riot at the San Felipe jail in Yaracuy where shots were fired between the prisoners and the National Guard; (b) also on July 19 there was a fire at the Cabimas jail in Zulia, caused by a Molotov cocktail thrown inside a cell, burning 17 prisoners and leaving one dead; (c) there was a riot on July 14 at the Coro prison in Falcón, as a result of which two inmates and three National Guard troops were injured;

⁸⁰⁶ Fights among inmates organized and periodically programmed by inmates.

and (d) three inmates died on July 22 at the Sabaneta prison and another seven were injured by the explosion of two grenades inside the prison.

516. In its press releases regarding the alarming situation of violence in the prisons, the Commission reiterated its concern over high rates of violence in Venezuelan prisons and high caliber weapons in the hands of criminal organizations inside various prisons, which are obtained with the collaboration of National Guard agents; the extortion fee known as *causa* collected from inmates, which is divided among the criminal gangs controlling the prisons, the civilian authority, and the military authorities on guard outside the prison; serious conditions of over-crowding, the lack of medical care, and the procedural delay in handling criminal cases. In addition, the Commission again urged Venezuelan authorities to adopt appropriate measures to prevent outbreaks of violence in the prisons.

517. On March 25, the State responded to the Commission's request, confirming the information regarding Rodeo I and II and added that an irregular situation occurred on February 15 and 16 at the "Uribana" Center-West Region Prison "with the unfavorable result of the death of two (2) persons deprived of freedom and fifty-seven who were wounded." As a measure to prevent the repetition of such events, it pointed to efforts to coordinate with the prison regime to patrol all prison areas three times per day in order to minimize flashpoints. Regarding the investigations initiated into these events, it noted that it called on the Public Prosecutor and prosecutors to see to and conduct the relevant procedures and investigations needed to shed light on the facts. It also stated that in order to maintain security inside the prisons, security sessions were held with the Bolivarian Guard, as were discussions with inmates' spokespersons, the Bolivarian Guard, prison facility directors, and human rights representatives at each facility in order to hear the inmates' viewpoint, and cameras were installed at strategic points to keep illegal objects and substances from entering prison facilities.

518. Exercising its monitoring functions, the Commission has also recorded other acts of violence and disruptions occurring in the prisons of Venezuela, such as the kidnapping, in September, of more than 1,600 relatives by the inmates themselves at the Uribana Prison as a form of protest;⁸⁰⁷ the death of four inmates and injuries to eight inmates as a result of a grenade that exploded at the Barinas prison, after a shootout inside the prison,⁸⁰⁸ a shootout at the Maracaibo prison that lasted for more than four hours, in which one inmate died and another was injured;⁸⁰⁹ the violent death of seven inmates at the Uribana prison in October as the result of a struggle for internal control of the prison (two of whom died when a grenade exploded);⁸¹⁰ the kidnapping of 60 employees by inmates at the Carabobo prison;⁸¹¹ and continuation of the bloody practice of "Coliseums" at the Uribana prison, despite the two statements issued by the IACHR condemning the practice.⁸¹²

⁸⁰⁷ El Informador, *2 mil secuestrados en Uribana "por mal trato a familiares"* [2,000 people kidnapped in Uribana "for mistreatment of relatives." <http://www.elinformador.com.ve/noticias/sucesos/carceles/secuestrados-uribana-trato-familiares/45401>; El Universal, *Presos de Uribana solicitan la presencia de Iris Varela*, [Uribana inmates seek presence of Iris Varela]. <http://www.eluniversal.com/2011/09/27/presos-de-uribana-solicitan-presencia-de-iris-varela.shtml>

⁸⁰⁸ La Nación, *Mueren cuatro presos y ocho heridos al explotar una Granada en cárcel de Barinas* [Four inmates killed and eight injured when grenade explodes at Barinas prison]. <http://www.lanacion.com.ve/noticias.php?IdArticulo=187841&tit=Mueren%204%20presos%20y%20ocho%20heridos%20al%20expotar%20una%20granada%20en%20cárcel%20de%20Barinas>; El Universal, *En huelga de hambre 500 reos en penal modelo de Croro* [500 inmates on hunger strike at Croro model prison], <http://www.eluniversal.com/caracas/sucesos/111004/en-huelga-de-hambre-500-reos-en-penal-modelo-de-coro>

⁸⁰⁹ El Regional Del Zulia, *Tiroteo en la Cárcel de Maracaibo dejó un reo muerto y otro herido* [Shootout at Maracaibo prison left one inmate dead and another injured]. <http://www.elregionaldelzulia.com/titulares/default.asp?ID=33491>

⁸¹⁰ El Impulso.com, *Lucha por el control de Uribana deja 7 muertos en 3 días* [Struggle for control of Uribana leaves seven dead in three days]. <http://www.elimpulso.com/pages/vernoticia.aspx?id=129792>

⁸¹¹ El Espectador.com, *Presos secuestran a unos 60 trabajadores de cárcel de Venezuela* [Inmates kidnap some 60 employees at Venezuelan prison]. <http://www.elespectador.com/noticias/elmundo/articulo-305866-presos-secuestran-unos-60-trabajadores-de-carcel-de-venezuela>

⁸¹² El Nacional, *Se elevan a 31 los heridos por coliseo en Uribana* [Number of wounded in Coliseum at Uribana increases to 31]. http://www.el-nacional.com/www/site/p_contenido.php?q=nodo/227543/Regiones/Coliseo-en-Uribana-deja-19-internos-heridos-

519. According to the information received in the context of the 143rd Period of Session, the current prison population in Venezuela totals 48,000 inmates, while the actual capacity of the system is 16,000. Of this universe, 63% of the persons deprived of freedom are actively involved in criminal proceedings and only 37% have received a final judgment. It was pointed out that one of the principal reasons for the high rate of persons held in preventive detention is the lack of judicial independence since in practice criminal judges refrain from ordering measures other than preventive detention for fear of being sanctioned or removed from the bench.

520. Information received by the Commission during the 143rd Period of Session indicated that 90% of the inmate population is idle, with no access to educational or work activities, which is a particular concern considering that 70% of the inmates are between the ages of 18 and 30.⁸¹³ Besides this, 75% of prisons were constructed in the 1940s and the renovations and modifications needed to deal with the passage of time have not been performed. One of the serious problems of prison management in Venezuela that were reported is the lack of medical care for inmates, particularly those suffering from tuberculosis and those living with HIV.⁸¹⁴ Regarding this last point, the OVP submitted a list of 24 inmates who died in custody due to serious health conditions.⁸¹⁵

521. The IACHR notes that the principal problems seen in Venezuelan prisons remain unresolved and without any path to their resolution: prison violence, control of prisons by inmate mafias, high caliber weapons and drugs entering the prisons (with the direct participation of the National Guard), extortionate fees collected from inmates by mafias that control the prisons (fees known as *causa* or *obligaito*), serious procedural backlog of criminal cases, which is one of the causes for the constant outbreaks of violence and physical protests such as hunger strikes, blood strikes, kidnapping of relatives and employees, and others practices. The IACHR reiterates that the Venezuelan State must take actions with immediate impact as well as medium- and long-term measures to contain the serious situation of violence and lack of control affecting the prison system.⁸¹⁶ Otherwise, it would be unattainable and impracticable to speak of “humanization” of the prison system; and of the system’s being used as a mechanism for reform and social readjustment of persons with criminal convictions.

F. Gay, lesbian, transsexual, bisexual, and intersexed (LGTBI) persons

522. In the March 21, 2011 report it prepared for the United Nations’ Universal Periodic Review, the organization DIVERLEX observed that “the Constitutional Chamber of the Venezuelan Supreme Court has held that the clauses of the Constitution that embody the human rights recognized in

⁸¹³ Meeting held with the Rapporteur for Persons Deprived of Freedom and civil society organizations during 143rd session.

⁸¹⁴ Meeting held with the Rapporteur for Persons Deprived of Freedom and civil society organizations (Venezuelan Observatory of Prisons, Una Ventana a la Libertad and CEJIL) during the 143rd Period of Sessions.

⁸¹⁵ 1. Luis Antonio Garcés Piñango (tuberculosis); Whitney Alberto Gutiérrez Peña (upper digestive hemorrhage); 2. José Luis Bracamonte (HIV); 3. Marcos Rafael Rodríguez Vargas (severe complex with fever, vomiting, diarrhea, possibly suffered from hepatitis); 4. Elías A. Duarte Vanegas (HV); 5. Wilfredo Zamora Campos (tuberculosis); 6. Jesué Abraham Torres (brain tumor); 7. Eudis A. Colmenares S. (HIV); 8. Pedro J. Ahumada Benavides (HIV); 10 Melvin G. Medina Pire (acute pancreatitis); 11. Andrés J. Lunar (dyspnea, bronchial asthma and bronchopneumonia); 12. Kerwin Ramos (liver infection); 13. Marcos E. Zarcos V. (respiratory failure, presented convulsive syndrome); 14. Félix A. Martínez Noriega (acute respiratory insufficiency due to pulmonary tuberculosis, as HIV carrier); 15. Dennys José Ortiz M. (peritonitis); 16. Ignacio Vargas Iriarte (diabetes and tuberculosis); 17. Luis A. Rodríguez V. (respiratory arrest, suffered from tuberculosis); 18. Pedro Díaz (cancer); 19. Segundo López (respiratory arrest, had tuberculosis); 20. Gerónimo Domínguez Guillén (respiratory arrest); 21. Antonio J. Velázquez (respiratory infection); María Alejandra Rodríguez (respiratory arrest, HIV carrier); 22. José Daniel González (respiratory arrest, HIV carrier); 23. Manuel Rodolfo Ochoa (respiratory arrest, suffered from tuberculosis) y 24. Alexander Palencia (meningitis). Information submitted by OVP to Rapporteur for Persons Deprived of Freedom during 143rd session.

⁸¹⁶ IACHR, Report on Democracy and Human Rights in Venezuela, OEA/Ser.L/V/II. Doc. 54, December 30, 2009, Chap. VI, para. 905. See also: IACHR, 2008 Annual Report, Chapter IV, Venezuela, OEA/Ser.L/II.134, Doc. 5 Rev.1, February 25, 2009, para. 430.

Venezuela are immediately exigible, irrespective of whether those rights are recognized in any law.”⁸¹⁷ DIVERLEX pointed out that the Supreme Court’s ruling notwithstanding, there are still laws in force in Venezuela that segregate and discriminate on the basis of sexual orientation and gender identity. It asserted that Venezuela: (i) does not have laws to effectively combat homo-lesbo-transphobia, violence and discrimination against the LGBTTI community and the consequences, (ii) does not have public policies promoting inclusiveness and requiring that equal services be provided to the LGBTTI community⁸¹⁸ and (iii) has a number of sub-legal provisions, ordinances, and the like still in effect that draw distinctions based on sexual orientation or gender identity. It noted that LGBTTI persons do not have equal protection of the law or equal rights, even though they have the same duties and obligations. The report states that such laws breed violence, serve to legitimize homophobia, create an environment of hatred toward LGBTTI persons that is deaf to their demands for equality and disregards their human dignity.⁸¹⁹

523. The report also complains of the aggression that police and private security personnel constantly practice against same-sex couples or transgender persons to prevent them from entering or remaining in shopping centers, parks, and public recreation areas. The government–run television stations (La Hojilla, VTV, febrero 2011) justify this conduct by arguing that “there are children” in such places and that the mere presence of same-sex couples or transgender persons would be “exhibitionist”. The report points out that this extreme reaction has drawn criticism even from persons associated with government circles.⁸²⁰

524. In the early morning hours of April 30, 2011, two transgender persons were murdered on Avenida Libertador in Caracas. The defender of the rights of LGTBI persons, Tamara Adrián, explained that the problem of identity is one of the most difficult for these communities. She said that “there are no public policies for them. As a rule, these are people who engage in prostitution because they have no alternative, as no one will give them a job. This invites exploitation, as these are the most vulnerable groups in society.”⁸²¹

525. The IACHR would remind the Venezuelan government that the right of all persons to live free of discrimination is guaranteed by the international law of human rights, and specifically by the American Convention on Human Rights. The IACHR therefore urges Venezuela to take measures to prevent and respond to these human rights abuses by adopting and enforcing the appropriate public policies and waging campaigns to combat discrimination based on sexual orientation.

V. RECOMMENDATIONS

1. Guarantee the full exercise of political rights to all individuals, irrespective of their positions on government policies, and adopt the measures necessary to promote tolerance and pluralism in the exercise of political rights.

2. Refrain from taking reprisals or using the punitive power of the State to intimidate or sanction individuals based on their political opinions, and guarantee the plurality of opportunities and

⁸¹⁷ DIVERLEX. *Informe sobre la República Bolivariana de Venezuela*, UPR, October 2011. Available [in Spanish] at: <http://es.scribd.com/doc/52851166/EPU-de-Venezuela-en-ONU-Informe-de-DIVERLEX-Diversidad-e-Igualdad-a-Traves-de-la-Ley>, párr. 2.

⁸¹⁸ Lesbian, gay, bisexual, transsexual, transgender and intersexed persons.

⁸¹⁹ DIVERLEX. *Informe sobre la República Bolivariana de Venezuela*. UPR. October 2011. Available [in Spanish] at: <http://es.scribd.com/doc/52851166/EPU-de-Venezuela-en-ONU-Informe-de-DIVERLEX-Diversidad-e-Igualdad-a-Traves-de-la-Ley>, paragraph 3.

⁸²⁰ DIVERLEX. *Informe sobre la República Bolivariana de Venezuela*. UPR. October 2011. Available [in Spanish] at: <http://es.scribd.com/doc/52851166/EPU-de-Venezuela-en-ONU-Informe-de-DIVERLEX-Diversidad-e-Igualdad-a-Traves-de-la-Ley>, 16.

⁸²¹ Reportero 24, June 2011. Available [in Spanish] at: <http://www.reportero24.com/2011/06/caracas-transexuales-temen-por-su-vida/>

arenas for democratic activity, including respect for gatherings and protests held in exercise of the right of assembly and peaceful protest.

3. Effectively guarantee the separation and independence of the branches of government and, in particular, adopt urgent measures to ensure the independence of the judicial branch, by strengthening the procedures for appointing and removing judges and prosecutors, affirming their job stability and eliminating the provisional status in which the large majority of judges and prosecutors find themselves.

4. From the highest levels of government, continue to publicly condemn acts of violence against social communicators, communications media, human rights defenders, unionists, and political dissidents, with the aim of preventing actions that foment these crimes and of avoiding continued cultivation of a climate of stigmatization towards those who maintain a stance critical of government actions.

5. Promote a climate of tolerance that encourages and is conducive to the active participation of and an exchange of ideas among the various sectors of society, and design institutions that promote rather than inhibit or thwart public discourse.

6. Adopt the necessary measures to protect the life and personal integrity of all persons, and the specific measures needed to protect journalists, human rights defenders, members of organized labor, persons who participate in public demonstrations, persons deprived of their liberty, indigenous peoples, afrodescendants and the LGTBI community. Also, strengthen judicial institutions' capacity to combat impunity in cases of violence and to ensure that investigations into acts of violence are conducted effectively and with due diligence.

7. Guarantee the conditions necessary for defenders of human rights and union rights to be able to engage freely in their activities, and refrain from taking any action or adopting any legislation that would limit or impede their work.

8. Urgently adopt the measures necessary to correct the procedural delays and the high percentage of persons deprived of liberty without a final verdict, thereby avoiding the excessive, unnecessary and disproportionate reliance on preventive detention or detention pending trial. Also, take measures to reduce prison overcrowding and improve detention conditions so that they are in line with international standards in this area, while taking particular care to ensure safety inside prisons, effective control of weapons inside prisons, proper segregation of the inmate population to conform to the categories and criteria established in the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, and to prohibit prisons from holding more prisoners than they have space for.

9. Step up efforts so as to gradually give full effect to economic, social and cultural rights while ensuring that that this does not come at the cost of the people's other basic rights. Furthermore, adopt public policies that allow for long-term continuity of efforts to guarantee economic, social and cultural rights, thereby ensuring that full enjoyment of these rights will not depend on the resolve of any future administration.